

FIGHTING CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA

Anti-corruption Reforms in Eastern Europe and Central Asia

Progress and Challenges, 2016-2019



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**PROGRESS AND CHALLENGES,
2016-2019**



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About the Anti-Corruption Network for Eastern Europe and Central Asia

Established in 1998, the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) supports its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor coordination via regional meetings and seminars, peer learning programmes, and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at www.oecd.org/corruption/acn.

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Foreword

Corruption remains high in the region of Eastern Europe and Central Asia. Governments have undertaken many reforms to tackle corruption. However, empirical data and perception surveys show a poor enforcement track record and that countries have not fully aligned their laws with the international standards. This report takes stock of the actions that countries in the region took to address corruption since 2016. It identifies progress achieved as well as remaining challenges that require further action by countries.

The report summarises outcomes of the fourth round of Istanbul Anti-Corruption Action Plan monitoring that covered nine countries in the region: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan. The Istanbul Anti-Corruption Action Plan is an initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN).

The report analyses three broad areas of anti-corruption work, including anti-corruption policies and institutions, criminalisation of corruption and law-enforcement, and measures to prevent corruption in public administration and in the private sector. Examples of good practice from the OECD and other countries and comparative cross-country data help to illustrate the analysis. The report also reviews the role that the OECD/ACN played in supporting anticorruption efforts in the region.

The report covers the period from 2016 until the end of 2019 (with some data reflecting early 2020 developments). It is linked to the end of the fourth round of monitoring of Istanbul Action Plan. It thus updates the 2016 publication “Fighting Corruption in Eastern Europe and Central Asia, Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2013-2016”, which summarised the results of the third round of monitoring.

The ACN Secretariat drafted the report based on the fourth round Istanbul Action Plan monitoring reports, progress updates, thematic studies and other available materials and research. ACN countries provided information and comments, and they also reviewed the draft report. The findings of the report will provide the foundation for the new ACN Work Programme for 2020-2024 and the new anticorruption assessment framework, including the performance indicators.

The ACN Secretariat at Anti-Corruption Division (ACD) of the OECD Directorate for Financial and Enterprise Affairs prepared this report with the following contributions:

- Dmytro Kotlyar, ACN Consultant, coordinated preparation of the report and drafted Chapter 1 (Anti-corruption trends in Eastern Europe and Central Asia), the sections on integrity in the judiciary, integrity in the public prosecution service, access to information in Chapter 3 (Prevention of corruption) and the section on criminal law against corruption in Chapter 4 (Enforcement of criminal responsibility against corruption).
- Olga Savran, ACN Manager, drafted Chapter 5 (Prevention and prosecution of corruption in selected sectors), Chapter 6 (Anti-Corruption Network for Eastern Europe and Central Asia), the section on integrity in the public service, and the section on business integrity in Chapter 3 (Prevention of corruption).

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- Rusudan Mikhelidze, Anti-Corruption Analyst, drafted Chapter 2 (Anti-corruption policy and institutions) and the sections on conflict of interest and asset declarations in Chapter 3 (Prevention of corruption).
 - Tetyana Khavanska, Legal and Policy Analyst, drafted the section on corruption prevention and co-ordination institutions in Chapter 2 (Anti-corruption policy and institutions) and the section on anti-corruption criminal justice bodies in Chapter 4 (Enforcement of criminal responsibility against corruption).
 - Andrii Kukharuk, Anti-Corruption Analyst, drafted the section on procedures for investigation and prosecution of corruption offences and the section on enforcement of corruption offences in Chapter 4 (Enforcement of criminal responsibility against corruption).
 - Noel Merillet, Anti-Corruption Analyst, contributed to drafting of the section on awareness raising in Chapter 2 (Anti-corruption policy and institutions), the section on reporting and whistle-blowing in Chapter 3 (Prevention of corruption), and Chapter 6 (Anti-Corruption Network for Eastern Europe and Central Asia).
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Acronyms

ACC	Anti-Corruption Council (Georgia)
ACD	Anti-Corruption Directorate (Prosecutor General’s Office of Azerbaijan)
ACN	Anti-Corruption Network for Eastern Europe and Central Asia
ADB	Asian Development Bank
AML	anti-money laundering
ARIN	asset recovery inter-agency network
ARMA	Asset Recovery and Management Agency (Ukraine)
BiH	Bosnia and Herzegovina
BO	beneficial ownership
BOC	Business Ombudsman Council (Ukraine)
CARIN	Camden Asset Recovery Inter-Agency Network
CC	Criminal Code
CCC	Commission on Combating Corruption (Azerbaijan)
CEHRO	Commission on Ethics of High-Ranking Officials (Armenia)
CoE	Council of Europe
COI	conflict of interest
CoST	Infrastructure Sector Transparency Initiative
CPC	Criminal Procedure Code
CPI	Corruption Perception Index of Transparency International
CSB	Civil Service Bureau (Georgia)
CSL	Civil Service Law
CSO	civil society organisations
DNA	National Anti-Corruption Directorate (Romania)
DPA	deferred prosecution agreement

EaP	Eastern Partnership
EBRD	European Bank of Reconstruction and Development
EITI	Extractive Industries Transparency Initiative
EU	European Union
FATF	Financial Action Task Force
FCPA	Foreign Corrupt Practices Act
FIU	Financial Intelligence Unit
FOI	freedom of information
GLEN	Global Law-Enforcement Network
GPO	General Prosecutor's Office
GRECO	Group of States against Corruption
HACC	High Anti-Corruption Court (Ukraine)
HR	human resources
HRMIS	Human Resource Management Information System
IAP	Istanbul Anti-Corruption Action Plan
IAAC	Independent Agency Against Corruption (Mongolia)
IBA	International Bar Association
ICC	International Chamber of Commerce
KPIs	key performance indicators
LEA	law enforcement agency
LEN	Law-Enforcement Network
MIA	Ministry of Internal Affairs
MLA	mutual legal assistance
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MoU	Memorandum of understanding
NABU	National Anti-Corruption Bureau of Ukraine
NACP	National Agency on Corruption Prevention (Ukraine)
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development

OGP	Open Government Partnership
OSCE	Organisation for Security and Cooperation in Europe
OSCE/ODIHR	OSCE Office for Democratic Institutions and Human Rights
PEPs	politically exposed persons
RAI	Regional Anti-Corruption Initiative
SAPO	Specialised Anti-Corruption Prosecutor's Office (Ukraine)
SIGMA	Support for Improvement in Governance and Management (a joint initiative of the OECD and the European Union)
SME	small and medium enterprises
SOE	state-owned enterprise
StAR	Stolen Asset Recovery Initiative
STR	suspicious transaction report
TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNIC	Ukrainian Network of Integrity and Compliance
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
WEF	World Economic Forum
WGB	Working Group on Bribery in International Business Transactions

Executive summary

Anti-corruption policy and institutions

Anti-corruption policy planning has improved in the region. However, in most countries the policy is still not based on risk analysis and other evidence. The IAP countries have used anti-corruption policy documents to steer and co-ordinate implementation of reforms, engage external stakeholders. Most IAP countries have shown progress in making the policy development process more transparent, inclusive and diligent. However, policy documents often neglected key corruption risk areas, mostly for the lack of political will to address these risks. The IAP countries made progress in monitoring of implementation of anti-corruption policies but failed to measure impact of these reforms. Despite overall broader engagement with civil society, there were regrettable cases of shrinking space for the civil society engagement in the IAP region. Countries continued to carry out many anti-corruption education and awareness raising activities, but most of them lacked a systemic and targeted approach.

Most countries in the region have put in place specialised co-ordination and prevention bodies or mechanisms. However, their law enforcement counterparts often overshadowed them. Co-ordination and prevention institutions lacked resources, visibility and authority. Stakeholders in most IAP countries questioned the real impact of these institutions and their role as drivers of the national anti-corruption agenda. The governments and the general public rarely supported them. Going forward the countries should focus on making the work of these institutions better known, providing them with resources, mandate, and enabling them to exercise their functions to the full. Non-governmental sector should be involved meaningfully in the supervision and governance of these institutions. There needs to be a system of periodic assessment of their institutional capacity and performance. Governments should also avoid hasty decisions and afford time to test the new institutional arrangements before making further changes.

Prevention of corruption

All countries in the ACN region have identified public sector integrity as one of the key priorities of their anti-corruption and/or civil service sector reform policies. Poor quality of risk assessment in the development of the civil service or anti-corruption policies was the common problem across the region. Lack of reliable statistical data further undermined evidentiary basis. Level of implementation of public sector integrity policies varied a lot among countries. The main challenge in assessing progress in this area was the lack of effective and regular measurement of impact of anti-corruption, public integrity and civil service reforms. All IAP countries, except two, ensured delineation between political and professional positions in their laws, but some still had serious shortcomings where the classifications were wrong or unclear. ACN countries made good progress regarding merit-based recruitment in civil service. Other countries also required merit-based appointments, but there were major exemptions in laws or in practice in some of them. The risk of politisation remained high across the IAP region in relation to the senior positions in civil service. All IAP and many ACN countries suffered from little available data regarding professionalism in civil service. While many countries aimed at performance-based evaluations and promotions, only few countries have introduced them in practice. Countries achieved less progress in ensuring fair and transparent remuneration.

Codes of ethics or conduct did not seem to play an important role in promoting public sector integrity in the IAP countries. This might be because of a stronger reliance of the countries to rules based cohesive measures such as mandatory declarations or disciplinary sanctions. While all countries had ethics commissions or officers established in various state bodies, they appeared weak and ineffective

Ensuring public sector ethics among MPs and other political officials was probably the main challenge in the region. Many countries did not have codes of parliamentary ethics because of the continued resistance of MPs themselves; some countries have adopted them only recently. In all cases, there were no effective mechanisms to support the implementation ethical rules among the MPs. There was no training for MPs, parliamentary commissions that dealt with ethics did not play a strong role in controlling the implementation

The IAP countries have further reformed conflict of interest regulations in line with international standards. They also made some enforcement efforts. Most IAP countries did not have detailed procedures for enforcing these regulations though. There were examples of good practice of providing methodological guidance, training and conducting awareness raising, but only few countries provided practical teaching and individual counselling. Enforcement, especially in relation to high-ranking officials, has been low and inconsistent. The public often perceived enforcement measures as biased.

The IAP countries have shown uneven progress in introducing or reforming their asset and interest disclosure systems. The countries with advanced systems had a poor enforcement record, whereas some others did not even have basic laws in place. Asset and interest disclosure proved to be a powerful public oversight mechanism in the IAP countries that opened relevant data for the re-use through online publication. The main challenge has been ensuring effective verification and follow up on violations, especially regarding political officials.

The independence and integrity of the judiciary are crucial for anti-corruption efforts and proper democratic governance. Several IAP countries have conducted further reforms in this area, but most of the IAP countries have yet to comply with the applicable international standards and ensure judicial independence and integrity in practice. Only few IAP countries have reformed their laws to remove or limit involvement of political actors in the selection, promotion and dismissal of judges. Judicial councils remained weak and did not fulfil their role of guaranteeing judicial independence. There were also cases when legal safeguards were ignored, *e.g.* when judges were dismissed under the pretext of reorganisation or job cuts contrary to irremovability guarantees enshrined in the law. Creating a judicial accountability system that does not impair the independence and impartiality of the judiciary remained a challenging task in the region. Disciplinary proceedings lacked impartiality in some countries, and their use often undermined the judicial independence.

The IAP fourth round monitoring reviewed the independence and integrity of the public prosecution service in the IAP countries for the first time. In most IAP countries the reform of the prosecution service has been difficult, in particular due to the Soviet legacy. The prosecution services (still called *prokuratura*) remained highly hierarchical and governed by the decisions of the Prosecutor General. Only two countries have introduced major reforms of the prosecution service and have instituted bodies of the prosecutorial self-governance. Decisions of political bodies still significantly influenced the appointment and dismissal of Prosecutor General in most IAP countries. The systems of integrity and accountability for prosecutors required substantial reforms that take into account the functions and status of the public prosecution.

The IAP countries used various mechanisms to guarantee access to public information. While most of the states had specific laws on freedom of information (some even had more than one), which may formally be of good quality, their practical implementation remained very weak. The mechanism for reviewing and acting on the complaints related to access to information was one of the key deficiencies. More and more countries in the region introduced measures to disclose as much information as possible about public funds and their use, and they were doing this in a user-friendly way. Equally important for anti-corruption was

the openness of public registers, especially those containing data about ownership rights (real estate, land, vehicles, etc.) and companies, including beneficial ownership. This information was essential to prevent illicit enrichment of public officials and protect ownership rights. The IAP countries conducted no major reforms in the area of defamation and, regrettably, several countries have actively used the defamation laws in practice. Excessive civil damages for defamation remained another problem for investigative journalism in the region.

Conditions for business integrity remained unfavourable in the ACN region, especially in the IAP countries, because of incomplete economic transition which resulted in poor economic freedom, insufficient protection of property rights and of fair and open competition. ACN countries have achieved good progress in reducing administrative corruption through various regulatory simplifications of business registration, inspections, permits and licenses, use of e-tools to reduce ‘human factor’ and greater transparency of state bodies. Countries in the region have not yet used many potential tools for business integrity, such as strengthening the role of audit in detection and reporting of corruption, improving rules for whistle-blowers protection in the private sector, improving reporting channels for companies and adopting regulation of lobbying. Creation of business ombudsman institutions was the main trend in the ACN region over the past several years. Some countries introduced specific anti-corruption measure for SOEs, however, this experience showed that they could only be effective if they become a part of the overall reform of ownership and governance of SOEs, a part of internal management and control systems. Collective actions by companies – where they publicly commit not to bribe and to promote compliance and integrity – were not yet common in the region, although some positive examples appeared.

Enforcement of criminal responsibility for corruption

The fourth round of monitoring revealed that countries have made further progress in meeting international standards in the area of criminalisation of corruption. Even countries that previously refused to make necessary adjustments have made incremental progress in complying with binding international standards criminalising corruption. However, despite all their previous efforts, several IAP countries have yet to align fully their criminal law with the relevant well-established international standards. In particular, countries still struggled with introducing the corporate liability for corruption and effectively enforcing it once introduced.

Despite certain progress in improving and implementing the procedures of detection, investigation and prosecution of corruption offences, in most cases these changes were not dynamic or proactive. Law enforcement authorities used a wider diversity of information sources for the detection of corruption, but they did not use fully the potential of analytical sources. Law enforcement authorities received more possibilities of getting comprehensive data via easier access to different public registries and databases. Many countries proactively sought international co-operation in corruption cases using modern and informal direct forms of co-operation. Actual recovery of stolen assets in corruption cases remained challenging. Countries have to invest more efforts in improving the legal framework, law enforcement capacities and international co-operation.

High-level and complex corruption remained one of the key problems for the region with most countries showing limited efforts to address it adequately. The most common obstacles to tackle effectively high-level corruption in the region were the lack of true political will to pursue these crimes, weakness and lack of capacities of law enforcement institutions, low levels of interagency and international co-operation. Disproportionate and lenient sanctions which courts applied in corruption cases was another area of concern.

A variety of law enforcement specialisation models existed in the ACN region. Many problems from the third round of monitoring persisted. The IAP countries, which opted for the specialisation within the existing law enforcement bodies, mostly, failed to ensure an appropriate level of such a specialisation

because of the duplicate roles and fragmentation of functions. Countries, which established specialised law enforcement bodies, struggled to ensure in practice their exclusive jurisdiction or lacked the resources to do so. Political pressure on some “better enforcers” in the region has been mounting in the recent years. The role of the civil society and international community was very important for these agencies, as they sought support to their independence. Specialisation of prosecution was missing in almost all IAP countries. Many countries relied on informal specialisation, which was not sufficient and hindered prosecution success. Only one IAP country has set up an institution responsible for asset recovery and management. The report also explores the emerging practice of specialised anti-corruption courts in the region.

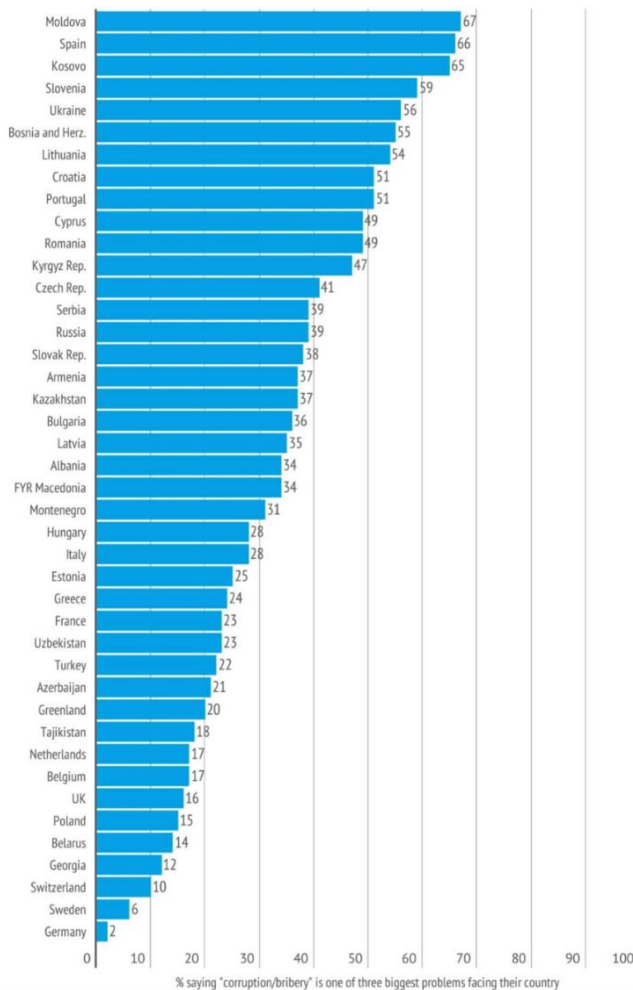
Chapter 1. Anti-corruption trends in Eastern Europe and Central Asia

This chapter presents anti-corruption trends in the region as measured by various ratings of corruption perception, business environment, economic freedom and public governance. The chapter shows the dynamics of countries' position in the ratings during the past three years and compares it with the starting position when the Istanbul Anti-Corruption Action Plan launched in 2003. The chapter also reviews the adherence of countries to the international anti-corruption instruments.

Spread of corruption in Eastern Europe and Central Asia

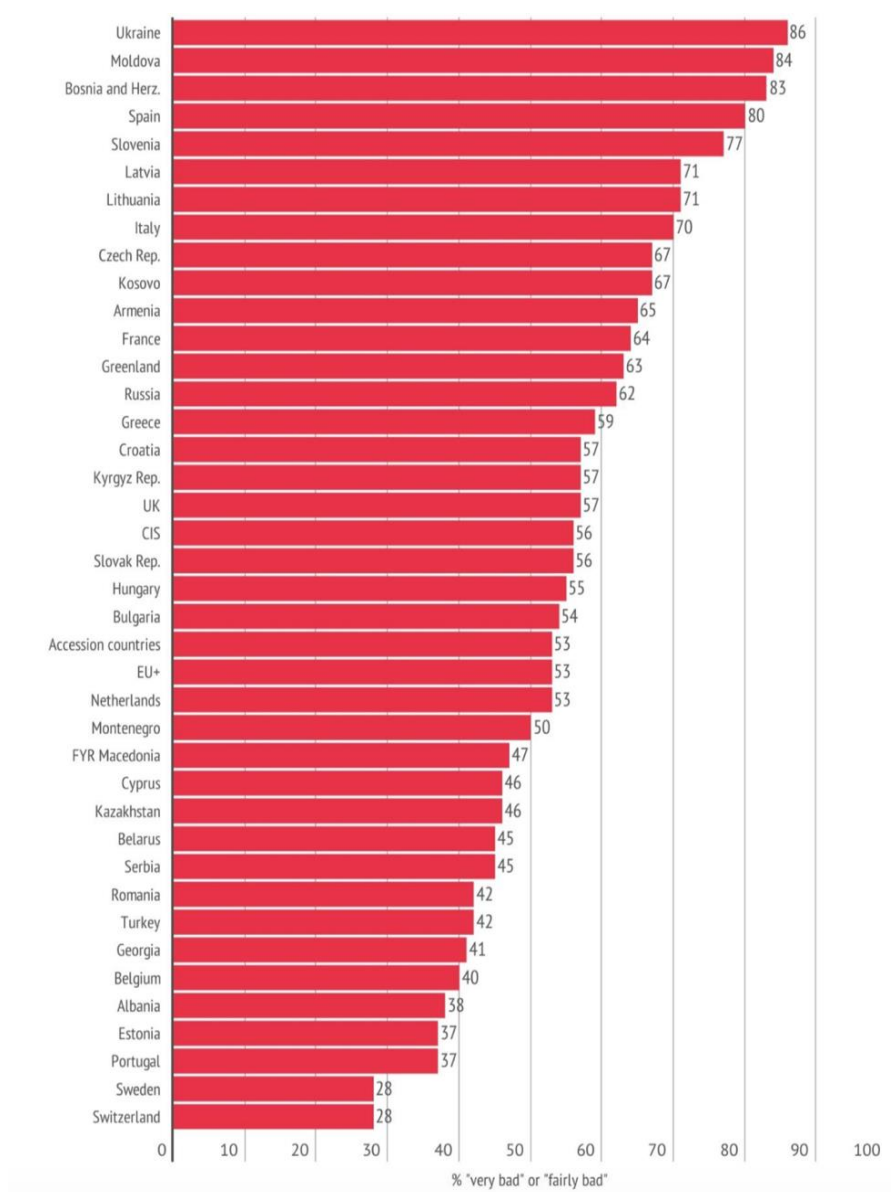
Corruption remains a serious problem for countries in the region. Despite numerous, and often successful, reforms designed to prevent and punish corrupt practices, countries still struggle with corrupt behaviour in the public and private sectors. Corruption affects countries in the region to varying degrees.

Figure 1. Corruption is one of the three biggest problems facing the country



Source: Transparency International, Global Corruption Barometer, People and Corruption: Europe and Central Asia, 2016. www.transparency.org/whatwedo/publication/people_and_corruption_europe_and_central_asia_2016.

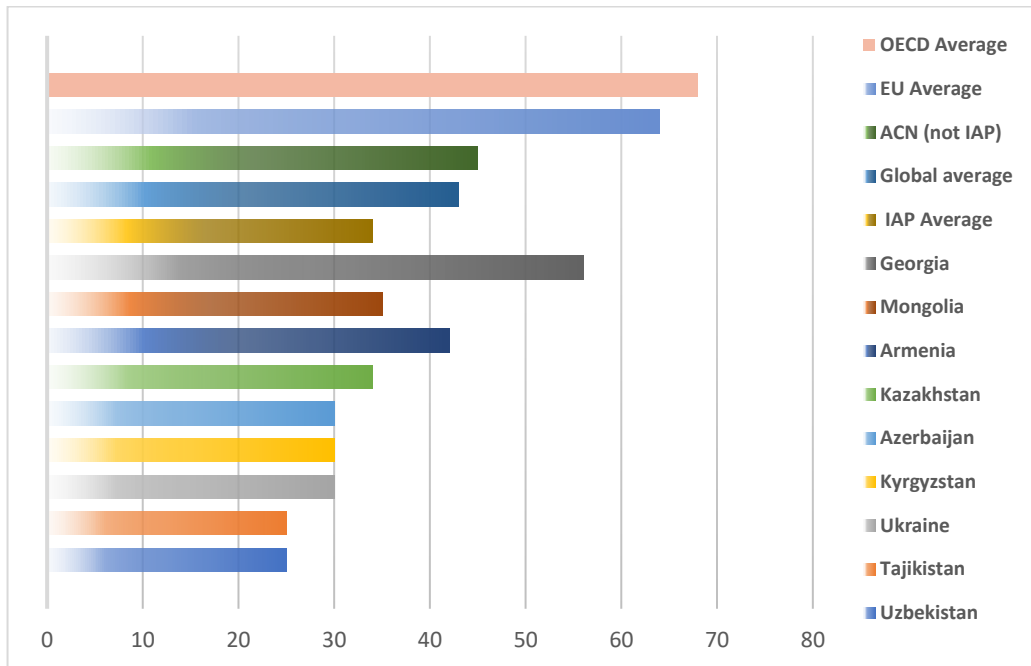
The chart above shows how many respondents of the Transparency International survey replied that “corruption” or “bribery” was one of the three biggest problems facing this country that government should address. Notably the corruption is an important problem in most ACN countries, and in some ACN countries the number of respondents finding it a major problem is even higher than in some IAP countries. From the IAP countries, Ukraine and Kyrgyzstan had the highest level of response, followed by Armenia and Kazakhstan. Equally disturbing are results of the perceptions of government actions to fight corruption in the region (see the next chart – the number of respondents who think that the government is “very bad” or “fairly bad” at fighting corruption in government).

Figure 2. Government perceived “badly” at fighting corruption

Source: Transparency International, Global Corruption Barometer, People and Corruption: Europe and Central Asia, 2016, cited above.

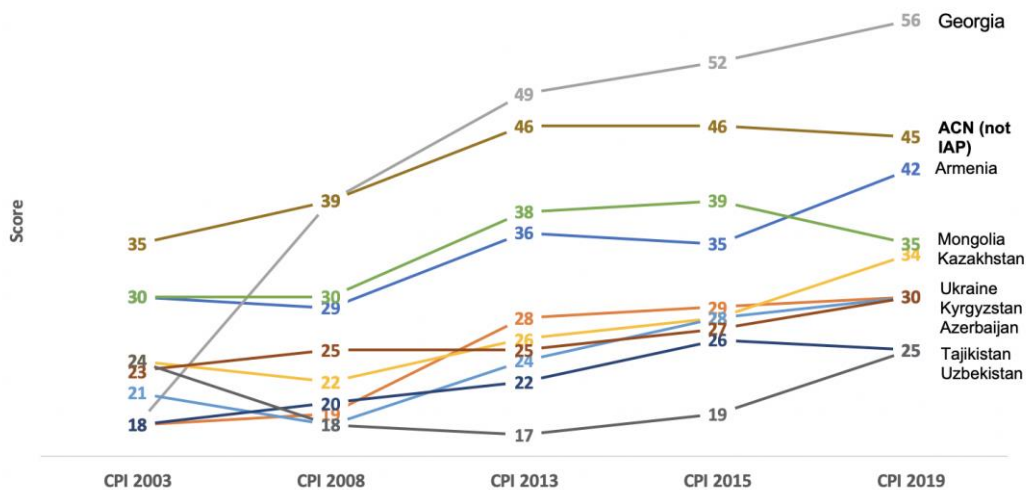
The level of corruption perception remained high in the region and did not improve significantly since the previous monitoring round. The Corruption Perception Index dynamics in the Istanbul Action Plan countries is shown in the figures below tracking progress or lack of it since 2003 when the Istanbul Action Plan was launched.

Figure 3. IAP, EU and OECD countries in the TI’s Corruption Perception Index (2019, Score)



Note: Higher score means ‘less corrupt’. Source: Transparency International, CPI, www.transparency.org/research/cpi.

Figure 4. IAP countries in the TI’s Corruption Perception Index (2019, Score)



Source: Transparency International, CPI, www.transparency.org/research/cpi.

The Istanbul Anti-Corruption Action Plan countries still lag significantly behind their regional counterparts in the anti-corruption area when measured by corruption perception. The only exception remains Georgia, which managed to maintain and even improve its level of perception.

According to Transparency International’s Corruption Perceptions Index, when comparing data for 2015 (before the launch of the IAP fourth monitoring round) and 2019 (the latest available data), the corruption perception in the region has improved. It concerns such countries as Belarus (+13 points in the CPI score),

Armenia (+7), Kazakhstan (+6), Uzbekistan (+6), Georgia (+4), Estonia (+4), Ukraine (+3), Czech Republic (+3), Kosovo (+3), Latvia (+3), Bulgaria (+2), Kyrgyzstan (+2), Azerbaijan (+1), Lithuania (+1), Montenegro (+1), Turkmenistan (+1).

In contrast, the corruption perception deteriorated in the following countries (2019 vs. 2015 CPI score): Hungary (-7), North Macedonia (-7), Poland (-5), Croatia (-4), Mongolia (-4), Turkey (-3), Bosnia and Herzegovina (-2), Romania (-2), Albania (-1), Moldova (-1), Russia (-1), Serbia (-1), Slovakia (-1), Tajikistan (-1).

The TI's Corruption Perception Index (see the table below) also shows the following trends over the last ten years:

- All of the new EU member countries in the region significantly improved their corruption perception record.
- From among the Istanbul Action Plan countries, only Georgia has passed the '50' mark of the CPI score, which even surpasses that of some EU member states. Georgia remains the leader in this regard among the IAP countries and is the only IAP country above global average CPI score (43 in 2019; Armenia is close with 42).
- In the past four years four more countries (Azerbaijan, Kazakhstan, Kyrgyzstan, Ukraine) reached the '30' mark of the CPI score and joined Armenia, Georgia and Mongolia which are also above that threshold.
- All IAP countries have gradually improved – to differing degrees – their scores, with Georgia improving the most (+17) and Mongolia, Tajikistan and Ukraine improving the least (+5).

Table 1. Transparency International's Corruption Perception Index, Eastern and Central Europe and Central Asia

Global Country Rank 2019	Country	CPI 2019 Score	CPI 2017 Score	CPI 2016 Score	CPI 2015 Score	CPI 2014 Score	CPI 2013 Score	CPI 2008 Score	CPI 2003 Score
18	Estonia	74	71	70	70	69	68	66	55
35	Lithuania	60	59	59	59	58	57	46	47
35	Slovenia	60	61	61	60	58	57	67	59
41	Poland	58	60	62	63	61	60	46	36
44	Czech Rep.	56	57	55	56	51	48	52	39
44	Georgia	56	56	57	52	52	49	39	18
44	Latvia	56	58	57	56	55	53	50	38
59	Slovakia	50	50	51	51	50	47	50	37
66	Belarus	45	44	40	32	31	29	20	42
66	Croatia	47	49	49	51	48	48	44	37
66	Montenegro	45	46	45	44	42	44	34	23
70	Hungary	44	45	48	51	54	54	51	48
70	Romania	44	48	48	46	43	43	38	28

Global Country Rank 2019	Country	CPI 2019 Score	CPI 2017 Score	CPI 2016 Score	CPI 2015 Score	CPI 2014 Score	CPI 2013 Score	CPI 2008 Score	CPI 2003 Score
74	Bulgaria	43	43	41	41	43	41	36	39
77	Armenia	42	35	33	35	37	36	29	30
91	Serbia	39	41	42	40	41	42	34	23
91	Turkey	39	40	41	42	45	50	46	31
101	BiH	36	38	39	38	39	42	32	33
101	Kosovo*	36	39	36	33	33	33	-	-
106	Albania	35	38	39	36	33	31	34	25
106	Mongolia	35	36	38	39	39	38	30	-
106	N.Macedonia	35	35	37	42	45	44	36	23
113	Kazakhstan	34	31	29	28	29	26	22	24
120	Moldova	32	31	30	33	35	35	29	24
126	Azerbaijan	30	31	30	29	29	28	19	18
126	Kyrgyzstan	30	29	28	28	27	24	18	21
126	Ukraine	30	30	29	27	26	25	25	23
137	Russia	28	29	29	29	27	28	21	27
153	Tajikistan	25	21	25	26	23	22	20	18
153	Uzbekistan	25	22	21	19	18	17	18	24
165	Turkmenistan	19	19	22	18	17	17	18	-

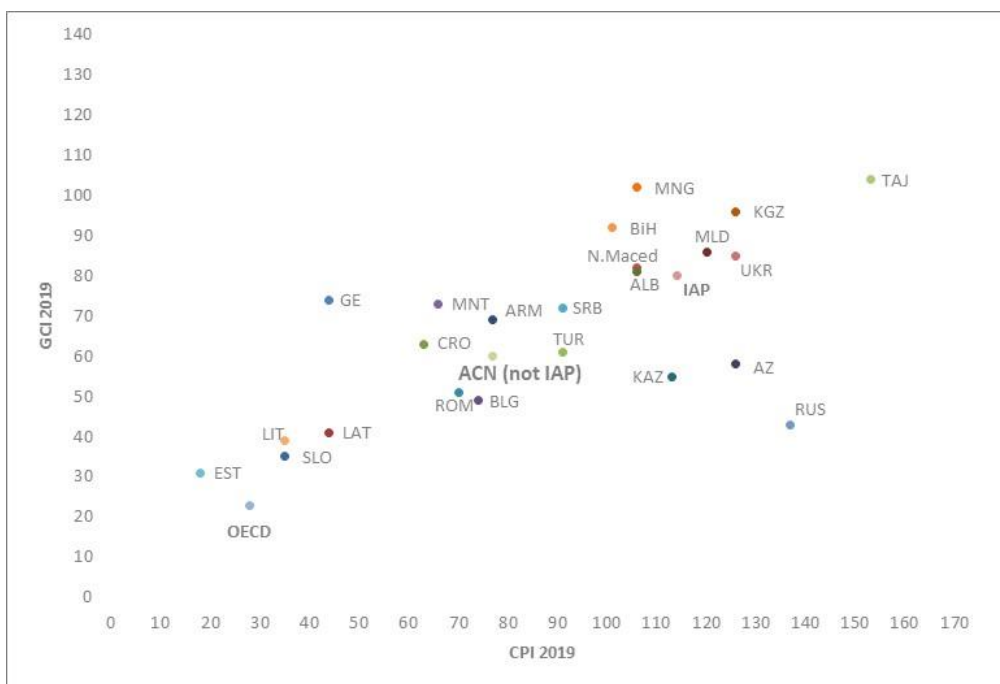
Notes:

* This designation is without prejudice to positions on status and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

A higher score means 'less corrupt'. Until 2013, the CPI score was calculated differently (on 0-10 scale); to enable comparison, the CPI 2003 and 2008 scores were converted to 0-100 scale. Source: Transparency International, CPI, www.transparency.org/research/cpi.

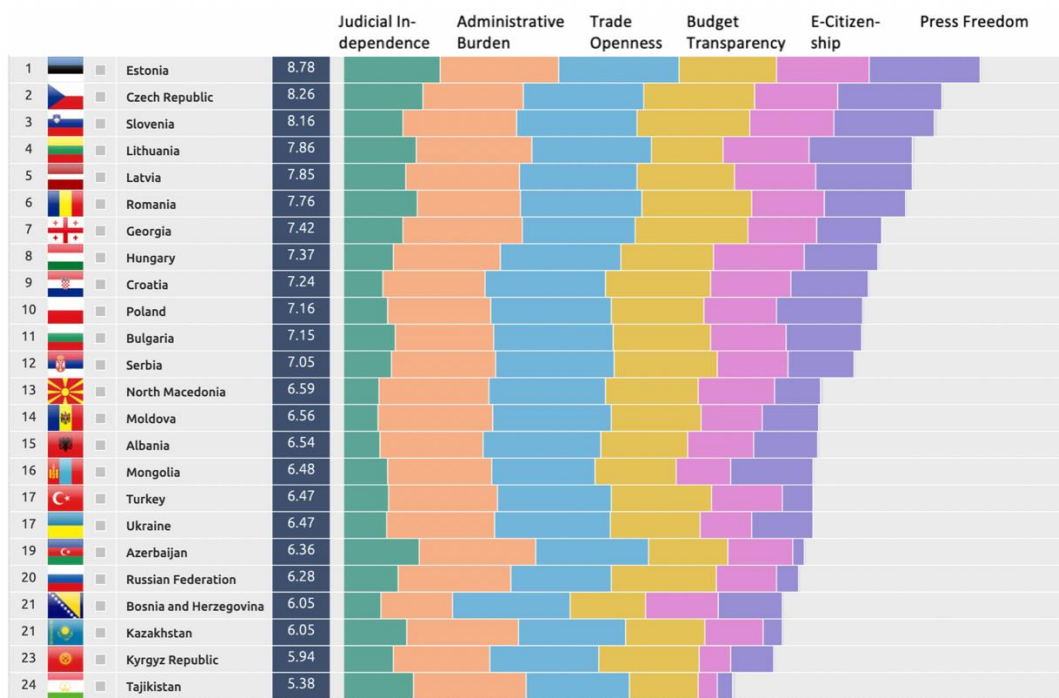
The level of perceived corruption correlates with the country's competitiveness, as shown in the chart below. It should be recalled, however, that competitive advantages not related to corruption or good governance may help to gain better competitive position (*e.g.* Azerbaijan, Kazakhstan). See also position of IAP and ACN countries in other relevant ratings below.

Figure 5. Country ranking in TI Corruption Perception Index and WEF Global Competitiveness Index



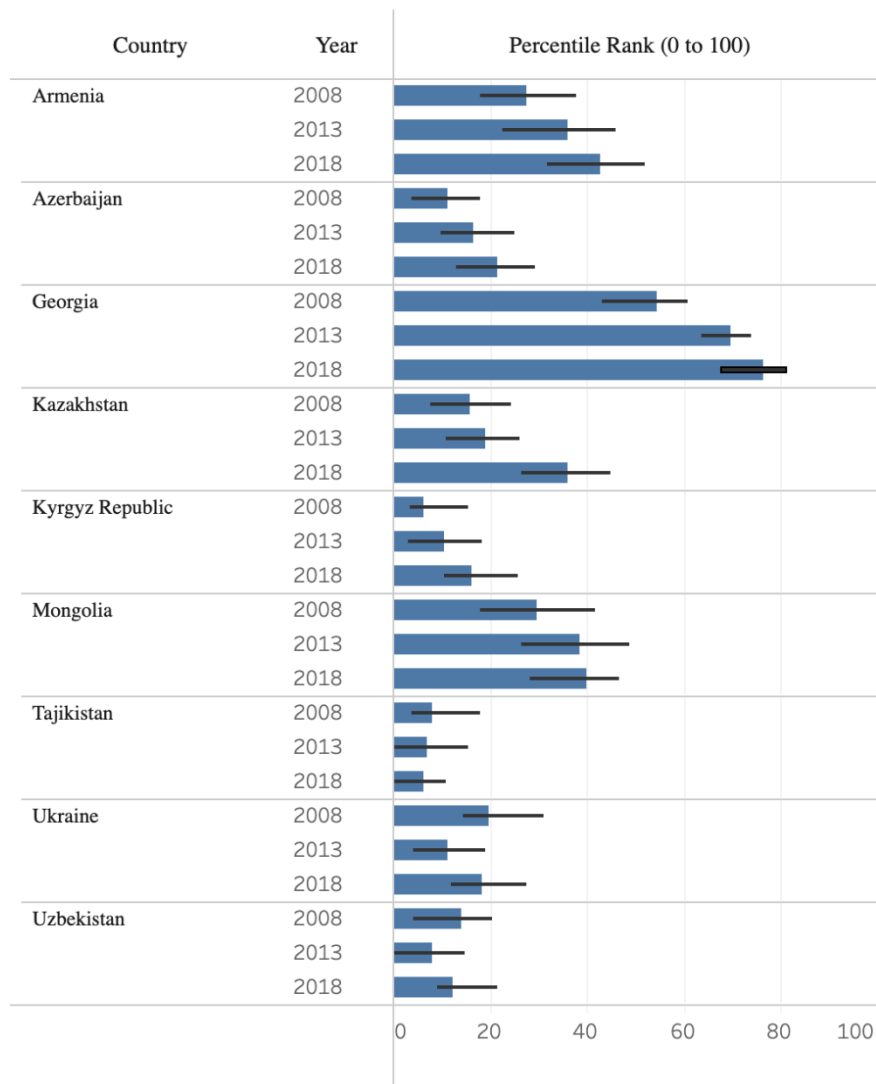
Source: Transparency International, CPI, www.transparency.org/research/cpi; World Economic Forum, Global Competitiveness Index, www.weforum.org/reports/the-global-competitiveness-report-2018.

Figure 6. ACN countries in the Index of Public Integrity



Source: Index of Public Integrity 2019, European Research Centre for Anti-Corruption and State-Building, <http://integrity-index.org>

Figure 7. IAP countries in Worldwide Governance Indicators, Control of Corruption



Source: World Bank, Worldwide Governance Indicators, Control of Corruption, 2018, <http://info.worldbank.org/governance/WGI>. Note: Percentile Rank (0-100) indicates rank of country among all countries in the world. 0 corresponds to lowest rank and 100 corresponds to highest rank.

The IAP countries are doing better in terms of their business climate ratings than in their corruption estimates. Some of the countries in the region have been the best performers in the past several years in terms of improving business environment. According to the World Bank's Doing Business report, out of 50 top economies in terms of business climate 24% are countries in Europe and Central Asia (60% are OECD high-income countries).¹ Europe and Central Asia are among the three regions globally which have improved the most since 2004 with the highest average number of reforms per economy per year.² The economies of Europe and Central Asia were among the most active in reforming their regulatory frameworks in 2017/18, with four of every five economies substantially improving business regulations. Nineteen economies in Europe and Central Asia implemented a total of 54 regulatory reforms improving the business environment. Azerbaijan implemented eight reforms making it easier to do business in 2017/18, a record number among the 10 top improvers and globally.³ Georgia remained the leader among IAP and broader ACN countries by holding 6th rank in the 2019 ranking. See the table for more details.

Table 2. IAP countries in Doing Business ranking and Economic Freedom Index

	Armenia	Azerbaijan	Georgia	Kazakhstan	Kyrgyzstan	Mongolia	Tajikistan	Ukraine	Uzbekistan
"Doing Business", 190 countries. Rank in 2019	41	25	6	28	70	74	126	71	76
Economic Freedom Index, 180 countries. Rank in 2019	47	60	16	59	79	126	122	147	140

Source: World Bank, Doing Business, www.doingbusiness.org; Heritage Foundation, Economic Freedom Index, www.heritage.org/index.

Figure 8. IAP countries in the WEF Global Competitiveness Index, 2019

Source: Based on data of the World Economic Forum, Global Competitiveness Index, www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf.

Participation of the region in global anti-corruption efforts

Countries in the region take an active part in anti-corruption efforts, most notably by adhering to and implementing relevant international treaties and participating in the monitoring and review processes. All IAP and ACN countries are parties to the UN Convention against Corruption and participate in its Implementation Review Mechanism.

Latvia and Lithuania acceded to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2014 and 2017 respectively. All of the ACN and IAP countries that are members of the Council of Europe are also members of the Group of States against Corruption (GRECO). Besides, on 1 January 2020, Kazakhstan became GRECO's 50th member state.

The table below provides the status of ACN and IAP countries vis-à-vis major international anti-corruption instruments.

Table 3. Adherence of the IAP and ACN countries to international anti-corruption and related treaties

	UNCAC	CoE Criminal Law Convention on Corruption (CETS 173)	CoE Civil Law Convention on Corruption (CETS 174)	Additional Protocol to CoE Criminal Law Convention on Corruption (CETS 191)	OECD Anti-Bribery Convention	CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ... (CETS 198)	CoE Convention on the Manipulation of Sports Competitions (CETS 215)	OECD/CoE Convention on Mutual Administrative Assistance in Tax Matters as amended
Istanbul Action Plan countries								
Armenia	2007	2006	2005	2006	-	2008	Signed 2014	Signed 2018
Azerbaijan	2005	2004	2004	2013	-	2017	Signed 2014	2015
Georgia	2008	2008	2003	2014	-	2014	Signed 2014	2011
Kazakhstan	2008	-	-	-	-	-	-	2015
Kyrgyzstan	2005	-	-	-	-	-	-	Not signed
Mongolia	2006	-	-	-	-	-	-	Not signed
Tajikistan	2006	-	-	-	-	-	-	Not signed
Ukraine	2009	2010	2006	2010	-	2011	2019	2013
Uzbekistan	2008	-	-	-	-	-	-	Not signed
Other Anti-Corruption Network countries								
Albania	2006	2002	2003	2005	-	2008	Signed 2016	2013
Belarus	2005	2008	2006	2015	-	-	-	Not signed
BiH	2006	2002	2003	2012	-	2008	Not signed	Not signed
Bulgaria	2006	2002	2003	2005	1999	2013	Signed 2014	2016
Croatia	2005	2002	2003	2005	-	2009	Signed 2019	2014
Estonia	2010	2002	2003	Not signed	2005	Signed 2013	Signed 2016	2014
Latvia	2006	2002	2005	2006	2014	2010	Signed 2017	2014
Lithuania	2006	2002	2003	2012	2017	Signed 2015	Signed 2014	2014
North Macedonia	2007	1999	2003	2006	-	2009	Not signed	Signed 2018
Moldova	2007	2004	2004	2007	-	2008	2019	2012
Montenegro	2006	2006	2008	2008	-	2009	Signed 2014	Not signed
Poland	2006	2003	2003	2014	2000	2008	Signed 2015	2011
Romania	2004	2002	2003	2005	-	2008	Not signed	2014
Russia	2006	2007	Not signed	Signed 2009	2012	2018	Signed 2014	2015
Serbia	2005	2003	2008	2008	-	2009	Signed 2014	Signed 2019
Slovenia	2008	2002	2003	2005	2001	2010	Signed 2016	2011
Turkmenistan	2005	-	-	-	-	-	-	Not signed

Note: Status as of August 2019. Year refers to the year of entry into force in respect of the country, unless specified otherwise. “-” – means that the country is not a Member State of the relevant organisation and has not acceded to the treaty under the procedure for non-member accession (if available). Source: Treaty Office of the Council of Europe, UNODC and OECD.

Chapter 2. Anti-corruption policy and institutions

This chapter looks into anti-corruption policy making in Eastern Europe and Central Asia. It reviews achievements and challenges related to policy planning, co-ordination, monitoring and evaluation, public participation in the policy development and anti-corruption awareness raising and education. The chapter concludes that anti-corruption policy was still not risk or evidence-based and action plans were not used as effective instruments for moving anti-corruption agenda forward or steering policy co-ordination. Main positive trend was the increased co-creation and stakeholder engagement, better quality of objectives and timeline of the policy documents and strengthened monitoring mechanisms. Anti-corruption awareness raising activities became more targeted, but the efficiency of numerous conducted activities remained questionable.

The chapter also analyses the institutional framework for co-ordination and prevention of corruption in Eastern Europe and Central Asia. The review covers such issues as models of specialisation, functions and mandates of specialised anti-corruption co-ordination and prevention institutions, their independence and autonomy, accountability and transparency, allocated resources, as well as assessment of performance of such institutions. Most countries in the region have put in place specialised co-ordination and prevention bodies or mechanisms. However, they were often overshadowed by their law enforcement counterparts and lacked the necessary resources, visibility and authority. The real impact of these institutions and their role as drivers of the national anti-corruption agenda was questioned in most of the countries in the region and often lacked support within the government and most importantly - the general public.

Anti-corruption policy development

Evidence-based policy is essential for sustainable anti-corruption reforms. Policy documents are important tools to plan and prioritize resources of state budget and donor assistance, to set a clear roadmap of reforms for implementing agencies and incentivize their performance, engage public and raise awareness about policy priorities, achievements, challenges and impact of the reforms.

The UNCAC obliges the states parties to develop and implement effective and co-ordinated anti-corruption policies (Art. 5). The 2017 OECD Recommendation of the Council on Public Sector Integrity emphasizes the importance of risk-based approach to public sector integrity policies and calls upon the states to “develop a strategic approach for the public sector that is based on evidence and aimed at mitigating public integrity risks.”⁴ The recommendation encourages countries to develop benchmarks and indicators and gather credible and relevant data on the level of implementation, performance and overall effectiveness of the public integrity system.

Anti-corruption policy has been in focus of the IAP monitoring since 2003. Throughout this period, strategic planning has significantly improved in the IAP countries, resulting in better anti-corruption policies.⁵ There has been progress in terms of increased co-creation and stakeholder engagement, quality of policy documents, including clearer objectives and timelines, and strengthened monitoring mechanisms. Another positive development is the shift of the focus of anti-corruption policies from repressive to preventive measures. Several IAP countries have also piloted electronic solutions and modern technologies to gather data on the implementation and perform monitoring (e.g. in **Azerbaijan, Armenia, Georgia, Mongolia**). However, these are early initiatives and their effectiveness could not be assessed yet.

At the same time, overall, strategies continued to lack solid evidentiary basis, risk assessments have been rare, and the lack of measurable indicators and clear targets have precluded meaningful monitoring. Allocating specific budget and ensuring financial reporting was another area that required improvement. Periodic reports were compiled regularly but were largely based on inputs from state bodies. They usually lacked analytical part and did not include any assessment of impact or efficiency.⁶

Figure 9. Anti-corruption policy cycle



Anti-corruption policies of IAP countries continued to focus on legal and institutional reforms rather than enforcement and its impact. The policies often did not adequately address the key corruption risk areas.

This can be attributed to the lack of risk assessment and evidence-based strategic planning experience and capacities, or political sensitivity of the issues that the governments are not ready to address yet, or both. Considering these shortcomings, policy documents have remained formalistic and have not been used as real instruments to steer policy co-ordination and boost anti-corruption performance. The following analysis looks into the issues in more detail and provides illustrations of good practices from the region and beyond.

Evidentiary basis

Anti-corruption policies should be comprehensive, realistic, enforceable and evidence-based, targeting existing risk and challenges. Sources of evidence can be quality administrative data, analysis and assessments by external stakeholders, international organisations or civil society,⁷ general public surveys measuring perception and experience of corruption and trust towards institutions, as well as staff surveys, expert surveys or focus groups. Strategies and action plans should be regularly renewed taking into account the achievements and challenges to ensure they are up to date.

OECD countries use a variety of means to collect performance information that includes employee surveys (14 countries), interviews and focus groups (8 countries), public opinion polls (6 countries), and case studies (7 countries). Furthermore, in some countries administrative data are complemented by external information and general surveys that measure public attitudes and perceptions of government performance.⁸

Anti-corruption policy documents in most IAP countries lacked solid evidentiary basis. The Governments usually used research conducted by NGOs and other stakeholders in developing policy documents, but analysis of implementation of previous policy documents and the use of survey data or risk assessments were rare. Some strategies though included an overview of implementation of previous policy documents, reference to international rankings and stocktaking analysis of achievements and challenges (e.g. in **Georgia, Lithuania, Latvia, Kazakhstan**).

In Kazakhstan, a thorough analysis of situation was conducted with the use of survey data. Latvian strategy was fairly detailed as to the results and what is still left to be achieved in the future from the previous policy document. **Uzbekistan** has conducted corruption surveys and publishing the results. However, it could not be confirmed whether they were used in the policy planning. **Mongolia** has a well-established practice of using surveys, including of perception and trust to public institutions as well as integrity surveys of public agencies, to identify challenges and design policy recommendations. **Azerbaijan** used analytical data obtained through criminal investigations to inform its policy documents which was a good practice. According to the survey of ACN countries for the ACN annual report in 2018, majority of ACN countries reported conducting anti-corruption surveys (Romania, Latvia and Serbia being clear leaders in this field).

Quality

Policy documents should be used as instruments for planning and implementation of reforms. While strategies usually include a vision statement on where the government aims to get in a given period, action plans should be practical tools to help with getting there. Essential elements of good action plans are clear objectives and measures with necessary budget, timeline and targets to track progress, and indicators to evaluate impact.⁹ Realistic strategic planning takes into account capacities of the public administration and financial circumstances, as governments need to prioritize their limited resources. There should also be a clear link to the budget planning process to ensure necessary funding.¹⁰ Policy documents should include detailed budget and sources of funding. All of these elements are preconditions for policies to be actionable and not to remain on paper.

Ukraine's State Programme for the implementation of the Anti-Corruption Strategy in 2015-2017 was assessed as a good quality strategic document, with the log-frame of objectives, expected results and

indicators. There was an attempt to introduce quantitative impact indicators, however baseline values and targets were not provided. For example, indicators for awareness raising section were: increase of the percentage of people a) who trust anti-corruption bodies, b) are aware of corruption consequences, c) do not resort to corruption as a way of settling their businesses and d) have never had corruption experience. However, there was no baseline or target against which progress would be measured. Ukraine has not adopted the policy documents since 2017, the IAP monitoring assessed implementation and monitoring of 2015-2017 document as weak and formalistic.¹¹

Box 1. Anti-corruption strategy of the UK

The UK's first Anti-Corruption Action Plan of 2014. It is a cross-governmental strategy, defining long-term objectives on effectively combatting corruption, providing a roadmap to guide the government's efforts in the prevention of corruption. The Strategy contained 20 goals focused on six priorities: reduce the insider threat in high-risk domestic sectors, such as borders and ports; strengthen the integrity of the UK as an international financial centre; promote integrity across the public and private sectors; reduce corruption in public procurement and grants; improve the business environment globally; work with other countries to combat corruption.

In order to achieve these priorities the strategy laid out four approaches: protect against corruption by building open and resilient organizations across public and private sectors; prevent people from engaging in corruption, including strengthening professional integrity; pursue and punish the corrupt, strengthening the ability of law enforcement, criminal justice and oversight bodies to investigate, prosecute and sanction wrongdoers; reduce the impact of corruption where it takes place, including redress from injustice caused by corruption. In order to implement the strategy's vision, this cross-cutting governmental initiative aimed at coordinating its efforts with civil society, the private sector and law enforcement, to implement an evidence-based approach and to promote international standards and partnerships. The Anti-Corruption Champion and the Minister for Economic Crime in the Home Office share oversight over the progress of the strategy's implementation. Additionally, the Joint Anti-Corruption Unit, transferred to the Home Office in December 2017, supports the Champion's efforts and facilitate the co-ordination of anti-corruption actions domestically across government agencies and internationally.

Transparency International UK welcomed the strategy as "a clear signal of the Government's intent to confront the scourge of corruption on a national and international level" commending the government's commitment to establish a public register of foreign ownership of UK property in law.

Source: UK anti-corruption strategy for 2017-2022, available at: www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022.

Inclusive process of development

Anti-corruption policy should be developed in an inclusive and consultative process involving representatives of civil society, business, academia, international community and general public. Public consultations can be held in variety of forms, including meetings or e-consultations, working groups, written comments. Consultations should cover the whole country.¹² The schedule should be drawn up in advance and made public to ensure wide engagement. Stakeholders should be given reasonable time for comments. Feedback should be provided on what has been included in the final product, what has not and why.¹³

The majority of the IAP countries have shown progress in making the policy development process more transparent, inclusive and diligent when compared to the previous planning cycles.¹⁴ IAP recommendations together with the OGP action plan development process contributed to enhancing the co-creation. In most

IAP countries public consultations have been wide-ranging, recommendations of stakeholders have been considered and to some extent taken on board. Civil society has provided important input in shaping anti-corruption policy in **Ukraine** and **Georgia**. However, governments sometimes adopted policy documents shortly right after the end of the consultation period without providing adequate feedback to the public on what has been taken on board.

All ACN countries who participated in the 2018 annual survey conducted by the OECD/ACN secretariat reported that the civil society participated in the elaboration and implementation of the anti-corruption strategies. **Latvia**'s Corruption Prevention and Combating Bureau developed the strategy by holding four inter-institutional working meetings with state, municipal, and NGO institutions and a Public Consultative Council where ten NGOs discussed the draft strategy. Surveys, studies and reports related to corruption prevention in Latvia and a full assessment of the Latvian's legal framework and its compliance with UNCAC also informed the strategy development.

On the other hand, there have been regrettable cases of shrinking space for the civil society engagement in the IAP region. **Azerbaijan**'s OGP membership was suspended due to the concerns regarding operating environment for CSOs in the country. In **Ukraine**, according to the NGOs, attacks and intimidation of activists significantly intensified in 2018, especially in the regions.¹⁵

Sectoral and local level strategies

Along with the national anti-corruption policy documents, countries need to develop sectoral and local level policies based on risk assessments. IAP countries did have the practice of developing sectoral plans or the action plans for individual government bodies. These plans were mostly based on national action plan and aimed at implementing it in the context of the agency in question. Risk assessment to identify and address specific corruption risks was not a common practice.

Ukraine developed templates and guidance for internal action plans. Such plans were obligatory for the SOEs as well. However, this was seen more as a formality and a box ticking exercise. Whereas several public bodies had good anti-corruption programmes, overall the quality of these plans was poor. **Armenia** chose to focus on four priority sectors (education, taxes, service delivery in the police and health sector), conducted risk assessments and developed action plans for these sectors. In **Mongolia**, all public agencies were required to develop their own plans for implementation of the national action plan. The same approach was used in **Kazakhstan**, **Kyrgyzstan** and **Uzbekistan**. **Azerbaijan** conducted risk assessment in social security, banking sectors, health, land registry and municipalities and included some measures in the action plan to address risks. **Georgia** piloted anti-corruption action plans at the local level in municipalities, however it did not have agency or sectoral plans.

Co-ordination and guidance

Implementation of anti-corruption policies requires co-ordination across implementing agencies. According to SIGMA, policy development and coordination needs to be underpinned by arrangements and capacities for policy planning, development, coordination, implementation and monitoring.¹⁶ An operational co-ordination mechanism with related procedures should be put in place. Coordinating body should be designated and equipped with necessary powers and specialised resources. Focal points should also be identified in each implementing agency and reporting and communication channels should be set-up. Co-ordinating body should provide methodological guidance, training and assistance to the implementing agencies, be it in writing, through telephone consultations or visits and regular meetings to boost their performance. Written general methodological guidance should also be available. Furthermore, co-ordination of donor assistance should ensure that resources are used in a way that supports implementation in the best way.

IAP countries have increased the level of co-ordination of their anti-corruption policies. At the same time, countries with independent specialised institutions had some co-operation difficulties (e.g. **Mongolia, Ukraine**).¹⁷ In **Kyrgyzstan**, co-ordination functions were not clearly assigned, they were duplicated and often shifted from one body to another as a result of political changes.¹⁸ Another area that required attention was the lack of informal exchange, interactions and day-to-day guidance. **Georgia** established a positive practice of regular co-ordination, including bilateral meetings, regular interagency meetings, and used this mechanism in practice.¹⁹ Institutions in charge of co-ordination are discussed in the following section of this report.

Table 4. Anti-corruption policy co-ordination in IAP countries

	Centralized	Regular meetings	Focal points	Guidance	Donor coordination
Armenia	●	●	●	●	●
Azerbaijan	●	○	●	○	○
Georgia	●	●	●	●	●
Kazakhstan	●	●	●	○	○
Kyrgyzstan	○	○	●	○	○
Mongolia	●	○	●	●	○
Tajikistan	●	○	○	○	○
Uzbekistan	●	○	●	●	○
Ukraine	●	●	●	●	○
	● Yes				
	○ No				

Source: OECD/ACN secretariat research, IAP monitoring reports.

Monitoring and evaluation

The measuring of performance is an essential element of a policy cycle.²⁰ Well-functioning monitoring and evaluation systems are based on clear procedures and methodologies and are enforced in practice. They allow for collection and analysis of data to track progress, assess results and evaluate impact. Such analysis should be based on diverse data obtained from variety of sources. Apart from regular reporting by implementing agencies to the co-ordinating body, other credible and relevant information should be collected on the performance of the agencies, level of implementation of policy documents, and the effectiveness of measures. Performance information can be collected through employee surveys, interviews and focus groups, public opinion polls, and case studies. Furthermore, a well-balanced analytical framework for monitoring and evaluation should complement administrative data with additional external sources as well as with survey data measuring the level of trust and attitudes of general population.²¹

Assessments should draw on survey data and independent evaluations carried out by international organisations, alternative monitoring by civil society and other stakeholders.²² The impact of implementation should be measured with pre-defined indicators and clear benchmarks. Thus, periodic implementation reports should not be limited to the description of measures carried out by implementing agencies, but also include analytical part on progress made, as well as effectiveness and impact. They should also include financial reports.

Digital solutions and modern technologies can be used to gather data on implementation and carry out monitoring. Advanced systems use electronic tools to simplify data collection and analysis. The reports should be published to ensure transparency and accountability.

Most IAP countries have put in place clear procedures for monitoring of implementation of anti-corruption action plans and continued to produce implementation reports. However, the monitoring has been largely based on administrative data gathered from implementing agencies and rarely included an analytical part with performance assessment, evaluation of results or impact. The quality of the indicators did not allow for measuring impact and external assessment generally lacked in the reporting period. In some countries, the parliament performed an oversight – the implementation report had to be presented and discussed by the parliament (**Ukraine, Mongolia**). In Ukraine, the National Agency for Corruption Prevention developed a corruption research methodology for evaluating impact of anti-corruption reforms on a regular basis. However, surveys have not been carried out due to the absence of funding.

Some IAP countries explored the use of digital solutions for data collection. A new electronic system of monitoring in **Azerbaijan** (<https://ems.gov.az>) allowed collecting information and comparing the level of implementation and NGO inputs.

Kazakhstan created a so-called Special Monitoring Group for external evaluation of the policy implementation. The Group conducted visits to responsible state bodies in the regions, reviewed implementation of the policy and provided recommendations to the agencies. It discussed the status of implementation at its meetings; however, the IAP reports questioned the substantive value of such evaluation.²³

Uzbekistan developed a system of monitoring that incentivised the implementing agencies by regularly ranking their performance. The high ratings were singled out and listed as best performers, whereas the agencies with low compliance rating were subject to more intense oversight. The expert group under the Republican Commission on Combating Corruption carried out monitoring and issued recommendations for better implementation. The results of the monitoring were published. At the same time the Secretariat lacked resources.²⁴

Table 5. Monitoring and evaluation of anti-corruption policies

	Procedures in place	Regular meetings	Electronic system	External evaluation	NGOs in monitoring	Surveys	Risk assessment	Reports published
Armenia	•	•	○	○	•	○	•	•
Azerbaijan	•	○	•	○	○	•	○	○
Georgia	•	•	○	○	•	○	○	•
Kazakhstan	•	•	○	•	•	•	•	•
Kyrgyzstan	•	•	○	○	•	○	○	•
Mongolia	•	•	○	○	○	•	○	•
Tajikistan	•	○	○	○	○	•	○	○
Uzbekistan	•	○	○	○	○	•	○	•
Ukraine	•	•	○	○	○	•	•	•
	• Yes							
	○ No							

Source: OECD/ACN secretariat research, IAP monitoring reports.

In **Ukraine**, the civil society has been carrying out alternative assessments of the policy implementation.²⁵ In **Kyrgyzstan** CSOs have also been active in following up on the implementation of the IAP monitoring report recommendations.²⁶

In **Latvia**, KNAB was responsible for co-ordinating the implementation of the strategy and submitted interim and final evaluations of the strategy to the Cabinet of Ministers. Indicators for evaluation included international and national perception surveys, as well as quantitative indicators related to number of people trained or proportion of institutions implementing the specific objective.

In **Lithuania**, the co-ordinating agency conducted annual analysis of corruption-related problems to propose recommendations to the strategy and submitted a final assessment of the strategy at the end of the implementation period. The reports were published.

Albania's monitoring matrix included eight reporting sections for each activity: implementation status, descriptions of key achievements per output indicator, planned steps for implementing the measure, funds for specific activities and their source. **Montenegro** used result and impact indicators, but the impact indicators were missing for some activities. Many of the indicators lacked baseline and target values, which made it hard to monitor them since there were no clear benchmarks against which to assess the results and impact. **Serbia** introduced alternative monitoring by the civil society selected through competition. Monitoring usually involved civil society.²⁷

Table 6. Anti-corruption policy in the ACN region in 2018

	Policy document	Budget EURO	NGOs participating in a/c policy	Monitoring	Secretariat	Surveys	Risk assessment in Agencies	Local level plans	Agency plans
Albania	●	1632321	20	●	4	0	4	0	0
Azerbaijan	●	○	40	●	5	--	1	--	2
BiH	●	○	5	●	--	15	--	130	3
Croatia	●	--	8	●	4	4	--	4	--
Estonia	●	7000	1	●	2	--	1	--	1
Kazakhstan	●	355804	29	●	136	17	3	17	All
Kosovo	●	--	7	●	4	--	13	--	1
Kyrgyzstan	●	--	3	●	--	9	14	13	38
Latvia	●	○	22	●	5	109	1	109	13
Lithuania	●	1009432	5	●	19	57	4	49	10
North Macedonia	●	○	26	●	3	--	0	--	--
Montenegro	●	--	7	●	46	151	55	151	55
Romania	●	--	20	●	11	797	N/A	535	--
Serbia	●	--	--	●	1	79	0	79	All
Ukraine	○	○	7	○	288	43	1	43	86
Uzbekistan	●	1771479	20	●	43	14	27	0	0
Yes	●								
No	○								
No data	--								

Source: OECD/ACN, 2018 Activity Report, survey of countries.

Transparency and accountability

Transparency and public accountability are important features of modern public policies. Anti-corruption policy development and implementation should be transparent at various stages starting from public consultations (publishing agenda and timeline of consultations, summary of comments received and the

feedback on these comments) continued to co-ordination (agenda and minutes of the meetings of coordination bodies) and to implementation reports and survey data. Many IAP countries published consultation plans for developing open government action plans to comply with the OGP requirements. Similar approach should be extended to the anti-corruption policies. Generally, governments did not publish feedback regarding the received comments and decisions with respect to these comments. Most IAP countries published monitoring reports, however, they often lacked analytical and financial parts. One interesting initiative was **Armenia's** e-platform for monitoring (anti-corruption.gov.am) that included reports and allowed requesting information from government agencies about the status of implementation of measures.

Conclusions

IAP countries have advanced in anti-corruption policy development. Almost all countries now have anti-corruption strategies or action plans in place. IAP countries achieved better quality of strategic planning and increased the use of anti-corruption policy documents as tools for implementation of anti-corruption reforms, steering policy co-ordination and engaging with external stakeholders more openly. Main challenges have been the lack of focus on vulnerable or risk areas and omitting politically sensitive issues from the strategic documents. Whereas individual agency and sectoral action plans were in place, they were not based on risk assessment and individual agency needs but rather followed top-down approach. The monitoring procedures were set forth and, in some countries, were followed in practice. However, impact assessment was lacking.

See recommendations at the end of this chapter.

Table 7. Anti-corruption policy documents in ACN Countries

Country	Anti-Corruption Strategies and Action Plans	Adopted	Source
Albania	Inter-sectoral strategy against corruption 2015-2020	2015	Decision of the Council of Ministers
	On the approval of the Action Plan 2018-2020 for the implementation of the Crosscutting Anti-Corruption Strategy 2015-2020	2018	Decision of the Council of Ministers
Armenia	Anti-Corruption Strategy and its Implementation Action Plan for 2015-2018	2015	Government Decision
Azerbaijan	National Action Plan for 2016-2018 on Promotion of Open Government	2016	Presidential Decree
Bosnia-Herzegovina	Action Plan for the Implementation of the Anti-Corruption Strategy 2015-2019	2015	Decision of the Council of Ministers
Bulgaria	National Strategy for Prevention of Corruption 2015-2020	2015	Decision of the Council of Ministers
Croatia	Anti-Corruption Strategy 2015-2020	2015	Law
	Anti-Corruption Plan for 2017-2018		Government Decision
Estonia	Anti-Corruption Action Plan for 2019-2020	2017	Government Decision
	Anti-Corruption Strategy 2013-2020	2013	Government Decision
Georgia	Implementation Plan of the Estonian Anti-Corruption Strategy 2018-2020	2017	
	2019-2020 Action Plan for the Implementation of the Anti-Corruption Strategy	2019	Government Decree
Kazakhstan	Anti-Corruption Strategy for 2015-2025	2014	Presidential Decree
	Action Plan 2018-2020 for Implementing Kazakhstan's Anti-Corruption Strategy 2015-2025 and Combating Shadow Economy	2018	Government Resolution
Kosovo	Strategy and Action Plan against Corruption for 2013-2017	2013	Law
Kyrgyzstan	State Strategy of Anti-Corruption Policy	2012	Presidential Decree

Country	Anti-Corruption Strategies and Action Plans	Adopted	Source
	National Development Strategy of the Kyrgyz Republic for 2018-2040	2018	Presidential Decree
	Action Plan of the State Authorities of the Kyrgyz Republic for Countering Corruption in 2019-2021	2019	Government Decree
	The Plan to combat corruption in the judicial system of the Kyrgyz Republic for 2018-2020	2018	Order of the Chairman of the Supreme Court
Latvia	Guidelines for Corruption Prevention and Combating 2015-2020	2015	Cabinet's Order
	Operational Strategy of the Corruption Prevention and Combating Bureau 2018-2019	2018	Order of the Prime Minister
Lithuania	National Anti-Corruption Programme of the Republic of Lithuania for 2015-2020	2015	Parliament's Resolution
	Inter-institutional Action Plan for 2015-2019 for the Implementation of the National Fight against Corruption 2015-2025	2015	Government's Decree
North Macedonia	State Program for Prevention and Repression of Corruption and Conflicts of Interest and Action Plan 2016-2019	2015	Decision of the State Commission for the Prevention of Corruption
Moldova	National Integrity and Anti-Corruption Strategy for the Years 2017-2020	2017	Parliament's Decision
Mongolia	National Anti-Corruption Strategy	2016	Parliament's Resolution
	National Action Plan for Combating Corruption 2018	2017	Government's Decision
Montenegro	Action Plan for Chapter 23	2015	Government's Decision
Romania	National Anti-Corruption Strategy 2016-2020	2016	Government's Decision
Russia	National Anti-Corruption Plan 2018-2020	2018	Presidential Decree
Serbia	National Anti-Corruption Strategy 2013-2018	2013	Decision of the National Assembly
	Action Plan for the Implementation of the National Anti-Corruption Strategy 2013-2018	2013	Presidential Decree
Slovenia	Resolution on the Prevention of Corruption	2004	Resolution of the Parliament
	Consolidated Action Plan for the Implementation of the Resolution on the Prevention of Corruption	2016	Decision of the Commission for Prevention of Corruption
Tajikistan	Strategy for Prevention of Corruption in the Republic of Tajikistan for 2013-2020	2013	Presidential Decree
Uzbekistan	State Programme to Combat Corruption 2019-2020	2019	Presidential Decree
Ukraine	Anti-Corruption Strategy for 2014-2017	2014	Law
	Programme for implementation of the Strategy for 2015-2017	2015	Resolution of the Cabinet of Ministers

Source: OECD/ACN secretariat research, IAP monitoring reports.

Anti-corruption awareness raising and education

As noted in the previous summary report²⁸, informed citizens can be strong allies to governments in their efforts against corruption. Well-planned, structured and targeted anti-corruption awareness and education measures are critical in the countries with the past of systemic corruption, where society remains largely tolerant of bribe solicitation, conflict of interest or any forms of corruption and may even be complicit in these practices.²⁹ Along with real anti-corruption reforms, governments should engage in informing public about different forms of corruption, its causes and consequences as well as the measures undertaken to target them, to shape citizens' attitudes, create intolerance of corruption, increase trust in the reforms, and stimulate society to join anti-corruption effort.

The UNCAC (Art. 13) obliges the states parties to “raise public awareness regarding the existence, causes and gravity of and threat posed by corruption” with the aim of engaging society in the process of preventing and fighting it. The ACN has been promoting awareness raising and education through the IAP monitoring and its thematic work.³⁰

The review of anti-corruption policy documents in the ACN countries shows that the majority of them (19) included measures on anti-corruption education and awareness.³¹ There was some incremental progress in targeting the activities to specific outcomes or reform processes or tailoring them to concrete target groups. A common challenge of the lack of proper planning and impact evaluation to maximize efficiency and save resources remained. Overall, there have been numerous awareness raising measures carried out using considerable resources but with no clear objectives or outcomes.

Several positive examples in terms of targeted activities among the IAP countries were **Mongolia**'s "paper clip" campaign for youth³², **Armenia**'s campaign on the whistle-blower protection reform³³ and **Ukraine**'s awareness raising measures regarding conflict of interest.³⁴ Concerning measuring impact, **Kazakhstan**'s awareness-raising and educational plan developed on the basis of the findings of a survey measuring effectiveness of awareness raising activities was one of the few positive highlights.³⁵

Fourth round of monitoring recommended including anti-corruption topics in the education curricula. Most of the IAP countries did not address this recommendation, perhaps with the exception of **Mongolia** where integrity was taught to youth at various stages of education and **Ukraine** which included some related material in the curricula. A recent OECD publication is a good resource on teaching anti-corruption to youth. It draws on country experiences and provides a practical toolbox for policymakers as well as teachers to educate youth on anti-corruption, integrity values and rule of law.³⁶ Detailed overview of the progress made by IAP countries in this area is provided below.

Armenia's anti-corruption strategy and the action plan included measures to build trust of citizens towards the Government and to raise awareness on ongoing reforms by regularly publishing the reform implementation reports, organizing public discussions, informing about on-going and finalized criminal cases on corruption, creating platforms for cooperation with CSOs and e-consultations on the draft normative acts. Armenia also carried out a targeted awareness raising campaign in connection with the introduction of the new whistleblower protection law. The campaign included a survey, videos and billboards, TV programs and interviews. However, it appeared that over the reporting period awareness raising measures have been largely perceived as cosmetic actions in the fight against corruption.³⁷ In the forthcoming institutional framework, anti-corruption awareness raising will be a responsibility of the new corruption prevention body.

In **Azerbaijan**, CCC Secretariat and prosecutors of the ACD gave lectures at universities, participated in TV shows and held quarterly press conferences about the fight against corruption. In addition, the ACD produced several publications, brochures and leaflets and the CCC has published a journal "10 Years of Achievements in Fight against Corruption". The National Corruption Barometer report developed by the CCC in co-operation with the Azerbaijan Anti-Corruption Academy in 2017 was a step forward in measuring results. Another survey was planned for 2019.³⁸

In **Georgia**, anti-corruption education and public awareness raising were included in the new Anti-Corruption Strategy and Action Plan as one of its strategic priorities, with the Anti-Corruption Council's Secretariat responsible for the implementation. However, the budget allocated to these activities was very limited and the Secretariat counted on donor support. Draft of the public relations strategy has been under development for several years and has yet to be submitted to the Anti-Corruption Council for approval. A number of educational and awareness activities were conducted: model sessions with participation of students and NGOs which provided a direct and interactive tool to educate the target groups about anti-corruption policy-making along with an anti-corruption awareness raising campaign in 10 universities of Tbilisi, including 10 lectures on corruption and civil service reform elaborated by the Civil Service Bureau, the Anti-Corruption Council Secretariat and other agencies. It appeared that although the activities carried out were well-designed and targeted, they remained limited and fell below the action plan's requirements. Overall government action has stalled in this regard throughout the reporting period.³⁹

Kazakhstan continued carrying out a significant number of awareness activities. It also attempted to monitor the effectiveness of these activities as mentioned above. The Public Association “Socium-Zertteu” conducted a survey in 2017 to assess the impact of information campaigns on the dynamics of corruption. The anti-corruption agency then prepared the Comprehensive Plan of the Anti-Corruption Public Culture Formation for 2018 based on the findings of the survey. The Comprehensive Plan had to be updated based on the assessment planned to take place in 2019.⁴⁰

Kyrgyzstan adopted the Concept for Raising Legal Culture of the Population of the Kyrgyz Republic for 2016-2020 that identifies students as target audience. The government carried out a significant number of activities and campaigns throughout the reporting period. However, as the IAP report noted, the awareness raising function was assigned to various institutions without proper planning or co-ordination. The Ministry of Justice was responsible for raising the legal culture of the population. The Department for Defence, Law Enforcement and Emergency Situations of the Office of the Government was also appointed as the body responsible for developing comprehensive approaches and activities for education and training on anti-corruption. Furthermore, there was no clear budget allocation for these activities.⁴¹

In **Mongolia**, the anti-corruption action plan required all ministries, government agencies and local authorities to conduct awareness activities to meet the objective of the Anti-Corruption Strategy. The Prevention and Public Education Department of the Independent Agency Against Corruption had a dedicated plan aimed at schoolchildren, students and CSOs. For example, in 2018, a “paper clip” campaign for youth attracted significant traction on social media. These initiatives benefited from broad CSO support and an allocated budget of MNT 110 million (about EUR 36,500) for a period of six years. Although authorities did not measure the impact of these activities, a positive trend could be noted through perception surveys. According to the survey of 2018, 54.7% of respondents disagreed with the statement that “some level of corruption is acceptable” (compared to 41.8% in 2006). The level of petty corruption decreased from 26% in 2006 to 4.1% in 2018. Additionally, less people were willing to pay bribes: percentage of those who would refuse to pay a bribe increased from 28.7% to 46.9% within the decade.⁴²

Tajikistan’s Department of Corruption Prevention within the State Agency for Financial Control and Combating Corruption was responsible for carrying out anti-corruption education and awareness raising measures. In 2017-2018, the Agency conducted an assessment of the effectiveness of its educational activities and drafted an action plan based on its results in co-operation with the OSCE and two CSOs.⁴³

In **Ukraine**, the National Agency for Corruption Prevention was responsible for anti-corruption awareness and education, and focused on raising awareness on specific reform areas, namely conflict of interest, asset declarations and political party funding. It also organized trainings on aspects of anti-corruption legislation for public sector employees covering 1,700 persons and launched online training courses using open online platforms for massive courses. 36,500 people have completed the on-line trainings. The NACP adopted its communication strategy in 2017. The Ministry of Education developed a training course for secondary school students along with the UNDP’s educational project “EdEra” in 2016, which was rolled out to 200 schools. Additionally, the so-called Corruption Park, created with the support of EU Anti-Corruption Initiative project, had significant reach with over 100 million contacts. In 2018, under the communication strategy’s action plan a pilot system for monitoring and assessment of the effectiveness of communications initiatives were launched, however it focused mostly on the number of activities, rather than the impact of these activities on raising awareness.⁴⁴

Uzbekistan carried out a huge array of activities on anti-corruption education and training, done both by public bodies on their own or in co-operation with the representatives of civil society and the business sector, or with their support. The government used various media including television, radio, print and electronic media. The printed materials aimed at explaining the essence and significance of anti-corruption legislation were widely distributed. Educational institutions conducted over 500 corruption prevention activities during the reporting period.⁴⁵

Box 2. Public integrity curricula in Hungary

Hungary has incorporated integrity and anti-corruption values into primary and secondary school curricula. The Ministry of Public Administration and Justice prepared modules on anti-corruption in cooperation with other ministries and CSOs. With the approval of the Secretaries of State of the Ministry of Human Resources they were included into the ethics curriculum for grades 11 and 12 as a pilot. Following this, the modules were incorporated into ethics curricula for grades 9-12 and 5-8.

The modules aim at providing students with knowledge on: fair and unfair representation of interest; just and unjust favour, bribery and passive bribery; private interest and the public good; the phenomena and dangers of corruption, misuse of power and corruption in everyday life; tools to stop bribery and corruption; assessment of ethical dilemmas; the roles and responsibilities of individuals and the community in the fight against corruption.

The teaching methods include group discussion, reasoning and individual or small group projects. Upon completing the module students will be able to recognize and address ethical dilemmas and become acquainted with values essential to integrity and rules of conduct. The National Anti-Corruption Programme 2015-2018 provided for the assessment of the programme which was conducted by the Ministry of Human Resources. To this end, the Ministry established a working group which included experts from the National Protective Service, the National Crime Prevention Council, the National Police Headquarters and the National Institute for Education Research and Development. The working group found that trainings should be conducted within regular one-day events at schools and that anti-corruption should be incorporated into other subjects besides ethics.

Source: OECD (2018), Education for Integrity, p. 86, www.oecd.org/governance/ethics/education-for-integrity-web.pdf.

Conclusions

IAP countries have continued to carry out numerous anti-corruption education and awareness raising activities. Some countries have made these measures targeted and structured. However, these measures still generally lacked a systemic and targeted approach. Governments did not properly assess the impact of the numerous activities they conducted, as well the efficiency of resources they used.

See recommendations at the end of this chapter.

Corruption prevention and co-ordination institutions

International standards

The UN Convention against Corruption (Art. 6) obliges the states parties to ensure the existence of a body (or bodies) that prevent corruption, including by implementing, overseeing and coordinating anti-corruption policies, as well as raising awareness and disseminating knowledge about the prevention of corruption. States should grant such bodies the necessary independence to carry out their duties effectively and free from any undue influence. They also should provide the necessary material resources and specialised staff, including the training for such staff to carry out their functions. These provide the main benchmarks for specialisation. UNCAC also requires states parties to involve the civil society in their anti-corruption efforts, as well as disseminate information concerning corruption.

Policy functions include development and implementation of the anti-corruption policies, which requires coordination, monitoring and research to ensure that they are comprehensive and respond to the actual

corruption risks within the country. Coordination is required both at the stage of development, as well as at the stage of implementation of the developed measures.

Preventive functions are diverse and many. They include anti-corruption education, training and awareness raising; review of corruption risks in public sector and development of integrity plans, methodologies and recommendations; gathering, analysing and verifying asset declarations of public officials; research on corruption; anti-corruption assessment of legal acts; management of the conflict of interests; control of financing of political parties; and others. Often a single institution cannot perform such a multitude of functions.

Institutional models and good practices

Specialisation may take various forms, as there is no single model for the best anti-corruption institution. It is the responsibility of the countries to find the most effective and suitable institutional solution for its legal and institutional framework, level of corruption, etc.⁴⁶ At the same time, whichever model is chosen, the necessary level of independence and resources must be ensured.

In the last fifteen years, many such agencies, bodies, commissions have been set up. In fact, most of the ACN countries (see the table below) have one or more specialised anti-corruption body responsible for policy and or prevention matters. It is difficult to identify all main patterns and models. They can be divided into three models based on their purpose and functions.⁴⁷

Table 8. Specialised anti-corruption coordination and prevention institutions in ACN countries

Country	Anti-corruption coordination and prevention of corruption institutions
Albania	1. National Coordinator for Anti-Corruption 2. Anti-Corruption Task Force/ Inter-Ministerial Working Group (TBC) 3. High Inspectorate of Declaration and Audit of Assets and Conflict of Interests
Armenia	1. Anti-Corruption Council 2. <i>Commission for Prevention of Corruption</i>)
Azerbaijan	1. Commission on Combatting Corruption 2. Anti-Corruption Directorate (acquired preventative functions)
Belarus*	<i>Office of the Prosecutor General is primarily responsible for anti-corruption coordination and prevention mandate</i>
Bosnia and Herzegovina	1. Agency for the Prevention of Corruption and Coordination of the Fight against Corruption
Bulgaria	1. Commission for Anti-Corruption and Illegal Assets Forfeiture 2. National Council on Anti-Corruption Policies
Croatia	1. National Council for Monitoring the Anti-Corruption Strategy 2. Commission for Prevention of Conflict of Interest in Performing Public Duties 3. Independent Anti-Corruption Sector in the Ministry of Justice 4. Office for the Suppression of Corruption and Organized Crime (USKOK)
Estonia*	<i>Ministry of Justice is primarily responsible for anti-corruption coordination and prevention mandate</i>
North Macedonia	1. State Commission for the Prevention of Corruption
Georgia	1. Anti-Corruption Council
Kazakhstan	1. Presidential Commission on Anti-Corruption Issues 2. Agency for Civil Service Affairs 3. Anti-Corruption Agency
Kosovo	Anti-Corruption Agency
Kyrgyzstan	1. Security Council Working Group on Control of Implementation of the State Anti-Corruption Policy Strategy 2. Anti-Corruption Policy Sector of the Government Secretariat 3. Prosecutor's General Office that coordinates activities of public authorities in countering corruption
Latvia	1. Corruption Prevention and Combatting Bureau (KNAB)
Lithuania	1. Special Investigation Service (STT) 2. Chief Official Ethics Commission (VTEK)
Moldova	1. National Anti-Corruption Centre (CNA)

Country	Anti-corruption coordination and prevention of corruption institutions
	2. National Integrity Authority (ANI)
Mongolia	1. Independent Authority Against Corruption
Montenegro	1. Agency for Prevention of Corruption
Romania	1. National Integrity Agency (ANI) 2. Ministry of Justice (responsible for anti-corruption coordination and prevention mandate)
Russian Federation	1. Office of the President of the Russian Federation for Fighting Corruption 2. Office of the Prosecutor General 3. Ministry of Justice and others
Serbia	1. Anti-Corruption Council 2. Anti-Corruption Agency 3. Ministry of Justice
Slovenia	1. Commission for the Prevention of Corruption
Tajikistan	1. National Council on Prevention of Corruption 2. Agency on State Financial Control and Fight Against Corruption
Ukraine	1. National Council for Anti-Corruption Policy 2. National Agency on Corruption Prevention 3. Anti-Corruption Committee of the Parliament
Uzbekistan	1. Republican Anti-Corruption Interagency Commission 2. Territorial Anti-Corruption Interagency Commissions

*No specialised anti-corruption institution.

Source: information provided by the governments, IAP monitoring reports and OECD/ACN secretariat research.

The first model combines prevention and coordination functions with enforcement functions under the umbrella of one institution – the multi-purpose anti-corruption agency. This is the case in some ACN countries, including **Lithuania** (Special Investigation Service), **Latvia** (Corruption Prevention and Combatting Bureau), **Moldova** (National Anti-Corruption Centre), as well as OECD countries, such as Poland (Central Anti-Corruption Bureau), Argentina (Anti-Corruption Office), Austria (Federal Bureau of Anti-Corruption) and Australia (commissions against corruption at the state level). Many of them were inspired by the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau.

Among IAP countries, **Mongolia** opted for such institutional solution. Its Independent Authority Against Corruption is a multi-purpose agency, which combines anti-corruption policy development and coordination, prevention and investigation of corruption.

Two other countries have agencies, which can be considered multi-purpose, as they combine preventive and enforcement functions. In particular, **Tajikistan**'s Agency on State Financial Control and Fight Against Corruption is responsible for prevention of corruption, as well as investigation of corruption offences. **Kazakhstan**'s Agency for Civil Service Affairs and Anti-Corruption, which carried out preventative and law enforcement functions, was another such example. However, in June 2019 it was transformed into two separate state bodies: Agency for Civil Service Affairs and Anti-Corruption Agency. The distribution of functions between them has not been decided at the time of drafting and will determine the future model of anti-corruption institutional set up of Kazakhstan. In both these countries these agencies are not key holders of the anti-corruption policies. Policy development, implementation and monitoring fall within the preview of high-level councils as described below.

Finally, **Azerbaijan**'s Anti-Corruption Directorate (ACD), which is a specialised anti-corruption law enforcement body established in the Prosecutor General's Office, has acquired some preventive functions; its structure has been changed as described in the fourth round of monitoring. In particular, the established Preventive Measures and Inquiry Department of ACD analyses the corruption situation and proposes preventive measures, issuing recommendations (motions) to the state bodies. ACD also increasingly carries out awareness raising functions.

The second model of specialised institutions is law enforcement in nature and is discussed in a separate section of this report.

The third and the broadest model includes preventive institutions. In practice, preventive and coordinating functions are either combined in one body or entrusted to different bodies. Such institutions broadly fall into three main categories:

1) Anti-corruption coordination councils (commissions, committees) which, as a rule, combine representatives of various state institutions concerned with anti-corruption; they are not permanent in nature, operate through meetings, and are supported by a dedicated secretariat. These can be high-level or working level bodies. They also often include representatives of the non-governmental sector (NGOs, academia, business, experts, international organisations, etc.). They usually lead the anti-corruption reform efforts in the country and are responsible for development, implementation and monitoring of the anti-corruption strategic documents. The National Council for Anti-Corruption Monitoring in **Croatia**, the Anti-Corruption Council in **Serbia**, the Inter-Ministerial Working Group in **Albania**, and the Council on Corruption Prevention under the President of **Russian Federation** are such examples in the ACN.

These bodies are most common in the IAP countries too: **Georgia**'s Anti-Corruption Council, **Ukraine**'s National Council for Anti-Corruption Policy, **Kazakhstan**'s Presidential Commission on Anti-Corruption Issues, **Kyrgyzstan**'s Security Council Working Group on Control of Implementation of the State Anti-Corruption Policy Strategy, **Tajikistan**'s National Council on Prevention of Corruption, **Armenia**'s Anti-Corruption Council, **Uzbekistan**'s Republican Anti-Corruption Interagency Commission. **Azerbaijan**'s Commission on Combatting Corruption was established as a preventive body, however *de facto* it operates as one of the councils listed above.

2) Dedicated corruption prevention bodies that are created for prevention of corruption, are more permanent in nature and deal with a range of corruption prevention issues. They usually have a broader mandate and often combine prevention and policy development and coordination roles or supplement the work of the anti-corruption coordination councils described earlier by providing organisational and analytical support to them. Such agencies operate in some ACN countries, including **Bosnia and Herzegovina** (Agency for the Prevention of Corruption and Coordination of the Fight against Corruption), **Bulgaria** (Commission for Anti-Corruption and Illegal Assets Forfeiture), **Montenegro** (Agency for Prevention of Corruption), **Serbia** (Anti-Corruption Agency), and **Slovenia** (Commission for the Prevention of Corruption). Some OECD countries, such as France, also have such agencies.

Among IAP countries, **Ukraine** has set up such prevention agency – the National Agency on Corruption Prevention. **Armenia** had a Commission on Ethics of High-Level Officials and recently embarked on creation of a new institution, with more limited anti-corruption policy functions - the Commission for Prevention of Corruption. As mentioned before, **Azerbaijan**'s Commission on Combatting Corruption would belong to this group of agencies if it were to exercise all functions afforded to it by law.

3) Public institutions which focus on one or two corruption prevention issues, e.g. conflict of interests, asset declarations. Examples among ACN countries are **Albania** (High Inspectorate of Declarations and Audit of Assets and Conflict of Interests), **Croatia** (Commission for Prevention of Conflict of Interest in Performing Public Duties), **Lithuania** (Chief Official Ethics Commission), **Moldova** (National Integrity Authority) and **Romania** (National Integrity Agency). Other OECD countries have such agencies as well, including the USA, the UK, the Netherlands, and Italy.

Institutional anti-corruption arrangements in IAP countries have undergone significant changes since the third round of monitoring (for more detail see the table below). Some countries further strengthened their existing bodies and coordination mechanisms (**Georgia**, **Tajikistan**). Others made operational institutions that were created at the time of the third round of monitoring (**Ukraine**). Some reformed their institutional framework (**Uzbekistan**) and others are in the process of making such changes (**Armenia**, **Kazakhstan**).

Table 9. Institutional changes in the corruption prevention and coordination institutions in the IAP countries

Anti-corruption coordination and prevention agencies as of mid-2016	Anti-corruption coordination and prevention agencies as of mid-2019
Armenia	
Anti-Corruption Council	Continues to function
Anti-Corruption Strategy Implementation Monitoring Commission	Dismantled
Ethics Commission of High-Ranking Officials	Replaced by Commission for the Prevention of Corruption once established in November 2019 according to the 2017 Law on the Commission for the Prevention of Corruption
Non-existent	Commission for Prevention of Corruption
Existed but did not have prevention functions	State Oversight Service under the Prime Minister's Office
Azerbaijan	
Commission on Combatting Corruption	Continues to function
Existed but did not have prevention functions	Anti-Corruption Directorate (acquired prevention functions)
Georgia	
Anti-Corruption Interagency Council	Continues to function
Kazakhstan	
Presidential Commission for the Fight against Corruption	Continues to function
Agency for Combating Economic and Corruption Crimes (Financial Police)	Dismantled//Merged into another institution
Non-existent	Agency for the Civil Service Issues and Countering Corruption (created in September 2016 and liquidated in June 2019)
Non-existent	Agency for Civil Service Affairs (established in June 2019)
Non-existent	Anti-Corruption Agency (established in June 2019)
Kyrgyzstan	
Corruption Service of the State Committee on National Security	Security Council Working Group on Control of the Implementation of the State Anti-Corruption Policy Strategy
Mongolia	
Independent Authority Against Corruption	Continues to function
Tajikistan	
National Anti-Corruption Council	Continues to function
Agency for State Financial Control and Fight against Corruption	Continues to function
Ukraine	
National Anti-Corruption Committee	National Council for Anti-Corruption Policy
Government Agent and the Bureau on Anti-Corruption Policy	Dismantled
Non-existent	National Agency on Corruption Prevention
Uzbekistan	
Department for Fighting Economic Crime and Corruption of the Prosecutor General's Office	Relevant functions have been transferred
Non-existent	Republican Anti-Corruption Interagency Commission
Non-existent	Territorial Anti-Corruption Interagency Commissions

Source: information provided by the governments, IAP monitoring reports, OECD/ACN secretariat research.

Institutional changes may bring positive results. However, any institutional arrangement requires time to start functioning properly and frequent institutional changes may be disruptive to effective anti-corruption reforms. Newly created institutions should be afforded reasonable time to assume their functions and prove their effectiveness. Establishment of new institutions or changes of institutional arrangements require financial resources, political investment, credit of public trust, etc.

The previous Summary Report, while noting remaining legal and institutional challenges, highlighted that the lack of political leadership and appropriate resources, rather than institutional set-up, often impede efficiency of the anti-corruption policy coordination and prevention bodies. In particular, it noted that

“[...some existing mechanisms can be efficient without any need for further institutional reforms if they receive a decent level of political and administrative support.]⁴⁸ This conclusion still holds true after the fourth round of monitoring and should be kept in mind when considering or advocating for further institutional changes.

Below is the analysis of steps taken by IAP countries to implement previous recommendations, as well as analysis of general trends in issues important for effective functioning of the anti-corruption coordination and prevention bodies.

Functions and mandate

One of the conclusions and recommendations from the third round of monitoring was that the specialised anti-corruption coordination and prevention institutions should be given a clear mandate. As discussed before, there is no one model that fits all. A range of functions needs to be ensured by the state according to the international standards and obligations.

In IAP countries, mandates of the specialised anti-corruption coordination and prevention institutions differ from country to country (see the table below).

Anti-Corruption Council of **Georgia** has perhaps the narrowest mandate. Its functions are limited to anti-corruption policy development, coordination and monitoring.

Others also include awareness raising and education, research and analysis of corruption, providing methodological guidance and consultations to other public institutions, as well as monitoring of implementation of anti-corruption measures in all public agencies, coordinating the anti-corruption units in state bodies, and international co-operation. This is the case in **Uzbekistan**.

In some cases, the mandate also covers preventative measures, such as management and verification of asset declarations, conflict of interest, political party financing, whistle-blower protection, etc. **Armenia**'s newly established agency – the Commission for Prevention of Corruption – has such functions.

Ukraine's National Agency on Corruption Prevention holds the broadest range of functions. In addition to all of the previously listed functions, Ukraine's agency coordinates, provides methodological support, and analyses the efficiency of the performance of the units/officers authorised for prevention and detection of corruption (anti-corruption authorised units/officers) that should be appointed by each public agency.

Despite the wide range of afforded functions, it appeared that the institutions established in some of the IAP countries held some of them only formally. Many of these functions remained on paper. In some cases, the specialised anti-corruption co-ordination and prevention institutions carried out only development of the anti-corruption policy (e.g. in **Azerbaijan**⁴⁹). In others - the agency may struggle to exercise its mandate independently and effectively, as was the case in **Ukraine**.⁵⁰ Finally, some institutions appeared to be seriously limited in their activities. For example, **Tajikistan**'s National Anti-Corruption Council met only three times in three years.

Another problem persists from the third round of monitoring. Namely, overlapping functions and competencies. For example, **Ukraine**'s NACP overlapped with the Secretariat of the Cabinet of Ministers in providing guidance support and coordination of the anti-corruption units or specially designated persons within state institutions. Its place and functions vis-à-vis the National Council for Anti-Corruption Policy were also not clear.⁵¹ In **Kyrgyzstan**, at the national level, at least three bodies (the Security Council Working Group on Control of the Implementation of the State Anti-Corruption Policy Strategy, the Office of the Government and the Office of the Prosecutor General) were responsible for development and implementation of anti-corruption policy and co-ordination and their functions overlap in many respects. The fourth-round monitoring report found organisation of such anti-corruption system ineffective with functions dispersed among too many authorities, when everyone did everything without proper coordination.⁵²

Table 10. Anti-corruption co-ordination and prevention institutions in IAP countries

Country	Institution	Description
Armenia	Anti-Corruption Council, since 2004	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Support to anti-corruption policy development, including at sector level, corruption risk analysis. - Coordination of anti-corruption policy and monitoring of implementation of the policy documents, including preparation of progress reports. - Donor coordination. <p><u>Composition:</u> Interagency body composed of high-level representatives from all branches of government. Chaired by the Prime Minister. NGOs, business and representatives of the opposition parties hold 5 seats.</p> <p><u>Mode of operation:</u> Operating through meetings every 4 months. Permanent Secretariat at the Monitoring division of the Government Staff (5 staff), Expert Task Force (3 independent experts). Ministry of Justice sometimes acted as Secretariat and supports the donor coordination function.</p>
	Commission for Prevention of Corruption, in the process of establishment	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Support to the ACC - Research, studies, survey; - Awareness raising and education; - Guidance to state institutions and business on anti-corruption measures; methodological support of anti-corruption units/persons; - Collection, analysis and verification of asset declarations; - Management of Conflict of Interest; - Control of Political Party financing. <p><u>Composition:</u> 5 independent commissioners, selected through open competition; permanent secretariat of 55 persons (planned for 2019).</p> <p><u>Mode of operation:</u> Permanent body.</p>
	State Oversight Service under the Prime Minister's Office, in the process of establishment	<p><u>Relevant functions:</u> - Oversight of the implementation of the anti-corruption measures.</p> <p><u>Composition:</u> No information available.</p> <p><u>Mode of operation:</u> The Secretariat of the Security Council assists the Council.</p>
Azerbaijan	Commission on Combating Corruption, since 2004	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Coordinating development and monitoring of implementation of anti-corruption policies. - Research and surveys in order to assess the efficiency of anti-corruption policies. - Awareness raising. - Collection and monitoring of asset declarations. - Analysis of corruption, hearing reports from heads of law enforcement and other institutions on corruption on implementation of anti-corruption legislation and issuance of recommendations. - Coordinating development and monitoring implementation of the AML/CTF policies (since 2017). - Focal point for Open Government Partnership (since 2017). - Representation in GRECO (since 2018). <p><u>Composition:</u> A collegial body of 15 members (5 appointed by the President, 5 - by the Parliament and 5 - by the Constitutional Court). Chaired by the Head of the Presidential Administration.</p> <p><u>Mode of operation:</u> Operates through meetings and working groups. Permanent secretariat based at the Executive Office of the President (4 employees).</p>
	Anti-Corruption Directorate, since 2004	<p><u>Relevant functions:</u></p> <ul style="list-style-type: none"> - Awareness raising and education. - Analysis of corruption risks in state institutions and development of recommendations to eliminate such risks. <p><u>Institutional organisation:</u> Preventative Measures and Inquiry Department.</p>

Country	Institution	Description
Georgia	Anti-Corruption Council, since 2008	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Development of anti-corruption strategy and Action Plan, their revision and monitoring. - Implementation of recommendations by international organisations and related reporting. <p><u>Composition:</u></p> <p>85 members, of which 31 represent three branches of government and independent institutions and 19 represent the civil society, international and business sector. Chaired by the Minister of Justice.</p> <p><u>Mode of operation:</u></p> <p>A coordination mechanism operating through meetings and expert groups. Secretariat is provided by the Analytical Department of the Ministry of Justice (8 employees working mostly on a/c).</p>
Kazakhstan	Presidential Commission on Anti-Corruption Issues, since 2002	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Development of proposals on anti-corruption issues to the President. - Monitoring and analysis of implementation of anti-corruption measures. - Review of complaints from individuals and legal persons and media allegations of corruption committed by high-level officials and recommending internal investigations. <p><u>Composition:</u></p> <p>14 high-level public officials representing the executive and legislative branch, as well as independent bodies. It may contain representatives of the NGOs.</p> <p><u>Mode of operation:</u></p> <p>Advisory and consultative body operating through meetings not less than once every 3 months. Secretariat is provided by the Law Enforcement Department of the Presidential Administration.</p>
	Anti-Corruption Agency (established in June 2019)	<p><u>Functions:</u></p> <p>To be defined.</p> <p><u>Composition:</u></p> <p>To be defined.</p> <p><u>Mode of operation:</u></p> <p>To be defined.</p>
	Agency for Civil Service Affairs (established in June 2019)	<p><u>Functions:</u></p> <p>To be defined.</p> <p><u>Composition:</u></p> <p>To be defined.</p> <p><u>Mode of operation:</u></p> <p>To be defined.</p>
Kyrgyzstan	Security Council Working Group on Control of the Implementation of the State Anti-Corruption Policy Strategy, since 2011	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Development and monitoring of effectiveness of anti-corruption policies. <p><u>Composition:</u></p> <p>7 high-level officials from different branches of power; 3 experts and NGO representatives</p> <p><u>Mode of operation:</u></p> <p>The Secretariat of the Security Council assists the Council.</p>
	The Office of the Government, since 2015	<p><u>Relevant functions:</u></p> <ul style="list-style-type: none"> - Coordination of the state bodies work on development and implementation of the anti-corruption plans, control over their implementation. - Analysis of situation with corruption and development of proposals to improve anti-corruption measures. <p><u>Institutional organisation:</u></p> <p>No information available.</p>
	General Prosecutor's Office, since 2013	<p><u>Relevant functions:</u></p> <ul style="list-style-type: none"> - Coordination of the state bodies work on fight against corruption, control over their implementation. - Collection and analysis of information on the state of corruption in state administration and local self-governance and assessment of effectiveness of their anti-corruption measures. <p><u>Institutional organisation:</u></p> <p>No information available.</p>
Mongolia	Independent Authority Against Corruption, since 2007	<p><u>Relevant functions:</u></p> <ul style="list-style-type: none"> - Anti-Corruption Policy. - Prevention and public awareness. - Inspections and analysis, including corruption risk assessment in state institutions and SOEs and development of subsequent recommendations.

Country	Institution	Description
		<p><u>Institutional organisation:</u> Two of the five departments work on prevention (prevention and public awareness department and inspection and analysis department), and a dedicated office on implementation of the A/C strategy.</p>
Tajikistan	National Anti-Corruption Council, since 2010	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Analysis of anti-corruption measures and coordination of the state institutions in anti-corruption work. - Support to the implementation of international anti-corruption commitments. - Monitoring of anti-corruption prevention measures and assessment of state institutions in these tasks. - Engagement with the civil society and the public. - Prevention of causes of corruption and awareness raising. <p><u>Composition:</u> 21 high-level representatives of the executive, judicial and legislative branches, heads of specialised institutions, as well as leaders of political parties, whose representatives were elected to the Parliament, the Ombudsman, civil society (trade-union, media, youth, business associations). Chaired by the Prime Minister.</p> <p><u>Mode of operation:</u> Operating through meetings, can form commissions and working groups. The Secretary of the Commission is the Head of the Department of defence and order of the Executive office of the President.</p>
	Agency for State Financial Control and Fight against Corruption, since 2007	<p><u>Relevant functions:</u></p> <ul style="list-style-type: none"> - Monitoring of the implementation of anti-corruption strategy. - Raising awareness and public education. - Anti-corruption screening of legislation. - Collection and analysis of information on corruption risk assessment conducted by state institutions. - Coordination of anti-corruption efforts of state institutions (internal control units to prevent corruption within state institutions). <p><u>Institutional organisation:</u> Main Department on Prevention of Corruption (22 staff), composed of three divisions (detection and analysis of corruption risks (8), anti-corruption education (7), anti-corruption expertise (7)) and at the regional level – Units on Prevention of Corruption (22 persons).</p>
Ukraine	National Agency on Corruption Prevention, since 2016	<p><u>Main functions:</u></p> <ul style="list-style-type: none"> - Development, coordination and monitoring implementation of anti-corruption policies. - Research, studies, surveys. - Awareness raising and education. - Guidance to state institutions and business on anti-corruption measures; methodological support of anti-corruption units/persons. - Collection, analysis and verification of asset declarations. - Monitoring and oversight of compliance with legislation on conflict of interest - Protection of whistleblowers. - Control of political party financing. <p><u>Composition:</u> Since the launch till October 2019, NACP was led by 5 commissioners selected through an open competition. In October 2019, the parliament amended the law and changed the governance model with one head of the agency and three deputy heads. The head is selected through an open competition by a commission consisting of 3 persons nominated by the Government and 3 persons nominated by the international donors. The NACP number of staff was 311 employees; in November 2018, the Government increased the maximum staff 408 persons.</p> <p>Public Council.</p> <p><u>Mode of operation:</u> Permanent body.</p>
	National Council for Anti-Corruption Policy, existed since 2010, changes into its statute and composition in 2019	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Development and monitoring implementation of anti-corruption policies. - Analysis of corruption and effectiveness of anti-corruption measures. - Implementation of recommendations of international organisations. <p><u>Composition:</u> 27 members including high-level public officials from three branches of government, representatives of the civil society, expert community, business, etc. 16 members are non-government, and 7 international observers. Headed by the deputy Head of Office of the President.</p> <p><u>Mode of operation:</u> Consultative body under the President, operating through meetings (no less than quarterly). No permanent secretariat.</p>

Country	Institution	Description
Uzbekistan	Republican Anti-Corruption Interagency Commission, since 2017	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Organising development and implementation of anti-corruption programmes. - Coordination of anti-corruption activities of state institutions and monitoring of their implementation. - Anti-Corruption education and awareness raising. - Collection and analysis of information on corruption trends. - Legislative proposals. - Coordination of activities of the Territorial Anti-Corruption Interagency Commissions. <p><u>Composition:</u> 43 members including heads and expert level representatives of state institutions, representatives of civil society and academia. Chaired by the Prosecutor General, Minister of Justice is Deputy Chair.</p> <p><u>Mode of operation:</u> Working meetings, no less that every three months, can establish working commissions and expert groups. The Secretariat is place within the Directorate for the Methodological Support of Investigation at the Prosecutor General's Office (Number of staff) and Expert Group (13 members)</p>
	Territorial Anti-Corruption Interagency Commissions, since 2017	<p><u>Functions:</u></p> <ul style="list-style-type: none"> - Organising development and implementation of anti-corruption programmes at the regional and local level. - Coordination of anti-corruption activities of state institutions and monitoring of their implementation at the regional and local level. - Anti-Corruption education and awareness raising. - Collection and analysis of information on corruption trends at the regional and local level. <p><u>Composition:</u> Members are representatives of the regional and local level state institutions. Chaired by the Heads of the Prosecutor's Offices.</p> <p><u>Mode of operation:</u> Working meetings.</p>

Source: information provided by the governments, IAP monitoring reports and OECD/ACN secretariat research.

Independence

Independence is important for the proper and effective exercise of prevention and co-ordination functions. The situation seems to have somewhat improved as to the legal basis for functioning of these institutions.

Most of prevention and coordination institutions have their mandate, functions, institutional placement, powers and responsibilities stipulated in the law. Only **Kazakhstan** and **Kyrgyzstan** still regulate such bodies by presidential or other bylaws.

Many other issues, such as appointment and removal of the head, internal structure, budget and personnel related matters are often not part of these laws. Moreover, internal operating, administrative, and reporting procedures and codes of conduct should also be adopted in legal form by regulations or by-laws, and this is still not the case across the IAP countries.

Appointment of senior management, as well as members of the high-level councils is one of the concerns raised in the fourth round of monitoring. Composition of **Azerbaijan's**, **Armenia's**, **Kyrgyzstan's** councils and selection procedures of their members were deemed not in line with good practices and have been criticised by the civil society of these countries. In **Ukraine**, where this process was well regulated, the fourth round report noted concerns of the civil society that it was still manipulated and suffered various pressures and interferences.⁵³ In **Armenia**, when it launched the process for selection of the commissioners of its new Commission for Prevention of Corruption, some interlocutors raised concerns regarding forming of its Selection Board.

Appointment of leadership is an important factor of independence. The head and senior management play a symbolic role in addition to other functions and their selection should be transparent with adequate and clear appointment criteria. These criteria would help ensure that candidates are not politically affiliated and are capable and experienced to lead the institutions. Criteria alone are not enough. As illustrated by

Mongolia's example, where criteria for selection of the head and deputy head of IAAC are identified in law but procedure for selection or appointment is missing, rendering the process subjective and non-transparent. While different approaches can be employed, it is important that there is a specific procedure, which combines various levels of decision making, instead of appointment by one political figure.

Finally, the tenure of the agency's head should be protected by law against unfounded dismissals. This was especially of relevance in **Mongolia**, where monitoring report described numerous examples of pressure put on the leadership of IAAC and attempts to dismiss its head and deputy head by circumventing the statutory term terms of office of the agency's leadership.⁵⁴

Adequate resources, training

As regards budget and fiscal autonomy, the situation somewhat improved from the third round of monitoring. Some agencies had their budget stipulated in laws (**Ukraine**, **Azerbaijan**, and **Mongolia**). Others received some increase in funding (e.g. **Tajikistan**). However, overall the issue of insufficient funding remained high on the agenda and was mentioned in the context of prevention and coordination in all IAP countries, except for **Ukraine**. While achieving full financial independence is impossible, sustainable funding needs to be secured with legal regulations in place precluding discretion of the executive in the funds' allocation.

Councils are overall poorly supported in terms of both organisation and analytics. In some cases, they simply do not have permanent secretariats, as is the case in **Tajikistan**'s National Council of Prevention of Corruption.

In other cases, organisational and analytical support is assigned to an existing department in the host institution, which carries out other functions in addition to secretariat support of these councils. This is the case in **Georgia**'s Anti-Corruption Council, which is supported by the Analytical Department of the Ministry of Justice. The same department also serves as Secretariat of Criminal Justice Reform Council and is responsible for legal research on various issues for the Ministry; it also used to act as the secretariat for the Open Government Partnership Initiative implementation in Georgia.⁵⁵ This has prompted recommendation to **Georgia** to consider establishing a dedicated anti-corruption unit in the Analytical Department to make Secretariat of the ACC more visible. **Uzbekistan**'s Republican Anti-Corruption Interagency Commission is supported by the persons from within General Prosecutor's Office (its Directorate for Methodological Support of Investigations). The IAP report also recommended to provide adequate resources to the Commission, ensuring that they are persons solely dedicated and qualified to do the job.

Even in councils with permanent secretariats their secretariats are understaffed (e.g. **Azerbaijan** with four persons in the secretariat of the CCC and **Armenia** with the secretariat of five persons) or require training and other support (e.g. in **Kyrgyzstan**).

Specialised prevention and multi-purpose agencies appear to be much better staffed and supported. **Ukraine**'s NACP has Secretariat of over 400 persons. NACP adopted a training plan and was continuously training its staff. It is planned that **Armenia**'s new Commission for Prevention of Corruption will have staff of 55 persons.

Multi-purpose agencies tend to have a strong inclination to law-enforcement functions in terms of allocation of resources. For example, out of 495 persons working for **Tajikistan**'s Agency on State Financial Control and Fight Against Corruption 38 persons work on prevention (22 in central office and 16 in the regions). This example still represents a positive development compared with the third round of monitoring, as there are now staff specifically dedicated to prevention work with relevant qualifications and training.

Overall, staff support to the dedicated prevention and multi-purpose agencies has improved according to the findings of the fourth round of monitoring. Now at least four IAP countries provide dedicated support to coordination and prevention functions; but in most cases these resources are still disproportionate to the functions. Secretariats of the advisory bodies continue to require further built-up, as was also recommended by the previous Summary report.

Accountability and transparency

In the fourth round of monitoring the IAP countries improved transparency of their work. Most of the decisions, reports, minutes of the meetings of the coordination institutions are formally required to be made public. **Tajikistan**'s National Council on Prevention of Corruption is an exception among IAP countries, and the monitoring report recommended to do so.⁵⁶

Accessibility and visibility of information remains a challenge. For example, the IAP fourth round monitoring report on **Georgia** recommended setting up a stand-alone dedicated website.⁵⁷ Some of the IAP countries were not updating information regularly enough. For example, **Azerbaijan**'s CCC website was current only on issues related to AML, not corruption.⁵⁸

Most of the IAP specialised coordination and prevention agencies could also benefit from increasing their level of communication with the public. In most cases, just releasing information on the website is not enough for their work is to gain the necessary level of recognition and public support.

Finally, engaging various stakeholders can also be encouraged through reporting. For example, **Georgia**'s ACC was recommended to institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work. This should also help raise its visibility.

Inter-agency co-operation and coordination

Formally, many of the IAP coordination and prevention institutions have within their mandate the responsibility to coordinate anti-corruption measures in other state institutions, including on a regional, municipal and local level. This is the case in **Azerbaijan, Ukraine, Tajikistan**. However, in practice the capacities to do so effectively are lacking in the IAP. For example, in **Azerbaijan** secretariat of 4 persons is responsible for coordination of over 100 sectoral plans and the anti-corruption work of the state agencies at the national and local level. The monitoring report found that "agencies are not generally aware of its work and instead consider ACD as their main partner in fighting corruption." **Ukraine**'s NACP did not have territorial units envisioned by the law. It was also the case in **Mongolia**, where despite several requests from IAAC the government refused to create its regional offices. Coordination of regional offices by **Tajikistan**'s Agency for State Financial Control and Fight against Corruption is limited to approval of work plans of regional and local office representatives and reports submitted by them to the Director every three months. No priorities of work are set, no expert or methodological guidance is provided.

The capacity of many specialised coordination and prevention institutions to involve other state bodies also remains insufficient. In some countries, like in **Ukraine**, the monitoring report questioned the convening power of the agency; it stated that the agency struggled to involve the necessary institutions even during the monitoring visit.⁵⁹ Furthermore, as noted in the latest progress update, current situation with the absence of the anti-corruption strategy in Ukraine was partially attributed to NACP's inability to work with other agencies towards developing and moving forward the document that would be acceptable for various stakeholders. In **Georgia**, ACC was criticised for not being able to engage with the Parliament.

IAP countries continue to rely on signing MoUs between the specialised anti-corruption coordination and prevention agencies and other state and non-government institutions. These however was not sufficient in practice. For example, in **Ukraine**, NACP signed MOUs with multiple state institutions; however, at the time of the fourth round of monitoring it had access to 11 out of 23 relevant databases held by the state institutions.

In **Tajikistan**, a special council on coordination of the bodies in fight against corruption was created at the Agency for State Financial Control and Fight against Corruption. However, the monitoring report did not find it efficient and recommended to ensure effective coordination among various state institutions.

Involvement of the non-governmental actors

The quality and extent of involvement of the civil society also differs among IAP countries. Some countries include non-governmental representatives into the composition of the bodies themselves. In **Georgia**, 19 out of 85 ACC members are non-governmental representatives; the Council's composition appeared to be inclusive and open. In **Ukraine**, new membership of the National Council for Anti-Corruption Policy had a very broad range of non-governmental representatives – out of 27 members, 16 did not represent state institutions. In addition, it envisaged participation of international observers, including from the OECD/ACN Secretariat. In **Armenia**, five members of the Anti-Corruption Council represent the NGOs and business; others can participate as observers and get involved in the working groups. Some countries foresee a possibility of including non-governmental members but did not do it in practice – this was the case with **Kazakhstan**'s Presidential Commission on Anti-Corruption Issues.

In some cases, non-governmental representatives who become members of such councils are selected based on clear criteria through the process that was viewed as genuinely inclusive. This was the case in **Ukraine, Georgia and Armenia**. In contrast, in **Tajikistan**, they were appointed in an unclear process and included non-governmental stakeholders with questionable affiliation to anti-corruption work.

Ukraine's NACP and **Mongolia**'s IAAC have Public Council attached to them. However, their success is also evaluated differently. Public Council of **Ukraine**'s NACP was viewed as selected on clear criteria and well represented. However, it engages in various disputes with the Agency and lately many of its members ceased to participate in order to demonstrate their disapproval of the NACP's work. NACP reportedly adopted its 2018 annual report without the Council's opinion of the Council contrary to what is required by law.⁶⁰ In **Azerbaijan** CCC's Public Council was heavily criticised for having dubious selection procedures and subsequently questionable membership.⁶¹ In **Mongolia** IAAC's Public Council appeared to be misused for political purposes.⁶²

Several IAP countries have piloted other mechanisms to facilitate involvement of the broader public and expert community in the work of these anti-corruption bodies with various degrees of success. For example, in **Georgia**, the secretariat of ACC has set up consultative online mechanism, which enables any member of the public to provide their feedback on the anti-corruption strategy and action plan and its implementation. However, very few comments were received through this mechanism at the time of the fourth round of monitoring. In **Uzbekistan**, the Republican Interagency Commission used messenger bots through which the public could provide their comments and suggestions on the draft anti-corruption legislation and related policy documents. Uzbekistan reported that these channels had been actively utilised. In **Mongolia**, to compensate for the lack of regional offices, IAAC has set up Citizen's Oversight Councils. However, the IAP fourth monitoring round report found their effectiveness limited due to by their mandates and capacities.

Donor co-ordination mechanisms

The fourth round of monitoring did not look into the issue apart from the case of **Armenia**, where the Ministry of Justice was commended for initiating and administering effective donor coordination. In Armenia, regular donor coordination meetings were supplemented by the matrix of anti-corruption assistance needs, and the government planned to launch an online platform for coordinating assistance.

Additionally, ACN through its country-specific work helped establish such mechanisms in two other IAP countries. Namely, such mechanism was established by OECD in 2015 in partnership with UNDP in **Ukraine**, and similarly was launched by OECD in 2019 in **Uzbekistan**. Although in both these countries

such initiatives were donor-driven, the governments have been actively involved and benefited from such coordination. In both countries, the meetings of donors were composed of two parts: one open to the government stakeholders working on the anti-corruption and another one open to donors only to discuss how assistance needs can be best shared and supported.

In **Ukraine**, such initiative became an excellent platform for the government to state its needs and report on progress to the international stakeholders. As a result, many of the anti-corruption initiatives have been supported by donors collectively. Examples include assistance in setting up the Asset Recovery and Management Agency, coordinated assistance to the National Anti-Corruption Bureau in training and capacity building, and donor's coordinated response and participation in the selection of judges for the High Anti-Corruption Court through nomination of the international experts into the Public Council of International Experts.

Similarly, in **Uzbekistan**, coordination meetings provided an opportunity for the donor community to learn what government plans and priorities are in the area of anti-corruption and initiate dialogue on what assistance and in what forms can be provided towards this end.

Authority, political weight and visibility

Many of the corruption prevention and coordination institutions face the same problem of the low visibility and authority. In most IAP and ACN countries, their law enforcement and criminal justice counterparts often overshadow them.

Many of the issues described above come into play in this context, including their institutional placement and status – they are often being consultative bodies (**Azerbaijan**), mostly within the executive branch (**Georgia, Kazakhstan, Tajikistan**).

Composition of these bodies also plays an important role. Some of the high-level consultative bodies became non-functional and could not gather the necessary quorum; their work is of general nature and is perceived as ceremonial. On the other hand, working-level bodies face challenges with asserting their authority and legitimacy of their actions.

In many IAP countries, decisions of the anti-corruption coordination and prevention bodies are not obligatory for the agencies concerned. This is the case in **Azerbaijan**. In **Tajikistan**, decisions of the National Anti-Corruption Council are mandatory, but the fourth round of monitoring report noted that mechanism of their implementation is not clear. In **Georgia**, decisions and recommendations of the ACC are mandatory only for its members, who implement them on voluntary basis, and while there were no instances of non-implementation of the recommendations of the ACC, the report notes that, for example State Audit Institution refused to take part in the session of the ACC.⁶³

In countries where their decisions are mandatory, some other challenges have been observed to create obstacles. In **Ukraine**, the fourth round of monitoring drew attention to the fact that many of the important decisions related to secondary legislation and development of procedures become mandatory only upon approval by the Ministry of Justice, thus undermining autonomy and decision-making powers of the NACP.

In some countries, the agencies are not consulted on the major decisions affecting anti-corruption in the country. This was the findings of the report for Azerbaijan where CCC was not consulted when the Civil Service Commission has been abolished.⁶⁴

Finally, this is in parts due to the fact that prevention and anti-corruption policy development and coordination do not hold the same position in the list of priorities of the governments of the IAP countries. The public often does not fully understand their purpose and functions and does not put as much pressure on its governments concerning performance of these bodies.

Assessing performance

It appears that only a few anti-corruption coordination and prevention institutions are looking at themselves from the organisational perspective in order to assess their success and failure with the view of further improvement. Only **Mongolia**'s IAAC stated that it requested an external evaluation of their work which is yet to be conducted.

The importance of external independent evaluation can be demonstrated on the example of **Ukraine** which, on the face of it, had introduced all recommended elements of the previous summary report. It established a specialised agency with broad functions, held open selection process of the management and staff, provided the resources and training, designated specialised persons to coordinate and report centrally on the anti-corruption measures of their respective agencies, ensured donor coordination – yet the system or some its individual elements were still failing.

There are multiple challenges here. Firstly, most anti-corruption coordination and preventative institutions do not have strategies for their organisations, which is a starting point for any performance assessment. **Ukraine** was the only country in which its prevention agency adopted a development strategy and its implementation plan. **Mongolia**'s IAAC used annual planning of its work, which was of operational nature rather than strategic. Nevertheless, this could be seen as progress compared with similar agencies in other countries that appear to have no such systems in place.

Secondly, the issue of indicators and methodologies for such assessment. There is no well-developed practice on this issue in IAP, ACN or even broader.

In **Azerbaijan**, the fourth round of monitoring report recommended that capacity of CCC be assessed based on such criteria as frequency of the meetings, number of decisions, quality of materials produced, including number and quality of new initiatives, produced analytical work and the impact assessment, guidance and coordination with the agencies, effect of its policies, visibility and trust of the population and others.

In the case of **Mongolia**, operational performance indicators used for the annual work plans were found process, rather than results oriented.

After the multiple anti-corruption agencies have been set up in **Ukraine** and have operated for some time, the need of the performance evaluation and further institutional improvements has become prominent, including for the NACP. However, other bodies, such as NABU and ARMA, are more advanced in these processes, this is discussed in another Chapter of this report. The experiences of the law enforcement anti-corruption bodies can be useful for coordination and prevention institutions.

Conclusions

Many institutional changes took place since the previous monitoring round in the IAP countries regarding the coordination and prevention agencies. Most of them were positively assessed in the fourth round of monitoring. It is important to allow new institutions be tested by time before they are replaced by yet new models.

By now, most of the IAP countries have one or more coordination and/or prevention agency, with exception of Kyrgyzstan. To the latter the monitoring report recommended to set up or determine a body responsible for the anti-corruption policies and prevention.⁶⁵ Nevertheless, it appears that the institutions established in the IAP countries hold a range of functions only formally. Many of these functions remain on paper and in most cases specialised anti-corruption coordination and prevention institutions real functions were limited to development of the anti-corruption policy. They also struggled to exercise their mandate independently and effectively, could not assert their authority and leadership among the public agencies.

The problem of overlapping functions and competencies remained, same as the issue of independence and autonomy. The fourth monitoring round reports reiterated recommendations on ensuring independence in many of the IAP countries. The reports noted many examples of improper interferences and legislative or other gaps that allowed such an interference.

Similarly, the issue of resources has been repeatedly mentioned. All IAP countries, with the exception of Ukraine, should do better, either in terms of staff, financial resources, training, or overall budgetary support.

Accountability, reporting and involvement of the non-governmental sector also requires further improvement. The countries should either set clear procedures and criteria for selection of the non-governmental representatives into the specialised institutions or their public councils; or afford the non-governmental sector with the real voice in decision-making. The work of these institutions should be made better known, reports should be regularly submitted to the public and the Parliament, the decisions of these institutions should be published.

Coordination and prevention work at the ministerial, sectoral and local level required serious enhancement. All IAP countries were prompted to develop capacities of the public authorities to develop and implement effective anti-corruption measures. They should receive better analytical and methodological support, and coordination with the central authorities has to be improved.

Finally, the countries did not address properly the issue of performance evaluation of these institutions. It should be the focus of the steps taken to further develop and strengthen such institutions. Among such issues: what would be appropriate performance indicators for such institutions, how to measure them effectively and objectively, how to best use evaluation results to move forward. The indicators used so far included external (e.g. assessing the level of perception of corruption, trust in the particular institutions, corruption cases involving the staff of the said institution, etc.) and internal performance indicators tied to the functions of the institutions. The indicators would differ in different contexts and institutional and legal frameworks, but some general principles would be relevant for all and should be developed.

Recommendations

Scope and quality of anti-corruption policy documents

- A. Develop evidence-based policies addressing key corruption risks and challenges. Regularly review and update policies.
- B. Include clear objectives, measures to achieve them, timelines, targets and indicators to assess progress, performance and impact.
- C. Make policy documents realistic and affordable, taking into account financial situation and other priorities.
- D. Allocate budget and identify sources of funding for the policy document implementation.
- E. Involve stakeholders in co-creation, inform about the planned process and allow for adequate time for feedback.
- F. Together with quality administrative data, use general public surveys to measure perception of corruption, experience of corruption and public trust to institutions. Use these data in reviewing and assessing policy. Publish results.
- G. Following a risk assessment, develop anti-corruption policies at the local level, at the level of individual agencies and sectors.

Anti-corruption policy co-ordination

- H. Ensure anti-corruption policy co-ordination, designate focal points in each public agency.
- I. Provide methodological guidance, training and assistance to the implementing agencies.
- J. Ensure donor co-ordination for efficient use of resources.

Anti-corruption policy monitoring

- K. Put in place procedures and practices of regular reporting, monitoring and evaluating anti-corruption policy.
- L. Evaluate results using diverse sources of data, including quality administrative data, public opinion and enterprise surveys, staff surveys, NGO inputs, etc.
- M. Develop analytical reports evaluating progress, performance and impact, include financial reports. Publish the reports.
- N. Carry out external evaluations and use the results to improve the public policy in the next policy cycle.
- O. Use electronic tools for reporting and monitoring.

Transparency and accountability of anti-corruption policy

- P. Publish public consultations plan for development of the policy documents.
- Q. Publish information about received feedback and summary of what has been taken on board, what has not and why.
- R. Publish agenda and minutes of co-ordination meetings, implementation reports, survey results.

Anti-corruption awareness raising and education

- S. Develop comprehensive and targeted educational and awareness raising strategies.
- T. Allocate sufficient budget to conduct relevant activities.
- U. Incorporate anti-corruption modules into the curricula of educational institutions.
- V. Ensure broad stakeholder engagement in the development and implementation of these activities.
- W. Evaluate impact of educational and awareness activities and tailor measures and strategies using findings of such evaluations.

Anti-corruption policy co-ordination and prevention institutions

- X. Ensure that all functions connected to policy development, co-ordination, monitoring and prevention of corruption are clearly assigned to bodies with mandates and powers to carry out such functions effectively. Similarly, ensure that all these functions are actively exercised and do not overlap.
- Y. Provide such bodies with adequate financial resources and secure sustainable funding.
- Z. Provide such bodies with adequate human resources, including a permanent, dedicated secretariat with the staff specialised in anti-corruption and provide continuous training to such staff.

- AA. Improve capacity of the public authorities to develop and implement effective anti-corruption measures and designate persons in each agency responsible for co-ordination of such measures and reporting to the central authority. Ensure functioning mechanisms for communication, co-ordination and monitoring of their work. This should include the necessary guidance, expert advice and support from the central institutions, as well as feedback on measures designed by these institutions and their implementation at all levels.
- BB. Provide for a transparent selection of the leadership of specialised corruption prevention bodies with adequate and clear appointment criteria based on merit to ensure that candidates are not politically affiliated and are capable and experienced to lead the institutions, have necessary integrity. Put in place a specific procedure, which involves independent expert assessment in the decision making, instead of appointment by one political figure or body.
- CC. Ensure that tenure of the specialised corruption prevention agency's head is protected by law against unfounded dismissals and that an early termination of powers due to ineffective work may be possible only based on the conclusions of an independent external evaluation using transparent and objective criteria and methods of assessment.
- DD. Further improve accountability and reporting of these institutions, obliging them to report on a regular basis to the public and the Parliament. Make their decisions and work products easily available to the public. Step up their outreach activities and encourage the use of various innovative communication tools to make their work better known and more accessible.
- EE. Ensure meaningful involvement of the non-governmental sector by affording it with the real voice in decision-making. Set clear procedures and criteria for selection of the non-governmental representatives into the specialised institutions or their public councils, provide for possibilities for rotation and wider representation of various stakeholders. Make effort to actively involve the private sector in the work of these institutions.
- FF. Ensure regular assessment of the institutional capacities and measuring of performance of the co-ordination and prevention institutions, including developing and regularly reviewing internal monitoring and evaluation systems with performance indicators. Use results of these evaluations for development of institutional development plans and initiating the necessary changes. Make results of such assessments public.
- GG. Afford adequate time to meaningfully test introduced institutional arrangements before making further changes and institutional adjustments.

Chapter 3. Prevention of corruption

This Chapter examines a broad range of measures taken by countries in Eastern Europe and Central Asia to prevent corruption in the public administration and in the private sector. The Chapter examines progress in strengthening integrity in public service and preventing political influence on professional civil service. It reviews progress and challenges in regulating and enforcing conflict of interest resolution and asset and interest disclosure, and whistle-blower protection.

The Chapter reviews state of play in the region with the judicial independence and integrity. It focuses on the most problematic areas, such as the irremovability of judges, judicial councils, the role of political bodies in the judicial careers, influence of court presidents, merit-based procedures for appointment and promotion, asset and interest disclosure, disciplinary proceedings. The Chapter further looks at the independence and integrity of public prosecutors which the IAP fourth round of monitoring evaluated for the first time. The chapter includes a review of the emerging body of international standards in this area and outlines issues related to the appointment and dismissal of the Prosecutor General, prosecutorial councils, merit-based procedures for appointment and promotion of prosecutors, enforcement of ethics rules, disciplinary proceedings.

The Chapter further examines the legislation on access to information and its implementation and the effect strict defamation laws have on the effective detection of corruption. The Chapter concludes by exploring measures that governments and the private sector in the region took to prevent corruption and build integrity in the business sector and proposes recommendations for further strengthening these measures.

Integrity in the public service

Chapter II of the UN Convention against Corruption on preventive measures establishes global standards including in such areas as preventive anti-corruption policies and bodies, public service and codes of conduct for public officials. The OECD Recommendation on Public Integrity⁶⁶ identifies main elements of an effective system of public integrity including political commitment, institutional responsibility, strategic and whole-of-society approach, integrity leadership, professional public service, control and risk management, enforcement, external oversight and transparency.

The 2016 ACN Summary Report⁶⁷ provided regional recommendations for promoting integrity in the public administration in such areas as a public sector integrity policy, professionalism of civil service, professional ethics among civil servants and political officials, and protection of whistle-blowers. These recommendations were used as benchmarks for the fourth round of IAP country monitoring and for the annual reporting by the ACN countries during 2016-2019.

This chapter reviews trends in implementing the recommendations since 2016 based on the IAP monitoring reports and annual performance data submitted by ACN countries, as well as taking into account other publicly available reports, such as SIGMA assessments available for some of the ACN countries.⁶⁸ The analysis of trends, achievements and challenges in ensuring public sector integrity in the region is illustrated by country case studies and good practices.

The section proposes new policy recommendations for the governments and non-governmental partners engaged in public sector integrity work. The EU-OECD programme SIGMA's Methodological Framework for the Principles of Public Administration⁶⁹ provided references in such areas as public service and human resource management and accountability

Public sector integrity policy

The 2016 Summary Report included the following recommendations regarding public sector integrity policy:

- Develop and implement public sector integrity policy, e.g. as a part of anti-corruption, sectoral, local or other policies, including risk-based objectives, measures and sanctions and mechanism for control and monitoring of implementation.
- Strengthen the role of leadership of public institutions in promoting integrity.
- Measure impact of integrity policies:
- Commission and use perception surveys about trust of citizens to various branches of public administration, about conflict of interest and integrity of the civil servants.
- Commission and use surveys about attitudes of civil servants.

All countries in the ACN region have identified public sector integrity as one of the key priorities of their anti-corruption and/or civil sector reform policies. For example, **Armenia** and **Ukraine** had comprehensive civil service reform strategies that clearly established objectives of professionalism, merit-based recruitment, promotion and performance appraisal, fair and transparent remuneration, discipline, ethics and integrity. Other countries, like **Mongolia** and **Uzbekistan**, dedicated special sections of their anti-corruption strategies to integrity of civil servants, prevention of conflict of interests, and ethics. Both approaches aimed to address the same goal – integrity of civil servants – from different directions, which can be positive, but can also lead to some overlaps of mandates and co-ordination challenges.

Civil service agencies usually co-ordinate the civil service strategies, whereas corruption prevention agencies, inter-ministerial anti-corruption councils or commissions and ministries of Justice co-ordinate anti-corruption strategies. The said institutions share responsibilities for developing the general integrity rules, training and control of implementation. Formally, heads of state bodies are expected to implement

public integrity objectives in their organisations, while in practice the implementation of these tasks is delegated to HR or internal control and audit departments, ethics officers or commissions, anti-corruption contact points. These units have to perform integrity-related functions in addition to their main duties – with some exceptions, e.g. in **Kazakhstan** where ethics officers reportedly became full time positions.

Poor quality of risk assessment in the development of the civil service or anti-corruption policies is the common problem across the ACN region. While several countries conduct some risk assessment, e.g. general risk assessment for the anti-corruption strategy in **Georgia** or sectoral risk assessments in **Kyrgyzstan** and **Uzbekistan**, all IAP countries lack good methodologies for assessing integrity and corruption risks for the purposes establishing objectives of public sector integrity policies. Lack of reliable statistical data further undermines evidentiary basis. As a result, countries face difficulties in ensuring effective objectives and measures and developing measurable performance indicators.

Box 3. Corruption risk assessment in the Ministry of Interior of Romania

The Anticorruption General Directorate (DGA) within the Romanian Ministry of Internal Affairs (MIA) has developed a standard Methodology for corruption risk assessment, which has been used within all the units of the ministry (police, gendarmerie, border police, etc.) since 2010. The purpose of the corruption risk assessment has been to establish a sound and efficient control system, adequately resourced and staffed, capable to minimise the exposure to corruption risks, through concrete measures including better laws, regulations and procedures, IT systems, better monitoring instruments, adequate control and proper enforcement. The Methodology for corruption risk assessment uses a mixed approach (self-assessment and external evaluation), allowing the MIA organisations to identify their own risks (self-assessment), and relying on the outside evaluation made by DGA experts, when corruption cases occur in certain fields of activity (assessment of integrity incidents).

According to the Government Decision no. 599/2018, all central public institutions in Romania have the obligation to build their own sectorial anti-corruption strategies using the approved methodology, helping to identify and correct the practices and existing control systems, to adequately respond to any corruption attempts that the employees might be exposed to.

Source: Information provided by Mr. Mihai Barlici, Head of Anticorruption General Directorate, Ministry of Internal Affairs of Romania.

Level of implementation of public sector integrity policies varies a lot among countries. The main challenge in assessing progress in this area is the lack of effective and regular measurement of impact of anti-corruption, public integrity and civil service reforms through surveys among the citizens and civil servants.

In **Armenia**, chapter on integrity in public service of the Anti-Corruption Strategy together with the Civil Service Reform Strategy were the main policy documents in this area. However, the new Anti-Corruption Strategy has not been developed yet since the previous expired in 2018. The Civil Service Reform Strategy dealt with such issues as classification in civil service, recruitment and promotion, performance appraisal, remuneration, discipline, ethics, integrity and incompatibilities. The fourth monitoring round report noted that Armenia did not conduct risk assessments or other studies to target its policy solutions to specific risks and challenges. Besides limited civil service statistics collected by the CSC, no comprehensive data was available in the human resources management information system (HRMIS) for planning and monitoring of implementation. New Corruption Prevention Commission envisaged in 2018 would receive a broad mandate of promoting integrity in public administration, however it was not established at the time of drafting of the report. Ethics commissions that were created earlier in various state bodies did not become effective either.⁷⁰

Table 11. Control measures in specific risk areas implemented in the Romanian Ministry of Internal Affairs

Unit/Risk	Control / preventive measures
Unit: Driving license Risk: High risks of receiving money and other goods, in order to facilitate the issuing of driving licenses for certain candidates who did not meet the legal requirements	Follow up in relation to the written examination Eliminating the risks in relation to written examination through IT changes at national level within the system of examination for getting a driver license (electronic interface, computer generated questions). The database with the questions is administrated at central level, so no human/local intervention with the questions to be administered is possible. During the exam process, the images of the persons examined are captured (in order not be substituted by someone else). Video surveillance of the exam rooms. A minimum of 5 persons in the exam rooms Risks remained in the field examination and vehicles registration Follow up in relation to the practical exams: Starting from 2017, resources for designing and implementing a mobile audio-video recording system have been adopted, in order to record images both inside and outside of the exam car while evaluating candidates. The mobile devices store on a local hard disk at least 8 hours of recordings, while the archive has to be kept at least six months. Increasing the number of police examiners and change of the standard methodology for assessing driving competencies
Unit: Human resources Risk: High risks of disclosure of topics during competitions for recruitment of external source for MIA personnel or appointing management.	Changes within the system of employment: Centralization of the process of organizing the competition for employing – everything is done centrally, starting with the competition announcement, drafting of the tests, organization of the competition etc Video – recording of all phases of the exams (including sport, practical exams, written) Correcting the tests in front of the candidates, signed by the members of the commission, the persons examined and one of the other candidates Line managers All procedures are supervised, and all candidates are informed about the selection criteria's and requirements, that all the information's regarding the selection were shown, and encourage the candidates to speak up if something seems to look wrong

Source: Information provided by Mr. Mihai Barlici, Head of Anticorruption General Directorate, Ministry of Internal Affairs of Romania.

After several years of consultations, in November 2018, **Azerbaijan** adopted “Strategy on the development of civil service for 2019-2025”, however, it will not cover high-level and senior civil servants. The Anti-Corruption and Open Government action plans included few measures on civil service integrity, namely the regulation of conflict of interest and ethics education. The leaders in public institutions have a statutory obligation to oversee the observance of the code of conduct, however no information is available on their specific role in this regard. In practice, ethics commissioners in co-ordination with Civil Service Commission and internal security units in co-operation with the Anti-Corruption Directorate of the Prosecutor General’s Office were responsible for controlling the implementation of various integrity rules. The Civil Service Commission conducted surveys regularly, both among the general public (on questions of ethical conduct by civil servants, response to complaints) as well as the civil servants themselves (on issues of satisfaction with salary, career prospects), but there was little evidence that the Civil Service Commission had used the results of these surveys to measure the impact of civil service policy in any public reports on policy implementation.⁷¹

In **Georgia**, the main policy directions regarding integrity in the civil service were provided in the section on prevention of corruption in civil service of the Anti-Corruption Strategy and Action Plan and included establishing professional merit-based civil service, strengthening rules on ethics, conflict of interests and incompatibility, monitoring of asset declarations, upgrading of and training on the Code of Ethics, introducing a mechanism for disciplinary liability, promoting whistle-blower protection. These objectives were based on the general analysis conducted by the ACC in the run-up to the preparation of the Strategy, but they were not based on analysis of risks, that would allow identifying integrity risks for various civil service categories and institutions, ensuring targeted approach and establishing baseline and impact indicators that could be used for the future progress analysis. Ensuring integrity inside each ministry and

state body was the responsibility of its leader: "the major role of leaders of public institutions in promoting integrity is to create an ethical and professional environment and provide proper ethical leadership". In practice, internal audit units that had tasks related to public financial management and control, human resource units were busy with civil service reform issues, and contact points representing ministries in the Anti-Corruption Council were dealing with their own obligations under the Anti-Corruption Strategy and Action Plan. In some ministries, Inspector Generals also dealt with conflict of interest and other anti-corruption rules.⁷²

Table 12. Public sector integrity policy in IAP countries

Country	Stand-alone or part of another policy	Risk-based methodology used to develop objectives and measures	Responsible body, control mechanism, sanctions	Measuring impact through surveys
Armenia	Part of civil service reform strategy and a-c strategy (expired)	no	Civil Service Commission, Corruption Prevention Commission (when established), ethics commissions in state bodies	no
Azerbaijan	Recent civil service development strategy, anti-corruption and open government action plans	no	Formally heads of state bodies, in practice ethics commissioners and internal audit in cooperation with CSC and A-C Directorate of Prosecution	Surveys of public and civil servants are conducted, but not used for policy making or monitoring
Georgia	Part of a-c strategy and action plan	General a-c risk analysis	Formally heads of state bodies	no
Kazakhstan	A-c and civil service legislation, Strategy of the Agency for Civil Service Affairs and Anti-Corruption	no	Civil Service agency, 764 full-time ethics officers	no
Kyrgyzstan	A-c strategy and concept of modernisation of civil service	Sectoral a-c risk assessment conducted by Security council	Security council under the President Government	Surveys are conducted by Statistics committee, but not used for policy purposes
Mongolia	A-c strategy	no	Civil service council and its sub-councils in state bodies	Integrity Assessment Survey by IAAC
Ukraine	Civil service reform strategy, a-c strategy (expired), public administration reform strategy	no	National Agency for Civil Service, heads of Civil Service in state bodies, HR functions in state bodies	no
Uzbekistan	A-c strategy	Sectoral a-c risk assessment by state bodies and GPO, plan to develop methodology	Interagency commission and GPO	no

Source: IAP monitoring reports; OECD/ACN secretariat research.

Reforms in the public service integrity area in **Kazakhstan** have been under way since 2016 following the enactment of laws “On the Civil Service”, “On the Fight against Corruption”, the Code of Ethics, the Statute of the Ethics Commissioner, etc. Country leadership demonstrated its attention to public sector integrity and anti-corruption issues through public addresses and media appearances. The Agency for Civil Service Affairs and Anti-Corruption – that had been restructured several times during the reporting period – was responsible for a large range of tasks, including enforcement of public service rules, anti-corruption and integrity standards, reviewing disciplinary cases and co-ordination of the operation of disciplinary/ethics commissions. The Agency’s performance in promoting integrity within the public service was assessed against KPIs established in its Strategic Plan including such indicators as “the

proportion of competitions held with observers' participation", "the proportion of recommendations put forward by Integrity Councils", "the proportion of individuals who demanded protection of their rights, and whose rights were reinstated", "the proportion of implemented suggestions resulting from a review of compliance with the law on public service". The function of ethics officers was introduced in state bodies to enforce integrity standards and prevention of violations of the legislation on the civil service, fight against corruption and the Code of Ethics for public servants. By 2019 there were 764 ethics officers. In the past, these functions were assigned to HR divisions, since 2019 the ethics officers reportedly became full-time positions.⁷³

In **Kyrgyzstan**, public sector integrity is regulated by the State Anti-Corruption Strategy, Concept of Modernization of the Public and Municipal Service and Law on Public and Municipal Service. The Security Council under the President had the leading role in monitoring the implementation of these legal acts, while the State Personnel Service and the newly created Civil Service Council did not play an important role in the development and implementation of public sector integrity policy. The Statistical Committee of Kyrgyzstan conducted regular public surveys on broad range of anti-corruption issues, but it appeared that there was no link between these surveys and the monitoring of public sector integrity in the country.⁷⁴

Highly politicized civil service, recruitments based on political affiliations, alleged bribery in connection with the appointments in the public service and high turnover of staff after each change of political power have persisted in **Mongolia** during the fourth round of monitoring. To address this challenge the National Anti-Corruption Strategy included civil service reform as one of its objectives. The goal was to prevent corruption risks by creating accountable and transparent civil service that was based on merit and was free from political influence. The corresponding measures in the Action Plan were mostly declaratory, without concrete targets and were focused on changes of laws rather than implementation. The new Civil Service Law (CSL) was adopted and entered into force in 2018, but bylaws necessary for its implementation were not adopted at the time of drafting of the IAP monitoring report. The Civil Service Council (CSC) was responsible for the implementation of the CSL; but it suffered from the risk of politisation: three of its five members were nominated by the President, the Parliament and the Government and two others were selected from the core civil servants. The CSC had a Secretariat with 14 staff and sub-councils: 11 in the ministries, 14 in public agencies, and 22 at the local level. In view of its broad functions and an important task to enforce the new CSL, these resources seemed insufficient.⁷⁵

In **Ukraine**, policy framework for public sector integrity was provided by several documents. The now expired State Anti-Corruption Programme for 2014-2017 contained a section on reforming civil service, however it only included the adoption of necessary laws and action plans; its implementation was coordinated by the National Agency for Corruption Prevention. Ukraine had a dedicated strategy and action plan on reforming the civil service and the service in local government, coordinated by the National Agency for Civil Service. More broadly, the government also adopted its Public Administration Reform Strategy for 2016-2020, developed with the assistance of the OECD/SIGMA, that focused on public policy development and coordination; modernization of public service and human resources management; ensuring accountability of public administration; service delivery; and public financial management. No regular studies were conducted to analyse integrity risks in civil service and design responses. Even basic statistical data was not available on civil service as the information management system was lacking. The human resources management information system was under development.⁷⁶

The State Anti-Corruption Programme of **Uzbekistan** for 2017-2018 provided for the implementation of measures by state bodies to prevent corruption, based on a systematic analysis of their activities, identifying policies and areas subject to corruption risks, taking effective measures to prevent corruption offences. Indeed, 64 ministries and departments prepared their own plans, which provided inputs for the report on the implementation of the State Programme for 2017 prepared by the Interagency Commission. Based on the results of monitoring the General Prosecutor's Office conducted a comprehensive study of the causes and

conditions conducive to crimes committed by officials and other violations of the law in the sectors most exposed to the risks of corruption. Based on the analysis of existing corruption threats and risks, the following areas were covered: public education, health, taxation, higher and secondary special education, public procurement, SOEs and others. To ensure a thorough and systematic risk assessment and to increase the effectiveness of anti-corruption policy, Uzbekistan intended to develop a standard risk-assessment methodology during 2019.⁷⁷

See recommendations at the end of this chapter.

Professional merit-based civil service

All IAP countries – except for **Azerbaijan** and **Uzbekistan** - ensured delineation between political and professional positions in their laws, but some still had serious shortcomings where the classifications were wrong or unclear (e.g. **Kazakhstan** and **Tajikistan**). Ensuring professionalism of civil service in practice remained a serious challenge for all countries. Some countries have made efforts to improve legislative provisions for protecting professional officials from undue political influence, e.g. stronger provisions on rights and duties were introduced in civil service laws of **Georgia** and **Ukraine**. Ukraine also introduced the positions of heads of civil service and State Secretaries and monitored dismissals of civil servants to prevent political motivation.

Data about stability of civil service was not conclusive, and questions remained especially about voluntary resignations that often follow elections and other major changes of power, e.g. in **Georgia** and **Mongolia**. While in many countries laws provide freedom of professional civil servants from political or any other influence (e.g. the Law on Civil Service or Georgia stated that civil servant should only be guided by the Constitution and by other Laws and bylaws), in practice there is little information how the decision-making autonomy of professional officials is ensured to allow them protect the rule of law against the interests of the politicians of the day.

ACN countries made good progress regarding merit-based recruitment in civil service. **Georgia** and **Ukraine** appeared the most advanced in this regard among the IAP countries – merit-based appointments were required for all civil service positions. However, in autumn of 2019, following the change of president, parliament and government, Ukraine announced its intention to partially replace career-based civil service by a contractual service.

Other countries also required merit-based appointments, but there were major exemptions in laws (e.g. Azerbaijan, Kyrgyzstan, Tajikistan) or in practice (e.g. Armenia, Kazakhstan, Mongolia). The risk of politisation remained high across the region in relation to the senior positions in civil service.

While many countries aim at performance-based evaluations and promotions, only few countries have introduced this in practice. **Ukraine** conducted its first performance evaluation of civil servants in 2018, **Kazakhstan** also conducted such evaluations, but the risk of politisation was high in this process.

Less progress has been achieved in ensuring fair and transparent remuneration. There was progress in increasing the level of pay in **Ukraine**, **Azerbaijan** and **Kyrgyzstan**, but the salaries of civil servants in the region were still not competitive with the private sector, especially in Kyrgyzstan and Tajikistan. Ukraine appeared the only country among the IAP that ensured the fairness and transparency of the salaries of civil servants, while in many countries the level of pay was different for the same jobs in different state institutions, and it was especially lower outside the capitals. In some countries, information about the salaries of public officials is secret, e.g. in Kazakhstan, Kyrgyzstan. Finally, in all countries the discretion of heads of state bodies remains high in determining the salaries, especially the bonuses and other variable part of the pay which leads to nepotism and politisation. While bonuses are now linked to performance in many countries (Armenia, Georgia, Kazakhstan, Kyrgyzstan and Ukraine), the assessment process was politicised or senior managers had a broad discretion in setting the bonuses.

Box 4. Do transition economies need a merit-based career civil service?

Georgia was the first country in the ACN region that decided to move away from career civil service to a flexible contractual public administration in the beginning of its reforms back in 2012. The way Georgia reformed its police was both inspirational and controversial: all policemen were fired overnight using questionable legal means, which opened an extraordinary possibility to reform this service and to clean it from corruption. While the police reform was a success, the intention of the government of that time to move all public administration onto ‘free market’ contractual grounds was criticised by domestic and international experts stressing that the government should serve the rule of law and not the politicians of the day, who may be good today but bad tomorrow. Indeed, some of the radical ideas were not implemented, and eventually Georgia followed the path of the European principles of public administration and introduced merit-based professional civil service.

During the past several years all ACN countries were moving towards this goal as a recognition that professional civil service is the important tool to protect the rule of law and to prevent politisation of public administration. Ukraine was one of such countries: it implemented significant legal and institutional reforms, with the assistance of the EU, including EU-OECD SIGMA programme, to bring civil service legislation up to EU standards, to ensure merit-based selection and appraisal in practice, and to build the professional and stable institutions of senior public officials.

But after the presidential and parliamentary elections in 2019, and immediately after the establishment of the new government in September 2019, the Prime Minister announced that Ukraine will change its civil service legislation and will replace it partially with contractual public administration. The parliament swiftly adopted relevant legislative amendments.

Indeed, this conflict between the need for a stable and professional civil service and the the need for flexibility and boldness for major reforms is very typical for transition countries. A mix of news transpiring from various media sources in Ukraine demonstrated this conflict. In the Ministry of Health, which was one of the strongest reformers in the previous government, senior officials are in conflict with the new leadership, which poses questions about continuity of reforms. At the same time, in the Office of the Prosecutor General, which was perceived as one of unreformed and corrupt state bodies, cleaning up will undoubtedly require major changes of staff.

These examples confirm the dilemma - is professional and stable civil service possible and necessary in transition economies at all times? Ultimately, yes, as the goal of the reform is to protect public administration from extreme politisation typical in transition countries. But how to ensure flexibility necessary during major reforms? Probably, a correct mixture of career and contractual arrangements is necessary, that should be adapted for each country, based on principles of merit and open competitive selection.

Source: OECD/ACN secretariat based on IAP reports.

All IAP and many ACN countries suffered from little available data regarding professionalism in civil service. It appears that anti-corruption bodies do not deal with these issues, while civil service bodies are only now launching the HR information systems that will provide basic information. Both civil service and anti-corruption authorities need to work together to ensure that meaningful data is generated and used for civil service reforms, as ensuring professionalism of civil servants is a pre-condition for all other efforts to ensure integrity in the public sector in the ACN region where political corruption is the top priority.

Table 13. Professional merit-based civil service in IAP countries

Country	Delineation of political and professional positions	Merit based appointments	Merit based performance evaluation	Transparent and fair remuneration	Transparent and objective allocation of bonuses
Armenia	yes	Exceptions, risk of politisation regarding senior civil service	No data	Low pay	No (30% threshold)
Azerbaijan	no	Only for lower level positions	No data	no	no
Georgia	yes	yes	yes	No data	No data
Kazakhstan	yes, but with important flaws	High risk of politisation of civil service	Highly politicized	no	no
Kyrgyzstan	yes	Exemption for admin positions in Presidential administration	No data	Low and unequal pay	-
Mongolia	yes	High risk of politisation of civil service	No data	No	No, high discretion of managers
Tajikistan	yes, but with important flaws	many exemptions and violations in practice	No data	no	no
Ukraine	yes	yes	yes	yes	no
Uzbekistan	no (foreseen in the draft CSL)	No (foreseen in the draft CSL)	No data	no	no

Source: IAP monitoring reports; OECD/ACN secretariat research.

Armenia adopted new laws on Civil Service and on Public Service in 2018. It aimed at ensuring a broader scope of civil service (but some unacceptable exceptions remained, e.g. tax and customs officials), merit-based recruitments in all civil service, greater stability and professionalism through introduction of the position of a secretary general as the highest ranking senior civil servant responsible for human resources management, and shirring the civil service management function from an independent body to the Government. However, the new Civil Service Law contained risk of politicization of senior civil service: appointment, dismissal and application of disciplinary sanctions to senior civil servants was the responsibility of the heads of agencies, not secretary generals. While the merit-based recruitment has been expanded, non-competitive appointments continued: 87.5% of the appointments of civil servants in 2017 were merit-based, whereas other appointments were made through out-of-competition promotions, without competition from the personnel reserve list, and on a temporary basis. Provisions on dismissals were in line with good international practices, however the number of dismissed civil servants as a result of the optimization of civil service positions increased. The Government reported that the performance evaluation was practiced in civil service; however, detailed information was not provided. The remuneration in public service was regulated by the Law on Remuneration of State Officials which has not changed during the fourth round of monitoring. The law linked bonuses to the performance, however the HRMIS did not allow collecting data to assess the practice. According to SIGMA, the wide use of discretionary bonuses compromised the fairness of remuneration.⁷⁸ The level of pay has not increased since the last monitoring, while such increase was needed to ensure competitive salary with the private sector.

The Civil Service Law of **Azerbaijan** dates back to 2000 and applies to executive, legislative and judicial branches of government, and at the local level. New draft Civil Service Code was prepared several years ago, but not adopted during the fourth round of monitoring. The Constitution listed the positions subject to appointment by the President, but there was no definition of political officials in the legislation. Merit-based appointment still covered only a small group of civil servants in lower categories from 5 to 7. The competition procedure itself was transparent and well-regulated; the vacancies were announced on the website and exams were automated, but the decision on appointment of one of the successful candidates was still discretionary and rested upon the head of agency. Performance of civil servants of categories 3-7

was assessed annually by the direct supervisor, who drafted the report and submitted it to the head of the relevant unit for approval. The appraisal included an interview with the civil servant, the comments of the civil servant were included in the performance appraisal form. The performance evaluation could be the basis for promotion, rotation, remuneration increase, training or demotion. While the draft Law “On the salary system of civil servants” has been prepared, it was not adopted during the reported period and the remuneration system remained unfair since similar positions in different public sector organisations were differently remunerated, the granting of collective or individual rewards was not transparent. Salaries in the public sector were not competitive with the equivalent positions in the private sector, especially for the category 5-7 of the civil servants. No comprehensive salary survey has been conducted to compare pay in the public sector with that of the private sector. The recent across the board increase of salary by 10%, although a positive development, did not improve the situation significantly.

The new Law on Civil Service (CSL) of **Georgia** was adopted in 2015 and came into force in 2017. The law stipulated the principles and the scope of civil service, introduced a centralised civil service management, a new classification system, rules for appointment, career management, rights, guarantees and obligations of civil servants, regulated agreements under public and labour laws in the civil service, rules for dismissals, including on reorganization. The CSL delineated political and executive functions and provided for a distinction between professional civil servants, who represent a core civil service, civil servants on administrative contracts responsible for policy advice and assistance to political appointees and civil servants under labour contracts providing support services. To ensure the autonomy of professional civil service from political influence, the CSL provided detailed definition of rights, responsibilities and guarantees.

Table 14. Civil service statistics in Georgia

	2016	2017	2018
Total number of civil servants	32,193	28,557	19,745
Number of civil servants in:			
Managerial positions	5,623	5,022	3,655
Non-managerial positions	26,570	23,535	16,090
Number of vacancies	5,410	After new CSL entered into force: 1,533 (open competition) 73 (close competition) Before new CSL entered into force: 5,416	4,838 (open competition) 363 (close competition)
Number of dismissals	2,695 (out of which 844 dismissed based on institution's decision and 1,851 - based on decision of civil servant)	2,021 (out of which 296 dismissed based on institution's decision and 1,725 - based on decision of civil servant)	1,738 (out of which 324 dismissed based on institution's decision and 1,414 - based on decision of civil servant)
Average salary of civil servant		1,339 GEL	1,863 GEL

Source: Information provided by the government of Georgia.

Under the new CSL for professional civil servants competitive and merit-based recruitment were applied for entry positions and for moving between categories and positions. Professional civil servants nominated by heads of relevant ministries/agencies chaired the selection panels. The assessment of candidates was done through several steps, including certification, testing and interviews. Only the best candidates were nominated for the appointment. The new CSL provided for the annual compulsory performance appraisal using a unified methodology. To build capacity of public institutions to ensure merit-based civil service practice, the CSB prepared the HR manual and conducted trainings for the HR units. The system of appeals was to be established whereby candidates can appeal against the decision of selection panel to the CSB or to the court. The new CSL introduced new important principles regarding remuneration including transparency and fairness which implies equal pay for equal job. The detailed procedures concerning

remuneration system were introduced by the Law on Remuneration that came into force in January 2018. While the legal and regulatory framework improved the transparency and objectivity of the remuneration system, there were media allegations that in practice these rules were circumvented by the powerful rich individuals to control the public officials, e.g. by providing rewards to MPs, ministers and other officials for loyalty and financing their party's electoral campaigns.⁷⁹ At the time of the monitoring, the Government could not provide any statistics about civil service, such as the total number of civil servants, or number of different categories, numbers of vacancies and dismissals or data regarding the remuneration claiming the lack of centralisation of such data. Electronic Human Resources Management System became functional in 2018. Georgia provided the following statistics regarding its civil service.

Box 5. Protecting professional civil servants from undue influence: case of Georgia

The Law on Civil Service of Georgia established uniform standards for all civil servants regarding the rights and obligations that was important for ensuring their professionalism and protection from politisation. This included the right to leave, join professional unions, request working conditions corresponding to one's health condition, obtain and appeal information. A number of obligations arising from the status of professional civil servant were also formulated in detail, for example: the obligation to perform official duties and observe legal acts; to fulfil orders; to observe the principle of transparency and openness; to keep secret information confidential, et cetera. A professional civil servant should carry out his/her powers by observing the principle of political neutrality and was prohibited to use their official powers to favour partisan interests. Civil servants in principle could be members of political parties but there was an explicit prohibition to use administrative resources for the party purposes. Political neutrality was protected by obligation to refrain from political activities during the civil service employment.

Despite the improvements provided by the new CSL regarding the legal basis for professionalism in civil service, there was a risk of political influence from political appointees on professional civil service. Ministers and heads of agencies were direct supervisors of civil servants, as there was no position of a senior civil servant, such as a state secretary. Another more important risk that Georgian state institutions might face was undue influence by the private sector. According to an opinion poll commissioned by TI in 2014, 50 per cent of the respondents agreed with the statement that former Prime Minister Ivanishvili "continued to be a decision-maker" in the government" while formally he did not have any role in the executive.

Source: OEDC/ACN (2016), Fourth monitoring round report on Georgia, p. 31.

Kazakhstan introduced career based civil service model in 2013. It included three main categories: administrative public positions of corps A and of corps B, and political public positions. The President approved the Register of Political and Administrative Positions. Selection for corps A was held by the Administration of the President or by the Chancellery of the Prime Minister, for corps B – by the Civil Service Agency together with the hiring agency. Competition for B positions was open for observers including MPs, mass media, other government agencies, NGOs, commercial organizations and political parties. Judges, MPs and political public servants still could be appointed to administrative public positions of corps 'A' and corps 'B' by the President without competition, though the number of such appointments reduced during the fourth round of monitoring. Executive secretaries appointed and dismissed by the President were responsible for HR management of civil servants. Public servants in Kazakhstan must undergo evaluations which determine bonuses, rewards, as well as their training, rotation, demotion or dismissal from post. The procedure was approved by the President, on this basis each government agency set its own methodology. Positions A were evaluated annually, each agency submitted the results to the Administration of the President, which also served as the dispute resolution body. Positions B underwent quarterly evaluations and also attestations, attestation commissions included MPs. Regarding

remunerations, flexible parts that were paid in addition to the basic fixed salary were regulated by the Rules of Awarding, Provision of Financial Assistance and Establishment of Supplements to Salaries of Employees of Bodies approved in 2001. According to the Rules, the amount and frequency of bonuses were stipulated by the head of the state agency that administered the budgetary programme. At the time of the fourth round of monitoring, a new performance-based remuneration was approved by the National Commission on Modernisation and was pilot-tested at two government agencies. To further regulate bonus payments, in 2018, the Ministry of National Economy approved the methodology for calculation of bonuses. Kazakhstan did not provide statistics on the remuneration of public officials, as such information has been classified as confidential.

Box 6. Role of heads of state bodies in ensuring public sector integrity: Case of Kazakhstan

In 2018 the President in his annual address to the country suggested the need increasing the agencies' heads' personal responsibility for corruption. Responding to this call, in February 2019 the Lower Chamber of Parliament passed a bill in the first reading that will establish disciplinary responsibility of the heads of state bodies for corruption offences committed by their junior staff. The ACN progress update in 2019 welcomed this development, but noted that like other kinds of individual legal responsibility, the disciplinary responsibility should be based upon personal guilt, and the fact of commission of an offence by a junior staffer should not per se form sufficient a cause for bringing his/her chain manager to account. Such a collective responsibility may as well lead to concealment of junior staff's offences and reduce incentives to strive for their prevention and detection.

Source: IAP reports on Kazakhstan.

The Law of **Kyrgyzstan** "On the Public Service and Municipal Service" adopted in 2016 provided for a better delimitation of positions into political, special, administrative and patronage. The Register of the Public and Municipal Offices adopted by the President in 2017 further distinguished between political and administrative offices not based on the principle of election or appointment, but on the basis of whether employees had the authority to accept or execute political decisions. The Law "On the Public Service and Municipal Service" excluded the possibility of hiring of an administrative public office without the competitive procedure. As in the past, there were two types of competition for entering public service: a closed competition – for persons who were registered in the internal and national personnel reserves, and (if the vacancy was not filled through a closed competition) a competition which was open to all persons wishing to enter the civil service. There was a special out-of-competition recruitment procedure for a number of administrative posts in the administration of the President. Also, in practice there were cases when officials were moving from a political post to an administrative post without competition. The Regulations on the Procedure for Assessing the Activities of the Public Servants and Municipal Servants, approved by the Government in 2017, specified the procedure for the performance assessment of the officials holding administrative posts. Officials had to undergo quarterly assessment by their supervisors, and annual assessment by the assessment commission. Positive assessment led to an upper grade in the wage scale. Despite the relative stability and the possibility of growth, the civil service was still not very attractive for highly qualified personnel, primarily because of low wages. The Ministry of Finance together with the State Personnel Service and the Ministry of Labour and Social Development conducted in 2017 a study of the private sector wage market that showed that the salaries of civil servants were re still low and not competitive in comparison with the private sector, especially for junior positions and outside the capital.

The Civil Service Law of **Mongolia** was adopted in 2018 and established a clear delineation between political and professional public service, including public administration positions, special state service positions (related to security, social order and rule of law), and political positions. However, risk of politisation of

professional civil servants remained high. The recruitment procedure did not change during the fourth round of monitoring and included promotion from within the civil service, the selection from the reserve list, and the open competition in case vacancy could not be filled with the first two; political officials could still be listed in the reserve without passing the exams. The remuneration system remained complex, there was no classification of civil service positions, and managers had a broad discretion in assigning different elements of salary, including allowances and bonuses which could be about 40% of the total pay. The average salary of civil servants was well below the average salary in the country and prevented from attracting well-qualified people to the civil service. A new procedure for bonuses was approved by the Government in January 2019, but it was not assessed yet for the purposes of the monitoring report.

Box 7. Politisation of civil service in Mongolia

There was a wide-spread perception that public service positions were being “sold” in exchange of a bribe or distributed based on political affiliations, and the human resource management tools such as performance appraisal, professional training, transparent and fair remuneration, integrity and disciplinary measures, did not properly function either. The so-called “60 billion tugrik case” was very symbolic: high level officials were allegedly selling public service positions, which instigated public manifestations and resulted in the dismissal of the parliamentary speaker. The lack of merit-based professional civil service was especially visible during the periods of changes of governments. Many structural changes occurred in conjunction with ‘voluntary resignations’ or dismissal of civil servants. Over 40,000 civil service positions have been abolished due to reorganisation of public bodies during the past six years. Interlocutors met at the on-site visit stated that civil servants were under pressure to resign after political change. Each political change brought about massive ‘cleaning up’ of the public service that led to serious instability. The constant changes of the government together with high turnover of staff negatively affected the professionalism and integrity of the civil service.

Source: OECD/ACN (2019), Fourth monitoring round report on Mongolia, pp. 42-3.

The Law on Civil Service of **Tajikistan** dated back to 2007 and established 3 types of officials – state, political and administrative officials. The difference between the state and political officials was not clear, e.g. positions of the president and of MPs was classified as state positions, while they should belong to political, but positions of judges, prosecutor general and the head of the supreme audit institution were classified as political, while they should be professional. The Law did not cover law-enforcement bodies. Decree of the President from 2016 introduced new rules for recruitment in civil service through open competition, which was a positive development. However, the Decree also provided for many exemptions from this rule. There were cases when heads of state bodies were sanctioned for attempts to recruit officials at the regional level without competition. Several state bodies used testing during the selection process, notably the Agency for Financial Control and Fight against Corruption, Accounting Chamber, Customs Administration and the Municipality of Dushanbe used tests in 2016 and 2017. In contrast to this new good practice, recruitment to the Prosecution Service was not based on open competitions, and candidates were hand-picked from the university. There was a system of assessing of administrative public officials using a scale from 1 to 5; however, little was known about the usefulness of this system. Remuneration system did not change in Tajikistan since 2013, but the salary rates were somewhat increased. Public officials’ total pay included various bonuses, but there was no information about the rules that were used for their calculation and allocation.

The new CSL established clear delineation between political and professional positions in the civil service of **Ukraine**. A separate article of the CSL was devoted to political impartiality of a civil servant and stated that civil servants were not obliged to execute instructions of a political advisory office. Stability of the civil service was guaranteed by prescribing that the appointment to a civil service position was indefinite

and that the change of managers in civil service might not be a ground for termination of civil service. The CSL provided sufficient framework regarding dismissals and disciplinary sanctions, however, abuses were still possible in practice. In 2018, the National Agency on Civil Service (NACS) issued mandatory requirements to state bodies regarding the prevention of unlawful dismissal and other violations of the rights of public servants.

The CSL provided clear and detailed rights and obligations of a civil servant, in case of violation of his/her rights, a civil servant might file a complaint with the head of civil service, procedure of consideration of complaints was provided as well. Introduction of the head of civil service and state secretaries in state bodies was the major achievement for politically neutral civil service. In order to attract the best candidates, salary of a state secretary was set to 30,000 UAH (about 1,100 EUR), which was significantly higher than the average rate in the civil service sector.

The civil service positions in Ukraine were split among category A - the senior civil service comprising state secretaries, heads and deputy heads of central executive bodies and local state administrations; category B included middle level managers; and category C - the rest of civil servants. While all these categories were within the scope of merit-based civil service and all main principles extended to them, different regulations of recruitment, remuneration and discipline applied to different categories. The vacancies were advertised on the website of the NACS together with the eligibility criteria and procedure for recruitment. The stages of competition included the screening of documents, tests, case-based tasks and interviews. The recruitment for category A was under the mandate of the Commission of Senior Civil Service. During the fourth round of monitoring, there were no exceptions to filling the positions by open competitions. Remaining challenges included ensuring proper composition of the competition commissions and their professional skills as well as alleged manipulations of the existing procedure.

Under the new CSL, civil servant's performance was subject to an annual appraisal. Performance was assessed against the pre-determined indicators. Performance appraisals of public servants, including for senior public servants, was conducted in Ukraine for the first time ever in 2018. 26 per cent of all public servants received excellent marks. The law provided that those who received excellent mark should receive annual bonus. The size of this annual bonus was not determined; the head of each agency had a discretion. The salaries have been gradually increasing and the civil service has become more competitive, but the challenges for recruiting, motivating and retaining civil servants with required education level and professional skills remained.

At the time of the monitoring there was no uniform law in **Uzbekistan** in the field of public or civil service. Labour relations in state bodies continued to be regulated by the Labour Code and a number of sector-specific laws like the laws on courts, tax, customs and others. The draft Law "On Public Service" developed in 2017 was awaiting the approval of the Administration of the President; it was expected to be submitted to the Legislative Chamber of the Parliament in 2018. The draft provided that professionalism was one of the basic principles of public service and introduced the qualification classes and ranks of the civil service including political, senior, regular and support positions. The draft Law also contained some important provisions intended to ensure political neutrality of career civil servants; equal access to public service on the basis of merit; a unified competition and evaluation of the efficiency of the civil servant; stability and independence of a professional civil servant, the rules relating to social and legal protection of civil servants, including provisions designed to ensure uniform and transparent conditions of remuneration. The draft Law also provided for the establishment of an authorized body for the civil service affairs, which, among other things, had to maintain statistics of the public service and prepare reference and analytical reports on the public service.

While the general reform was under preparation, Uzbekistan has also taken several initiatives already to introduce elements of competitive merit-based selection, including the republican competition for the selection of high potential executive staff based on "On Measures to Establish a Modern System of Selection of High Potential Executive Staff on a Competitive Basis". The winners of the Competition were appointed

to executive (senior) positions in the public administration, local executive authorities with higher salaries. Certain bodies and agencies also organized their own competitions, including Ministry of Finance and the State Customs Committee. At the time of the monitoring, remuneration of employees of government and local executive authorities was carried out on the basis of a Uniform Tariff Scale. Remuneration consisted of the basic salary and additional payments, including various bonuses which could amount to 40% of the total salary, bonuses depended on the results of performance. The general appraisal system included evaluation of the efficiency of labour (performance), discipline and compliance with ethical rules of conduct. Such appraisal was normally carried out in state bodies by assigning appropriate points for a certain achievement by summing up the total according to the approved methodology.

See recommendations at the end of this chapter.

Public sector ethics

The 2016 Summary Report did not have separate recommendations with regard to the political officials, but suggested that the ethical standards, conflict of interest rules and declarations of interest and of income should be applied to high risk sectors and high-level officials. The fourth round of monitoring did examine these areas; the section below therefore also studies trends regarding codes of ethics for MPs and their implementation in practice.

Codes of ethics or conduct do not seem to play an important role in promoting public sector integrity in the IAP countries. This may be due to a stronger reliance of the countries to rules based cohesive measures such as mandatory declarations or disciplinary sanctions. Many countries do not have updated, detailed or practical codes of ethics, including general codes for all public servants and sectoral codes for specific services and institutions.

As in the past, training related to codes of ethics remained ad-hoc. Once the newly recruited civil servants are informed about the codes, further ethics training is not mandatory and not systematic. Several countries have developed manuals on ethics (e.g. **Armenia**), but it was not clear if they were used systematically for the training courses provided by various institutions. Ethics is one of many subjects that was covered by the regular in-service training, but no IAP country was able to demonstrate an ethics training that was provided based on needs assessment, using modern training methods such as ethical dilemmas. There was no assessment of the impact of the training either.

While all countries have ethics commissions or officers established in various state bodies, they appeared weak and ineffective. At most they focused on individual disciplinary cases, but their role in promoting ethics training, counselling and controls remained insignificant. This reflected the insufficient importance that the heads of state institutions gave to their functions.

Ensuring public sector ethics among MPs and other political officials was probably the main challenge in the region. Many countries did not have codes of parliamentary ethics due to continued resistance of MPs themselves; some countries have adopted them only recently. In all cases, there were no effective mechanisms to support the implementation ethical rules among the MPs. There was no training for MPs, parliamentary commissions that dealt with ethics did not play a strong role in controlling the implementation (e.g. in **Kyrgyzstan** there was no such committee at all and in case when MP violated ethics rules it was the head of his or her faction that was called to review the case, theoretically). These committees usually also dealt with requests for lifting immunities for investigation and they often refused to do so. This proved that MPs – albeit political opponents and business competitors – were often united by the shared interest of self-protection and therefore their self-control did not work. More generally, it appeared that in the countries where corrupt individuals went to parliament with corrupt intent to have access to public resources and to protect their businesses, codes of conduct could not make them ethical. This problem can be addressed by better democratic elections, more transparency and stronger external controls.

Table 15. Codes of conduct in IAP countries

Country	General/model for all civil servants	Body responsible for control of implementation	Practical guides, mandatory training	Codes for selected risk sectors	Code for MPs, training and enforcement
Armenia	No general code	no	Handbook on Ethics in Public Service	New codes for judges, customs officers and prosecutors	No code, no training, parliamentary commission, no cases
Azerbaijan	Old general rules exist	Training and monitoring were provided by CSC, but it was recently abolished		Old sectoral codes, new code for municipalities	Code adopted in 2017, no training, parliamentary commission is responsible
Georgia	yes	The Civil Service Bureau and internal units of the state agencies, e.g. General Inspectorate	Ad hoc training for Civil Servants	Separate codes exist for selected sectors, e.g. for police, for prosecutors, judges	Code adopted in 2018
Kazakhstan	Old general code, politisation of the code (civil servants should implement the policy of the president)	Civil Service Agency, Ethics officers and commissions	Model Curriculum on anti-corruption legislation, prevention, ethics and conflict of interest		Old rules of the Deputy Ethics do not address corruption, parliamentary commission is responsible, no cases
Kyrgyzstan	yes	Ethics commissions	Mandatory training for new civil servants	New codes for tax and local governments agencies	2008 code for MPs, no training or enforcement, head of faction reviews cases of its member, no ethics commission, no cases
Mongolia	Old general code	IAAC and CSC, ethics officers, 682 ethics commissions	Ad-hoc trainings	Old codes in all state bodies	2019 Code for MPs, ethics commission of parliament is passive
Ukraine	Very general ethics rules	Heads of state bodies, National Agency on Civil Service and NACP	Ad-hoc	Some and sectors have separate codes, e.g. NABU, SAPO, NACP, separate codes for judiciary, prosecutors, public procurement, police officers, state border officers	No code, no training, no cases
Uzbekistan	Old model rules for employees	Heads of bodies, ethics commission and Interagency commission	Regular distance training is planned	Old sectoral codes exist, but some are confidential	Code for MPs, no cases of enforcement

Source: IAP monitoring reports; OECD/ACN secretariat research.

In **Armenia**, the newly adopted laws on civil and public services envisaged three different codes: a code of conduct for public officials, a code of conduct for civil servants and a model code of conduct for public servants which should serve as basis for codes for special categories of public servants such as, members of Parliament, judges, prosecutors and investigators. In the reporting period ethics codes have only been adopted for judges, customs officers and prosecutors. Old ethics codes were still in place for other special categories, such as tax service, diplomats etc., however, they were still to be revised in line with new legislation. Despite the low level of trust to the authorities in Armenia – only 12 % of respondents of one of the recent surveys had trust in the Parliament - code of conduct for the MPs has not been adopted, and the CEHRO did not have a mandate regarding conflict of interest rules in relation of the MPs. Parliamentary

committee responsible for ethics had been extremely passive in the face of the large-scale conflict of interest and incompatibilities of the MPs. During the fourth monitoring round, new legislation was adopted that foresaw the establishment of Corruption Prevention Commission to replace CEHRO. Its mandate included promotion and enforcement of these rules in relation to the political officials, but the new agency has not been created yet. In 2016, CEHRO elaborated a Handbook on Ethics in Public Service and organized awareness raising activities. Various training events have been carried out for public servants, civil servants, anti-corruption contact points and the members of ethics commissions. However, practical trainings specifically in relation to the codes of ethics have not been reported, there was no effective coordination of the ethics training.

The legislative framework for public sector ethics in **Azerbaijan** included the Law on Rules of Ethical Conduct of Civil Servants and the various ethics code of separate public institutions and recently adopted ethics code for municipalities. In 2017, the Law “On rules of ethical conduct of the Members of the Milli Majlis” – which is effectively a Code of Conduct for MPs – was adopted and Disciplinary Commission of the Parliament was designated as a body responsible for its implementation. An Action Plan for its implementation was prepared, including awareness raising. No further information was available on the implementation of the Code during the monitoring. Ethics training was not mandatory in civil service. CSC annually requested the report from state agencies on training and enforcement of ethical rules. Training was conducted by agencies themselves, as well as by CSC. The abolishment of CSC had affected the function of supervising ethics training as well as mandate for disciplinary proceedings.

Preventing political corruption was one of the priorities of the National Anti-Corruption Action Plan of **Georgia**. It focused only on two issues – legal framework for funding of political parties and election campaigns and transparency of political finances. Regarding more general issues of political corruption, Parliament’s Rules of Procedure contained some general guidelines on behaviour and integrity. Political officials were obliged to submit asset declarations and comply with rules on gifts and incompatibilities with other paid jobs and business activities. There was no training for political officials on conflict of interest and integrity, and no agency designated to enforce the above rules, no sanctions were provided for their violation. Code of Ethics for MPs was adopted by parliament in 2018 after lengthy debates. According to the government, it provided for an enforcement authority and sanctions. However, it was not assessed by the ACN yet, and according to NGOs, the code had a number of shortcomings, the enforcement mechanism and sanctions were ineffective.

The Code of Ethics of Public Servants of **Kazakhstan** was approved by presidential Decree in 2015. The Code required that “public servants in their activities should commit to the policy of the First President of the Republic of Kazakhstan – the Leader of the Nation Nursultan Nazarbayev - and consistently pursue it in practice”. This provision was inconsistent with the objectives of a code of ethics for public servants, which should strive to promote commitment to the rule of law, rather than a policy instituted by a President. Heads of central bodies and executive secretaries were responsible for ensuring compliance with the requirements of the Ethics Code. Following recommendations by Councils on Ethics, in 2016, 232 disciplinary actions were imposed for breaches of the Ethics Code. The Agency for Civil Service and the Civil Service Academy developed a Model Curriculum for training of civil servants about anti-corruption legislation, prevention of corruption offences, ethics and conflict of interest in public service. The new entrants to the civil service and newly appointed executives had to undergo an anti-corruption training; such training was also provided to civil servants in central government agencies and in local executive bodies. Laws “On the Fight against Corruption” and “On the Civil Service” obliged MPs, local deputies and other political officials to comply with several restrictions such as on business activities. However, these laws did not provide for an enforcement mechanisms or sanctions for violations. There were “Rules of the Deputy Ethics” but they did not to address conflict of interest and prevention of corruption. The Central Electoral Commission was responsible for enforcement of disciplinary measures, but there were no violations. Information about remuneration of MPs and other political officials was secret. No information was provided on ethics training to political officials.

The Code of Ethics for the Public and Municipal Servants of **Kyrgyzstan** was approved by the Public Service and Municipal Service Council in 2016. The code included chapters on general provisions; professional duties; prevention of corruption; culture of conduct; the procedure for considering violations of ethical standards; liability for violation of the ethical standards. While many state bodies had their own Codes, they predated the general code, and needed to be updated. Only the State Agency for Local Government and Ethnic Relations and the Tax Service developed their codes in 2016, and the office of the Prosecutor General updated their Code in 2018. All newly recruited officials had to go through ethics training; state bodies organised such trainings for their employees as they saw necessary. If there was a complaint about the violation of the Code, state bodies had to form ethics commissions. In addition, several ministries and agencies recently introduced the post of the Commissioner for Preventing Corruption. The Code of Deputies' Ethics was adopted in 2008 and was obsolete. Ethics training is organized at the beginning of each convocation for those deputies who want to take part in it. There was no permanent commission on ethics in the Parliament. If a complaint on a deputy was received, it was considered by the head of the faction, to which the deputy belonged (in 2017 there were three such cases). These provisions were declarative in nature, but there were some cases of imposing sanctions. For example, the Minister of Transport was fired for using official vehicles for personal needs. However, there were no systemic mechanisms for training political servants on the issues of ethics or monitoring of implementation of the ethical standards. The Law on Conflict of Interests adopted in 2017 applied to the political servants. For example, according to the Law, members of the Parliament should avoid making decisions in which they may have a conflict of interests, but there was no single instance of such self-recusal.

Mongolia's Code of Conduct for public administration was in force since 2010, requiring state agencies to put in place oversight structures to ensure its implementation. Most of the sectors and services had dedicated codes of ethics and about 682 ethics committees were operating countrywide and ethics trainings were conducted either by the IAAC or by the CSC and the National Academy of Governance but did not seem to be systematic or based on any established curriculum. A study by the Asia Foundation on the operations of ethics committees showed poor performance on receiving and responding to citizens' complaints on breaches of ethics rules and conflict of interest, especially in relation to higher level officials. The IAAC conducted the research on corruption perception in politics annually since 2008. One of the frustrations of the public was that the sanctions were applied to low-level officials, but high-level officials were rarely touched, and the MPs were protecting their own business. The new code of conduct for memberships of Parliament was approved by Parliament resolution in 2019. However, the Ethics Sub-Committee of the Parliament did not have any cases so far: 15 complaints regarding alleged violations by MPs were not followed up; however, a former deputy speaker of the parliament mentioned in Panama Papers resigned and there were two cases when MPs did not vote on bills that were related to their interests. There were no integrity rules that applied to other high-level officials, apart from MPs.

In **Tajikistan**, new Code of ethics for all public officials, including state, political and administrative, was adopted by the President in 2015. Newly hired officials were expected to read the Code, the Code was also presented during the in-service training of public officials. Each head of a state body was supposed to establish an ethics commission to control the implementation of the Code. The Commissions should be composed of other civil servants but also MPs and local deputies. They were supposed to review individual cases and propose disciplinary sanctions, e.g. in 2016, 36 officials were sanctioned. In practice, the duties of the commissions were allocated to the HR officers or to internal control units, as commissions did not have resources or knowledge to perform their duties. Tajik Anti-Corruption Agency was very active in providing ethics training during the fourth round of monitoring. Specialised codes of ethics for sectors with high risk did not exist yet.

The Corruption Prevention Law of **Ukraine** included very general rules of ethical conduct for public officials. In 2016, the NACS adopted rules of ethical conduct for civil servants, however they were general and not very useful in practice. Civil servants were made aware of these rules once appointed. Trainings on ethics were provided by different entities, but there was no assessment of their quality, costs and results

in terms of their impact on ethics knowledge and skills of public officials. The Civil Service Law provided that the general rules of ethical conduct should be part of the internal regulations of each agency. The heads of state bodies were obligated to monitor enforcement of these rules in their individual agencies and take disciplinary action or if there are signs of criminal or administrative offenses, refer the case to the relevant authorities. Information about approval by specific ethics codes by state agencies, trainings or enforcement was not provided, but it is known that, for example, the NABU has its own code of conduct. The Prosecutor's General Office also adopted its code in 2017, but according to NGOs this code was often violated, and there were no sanctions that could be applied. Integrity rules established by the Corruption Prevention Law apply to the political officials, and the Law on the Status of People's Deputy of Ukraine provided some integrity rules but there was no code of conduct for MPs or other political officials. The NACP and the Parliamentary Rules and Procedures Committee were, in principle, the main bodies that were supposed to control the implementation of rules of ethics by MPs. However, the Rules of Procedure Committee was not very active regarding control of ethics rules, it did not support most of the requests for lifting immunity filed by NABU in its investigations in relation to MPs on alleged false declarations or illicit enrichment. NGOs also claimed that the NACP did not ensure meaningful follow up and sufficient enforcement of rules of conduct of political officials either.

In **Uzbekistan**, "Model Rules of Ethical Conduct of Employees of Public Administration and Local Executive Authorities" were the basis for rules developed in state bodies and local executive authorities. Ethical rules for certain categories of persons were classified. The heads of public institutions were responsible for the implementation these rules. Monitoring of compliance with ethical rules by employees of state bodies was carried out by the Republican Interagency Commission. The draft Law "On Public Service" provided that the authorized body for the civil service affairs had to approve the Rules of Ethical Conduct of Civil Servants, this body together special units and ethics commissions of public institutions had to control the implementation of these rules. Every year the Interagency Commission approved the schedule of trainings on prevention and combating corruption, with an emphasis on the practical application of legislation, including ethical standards. Once every three years, civil servants, in particular judges and law enforcement officials had to undergo in-service professional development training, including on issues related to anti-corruption. In 2018 the Anti-Corruption and Crime Prevention Centre under the Academy of the General Prosecutor's Office launched anti-corruption training. It prepared a standard training programme and planned to provide it on the regular basis through the distance learning module for civil servants. In accordance with the Law "On the Status of a Deputy" MPs must strictly comply with ethical norms. Both chambers of the Uzbek parliament adopted their Rules of Ethics (Legislative Chamber in 2015 and the Senate in 2017). The Rules contained provisions relating to the parliamentary ethics, restrictions and incompatibilities, prohibition of abuse of the deputy's status, non-disclosure of information received by a deputy in connection with the exercise of parliamentary powers. The Ethics Commissions of the Chambers had to monitor compliance with the Rules. In case of violations, the Commissions had the right to take a disciplinary action or to make a proposal to the respective Chamber on early termination of the deputy's powers. If the Chamber agreed, the Central Election Commission had the right to recall the MP. Similar rules existed for locally elected officials. For the monitoring period, violations have not been identified.

See recommendations at the end of this chapter.

Reporting and whistleblowing

Whistle-blowers and the management of protected disclosures are paramount to reinforcing integrity within public institutions.⁸⁰ Ensuring effective protection of whistle-blowers is crucial given their potential role in combatting corruption by providing information on practices that would otherwise go undetected, thereby contributing to the prevention, detection, investigation and prosecution of corruption. As was noted in the recent resolution of the Parliamentary Assembly of the Council of Europe, without whistle-blowers, it will be impossible to resolve many of the challenges to our democracies, including of course the fight

against grand corruption and money-laundering. There is therefore an urgent need to implement targeted measures which encourage people to report the relevant facts and afford better protection to those who take the risk of doing so.⁸¹

Notwithstanding the absence of a common legal definition⁸², whistle-blower protection standards are set out in a number of international instruments and guidelines. The UNCAC (Article 33) refers to applying protection to “any person who reports in good faith and on reasonable grounds to competent authorities”. Both of the Council of Europe’s Civil Law (Article 9) and Criminal Law (Article 22) conventions on corruption adopt similar definitions to UNCAC, and are further reinforced with the Council of Ministers recommendation on the protection of whistle-blowers.⁸³ The OECD 2009 Recommendation⁸⁴ refers to protection from “discriminatory or disciplinary action public and private sector employees who report in good faith or on reasonable grounds to the competent authorities suspected acts of bribery”.

Accordingly, in ACN countries, legal framework for whistle-blower protection should be provided through dedicated provisions. The scope of protected disclosures should include those made in good faith and on reasonable grounds and should be available to the broadest possible range of reporting persons in both private and public sectors. Procedures for protected disclosures should provide a number of visible reporting channels and ensure the confidentiality of reporting persons. Remedies and effective protection against retaliation should be provided for by defining retaliation against whistle-blowers in a comprehensive way, ensuring robust protection for whistle-blowers, by providing effective, proportionate and dissuasive sanctions in cases of retaliation and by ensuring that whistle-blowers cannot be held liable in connection with protected disclosures and are provided with provisional protection and legal aid. Effective enforcement and evaluation of the legal framework should be provided for by monitoring and assessing the effectiveness and implementation of the framework.⁸⁵

During the first round of monitoring, none of the IAP countries had legislation on the protection of whistle-blowers. By the time of the second round, several countries had introduced new legal provisions to protect whistle-blowers. In the third round, many countries had adopted basic legal provisions concerning whistle-blower protection and several countries adopted new and more elaborate legal framework or introduced new practices, such as rewarding whistle-blowers. This has been a positive development, but prescribing protection of whistle-blowers in law alone is not sufficient. Practical measures to support the implementation of legislation are needed across all IAP countries. Accordingly, the previous summary reports recommended IAP countries to curb overly strict defamation laws⁸⁶ and further strengthen whistle-blower protection in legislation, establish responsible institutions for enforcement and collect statistics on enforcement.⁸⁷

During the fourth monitoring round ACN countries remained active in reforming the area of whistle-blower protection. Twelve countries developed new legislation for protecting whistle-blowers (Albania, Armenia, Croatia⁸⁸, Kyrgyzstan, Latvia, Lithuania, North Macedonia, Moldova⁸⁹, Montenegro, Serbia, Ukraine, Uzbekistan), and four more IAP countries established channels for reporting (Armenia, Georgia, Kazakhstan).⁹⁰

Data provided by countries, while insufficient, shows that the number of reports has been growing, and that citizens have been willing to report corruption. This contradicts the traditional assumption that citizens in the region are not inclined to report corruption. The trend is especially visible when certain conditions are in place, notably the possibility of anonymous reporting, protection against both civil and criminal liability and acts of retaliation, and effective action by responsible authorities to act on reported information and sanction violations.

The incentives to encourage reporting are used in eight OECD countries⁹¹, most notably in the United States (see the box below), and have been identified as a good practice by the OECD.⁹² From IAP countries, financial incentives were provided only in **Kazakhstan**, stipulated in law in **Kyrgyzstan** and contemplated in **Ukraine** (see additional information below on these countries).

Box 8. USA Dodd-Frank Act Reward Mechanism

Section 21F of the Dodd-Frank Act, enacted in 2010, entitled “Securities Whistle-blower Incentives and Protection” directs the US Securities and Exchange Commission (SEC) to make monetary awards to persons who voluntarily disclose original information that leads to successful enforcement actions resulting in monetary sanctions of over 1 million USD. The Act, under section 924(b), also established the Office of the Whistle-blower within the SEC to oversee the implementation of the program. Whistle-blower submissions benefit from confidentiality protections and may be made anonymously with the assistance of an attorney.

The range for awards is fixed between 10% and 30% of the amount collected. Factors which influence the percentage a whistleblower will receive are; the significance of the information provided, the level of assistance provided, the law enforcement interests at stake, and whether the whistleblower reported the violations internally through the appropriate internal channels.

Since the program’s creation in 2011, the SEC has collected over 1,7 billion USD, including more than 901 million in disgorgement of ill-gotten gains and interests, through successful enforcement actions which were made possible by information provided by whistleblowers, which in turn have received 326 million USD.

Source: Annual Report to Congress, Whistleblower Program 2018 <https://www.sec.gov/files/sec-2018-annual-report-whistleblower-program.pdf>.

Armenia adopted a stand-alone law on Whistleblowing System in 2017.⁹³ It provided for two channels of reporting: internal (reporting to supervisor) and external (reporting to the competent state body). Anonymous reporting was provided through a unified electronic platform launched in May 2019 (www.azdararir.am), which is managed by the Prosecutor’s Office. It also established a feedback system to facilitate data collection. The Code of Administrative Violations provided for liability in cases where protection of whistle-blower from “harmful” actions taken against him/her was not provided. The Criminal Code sanctions unlawful disclosures of information on a whistle-blower. Armenia launched a large-scale campaign to raise awareness about the new regulations and to incentivize reporting. According to a recent survey by the Ministry of Justice, 86% of the respondents witnessed corruption and only 4% of them took action to reveal it, 96,5% of the respondents would not recommend to blow a whistle to their relatives, because it was either pointless, or they were afraid that general public would not understand it, but 94,5% would consider whistleblowing if anonymity was ensured.⁹⁴

In **Azerbaijan**, the Law on Combatting Corruption was amended in 2016 to include provisions on the protection of whistle-blowers.

Georgia was one of the first countries in the region to introduce legislation on whistle-blowing. The legislation was further strengthened during the fourth round of monitoring. The definition of a whistle-blower was broadened to include not only ‘active or former public official’ but ‘any person’. The reporting channels included internal control units, investigators and prosecutors, Public Defender, media, civil society and a web-site administered by the Civil Service Bureau (CSB) <https://mkhileba.gov.ge>. A whistle-blower can now inform civil society or mass media about his case directly after the report was filed to the state body, and not to wait for two months as in the past. The CSB has developed an online tool, so called “red button”, which provided a possibility to report anonymously. Protection provided to the whistle-blower should be monitored by the general inspectorate that reports to the head of the appropriate public institution, and includes prohibition of intimidation, oppression, coercion, humiliation, moral or material damage, use of violence or threat of violence, discriminatory or any other illegal act with regard to incidents against the whistle-blower or his/her close relative. In addition, the whistle-blower may not be

subject to administrative procedures, civil action, prosecution, and retaliatory measures or be held responsible otherwise for the circumstances related to the facts of whistleblowing. The CSB raised awareness and provided training to civil servants on the whistle-blower protection regulations and their rights and prepared a manual on “Whistle-blower Protection”. Nevertheless, reporting remained low, and the effectiveness of the monitoring channels has not been evaluated. In December 2018 the CSB initiated a program, with the support of USAID, of data processing and audit of reporting channels with the aim of elaborating recommendations to further improve the existing channels.⁹⁵

Box 9. Whistle-blowing law in Latvia

The Whistleblowing Law (available in English here <https://likumi.lv/ta/en/en/id/302465-whistleblowing-law>) was adopted by Saeima (the Parliament of Latvia) in October 2018. It entered into force on 1 May 2019. The law defined what a whistleblower and whistleblowing is, provided the basis for establishing whistleblowing channels and set out protection guarantees for whistleblowers and their relatives.

The law provided for three main whistleblowing channels. First, all public entities, as well as private sector legal persons with more than 50 employees, have to establish an internal whistleblowing system. Second, Whistleblower's Report can be submitted to the competent public authority. Third, it can be sent with intermediation of a Contact Point of Whistleblowers or an association. Moreover, respecting conditions provided in the law, one can blow the whistle by making information public.

The law sets out main guarantees of protection for whistleblowers, including protection of identity, consultation on protection, provisional protection (interim relief), release from legal liability, appropriate compensation and state legal aid.

The goal of the Whistleblowing Law is to promote whistleblowing and due protection of whistleblowers in Latvia. The whistleblowing means taking initiative to report in good faith and on reasonable grounds possible breaches of law, violations of professional norms and ethical norms, including corruption.

The Whistleblowing Law designated the State Chancellery as the Contact Point of Whistleblowers. Its duties include provision of information on whistleblowing and methodological support, including annual reports and two guidelines, raising awareness, support and consultation to whistleblowers, transfer of the received Whistleblower's Reports to competent authorities.

During May 2019, the first month of law being in force, 47 submissions were received and out of them 14 recognised as Whistleblower's Reports. The State Chancellery has created an Internet portal on whistleblowing <https://www.trauksmescelejs.lv> that includes a list of around 160 public authorities, with their nominated contact persons, where Whistleblower's Reports can be submitted (the list is regularly updated). During April – September 2019, an awareness raising campaign “Hear. See. Speak” (Redzi. Dzirdi. Runā”) was held in Latvia.



Source: Information provided by Ms. Inese Kuške, State Chancellery Republic of Latvia.

Kazakhstan did not have dedicated legislation on whistle-blower protection, however the Law “On the Fight against Corruption” required that “a person in possession of information about a corruption offense should report it to the executive management of the organization in which he is employed or an authorized anti-corruption body.” Persons reporting such information and otherwise contributing to anti-corruption efforts have to be protected; however, the protection measures were only those that apply to the protection of witnesses and persons co-operating with criminal justice. The National Anti-Corruption Bureau maintained a register of reports about corruption, but it did not distinguish reports of whistle-blowers from other reports and complaints. The National Anti-Corruption Bureau’s channels for reporting include a website⁹⁶, call centre, reports by postal service or in person. Furthermore, in order to encourage reporting whistle-blowers may receive a financial reward.⁹⁷ The reward varies according to the significance of the information provided and the nature of the case it caused. Non-financial rewards may also be provided in the form of certificates of recognition. During 2014-2016, 345 persons who reported corruption were rewarded around 911 million Kazakh Tenge (about EUR 2 million). The IAP monitoring report, however, criticised the fact that the Code of Administrative Offences of Kazakhstan established administrative liability for reporting false information with substantial sanctions in the form of fines, which had the potential to deter reporting of corruption, given that the facts surrounding instances of corruption are often difficult to prove. The amendments of December 2017 lowered the fines, however they remained sufficiently heavy and could continue to discourage reporting.⁹⁸

In **Kyrgyzstan** the draft Law “On the Protection of Persons Reporting Corruption Offenses” was passed by the Supreme Council in 2016 but was vetoed by the President. The revised version of the Law was enacted in January 2019.⁹⁹ The Law established that information about whistle-blowers should be confidential but did not provide for a responsible body to evaluate the reports and provide protection. Additionally, the law also provided for financial incentives to be offered to whistle-blowers stipulating that they should be rewarded with the funds recovered and owed to enforcement agencies, and that such a reward could not exceed 1 million soms (about EUR 13,000). The Ministry of Interior is supposed to provide training on this subject. Each state body has to maintain a record of reports about corruption.¹⁰⁰

Whistle-blower protection system has not been introduced in **Mongolia** during the fourth round of monitoring, although reporting of corruption remained mandatory. A relevant draft law was pending in the Parliament. As in the past, citizens could report about corruption to the IAAC through a direct phone line, post, in person and email; direct phone lines have been most frequently used as they offered anonymity. However, awareness of these reporting channels was declining, as illustrated by SPEAK’s survey¹⁰¹ conducted in 2018 indicating that respondents’ awareness of the telephone hotline had dropped from 47.8% in 2010 to 18.5% in 2018. There were indications that a legal reform in this area might be possible, as the President of Mongolia called for protection of corruption witnesses and reporters in 2018-2019. The Anti-Corruption Strategy stipulated the establishment of a legal framework for protecting whistle-blowers and journalists. This framework should provide for the effective protection of whistle-blowers, include procedures for submission, review and follow up on reports and provide protection and incentives to create an environment that encourages reporting.¹⁰²

There is no protection of whistle-blowers in **Tajikistan**. Civil Service Agency prepared amendments to the Civil Service Law that would require public officials to report on corruption in their institutions to the relevant law-enforcement bodies and introduce measures to protect public officials from violence or threats. The amendments were passed to the President’s Administration in 2016, where they had been pending since.¹⁰³

The legal basis for corruption reporting and whistle-blower protection in **Ukraine** was provided in the Law on Corruption Prevention. The National Agency on Corruption Prevention (NACP) is the body responsible for raising awareness and promoting whistleblowing, receiving and addressing whistle-blower reports and providing protection to reporting persons, where it can intervene in administrative or civil proceedings to represent a whistle-blower. The NACP introduced a special phone-line and an electronic notification form

on its website, including a possibility of anonymous reporting. The NACP conducted relevant trainings for its staff. In 2016-2017, the NACP received 860 reports on corruption-related offences, among them 292 were anonymous. From these reports, 316 have been found ungrounded, 106 reports have been verified but the information was found to be inaccurate. 195 reports were sent to the National Police, 35 reports resulted in 70 protocols on administrative offence filed with courts and, eventually, UAH 34 000 (approximately EUR 1,300) were charged as fines in total. The number of reports received in 2018 was 1392. NGOs supported activities to protect whistle-blowers but considered the NACP's work and powers to protect whistle-blowers insufficient. Besides, NACP's reputation has been marred by a whistle-blower who alleged political influence in the process of asset declarations verification. NGOs advocated for reinforcing legislative protection of whistle-blowers, as they found the existing provisions to be declaratory and lacking detailed and enforceable procedural rules.¹⁰⁴

Box 10. EU Directive of 17 April 2019 on the Protection of Persons Reporting on Breaches of Union Law

The European Union's Directive on Protection of Persons Reporting on Breaches of Union Law, adopted on 17 April 2019, introduced common minimum standards among Union members regarding whistle-blower protection, with an obligation of creating reporting mechanisms and ensuring whistle-blowers are protected against retaliation. States have two years to transpose the directive into their respective national legislative frameworks.

The Directive provides a list of the material scope for protected disclosures in a wide range of Union policy domains, including for corruption offences. Its personal scope is much broader covering employees, contract workers, freelancers, suppliers, stakeholders, former employees or those in the recruitment process, paid or unpaid trainees, volunteers in both the private and public sectors. It further extends the scope to cover third persons, such as colleagues or relatives of whistle-blowers susceptible to retaliation, legal entities connected to the whistle-blower and facilitators.

Acts that fall under protection are those in which the reporting person had reasonable grounds to believe his disclosure was truthful and covered by the Directive. These disclosures can be reported in three forms; either internally or externally to a competent authority or the public. Internal reporting is to be encouraged; however, external reports may be made if deemed more effective or if the information presents an imminent or manifest danger. All public legal entities, including those owned or controlled, municipalities with a population of over 10 000 along with private sector companies with 50 employees or more must establish internal channels for reporting, and diligently follow up on all those received.

The Directive establishes a duty of confidentiality to reporting persons; however, it does not require States to establish anonymous reporting mechanisms. It further establishes an exhaustive list of direct and indirect acts of reprisal against which a whistle-blower is protected, by providing criminal sanctions in cases of disclosures of identity, retaliation or interference and provide civil remedies, in which the burden of proof favours the whistle-blower. Additionally, it waives civil liability for disclosures that fall under the Directive's provisions. However, it also requires states to provide for proportionate and dissuasive sanctions in cases where disclosures are maliciously made.

Source: www.europarl.europa.eu/doceo/document/TA-8-2019-0366_EN.html.

In November 2019, the parliament of Ukraine adopted comprehensive amendments proposed by the President and aimed at strengthening the protection of whistle-blowers of corruption. The new provisions entered into force on 1 January 2020. The amendments, in particular, establish a reward for whistle-blowers of 10% of the money obtained through reported corruption crime or of the damages caused to the state by such crime (but not more than an equivalent of about EUR 450,000). The amendments in the Corruption Prevention Law introduce changes in terms defining the legal status of whistleblowers, their rights and

guarantees of their protection; ensuring conditions for disclosure of information on corruption; regulating the procedure for disclosure by a whistleblower of information on corruption; exempting a whistleblower from legal liability for disclosure of information on corruption or corruption-related offences. The NACP was provided with additional powers to ensure whistleblower protection, as well as to verify the information received from whistleblowers.

According to the Law “On Combating Corruption”¹⁰⁵ of **Uzbekistan** public officials were required to notify their supervisor or law enforcement bodies about all cases of appeal to them by any person in order to induce them to commit corruption offences and any cases of such offences committed by other public officials. Failure to do so entailed liability. The Law also contained provisions for the protection of persons reporting on corruption offences. Prosecution of persons reporting on corruption offences was punishable. In the absence of any generalized statistical data it was impossible to conclude whether these norms were indeed applied in practice.¹⁰⁶

Table 16. Whistle-blower protection in ACN countries

Country	Separate law (date), a part of another law	Responsible authority	Reporting channel(s), possibility of anonymous reports, incentives
Albania	Law on Whistleblowing and protection of whistleblowers, No. 60/2016 of 2016	HIDAACI	Internal: Whistleblowing Units External: HIDAACI
Armenia	The Law of the Republic of Armenia “On Whistleblowing System” No. HO-97-N of 2017 Specialised law adopted in 2017	No central authority	Internal: Supervisor External: Prosecutor’s Office Anonymous reporting is allowed
Azerbaijan	Part of a Draft Law on Prevention of Conflict of Interest in the Activities of Public Officials	-	
BiH	Law on Whistleblower Protection in Institutions of 2013	Agency for Prevention of Corruption and Coordination (APIK)	Internal : Supervisor, Internal Unit External: APIK
Bulgaria	Part of Law on Counteracting Corruption and Forfeiture of Illegal Asset of 2018	No central authority	Internal: Internal control units External: investigators and prosecutors, CACIAF Public: media, civil society
Croatia	Act on the Protection of Denouncers of Irregularities, of 2019	Ombudsman	Internal: Supervisor, internal Unit External: Ombudsman Public
Estonia	Anti-Corruption Act of 2014 Civil Service Act of 2012	Commission of Resolution of Conflicts of Interest	Internal: Supervisor External: Commission of Resolution of conflicts of interest
Georgia	Specialised law of 2015, Law On Conflict of Interest and Corruption in Public Institutions, No. 4358 of 2015	Civil Service Bureau	Internal: Internal control units, investigators and prosecutors, External: Public Defender, Public: media, civil society Anonymous reporting is allowed
Kazakhstan	Law on Combating Corruption, No. 410-IV LRK of 2015	Anti-Corruption National Bureau	Internal: Employer External: ACNB Financial incentive Non-financial incentive
Kosovo	Law no. 06/L-085 on Protection of Whistle-blowers	Anti- Corruption Agency/public sector and Labour Inspectorate/private sector	Internal whistleblowing External whistleblowing/The external whistleblowing procedure for public sector is initiated by reporting information to the Anti-Corruption Agency External whistleblowing in private sector/Regarding whistleblowing in the private sector, the regulators according to the areas of

Country	Separate law (date), a part of another law	Responsible authority	Reporting channel(s), possibility of anonymous reports, incentives
			responsibility, shall apply mutatis mutandis the procedure provided for internal whistleblowing.
Kyrgyzstan	Law On the Protection of Persons Reporting Corruption Offenses of 2019	No Central Authority	Internal Financial incentive
Latvia	Whistleblower Protection Law of 2018	State Chancellery	Internal External: State Chancellery, Associations Public
Lithuania	Law on the Protection of Whistleblowers of 2017	Prosecutor's Office	Internal: Supervisor, internal whistleblowing unit External: Prosecutor's Office Public Financial incentive
Mongolia	No special law	-	External: IAAC
Moldova	Law on Integrity Whistle-blowers No. 122 of 12.07.2018	National Anti-corruption Centre People's Advocate (Ombudsman)	Internal (to the employer) External (National Anti-corruption Centre) Public The person making a disclosure of illicit practices must identify themselves
Montenegro	Law on Prevention of Corruption No. 53 of 2014	Agency for Prevention of Corruption	External: Agency for Prevention of Corruption
North Macedonia	Law on Whistleblower Protection of 2015, amended in 2018	State Commission for Prevention of Corruption	Internal: Supervisor, internal whistleblowing unit External: State Commission for Prevention of Corruption Public
Romania	Law on the Protection of personnel within public authorities, public institutions and other establishments, who report infringements, No. 571 of 2004		Internal: Supervisor, Head of Public body, Disciplinary committees within authority, legal bodies, ethics commissions, parliamentary commissions, associations and trade unions, CSOs Public
Serbia	Law on the Protection of Whistleblowers No. 128/2014 of 2014		Internal: Supervisor External Public Anonymous reporting is allowed
Tajikistan	No law	-	-
Ukraine	Part of Corruption Prevention Law of 2014, provisions on whistle-blower protection revised in November 2019 (enter into force in January 2020)	NACP	External: to NACP Anonymous reports reporting is allowed
Uzbekistan	Provision of Law on Combating Corruption, LRU-419 of 2017 Resolution of the President of Uzbekistan «On measures for further improvement of the system of crime prevention and combating crime» No. ПП-2833 of 2017	No	No

Source: IAP monitoring reports; OECD/ACN secretariat research, country comments.

The fourth round of monitoring showed that IAP countries have continued enacting dedicated legal framework for the protection of whistle-blowers and some strengthened their initial legal provisions with additional reform. The implementation has started as well. Despite this, the legal framework in many countries contains important loopholes due to the absence of an exclusive and dedicated instrument on

whistle-blower protection, which would be sufficiently comprehensive to ensure clarity and effective safeguards. It is important to clearly define the scope of the protection, the procedures and responsible bodies for reporting channels, include effective protection and provide for enforcement mechanisms, raise awareness and ensure data collection and monitoring of the implementation efforts.

See recommendations at the end of this chapter.

Conflict of interest and other anti-corruption restrictions

Preventing and managing conflict of interest is key to promoting integrity in the public service. If not properly managed, conflict of interest may lead to corruption and corrode public trust in government. Unresolved conflicts of interest can result in violations such as nepotism, abuse of power, failure to perform duties, misappropriation, bribery or other serious crimes. International standards applicable to the ACN region (UNCAC,¹⁰⁷ Council of Europe recommendation)¹⁰⁸ oblige states to put in place measures for disclosing, managing and resolving conflict of interests.

OECD's extensive work on the topic provides useful guidance not only to the member states, but also globally. The OECD Guidelines for Managing Conflict of Interest in the Public Service identify a set of core principles and standards for designing and implementing conflict of interest policies. These include definitions of actual, apparent and potential conflict of interest¹⁰⁹ and guidance on declaring, managing and resolving them, as well as on oversight and enforcement, providing training, counselling and raising awareness that can help in policy design and implementation. Other knowledge products, such as a toolkit and reports on implementation, provide examples of good practices and instruments for policymakers and managers in the public sector.¹¹⁰

Conflict of interest (COI) stands for a conflict between public duty and private interests of a public official that could improperly influence the performance of official duties and responsibilities. Such private interests can include: "financial and economic interests, debts and assets, affiliations with for-profit and non-profit organisations, affiliations with political, trade union or professional organisations, and other personal-capacity interests, undertakings and relationships (such as obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity, or relationships to people living in the same household)."¹¹¹

Modern COI policies must strike balance between the need for regulation and organisational flexibility. While rules must be set forth as specific prohibitions, such as restrictions and incompatibilities, it is not feasible or even desirable to capture all possible conflict of interest situations and prohibit them, rather public organisations should aim for a functional mechanism of identifying and resolving conflict of interests as they emerge, as a part of the prevention and education policies to foster culture of integrity in public service. At the same time, certain situations of COI have to be regulated and even banned when warranted without leaving it for ad hoc resolution (e.g. restriction of incompatibility, regulations on gifts, post-employment restrictions).

The IAP fourth round of monitoring looked into the development of regulatory framework and examined enforcement practices. Monitored countries have made clear progress in this area that can be attributed also to the IAP process. IAP countries have introduced legislation to regulate conflict of interest and institutional framework, developed tools to raise awareness, train public sector employees and provide methodological guidance and counselling (**Ukraine, Mongolia, Armenia, Uzbekistan**), and some of the countries have shown enforcement efforts (Ukraine, Mongolia, Armenia). Despite this progress, conflict of interest remains a challenge in all IAP countries, and available instruments are not fully and effectively used in practice. Enforcement, especially in relation to high-ranking officials, is low, inconsistent and often seen as biased. The analysis below looks in further detail into the legal framework, institutions and enforcement of COI in IAP countries and ACN region as a whole.

Legal framework

A comprehensive legal framework on conflict of interests should include restrictions applicable pre-, post- and during public service, such as restrictions on gifts, additional employments and external activities, owning shares in private companies, cooling off periods, or use of information obtained in the public service. The laws should also provide for clear definitions of what may constitute an *ad hoc* conflict of interest situation, whether actual, apparent or potential, and provide guidance on how to resolve it.¹¹² This includes clear steps to report COI, abstain from the decision-making in the situation of COI and resolve the COI. Upon appointment and while-in-service regular disclosures should be a requirement (details on asset and interest disclosure are below). Apart from the general regulations, risk areas, such as public procurement, merit dedicated provisions to address specific risks of COI.

As regards the scope of application, even when the rules apply to all public servants, which is a quite common approach, oversight, awareness-raising and enforcement efforts should prioritize top-level offices, political officials and corruption risk areas. Some countries have considered establishing rules for staff exercising public tasks but not employed in the public service and public officials working in boards or committees of statutory authorities, public agencies and state-owned enterprises.¹¹³

Box 11. Conflict of interest resolution, OECD Guidelines

OECD Guidelines refer to the following options for COI resolution:

- Divestment or liquidation of the interest by public official.
- Recusal of the public official from involvement in an affected decision-making process.
- Restriction of access by the affected public official to particular information.
- Transfer of the public official to duty in a non-conflicting function.
- Re-arrangement of the public official's duties and responsibilities.
- Assignment of the conflicting interest in a genuinely 'blind trust' arrangement.
- Resignation of the public official from the conflicting private-capacity function, and/or
- Resignation of the public official from their public office.

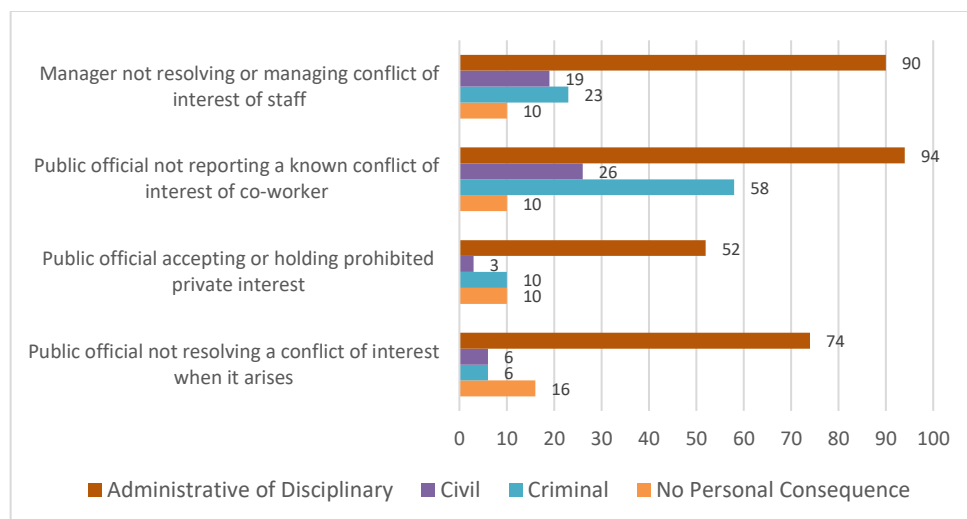
Source: OECD (2003), Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service, www.oecd.org/gov/ethics/2957360.pdf.

Finally, proportionate and effective sanctions should be put in place for violation of COI rules. Whereas disciplinary and administrative liability are most common, some countries (Austria, Latvia, Poland, UK, Italy, Ireland, France, Slovakia) envisage criminal liability for violation, such as not resolving a conflict of interest, or accepting a prohibited gift, violating rules on disclosure, false declaration of interests, or breaching post-employment rules to obtain pecuniary benefit.¹¹⁴ Invalidation of decisions or contracts concluded under the conflict of interests is a common legal consequence as well. OECD Survey on Managing Conflicts of Interest in the Executive Branch (2014, see below) showed diversity of sanction types applied in OECD countries for conflict of interest related violations.

While conflict of interest is not a misconduct in itself, if unresolved, it may lead to corruption and related offences subject to criminal liability. A few countries have opted to criminalise acts carried out in the situation of conflict of interest as a separate "conflict of interest" offence. For example, in **France** "unlawfully obtaining of an advantage" is a criminal offence, as well as 'pantouflage' - former government official moving to private sector.¹¹⁵ **Romania** had a provision in the Criminal Code on conflict of interest that was replaced with the offence "use of function to favour some person" in 2017. In case a country decides to criminalise COI, the elements of crime should not overlap with other related offences, such as

abuse of power, exceeding official capacities, trading in influence or else, to ensure legal certainty (for details on corruption related offences see relevant chapter of this report).

Figure 10. Sanctions for COI rules violation in the OECD members



Note: Figure covers executive branch officials. Numbers represent per cents. Source: OECD (2014), Survey on Managing Conflicts of Interest in the Executive Branch.

All IAP countries have in place regulations on conflict of interest with a degree of alignment with international standards. The exception is Azerbaijan where these rules are still pending.

Armenia's conflict of interest regime was provided in the Public Service Law and the Law on Commission on Prevention of Corruption. Since the last Summary Report, Armenia has substantially reformed these regulations. It extended the application of rules to all public servants, broadened the definition of related persons, introduced the notion and procedures for management of potential conflict of interest, as well as disciplinary sanctions for violations of related rules. It also separately regulated conflict of interest in high risk areas, such as public procurement.¹¹⁶

The Law on Rules of Ethical Conduct of Civil Servants of **Azerbaijan** had an article on prevention of conflicts of interest, however it is not in line with international standards and the enforcement mechanism is absent. The draft law on the prevention of conflict of interest had been pending for several years and still remains on the agenda according to various policy documents. Likewise, no regulations were in place for political officials, including MPs.¹¹⁷

In **Georgia**, the Law on Conflict of Interest and Corruption in Public Service provided the definition and rules for managing conflicts of interests and other restrictions. Application of these rules was broadened to include all public servants; however, the employees on labour contracts and majority of the employees of the Legal Entities of Public Law were not covered.¹¹⁸

The new Law on Countering Corruption and the Law on Civil Service of **Kazakhstan** expanded the provisions on the prevention and management of conflict of interests. However, the definition was not fully in line with international standards and the liability for violations is not effective.¹¹⁹

Kyrgyzstan adopted a new Law on Conflict of Interests. The law set a number of prohibitions, including restrictions on the exercise of the function of supervision, control and conclusion of contracts, acceptance of gifts and donations, and the exercise of the representative functions, including in private commercial

enterprises. However, the law did not cover apparent conflict of interest and lacked the implementation mechanism.¹²⁰

Mongolia's Law on Regulation of Public and Private Interests and Prevention of Conflict of Interest in Civil Service provided for key substantive regulations. However, procedural rules and sanctions were not in place. The law was recently amended to allow appointment on civil service positions in the situations of conflict of interest, which is a negative development.¹²¹

Tajikistan revised the notion of conflict of interest in the Law on Fight against Corruption and the Law on Civil Service, however the definition was still incompatible with the international standards. New restrictions were introduced related to the membership to the supervisory councils, governing bodies for commercial organisations, and opening bank accounts abroad.¹²²

Uzbekistan introduced provisions on prevention of conflict of interest in the Law on Counteracting Corruption, however, further substantive regulations were required to put them in practice. Liability was limited to disciplinary sanctions and a model procedure for resolving conflict of interest in public service was not approved. The draft law on Public Service of Uzbekistan had a number of new restrictions, including holding positions under the direct subordination of a relative, engaging in paid activities, other than teaching, research or creative activities, political party membership, membership of a management board of a commercial organisation, holding shares or interests in an organisation under the control of a public authority where the public servant is employed, etc.¹²³

Among IAP countries, **Ukraine** stands out with its legal and institutional framework on conflict of interest, as well as its practice which was further advanced since the previous monitoring round. Consistent and unbiased enforcement of rules seemed to remain a main challenge though. The following box highlights the main aspects of Ukraine's laws and practice on the issue.

Box 12. Conflict of interest regime in Ukraine

The law on Prevention of Corruption of Ukraine (enacted in April 2015) introduced regulations on preventing, managing and resolving conflict of interests. It applies to all professional and political public officials. Types of resolution of ad hoc COI include abstention from decision-making, suspension from performing duties, restricting access to certain information, decision-making under external oversight, reassignment to another position or dismissal. Administrative sanctions are foreseen for violations.

The National Agency for the Prevention of Corruption (NACP), among other functions, is responsible for monitoring and enforcement of COI, as well as guidance, consultation, training and awareness raising. NACP can issue a legally binding notice to heads of agencies requiring them to: eliminate the violations; conduct an internal investigation; take a disciplinary action. It can also initiate administrative liability for violations. In 2017, it issued 159 administrative protocols. NACP has issued methodological guidance for central and local government, carried out information campaigns and training. A campaign "Conflict of interests: need to know!" was conducted in cooperation with the UNDP. It also plans to introduce an electronic case management system for COI.

In 2018, number of protocols reached 497. Overall in these 2 years, the NACP issued administrative protocols against 11 parliamentarians, 4 judges, 4 prosecutors, and more than 80 deputies of local councils. Nevertheless, the NACP in exercise of its enforcement powers in relation to the high-level officials has been considered less proactive and sometimes biased as reported by civil society.

Source: Law of Ukraine on Corruption Prevention; OECD/ACN (2017), Fourth monitoring round report on Ukraine, pp. 58-59; OECD/ACN (2019), Progress update reports by Ukraine, pp. 43-47, www.oecd.org/corruption/acn/OECD-ACN-Ukraine-Progress-Update-2019-EN.pdf.

Gifts

International standards provide for restrictions on receiving gifts by public officials. Article 18 of the Recommendation No. R(2000) 10 of the Council of Europe Committee of Ministers of Member States on Codes of Conduct for Public Officials provide that public officials should not demand or accept gifts, favours, hospitality or other benefits that could cast doubt on their impartiality. Conventional hospitality or minor gifts are not included. Article 19 further provides guidance on what the official has to do in case he is offered a gift. Countries can decide on the criteria for acceptable gifts.¹²⁴

IAP monitoring did not look into regulations on gifts consistently, thus, the conclusions are not comprehensive. Nevertheless, it can be concluded that most of the IAP countries do have regulations on gifts, which usually include restrictions to accept gifts above certain threshold, obligation to report gifts, obligation to register gifts and transfer unacceptable gifts to the state. As shown below it is also a common practice to declare gifts on the asset disclosure forms.

Post-employment restrictions

Attracting experienced professionals to the public sector is an important objective in the ACN region, where the lack of skilled workforce is a significant challenge. At the same time, mobility between public and private sector may create integrity risks that require regulations. To regulate so-called ‘revolving doors’, international standards provide¹²⁵ for cooling off periods after public service and prohibitions on disclosing information obtained when performing duties in public service. In addition, some countries put in place pre-public employment restrictions on private sector employees or lobbyists or those who negotiate public sector contracts on behalf of a company (Australia, Austria, France, Israel, Japan, the Netherlands and New Zealand). Previous employments for potential conflicts of interest are assessed during the recruitment, and when in public service, conflicts of interests are managed through recusals from involvement in affected decision-making or restrictions from certain information.

Post-employment restrictions are in place in most of the IAP countries, however, limited data is available on their enforcement. This may be due to the lack sanctions and enforcement mechanisms.

In **Armenia**, regulations for post-employment restrictions have been revised. The Public Service Law provides for disciplinary responsibility for violations. However, these rules do not apply to political positions. In **Azerbaijan**, post-employment restrictions are provided in the Law on Rules of Ethics Conduct of Civil Servants. **Georgia** has recently amended the post-employment restrictions provision to prohibit disclosure of secrets and confidential information. **Ukraine** provides for post-employment restrictions, such as cooling off periods for private employment contract or representation of the interests of related institution, as well as on disclosure or use for their own interests of information received in the public service. Violation of these rules can result in invalidation of related contracts or transactions on the basis of an administrative proceedings initiated by the NACP. **Mongolia** has some limited practice of enforcing post-employment restrictions: one person was fined by 720 000 tugriks (240 euros) for violating post-employment restriction. Two other violations of post-employment restrictions have been reported but not followed up due to the expiry of statute of limitation.¹²⁶

Box 13. Regulation of new jobs for former ministers and senior civil servants in the UK

When taking up any new paid or unpaid appointment within 2 years of leaving office, former official must apply for advice on the suitability of the new post. The Advisory Committee on Business Appointments (ACOBA) considers applications from the most senior levels: ministers; permanent secretaries (and their equivalents); directors-general (and their equivalents). UK's Business Appointment Rules for Civil Servants contain post-employment restrictions.

Applications from all other levels of Crown servant are handled by their employing departments in line with the Cabinet Office's guidelines for departments and their own internal processes.

Persons can put in a speculative application as long as able to provide enough information about the position hoping to take up. Person can get informal advice from ACOBA if exploring potential employment areas. The final formal advice letters of ACOBA are published on website.

The purpose of the system is to: avoid any suspicion that an appointment might be a reward for past favours; avoid the risk that an employer might gain an improper advantage by appointing a former official who holds information about its competitors, or about impending government policy; avoid the risk of a former official or minister improperly exploiting privileged access to contacts in government.

Source: www.gov.uk/government/organisations/advisory-committee-on-business-appointments.

Box 14. Post-employment restrictions in Lithuania

Employment: Within one year to take up employment (head / deputy head of an enterprise or an enterprise controlled by it; council or board member; other office directly related to decision-making in enterprise management, property management, financial accounting and control), IF during the last year of work official's duties were directly related to the supervision or control of operations of the said enterprise or the enterprise controlled by it or that the person took an active part in the preparation, consideration and taking decisions favourable for these companies to obtain state orders or to receive financial assistance under the tender or other procedures.

Contracts: During one year to enter into contracts with the institution or make use of individual privileges provided by the institution in which the person held office for the last year. Concerns the former official and an enterprise in which he or his close persons hold over 10% of the authorised capital or material contribution, or are employed in the management or audit institutions.

Representation: During one year represent natural or legal persons in the institution in which the person held office during the last year. During one year represent natural or legal persons in other state or municipal institutions on the issues which had been assigned to the person's official functions.

Source: Law of the Republic of Lithuania on the Adjustment of Public and Private Interests in the Civil Service.

Institutional framework

Conflict of interest policies should be monitored, enforced and coordinated centrally.¹²⁷ Collection and analysis of relevant data is important for evidence-based policy and reform, including awareness raising and teaching. Enforcement should be consistent and unbiased and be seen as such by public. Thus, addressing allegations with a degree of transparency is key to building public trust and promoting culture

of integrity. Special emphasis should be made on high-ranking and political officials, as well as high-risk areas. Apart from central bodies, a dedicated function, person or unit, should be placed in individual agencies in charge of promoting integrity and providing ad hoc guidance, including on COI issues. Such functions should be separated from detection or enforcement¹²⁸ and coordination should be ensured centrally. For example, Canadian COI Network provides a platform for experience sharing and capacity building across.¹²⁹

In the ACN region, oversight is usually performed by the specialised anti-corruption institutions, prevention bodies or ethics commissions. These institutions are usually responsible for developing COI policies, monitoring implementation, guidance, training and awareness raising, as well as providing recommendations to individual agencies on concrete cases. Enforcement functions include resolution of COI when the conflict cannot be resolved internally, disciplinary and sometimes administrative actions for violations. In a number of countries, conflicts of interest of parliamentarians and judges are subject to separate institutional set up, e.g. of the parliamentary committees and relevant parts of judicial administration. Some countries have contact points in each public agency, to provide guidance to staff of the agency and coordination with central authority. Disciplinary action is usually initiated by internal control units within public bodies or similar functions.

In **Latvia**, conflict of interest oversight is the responsibility of KNAB. **Lithuania** has a dedicated body, Chief Official Ethic Commission. **Estonia** does not have a centralized enforcement body, and individual public agencies are responsible for the implementation. Estonia prioritises prevention using teaching and awareness raising tools to promote integrity, rather than punishment. In **Romania**, these functions are performed by the National Integrity Agency and its integrity inspectors. In **Slovenia**, Commission for Prevention of Corruption is in charge. Dedicated bodies operate in **Albania**, **Bosnia and Herzegovina**, **Croatia** and **Moldova**. Whereas in **North Macedonia**, **Montenegro** and **Serbia** conflict of interest related functions are carried out by preventive agencies.

In **Armenia**, it was planned that the future independent Commission for Prevention of Corruption (CPC) that will replace the Commission of Ethics for High Ranking Officials, will have a broad mandate on conflict of interests. CPC will be able to issue general guidelines and clarifications on specific integrity-related questions, whereas ethics commissions in public sector bodies and ethics commission for civil service will review cases and provide recommendations on resolving them. Each public agency will also have a position of “integrity organiser” with specific duties related to ethics, guidance on COI and disciplinary action.¹³⁰

Enforcement function is decentralized in **Georgia** and internal audit units in the line ministries and agencies (inspectorate generals in some bodies) are responsible for enforcement. In **Mongolia**, the Legal Standing Committee of the Parliament (in relation to the MPs and IAAC staff), General Judicial Council (in relation to judges) and the IAAC (for all other public agencies) are responsible. The IAAC’s Research and Inspection Department provides some ad hoc guidance and assistance to public bodies.

Enforcement of COI regulations in IAP countries has remained low. Comprehensive statistics on resolution and enforcement of COI that could be used for policy planning and implementation are generally not maintained. **Azerbaijan**, **Georgia**, **Kyrgyzstan** and **Uzbekistan** did not have cases at all, despite allegations. In **Georgia**, multiple cases of conflict of interest have been detected by the media or NGOs. For example, according to NGOs, several high-ranking officials had moved to the private sector immediately after leaving the government, but no cases were investigated and sanctioned.¹³¹

In **Mongolia**, three public servants have been sanctioned by decreasing salary for violating rules on incompatibilities.¹³² In **Kazakhstan**, reportedly there were first cases of detected violations of COI regulations, but data is not available.¹³³ In **Tajikistan**, 36 disciplinary sanctions included warnings, demotions and dismissals.¹³⁴

Armenia has shown some enforcement efforts: 91 companies were found to have links with high-ranking officials and their relatives and 709 public procurement contracts concluded with these companies, 14% of these in violation of the conflict of interest regulations, but no information is available regarding the follow up or sanctions.¹³⁵ **Ukraine** has demonstrated enforcement efforts including in relation to MPs, local level deputies, judges and prosecutors. Nevertheless, the National Agency on Corruption Prevention has been criticised for being selective and biased.¹³⁶

Table 17. Institutional framework for COI management in IAP countries

	Policy design, guidance	Disciplinary action	Administrative action	Recommendations on resolution	Individual counselling	Data collection analysis	Training, awareness
Armenia	■	◆ ◎ ○	■	■	○	■ ○	■
Azerbaijan	-	-	-	-	-	-	○
Georgia	-	●	▲	-	-	-	▲
Kazakhstan	-	○	-	○	-	▲	▲
Kyrgyzstan	-	-	-	◎	-	-	▲ ◎
Mongolia	■	■	■	■	-	■ ◎	■
Tajikistan	-	○	-	-	-	-	-
Ukraine	■	■ ○	■	■	■	■	■
Uzbekistan	-	◎ ○	-	-	-	-	-
Total							
■ Corruption prevention agency	3	2	3	3	1	3	3
◆ Ethics commission		1					
▲ Civil service agencies			1			1	3
◎ Individual ethics commissions		2		1		1	1
● General inspectorates		1					
○ Integrity contact points		5		1	1	1	1
-- NA	6	2	5	4	7	5	2

Source: IAP fourth monitoring round reports, OECD/ACN secretariat research.

The ACN annual report for 2018 data showed some level of enforcement in other ACN countries. The National Integrity Agency of **Romania** opened 59 administrative cases resulting in 17 dismissals and 8 cases of salary decrease between 5 % and 20% for a defined period of time (from 1 to 6 months). 5 cases have been referred to prosecution. In **Lithuania**, 283 investigations have been carried out by the central body with 239 confirmed violations and 488 investigations by state and local bodies themselves with 319 violations confirmed. Main sanctions were suspension of bonuses and promotions.

Montenegro's anti-corruption agency issued 185 mandatory opinions related to taking decisions in COI, incompatibility of public functions, membership in governing bodies, accepting fees and violating post-employment restrictions. In addition, 71 administrative proceedings confirmed 60 violations. 77 public officials resigned, including 13 from companies. 5 officials were dismissed, and 10 reprimands were issued. 3 public officials were ordered to return money to the state budget (in total EUR 4,606). Total EUR 4,930 has been imposed as fines and property with the value of EUR 12,540 was confiscated.¹³⁷

Conflict of interest is still perceived widespread among political officials in the IAP countries and public trust is low. In most IAP countries, general integrity rules apply to MPs and other political officials (**Armenia, Mongolia, Ukraine**). Only **Georgia** has adopted a separate code of ethics for MPs in addition to having them covered by the relevant law. In **Mongolia** there were 15 complaints regarding alleged violations by MPs, however none of them have been followed up. Although MPs had business interests and were engaged in business activities, they rarely recused themselves from voting.¹³⁸ In **Ukraine**, NACP was believed to be failing to objectively enforce integrity rules against political officials.¹³⁹

Guidance, awareness and training

Along with good laws, public administrations need guidelines, training manuals, instructions and other educational material for dissemination in public service. Case study-based teaching should be provided to explain what COI is and what steps should be taken to resolve it, together with ad hoc advice or individual counselling. Personal leadership, example and taking responsibility by managers is also encouraged.

Several IAP countries have produced methodological guidance on conflict of interests (**Armenia, Kazakhstan and Ukraine**). Substantial efforts have been put into awareness raising activities. However, targeted trainings using case studies and related practical content were generally rare. Individual counselling and guidance were provided only in a few cases. In **Mongolia**, 10137, 6962 and 12 686 professionals have been trained in 2015, 2016 and 2017 respectively. **Ukraine** conducted wide-ranging awareness campaign and trainings. **Uzbekistan** provided training on COI as a part of its standard curriculum on integrity, implemented by the Anti-Corruption and Crime Prevention Centre under the Academy of the General Prosecutor's Office. In addition, it is part of the training course for senior executives carried out by the Academy of Public Administration.

Estonia produced e-training material on corruption issues, including COI. Material was available on the Ministry of Justice's website.¹⁴⁰ The site also included a section on COI in which case examples and solutions were given. Furthermore, anti-corruption e-learning programme is being developed to present the principles of Anti-Corruption Act to all public sector employees, including civil servants, university and hospital employees, policemen and others. The programme will include YouTube videos and ended by an e-test and certificate. This is a cost-efficient way of training all public officials on COI.¹⁴¹

An interesting tool for resolution of COI was developed by **Argentina**, a web-based COI simulator that allows an individual to assess if he or she is in COI situation or not. If the potential violation is detected the person should seek guidance from the responsible authority.¹⁴²

Conclusions

The main achievement in the area of conflict of interest was further alignment of the regulations with international standards and initial efforts to put these rules in practice. However, most IAP countries lacked detailed procedures for enforcing these regulations. There were some good practices of methodological guidance, training and awareness raising but practical teaching and individual counselling have been lacking. Enforcement, especially in relation to high-ranking officials, has been low, inconsistent and often seen as biased.

See recommendations at the end of this chapter.

Asset and interest disclosure

Disclosure of assets and interests is a powerful anti-corruption tool. It can help identify and prevent conflict of interest and detect illicit enrichment as well as support financial investigations, enhance accountability, transparency and public trust in government. Public disclosure of asset and interest declarations may also boost civic activism and empower investigative journalists with information to uncover unjustified wealth of public officials and other violations of integrity.

UNCAC obliges states parties to endeavour to establish systems requiring public officials to declare “inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials” (Art. 8.5). It also encourages states parties to consider establishing effective financial disclosure systems with appropriate sanctions for non-compliance (Art. 52.5). According to the World Bank, 161 countries have introduced the tool by 2017.¹⁴³ Majority of the ACN countries are using it as well.

The ACN has covered this topic extensively in its work on prevention of corruption.¹⁴⁴ The ACN/SIGMA joint publication “Asset Declarations for Public Officials, A Tool to Prevent Corruption”¹⁴⁵ released in 2011 has been updated and its publication is forthcoming. The publication analyses regional practice and provides recommendations. Further guidance on asset and interest disclosure is available in various publications of the World Bank, work of GRECO, UNCAC implementation reviews¹⁴⁶ and other international documents.

The previous Summary Report highlighted positive developments in strengthening asset and interest disclosure systems (specifically in Ukraine, Armenia and Georgia) and recommended to step up enforcement and focus on high level officials and officials in corruption-risk areas, and provide bodies responsible for implementation of asset declarations with duties, rights and resources necessary to ensure publication, verification, sanctioning, collecting statistics and measuring impact.¹⁴⁷

In the course of the fourth round of monitoring, the IAP countries have further improved their systems, for example, **Georgia** introduced the system of verification of declarations, **Armenia** substantially enhanced legal and institutional framework and started applying new regulations in practice, **Ukraine** launched a fully electronic system of submission and disclosure of comprehensive asset and interest declarations by about 1 million public officials and showed progress in enforcement efforts, including verification and follow up on violations, including with criminal investigations. **Kyrgyzstan** improved its regulations, but they needed further alignment with international standards. **Mongolia** made some progress by publishing more information from declarations online and introducing electronic system to replace paper-based declarations. **Uzbekistan** finally put this issue on its policy agenda and launched the reform process.

Other three IAP countries did not show progress: **Kazakhstan** further delayed the introduction of a new system (the existing one was short of international standards and was inefficient).¹⁴⁸ Similarly, **Tajikistan**’s asset disclosure was not in line with international standards, in particular because it did not include declaration of interests, declarations were not published and systematically verified, the oversight was not centralized and secondary legislation necessary for implementation was missing.¹⁴⁹ In **Azerbaijan**, situation remained unchanged. While regulations were in place since 2004, the form of asset declarations has not been adopted for 15 years and the implementation has yet to start.¹⁵⁰

The EU in its document ‘20 deliverables for 2020’ for the Eastern Partnership (EaP) countries¹⁵¹, under Deliverable 9 strengthening rule of law and anti-corruption mechanisms, focuses, inter alia, on the effective systems of assets and interest disclosure, for at least members of parliament and politicians and high-ranking officials. This includes an electronic, easily searchable public registry of interests and assets, effective verification mechanism and dissuasive sanctions.

The table shows that at least 4 of 6 EaP countries have put in place electronic asset and interest disclosure systems with publicly available data (open data format in 3 countries) with verification mechanisms and administrative and criminal sanctions. These systems include members of parliament and political officials. As regards effective verification and dissuasive sanction, Ukraine, Armenia and Georgia have shown some enforcement by verifying declarations and applying administrative sanctions in practice. However, the following sections show overall lack of rigour in enforcement as well as perceived bias when it comes to the high-level officials.

Table 18. Asset and interest disclosure in IAP countries

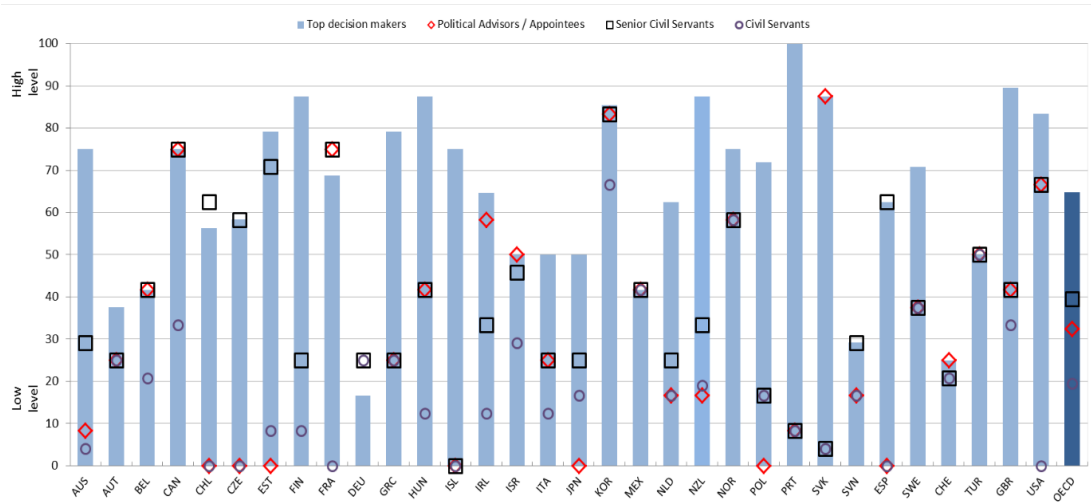
	Asset and Interest Declarations	Electronic system	Declarations published	Central oversight body	Verification	Administrative sanctions for violations	Criminal sanctions for violations
Armenia	◆	●	▲	●	□①	●✓	●
Azerbaijan	○	○	○	○	○	○	○
Georgia	◆	●❖	▲	●	□①⊕	●✓	●
Kazakhstan	◆	○	○	●	●	●	○
Kyrgyzstan	◆	●	◎	●	●	●	●
Mongolia	◆	●	◎	○	⊕①	●✓	○
Moldova*	◆	●	●	●	●①	●	●
Tajikistan	■	○	○	○	●	○	○
Uzbekistan	○	○	○	○	○	○	○
Ukraine	◆	●❖	▲	●	①⊕	●✓	●
Total							
● Yes		5	6	5	8	7	4
○ No							
◆ Both asset and interest	7						
■ Only assets	1						
▲ Open data format			3				
◎ Not in open data format			2				
❖ Expanded search		2					
□ Random selection					2		
⊕ Risk-based					3		
① Citizen complaints					4		
✓ Sanctions applied in practice						4	0

Source: IAP fourth round monitoring reports, OECD/ACN secretariat research. *Information on Moldova is based on online sources

Asset and interest declarations usually apply to the middle to high-level public officials, elected and appointed, judges, prosecutors and managers of SOEs. Some countries extend these rules to a broader category of public servants. Many OECD countries take risk-based approach. This is done not to overburden the system and make the best use of the available resources.¹⁵² Indeed, when considering the limited resources, priority should be given to high-level officials and corruption risk areas. It is important to include family members as well.¹⁵³

As regards the substantive scope, declarations should include sufficient information that would enable identifying illicit enrichment and conflict of interest situations. Depending on the objectives the system is designed to serve, it may either focus on detecting illicit enrichment and include information about movable and immovable assets, income, stocks and securities, liabilities etc., to allow for financial analysis across time. Or if the aim is identifying conflict of interest the focus would be on positions held outside the office, sources of income, gifts, and names of companies in which the official has interests, etc. It is more common to focus on both objectives at the same time (so-called dual systems of asset disclosure) as is the case in most IAP countries.

Figure 11. Level of disclosure and public availability of private interests by the level of public officials in the executive branch

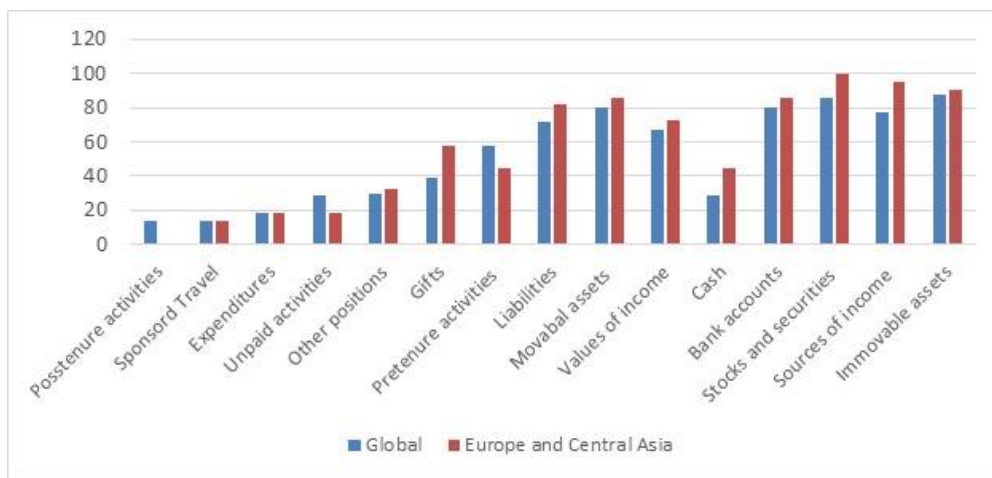


Source: OECD (2014), Survey on Managing Conflict of Interest in the Executive Branch and Whistle-blower Protection, OECD, Paris.

Advanced systems would include: financial assets (income, movable or immovable assets, shares etc. with the acquisition value), sources of income, and information on other shareholders of assets, liabilities with dates of when it was incurred and when it is due, paid and non-paid outside positions, expenditures, gifts and employment history. Good practice approach is to also include assets effectively used or controlled by a public official even if he or she is not a direct or formally registered owner. It is suggested, that beneficial ownership information can be a complementary requirement only to the politically exposed persons.¹⁵⁴ Notably, since 2016 **Ukraine** requires disclosure and publication of information about beneficial ownership in legal entities and beneficial ownership of assets and income. In 2018, **Moldova** updated its asset declaration law also to require disclosure of the beneficial ownership in legal entities and assets.

The following figure can be illustrative on what to include in the disclosure forms:

Figure 12. Type of information in disclosure forms



Source: Based on data from Rossi, Ivana M., Laura Pop, and Tammar Berger. 2017. Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure. Stolen Asset Recovery (StAR) Series, cited above, p. 34.

Table 19. Scope of the asset and interest declaration form in Ukraine

Section	Objects covered	Value threshold
Real estate	Land plots, residential or other real estate, parking space, etc.	No threshold
Unfinished construction	Any unfinished buildings and land plots where they are located	No threshold
Movable valuables	Jewellery, art, antiques, weapons, animals, gadgets, etc.	Above EUR 8,000 per item
Vehicles	Automobiles, ships, aircrafts, machinery, etc.	No threshold
Securities	Private and public bonds, promissory notes, cheques, derivatives, etc.	No threshold
Corporate rights	Shares, etc.	
Legal persons, trusts and other similar legal arrangements in which declarant or family member is a beneficial owner (controller)	Legal persons in Ukraine and abroad, including non-profit entities. Trusts and other similar legal arrangements (from January 2020)	No threshold
Intangible rights	Intellectual property rights, licences, etc. Cryptocurrencies (from January 2020)	No threshold
Income	Salary, fees, dividends, royalties, interest, insurance payments, charity donations, pension, social benefits, etc.	No threshold
Gifts	Any gifts defined as money or property, benefits, advantages, services, intangible assets received free of charge or at the price below the minimum market price	Above EUR 400 per non-pecuniary gift; above EUR 400 in total for pecuniary gifts from one source during a year
Monetary assets	Cash in any currency, cash outside of banks, money in bank accounts, loans to other persons, bank metals, etc.	Total values of all monetary assets above EUR 4,000
Bank accounts and safe deposit boxes	Bank accounts in Ukraine and abroad regardless of their balance, opened in the name of the declarant or family member by any person; safe deposit boxes (vaults) to which declarant or family member has access (from January 2020)	No threshold
Beneficial ownership of any asset. <i>*Applies only to high- and mid-level officials</i>	Any property or income that formally belongs to a third person but which is in fact controlled by the declarant/family member or from which declarant/family member received/can receive income	Thresholds for relevant declaration items apply
Financial liabilities	Credits/loans received from any person/entity, leasing, insurance contracts, interest paid, insurance, property in mortgage, etc.	If the liability is above EUR 4,000 (since January 2020)
Expenditures and other transactions	Any expenditure or transaction as a result of which declarant acquired or ceased to own or use any asset. <i>*Only for the declarant, not family members</i>	Above EUR 4,000 per one expenditure
Any employment/engagement in addition to the main job	Any relevant paid or non-paid job <i>*Only for the declarant, not family members</i>	No threshold
Membership in organisations	Membership in any civic association, self-regulatory or professional association, charity, as well as membership in management or supervisory bodies of such organisations <i>*Only for the declarant, not family members</i>	No threshold

Form and frequency of submission

Public officials are usually required to submit asset and interest declarations when taking up duties, at regular intervals while being in office and upon termination of office. Some countries require updating declarations ad hoc in case of a substantial change in public official's assets and interest (**Ukraine, Mongolia**). A few countries have introduced declarations for candidates of public office (**Mongolia, Ukraine**). Some countries also have post-employment declarations submitted once or twice after termination office to track changes in assets and post-employment restrictions after leaving office (e.g. in **Georgia, Latvia, Ukraine**). Both assets and interest are usually included in one form, but some countries have separate forms (**Mongolia, France**).

In the modern world of information technologies, asset and interest disclosure can be fully managed electronically. Advanced systems enable not only electronic submission and maintenance of data but have a number of features that make verification and public oversight simple and efficient. Such features include interoperability of databases, automated red flags analysis, advanced search, etc. According to the World

Bank research, the benefits of transitioning to e-filing can be summarised as follows: convenience for declarants; better data management and improved security; more effective review and enforcement; and increased transparency and public accountability.¹⁵⁵

Furthermore, user-friendly systems can ease the submission process, for example, by storing data from previous year's declarations that will only need to be updated with the new information (as it works e.g. in **Georgia, Ukraine**). Countries, therefore, should consider transitioning from paper-based systems to fully digitised asset and interest disclosure. To promote civil society oversight, data should be published in machine readable (open data) format. Among the IAP countries, **Ukraine, Georgia** and **Armenia** have introduced and use electronic systems. **Moldova** introduced such system in 2017.

Box 15. Possible benefits of an electronic asset and interest disclosure system

- All declarations filed through one website using one standard electronic form.
- Simplified data entry by the declarant, user-friendly interface (hints, built-in guidelines).
- Secure authentication protocol.
- Real time error prevention.
- Secure data storage (public-access website separated from the main database).
- Submitted documents cannot be withdrawn or changed in the system.
- Each document displays the date and time of its submission.
- Built-in verification of data consistency.
- Use of dropdown lists, avoiding error-prone “open fields”.
- E-mail notifications about registration in the system, deadlines, successful submission of the declaration, etc.
- Free read-only access to the public without prior identification/authorization.
- Public API for open data access to declarations on the public website.
- A separate module for the automated verification of data in the submitted declarations includes: 1. checking data for inconsistencies within one declaration; 2. comparing a declaration with the previous declarations from the same declarant to look for deviations or other “red flags”; 3. comparing data from the declaration with external data sources, such as public databases (registers of properties, companies, etc.).

Source: Based on the case study of Ukraine in: Kotlyar, Dmytro; Pop, Laura. 2019. E-filing Asset Declarations: Benefits and Challenges. Washington, D.C.: World Bank Group, p. 14, <http://documents.worldbank.org/curated/en/448191561650076794/E-filing-Asset-Declarations-Benefits-and-Challenges>

Oversight

Oversight of asset and interest disclosure can be centralised or decentralised. Whereas centralised model is preferred, countries can decide on a system that is most suitable in their context. Whichever model is chosen, sufficient resources, specialisation, independent exercise of functions without outside interference and efficient co-operation with other state bodies must be ensured. Oversight functions include collection of declarations, control of submission, verification of the declarations' content and sanctioning powers, as well as co-ordination and data collection for evidence-based policy. The body responsible for collection, publication and verification of declarations should have a clear mandate, sufficient resources and access to information and databases necessary to conduct such verification. Responsible bodies should also provide guidance and promote compliance by raising awareness, reminders, etc.

Review of country experiences reveals the type of bodies responsible for oversight can vary from anti-corruption institutions to civil service agencies, tax authorities, or audit institutions. In addition, parliamentary and judicial bodies are usually responsible for MPs and judges, respectively as shown in the table below.

Transparency and civic oversight

Efficiency of asset and interest disclosure as a preventive instrument is significantly boosted when declarations are open for public scrutiny. Disclosure can be a signal to citizens that government is accountable and open to public scrutiny. It also strengthens the deterrent effect of the tool and builds social pressure to follow integrity standards.¹⁵⁶ Many countries have chosen to open up these data, with minimum requirements of personal data protection in place, in machine readable format, to allow for greater civic oversight. While countries still use the privacy argument to restrict data, it is recognised that the public interest justifies such an interference with the right of privacy of public officials.¹⁵⁷

About 97% of the OECD high income countries require publication of asset declarations. Three IAP countries publish asset declarations in open data format (**Armenia, Georgia, Ukraine**) and two more countries do so in conventional formats. An opposite is the case in **Kazakhstan**, where this information is considered secret information and its disclosure is prohibited. Opening up declarations has enabled greater public scrutiny and civil society activity in the countries, where civil society is using this information to hold governments accountable to follow up on alleged irregularities.

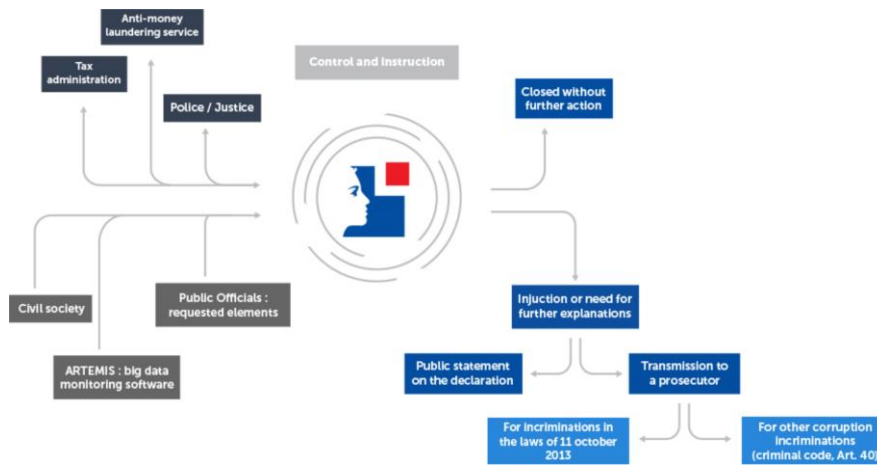
Verification

Verification is an important element of asset and interest disclosure systems that enables identification of actual or potential conflict of interest or flags possible unexplained wealth that needs a follow up. Impartial and rigorous verification is crucial for the credibility of the system and public trust. Verification can lead to requests to rectify errors, disciplinary or administrative sanctions or forwarding the case to the law enforcement for investigation in case of possible criminal offences.

There can be several levels of verification. First level is checking for complete and timely submission of declarations. This can be done on the central level or in a decentralised way by the institutions where the declarants work (e.g. the case of **Ukraine**). The accuracy of the submitted data can be then crosschecked automatically with other databases and registers held by the government institutions (e.g. registers of real estate, vehicles, legal entities). To enable such automated cross-checks the database of asset declarations has to be connected electronically with other registers either directly on bilateral basis (as is the case now in Ukraine where connection with 13 registers has been established and used for cross-checks) or through the interoperability platform (e.g. such platform is operational in **Moldova** but it has not been used so far for bulk automated comparison of data from declarations with other registers). Advanced electronic systems (e.g. in Ukraine) also perform at the initial stage automated risk analysis of declarations based on a set of pre-determined red flags that compare data within one declaration and among several declarations of the declarant looking for risks and then drawing a risk report on each declaration.

The following step is the “manual” in-depth verification (sometimes called audit) of the declaration by the staff of the verification agency. A number of grounds may trigger such a verification, for example: a) a random selection of declarations; b) declarations of persons holding specific high-risk positions or functions; c) based on the risks detected through automated red flags analysis; d) external complaints of the public or notifications from other public authorities; e) initiated *ex officio* by the verification agency based on the media reports and other open sources. In **France**, for example, an in-depth audit process is triggered according to risk exposure, missing or wrong information or late filing, abnormalities in previous years, reports from civil society and a random computer-generated selection.

Figure 13. Asset declaration verification process by French HATVP



Source: presentation by Ms. Zubek, HATVP, at the roundtable “Asset and Interest Disclosure as a Tool for Preventing and Fighting Corruption: Practical Solutions on How to Introduce and Make it Efficient” (Tashkent, Uzbekistan, 2019).

Box 16. Verification of asset declarations in Georgia

Georgia introduced the system of monitoring of asset declarations in 2017 and assigned the oversight mandate to the Civil Service Bureau (CSB). A separate department was established within the CSB with 8 staff members to perform related functions. In addition, an independent commission is set up annually to select declarations for the monitoring procedure. The commission comprises 5 members – 3 NGO representatives and 2 representatives of academia.

Grounds for initiating monitoring are the following: a) random selection by the electronic system (up to 5% of the total number of declarants); b) selection by the independent commission; c) substantiated written complaints. The number of declarations selected by the independent commission should not exceed 5% of the total number of the declarants, of which one half is selected among declarations of political officials and another half based on the exceptional factors: particular risk of corruption, high public interest and violations identified through the monitoring.

In case violations are detected, the following course of action is taken: a) CSB issues a warning for non-substantial violations; b) in cases of administrative violations, CSB is authorised to fine the official directly; c) CSB refers the case to law enforcement bodies if there are elements of a criminal misconduct. In 2018, CSB verified 448 declarations and found violations in 59 cases. CSB found non-substantial violations and issued warnings in 31 cases; it fined 347 persons, and referred one case to the law enforcement. The number of complaint-based monitoring procedures increased from 3 in 2017 to 128 in 2018. Out of these 128 complaints, CSB discontinued 3 cases, found 3 declarations to be in line with the requirements, and referred one case to law enforcement. In other cases, CSB issued warnings and fines.

CSB publishes annual report on implementation of the action plan on verification of asset declarations at its website: <http://csb.gov.ge/ge/8745457/1138>. Reports include the list of officials whose asset declarations have been checked and results of such monitoring. At the same time, NGOs highlight irregularities in asset declarations, such as bank loans that could not be afforded given the income of a public official, suspicious origin of received and declared gifts and others, that have not been followed up by respective authorities.

Source: Information provided by the Government of Georgia; NGO reports (among others: www.transparency.ge/en/blog/bank-loans-ministers-and-their-deputies, www.transparency.ge/en/blog/gifts-received-public-officials-need-be-studied-further); OECD/ACN secretariat research.

To ensure effective verification, the responsible body should be equipped with necessary mandate and resources, as well as access to relevant databases, information and tools and provided through co-operation from other state bodies.

Box 17. Asset and interest disclosure in Ukraine

Ukraine has set a high bar for advanced asset and interest disclosure in the region. Its Law on Prevention of Corruption requires a comprehensive disclosure of assets and interests of public officials, civil servants and their family members. The system covers about one million declarants. The scope of disclosure was extended to include: cash outside of the financial institutions; valuable movable property (e.g. jewelry, antiques, art) with value above threshold; intangible assets (e.g. intellectual property rights); beneficial ownership of legal persons or any assets; unfinished construction of real estate; membership in civic unions, etc. See a table above on the scope of the declaration form.

Filing. Declarants file asset and interest disclosures through an electronic system operational since September 2016. The launch of the new system was preceded by multiple attempts to sabotage and obstruct its functioning by politicians and various decision-makers. The system allows for submission and automatic publication of declarations, including in machine-readable format (except for certain narrowly defined data). Wide public access was however restricted by closing, allegedly in violation of the law, of access to the declarations of staff of the Security Service of Ukraine. Declarations are submitted by candidates for public office, annually while in office, before leaving office and one year after leaving it. There are separate disclosure forms submitted when the declarant or family member opened a foreign bank account or when the declarant received a substantial income or acquired asset above the value threshold.

Key Figures

- NACP staff working on the verification: 20
- Number of e-documents in the public register of declarations (Sep 2019): over 4.1 million (mostly original declaration and corrected declarations)
- Declarations verified: 623 (in 2017-2018); 1,535 (Jan-Oct 2019)
- Administrative protocols on false statement: 22 (2017-2018), 22 (Jan-Oct 2019)

Oversight. The National Agency on Corruption Prevention (NACP) is responsible oversight of the financial disclosure system. The oversight over compliance with the submission requirement is decentralized – each employing agency is supposed to check its employees by reviewing the publicly available database of declarations and alert NACP is case of violation. NACP may check the compliance too, including based on the open source information. In 2019, NACP also launched the module for automated analysis of declarations based on the red flags by checking data within one declaration, among several declarations of the same person and by cross-checking data with external registers and databases. Following such automated analysis each declaration is assigned a risk rating that may trigger its full verification. As of November 2019, the NACP has concluded the MoUs for access to the data held in 16 state-owned registers that are necessary for verification of e-declarations. After additional amendments in the law (October 2019), NACP managed to obtain access to 3 remaining registers held by the Ministry of Justice.

Verification. The NACP is supposed to perform full verification of the following declarations: a) for all declarations submitted of high-level officials or officials in high-risk positions; b) when the automated analysis assigned the declaration a risk level above the threshold; c) if the declarant noted in the form that his family member refused to provide any information required in the form; d) based on the media reports and other notifications. The list of grounds for the full verification appeared to be too extensive covering

at least 100,000 declarants and setting an impossible target for the NACP which has to prioritise the verification exercise.

Sanctions. Criminal sanctions apply to intentional non-submission of the declaration and false statement if the discrepancy is more than EUR 18,000. The criminal punishment can be a fine, public works or imprisonment for up to 2 years with the ban on holding public offices. Administrative fine can be imposed for the late submission of the declaration without a valid justification and for false statement in the declaration (for the amount between about EUR 7,250 to 18,000). Any other violations related to the asset and interest disclosure are punished through disciplinary sanctions. Illicit enrichment was punished as a separate criminal offence but was found unconstitutional in 2019 (see chapter on criminal law in this report).

Despite the technical steps taken to launch the new e-declarations system and start of the verification of declarations (which intensified in 2019), the NACP has been heavily criticized by the civil society for its performance and lack of impartiality in the enforcement actions. A whistle-blower reported allegations of political interference in the verification process were not investigated, further fueling distrust of the public in this system. This led to the calls of the “re-launch” of the agency by changing its governance model (from 5-member commission to a one-head agency) and recruiting new leadership and staff. In October 2019, the parliament passed relevant amendments which started a process for the competitive selection of the new NACP head (concluded in December 2019).

Source: OECD/ACN (2017), Fourth monitoring round report on Ukraine, pp. 60-68; OECD/ACN secretariat research; country comments.

Sanctions

Violations of rules on asset declarations should entail proportionate and enforceable sanctions. Failure to submit and late submissions are usually qualified as administrative offences and intentional submission of false data is a criminal offence. However, application of the criminal sanctions is quite rare, as it is difficult to prove intent.¹⁵⁸ In the majority of OECD countries, the failure to fulfil duties related to the declaration system results in administrative or disciplinary sanctions. These are related to either the submission process or to the information provided.¹⁵⁹

Three groups of sanctions may be applicable: 1) sanctions for core offenses imposed on the declarants (late submission, non-submission, submission of false or incomplete information); 2) sanctions related to the effective enforcement of the asset declaration provisions (e.g. failure of an entity or person to provide information in response to the request of the asset declaration verification agency, non-reporting of violations related to the asset declarations); 3) sanctions for related offenses that are detected or proven through the asset declaration (unjustified of wealth, conflict of interest).

In **France** failure to submit declarations, omitting a substantial part of assets or interests, or providing a false evaluation of assets is punishable by 3 years of imprisonment and a EUR 45,000 fine. Additional penalties may be imposed, such as the loss of civic rights and the prohibition of exercising public functions. Non-compliance with decisions issued by the HATVP, or failure to disclose requested information is punishable by 1 year of imprisonment and EUR 15,000 fine. In **Albania, Georgia, Latvia, Moldova, Romania** and **Ukraine** (see above) submission of false or incomplete information in the asset declaration is a criminal offence as well.

Statistics and data for evidence-based reform

Evidence-based policy is equally important to asset and interest disclosure as to other reform efforts. Countries should collect relevant data to measure effectiveness and impact of the reform. Measuring impact of integrity policies, including effectiveness of the system is multifaceted exercise involving not only

administrative, but also survey data and different indicators. A set of variables should be integrated into the statistics systems, collected, analysed and taken into account when taking policy decisions. Such reports should be published to ensure public accountability and increased trust to the system. In addition, publication of information about sanctions may itself have a deterrent effect. The below variables could be used as indicators of objective and unbiased enforcement:

- % of asset declarations collected from the total number of declarants
- % of asset declarations published from the total number of declarants
- % of late submissions and incomplete data from total number of declarants
- % of declarations verified (full verification), of these:
 - Declarations of high-ranking officials
 - Declarations of public officials in corruption risk areas
 - On the initiative of a responsible body after detecting irregularities or risks
 - Based on media sources
 - Based on citizen/civil society complaints
 - Of all verified declarations sanctions imposed: disciplinary, administrative, criminal.
 - Of all verified % cases referred to law enforcement, % persons prosecuted, % persons convicted.

Box 18. Asset and interest disclosure in France

After various corruption scandals in France, a new independent agency was created with broad powers for promoting integrity and enforcing related laws. One of the functions of the Higher Authority for Transparency in Public Life (Haute Autorité pour la transparence de la vie publique, HATVP) is control of asset and interest declarations of 15,800 high-ranking elected and appointed officials of executive and legislative branches and state-owned companies. Online declarations are submitted through ADEL platform designed by HATVP in-house, when taking up duties, in case of a substantial change in assets and when leaving the position. Asset declarations include information about real property, movable property (e.g. financial assets, life insurance, bank accounts, vehicles), income and liabilities.

Interest declarations include pecuniary interests of a declarant and his/her spouse, such as professional activity, secondary activities, shares held, etc., and non-pecuniary interests such as membership to certain bodies and unpaid positions, charities, volunteering etc.

Key Figures

- Budget: €6.3 million for 2019
- Staff: 49 in 6 divisions
- Submitted declarations: over 42 000 in 4 years
- Cases referred to prosecution: over 60
- Published declarations: more than 7 000 since 2014
- www.hatvp.fr page views: 1.5 million-page views in 2018
- Example of sanctions:
 - Six-month suspended sentence and a €60,000 fine for a senator
 - 1-year of ineligibility, a 2-month suspended sentence, and a €5,000 fine for a former minister

- €45,000 fine for a former MP
- Four-month suspended sentence and a €30,000 fine for a former MP

Annual verification plan is approved by the board of the HATVP. The verification has three levels: (1) basic verification includes eligibility check and completeness check; (2) simple verification: content of declarations is checked for accuracy to ensure there are no errors. Any important omissions or inexplicable variation of assets and subsequently illicit enrichment can be detected at this stage and potential conflict-of-interest situations can be identified; (3) audit: selected declarations are subject to a more in-depth audit process.

While audit is systematic for certain positions and functions, for other functions it is conducted in case specific criteria are met, to spare limited resources. Audit is initiated on the following grounds, or in case of following circumstances: for functions that have high-risk exposure; incomplete or late submissions; unexplained variations of assets; random sample; external alerts (information received from citizens, media, etc).

Source: presentation by Ms. Zubek, HATVP, at the roundtable “Asset and Interest Disclosure as a Tool for Preventing and Fighting Corruption: Practical Solutions on How to Introduce and Make it Efficient” (Tashkent, Uzbekistan, 2019).

Conclusions

IAP countries have shown uneven progress in implementing asset and interest disclosure reforms. Some countries already advanced their systems and need to step up enforcement efforts, whereas others do not even have basic laws yet in place. Asset and interest disclosure has proven to be a powerful public oversight mechanism for those countries that open up data. The main challenge has been ensuring effective verification and follow up on violations, especially with respect to political officials. Objective and independent verification without political or other forms of interference has been problematic. Another area that requires improvement for better enforcement is technical capacities of the systems, such as interoperability of databases, capacities of the oversight bodies and access to data necessary to perform verification. Transitioning to e-filing is another trend that should be encouraged.

Table 20. Summary of asset and interest disclosure systems in ACN countries

Country	Categories of officials who submit declarations	Number of declarants	Number of submitted asset declarations	Body responsible for collection and verification of asset declarations	Number of staff dealing with declarations	Form of public disclosure
Albania	High level legislative and executive officials; Political officials; Governors of central bank; Civil servants of high and middle management level; Judges; Directors of SOEs; Administrators of state owned joint stock companies; Prosecutors	3201	3679	- The High Inspectorate of Declaration and Audit of Assets (for all branches of power)	70	Access to individual files upon request
Armenia	High level legislative and executive officials; Senior Political officials; Governors of central bank; Civil servants of high management level; High level judges; prosecutors	3500	3400	- Ethics Commission for High Ranking Officials	No data	No data
Azerbaijan	All public officials	No data		- Commission on Combating Corruption	None	No public disclosure
Belarus	Elected officials and their spouses and children; Civil servants and candidates to civil service positions	No data		- The Ministry of Taxes and Revenue - Personnel departments of state bodies - Heads of superior bodies	No data	No public disclosure
Bosnia and Herzegovina	High level legislative and executive officials and their advisors; Governors of central bank; Candidates to legislative positions; Judges; Prosecutors	No data	1700	- The Central Election Commission - High Judicial and Prosecutorial Council	4	Access to individual files upon request
Bulgaria	High level legislative and executive officials and their deputies; Senior political officials; Governors of central bank; Senior Judges; Civil servants of high and middle management levels; Members of governing bodies of SOEs in energy sector; Judges; Prosecutors	No data	No data	- Commission for Anti-Corruption and Illegal Assets Forfeiture - Supreme Judicial Council (Judges, Prosecutors) - Public Registry Department unit in the National Audit Office	No data	Online publication

Country	Categories of officials who submit declarations	Number of declarants	Number of submitted asset declarations	Body responsible for collection and verification of asset declarations	Number of staff dealing with declarations	Form of public disclosure
Croatia	High level legislative and executive officials; Judges; Prosecutors	2158	941	- Commission for the Prevention of Conflict of Interest (public officials) - High Judicial and Prosecutorial Council (judges, prosecutors)	12 (Commission for the Prevention of Conflict of Interest)	Online publication
Estonia	High level executive and legislative officials; Political officials; Civil servants of high management levels; Judges	4640	3796	- Parliamentary Committee - Depository of declarations is appointed by the head of an agency or authorized body (e.g. local government body)	No data	Online publication
Georgia	High level legislative and executive officials; Political officials; Civil servants of high and middle management levels; Head and board members of central bank; Judges; Prosecutors; Heads of SOEs; Heads of legal entities under public law; Heads of public non-entrepreneurial legal entities and subsidiaries	5,600 (as of end of October 2019)	5,809	- Departments in the Civil Service Bureau	14	Online publication
Kazakhstan	High level legislative officials; Judges; Civil servants; Candidates to civil service positions; Persons released from prison; Persons dismissed from civil service	No data	506 408	- The Tax Committee of the Ministry of Finance	No data	No public disclosure
Kosovo	High level legislative and executive officials (state and local); Political officials (state and local); Judges; Prosecutors; Head and board members of central bank; Heads and board members of SOEs	5 353	5 270	- Anti-corruption Agency	8 + 5 contracted interns	Online publication
Kyrgyzstan	Political officials, senior state positions, special state positions, employees of law enforcement bodies, diplomats, military servicemen, municipal officials, officials of the Central Bank, civil servants and municipal servants	No data	No data	- State Tax Service	No data	Online publication of summary information only
Latvia	High level legislative and executive officials; Political officials; Civil servants; Governors of central bank; Judges; Prosecutors	57 676	57 652	- Department in the State Revenue Service - Corruption Prevention and Combating Bureau	20	Online publication

Country	Categories of officials who submit declarations	Number of declarants	Number of submitted asset declarations	Body responsible for collection and verification of asset declarations	Number of staff dealing with declarations	Form of public disclosure
Lithuania	High level legislative and executive officials; Political officials and candidates; Civil servants; Judges; Heads of state owned enterprises; Heads of political parties and their deputies; Candidates to elected positions.	No data	127 900	- The State Tax Inspection (for all branches of power) - Chief Official Ethics Commission (for members of parliament) - Specialized public officials or units in each state body	80	Online publication
North Macedonia	High level legislative and executive officials; Political officials (Elected submit to SCPC and appointed to PRO); Civil servants (submit declarations to the institutions where they are employed); SOE employees; Judiciary employees	No data	4082	- State Commission for Prevention of Corruption - Public Revenue Office	5	Online publication (except civil servants)
Mongolia	High level legislative and executive officials; Political officials; Civil servants (submit declarations to the institutions where they are employed) ; Judges (except for Supreme Court); Legislative candidates; Presidential candidates	No data	No data	- IAAC (High level executive and political officials) - General Election Committee (Presidential and legislative candidates) - General Council of Courts (Judges) - Government Service Council (Appointed officials)	No data	Online publication of summary
Montenegro	Legislative and executive officials; Political officials; Civil servants; SOE employee; Judges and prosecutors	5769	5277	- Agency for the Prevention of Corruption	5	Online publication
Romania	High level legislative and executive officials; Political officials; Judges; Prosecutors; Deputy Magistrates; Judicial assistants and support staff; Civil servants; Controlling and management members of SOEs; High and mid-level officials of the central bank; Presidential and legislative candidates	350 000	538 454	- The National Integrity Agency (NIA)	48 (NIA integrity inspectors)	Online publication
Russia	State and local officials; Central Bank officials; SOE employees;	No data	No data	No data	No data	Online publication and individual files

Country	Categories of officials who submit declarations	Number of declarants	Number of submitted asset declarations	Body responsible for collection and verification of asset declarations	Number of staff dealing with declarations	Form of public disclosure
Serbia	All public officials (Except for Senior level management officials of local SOEs, institutions and other organisations)	32 979	5505	- Anti-Corruption Agency	17	available on request by media Online publication
Slovenia	High level legislative and executive officials; Senior civil servants; Judges; Prosecutors; Heads of SOEs	No data	No data	- The Commission for the Prevention of Corruption	No data	Online publication
Tajikistan	All public officials; Electoral candidates	No data	No data	- Department in the State Service Board - Department in the Tax Committee - Personnel departments of state institutions	No data	No public disclosure
Ukraine	High level legislative and executive officials (state and local); Political officials (state and local); Head of central bank; Civil servants and public officials (state and local); Military officials; Judges; Prosecutors; Electoral Candidates; SOE employees;	About 1 million	More than 4 million	- National Agency on Corruption Prevention (control of submission, verification of information submitted)	20 authorised officers in the asset declarations department and 20 officers in the COI department who verify declarations for COI violations. Average workload on each officer is about 50 asset declarations under verification.	Online publication

Source: IAP monitoring reports; OECD/ACN secretariat research; country comments.

Recommendations

Public sector integrity policy

- A. To ensure evidentiary basis for public sector integrity policies (as a part of civil service or anti-corruption policy documents) and to set correct objectives and effective measures:
 - a. Elaborate and apply risk assessment methodology for the development of public sector integrity policies;
 - b. Conduct regular surveys, collect and analyse data to measure the impact of implementation of public sector integrity policies.
- B. To implement the public sector integrity policies in practice, allocate sufficient resources, especially at the level of individual state bodies, and ensure their effective co-ordination.

Professional merit-based civil service

- C. Ensure that merit-based recruitment, evaluation and dismissal are established by law and followed in practice for all civil servants, including senior positions.
- D. Ensure fair and objective remuneration of civil servants; reduce risk of politisation and nepotism by ensuring transparent and objective provision of performance based flexible part of the pay, such as bonuses.
- E. Create evidentiary basis for the development and monitoring of civil service reform by collecting and analysing data on the above issues.

Public sector ethics

- F. Develop and adopt a modern general code of conduct for all civil servants, for sectors with high integrity risk, for MPs and other political officials.
- G. Provide systematic and effective training on public sector ethics, including mandatory training for all new servants and for the servants in sectors with high integrity risk.
- H. Clarify the role and strengthen the capacity of ethics officers in state institutions to ensure effective implementation of the codes of ethics, and provide them with strong methodological support from the central agency responsible for public sector ethics.
- I. Collect data about key aspects of implementation of codes of ethics, such as about resources dedicated to this work area, including training, requests for counselling and about sanctions for breaches of code of ethics.

Conflict of interest and other anti-corruption restrictions

- J. Ensure that the law provides the following in line with international standards:
 - a. Definition of conflict of interest (actual, potential and apparent)
 - b. Definition of ‘interest’ and ‘related persons’
 - c. Restrictions and incompatibilities
 - d. Regulations on gifts
 - e. Post-employment restrictions
 - f. Procedures for disclosure, management and resolution of ad hoc conflict of interest.

- g. Proportionate sanctions for violations (at least disciplinary and administrative)
- h. Additional regulations for high risk sectors, such as procurement, taxes, customs and regulatory functions.
- K. Ensure centralised co-ordination, monitoring and oversight.
- L. Provide methodological guidance to state bodies on related issues.
- M. Ensure a dedicated function (a person or a unit) responsible for COI issues in state bodies.
- N. Provide for centralised data collection and analysis to inform policy planning and implementation.
- O. Ensure unbiased and vigorous enforcement of regulations, including resolution of COI and application of sanctions with a focus on high-ranking and political officials and risk areas.
- P. Ensure initial and in-service training based on practical examples and case studies.
- Q. Provide individual guidance or counselling to assist in managing concrete COI situations.

Asset and interest declarations

- R. Establish comprehensive asset and interest disclosure requirement at least for high-level officials and officials holding political positions, appointed or elected, as well as those working in high-risk areas or performing high-risk functions. The following positions should be covered as a minimum: the President, members of parliament, members of government and their deputies, other political officials, senior management of public authorities, judges, prosecutors, anti-corruption investigators, senior managers of SOEs.
- S. Ensure that the scope of information covered by the declaration form is broad enough to allow detection of both conflict of interests and illicit enrichment, including all types of income with their sources, financial obligations and expenditures. Include disclosure of information on beneficial ownership in companies, trusts and assets.
- T. The financial disclosure should cover assets and interests of the declarant's family members (spouses and co-habitants).
- U. Provide for proportionate and dissuasive sanctions for asset declarations related violations (at least disciplinary and administrative). Establish criminal sanctions for intentional false or incomplete information about assets of significant value.
- V. Ensure centralised co-ordination, monitoring and oversight of the asset and interest disclosure provisions.
- W. Provide responsible body with necessary mandate, resources and specialisation for the independent exercise of its functions.
- X. Ensure that the body in charge of verification of the asset and interest declarations has access, including automated access, to information and databases held by public agencies and possesses tools necessary for full exercise of its mandate.
- Y. Introduce an electronic system of submission and publication of asset and interest declaration forms. Ensure that the system is user-friendly and secure. Introduce automated risk analysis of electronic declarations and automated cross-checks with other relevant government registers and databases.
- Z. Ensure online publication of declarations, including in an open data (machine-readable) format. Any restrictions in the publication should be narrowly and clearly defined in the law

and include only what is necessary to protect privacy and personal safety. Provide extended search of data to facilitate efficient public oversight.

- AA. Provide for full verification (audit) of declarations triggered by a variety of grounds, including specific high-risk positions, high risk detected through red-flag analysis, citizen complaints and media reports. Prioritise verification so that it mainly concerns high-risk declarations.
- BB. Ensure unbiased and vigorous enforcement of regulations with the focus on high-ranking and political officials and risk areas.
- CC. Ensure impartial and transparent proceedings on the alleged violations with the publication of justified decisions.
- DD. Ensure effective co-operation with law enforcement bodies during the enforcement of asset and interest disclosure provisions.
- EE. Collect, analyse and publish administrative and survey data to inform policy planning and implementation.

Whistle-blower protection

- FF. Adopt or improve respective legal frameworks to encourage citizens to report corruption-related violations in line with the international standards and good practices regarding whistle-blower protection.
 - GG. Ensure that internal reporting channels are operational in individual state institutions, and in the private sector, and that there is a central responsible channel/authority with necessary mandate and resources.
 - HH. Provide practical and systematic awareness raising about the importance of reporting and the protection and support that is provided.
- II. Collect data on the key elements of whistle-blower protection systems, in order to analyse system's operation, identify shortcomings and address them appropriately.

Integrity in judiciary

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

There are a number of international instruments establishing standards in this area, which are used by the IAP monitoring as benchmarks. The UN Convention against Corruption (Art. 11) states, that bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. The independence and impartiality of the courts is part of the fundamental human right to fair trial as outlined in global and regional binding international treaties¹⁶⁰ and their interpretation by relevant bodies, notably in the case-law of the European Court of Human Rights¹⁶¹. Council of Europe's Committee of Ministers¹⁶², Venice Commission¹⁶³, Consultative Council of European¹⁶⁴ and other bodies¹⁶⁵ laid down detailed guidelines on judicial independence and integrity. The same concerns other organisations, notably UN¹⁶⁶ and OSCE¹⁶⁷.

Issues of judicial independence and integrity are prominent in the anti-corruption policy documents of some IAP countries. For example, the National Anti-Corruption Strategy of **Mongolia** provides the following objectives related to integrity in the judiciary: (1) improving integrity, transparency and independence and anti-corruption co-operation of the judiciary, (2) avoiding illegal interference from political and business group. The action plan for implementing the Strategy provides a number of measures to meet these objectives. Although the monitoring report found some of such measures to be vague and ineffective.¹⁶⁸

The EU Eastern Partnership (EaP) “20 Deliverables for 2020”¹⁶⁹ call for essential measures strengthening the independence, impartiality, efficiency and accountability of the judiciary in the region. It includes, in particular, the following targets for the EaP countries by 2020:

- Track record of transparent and merit-based recruitment and promotion system disaggregated by gender.
- Track record of judges' and prosecutors' performance, as per their career development.
- Track record of reported disciplinary cases, proceedings initiated and convictions in line with EU standards.
- Comprehensive and effective training of the judiciary on judicial competences and ethics.

Independence of judiciary

“A judiciary that is not independent can easily be corrupted or co-opted by interests other than those of applying the law in a fair and impartial manner. Strengthening the judiciary from within, as well as providing all the safeguards for its independence vis-à-vis other public officials and private actors, is essential in combating and preventing instances of judicial corruption.”¹⁷⁰

The independence of individual judges is safeguarded by independence of the judiciary as a whole. Judicial independence should be enshrined in the constitution, with more specific rules being provided at the legislative level.¹⁷¹ Judicial independence should be statutory, functional and financial. It should be guaranteed with regard to other powers of the state, to those seeking justice, other judges and society in general.¹⁷² Judicial independence thus involves independence from actors external to the judiciary (e.g., executive and legislative branches, or other institutions) and internal independence within the judiciary (e.g. court presidents, courts of higher instance, judicial councils, judicial administration, etc.).¹⁷³

Constitutional guarantees

All IAP countries guarantee the independence of the judiciary in their constitutions. For example, the Constitution of **Azerbaijan** (Art. 127) proclaims that judges are independent. They are subordinate only to Constitution and laws of the Republic of Azerbaijan and cannot be replaced during the term of their authority. In consideration of legal cases, judges must be impartial and fair. They should ensure the equality of parties, act based on facts and according to the law. Direct and indirect restrictions of legal proceedings – e.g. illegal influence, threats, interference – are not allowed. At the same time, the IAP report criticised another provision of the Azerbaijan’s Constitution which declares the President to be the guarantor of judicial independence. This was seen as an encroachment on the separation of powers and the institutional independence of the judiciary.¹⁷⁴

Tenure of judges

Tenure of judges and guarantees of their irremovability (i.e. guaranteed tenure until a mandatory retirement age) is an important aspect of judicial independence. Several IAP countries use *de facto* probationary periods by appointing judges for an initial term (e.g. **Azerbaijan, Georgia, Tajikistan**). According to international standards, such arrangements may be seen as problematic, if judges have to be re-confirmed

at the end of their initial appointment and there are no clear criteria for confirming them in office. According to the European Charter on the statute for judges, the existence of probationary periods or renewal requirements presents difficulties, if not dangers, for the independence and impartiality of the judge in question, who is hoping to ultimately obtain a post or to have his or her contract renewed.

However, in countries with relatively new judicial systems, there might be a practical need to first ascertain whether a judge is really able to carry out his or her functions effectively before obtaining a permanent appointment.¹⁷⁵ Therefore, in the Venice Commission's opinion, if probationary appointments are considered indispensable, a refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office.¹⁷⁶

In **Ukraine**, in 2016 the Parliament amended the Constitution of Ukraine to remove the power of the Parliament to appoint judges and to repeal the probationary appointment of judges. Under the new provisions, all judges would be appointed for life by the President upon a binding submission of the High Council of Justice following a competitive selection. In its opinion the Venice Commission strongly supported such amendments, as they put an end to the practice of the probationary periods for junior judges, which the Venice Commission had repeatedly criticised, and introduced permanent tenure until the prescribed mandatory age of retirement for all judges (with the exception of the judges of the Constitutional Court).¹⁷⁷

In **Georgia**, the Constitution was amended in 2013 to establish that judges should be appointed for life, but the law may provide for a probationary period of not more than three years. Also the provision on the appointment of Supreme Court judges for a limited term (not less than 10 years) was preserved. This provision concerning Supreme Court judges, as well as possibility of establishing a three-year probationary period, was criticised by the Venice Commission. It noted that whereas it is generally accepted to limit the tenure of Constitutional Court judges, this does not apply to Supreme Court judges. The Venice Commission therefore recommended extending life tenure, in unequivocal terms, to Supreme Court judges. It also criticised the provision that all judges of the Supreme Court have to be proposed by the President; it would be preferable to transfer the right to propose candidates to the High Judicial Council.¹⁷⁸ As for other judges, under the Organic Law on Common Courts of Georgia, the judges of the district and appeal courts are appointed for three years. After expiration of this term, the High Council of Justice makes a decision on whether to grant a life-time appointment based on specific criteria.

Georgia introduced an intricate system of evaluation of judges serving the probationary period and their appointment for life afterwards:

- After one and two years of office, as well as four months before the expiration of the three-year term of office of the judge, the High Council of Justice selects, by lot, one judge member and one non-judge member of the High Council of Justice of Georgia (‘the evaluators’) to assess the activity of the judge.
- The evaluators assess the activity of the judge for the given period within one month. The evaluators assess the activity of a judge concurrently and independently from each other. The evaluators may not disclose to each other the information and assessment results obtained during the assessment.
- The evaluators may examine cases, attend court hearings chaired by the judge to be assessed, upon request obtain audio and video recordings of the court hearings conducted both during and before the assessment period, search for necessary information in the manner prescribed by Law, apply to representatives of legal circles for legal consultation, personally meet the judge to be assessed, and other persons, and interview them in order to obtain information on specific issues. The method of obtaining information should not interfere with the independence of the judge to be assessed. The judge who is being assessed has access to the reports of each period of assessment.
- The activity of a judge is assessed based on two main criteria – integrity and competence.

- The High Council of Justice analyses the results of all assessments it has performed during the three-year term of office of a judge and sums up the assessment points gained by a judge under each criterion.
- After interviewing the judge and considering the results of the evaluation, the High Council of Justice makes a reasoned decision on the life-time appointment of the judge by two thirds of votes.
- The refusal on appointment on lifetime period can be appealed to the Qualification Chamber of the Supreme Court. The legal grounds for appeal are: a) the evaluator, during the assessment, or a member (members) of the High Council of Justice, during the interview, were biased; b) the attitude of the evaluator during the assessment or of a member (members) of the High Council of Justice was discriminatory; c) the evaluator exceeded his/her powers granted under the legislation of Georgia that violated the rights of the judge to be assessed, or put the independence of the court at risk; d) the information upon which the assessment was based, is substantively wrong, which can be proven by appropriate evidence provided by the judge under evaluation; e) the assessment was not performed in compliance with the procedure determined by the legislation of Georgia, which could have substantively affected the final result.¹⁷⁹

In **Tajikistan**, a judge's term of office is ten years (previously – five years). Such term limits can give rise to problems when there is discretion on whether to extend a judge's term in office. The same is true, in **Kazakhstan**, where the chairperson of the Supreme Court (upon consent of the Supreme Judicial Council) could decide on the extension of the tenure of a judge who reached 65 years (for not more than five years).¹⁸⁰

In **Mongolia**, all judges are appointed for permanent tenure, i.e. until retirement.

In **Kyrgyzstan**, the judges of the Supreme Court stay in office until the age limit is reached. Judges of the local courts are appointed by the President on the recommendation of the Council for the Selection of Judges for the first time for a period of five years, and subsequently – until reaching the age limit. The procedure for the presentation and appointment of judges of the local courts is specified in the constitutional law. The Council of Judges has established a procedure and criteria for assessing judges before their permanent appointment. The IAP monitoring report recommended Kyrgyzstan to consider revoking the initial 5-year appointment for the position of a judge, ensuring the permanent tenure of all local court judges (until the age limit is reached).¹⁸¹

A similar situation of mass dismissals of judges in violation of relevant procedures was noted in **Kyrgyzstan**, where more than 60 judges were dismissed following the events of 2010. This was in particular exacerbated by the fact that the Prosecutor's General Office played a leading role in compiling the list of judges to be removed. IAP monitoring concluded that such a practice violated the principle of judicial irremovability and will have an extremely adverse effect on real judicial independence in future.¹⁸² A welcomed example of a proper approach to regulation of the court system occurred in 2011. Kyrgyzstan adopted a special law that detailed the exact structure of local courts and number of local courts judges. This means that establishment of new courts, reorganisation or liquidation of the existing ones, as well as changes in the number of judges in specific courts, will require legislative approval.

In **Uzbekistan** the law has not been improved, and the permanent tenure was not introduced as recommended by the IAP monitoring. On the contrary, the new provisions introduced in 2017 stipulate that there are two de facto probationary periods - judges are appointed for the initial five-year term, then for a ten-year term, and only subsequently for unlimited (lifetime) tenure in accordance with the established procedure. The main criteria for the selection judges for a new term and other judicial positions are "impeccable reputation, honesty, objectivity, fairness and professional competence shown during their career". While considering a candidate for reappointment, the Supreme Judicial Council takes into account the consistency of judgments, the presence of sufficient experience in the field of justice administration and application of the legislation as well as public opinion about judge's professional activities. Overall,

in the end of 2018, there were 38 judges with a lifetime term in office (mostly in the Supreme Court), 164 judges were appointed for a 10-year term while the rest of judges served a 5-year term (the total number of judges in all courts was 1,380). The monitoring report noted with regret that judges shall be appointed not even for one, but for two terms prior to their possible appointment for a lifetime term. Less than 3% of the total number judges have a life tenure. This factor considerably limited the judicial independence. The criteria to evaluate candidates for reappointment to a new term in office were also found to be insufficiently clear and too broad. The new recommendation was strengthened and recommended establishing in the law that judges were appointed for life. If provisional regulations envisaging the appointment of judges for a fixed term remain temporarily in force, then such appointment should be limited to one term only and upon its expiration the judge may be refused confirmation in office only if he fails to meet clear criteria based on an impartial and transparent evaluation procedure.¹⁸³

Judicial councils

The judicial council is a key institution for ensuring the independence of the judiciary, as well as the integrity and accountability of judges.¹⁸⁴ Such a council, itself independent from legislative and executive interference, should be endowed with broad powers for all matters concerning the status of judges as well as the organisation, the functioning and the image of judicial institutions. The council shall be composed either exclusively or substantially of judges elected by their peers.¹⁸⁵ All IAP countries have a judicial council or a similar body, although not all them comply with the relevant international standards. Since the previous monitoring round several countries have conducted important reforms of their judicial councils.

As noted in the UN Special Rapporteur's report, the creation of a judicial council is not in itself sufficient to ensure judicial independence and promote judicial accountability. In order to enable a council to play its role of guarantor of judicial independence, it is important to ensure that it is granted extensive powers in all aspects relating to judicial careers, and that its institutional structure and composition contribute to the insulation of the judiciary and judicial career processes from external political pressure.¹⁸⁶

In **Armenia**, until the constitutional reform of 2015, the Council of Justice consisted of 9 justices elected by the General Assembly of Judges, 2 legal scholars appointed by the President and 2 members appointed by the National Assembly. After the 2015 reform, the Supreme Judicial Council (SJC) of Armenia consists of ten members. Five of them are elected by the General Assembly of Judges, from among judges having at least ten years of experience as a judge. Judges from all court instances must be included in the Supreme Judicial Council. A member elected by the General Assembly of Judges may not act as chairperson of a court or chairperson of a chamber of the Court of Cassation. Five more members of the Supreme Judicial Council are elected by the National Assembly (the Parliament of Armenia), by at least three fifths of votes of the total number of Deputies, from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia with high professional qualities and at least fifteen years of professional work experience. The member elected by the National Assembly may not be a judge. The Venice Commission has found the composition of SJC quite balanced. It also has pointed out that some clarification on the non-judicial members' candidatures and status is needed.¹⁸⁷ Members of SJC are elected for a term of five years, without the right to be re-elected. The IAP monitoring report recommended Armenia to establish open, transparent and competitive procedure of election of non-judicial members of the Supreme Judicial Council and specify criteria for elections as its member by the National Assembly.¹⁸⁸

In 2016, **Kazakhstan** reformed its Supreme Judicial Council (SJC) which was transformed into an autonomous public institution with its own staff. Its mandate was expanded to include, among other powers, assessing and approving the performance of judges who have been in office for one year, and looking into judges' appeals against decisions made by the Judicial Jury. However, the monitoring report found that Kazakhstan failed to fully comply with the previous IAP recommendations in this regard. More specifically, the SJC's mandate did not comprise the task of ensuring guarantees of the judicial independence (vis-à-vis other branches of power), but not that of individual judges and securing the

President's constitutional powers with regard to formation of courts. The overall number of SJC members has not been established by law, which bears the risk of prevalence of non-judge members or judges in retirement over adjudicating judges. At the time of the monitoring, the number of active judges who held membership in SJC (excluding the SJC Chair and retired judges) accounted only for one-third of the total number of its members (five out of 16). The President of Kazakhstan appoints all the SJC members (upon the recommendation of the Plenary Session of the Supreme Court, rather than the conference/congress of judges), and approves the SJC's staff regulations and structure, appoints head of SCJ secretariat. The report concluded that the procedure of formation of the SJC still did not meet international standards. The monitoring expert team reiterated that the judicial council shall be a body of the judicial system and, consequently, be independent of other branches of power and even of the head of state.¹⁸⁹

In **Kyrgyzstan**, there are two main judicial bodies responsible for the careers of judges and other matters concerning the administration of the judiciary. Various matters, including the early dismissal of a judge from office, disciplinary responsibility, lifting of judicial immunity, and preparing the courts' budget, are decided by the Council of Judges, which is an elected body of judicial self-government. The Council of Judges is elected by the majority of votes of the Congress Judges. The Council of Judges comprises 15 members elected from among the members of the judicial community for a three-year term taking into account gender representation, no more than seventy percent of people of the same sex. In addition to the judges of local courts, no more than three judges of the Supreme Court and one judge of the Constitutional Chamber of the Supreme Court may be included in the list of the candidates. Court presidents of any level court, as well as judges who are members of the Council for the Selection of Judges, may not be members of the Council of Judges. In 2017 the constitutional amendments instituted a Disciplinary Commission at the Council of Judges.

The Council for Selection of Judges carries out selections. The Judicial Selection Council consists of nine judges. The Council of Judges, representatives of the civil society elected by the parliamentary majority and the parliamentary opposition of the Supreme Council each elect one third of the Council. Judges are elected to the Judicial Selection Council by the Council of Judges in accordance with the procedure established by the Congress of Judges, taking into account the representation of no more than seventy percent of persons of the same gender. At the same time, judges elected to the Council must be represented by all instances of the courts. Representatives of the civil society in the Council are elected by the parliamentary majority and the parliamentary opposition at meetings, taking into account the representation of no more than seventy percent of persons of the same gender. Candidates from the civil society for the positions of members of the Council are nominated from the educational, scientific institutions, public associations and other organizations. The civil society (educational, scientific institutions, public associations and other organizations) submits its proposals in writing to the parliamentary majority or to the parliamentary opposition of the Supreme Council. The parliamentary majority and the parliamentary opposition select three candidates from among the proposals, taking into account the requirements for members of the Council.

The IAP monitoring report noted the existence of the judicial self-government bodies, provided for in the Constitution and laws, was a very good experience of the Kyrgyz Republic. It was also positive that court presidents could not be members of the Council of Judges. The report welcomed the establishment of a separate body responsible for the selection of the candidates for judicial positions. The quota procedure for election of members of the Council for the Selection of Judges envisaged in the specialized law looked attractive, but the fact that two-thirds of its members was formed by the Parliament retained the political context.

The monitoring experts also drew attention to the fact that the Judicial Department is under the Supreme Court of the Kyrgyz Republic. At the same time, the Judicial Department ensures the work of the judicial system, including the judicial self-government bodies and special bodies, such as the Council for the Selection of Judges and the Disciplinary Commission. The Chief of the Judicial Department is appointed

by the Chairman of the Supreme Court with the consent of the Council of Judges. The report found such a concentration of powers as well as influence on the bodies ensuring the work of the entire judiciary (Judicial Department and the staff of the Supreme Court) in the hands of the chairman of the Supreme Court to be inappropriate.¹⁹⁰

Ukraine also reformed its institution of the judicial council following legislative and constitutional amendments adopted in 2016. The composition of the High Council of Justice has been changed to 21 members, the majority of which are judges elected by their peers. The President and the Parliament still take part in the forming of the composition of the High Council of Justice (appointing two members each). The Congress of Advocates of Ukraine, the Congress of Prosecutors and the Congress of representatives of the legal higher education and scientific institutions select two members each. The Congress of Judges of Ukraine appoints ten members, who must be serving or former judges and the only ex-officio member of the High Council of Justice is the President of the Supreme Court. Both the Minister of Justice and the Prosecutor General are no longer a part of this body. The members are appointed for a four-year term and cannot serve two consecutive terms. The High Council of Justice will become operational with the minimum of 15 members, the majority of which should be judges.

Additionally, the members of the High Council of Justice work on the permanent basis (apart from the President of the Supreme Court) and are subject to strict rules on incompatibilities. The High Council of Justice is endowed with broad powers for most matters concerning the status of judges as well as the organisation and the functioning of judicial institutions, disciplinary proceedings against judges.¹⁹¹

The High Qualifications Commission of Judges (HQCJ) of Ukraine is another permanent judicial self-governance body which is responsible for the appointment procedure and the qualifications examination of judges. The HQCJ had 16 members. Eight members were elected by the Congress of Judges from among the judges who have experience as a judge for at least ten years or retired judges; the Congress of Advocates and by the Congress of law schools and scientific institutions selected two members each; and two members each were appointed from among persons who are not judges by the Parliament's Ombudsperson and by the Head of the State Court Administration. Like the HCJ members, HCQJ members were subject to strict rules on incompatibilities. According to the amendments adopted in October 2019, the composition of HQCJ was reduced to 12 members to be appointed by the High Council of Justice based on the results of a competition conducted by a selection panel. The selection panel should include three persons elected by the Council of Judges of Ukraine among its members and three persons from among international experts. The decision on the dismissal of a HQCJ member will be taken by the High Council of Justice.

It should be noted, however, that both GRECO and the Venice Commission found the new arrangement of the judicial institutions in Ukraine to be too complex regarding the judicial selection procedure. As described in the GRECO report, the selection procedure is the responsibility of the HQCJ; in the qualification assessment of judicial candidates, the HQCJ is assisted by the new Public Council of Integrity; the HQCJ recommendations are then decided upon by the HCJ; the final appointment is effected by the President of the Republic. Such involvement of different bodies and persons may hinder the effectiveness of the process and increase the risk of external influence at different stages. As the Venice Commission pointed out, this complex system “bears the risks of overlaps and conflicts” and “ideally, in order to ensure a coherent approach to judicial careers, the HQCJ should become part of the HJC, possibly as a chamber in charge of the selection of candidates for judicial positions.”¹⁹²

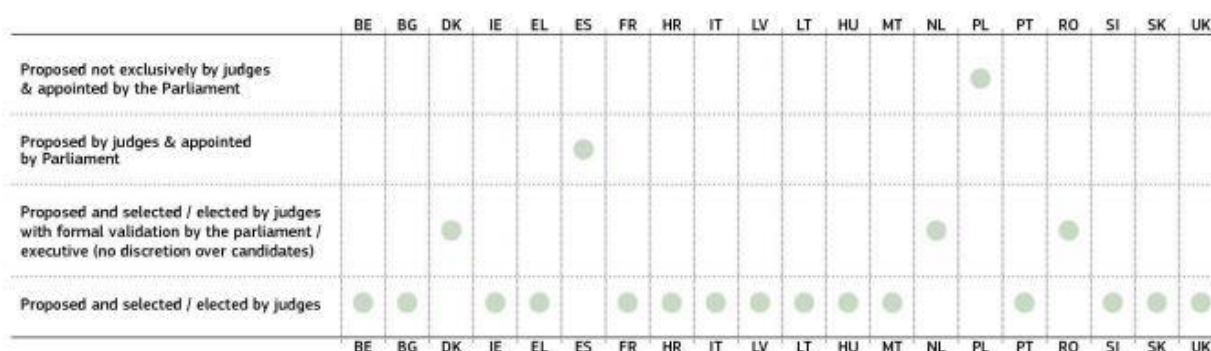
In **Uzbekistan**, the Presidential decree in 2017 instituted the Supreme Judicial Council (SJC) that replaced the Higher Judicial Qualification Commission. The new Law “On Supreme Judicial Council of the Republic of Uzbekistan” defined the Council as a judicial community body aimed at supporting and facilitating the observance of the constitutional principle of judicial independence in the Republic of Uzbekistan. The Chairperson of the Council is appointed by the Oliy Majlis Senate upon the recommendation of the President of Uzbekistan. Eleven members of the Council chosen among judges are appointed by the President of Uzbekistan upon the recommendation of the SJC Chairperson. The Secretary

and seven members of the Council selected from among representatives of law enforcement agencies, civil society institutions and highly qualified legal experts are approved by the President of Uzbekistan as well. The Chairperson, Secretary and eleven members of the Council chosen among judges carry out their activities on a permanent basis while other eight members, including the Deputy Chairperson, work pro bono.

The IAP monitoring report welcomed establishment of the Supreme Judicial Council as a separate body as well as adoption of the respective law. Creation of such a body given a broad mandate to act as an agency promoting judicial independence was found to be a positive development and it complies, in part, with the international standards. At the same time, the composition of the SJC and its formation procedure raised a number of issues:

- SJC composition did not conform to the standard whereby the majority of its members must be selected by judges from among judges. Political bodies (President, Oliy Majlis Senate) play the key role in the nomination of Council members. Even the members represented by judges are nominated by the President upon the recommendation of the SJC Chairperson rather than proposed for nomination by the judicial community. The appointment of most judges should be entrusted to a judicial community body, e.g. judicial congress.
- The possibility of including representatives of civil society is commendable. However, they account for a small percentage of the Council membership, and a transparent procedure for their selection and nomination is lacking. Moreover, they serve on a pro bono basis which diminishes their role and opportunities for influencing the decision making. There was only one NGO representative in the active membership of the Council and even this single member represented an association of judges.
- The presence of law enforcement and executive body representatives (General Prosecutor Office, Interior Ministry, Ministry of Justice) among the Council members was not advisable since it might have a negative effect on Council's independence.
- According to the Law on SJC, its structure and executive secretariat staff number are approved by the President of Uzbekistan. These powers should be delegated to the Council itself to strengthen its independence and limit the influence of the political body on the judiciary.
- The procedure for the termination of office of SJC members is not spelled out in law.¹⁹³

Figure 14. Appointment of judges-members of the Councils for the Judiciary in the EU Member States: involvement of the judiciary



Source: The 2019 EU Justice Scoreboard, p. 50, https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf.

Appointment procedures

Independence of the judiciary can be undermined if political bodies (*e.g.* the parliament or the president) play a decisive role in judicial appointments. As noted in one of the IAP monitoring reports, it is advisable to remove such bodies from the process for appointing and removing judges. If it is impossible to do so, it is then necessary to configure the procedure in such a way that the principal decision is adopted by a judicial council (constituted in accordance with international standards discussed above), while the political bodies would only endorse the judicial council's decision.¹⁹⁴

In **Mongolia**, the President appoints all judges upon the proposal of the Judicial General Council; nominations for the Supreme Court judges must first be cleared by the parliament. Before nomination, judicial candidates are selected by the Judicial General Council and its Judicial Qualification Commission; vacancies are announced on the Council's website. The Judicial Qualifications Commission assesses the candidates; then the General Council conducts interviews with each candidate and votes to determine whom it will nominate; the candidates with the most votes are submitted to the President. The President is not bound by the Council's recommendation and may reject a candidate. The IAP monitoring noted that the involvement of the political branches (President, Parliament) in the appointment of judges causes concern, as it undermines judicial independence.¹⁹⁵ The report also mentioned that if such institutions cannot be fully removed from the selection process, then it is necessary to formalise the procedure to ensure that it is aligned with international standards. Thus, the political bodies should only endorse the decisions made by an appropriately constituted judicial council and have no discretionary decision-making powers with regard to the appointment or dismissal of a judge. However, if that is not possible, one option would be to allow the President to veto the judicial council's recommended candidate but the President will have to accept the candidate if the judicial council resubmits the candidate for appointment.¹⁹⁶ The fourth monitoring round report recommended excluding political institutions (the President and Parliament) from the appointment and dismissal of judges, members of the Judicial Qualifications and Ethics Committees (by replacing them with the Judicial General Council).¹⁹⁷

Kyrgyzstan conducted important reforms since the previous round of monitoring. However, political bodies still have excessive powers in the appointment of judges and other issues of the judicial career. Judges of the Supreme Court, judges of the Constitutional Chamber of the Supreme Court are elected by the parliament at the proposal of the President based on the proposal of the Council for the Selection of Judges. Judges of the local courts are appointed by the President from among those who have passed the competitive selection and who are proposed by the Council for the Selection of Judges. The President, by his reasoned decision, has the right to return to the Council for the Selection of Judges the materials on the proposed candidate within 10 working days from the date of their receipt. In this case, the Council proposes in the order of priority a new candidate from the list of the candidates, depending on the number of points received. The repeated proposals of the Council for the Selection of Judges are made until the complete use of the formed list of the candidates for the specified post. In case of the complete use of the formed list of the candidates, the Council for the Selection of Judges holds a new competition.

The IAP monitoring report found that, in case of the appointment of local court judges, the Council for the Selection of Judges may not insist on the candidate that it has proposed to the President for appointment. At the same time, the President can return any candidacy "by his/her grounded decision" for any reason. This provides for unrestricted discretion of the President and does not meet the international standards. This was confirmed by practice: about 30% of the candidates proposed by the Council for the Selection of Judges have been previously rejected by the President without explanation. The procedure for the appointment of judges of the Supreme Court and the Constitutional Chamber of the Supreme Court is more acceptable, since the President is obliged to submit to the Parliament the proposed candidacies in case of "absence of circumstances preventing the election of a candidate for the position of a judge", and also must present the candidates repeatedly submitted by the Council for the Selection of Judges. However, such "circumstances preventing the election of a candidate for the position of judge" are not clearly defined in

the law, which also allows the President to reject candidates at his own discretion. This confirms that the political bodies perform not only a formal role, but also have unlimited or significant discretion in the issue of appointing judges, which does not comply with the standards and previous recommendations of the IAP monitoring.¹⁹⁸ Such arrangement was also criticised in the Venice Commission opinion.¹⁹⁹

The IAP monitoring report recommended Kyrgyzstan to remove the Parliament from the process of appointing and dismissing judges, suspension from office, delivery of certificates and taking oath of judges. The role of the Parliament in the formation of the judicial authorities (Council for the Selection of Judges and the Disciplinary Commission) should also be narrowed to the maximum possible extent. Also, the report recommended limiting the role of the President as much as possible. The international standards allow a certain role of the President in the process of appointing judges, but at the same time his discretion should be limited with giving priority to decisions of the judicial authority (see above). All other powers should be abolished and handed over to the judicial authorities.²⁰⁰

In its opinion on **Ukraine** the Venice Commission found the proposal to remove the competence of the parliament to elect the judges for an unlimited term to be “very welcome” and strongly recommended by the Commission in its past opinions.²⁰¹

The optimal model for judicial appointments and dismissals is to have the judicial council directly decide such matters, provided that the law ensures the independence and proper composition of the council. From the IAP countries, the Judicial Council directly appoints and dismisses judges of general courts only in **Georgia**. (However, the justices of the Supreme Court of Georgia are still appointed by the Parliament; as a result of the constitutional amendments of 2017, the HCoJ is entitled to submit candidates for the office of judges of the Supreme Court to the Parliament instead of the President of Georgia).

In a number of other European countries, including several ACN members, the judicial council makes a direct appointment of judges (rather than merely nominating a candidate). In **Italy** and **Portugal**, the judicial council has the power to appoint, assign, transfer and promote the judges of the courts of law and to exercise disciplinary control over them. In **Bulgaria**, the Supreme Judicial Council appoints, promotes, transfers and releases from office judges, prosecutors and investigating magistrates. In **Croatia**, the State Judicial Council appoints and dismisses judges. In **Cyprus**, the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary matters of judicial officers fall exclusively within the competence of the Supreme Council of Judicature. In **North Macedonia** the Judicial Council elects and dismissed judges and court presidents. In **Turkey**, the Supreme Council of Judges and Public Prosecutors is competent to appoint judges, transfer them to other posts, and to decide on their promotion and disciplinary matters.²⁰²

Court presidents

Presidents of courts may have an adverse impact on the internal independence of judges, by having excessive administrative powers, deciding the distribution of cases, allocating resources within the court and influencing the career growth of judges. It is therefore recommended to limit their powers. The best way to ensure a maximum level of independence of court chairpersons, is to elect them either by judges of the respective court or by a judicial self-government body (e.g., conferences of judges or even an appropriately constituted judicial council).²⁰³ It is advisable that in any case such selection is merit based.²⁰⁴ Court chairpersons should be appointed for a limited term with the option of only one renewal.²⁰⁵

In **Kyrgyzstan**, the judges of the Supreme Court elect from among themselves the chairperson and vice-chairpersons for a period of three years. The chairperson and deputy chairpersons in the local courts are elected by the assembly of judges of the relevant local court for a period of three years. The same judge cannot be elected as the chairperson, deputy chairperson of the Supreme Court or local court for two consecutive terms in the same court.²⁰⁶ In **Ukraine**, after the 2014-2016 reforms of the Law on the Judiciary and Status of Judges, most court presidents and their deputies are selected by gatherings of the respective

court's judges by a secret ballot for a three-year term (not more than two consecutive terms). The judges of the court may decide on the early dismissal of the court president or his deputy by two thirds of votes. The Supreme Court's president and deputy presidents are appointed and dismissed by the plenary assembly of the Supreme Court that includes all justices of the Court. In **Georgia**, presidents of the courts and presidents of court chambers are appointed and dismissed by the High Council of Justice.²⁰⁷

Case assignment

The arbitrary distribution of cases among judges creates the conditions for corruption and undue influence on the administration of justice. This function should not belong to the court's chairperson. Case assignments should either be random or be made on the basis of predetermined, clear and objective criteria determined by a board of judges of the court.²⁰⁸ It should not be influenced by the wishes of a party to the case or by anyone otherwise interested in the case's outcome.²⁰⁹

Laws in some IAP countries have formally introduced automatic case assignment, but there are concerns that automatic systems may be tampered with (*e.g.* through fake specialization of judges, or assigning certain court districts to the judges of the appellate courts, thus narrowing down the pool of judges to whom specific cases may be assigned). It is therefore important to ensure that the parties and the general public have access to information on how cases are assigned through the automated system (either by publishing the results proactively or providing them upon request).

The report on **Kyrgyzstan** noted that the automated case assignment system was implemented in practice only in one chamber of the Supreme Court. In other courts, assignment of cases was still carried out "manually" by the chairpersons of the courts.²¹⁰ Since the adoption of the monitoring report, Kyrgyzstan implemented the automated case assignment in three local courts as a pilot and planned to roll it out to all courts until the end of 2019.²¹¹

In **Georgia**, the IAP monitoring report recommended introducing an automated random case assignment in courts with publication of the results of such automated case assignment. Such mechanism was introduced through legislative amendments in 2017 and enforced in 2018. The results of the case assignment are available for everyone through public information request submitted to the High Council of Justice. The NGO Coalition for an Independent and Transparent Judiciary, however, criticised the new system. While acknowledging that establishment of the new system for case allocation was one of the most significant reforms of the recent years, the Coalition was concerned that the case allocation program randomly selects which specialised judge gets assigned to a specific case, but which judge is specialised in certain legal area is decided by the court's chairperson. Allegedly the court chairperson can change the judge's specialisation without any justification. In the Coalition's opinion, this created significant risks of influencing the case distribution. Another NGO noted other problems with the functioning of the system of automated case allocation: shortage of judges, especially in regions, which prevents random allocation of cases in all courts; the procedure assigning duty shifts of judges which permits allocation of a case to a particular judge without giving due account to their specialisation and random principle; the practice of case allocation in sequential order by the staff of the chancellery; the rules on case allocation did not ensure fair and objective distribution of cases based on case difficulty and workload of judges; etc. To address these issues and supervise the functioning of the new system, the High Council of Justice established a special unit and started analysis of the system's operation to introduce improvements in 2019.²¹²

In January 2018 the HCoJ adopted the decision abolishing the previous practice according to which court chairpersons were entitled to assign cases to judges during the temporary suspension of the electronic system. The authority of sequential case distribution during the suspension of the electronic system has been transferred to the specifically authorized employee of a court registry who allocates cases according to the special rules (case assignment according to the order of enrolled cases and the alphabetical order of the surnames of judges).

Uzbekistan introduced the automated case allocation in all courts in the end of 2018. The system is based on the regulations approved by the Presidium of the Supreme Court. The IAP monitoring report welcomed the introduction of the electronic allocation of cases among judges across all courts of Uzbekistan. However, there were issues with certain exceptions which allowed a “manual” allocation by the chairperson of the court. In accordance with the regulations, if the judge was challenged (or recused himself) the allocation of the case to another judge, allocation of cases remitted by the court of the supervisory instance for a re-trial, allocation of cases referred from another court or cases referred by order of the President of the Supreme Court should be done manually by the court’s chairperson. The monitoring report concluded that such exceptions erode the positive effect of the automated allocation of cases, as such manual allocation is open to manipulation and exempts, without good reason, whole classes of cases. The report recommended Uzbekistan to ensure an automated case allocation in courts for all categories of cases and online publication of the results of such allocation; in the event of “manual” allocation because of the long-term malfunctioning of the automated system, such allocation must be substantiated in writing, be guided by the same criteria as the automated allocation, and its results should be published.²¹³

Financial autonomy, remuneration

The judiciary may not be independent if it is not properly funded from the state budget, when its funding depends on the discretion of the executive branch or when it has to rely on charitable donations from private parties. The judiciary should also have the opportunity to prepare its own budget and defend it before the parliament.

An example of a good approach to legal rules on funding can be found in **Kyrgyzstan**. According to the Budgetary Code of 2016, draft legal acts on matters relating to the judicial budget are subject to mandatory consultation with the Council of Judges. The budget of the judiciary is drawn up by the judiciary independently and included in the national budget upon agreement with the executive and legislative branches of power. The draft budget of the judiciary is sent by the Council of Judges to the Government for approval no later than 8 months before the start of the next fiscal year. If there are disagreements, the authorized state body forwards the draft budget of the judiciary to the Council of the Government. Representatives of the Council of Judges and the Council of Government are obliged to conduct and complete the approval procedure no later than 7 months before the start of the next fiscal year. If the agreement is reached, the Council of Judges finalizes the draft budget of the judiciary, taking into account the agreed proposals, and submits it to the Government. In case the agreement is not reached, the proposal of the Council of Judges and the Government’s comments on the draft budget of the judiciary are sent together to the parliament for consideration. When preparing the national budget for the corresponding year, the amount of the expenditures in the budget of the judiciary may be lower than the approved indicators of the previous year only if agreed to by the Council of Judges. The cutting of the judicial budget during the budgetary year may be conducted only with the approval of the Council of Judges. The State Program “Development of the judiciary of the Kyrgyz Republic for 2014-2017” provided for an increase in the budget of the judiciary that had to reach 2% of the overall budget of the Kyrgyz Republic. The monitoring report commended these provisions and the state programme. Although it also noted that the programme’s target was not reached; at the same time, the judicial budget allocated in 2015-2018 always matched or even exceeded the budget proposed by the Council of Judges.²¹⁴

Another positive example can be found in **Armenia**, where the new Judicial Code prescribed a detailed procedure of forming the judicial budget including the Supreme Judicial Council (SJC) and the General Assembly of Judges:

- the staff of each court and the General Assembly draft the Budget Proposal and send it to the Judicial Department;
- the Judicial Department prepares the Medium-Term Expenditure Programme and Budget Proposal, where also the budget of SJC should be included, and send it to SJC for approval;

- once approved the prepared budget or the Medium-Term Expenditure Programme are submitted to the Government within the time limits prescribed by the decision on starting the budgeting process;
- the Government has to accept the judicial Budget Proposal and include it in the draft State Budget, and, in case of objections, attach it to the draft State Budget submitted to the National Assembly. The Government's objections should include a detailed substantiation;
- The SJC Chairperson presents position of the Supreme Judicial Council on the Budget Proposal and the Medium-Term Expenditure Programme before the National Assembly.²¹⁵

In **Mongolia**, the General Judicial Council also has the right to present a proposed budget directly to the parliament. This, however, has not protected the judiciary from budgetary cuts so far. The final decision on the judiciary's budget rests with the parliament, which usually follows the positions of the Government and the Ministry of Justice. The provision of the law that the judiciary's budget cannot be reduced year on year has not been followed in practice and was eventually abolished altogether.²¹⁶

In **Uzbekistan** the monitoring report found problematic operation of the Development Fund of the Judicial Bodies which is formed from the collection of state duties and fines as well as court-ordered fees and penalties. The monitoring report noted that part of the Fund's moneys come from payments collected on the basis of writs of execution issued by the Compulsory Enforcement Office operating within the Prosecutor General Office. That makes the courts indirectly dependent on prosecution agencies and may affect the objectivity and impartiality when handling the cases involving participation of a public prosecutor. The fact that the informal responsibility for the Fund replenishment was placed on chief judges only confirms these concerns. Secondly, the Supervisory Board of the Fund is headed by the Chairperson of the Supreme Court. The Supervisory Board also comprises such *ex officio* members as the Chairperson of the Supreme Judicial Council, Director of the Department for Supporting Court Activities (also appointed by the Chairperson of the Supreme Court), and Director of the Research Centre for Studying the Problems of Justice under the Supreme Judicial Council. The Chairperson of the Supreme Court is entitled to initiate incentive payments to certain judges for special work achievements; a decision regarding the initiative is made by the Supervisory Board of the Fund which means that the Head of the Supreme Court actually considers his own proposal which constitutes a clear-cut conflict of interest. Thirdly, in the absence of clear and transparent criteria for providing incentive payments, the existing system of "manual" distribution of rewards to judges seemed highly questionable. The report recommended transferring the powers of the Supreme Court's Chairperson related to the matters of court funding and rewarding judges, including the right to appoint and dismiss the Head of the Department for Supporting Court Activities, to the Supreme Judicial Council or other judicial community body. It also recommended revising the procedure for forming and using funds of the Development Fund of the Judicial Bodies by ensuring its transparency and accountability to the judicial community bodies as well as eliminating the dependence of its formation from actions of bodies outside of the judicial system. It should be ensured that judicial salaries are paid exclusively from the state budget funds.²¹⁷

Remuneration commensurate with the status and duties of judges is another important aspect for ensuring financial independence and for reducing incentives for corruption. A good approach can be found in **Ukraine**²¹⁸, where since 2010 the law set directly the salary rates for judges while providing their gradual increasing and eliminating bonuses (which constituted a significant part of the judicial remuneration and served as an instrument of influencing judges by the court presidents). The Law on Court Fees provided that the fees collected should be directed to a special fund of the State Budget and should be allocated to the purposes of administration of justice and functioning of the judicial bodies, accessibility of court premises and court information for disabled persons. The level of salaries had been significantly increased as well. The judicial remuneration consisted of a base salary and additional payments for length of service, for holding an administrative position in court, academic degree and work that involves access to state secrets; region and size of the administrative community where the judge is practicing are also taken into consideration. The base salary rates for judges of different court levels were set in the following way: local

court - 30 minimum subsistence levels; the appeals court and high specialised court - 50 minimum subsistence levels; the Supreme Court - 75 minimum subsistence levels.²¹⁹

In 2016 the Constitution of Ukraine was amended to provide additional guarantees of judicial independence, including financial. The new constitutional provisions stipulate that the state budget should determine separately expenditures for the judiciary taking into account proposals of the High Council of Justice. The Constitution (Art.130) also states that the judicial remuneration amount should be set by the law on judiciary. The Venice Commission welcomed these provisions which are in line with the relevant recommendations of the Venice Commission and Consultative Council of European Judges.²²⁰

When the executive branch controls issues related to the allocation of financial resources or status (e.g., salaries, the assignment of qualification ranks, etc.), it creates a serious challenge to genuine judicial independence.²²¹ Paying bonuses to judges may also negatively affect judicial independence and lead to abuses.²²² Therefore, IAP monitoring recommended that the remuneration rates for judges should not only be sufficient but also be fixed directly in the law. Laws concerning remuneration should address the amount of wage and possible increments, for example, for the judicial length of service, qualification class, extra payments for special employment conditions (*e.g.*, for working overtime during consideration of election disputes, judges on duty) and holding of an administrative position in a court.²²³

Based on these standards the IAP monitoring found that the remuneration system for judges in **Uzbekistan** was problematic. First, the amount of judicial salaries was established by a Presidential Decree rather than primary legislation. Second, bonuses are paid to judges on a discretionary basis and can be initiated by the Supreme Court's Chairperson and the Supreme Judicial Council. Decisions on some of these payments are made by the Judicial Development Fund which is fraught with conflict of interest. Third, the amount of judicial salaries was set at the same level with the management of the Prosecution Office and Ministry of Justice. The report referred to the practice of European states where usually judges receive higher remuneration than prosecutors.²²⁴ The IAP report recommended setting in the law the amount of the judicial remuneration including the salary rates and all possible increments that in total must reach the level sufficient ensuring judicial independence; exclude the possibility of making extra incentive payments to judges. It was also recommended to increase financial security of judges and make legislative provisions ensuring elimination of the practice of placing informal financial obligations on judges and engaging them in non-core labour activities. Non-compliance with such prohibition should entail legal liability.²²⁵

Integrity of judges

Ensuring the integrity of judges is an important condition for preventing judicial corruption. The Consultative Council of European Judges noted the following mechanisms to strengthen the judicial integrity²²⁶:

- Legislative or other regulatory framework concerning the position of the judiciary as such and of the individual judge in a given system. This includes selection, appointment, promotion and advancement, training, performance appraisal and the disciplinary responsibility of judges
- Written principles of / guidelines for ethical conduct, ethical counselling, and training on ethics
- Avoiding conflicts of interests
- The responsibility of each judge to act against corruption within the judiciary
- Proper investigating and penalising corruption among judges.

The IAP fourth round monitoring covered most of these mechanisms and showed that in most IAP countries additional measures have to be taken to ensure judicial integrity and avoid judicial corruption.

Procedures for selection and promotion

Decisions concerning the selection and careers of judges should be based on objective criteria established beforehand either in the law or by the responsible authorities. Such decisions should be based on merit, including factors such as qualifications, skills and capacity.²²⁷

In **Kyrgyzstan**, all vacancies within the judiciary, including those in the Supreme Court and in the Constitutional Chamber of the Supreme Court, are filled by a competitive selection. Since the previous monitoring round, Kyrgyzstan has upgraded its judicial selection procedures. Competitive selection is carried out by conducting an interview to determine important professional and personal qualities. When admitting to an interview, the Council for the Selection of Judges examines: 1) the documents of the candidates and their compliance with the statutory requirements; 2) a declaration on incomes and expenses of a candidate submitting information in accordance with the legislation on declaration, his/her spouse and close relatives; and 3) other information (comments on the candidate, recommendations), confirming the irreproachability of the candidate's behaviour. The decision to admit the candidate to the selection is made by the Council for the Selection of Judges by open vote by a majority of the total number of members of the Council. The Council for the Selection of Judges has used detailed criteria for the competitive selection for the position of a judge. The criteria contain detailed indicators of the evaluation of “the professional and volitional qualities”, including such criteria (groups of criteria) as: irreproachability, efficiency of activities; intellectual abilities, cognitive abilities (general outlook, professional horizons); moral and ethical qualities (honesty, sincerity, impartiality, objectivity); self-criticism; constructive behaviour in a conflict situation; motivation to hold the position of a judge; aspiration for professional development; organization; operability. The list of the candidates proposed by the Council for the Selection of Judges to the President for the presentation or appointment is formed in descending order according to the points received during the competitive selection. Candidates who received the highest score according to the results of the competition are presented by the Council for the Selection of Judges to the President for the presentation or appointment in the number equal to the vacant posts.

The monitoring report welcomed the open and competitive nature of the selection for the position of judges as a positive practice that meets the international standards. The only issue which was raised was that the indicated selection criteria should be formally approved by the Council of Judges and made a part of the Regulations on the procedure for holding a competitive selection for the position of judge. Also, the report did not accept the statutory provision that at the stage of the selection for a judicial position the candidate must give a written consent to the wiretapping in case of his/her appointment as a judge as a condition for the participation. It was considered to be an excessive and unreasonable interference in the personal life of a judge, even if based on the his/her consent. Such a requirement puts the candidate in unfavourable conditions when s/he must either refuse to participate in the contest or voluntarily give up his fundamental right to personal privacy in the part of the secrecy of communications. Similarly, the report criticised the voluntary provision by candidates of the results of their lie detector examination.²²⁸

A merit-based system operates in **Georgia**, where the High Council of Justice (HCJ) appoints candidates to vacant positions based on a person's qualification shown in written and oral examinations, professional and moral reputation, ability to assess issues freely and impartially, professional work experience and physical health. The criteria for selecting candidates for judges are set in the decision of the High Council of Justice and include: decision-making ability, effective communication skills, managerial skills, impartiality, morality, personal skills, professional work experience, the candidate's rank in the qualification list of the High School of Justice (only for school listeners), judicial temperament, statistical data about decided cases (if the candidate already has experience working as a judge), and the ability to manage trial effectively.²²⁹ The fourth monitoring round noted concerns of the civil society of Georgia that the selection criteria and procedure were not established by law, that the High Council of Justice did not justify its decisions and lacked transparency. The report recommended increasing transparency of the High Council of Justice activities, ensuring that all Council's decisions contain detailed justification, regulating

directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details. Georgia was also recommended to introduce promotion of judges based on competitive procedure with an open announcement of vacancies and based on clear criteria for promotion.²³⁰

The so called third wave of the judicial reform in Georgia in 2017 addressed some of the report's recommendations. The law was amended to stipulate that all HCJ decisions, information about the change of the HCJ members and any other information on the HCJ's activities as well as information on the judicial selection competition and its outcome must be published on the official HCJ webpage. Additionally, the information regarding the HCJ meeting date and the agenda must be published on the HCJ webpage no later than 7 days before the meeting. New rules on conflict of interest of HCJ members were introduced as well. The Georgian NGOs, however, did find these changes sufficient and stated that the practice had not improved significantly. The NGOs believed that the procedures for selection and appointment of judges contained a number of shortcomings, which in practice revealed the selection and appointment of judges still do not satisfy the requirements of objectivity, reasoned decision-making, principles of merit-based selection and transparency. The Government planned to introduce further reform measures regarding the HCJ in the next judicial reform wave started in 2018.²³¹

A system of oral and written examination is also used in **Azerbaijan**. Entrance examinations are advertised in the media. Candidates take a two-stage written examination consisting of randomly chosen questions. The examinations are marked and "double-checked" by the Judicial Selection Committee and "invited specialists". Candidates that pass the written examination proceed to a further oral interview. International, governmental and nongovernmental organisations, as well as media representatives, can observe the written and oral examinations. A candidate can also observe the interviews of other candidates. Candidates who pass the written and oral examinations undergo one-year of paid training followed by a further examination and an interview. The Judicial Council, based on proposals by the Judicial Selection Committee, then ranks successful candidates by their test scores and submits the list to the President for appointment. The monitoring report noted concerns about the procedure for selecting judges of the Supreme Court and appellate courts, where the criteria for judicial appointments were found to be not sufficiently objective and transparent.²³²

In **Mongolia**, the selection procedure revised in 2018 by the President's decision.

For the courts of first instance the selection shall be carried out at least twice a year, and for the courts of appeal and the Supreme Court - every time when a vacancy is announced. The procedure of judicial recruitment consists of the following stages: decision of the Judicial General Council (JGC) Head on the selection for vacant judicial posts; official notification; registration of candidates; basic examination (only for candidates for non-administrative judicial positions in the courts of first instance), which covers professional ethics, moral qualities, soft skills and knowledge of the language; special examination, which covers legal knowledge and experience; interview conducted by the JGC; training (only for first instance court judges); submission of selected candidates to the President (in case of the Supreme Court the proposal should be presented to the Parliament prior to its submission to the President). The decision on selection for vacant judicial posts that includes list of documents subject to submission, date of registration and the exams, is published on the websites of the JGC and all courts. Information about candidates, including their working experience and education is also published upon their consent. A part of the exam is conducted in electronic format, the results of the exams are disseminated by the media. The subsequent training for candidates is organised by the Judicial Research, Information and Training Institute which is a part of the JGC. The final list of candidates nominated as a judge is published on the internet prior to submission to the President. Decision of the JGC not to submit a candidature to the President can be subject to appeal to JGC, but the respective procedure is not regulated by the law. Those who passed the examinations but were not selected are kept on the reserve list and their scores remain valid for the next two years. The same selection procedure is applied for promotion of judges. The monitoring report found

the overall procedure for the most part to appear transparent and well-designed, but also noted a major deficiency in the absence of criteria for shortlisting candidates by the JGC. As a result, the JGC selects candidates for the appointment among those who passed all the exams and interview regardless of their scores. According to the report, this decreases the public trust to the process.²³³

Ethics rules

According to international standards, judges should be guided in their activities by the ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures but offer guidance to judges on how to conduct themselves. These principles should be laid out in codes of judicial ethics. Judges should play a leading role in the development of such codes. Judges should be able to seek advice on ethics from a body within the judiciary.²³⁴

While judiciaries in all IAP countries have developed codes of judicial ethics, their enforcement is often weak and there is often a lack of awareness about their requirements. In several countries, there is no enforcement mechanism to provide judges with advice on how to apply ethics rules and how to deal with violations of these rules by judges.²³⁵

The IAP monitoring report on **Kazakhstan** criticised its judicial ethics system. It found the 2016 Judicial Ethics Code adopted by the congress of judges to be an important milestone in the development of deontological fundamentals of the judicial community in Kazakhstan. The Code is based on the provisions of the UN Bangalore Principles and other international standards. However, the report noted several deficiencies related to the process of its adoption and oversight of its enforcement. First, the Judicial Ethics Code was adopted by a body (congress of judges) not foreseen by the Law “On the Judicial System”. It was adopted under auspices of the Union of Judges, a voluntary civic organisation operating on the basis of the Law “On Civic Organizations”. Membership in such an organisation is not mandatory for judges, while its documents may be deemed as binding only within the organisation. Second, control over compliance with the Code has also been taken out of the judicial system regulated by the Law “On the Judicial System”. The control bodies are commissions on judicial ethics that operate under branches of the Union of Judges. In other words, the state de facto delegated oversight of the compliance with the judicial integrity standards to a civic association, which is unlikely to ensure a meaningful control and may potentially prove an external influence factor on judges.²³⁶ Similar arrangement when the ethics issues are supervised by the body with an NGO status exists in **Tajikistan**.²³⁷

In **Georgia** the rules of conduct or ethical rules that cover judges are the Code of Ethics and the Law of Georgia on Disciplinary Liability and Disciplinary Proceedings of Judges of General Courts of Georgia. The Judicial Ethics Code was adopted by the Conference of Judges of Georgia after an official submission by the High Council of Justice. The High Council of Justice of Georgia is in charge of enforcing ethics rules for judges. The High School of Justice of Georgia provides trainings on issues related to Judicial Ethics for Judicial Candidates (future judges) as well as sitting judges and other court staff under its In-service Training Programmes.²³⁸

In **Mongolia**, the Code of Ethics for judges was adopted by the board of directors of the committee of judges of the Mongolian Bar Association in 2014. The Judicial Ethics Committee is a body attached to the Judicial Council. It comprises nine members, selected from among distinguished legal professionals and academic scholars. Three members are respectively nominated from courts of first instance, appeal and the Supreme Court, three other members - by the Bar Association of Mongolia and three more members - by the Ministry of Justice. All members including the Head of the Committee are subject to appointment by the President of Mongolia who has the same level of discretion as in other appointments in the judiciary. The President also approves the Rules of the Committee. This Committee resolves complaints from individual citizens, government officials or legal entities regarding judges’ discipline, accountability and ethics, and decides whether to impose disciplinary sanctions or not on a judge upon review and consideration of a disciplinary case.²³⁹

It is also a good practice to have separate rules of conduct for non-judicial court staff (e.g. **Armenia, Ukraine**).

Conflict of interests, asset disclosure

Provisions on management of conflict of interests of judges and the requirements to disclose their assets and interests are important instruments to ensure judicial integrity and prevent corruption among judges. In most IAP countries relevant obligations (if established) are covered in the general legislation on public service or anti-corruption. Additional rules may be established in the sectoral laws on the judiciary. As with other public officials (see chapter on public service of this report), the conflict of interest regulations for judges include restrictions related to the service (regulations on incompatibilities, gifts, political activity, confidentiality of information, etc.) and rules established to manage *ad hoc* conflicts that arise in specific case. The latter, when concern judicial activity, are covered by the procedural rules of recusal.

For example, the Judicial Code of **Armenia** includes rules to prevent conflict of interest and some other anti-corruption preventive restrictions. Among other things, these rules list circumstances for self-recusal of a judge, for instance, when his economic interest is present in a case. The law also provides restrictions regarding payments derived from non-judicial activities of a judge and receiving gifts. Apart from that, the Law on Public Service stipulates the incompatibility requirements and other restrictions to be followed by the persons holding public positions including judges. The asset declaration system is centralized and legal regulations on asset declaration are general for all public officials including judges.²⁴⁰

In **Georgia**, a judge is subject to the Law on Conflict of Interest and Corruption in Public Service, violation of which is one of the grounds for disciplinary proceeding of a judge. The position of a judge is incompatible with any other occupation and remunerated activity, except for pedagogical and scientific activities; a judge may not be a member of a political party or participate in a political activity. According to the Code of Judicial Ethics a judge may engage in activities not related to his/her official duties providing they do not contradict the principle of independence of the judiciary and the judge, do not endanger authority of the judiciary, do not raise the suspicion of objectiveness and impartiality of a judge and is compatible with the Georgian legislation and the rules of conduct. Judges are also covered by the general provisions on asset disclosure.²⁴¹

In **Kyrgyzstan** the 2017 Law on Conflict of Interests extends to judges. However, the IAP monitoring report found it unsatisfactory. The Law on Conflict of Interests does not contain special provisions that would regulate the procedure for preventing and eliminating conflicts of interests among judges. Most of the provisions of the Law cannot be implemented by judges, because they do not have “direct leadership” or ethics commission in court. The report stated that relevant rules should be adapted to the organization of the work of judges and take into account the guarantees of their independence. This can be done by amending the Law on Conflict of Interests and its harmonization with the Constitutional Law of the Kyrgyz Republic on the Status of Judges. Another option may be to determine the specifics of resolution of the judicial conflicts interests by an act of the Council of Judges (which may also require a prior amendment of the Law on Conflict of Interests). In addition to adapting the general rules regulating conflicts of interests to the specifics of the judicial work, the Council of Judges should also prepare detailed clarifications and practical advice on preventing and eliminating conflicts of interests in the judicial work. Another inconsistency is the requirement to file and verify declarations of personal (private) interests under the Law on Conflict of Interests. The law provides that the verification of such declarations should be carried out by the ethics commissions of the state bodies, local self-government bodies, institutions, organizations or enterprises. The law does not provide for establishment of such commissions in courts. The report also found that the restrictions on gifts related to judges are regulated by the Law on the Status of Judges, the general Law on Conflict of Interests and the Judicial Code of Honour. The corresponding provisions overlap and do not always conform with each other.²⁴²

In **Mongolia**, according to the law a judge is obliged to recuse him/herself in court sessions where conflict of interest may arise or should inform trial participants about potential conflict of interest and provide them with opportunities to challenge him. The law further prohibits a judge to work as an attorney for two years after his/her resignation. The Law on Legal Status of Judges provides a broad list of anti-corruption and ethical restrictions for the judges, which are, for instance, related to expression of judges' opinion on ongoing cases, use of information, receiving gifts and other incentives, contacts with third parties including political forces, incompatibilities, improper conduct. In terms of incompatibility judges are subject to stricter restrictions compared to other public officials – they are prohibited from holding any concurrent work, including providing legal advice. Lecturing or research may be allowed depending on the context. Judges are subject to the general asset declaration system administered by the Independent Agency Against Corruption.²⁴³

In Ukraine, in addition to general rules on the conflict of interest and asset disclosure applicable to judges, the Law on the Judiciary and Status of Judges requires judges annually submit to the High Qualification Commission of Judges a “declaration on family relations” and a “declaration on judicial integrity” by filling an electronic form. In the declaration on family relations, judges indicate whether they have family relations with persons who hold or have held during the last five years specified positions such as the position of judge, court staff, prosecutor, employee of a law enforcement body, lawyer, notary, member or employee of the judicial bodies, President of Ukraine, MP, government member, etc. In the declaration on judicial integrity, judges have to make several specified statements, e.g. the congruity of their level of life with the property owned and income received by them as judges and their families, non-commitment of corruption offences, lack of grounds for disciplinary action, diligent fulfilment of judicial obligations and observance of the oath, non-interference with justice rendered by other judges, etc. Non-submission or untimely submission of such declarations or submission of knowingly inaccurate (including incomplete) information results in disciplinary liability.²⁴⁴

In **Uzbekistan**, the IAP monitoring report found that the provisions of procedural codes concerning recusal and self-recusal of judges were not sufficient to prevent conflicts of interest in the course of judicial activities. First of all, a conflict of interest has to be defined in legal terms, which can be done by adopting general legislation on conflict of interest or a special act regulating court activities. The rules concerning conflicts of interest should be adjusted with due account for the specifics of judicial office and safeguards of judicial independence. These specific rules can be fixed by law or a bylaw issued by a judicial community body. It is also necessary to prepare detailed explanations and practical guidelines on the prevention and elimination of conflicts of interest in judges' work. Concerning asset disclosure, the Supreme Judicial Council established special proceedings for judges to report about their income. But the monitoring report noted that the obligation of judges to declare their assets, income, expenses, liabilities and interests must be set forth by law. Besides, this information should be published online (with possible minor exceptions) and verified on a regular basis. Before the establishment of a common effective mechanism for the asset disclosure, it would be expedient to ensure publication of statements submitted by judges in accordance with the SJC Resolution.²⁴⁵

When dealing with recusals, the situations when the judge in question has to rule or even participate in the decision-making on his/her own recusal should be avoided. The IAP monitoring raised such an issue, for example, regarding **Ukraine**.²⁴⁶

Restrictions and anti-corruption requirements should also be complemented by an effective mechanism for providing consultations and recommendations to judges (including confidential ones) concerning conflict of interest, disclosure of assets and interests, rules of conduct and other anti-corruption restrictions. The judicial bodies need to develop and disseminate practical guides, training manuals and other materials on these issues designed specifically for judges. Training in the field of ethics, anti-corruption and integrity should be included in the curricula for the initial and in-service training for judges and have a practical focus.²⁴⁷

Training

The initial and in-service training of judges are both crucial for building integrity as well as to raise their awareness about ethics rules and anti-corruption legislation. According to international standards, judicial training should be conducted by a dedicated institution, which is subordinated to the judiciary (*e.g.* judicial council) and not to the executive (*e.g.* ministry of education or justice). An independent authority (*e.g.*, the judicial council), should ensure that training programmes for judges satisfy the requirements of openness, competence and impartiality inherent in judicial office.²⁴⁸ In the following IAP countries, judicial schools are subordinated to the judiciary: **Armenia, Georgia, Kazakhstan²⁴⁹, Kyrgyzstan and Ukraine.**

Accountability

Even most independent and ethical judiciary is susceptible to corruption when judicial actions remain unchecked. It is therefore necessary to set up effective mechanisms for judicial accountability. Creating an accountability system that does not impair judicial independence and impartiality is a challenging task. It should include preventive (transparency of various procedures related to the administration of justice and judicial careers, asset and conflict of interest disclosure, etc.) and punitive instruments (disciplinary liability, effective procedures for lifting judicial immunity, prosecution of misconduct by judges).

Transparency

All procedures related to the selection, promotion, dismissal, and disciplining of judges should be transparent and open to public scrutiny. It should include publication of vacancies, results of tests and other competitive selection procedures, open records of meetings and decisions of the relevant bodies. Also, the public should be aware of how the relevant procedures are regulated (criteria for recruitment, promotion, etc.). The IAP monitoring report noted in this regard that the lack of information about the reasons for appointing or dismissing judges as well as for reorganising the courts might have lowered the public's trust in the courts.²⁵⁰

It is also important to ensure transparency of court proceedings – from distribution of cases among judges and physical access to court premises or hearings to the publication of court decisions. In **Kazakhstan**, there is a publicly accessible database of electronic texts of judicial decisions on the official website of the Supreme Court. Also, public access was granted to information provided by courts regarding the status of cases, including the date of proceedings, copies of judicial decisions, and the name of the judge. In addition, information on the judiciary, addresses and contact details of the courts is also available online. At the same time, the IAP monitoring took note of that problems had been reported concerning access to court sessions, which typically should be open, as well as concerning prohibitions on recording proceedings with technical devices.²⁵¹ All judicial decisions are also available on-line in **Armenia, Mongolia, Ukraine and Uzbekistan.**

In order to further enhance the transparency of the judiciary and ensure access to justice for all, the High Council of Justice of **Georgia** created a centralized online database for publishing decisions of all court instances; the webpage <http://ecd.court.ge> was launched in June 2019.

In **Kyrgyzstan**, judges are required to publish online on the central website their own decisions. However, the level of compliance is relatively low. The IAP monitoring round report noted that other ways of organising publication of the judicial decisions should be considered. Also, the technical function of placing the judicial acts on the Internet goes beyond the basic functions of judges. This responsibility can be entrusted to the Judicial Department and/or the court staff.²⁵²

In **Mongolia**, the court sessions are recorded and are accessible through screens placed in each court. Also, the recordings are available for trial participants and for academic purpose only. The court rulings are published online on the special website. In 2017, the Judicial Council introduced the court service centre

in courts of all levels. The centre enables access to court hearings through the screens transmitting the sessions.²⁵³

In **Uzbekistan**, judicial decisions issued by courts of different jurisdictions are published on the website of the Supreme Court. In 2018 Uzbekistan also launched the first stage of the interactive service “Online broadcast” in 12 pilot courts. This service allows members of the public to watch live or recorded broadcasts from the courtroom via the Internet. The IAP monitoring report welcomed steps taken towards ensuring transparency and openness of courts in the Republic of Uzbekistan. Regarding publication of court decisions, the report recommended that there should be a legal basis in the law for the online publication. The law could clearly provide for the compulsory publication of court decisions including interlocutory judgments, the procedure and timeframe for publication, and the list of exceptions exempt from mandatory public disclosure (the list of data that should be anonymized in judicial acts). This anonymization should not extend to government public officials that are involved in the case by virtue of their official authority. It is recommended to ensure maximum automation in the procedure of anonymization and publication of decisions on the website immediately after the judicial acts has been signed by the judge. The report also recommended to spell out in law the procedure for live courtroom broadcasts. Such broadcasts involve a serious interference with the right to private and family life of the participants of court proceedings and thereby require statutory regulation. Live broadcasts should be conducted within a legal framework ensuring that this practice contributes to openness of court trials and strengthening of public confidence in the judiciary. The appropriate provisions have to be included in the codes of judicial procedures.²⁵⁴

Disciplinary liability

Weak disciplinary rules and lack of their enforcement may foster impunity among judges, while too broad provisions and arbitrary application may seriously encroach on the judicial independence. It is therefore important to find a necessary balance. The Venice Commission summarised the available international standards on the disciplinary liability of judges as three basic requirements: (i) that there be a clear definition of the acts or omissions which constitute disciplinary offences; (ii) that the disciplinary sanctions be proportionate to the respective disciplinary offence; and (iii) that the disciplinary proceedings be of an appropriate quality.²⁵⁵ The IAP monitoring and recommendations mostly focused on these issues as well.

The issue of overly broad grounds for imposing disciplinary liability on judges was raised regarding several IAP countries. The IAP report on **Kazakhstan** noted that such grounds and elements as “... resulted in bringing judicial office into disrepute and stigmatization of the judge’s standing”, “a grave violation of law”, “commission of a discrediting act contravening the judicial ethics” were not clear enough.²⁵⁶

In **Kyrgyzstan**, according to the Constitutional Law on the Status of Judges, a judge is dismissed if his conduct was not irreproachable. A breach of the irreproachability requirements means gross or systematic commission by a judge of a disciplinary offence that is “incompatible with the high title of judge”. The law includes a long list of such offences. The monitoring report noted that the wording “gross or regular commission by a judge... incompatible with the high title of judge” was not sufficiently clear and allowed too much freedom of interpretation. It also allowed dismissal of the judge for a one-time “gross” violation of one of the Law’s provisions, for example, for publicly speaking on an issue that is subject to review in a court before final judicial act is issued, failure to notify the Council of Judges of interference in the judicial activities. The report concluded that the list of grounds triggering disciplinary liability of judges was too large. There was a room for broad discretion when choosing a disciplinary sanction. Therefore, it was necessary to scale sanctions for various violations and clearly define them in the law without references to other provisions.²⁵⁷

It was also problematic that “gross violation” of the Judicial Code of Honour was one of the grounds for disciplinary liability. The Code contains rather broad wordings, the violation of which can be interpreted arbitrarily. Therefore, a simple reference to the Code as the basis for a disciplinary offense (even with the

specification of “gross violation”) is not enough. The Venice Commission in its opinion recommended to remove the non-compliance with the Judicial Code of Honour as the ground for instituting disciplinary proceedings and to specify the grounds for bringing judges to disciplinary liability in separate clearly worded provisions. Another issue raised was the fact that judges could be disciplined for violation of the labour regulations. Such a provision undermined the status of the judge, since the requirements of the labour legislation should not apply to judges at all. If the judicial behaviour was inappropriate and it affected the process of administration of justice, then it should not be about the labour schedule but about the violation of the oath of the judge.²⁵⁸

Similar conclusions were reached as a result of the IAP monitoring of **Uzbekistan**. The envisaged grounds for bringing judges to disciplinary responsibility were found to be too general and broad, which by itself can compromise the principle of legal certainty and foreseeability of legal norms. It concerns, in particular, such ground as “violation of the rules of ethical judicial conduct”. This definition was too broad and ambiguous. Besides, it appeared unjustified that this provision put very serious and relatively minor offences on the same level. For example, violation of basic judicial principles such as judicial independence, objectivity, impartiality, fairness and integrity entails the same liability as disregard for rules governing personal interaction of judges with their peers and subordinate staff.²⁵⁹

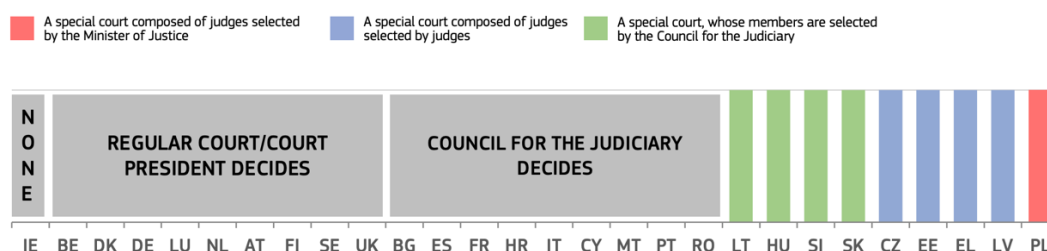
Disciplinary proceedings should also include guarantees against arbitrariness to ensure that judges are protected from persecution for political or other ulterior motives. For example, as was noted in the IAP monitoring reports, the functions of initiating disciplinary proceedings, conducting an investigation, and deciding a case should be separated. Otherwise there would be a violation of the principles of a fair trial.²⁶⁰ A system in which a member of the judicial council is in charge of the disciplinary inquiry and presentation of the case to the full panel of the council affects the impartiality of the proceedings, as the same person will perform the roles of a “prosecutor” and a “judge”.²⁶¹ As was noted in the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (paras. 5 and 26), in order to prevent allegations of corporatism and guarantee a fair disciplinary procedure, Judicial Councils shall not be competent both to a) receive complaints and conduct disciplinary investigations and at the same time b) hear a case and decide on disciplinary measures.²⁶² Such unacceptable overlap can be resolved, for example, by creating an autonomous service of disciplinary inspectors at the Judicial Council, which will examine complaints against judges, conduct their investigation and present results at a meeting of the disciplinary body that will decide whether to hold judges liable.²⁶³

Chairperson of the Supreme Court should not have the powers to initiate a disciplinary case and take part in its consideration if such person has a substantial influence on the relevant disciplinary body.²⁶⁴ In the same way, any powers of court chairpersons concerning initiation of proceedings against judges have to be revoked. This would help to strengthen the principle of equality of judges – court chairperson should not be regarded as a “boss” of judges.²⁶⁵

The participation of judicial qualification boards in disciplinary proceedings against judges was also criticised in the IAP reports. Often such boards take part in the selection of candidates for judicial positions and evaluation of judges when they are reappointed for a new term or transferred to a different judicial job. In other words, qualification boards are partly responsible for the selection and appointment of judges, and at the same time conduct disciplinary proceedings against them. Such arrangement may raise a question about the efficiency and fairness of their work.²⁶⁶

There should be sufficient procedural guarantees of the due process for a judge in the disciplinary proceedings, namely: the judge should have the right, in particular, to express his version of the facts in question, to prepare his defence, to represent oneself independently or through a lawyer, to appeal against the decision on the legality and proportionality of the imposed disciplinary sanctions; the law should also specify the requirements for sufficiency and admissibility of evidence, a list of grounds for holding closed disciplinary proceedings.²⁶⁷

Figure 15. Authority deciding on disciplinary sanctions regarding judges in the EU member states



Source: The 2019 EU Justice Scoreboard, p. 48, https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf.

Conclusions and recommendations

The independence and integrity of the judiciary are crucial for anti-corruption efforts and proper democratic governance. A number of IAP countries have conducted further reforms in this area, but most of the IAP countries have yet to reach compliance with the applicable international standards and ensure judicial independence and integrity in practice. There are also many cases when legal safeguards are ignored in practice, *e.g.* when judges are dismissed under the pretext of reorganisation or job cuts contrary to irremovability guarantees enshrined in the law. The financial independence of courts is often undermined in practice, *e.g.* when judicial budgets and salaries are reduced contrary to the legal guarantees. Disciplinary proceedings are often used as a tool to undermine the judicial independence. Creating a judicial accountability system that does not impair the independence and impartiality of the judiciary remains a challenging task in the region.

Recommendations:

- Continue necessary reforms of the judiciary to ensure their independence, impartiality, integrity and accountability in line with international standards (including through constitutional amendments where required).
- Ensure that main issues of the judicial system and career of judges are regulated in sufficient detail directly in the law.
- Strengthen and strictly abide by the guarantees of independence of the judiciary, including provisions on the irremovability of judges and safeguards against the undue influence of judges. Abolish the initial temporary appointment of judges where it exists; if it is retained, non-confirmation of judges already in office should be based on clear and transparent criteria and justified decisions.
- Minimise as much as possible or remove completely the involvement of political bodies in the appointment and dismissal of judges.
- Reform judicial councils or similar institutions in line with international standards (including their composition, status, powers, and procedures) and make them responsible for judicial careers, disciplining, training of judges, etc. The judicial councils should include a substantial representation of the civil society as its members to ensure public accountability and prevent corporativism. Members of the law enforcement agencies and executive bodies should not be members of the judicial councils. The judicial council should be transparent in its work and provide justification of its decisions.
- Introduce a system of automated assignment of cases among judges based on objective criteria, preferably agreed upon by the judges of the court. To prevent abuse, ensure that information on case assignments is open to judges, parties to the case and the public.

- G. Revoke the powers of court presidents related to judicial careers (including their salaries and other benefits, disciplinary liability, etc.), as such powers could affect judicial independence. Court presidents should be elected by judges of the relevant court or selected by the Judicial Council based on merit for a limited term.
- H. Ensure in law and in practice the financial autonomy of the court system, in particular, by allowing the judiciary to be responsible for drafting and defending its own budget before the parliament, and by establishing that judicial bodies (e.g. judicial council) are responsible for controlling the administration of the judiciary's budget. Ensure that remuneration rates and all wage increments of judges are fixed directly in the law at the level sufficient to ensure judicial independence and reduce the risk of corruption; prohibit payment of bonuses to judges.
- I. Introduce effective instruments for ensuring the integrity of judges, in particular, through merit-based competitive recruitment and promotion, rules on ethics, incompatibilities, conflict of interest management, gifts, etc. Abolish the system of judicial qualification grades if exists and ensure the evaluation of judges on the basis of clearly defined transparent and uniform criteria and procedures determined by law.
- J. Provisions on conflict of interest of judges should take due account of the specifics of judicial office as well as the need to observe the safeguards of judicial independence. Rules on conflict of interest and asset disclosure should cover members of the judicial bodies (e.g. judicial council, judicial selection commission).
- K. Establish a mechanism for providing consultations and recommendations to judges (including confidential ones) concerning conflict of interest, disclosure of assets and interests, rules of conduct and other anti-corruption restrictions. Prepare and disseminate practical guides, training and other manuals on these issues designed specifically for judges.
- L. Training on ethics, anti-corruption and integrity should be an important part of the training curricula for judges at all stages of their career. A dedicated training institution subordinated to the judiciary should be put in charge of the judicial training.
- M. Judges should be covered by a system of asset and interest disclosure that provides for regular reporting of the assets, income, expenditures, liabilities and interests of judges and their family members. Such a system should provide for effective verification of the declarations and their online publication to the extent necessary to ensure transparency and accountability of the judiciary (i.e. by excluding certain sensitive personal data that is narrowly defined).
- N. Ensure the accountability of the judiciary, first and foremost, through transparency of all issues related to judicial careers (publication of vacancies and candidates who applied, results of various stages of the competitive selection, etc.), court proceedings and decisions.
- O. While judicial bodies should have adequate means to effectively discipline judges, disciplinary liability should not be used to arbitrarily persecute independent judges. To this end, the grounds for and procedures of disciplinary liability should be clear and established in the law in line with the principle of legal certainty; disciplinary proceedings should comply with fair trial guarantees (in particular, by separating the investigation, prosecution and decision-making functions in such proceedings, affording judges with adequate means to defend themselves, and ensuring the right to appeal adverse decisions in court).

Integrity in the public prosecution service

The public prosecution service has an essential role in the criminal justice system of the state and in safeguarding the rule of law. In the Council of Europe documents public prosecutors are defined as public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.²⁶⁸ Public prosecutors contribute to ensuring that the rule of law is guaranteed, especially by the fair, impartial and efficient administration of justice in all cases and at all stages of the proceedings within their competence.²⁶⁹ Public prosecutors should have necessary capacity, independence and integrity to effectively prosecute corruption offences and prevent corruption within the public prosecution service itself.

The IAP fourth round monitoring reviewed the independence and integrity of the public prosecution service in the IAP countries for the first time. The review followed available international standards²⁷⁰ and best practices and was based on the understanding that standards applicable to the judiciary and judge to a large extent can be applied to the public prosecution service.

Functions

There are no strict standards on the scope of functions that a public prosecution office should have. The Council of Europe documents acknowledge the possibility of having certain functions outside of the criminal sphere. Venice Commission has consistently advocated that the prosecution service should have its primary focus on the criminal law field and that where other functions are exercised they must not be functions which interfere with or supplant the judicial system in any way. Where prosecutors have power to question the decision of a court, they must do so by exercising a power of appeal or a power to seek a review of a decision just as any other litigant might do.²⁷¹

The IAP monitoring has raised issues of functions of the public prosecution service in several of its report. For example, the report on **Kyrgyzstan** raised the following issues:

- With the adoption of the revised Constitution of the Kyrgyz Republic in 2016, the prosecutor's office no longer supervises commercial organisations and individual entrepreneurs, which narrowed down the scope of the supervision. The remaining supervisory functions of the prosecutor's office were still excessive and problematic not only from the point of view of the way government should be set up in a democracy; they also could lead to corruption. Kyrgyzstan has an ombudsman; it has also implemented free legal aid. The report stated that these were sufficient to allow giving up the broad supervisory role of the prosecution authorities and focusing their functions on leading criminal prosecution in court.
- Similar conclusions were reached by the Venice Commission and OSCE/ODIHR experts. The Venice Commission noted that the revised Constitution retained the quite extensive supervisory powers of the Office of the Prosecutor. Such a “supervisory” prosecution model was in fact reminiscent of the old Soviet prokuratura model. At the same time, over the last decades, many postcommunist democracies have sought to deprive their prosecution services of extensive powers in the area of general supervision, by transferring such prerogatives to other bodies, including national human rights institutions (such as an Ombudsperson). The rationale for such reforms was to abolish what was considered to be an over-powerful and largely unaccountable prosecution service. Maintaining the prosecution service as it is in the Constitution could mean retaining a system where vast powers are vested in only one institution, which may pose a serious threat to the separation of powers and to the rights and freedoms of individuals. The maintenance of such wide prosecutorial supervisory powers has been repeatedly criticized by international and regional organizations, among them OSCE/ODIHR and the Venice Commission. In numerous opinions on

this topic, the OSCE/ODIHR and the Venice Commission have recommended, for the above-mentioned reasons, that the supervisory role of prosecutors be abandoned and that their competences be restricted to the criminal sphere.²⁷²

- The monitoring experts welcomed the fact that the prosecution authorities of Kyrgyzstan would not be conducting investigations; this function was alien to prosecutors and leads to the conflict of interest. Problematic, however, was the power to open criminal prosecution against public officials of certain state authorities. Prosecutors enjoy sufficient powers to lead investigations and endorse key decisions in the course of the investigation, including the charges brought. There was no need to grant an additional corruption-prone power to initiate criminal prosecution. This step, opening up criminal investigations, in principle, was conducive to corruption, and it should be eliminated, replaced with an automatic registration of the detected criminal offences. This was exactly what was done in the new 2017 Criminal Procedure Code of Kyrgyzstan which became effective in 2019 and provided for no such action as “initiating a criminal case”. In this context, it was unclear how provisions of Article 104 of the Constitution would be complied with.
- A very important aspect of the work of the prosecution service in Kyrgyzstan, which might create a real threat to judicial independence and the right of the citizens to legal certainty, was a possibility, given by law to the prosecutor, to join the judicial proceedings at any stage should it be required in order to protect rights of citizens or the interests of the public or the state, and also the provision that authorises prosecutors to appeal against judicial acts.
- Of no less concern was the provision stipulating that the Prosecutor General had the right to make submissions to the Plenary Council of the Supreme Court of the Kyrgyz Republic to issue guidance for courts on issues of judicial case law, and to take part in their discussion. The report recommended abolishing these provisions.²⁷³

In **Uzbekistan**, the IAP monitoring report concluded that the prosecution authorities in Uzbekistan were vested with significant powers and oversaw many areas. In general, the broad supervisory functions of the prosecution authorities are problematic from the point of view of international standards. This supervisory role is based on the Soviet model of a prosecutor's office, where prosecution had some of the functions of the courts, the Bar, the Ombudsman and other institutions. Such excessive powers cannot only violate the principle of separation of powers, but also bear considerable corruption risks, since they concentrate a considerable amount of power in hands of a hierarchical structure headed by an official appointed by political bodies. In addition to the above, the supervisory powers of the prosecution authorities in Uzbekistan are not limited to state bodies and officials, but extend to institutions, enterprises and organizations regardless of their subordination, affiliation and forms of ownership, public associations, officials and citizens.

The report stated that with the development in Uzbekistan of an administrative jurisdiction of courts, reforming the provision of legal aid to the population, the supervisory powers of prosecutors should be abandoned or reduced as much as possible, keeping them within the scope of pre-trial investigation and execution of criminal punishments. It is also necessary to gradually exclude the fulfilment by the prosecution authorities of functions non-characteristic of them, transferring the appropriate powers to the executive authorities.

Of serious concern for the monitoring experts were also powers of prosecutors, regardless of participation in the judicial proceedings, to verify the compliance of the court decisions, sentences, rulings with the law and the materials collected in the case. According to the law on the prosecutor's office, the prosecutor may appeal decisions in criminal, civil, economic cases and cases of administrative offenses to a higher court. These powers violate the independence of the judiciary and the principles of the rule of law, in particular the finality of a judicial decision that has entered into force. The powers of prosecutors to recall or file a protest against court decisions should be abolished.²⁷⁴

The report on **Armenia** noted that the Constitution provides prosecutors with powers that need to be limited to some extent. These powers include 1) to bring cases to protect the state's interest (when the state or local government declines or fails to do this within a reasonable time period or when no state or local government body is authorized by law to do this); 2) to appeal against judicial acts in civil or administrative cases related to the state's interest wherein the Prosecutor's Office did not participate (when the state or local government is not going to appeal). Although Armenia's Constitution and laws provide some important limitations, generally these powers have been criticized as inconsistent with the powers of the prosecutor in a democracy and creating corruption risks.²⁷⁵

In **Tajikistan**, the IAP monitoring found the list of functions and powers of the prosecutors to be too broad, especially with regard the general oversight. Although the legislation prohibits prosecutors when exercising the general oversight to interfere in the commercial activity of entities and substitute bodies of sectoral administration and control, de fact the prosecutor may at any time start inspections and demand documents. The report recognized it a significant corruption risk.²⁷⁶

An example of the important reform in this respect is **Ukraine** where following the constitutional and legislative amendments enacted in 2014-2016 public prosecution service no longer exercises the general supervision function which was contrary to European standards and criticised by the international organisations for many years. Under the revised constitutional provisions, the prosecution service exercises the following functions: 1) public prosecution in the court; 2) the organisation and procedural leadership during pre-trial investigations, decision of other matters in criminal proceedings in accordance with the law, supervision of undercover and other investigative and search activities of law enforcement agencies; 3) representation of interests of the State in the court in exceptional cases and under the procedure prescribed by law.²⁷⁷

Independence

As noted in one of the international instruments, the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. Therefore, the general tendency to enhance the independence and effective autonomy of the prosecution services should be encouraged. Prosecutors should be autonomous in their decision-making and should perform their duties free from external pressure or interference, having regard to the principles of separation of powers and accountability.²⁷⁸ "Independence" means that prosecutors are free from unlawful interference in the exercise of their duties to ensure full respect for and application of the law and the principle of the rule of law and that they are not subjected to any political pressure or unlawful influence of any kind. Independence applies both to the prosecution service as a whole, its particular body and to individual prosecutors in the sense explained below.²⁷⁹

The enforcement of the law and, where applicable, the discretionary powers by the prosecution at the pre-trial stage require that the status of public prosecutors be guaranteed by law, at the highest possible level, in a manner similar to that of judges. They shall be independent and autonomous in their decision-making and carry out their functions fairly, objectively and impartially.²⁸⁰ States should take appropriate measures to ensure that the legal status, the competencies and the procedural role of public prosecutors are established by law in a way that there can be no legitimate doubt about the independence and impartiality of the court judges.²⁸¹

Prosecutorial independence should ensure that the prosecutor's activities are free of external pressure as well as from undue or illegal internal pressures from within the prosecution system. The complete independence of the public prosecution from intervention on the level of individual cases by any branch of government is essential. External independence of prosecutors can be ensured through a variety of methods and should include sufficient and non-arbitrary budgetary funding. To ensure proper functioning of the prosecution service, the Chief Prosecutor has to be appointed and dismissed in the transparent manner, strictly according to the law and through an objective and merit based process.²⁸²

In the report on **Kazakhstan** the monitoring experts reviewed the Constitution and the recently revised law on the prosecutor's office and on the law enforcement service. In each of these three acts there were gaps and contradictions that weakened the public prosecution service as a fully functional and independent state body. The Constitution did not define precisely the status of public prosecution. Neither the Constitution, nor the law on the prosecutor's office offered grounds for including public prosecution among law enforcement agencies. However, the new law on the prosecutor's office provided that service in public prosecution shall be a type of law enforcement service, and the procedure and specific rules applicable to the service in public prosecution offices are defined. Based on that, the Public Prosecution Service is subject to numerous regulatory acts (decrees, resolutions, rules and regulations) which govern the work of law enforcement agencies. Although the constitutional provisions guarantee independence of the public prosecution from the other government bodies or officials, they neither guarantee independence of prosecutors in the exercise of their procedural powers, nor protects them against unjustified interventions into their professional activities (including interventions by superior prosecutors, in certain instances). Such key matters as establishment, reorganization and liquidation of public prosecution offices are regulated by the Civil Law Code and not by the law on the prosecution office. The report recommended defining in the Constitution of Kazakhstan the status of the Public Prosecution Service and setting guarantees to protect prosecutors from illegal interference into their work, and guarantees of their autonomy, including the financial autonomy.²⁸³

Prosecutor General

The public prosecution service in all IAP countries is a highly hierarchical institution. This means that the independence of the public service at whole and the autonomy of individual prosecutors depends to a large extent the procedure for appointment and dismissal of the Prosecutor General (PG), his tenure and safeguards against interference.

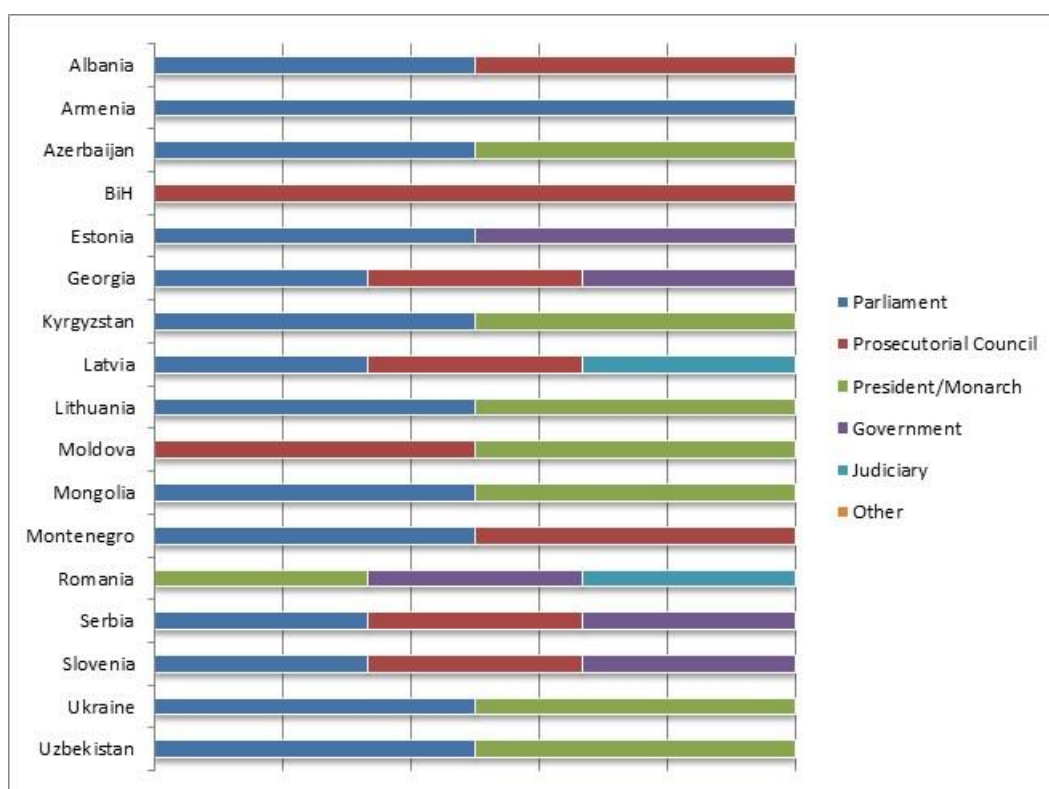
The Venice Commission, when assessing different models of appointment of Chief Prosecutors, has always been concerned with finding an appropriate balance between the requirement of democratic legitimacy of such appointments, on the one hand, and the requirement of depoliticisation, on the other. Thus, an appointment process which involves the executive and/or legislative branch has the advantage of giving democratic legitimacy to the appointment of the head of the prosecution service. However, in this case, supplementary safeguards are necessary in order to diminish the risk of politicisation of the prosecution office. In the Venice Commission's opinion, the establishment of a Prosecutorial Council, which would play a key role in the appointment of the Chief Prosecutor, can be considered as one of the most effective modern instruments to achieve this goal. The nomination of the candidate for PG should be based on his/her objective legal qualifications and experience, following clear criteria laid down in the law. It is not sufficient for a candidate for such a high office to be subjected to the general qualification requirements that exist for any other prosecutorial position; the powers of the Chief Prosecutor require special competencies and experience. In designing these qualification requirements, the authorities should give consideration to the possibility of opening the position of Chief Prosecutor up for highly qualified and experienced legal professionals from outside the prosecutorial community as well.²⁸⁴

In most IAP countries the monitoring reports found serious deficiencies in this regard. For example, in **Kyrgyzstan** the process of appointment and dismissal of the PG is dominated by political bodies – the President and parliament. The President and parliament have unlimited discretion as to early termination of the Prosecutor General's term of office, which only politicizes this office even more and makes it dependent on political interests. Such state of affairs fails to comply with democratic standards in the organisation of public prosecution authorities.²⁸⁵

The IAP monitoring report noted that it is important that the role of the President and parliament in the appointment and dismissal of the Prosecutor General should be removed or restricted to the maximum extent, with the establishment of a body of prosecutorial self-government (a prosecutorial council) which

will be authorized to select candidates for this office and appoint the Prosecutor General or nominate the selected candidate for appointment, as well as decide whether there are grounds for early dismissal of the Prosecutor General from office. Grounds for early dismissal of the Prosecutor General from office must be clearly defined in the Constitution or in the law, and no dismissal for political motives should be allowed.²⁸⁶

Figure 16. Authorities appointing the Prosecutor General in some ACN and IAP countries



Source: OECD/ACN (upcoming publication), The independence of prosecutors. Data from countries that replied to the questionnaire.

The monitoring report on **Uzbekistan** found that the prosecution authorities could not be considered sufficiently independent of political influence primarily because of the procedure of appointment and dismissal of the Prosecutor General by the President of the Republic of Uzbekistan with the approval of the Senate. Neither the Constitution nor the Law “On the Prosecutor’s Office” contain grounds for the early termination of the powers of the Prosecutor General. Thus, both the appointment and the dismissal from the office are of a political nature. The report stated that such procedures should be revised. It is necessary to provide a transparent mechanism for the appointment of a Prosecutor General on the basis of an assessment of the personal qualities of candidates. The procedure for the selection and appointment of the Prosecutor General should include consultations with the civil society.²⁸⁷

Also, in Uzbekistan, of problematic nature were regular updates by the General Prosecutor’s Office to the President and his administration about ongoing criminal investigations, including sending special circulars within 24 hours after the initiation of a criminal case, arrest, and so on. The Law on the Prosecutor’s Office (Article 12) stipulates that the Prosecutor General systematically informs the President of the Republic of Uzbekistan on the state of law and order, and also reports to the Oliy Majlis at least once every five years. However, informing “about the state of law and order” should not mean prompt notification of the

President about ongoing criminal proceedings. Information on ongoing criminal proceedings should be reported in a general manner through the media as decided by the responsible prosecutor.²⁸⁸

In **Armenia**, under the new Constitutional provisions effective from 2018, the Prosecutor General is elected by the National Assembly, upon the recommendation of the competent standing committee of the National Assembly, by at least three fifths of votes of the total number of Deputies, for a term of six years. The same person may not be elected as Prosecutor General for more than two consecutive terms.” The IAP monitoring report noted that the reform did not sufficiently remove the involvement of politicians from the process of election and dismissal of the Prosecutor General; it merely shifted to an increased role of the Parliament and a diminished role of the President. Overall, it did not adequately insulate the prosecution service from potential political pressure and influence. The monitoring team was of the opinion that broader involvement of legal professionals, including those from civil society, could reduce a danger of politicisation of the election of PG. Moreover, the possibility of re-election of the Prosecutor General for the second consecutive term can pose a risk in terms of his independence from political forces present in the Parliament.²⁸⁹ According to the conclusion of the Venice Commission, “there is a potential risk that a prosecutor who is seeking re-appointment by a political body will behave in such a manner as to obtain the favour of that body or at least to be perceived as doing so. A Prosecutor General should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period. The period of office should not coincide with Parliament’s term in office.”²⁹⁰

A positive example of the relevant reform can be found in **Georgia** (see box below).

Box 19. Procedure for appointment of the Prosecutor General of Georgia

The Prosecutor General is elected for six years term. No person may be elected as the Prosecutor General for a second consecutive term. To be eligible for appointment as the Prosecutor General, a person must be a citizen of Georgia, must have no criminal record and must have at least 5 years of working experience as a judge, a prosecutor, or a criminal defence attorney, or must be a recognized expert in criminal law with at least 10 years of working experience as a legal professional. The candidate should be a person with high reputation due to his/her moral and professional qualities. The appointment procedure consists of the following four phases:

1. The Prosecutorial Council consults with representatives of academia, civil society and law experts and based on those consultations proposes at least three candidates. At least one of the three candidates must be a representative of a different gender. The decision of the Prosecutorial Council on selecting candidates must be a reasoned one.
2. The Prosecutorial Council holds separate voting procedures by secret ballot for the three candidates. To be further considered, the candidate must be the one receiving the most votes but not less than 2/3 votes of all members. If all the candidates fail to receive the required number of votes, the two candidates receiving the majority of the votes are to be nominated for the second round. If none of the candidates receive required votes in the second round, then within one week the Prosecutorial Council nominates different candidates in the same manner.
3. The Prosecutorial Council presents the successful candidate to the Parliament for election.
4. The Parliament elects the Prosecutor General of Georgia with the majority of its members. If the Parliament does not support the candidate, the above procedures are repeated.

Source: OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 62-63; country comments.

The IAP report on **Mongolia** recommended providing for clear, transparent and merit-based procedures for the selection and appointment of the Prosecutor General involving legal community and civil society.

It also advised to provide for participation of an independent expert body in the dismissal procedure of the Prosecutor General with an authority to give preliminary legal opinion on the matter. A fair hearing within dismissal proceedings shall be guaranteed by the law.²⁹¹

Prosecutorial Council

As was noted in one of the IAP report, in line with the recent trends, the level of autonomy of prosecution authorities seems to get closer to the safeguards of judicial independence. As a result, a good practice is to transfer the key powers relating to the organization of the prosecution service, prosecution career management and prosecutorial accountability under special prosecutorial councils similar to judicial councils.²⁹² In its recent opinion the Consultative Council of European Prosecutors stated that the status of prosecutors should be guaranteed, which ensures their external and internal independence, preferably by norms at the highest legal level, the application of which is guaranteed by an independent body, such as the prosecution council, in particular regarding appointment, career and discipline issues.²⁹³

Georgia was the first IAP country to set up a prosecutorial council in 2015. But its role has been limited to issues involving the appointment, tenure and discipline of the Prosecutor General. Prosecutorial Council consists of 15 members, including the Minister of Justice as a chairperson of the Council, eight prosecutors elected by the conference of all prosecutors (of whom at least ¼ shall be of a different sex), two members of the Parliament (one from the parliamentary majority to be elected by the parliamentary majority and another from the members that do not belong to the parliamentary majority to be elected by such members), two judges of common courts to be elected by the High Council of Justice, and two members of the Prosecutorial Council who are elected by the Parliament from the candidates nominated by the higher educational institutions and civil society organizations. In addition, in 2016, the Chief Prosecutor established the Consultation Council to deal with certain governance issues well as incentives, promotion and disciplinary liability of the PSG employees.²⁹⁴

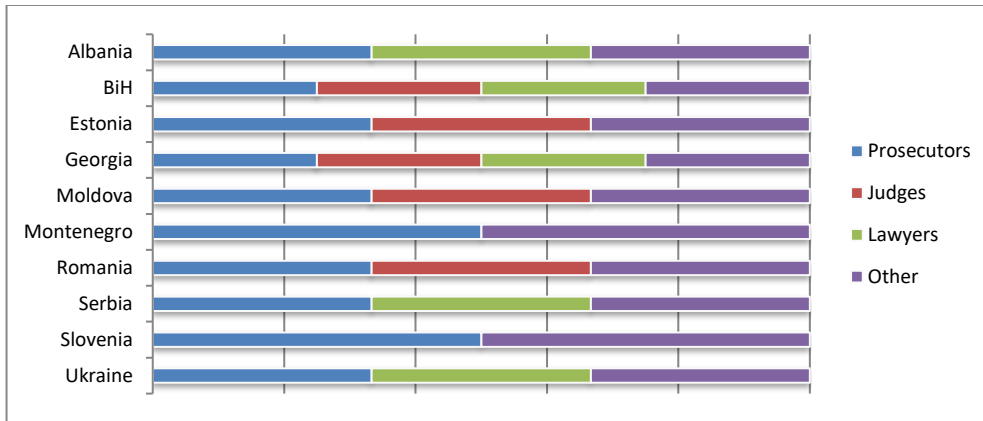
The IAP monitoring positively assessed the reform in Georgia but was concerned by the limited role of the body of prosecutorial self-governance, namely the Prosecutorial Council that has been established under the amendments in Prosecution Service Law. The majority of members of the Prosecutorial Council is elected by the conference of prosecutors but the Council has limited powers that concern various stages in the appointment and dismissal of the Prosecutor General, disciplinary proceedings with regard to the Deputies of the Prosecutor General, hearing reports of the Prosecutor General/Deputies of Prosecutor General on the PSG activities, criminal policy, protection of human rights in the course of legal proceedings and other issues. At the same time, the Prosecutor General determines who serves on the Commission responsible for the selection and recruitment of prosecutors.

The Prosecutor General has also set up by his decision Consultative Council that plays an important role in the promotion, disciplining and dismissal of prosecutors. The Consultative Council's composition is decided by the Prosecutor General and can be changed any moment. The Consultative Council is not a self-governance institution but an advisory body to the Prosecutor General. Such system may affect the independence of individual prosecutors and concentrate excessive powers in the hands of the Prosecutor General. Additionally, while the Prosecutor General has secure tenure, he is still appointed with decisive involvement of too many political bodies (Minister of Justice, Government, Parliament). It would serve well to further strengthening impartiality and independence of prosecutors, if the main role in the recruitment, promotion and dismissal of prosecutors was assigned to the Prosecutorial Council or another body of prosecutorial self-governance which would ensure involvement of employees of the prosecution service in these key decisions and would strengthen the independence of prosecutors.²⁹⁵

The IAP monitoring reports, therefore, recommended countries to establish a body (bodies) of prosecutorial self-governance where the majority of members will be elected by a regularly convened conference of prosecutors. Such a body (bodies) must be independent of the Prosecutor General and play

a key role in the competitive selection of candidates to the office of the Prosecutor General, his deputies and other prosecutors, and have remit over their disciplinary sanctions and performance evaluation.²⁹⁶

Figure 17. Members of the prosecutorial self-governance bodies in some ACN and IAP countries



Source: OECD/ACN (upcoming publication), The independence of prosecutors. Data from countries that replied to the questionnaire.

Selection, promotion, evaluation of performance and disciplinary liability of prosecutors

The recruitment and career of prosecutors, including promotion, mobility, disciplinary action and dismissal, should be regulated by law and governed by transparent and objective criteria, in accordance with fair and impartial procedures, excluding any discrimination and allowing for the possibility of impartial review.²⁹⁷

The recent opinion of the Consultative Council of European Prosecutors noted that it is particularly desirable that, while ensuring respect for gender balance, the process of appointment, transfer, promotion and discipline of prosecutors be clearly set out in written form and be as close as possible to that of judges, particularly in member States which uphold the principle of the unity of the judiciary and which have links between the functions of judges and prosecutors throughout their careers. In such cases, provisions should preferably be established by law and applied under the control of an independent professional authority (for instance, composed of a majority of judges and prosecutors elected by their peers) such as a Council for the judiciary or for prosecutors, competent for the appointment, promotion and discipline of prosecutors.²⁹⁸

As regards the evaluation of prosecutors, the quantitative indicators as such (number of cases, duration of proceedings, etc.) should not be the only relevant criteria to evaluate efficiency, either in the functioning of the office or in the work of an individual prosecutor. The qualitative indicators, such as proper and thorough investigation (when this is under the prosecutor's competence), appropriate use of evidence, accurate construction of the accusation, professional conduct in court, etc., should also be taken into consideration as a way to complement indicators of a quantitative character. The evaluation of prosecutors' work be transparent and foreseeable, having been based on clear and previously published criteria, both as regards substantive and procedural rules. Transparent and foreseeable evaluation means for the evaluated prosecutor to be able to discuss the results of the evaluation, or, where appropriate, compare the results of a self-evaluation with the evaluation conducted by the superior or by the person responsible, if different, and to submit them for review.²⁹⁹

As to the disciplinary liability, prosecutors should be subject, where appropriate, to disciplinary proceedings which must be based on a law, in the event of serious breaches of duty (negligence, breach of

the duty of secrecy, anti-corruption rules, etc.), for clear and determined reasons; the proceedings should be transparent, apply established criteria and be held before a body which is independent from the executive; concerned prosecutors should be heard and allowed to defend themselves with the help of their advisers, be protected from any political influence, and have the possibility to exercise the right of appeal before a court; any sanction must also be necessary, adequate and proportionate to the disciplinary offence.³⁰⁰

In **Kazakhstan**, the preliminary selection of candidates for the public prosecution service is regulated by the law and orders of the General Prosecutor and is based on a competition the information about which is publicly available, psychological test, assessment interview, internship and certain other examinations. The monitoring experts believed that such a selection process as a whole complied with the principles of meritocracy and transparency. As for other appointments, the experts were concerned that about 15% of employees are admitted in the public prosecution service on a non-competitive basis. In certain cases, such appointments could be justified by specific requirements (e.g. to hire officers with law enforcement experience). Nevertheless, the scale of such appointments and the fact that they were regulated not by law, but by the Prosecutor General's Decree, made the entire process of such non-competitive hiring look arbitrary and even based on nepotism or favouritism. The report recommended to minimize such appointments and to resort to them only in exceptional circumstances set forth by the law, and they must be based on objective and transparent selection procedures and criteria, which allow to access properly professional qualities and skills of candidates. The monitoring group was of the opinion that Kazakhstan should move in the direction of the international standards and best practices in this area. Because the Public Prosecution Office positions itself as an independent body of government committed, among other things, to the principals of meritocracy, and because independence primarily means competitive and transparent appointments to positions of all levels, the report advised Kazakhstan to consider expanding the system of competitive appointments to top level positions and to set forth in the law precise, objective and transparent criteria of access to such positions.³⁰¹

In **Uzbekistan**, enrolment in the reserve for service in the prosecution authorities and in the reserve for higher prosecution posts was carried out on a competitive basis, which the monitoring report found to be a positive practice. However, the process was not transparent enough. It was necessary to publish the information online about the competition for the reserve, about the candidates, the results of the passage of the various stages of selection. Also, the appointment to a vacant position in the prosecution bodies from among those enrolled in the reserve was not transparent. Such an appointment must take place on a competitive basis or take into account the personal rating obtained by candidates during the selection to the reserve, so that the appointment to the position is based on the personal qualities of the best candidates. Experts negatively assessed the possibility of interdepartmental rotation of prosecution positions within the prosecution authorities out of the competition. In general, the appointment of prosecutors and investigators to all positions should take place on a competitive basis on the basis of clear criteria and assessment methodology. At the same time, it is also important that the competitive selection is carried out by a body formed by the bodies of prosecutorial self-governance.³⁰²

As significant reform of the rules governing the career of prosecutors has been conducted in **Ukraine** with the adoption of the changes in the Constitution and new Law on the Prosecution Office in 2015-2016. The new legal framework included a system of prosecutorial self-governance (see the box below). The prosecutors are appointed for life by the head of the relevant prosecution office on the recommendation of the Qualification Disciplinary Commission and can be dismissed only on the grounds and in the manner prescribed in the law. First time appointed prosecutors at the local office level are selected on a competitive basis. Candidates have to undergo a proficiency test, the results of which are published by the Qualification Disciplinary Commission together with the ranking list of the candidates. After this vetting procedure, the Qualification Disciplinary Commission may decide to exclude the candidate from further stages of the procedure. This decision can be appealed to court. Successful candidates undergo 12 months training at the National Academy of Prosecutors. Once a position becomes available, the Qualification Disciplinary

Commission conducts a further contest and rates the candidates and submits its recommendations to the head of the prosecution office which has vacancies. The heads of local and regional offices are appointed for a five-year term and dismissed by the Prosecutor General upon the recommendation from the Council of Prosecutors. The IAP monitoring report found these to be welcome developments in the context of open and competitive selection procedure. Although the report also noted concern of the expert community in Ukraine that in practice this procedure has been closed and not competitive.³⁰³

Promotion to a higher level within the prosecution service was done based on the results of a competition organized by the Qualification Disciplinary Commission. The law specified no details about the criteria to be used. The absence of specific rules or criteria for prosecutor's promotion was a concern for the monitoring experts.³⁰⁴ In its report on Ukraine GRECO recommended "regulating in more detail the promotion/career advancement of prosecutors so as to provide for uniform, transparent procedures based on precise, objective criteria, notably merit, and ensuring that any decisions on promotion/career advancement are reasoned and subject to appeal".³⁰⁵ In November 2019, the Prosecutor General's Office of Ukraine, with an assistance by international development partners, has started developing the model for promotion of prosecutors, in particular, a system of individual assessment of quality of work.

Box 20. System of prosecutorial self-governance in Ukraine

The All-Ukrainian Conference of Prosecution Employees (AUCEP) is the highest body of prosecutorial self-governance. Its decisions are binding on the Council of Prosecutors and on all prosecutors. The AUCEP appoints members of the High Council of Justice, the Council of Prosecutors and the Qualifications and Disciplinary Commission of Prosecutors. Its delegates are elected at the meetings of prosecutors from the different levels of prosecution offices.

The Council of Prosecutors is competent to make recommendations on the appointment and dismissal of prosecutors from administrative positions (such as head or deputy head of a prosecution office), oversee measures to ensure the independence of prosecutors, etc. It consists of 13 members including 11 prosecutors representing prosecution offices of different levels and two academics appointed by the Congress of law schools and scientific institutions. They serve five-year, non-renewable terms.

The Qualifications and Disciplinary Commission is a collegial body empowered to establish the level of professional requirements for candidate prosecutors, decide on disciplinary liability, transfer and dismissal of prosecutors. It consists of 11 members including five prosecutors appointed by the AUCEP, two academics appointed by the Congress of law schools and scientific institutions, one defence lawyer appointed by the congress of defence lawyers and three individuals appointed by the Parliamentary Ombudsperson following approval by the competent parliamentary committee. They serve three-year terms and may not be reappointed for two consecutive terms.

Source: Law on the Prosecution Office of Ukraine; GRECO (2017), Fourth evaluation round, Report on Ukraine, pp. 58-59, <https://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-/1680737207>.

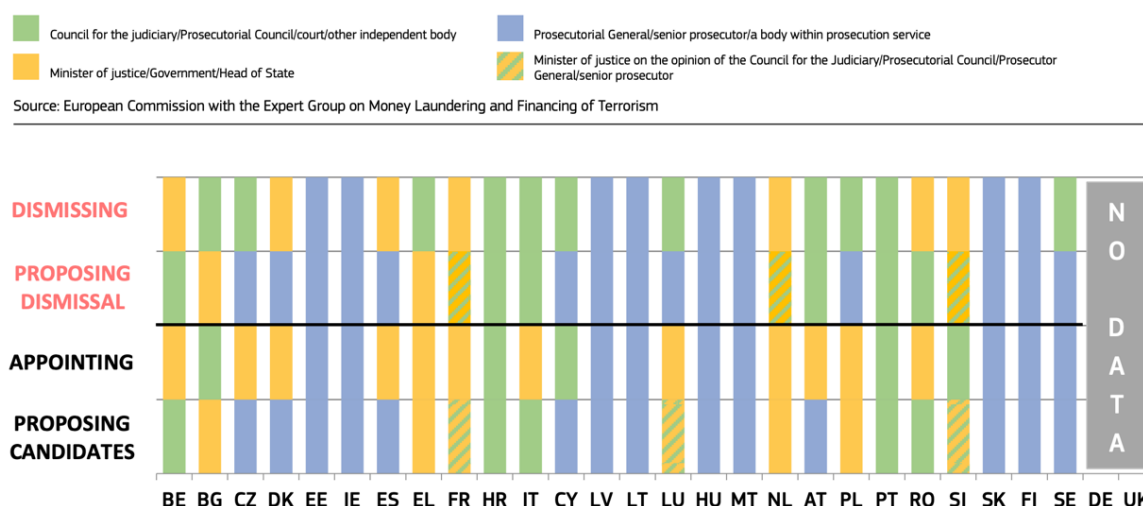
Kyrgyzstan updated its system of recruitment of prosecutors in 2016. The selection starts with the enrolment in the reserve of prosecutors through the following steps:

- computer-aided tests aimed at determining the level of academic knowledge, intellectual capabilities, logical reasoning, and testing the candidate's knowledge of the norms of the Constitution and other legal acts of the Kyrgyz Republic;
- an essay on the relevant topic to test writing skills, patterns of mentality, creative talents. The topic for the essay is set by the Personnel Selection Commission;

- a medical and comprehensive psychodiagnostic test aimed at establishing whether the potential candidate is fit to serve in the prosecution office;
- a polygraph test aimed at determining, in the manner prescribed by the legislation, the candidate's resilience to corruption and his compliance with the requirements and restrictions laid down by the civil service legislation;
- an interview of the candidate aimed at collecting additional information about the candidates and taking away an impression of his personality, an opinion of his intellect, erudition, interests, skills in formulating thoughts properly and logically, his/her willpower, inclinations and motivation;
- decision by the Personnel Selection Commission whether to recommend to the Prosecutor General to have the candidate included in the reserve or not;
- the Prosecutor General takes relevant decision whether to dismiss the candidate or include in the reserve.

The IAP monitoring report commended provisions on the competitive selection of candidates for the prosecutorial reserve in Kyrgyzstan. However, the follow-up appointment to the very first position in the prosecution service and career advancement did not seem to be guided by transparent or competitive procedures as they were subject to the Prosecutor General's discretion unlimited by any impartial criteria. The monitoring experts also noted that the Rules for the selection of candidates for the prosecutorial reserve stipulate several stages in the selection for the reserve (including computer-aided tests, an essay, a polygraph test, an interview.) A minimum number of points has been set that would allow the candidate to move on to the next stage. However, the Selection Rules failed to stipulate that only candidates that collected the biggest number of points and best match the criteria will be recommended for the pool. Nor did the Rules offer detailed provisions on openness and transparency of the selection, including publication of announcement of the selection for the pool, publication of the scores achieved at every stage of the selection, including detailed final results complete with the number of points achieved by each candidate. The report also stressed that the key issues of recruitment for and service at the prosecution authorities (issues of hire and career advancement of prosecution) must be regulated by the law, rather than regulations, let alone acts by political authorities.³⁰⁶

Figure 18. Appointment and dismissal of national prosecutors in the EU Member States



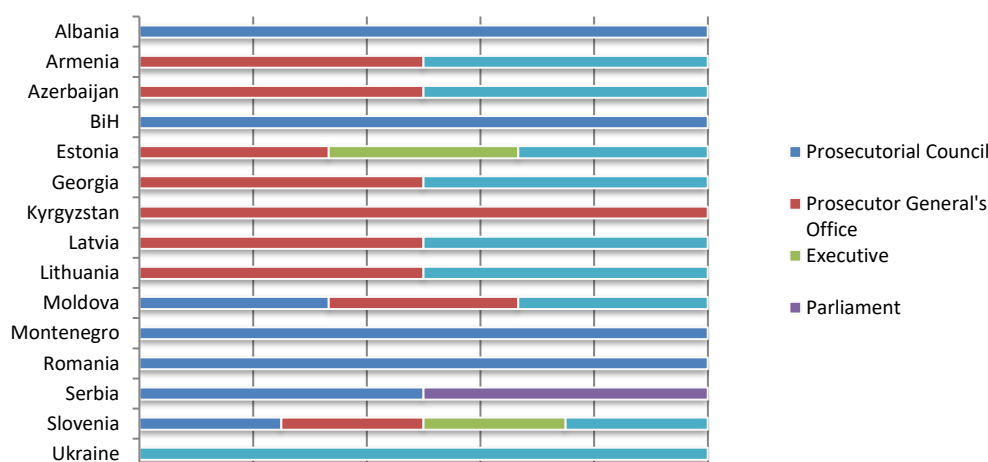
Source: The 2019 EU Justice Scoreboard, p. 54, https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf.

As regards the evaluation of prosecutors the IAP monitoring cautioned against creating an evaluation system that is too heavily weighted toward the number of investigations or cases resolved since this can create disincentives to prosecutors and investigators and their managers from undertaking difficult cases which may on balance present possibilities for greater harm to society and public's confidence in the ability of the prosecution service to enforce the law. Additionally, while the fact that a case resulted in an acquittal may be reflective of the inadequate preparation and skill of the prosecutors involved, the acquittal alone should not be used to assess performance since the decisions to charge cases is rarely made without consultation with supervisors and some difficult cases may result in acquittals but the merits of the cases warrant them being brought. The rate of acquittal as indicator of performance is especially problematic in view of the Soviet legacy of strong prosecution service to the detriment of the independent judiciary. With such indicators in place prosecutors may have an incentive to abuse their office, put pressure on judges, close their eyes to procedural violations of the defendant's rights, etc. This IAP monitoring strongly recommended that the government remove or minimize the importance of such indicators and substitute them with an evaluation of adequacy of preparation for the assigned tasks and professionalism.³⁰⁷

In 2017, **Georgia's** Prosecutor's General Office completed the development of performance appraisal criteria of prosecutors covering the following areas: the quality of supervision over investigation and prosecution, substantiation of procedural documents, quality of work in the Integrated Criminal Case Management System, workload, compliance with the Code of Ethics and outcomes of participation in trainings. The workload is included in the appraisal criteria. It is evaluated in conjunction with other criteria, also taking into account the volume and complexity of cases. The newly adopted performance appraisal system of prosecutors does not envisage the number of acquittals as an evaluation criterion for prosecutors.³⁰⁸

Kazakhstan has implemented a new measure of annual reviews of prosecutors. The IAP monitoring report noted that such mechanism should be regulated by the law, not act of the President. As for the attestation review of prosecutors once in three years to test their level of professional training, legal culture and ability to work with people, the experts were of the opinion that such a procedure overlapped in part with the annual review and should be re-considered within the framework of the general recommendation pertaining to the attestation review of public servants.³⁰⁹

Figure 19. Authorities involved in the recruitment of prosecutors in ACN and IAP countries



Source: OECD/ACN (upcoming publication), *The Independence of Prosecutors*, Data from countries that replied to the questionnaire.

The IAP monitoring criticised the system of evaluation of prosecutors in **Uzbekistan**. There were several concurrent procedures used to evaluate performance of prosecutors. The report recommended reducing and unifying them. It recommended cancelling the attestation and the “comprehensive evaluation” of prosecutors, which may adversely affect their independence. Instead, a modern system of regular (for example, once a year) assessment based on clear criteria and individual indicators of the effectiveness of the work of prosecutors should be introduced. The basis and general procedure for such an assessment should be set in the law, and the detailed regulation of the assessment procedure – by an act of the body of the prosecutor's self-governance (for example, the prosecutorial council). Such an assessment should be based not only on quantitative indicators, but also on qualitative indicators. The indicator of the number of acquittals should not play a key role in this regard. When creating a new evaluation system and its implementation, it would be advisable to take into account the progressive experience of the Academy of Prosecutor's Office in conducting diagnostics of prosecutors.³¹⁰

Rules of conduct, conflict of interests, asset declarations, disciplinary sanctions

The UN Convention against Corruption (Article 11, “Measures relating to the judiciary and prosecution services”) stipulates that each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary. Measures to the same effect may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

According to the Rome Charter of the Consultative Council of European Prosecutors, transparency in the work of prosecutors is essential in a modern democracy. Codes of professional ethics and of conduct, based on international standards, should be adopted and made public. Prosecutors should adhere to the highest ethical and professional standards, always behaving impartially and with objectivity. They should thus strive to be, and be seen as, independent and impartial, should abstain from political activities incompatible with the principle of impartiality, and should not act in cases where their personal interests or their relations with the persons interested in the case could hamper their full impartiality.³¹¹

The ethical rules of prosecutors should preferably be specified by law and take the form of codes of ethics, prepared and made public by national statutory and/or disciplinary bodies such as Councils for the Judiciary or for prosecutors.³¹²

Since the ethical issues faced by prosecutors are increasingly varied, complex and evolve over time, member States should provide available mechanisms and resources (specific independent bodies, experts within the Councils of Justice or prosecutorial councils, etc.) to assist prosecutors as regards the questions they raise (for example, whether or not to recuse themselves from a case because of a possible conflict of interests and knowledge or prejudices they may have, or the possibility for them to have supplementary activities such as arbitration, etc.). Ethics education should be offered in initial and in-service training.³¹³

As with judges, most IAP countries extend to prosecutors the general anti-corruption provisions establishing relevant restrictions and requirements, including concerning the conflict of interests and asset disclosure.

Georgia is an example of IAP country where general rules applicable to all public officials are supplemented by the special regulations. The rules of ethical conduct for prosecutors are provided in the Code of Ethics for the Prosecution Service of Georgia (PSG) Employees. According to the PSG Ethics Code, the PSG employee shall follow the requirements of the Law of Georgia on Conflict of Interests and Corruption in Public Service. An employee of the Prosecution Service who has the property or other personal interest towards the issue falling under the competence of the Prosecution Service of Georgia, is obliged to apply for self-recusal in accordance with the rule set by the law and not to participate in the

process of discussing and taking decision on this issue. PSG employees should refrain from receiving a gift, if such action constitutes an attempt to influence him/her or may influence him/her in future. In case of possible conflict of interests, the PSG employee shall refrain from receiving any kind of profit from an individual or a legal entity. According to the PSG Law, the position of an employee of the Prosecution Service is inconsistent with any position at other state or local self-government authority, also with entrepreneurial or other paid activities, except scientific, creative or educational activities. The PSG employee is not allowed to be a member of a political union or to carry out political activities. The competent body in charge of enforcing the above-mentioned restrictions with regard to prosecutors is General Inspection Unit of the Office of the Chief Prosecutor of Georgia.³¹⁴

Box 21. General Inspection Unit of the Office of the Chief Prosecutor of Georgia

The General Inspection Unit of the Office of the Chief Prosecutor of Georgia with respective independence and impartiality safeguards in place (directly reporting to Chief Prosecutor, not subordinate to deputies) is in charge of enforcing the ethics rules for prosecutors. To undertake this obligation, the General Inspection Unit has enhanced monitoring on cases that fall under the risk profiles. Every case where prosecutor enjoyed discretion are under the increased scrutiny. The General Inspection Unit has a tool of “CrimCase” software that facilitates categorization of cases as per discretions employed. The General Inspection Unit starts formal inquiry where a discretion decision diverts from the established criteria. Inquiry also is launched where the discretionary decision met criteria but is attended by suspicious circumstances. The General Inspection Unit operates a hotline, which is an important tool for receiving complaints from citizens. The following sanctions for violation of the ethics rules by the employees of Prosecution Service of Georgia are envisaged by the law: reprimand; reproach; demotion; discharge from the position; dismissal from the Prosecutor’s Office. The application of the particular type of sanction depends on the nature and graveness of a violation.

Source: OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 65-66.

Where no additional special rules regulating restrictions and conflict of interests of prosecutors existed, the IAP monitoring recommended to introduce them. For example, in **Kyrgyzstan**, although the 2017 Law on Conflict of Interests extends to prosecutors as civil servants, its general provisions were found to be insufficient for the effective prevention and regulation of the prosecutors’ conflicts of interests. The report recommended establishing detailed rules for preventing and resolving the conflict of interests of prosecutors taking into account the powers and specificity of the prosecutorial work.³¹⁵

Senior prosecutors in **Georgia** are subject to the same asset disclosure rules that are envisaged by the Law of Georgia on Conflict of Interests and Corruption in relation to the public officials. The IAP monitoring report recommended that the obligation to file asset and interest declarations should be extended to all prosecutors.³¹⁶

In **Ukraine**, prosecutors are bound by ethical rules in accordance with the Law on the Prosecutor’s Office. Regular (two or more times a year) or one gross violation of prosecutorial ethics results in disciplinary liability. In 2017, the All-Ukrainian Conference of Prosecutors adopted the Code of Professional Ethics and Rules of Professional Conduct for the Prosecution Office which replaced the previous code of 2012. The new code contains provisions on prevention of corruption, guidance on the conflicts of interests, and calls for respect of judicial independence. The IAP monitoring found the Code to be fairly general in nature and that it required supplementary guidance in order to be put it in practice. Disciplinary liability is the result of any actions which discredit the prosecutor and may raise doubts about his/her objectivity, impartiality and independences, and about the integrity and incorruptibility of prosecution office. This definition was found to be too vague and that it would benefit from further clarifications. The breach of prosecutor’s oath also results in liability.³¹⁷ GRECO in its report on Ukraine recommended (i) defining

disciplinary offences relating to prosecutors' conduct and compliance with ethical norms more precisely; (ii) extending the range of disciplinary sanctions available to ensure better proportionality and effectiveness.³¹⁸

Similarly, in the report on **Kazakhstan** the monitoring experts stated that all categories of the disciplinary wrongdoings which may be committed by prosecutors and relevant procedures must be clearly defined in the Law on the Prosecution Service, with specific sanctions and limitation periods applicable to them. The monitoring report welcomed the fact that the statistics of disciplinary measures applied against public prosecutors was freely accessible on the site of the General Prosecutor's Office.³¹⁹

The IAP monitoring report on **Kyrgyzstan** concluded that the Kyrgyz legislation failed to list clearly grounds for disciplinary liability. The legislation used different terms to describe acts that may lead to the disciplinary liability of prosecution officers. There was no clear list of misdeeds that disgrace the prosecution officer (one of the grounds for sanctions). The definition of offence as "action or inaction, which although not criminal, is incompatible by its nature with the good name of the prosecution officer" could not be deemed unambiguous as it allowed for a broad interpretation. As a result, prosecution executives have a large discretion in selecting the sanction. Also problematic was the fact that the decision to apply a disciplinary sanction was taken solely by the head of the prosecution authority. Internal investigation was not mandatory. This violated the due process, created opportunities for abuse and improper influence on prosecutors and limited their independence. The report considered it advisable to have a special body with the authority to look into the matters of prosecutorial disciplinary liability, e.g., the prosecutorial council or a body attached to it which would be set up by the conference of prosecutors and with proper safeguards of independence from the leadership of the prosecution service (e.g., a disciplinary commission).³²⁰ Nor does the legislation of Kyrgyzstan offer guarantees of fair hearing of disciplinary cases; appeal does not go beyond the superior prosecutor. Also problematic is the fact that issues of disciplinary liability are regulated by implementing regulations, rather than by the law.³²¹

The IAP monitoring recommended **Mongolia** to create a disciplinary body composed of experienced professionals (ordinary prosecutors and external legal experts) selected through a transparent procedure based on merit and ensure its independence and key role in disciplinary proceedings against prosecutors.³²²

According to the IAP monitoring report **Uzbekistan** also needs to revise the disciplinary system of prosecutors and bring it in line with international standards to ensure the independence of prosecutors:

- Issues of disciplinary responsibility of prosecutors and their dismissal from the service are governed by the regulations approved by the President of the Republic of Uzbekistan. At the same time, the decree itself is a classified document. The issues of recruitment and service of prosecutors should be regulated by law; individual procedural aspects can be regulated by the bylaws of the prosecution authorities themselves.
- The grounds for disciplinary responsibility are defined very broadly, which leaves virtually unlimited discretion in these matters for the heads of the prosecutor's office.
- It is also problematic that the decision on disciplinary action is imposed solely by the head of the prosecution authority. The Prosecutor General of the Republic of Uzbekistan has the right to cancel any disciplinary action, apply a more severe penalty or mitigate it.
- The legislation also does not provide guarantees of fair consideration of disciplinary cases; the appeal is limited to the Prosecutor General.
- The disciplinary system provides for disproportionate measures, namely the possibility of dismissal from the service, even for one-time minor violations. For example, absence at work (including the absence of more than three hours during the working day) without valid reasons, as well as one-time violation of the oath of prosecutor are considered a one-time gross violation of official duties

which may entail dismissal. Dismissal from service should be the last resort and may only be applied in the case of truly serious violations, which must be defined in the law.³²³

Remuneration

Remuneration of prosecutors in line with the importance of the tasks performed is essential for an efficient and just criminal justice system. A sufficient remuneration is also necessary to reduce the danger of corruption of prosecutors.³²⁴ States should take measures to ensure that prosecutors have reasonable conditions of service such as remuneration, tenure and pension commensurate with their crucial role as well as an appropriate age of retirement.³²⁵

In several country reports the IAP monitoring noted issues with regard to the remuneration of prosecutors. For example, to **Uzbekistan** the report recommended the following:

- Issues of remuneration of prosecutors should be regulated by law, and not secondary legislation, especially acts of the President. This is an important guarantee for the independence of prosecutors.
- The payment of cash incentives to prosecutors is problematic in terms of the independence of prosecutors. This creates conditions for interfering with the work of prosecutors, restricting their independence, and stimulates the loyalty of prosecutors to their leadership and not to the requirements of the law. The legislation does not limit the amount of cash incentives and does not provide clear criteria for their payment. It was recommended to cancel the payment of any discretionary incentives to prosecutors and increase their official salaries, if necessary. If the incentive payment system is temporarily maintained, it should be based on clear and transparent criteria, and incentives should be allocated through an open and sound decision-making procedure based on an annual assessment of the performance of a prosecutor.³²⁶

The IAP monitoring discouraged **Georgia** from implementing a system where the bonuses can be a high percentage of the base salary of prosecutors and investigators given the sensitive nature of the work. Overall, it was recommended to revoke payment of any discretionary bonuses to prosecutors and raise their salary, if needed. If preserved, bonuses should be based on clear and transparent criteria and awarded through open and justified decision-making.³²⁷ After the monitoring report, in 2018, Georgia reformed the bonus system in public sector, including the prosecutors. According to the amended rules, the majority of bonus funds were transferred into the salaries which resulted in their increase. The Law on Civil Service established that a bonus can be granted to prosecutor in the exceptional circumstances (good quality of work, working outside of the working hours etc.) based on the justified request of supervisor in accordance to the criteria. The relevant criteria were developed in parallel with the bonus system reform.³²⁸

Conclusions and recommendations

In the recent years the standards of prosecutorial independence and integrity have developed. Norms applied to judges are often extended to prosecutors which confirms the essential role played by prosecutors in the justice system and in sustaining the rule of law. In most IAP countries the reform of the prosecution service has been difficult, in particular due to the Soviet legacy. The prosecution services (still called *prokuratura*) remain highly hierarchical and governed by the decisions of the Prosecutor General. Only Georgia and Ukraine have introduced major reforms of the prosecution service and have instituted bodies of the prosecutorial self-governance. The appointment and dismissal of Prosecutor General in most IAP countries are still significantly influenced by decisions of political bodies. The systems of integrity and accountability for prosecutors require substantial reforms that take into account the functions and status of the public prosecution.

*Recommendations*³²⁹:

- A. Abandon any supervisory powers of prosecutors and limit their competence outside of the criminal area to the minimum required in a democratic state. Revoke powers related to the review of judicial decisions that are not afforded to other parties to the proceedings and remove any other powers allowing interference in the operation of the judicial bodies.
- B. Ensure that the status, principles, organisation, role and powers of prosecutors and prosecution offices are provided for by the law, including strong guarantees of prosecutorial independence and autonomy in decision-making. Stipulate that prosecution bodies, including specialised one, may be set up, reorganised or abolished only based on the law.
- C. The Law on the prosecution service should include the key principles of prosecutorial activity including such as the rule of law, legality, respect for human rights, presumption of innocence, impartiality and objectivity, independence, political neutrality, transparency, integrity.
- D. The prosecution service should be provided with adequate financial and staff resources to carry out its tasks effectively and be entitled to make proposals during the process of drawing up the annual budget.
- E. Ensure external and internal independence of individual prosecutors. The reporting of the Prosecutor General to the state authorities should be stipulated by the law and limited to the general activity of the prosecution service. The assignment and re-assignment of cases should follow clear and transparent published rules ensuring impartiality and autonomy from any form of external and internal pressure. Guidance or instructions in individual cases which can lawfully be given by a senior prosecutor shall be based on law, be reasoned and put in writing and should be a part of the case file. Prosecutors should have the right to challenge unlawful orders through a judicial or another independent procedure.
- F. Limit the role of the political bodies in the appointment and dismissal of the Prosecutor General. The key role in such procedures should be given to prosecutorial or judicial council or an independent expert selection committee (formed by professionals who are themselves selected through a transparent procedure based on merit).
- G. Limit the tenure of the Prosecutor General to one term in office. Establish clear and objective grounds for the dismissal of the Prosecutor General through a transparent procedure.
- H. Consider establishing by law a system of prosecutorial self-governance to protect the independence of prosecutors. The majority of members of the body (bodies) of prosecutorial self-governance should be elected by a regularly held conference of prosecutors and include a meaningful representation of the civil society. Such a body (bodies) should be independent of the Prosecutor General and play a key role in the competitive selection of prosecutors, consider issues of their disciplinary liability and evaluation of their performance. Ensure that activities and decisions of the prosecutorial self-governance bodies are transparent and open for public scrutiny.
- I. Regulate in law the procedure for the recruitment of prosecutors and their service. Provide for an open competitive selection for all positions in the bodies and institutions of the prosecutor's office on the basis of personal qualities, integrity and previous experience. Selection and appointment, including for senior positions, should be based on clear criteria and assessment methodology with online publication of the information on vacancies and the results of all selection stages. The sole power to make the appointment should not rest with the Prosecutor General or senior prosecutors but should include involvement of an independent body of prosecutors whose experience will allow to propose appropriate candidates for appointment. Provide the candidates with the possibility of appeal against the selection results.

- J. Introduce a modern system for evaluating the performance of prosecutors based on objective performance indicators, limiting the use of indicators of the number of acquittals and other quantitative indicators and providing prosecutors with an opportunity to argue against their negative assessment.
- K. Set clear ethical standards/code of professional conduct applicable to all prosecutors. Establish detailed rules for preventing and resolving conflicts of interest of prosecutors, taking into account the powers and specifics of the work of prosecution bodies.
- L. Prosecutors should be covered by a system of asset and interest disclosure that provides for regular reporting of the assets, income, expenditures, liabilities and interests of prosecutors and their family members. Such a system should provide for effective verification of the declarations and their online publication to the extent necessary to ensure transparency and accountability of the judiciary (i.e. by excluding certain sensitive personal data that is narrowly defined).
- M. Implement in practice a mechanism for providing prosecutors and other employees of bodies and institutions of the prosecutor's office with consultations, including confidential ones, and recommendations on issues of conflict of interest, disclosure of assets and interests, rules of conduct and other anti-corruption restrictions. Prepare and distribute practical guides, methodological and educational manuals on these issues, designed specifically for prosecutors and other employees of the prosecutor's bodies.
- N. Ensure regular in-service training and professional development of prosecutors on issues of ethics, integrity and prevention of corruption, as well as developing appropriate training materials that have a practical focus.
- O. Establish in law: a clear list of grounds for the disciplinary liability of prosecutors; a system of sanctions proportional to the wrongdoing; detailed procedures for bringing to disciplinary liability with guarantees of procedural rights of the prosecutor.
- P. Ensure impartiality and fairness of the procedures for consideration and adoption of decisions in disciplinary cases with regard to prosecutors, separating the function of the investigation from making a decision (for example, by creating a disciplinary commission under the body of prosecutorial self-governance). Decisions on the disciplinary sanctions of prosecutors should be taken by the collegiate bodies of the prosecutorial self-governance, where such bodies exist. Ensure publication of information on disciplinary sanctions applied to prosecutors.
- Q. Prosecutors should be protected by functional immunity to the extent necessary to enable them to perform their functions properly meaning that they cannot be investigated or be subject to civil claims for the conduct in good faith of their official duties. Any immunity from prosecution that goes beyond this functional immunity should be excluded from the legislation.
- R. Establish in the law on the prosecution service the salary rates for prosecutors and an exhaustive list of possible increments to them. The amount of monetary remuneration of prosecutors should be sufficient and reduce the risk of corruption and should not provide for discretionary payments (incentives). Ensure the publication of detailed information on the structure and amount of remuneration of prosecutors.

Access to information

Laws on access to information

Access to information is an important means for ensuring government accountability and to control corruption by making it more difficult to conceal it. Ensuring effective public access to government-held

information should be a part of corruption prevention policies. The UN Convention against Corruption (Art. 13) mentions it as one of the measures necessary to strengthen civil society participation in the prevention and the fight against corruption. It also calls for measures to enhance transparency in public administration, including by allowing the public to obtain information on the organisation, functioning and decision-making processes of the public administration and on decisions and legal acts that concern the public (Art. 10(a)).

Countries, when endorsing the OECD Istanbul Anti-Corruption Action Plan in 2003 and later, committed to ensure public access to information especially information on corruption through the development and implementation of:

- Requirements to give the public information that includes statements on government efforts to ensure lawfulness, honesty, public scrutiny and corruption prevention in its activities, as well as the results of concrete cases, materials and other reports concerning corruption;
- Measures which ensure that the general public and the media have the freedom to request and receive relevant information in relation to [corruption] prevention and enforcement measures;
- Information systems and data bases concerning corruption, the factors and circumstances that enable it to occur, and measures provided for in governmental and other state programmes/plans for the prevention of corruption, so that such information is available to the public, non-governmental organisations and other civil society institutions.

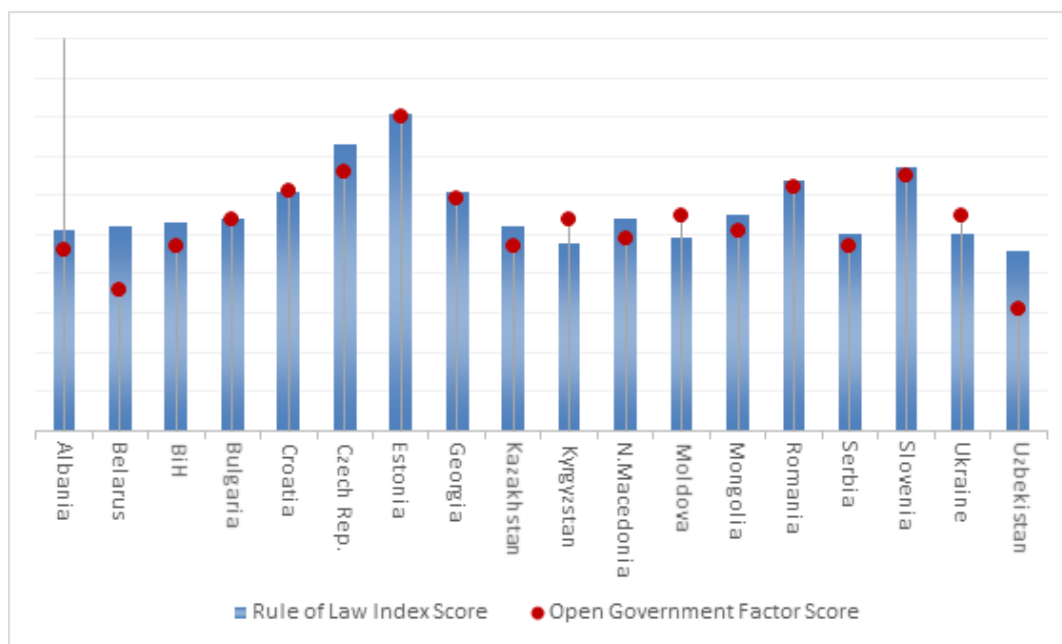
The second and third rounds of the IAP monitoring provided an in-depth evaluation of the available legal frameworks and highlighted their deficiencies, while also pointing out problems in enforcement of the laws. The fourth monitoring round reviewed progress in reforming the legislation and examined the state of enforcement. See previous Summary Report for the overview of the legal provisions in the IAP countries.³³⁰

IAP countries employ various mechanisms to guarantee access to public information. While most of the states have specific laws on freedom of information (some even have two laws or three like Uzbekistan), which may formally be assessed as being of good quality, their practical implementation generally remained very weak. Below is a table comparing the quality of the laws.

Kazakhstan was the latest IAP countries to adopt a dedicated access to information law. Its Law on Access to Information was adopted in 2015 after a long period of preparation and discussion. Adoption of the law followed the previous IAP recommendations. The new law provided a legal basis for access to information right but has a number of deficiencies, and some provisions fell short of international standards.³³¹

In 2014, **Georgia** has started the process of a comprehensive revision of its access to information framework and the elaboration of a Freedom of Information Act, as the IAP monitoring recommended. A draft was developed by a working group under the Ministry of Justice, taking into account input from civil society and international experts. However, both during the preparation of the fourth monitoring round report and after there was no tangible progress in the consideration of the law.³³²

Figure 20. Ranking of ACN and IAP countries in the Rule of Law Index (Open Government)



Notes: Open Government Factor includes such sub-factors as Publicised laws and government data, Right to information, Civic participation, Complaint mechanisms. The scores are based on the general population poll and qualified respondents' questionnaires. 126 countries included in the 2019 ranking. Armenia, Azerbaijan and Tajikistan are not covered by the ranking. Source: World Justice Project, Rule of Law Index, 2019, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>.

In **Azerbaijan**, the main developments since the previous round reported by the authorities were the designation of Freedom of Information Officers in charge of access to information in central and local executive agencies, adoption of the internal rules on freedom of information by central and local executive agencies, and training conducted on freedom of information. The IAP report found that the exercise of the right to access in practice raised concern. Implementation shortcomings and failures included: refusals or inadequate responses to the access to information requests; need for personal contacts to receive requested information; deadlines not complied with; inconsistent interpretation of the meaning and the scope of public information in different agencies, etc. One of the key critical impediments was the lack of clarity on which information was open to public. In the absence of clear regulations FOI officers did not have the authority to decide on the status of information in response to requests as it required supervisory approval. Furthermore, there was no information/document management system which would require classification, storing and registration of information in the public administration on a daily basis and which would assist the FOI officers in their daily work. The implementation of proactive publication of information was not systematically monitored or evaluated by the Government. No information was available on the practice of proactive publication by state agencies.³³³

The IAP monitoring recommended to Azerbaijan to:

- review the legislative framework of access to information to clarify and limit the exemptions and provide for a proportionality test to grant access unless withholding the information is justified by a legitimate interest that is greater than the right to know;
- ensure wide access to information held by public authorities by implementing a presumption of openness;
- publish the information on-line in open data format ensuring access to high-interest datasets;
- effectively enforce proactive publication of information.³³⁴

Table 21. Ranking of access to information laws in the IAP and ACN countries

Country	Name of the Law(s)	Year of the Law	Rank in the Global Right to Information rating ³³⁵	Accession to Council of Europe Convention on Access to Official Documents*
Serbia	Law on Free Access to Information of Public Importance	2004	3	2009 (S)
Slovenia	Access to Public Information Act	2003	5	2009 (S)
Albania	Law on the Right to Information	1999	6	
Croatia	Right of Access to Information Act	2013	8	
Azerbaijan	On the Right to Obtain Information	2005	17	
North Macedonia	Law on Free Access to Information of Public Character	2006	22	
Moldova	Law on Access to Information	2000	25	2016 (R)
Ukraine	On Access to Public Information	2011	29	2018 (S)
Bosnia and Herzegovina	Law on Freedom of Access to Information	2000	36	2012 (R)
Kyrgyzstan	On Access to Information Within the Competence of State Bodies and Local Self-government Bodies	2007	39	
	On Guarantees and Freedom of Access to Information	1997		
Armenia	On Freedom of Information	2003	41	
Georgia	The General Administrative Code	1999	45	2009 (S)
Estonia	Public Information Act	2000	48	2016 (R)
Bulgaria	Access to Public Information Act	2000	56	
Montenegro	Law on Free Access to Information	2005	59	2012 (R)
Romania	Law on Free Access to Public Information	2001	68	
Mongolia	Law on Information Transparency and Right to Information	2011	72	
Poland	Act on Access to Public Information	2001	74	
Czech Republic	Freedom of Information Act	1999	90	
Latvia	Freedom of Information Law	1998	91	
Slovakia	Act on Free Access to Information	2000	101	
Lithuania	Law on the Provision of Information to the Public	1996	107	2012 (R)
Kazakhstan	Law on Access to Information	2015	110	
Uzbekistan	Law on Principles and Guarantees of Freedom of Information	2002	114	
	Law on Guarantees and Freedom of Access to Information	1997		
Tajikistan	Law on the Right to Access to Information	2002	120	

Note: *Convention will enter into force after 10 ratifications (nine ratifications as of August 2019). “S” means “signed but not ratified”, “R” – “ratified”. See at www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures. Source: IAP monitoring reports; OECD/ACN secretariat research.

In **Armenia**, one of the main achievements in the area of freedom of information since the last monitoring round has been the adoption of the long-awaited secondary legislation, the Government Decision regulating e-requests, clarifying the role of FOI officers and providing new regulations on proactive publication of information. The adoption of the Decision was followed by appointment of FOI officers in the state bodies and updating of their websites. No progress was made on revising the access to information law. Government reported about the launch of the e-requests portal (www.e-request.am) that allows submitting electronic requests of public information as provided by legislation and generates statistics based on the requests received electronically. FOI officers were designated in the public sector agencies of Armenia; however, efficient supervision and oversight over the enforcement of the access to information right has not been achieved. The overall number of complaints related to access to information received by the Ombudsman in 2015-2017 was 17. Government and NGOs could not agree on the number of complaints which were satisfied.³³⁶

The IAP report on Georgia concluded that Georgia lacked a modern stand-alone right to information law. There was also no dedicated oversight authority that would ensure enforcement of the relevant provisions.

This, together with lack of sufficient training and awareness raising, affected implementation of the right to information in Georgia, which remained low. Other problems that has impact on the level of enforcement was the lack of effective sanctions for violation of access to information provisions, ineffective appeal mechanism and an imbalance with the right to personal data protection. The latter had stronger enforcement through a dedicated authority and sanctions. A separate FOI law and enforcement mechanism would correct this, but it may also be needed to amend the data protection law to find a better balance between two important human rights. Introduction of the system of proactive publication of information was an important reform. However, its implementation was uneven, and many public authorities did not comply with the set standards.³³⁷

The IAP report on **Ukraine** noted while the quality of the laws was good, the enforcement was marked with the evident challenges. Most of these challenges were related to the lack of knowledge of the legal requirements and how to interpret them in practice by public servants providing answers to the requests. In addition, according to the NGO analysis of implementation, often the responses are of poor quality, incomplete and provided with the delay. Additionally, the fees of administrative proceedings have been increased recently and set unreasonably high. It affected citizens who do not use the court appeal avenue when their requests are denied. The high cost of receiving print copies of the requested information (that are more than 10 pages) was a problem as well. The authorities noted difficulties related to the interpretation of the public interest test by freedom of information officers. Since there is no designated body to provide guidance and consultations, the practice has been inconsistent resulting in unjustified refusals. One of the weak points in the enforcement has been the judiciary – the courts disregarding the requests for information on budgets and salaries of judicial personnel. The Government also informed about the following challenges in the implementation: the use of departmental lists of information “for official use” as a ground for refusal of the access to information; non-disclosure of information that is open under the law and failure to answer email requests electronically. According to the Government, the main problems that lead to systematic violations are the lack of the culture of openness and the knowledge of the requirements of the law as well as controversial judicial practice of resolving the disputes concerning the application of the law in similar cases. As regards the enforcement statistics and analysis, the Government could not provide data on the number or requests, the percentage of satisfied requests against rejected or the use of sanctions for violations of access to information provisions.³³⁸

The IAP report on **Kazakhstan** acknowledged that the country made an important step by approving in 2015 and starting implementation of the long-awaited Law on Access to Information. The report noted that the new law has not started operating properly as yet. There was no effective supervision over its enforcement. In this regard, the Commission on Issues of Access to Information should be strengthened by changing its status and ensuring its independence from executive authorities. Kazakhstan revised, as was recommended, provisions on administrative liability for the violation of the right of access to information. However, certain violations (untimely response to information requests, incomplete disclosure of information, failure to respond to requests) were still not covered. In addition, the sanctions could not be considered effective. The new provisions were not applied in practice, as was the case before.³³⁹

Review mechanism

The mechanism for reviewing and acting on the complaints related to access to information remained a weak spot in the IAP countries. It affected the overall level of enforcement which remained quite low.

For example, in **Azerbaijan** the Ombudsman has not been exercising its oversight functions in practice and its role was limited to receiving complaints regarding violations of the right of access to information. The Ombudsman has not been provided with the necessary resources in order to effectively perform its functions in the area of access to information. In 2014, 21 complaints were received on access to

information, six of them were granted, in 2015, 38 complaints received and 14 granted. These figures were low compared to the 12,000 complaints received by the Ombudsman in total in 2015.³⁴⁰

In **Georgia**, the Ministry of Justice reviewed the issue of establishing an independent public authority for the oversight of access to information right enforcement during development of the FOI draft law. Three options were considered: 1) establishing an independent body with authority of overseeing access to information in public entities, 2) to assign oversight functions to the Public Defender's Office (Georgian Ombudsman), or 3) to merge access to information oversight body with the Data Protection Commissioner. Members of the drafting working group decided to go forward with an independent authority. Such a new authority would be independent from the Data Protection Commissioner, would be elected by the Parliament and have a high level of autonomy. Its powers would include access to any data (documents), including classified, issuing of recommendations non-compliance with which would result in an administrative sanction. The office will also raise awareness on the access to information. The respective draft law, however, has not been even submitted in the parliament.

The monitoring team welcomed the decision to set up an independent authority for access to information oversight in Georgia. The report mentioned that the office could be merged with the data protection authority to avoid (or more efficiently solve) conflicts between enforcement of two rights, but arguments could also be made in favour of a separate entity solution. Both models were seen as legitimate and existed in different countries. It was important that the access to information oversight authority has powers that match those of the data protection agency. Such powers should include issuing not just recommendations but binding orders on the disclosure or non-disclosure of information, on enforcement of other access to information regulations.³⁴¹

In **Ukraine** the Ombudsman's Office was assigned the powers to oversee implementation of the access to information legislation. However, the new mandate was not matched with the necessary resources. Both the authorities and CSOs concurred with the view that an independent oversight body was necessary.³⁴²

In general, the IAP reports confirmed that the judicial and general administrative remedies are often ineffective. Administrative authorities are usually reluctant to find a violation committed by the subordinate institution or official, while a judicial appeal takes a lot of time and may be costly. Therefore, international standards require an independent complaint mechanism in the form of an information commissioner (commission or agency) or another equivalent body. Its responsibilities should include the monitoring and supervision of compliance with the provisions on access to information. Such institutions also play an important role in raising awareness and educating public officials. In reaction to a complaint, such bodies should be able to issue binding decisions and impose fines or other sanctions for non-compliance.

There are several models of such institutions. In some countries, this mandate has been assigned to a special commission (or commissioner): Belgium, France, Italy (Commission on Access to Administrative Documents), Ireland (Office of the Information Commissioner), North Macedonia (Commission for Protection of the Right to Free Access to Public Information). Several countries have merged this institution with the personal data protection authority (e.g. Estonia, Germany, Hungary, Latvia, Malta, Serbia, Slovenia, Switzerland, the United Kingdom). There are also countries where the general institution of Ombudsman is in charge of protecting the right of access to information (all IAP countries, Bosnia and Herzegovina, Denmark, Norway, Poland, Spain, Sweden), but this is usually not a satisfactory arrangement, because in most cases the Ombudsman lacks binding enforcement powers.

A special office of information commissioner (even when merged with the data protection authority) is usually best suited to exercise an effective and independent control over access to public information. General ombudsman institutions may not have the necessary resources and focus, as they have to deal with the wide range of human rights violations. This is why IAP monitoring has consistently advised countries to create a separate independent review mechanism.

Defamation laws

Defamation and insult laws aim to protect an individual's reputation, which in principle is one of the legitimate interests that can justify restrictions on the freedom of expression. However, the law providing for the protection of someone's reputation must strike the right balance between protecting reputations and curbing free expression and legitimate criticism; it must not restrict freedom of expression further than is "necessary in a democratic society".

Strict defamation laws discourage debate about public institutions and their scrutiny by prohibiting criticism of the head of state, other public bodies and officials, and by imposing higher penalties when a defamatory statement concerns public officials or bodies. Defamation laws are often abused by public officials, politicians who use them to protect themselves from criticism or from the disclosure of embarrassing facts, including revelations of corruption and maladministration. Draconian defamation laws and their application encourage self-censorship among the media and individual citizens.

As noted in one of the IAP reports, the mere existence of criminal liability for libel, insult and other similar acts has a chilling effect on freedom of speech and activity of the mass media, which leads to self-censorship and hinders investigative journalism that can expose corruption. Moreover, enforcing sanctions connected with the restraint of liberty or the threat of imprisonment further exacerbates this problem and is unacceptable in a democratic state. More severe sanctions for libel and insult of public officials also do not comply with international standards, according to which such persons may, on the contrary, be subject to a much higher level of criticism than an ordinary citizen would be. Such sanctions are extremely detrimental for the fight against corruption since they significantly suppress social activity aimed at detecting and disclosing information about illegal acts.³⁴³ Journalists and whistle-blowers (both important actors in exposing corruption) should not be intimidated by possible penalties for defamation.³⁴⁴

The existence of criminal defamation laws and their application in practice was found by the IAP monitoring to be a serious obstacle to free media, which cannot exercise their role as a watchdog properly under such conditions. The IAP monitoring thus strongly recommended that countries repeal the general criminal liability for defamation and insult, as well as special crimes related to insult or infringement of honour of the president, members of the Parliament and other public officers, and to rely only on civil law to protect such reputational interests.

The fourth monitoring round found that no major reforms were conducted in this regard in the IAP countries and that several countries have been actively using the defamation laws in practice.

The IAP report on **Azerbaijan** reiterated that it should decriminalise all defamation and insult offences, as they have a strong chilling effect on media freedom and particularly investigative journalism and their application encourage self-censorship among the media and individual citizens. There have been no developments to address the concerns of the previous monitoring round on using civil law instruments to restrict media activity.³⁴⁵

In **Kyrgyzstan** the previous recommendation that the duty of the Prosecutor General to protect the honour and dignity of the President be abolished was not implemented. In 2017 the international organisation Article 19 conducted a legal review of the Law "On guarantees to the activity of the President of the Kyrgyz Republic" and confirmed that the law failed to comply with the international standards of the right of freedom of opinion and expression, as under such international standards public officials, by virtue of their office, should accept a larger scope of criticism levelled at them. The report also raised concern with the active use of this provision by the Prosecutor General in several cases.³⁴⁶

Analysis of the resolution of the Plenary Council of the Supreme Court of the Kyrgyz Republic on judicial practice in resolution of disputes concerning protection of honour, dignity and business reputation showed that it failed to offer safeguards against abusive use of lawsuits claiming protection of the honour and dignity or striking a balance with the public interest in disclosing important information, including possible

acts of corruption. In particular, the resolution failed to state that information that is true to reality may not be deemed defamatory; nor did it segregate value judgments from facts, and so on. Kyrgyz legislation appeared to miss other preventive instruments, e.g., a shorter statute of limitations for such lawsuits against the mass media; the concept of “reasonable publication” as an exemption from liability (when the mass media and journalist have taken reasonable steps to check the information which proved to be untrue); special standards for the protection of the honour and dignity of public figures; the shift of the burden of proof of falsity to the claimant in cases where the publication in question deals with public officials and public interest, and others.³⁴⁷

In **Mongolia**, which commendably decriminalized defamation and insult, the Law on Administrative Violations still included an offence of defamation. Statistics did not show the wide application of this provision in practice though.³⁴⁸

The IAP report noted that **Kazakhstan** failed to comply with the recommendation to avoid using liability for defamation to restrict freedom of expression and it was widely used in practice. Moreover, the new Criminal Code included even stricter sanctions for relevant offences and introduced a new criminal offence of dissemination of knowingly false information. Kazakhstan, while drafting and debating its new Criminal Code, looked into the possibility of repealing criminal liability for libel and insult and other similar offences against public state officials. But it decided to keep them. It also retained the aggravated qualification of the crime of libel combined with allegations of corruption, which was found to be unacceptable from the point of view of the need to encourage whistleblowing.

On measures to prevent exorbitant amounts of claims of moral damages, the monitoring report on Kazakhstan welcomed the fact that the amount of court fee was set in proportion to the amount of damages claimed. However, this measure failed to improve the situation significantly. This could be partly due to the fact that the provision on the proportionate amount of fee was not applicable to claims lodged during the criminal process, and partly because the plaintiffs that were public official and government institutions were exempt of the state duty. These gaps should be remedied. The report also reminded that it was important to remember that government institutions should not have any right to start such actions (since honour and dignity are attributes of physical persons only, and business reputation is inherent in commercial entities), while public officials may only sue as private persons, and not in their official capacity.

In accordance with the Civil Code of Kazakhstan an unlimited statute of limitations was set for the protection of personal non-property rights (honour, dignity and business reputation). This also negatively affected the media freedoms and the activities of journalists as the requirements for refutation, the protection of honour, dignity and business reputation and compensation for moral damages could be claimed at any time after publication. This weakened the legal safeguards for journalists and media to be protected from unjustified claims, especially in case of investigative journalism.³⁴⁹

Open data and transparency initiatives

Information about how public budgets are formed and spent is important for the prevention and detection of corruption. More and more countries in the region are introducing measures to disclose as much information as possible about public funds and their use, and they are doing this in a user-friendly way. Equally important for anti-corruption is the openness of public registers, especially those containing data about ownership rights (real estate, land, vehicles, etc.) and companies. This information is essential to prevent illicit enrichment of public officials and protect ownership rights.

Table 22. IAP and ACN countries in global transparency and media freedom ratings

Country	Open Budget Index (2017), Score out of 100	Global Open Data Index (2016-2017), Rank	The Open Data Barometer (2016), Score out of 100	E-Participation Index (2018), Rank	World Press Freedom Index (2019), Rank
Albania	50	47	32	59	82
Armenia	-	-	-	103	61
Azerbaijan	34	-	-	79	166
BiH	35	58	8	125	63
Bulgaria	66	36	37	35	111
Croatia	57	44	27	57	64
Czech Republic	61	27	44	92	40
Estonia	-	-	36	27	11
North Macedonia	37	52	33	71	95
Georgia	82	-	37	87	60
Hungary	46	-	23	69	87
Kazakhstan	53	-	26	42	158
Kosovo	-	58	24	-	75
Kyrgyzstan	55	-	13	75	83
Latvia	-	14	28	75	24
Lithuania	-	-	-	51	30
Moldova	58	-	44	37	91
Mongolia	46	-	-	65	70
Montenegro	-	49	15	64	104
Poland	59	28	34	31	59
Romania	75	24	-	69	47
Russia	72	38	49	23	149
Serbia	43	41	23	48	90
Slovakia	59	32	45	50	35
Slovenia	69	28	-	48	34
Tajikistan	30	-	10	134	161
Turkey	58	45	37	37	157
Ukraine	54	31	36	75	102
Uzbekistan	-	-	-	59	160

Source: Open Budget Index, www.internationalbudget.org/open-budget-survey/open-budget-index-rankings; Global Open Data Index, <https://index.okfn.org/place>; The Open Data Barometer, https://opendatabarometer.org/4thedition/?_year=2016&indicator=ODB; UN E-Participation Index, <https://publicadministration.un.org/egovkb/Data-Center>; World Press Freedom Index, <https://rsf.org/en/ranking>.

Table 23. Participation of IAP countries in the transparency and open government initiatives

Country	Extractive Industries Transparency Initiative / Status of compliance	Infrastructure Transparency Initiative	Open Government Partnership Initiative
Armenia	Joined in 2017. Not yet assessed	-	Member since 2011. Implementing Action Plan no. 4
Azerbaijan	Joined in 2007, left in 2017 (following suspension from EITI)	-	Member since 2011. Suspended in 2016
Georgia	<i>Not a member</i>	-	Member since 2011. Implementing Action Plan no. 4
Kazakhstan	Joined in 2007. Status of compliance with the Standard - "Meaningful progress" (2018)	-	<i>Not eligible for membership</i>
Kyrgyzstan	Joined in 2007. Status of compliance with the Standard - "Inadequate progress/Suspended" (2016)	-	Member since 2017. Implementing Action Plan no. 1
Mongolia	Joined in 2007. Status of compliance with the Standard - "Satisfactory progress"	-	Member since 2013. Implementing Action Plan no. 2
Tajikistan	Joined in 2013. Status of compliance with the Standard - "Inadequate progress/Suspended" (2017)	-	<i>Not eligible for membership</i>
Ukraine	Joined in 2013. Status of compliance with the Standard - "Meaningful progress" (2018)	Participating since 2015	Member since 2011. Implementing Action Plan no. 4
Uzbekistan	<i>Not a member</i>	-	<i>Not eligible for membership</i>

Source: <https://eiti.org/countries>; <http://infrastructuretransparency.org>; <https://www.opengovpartnership.org/our-members>.

Recommendations

- A. Align legislation on access to information with international standards and best practices. In particular, review laws on state and official secrets to align them with the primary access to information law and to ensure that they are not used to unjustifiably exclude information from the public's access.
- B. Establish explicitly in the law, as a fundamental principle, that all information held by public authorities is presumed to be open to the public and, therefore, access to such information may be exceptionally limited only when the authority justifies that non-disclosure of information is necessary to protect a legitimate interest and that the possible substantial harm to such interest outweighs the public's right to know such information. Exclude any automatic restriction of access to certain categories of information. Certain types of information, e.g. information related to budget revenues and expenses, the administration of public property and resources on national and local levels should be determined to be of high public interest and should therefore be even harder to restrict or prohibited from restriction altogether.
- C. Laws should provide clear guidelines on how the right of access to information can be balanced with the right to privacy and on how to exclude certain types of information from being protected under the latter, e.g. access to information on assets and income of public officials should be guaranteed.
- D. Strengthen requirements with regard to proactive disclosure of information about the decision-making, functioning and organisation of public authorities. There should be an especially strict set of rules on the publication of draft decisions (e.g. deadlines), notably those concerning human rights and freedoms, administration of public property, budgets, and so on.
- E. The provision of information to the public should be viewed as an important function of the state and local authorities and should therefore be supported with the necessary financial, material and human resources, including creation of information officers (offices) in such authorities.

- F. Set up an independent review mechanism with adequate powers, which should be provided with necessary resources and powers, including the power to impose sanctions and issue binding decisions regarding access to information. Such institution could be established as a separate body or as a body merged with an office for the personal data protection. Designate public officers (units) in the authorities that will be responsible for the implementation of the access to information law, granting them with sufficient powers and resources.
- G. Ensure introduction of agency-level recording of information requests, process and outcome of their consideration, and implement relevant centralised statistics collection with regular online publication of the data. Ensure preparation of an annual national report on the status of implementation of the law on access to information and safeguards to the right of access to information in the country.
- H. Conduct regular practical training on the exercise of the right of access to information for public agencies and carry out campaigns to raise awareness of the public about the existing mechanisms for enforcing this right.
- I. Conduct regular reviews of documents, access to which has been restricted, including documents classified as for official use only, to ensure that the restricted status is removed from documents where there is no need to continue the restriction or where there is an overriding public interest in having an open access.
- J. Establish the liability for violating the right of access to information and ensure enforcement of dissuasive and proportionate sanctions. Provide for the release from any liability for disclosing classified or other information whose access is restricted if it was required by an overriding public interest.
- K. Repeal criminal or administrative liability for all offences of defamation and insult, as they have a strong chilling effect on media freedom and investigative journalism in particular. Civil courts should provide the only legal forum for remedying harm caused to one's honour and dignity.
- L. Introduce effective measures to prevent unjustified and excessive monetary claims of moral damages against mass media and journalists, in particular, by:
 - a. setting court fees in proportion to the amount sought in compensation,
 - b. introducing a short statute of limitation period for such lawsuits,
 - c. forbidding public officials and public authorities themselves to sue seeking protection of honour and dignity,
 - d. exempting the expression of value judgments from liability,
 - e. requiring the aggrieved party to demonstrate malice on the part of the alleged defamer,
 - f. placing the burden of proof of unauthenticity on the plaintiff in cases where the publication concerns public officials and public interests,
 - g. establishing a defence of reasonable publication, which exempts a defendant from liability for disseminating false information if the journalist who published the statement acted in good faith and attempted to verify the information,
 - h. conducting regular training of judges on the relevant international standards.
- M. Adopt comprehensive measures to disclose information of public interest that is important to prevent and combat corruption. Establish ownership transparency requirements for broadcasting media and an effective supervision mechanism. Provide effective access,

including on-line and in the open data formats, to public registers of movable and immovable property, land, vehicles, companies, licenses granted to use public resources, etc. Provide a requirement to disclose beneficial ownership in all legal persons and publish such information on-line; introduce measures to authenticate beneficial owners and verify relevant information.

- N. Provide access to up-to-date and detailed information about the use of state and local budgets (including information about treasury transactions), budgets of state and municipal companies, their financial reports.
- O. Introduce legislation about on-line publication in open data formats of information held by public authorities and ensure the regular publication of high-interest datasets with the guaranteed right of re-use free of charge under an open license. Setup central government portals for publishing open data and establish national standards on open data.

Join and ensure full compliance with international transparency and good governance initiatives, notably the Extractive Industries Transparency Initiative, Infrastructure Transparency Initiative, and the Open Government Partnership.

Business integrity

Business risks in Eastern Europe and Central Asia

General challenges

Economic freedom, protection of property rights, open and fair competition are fundamental conditions for business development, investments and economic growth. ACN countries have started the transition towards these key principles of market economy almost 30 years ago, and while some of them – especially recent EU and OECD members – have made good progress, others, mostly the IAP countries, are still to create conditions to unleash creative market forces that can generate prosperity for the citizens.

Privatization followed the collapse of Soviet Union and led to the concentration of large businesses in monopolies tightly linked to high-ranking government officials, but also many small and mid-size businesses are owned by oligarchs and connected to their businesses.³⁵⁰ In many ACN, and particularly IAP countries, economies are now controlled by oligarchs, family clans, and corrupt politicians, criminal or other interest groups who continue enriching themselves by channelling public resources to their companies, foreign bank accounts and assets. These oligarchs and interest groups are fighting among themselves for greater dominance, but they are not interested in opening up competition or promoting other economic freedoms and strive to preserve the current power-sharing systems.

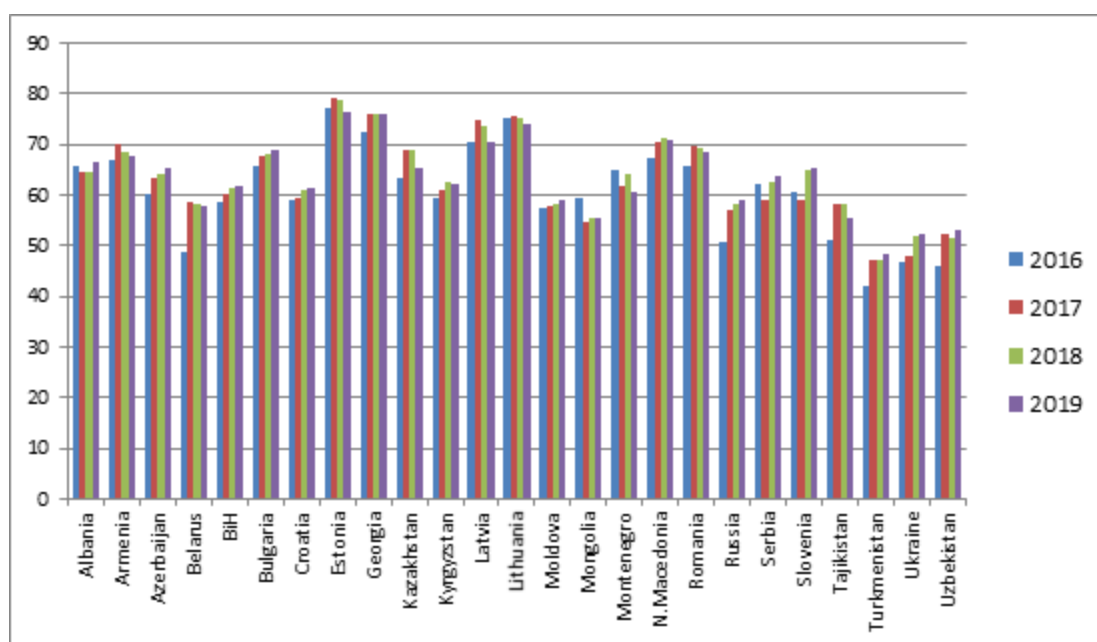
A survey conducted for the ACN Business Integrity Study in 2016 showed that legal uncertainty and selective application of the law by judiciary, insufficient development of competitive environment and poor protection of property rights were the top business risks in the region. The study recommended that Governments should strive to ensure fair and predictable legal environment including accessible, competent and independent courts.³⁵¹ However, given the merger of interests between the oligarchs and countries' leaders, the main problem is to generate 'political will' necessary to act on these recommendations. Business integrity work in the region over the past several years shows that healthy forces are, emerging reformers in the governments and responsible private sector leaders are raising their voices and struggle to change the rules of the game and to direct economies in their countries to the sustainable growth.

Economic freedom and market liberalisation

During 2016-2019, the ACN region achieved a moderate improvement of economic freedom, but it is affected by protectionism and politically motivated government spending. **Estonia** is the only ACN

country that is the closest to the status of a “free” economy. Four other countries (Georgia, Latvia, Lithuania and North Macedonia) are “mostly free” and 12 (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Kazakhstan, Kyrgyzstan, Montenegro, Romania, Serbia, Slovenia) are “moderately free”, while seven (Belarus, Moldova, Mongolia, Russia, Tajikistan, Ukraine, Uzbekistan) are “mostly unfree” and one (Turkmenistan) is considered as “repressive” to the economic freedom.³⁵² In terms of dynamics, **Georgia** moved closer to the countries with “free” status becoming the 16th freest country in the world in the 2019 index; **North Macedonia** has also made considerable upward movement to the list of mostly free countries; **Belarus**, **Ukraine** and **Uzbekistan** have made progress switching from repressive, but still being mostly unfree; despite improved scores **Russia** also remained as mostly unfree. **Mongolia** and **Montenegro** showed significant drop in the economic freedom scores.

Figure 21. ACN countries’ score in the Economic Freedom Index (2016-2019)



Source: The Heritage Foundation, www.heritage.org/index.

Protection of private property rights

Private property protection is one of the major pre-conditions for business development. Sound private property protection policies, their enforcement, and effective justice system capable of punishing unlawful expropriation of property are the key factors for prosperity and integrity of business. Prevention of shadow economy is also important, as unofficial or unrecorded business cannot be protected using legal means.³⁵³

Protecting property rights is very difficult in the region, e.g. according to the World Bank’s Enterprise Survey, companies in **Ukraine** do not have sufficient confidence in protecting property rights; while protected by the Constitution, in practice private property rights are weakly enforced due to insufficient court system which is subject to political influence and extensive corruption.³⁵⁴

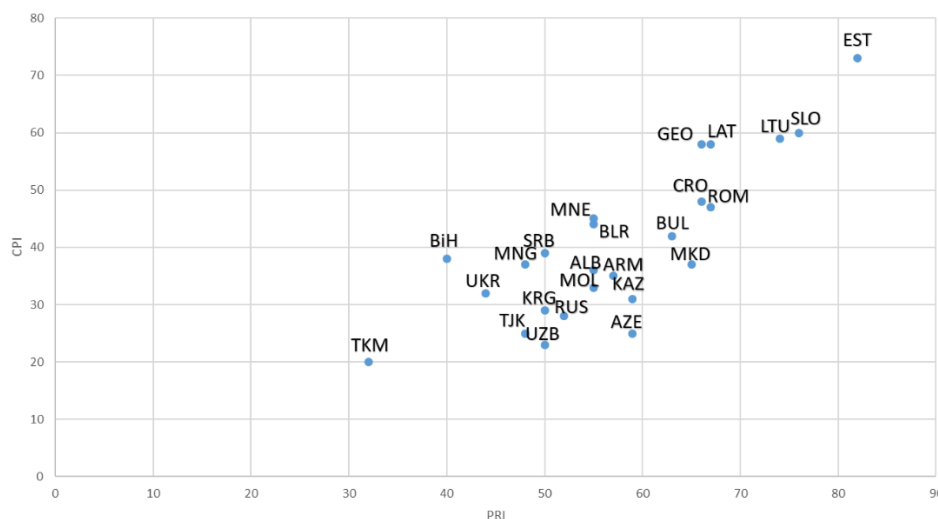
Raiding or seizing businesses is another widespread problem in the region. There are many examples of raiding reported by media, for example, in **Ukraine**. Sometimes, documents certifying the company ownership rights are falsified, often with the involvement of the government officials responsible for company registration. Companies can be raided or seized by competitors or by public officials by using illegal law-enforcement actions, e.g. the owner can be falsely accused of a murder or other crime and can be asked to give up his rights to the company while in detention in exchange of dropping these charges.

Companies can also be accused of various violations of business regulations, e.g. company accounts can be arrested in a dispute with tax administration until the owner agrees to cede his rights. This practice was also widespread in **Georgia** during Saakashvili's second term; there were allegations that members of his government were later raided by the new powers and their businesses were seized.³⁵⁵

Another example comes from **Uzbekistan** that went through a long history of expropriations that continues impacting country's investment climate. A number of large companies with foreign capital in the food processing, mining, retail, and telecommunications sectors faced expropriation by the Uzbek government in the past.³⁵⁶ These measures created very negative business environment that the new Uzbek government is struggling to improve in order to attract investment.³⁵⁷

The chart below demonstrates the inter-dependency of the level of corruption and private property protection in the ACN region, where countries with strong protection of private property usually also show higher CPI scores.

Figure 22. Correlation between corruption perception and private property protection in ACN countries



Note: Each country in the Property Rights Index (PRI) is graded from 0 to 100, where “0” means that private property is outlawed, and all property belongs to the state, people do not have the right to sue others and do not have access to the courts, and corruption is endemic. Meantime “100” means that private property is guaranteed by the government, the court system enforces contracts efficiently and quickly, the justice system punishes those who unlawfully confiscate private property and there is no corruption or expropriation.

Sources: Transparency International for Corruption Perception Index (CPI) and Heritage Foundation for Property Rights Index (PRI).

Open and fair competition

The open economy allows to prevent the concentration of wealth and economic power in the hands of a few. Competition helps promote a cleaner and fairer business environment, in which success comes to those firms that are best able to meet their customer needs, rather than those with the best connections or the deepest pockets. In the ACN region, many industry sectors are dominated by a few, and often politically influential players, which makes it very important for competition authorities to establish a reputation as an impartial institution, which is able to fight against competition law violations. In addition to effective enforcement, the decrease of the barriers to enter the market and development of competitive markets would help to fight the “business of insiders” and to attract foreign investments.

Many ACN countries have sufficient legal frameworks for a functional competition policy, but implementation of competition law is insufficient. This may be due to lack of necessary tools, a reluctance to use the available powers, inadequate funding and staffing of the competition agencies, or political factors.³⁵⁸ Some competition authorities in the ACN region have improved their performance recently, e.g. **Romania**.³⁵⁹ But many other countries, especially IAP countries, still suffer from poor resources and lack of independence of competition bodies, e.g. the salary of staff of the Anti-Monopoly Committee in Ukraine was the lowest among state bodies.³⁶⁰ Weak competition authorities can be seen as a reflection of the lack of political will to open up competition, to protect businesses controlled by oligarchs. Additionally, competition authorities also need to develop good co-operation with other enforcement bodies, such as anti-corruption bodies, as cartels and bid rigging in public procurement and corruption often go hand in hand.

For example, according to Anti-Monopoly Committee of **Ukraine**, the losses for consumers in the energy market account for 20% of GDP due to increasing prices and tariffs by monopolies in the country.³⁶¹ At the same time, a controversial decision by the Anti-Monopoly Committee to clear the acquisition of two regional energy-distribution companies by oligarch-owned energy company raised questions in the public about transparency of the decision, also considering that the company was identified by the Anti-Monopoly Committee as having signs of monopolistic dominance.³⁶² The recent drinking water crisis in Ukraine showed how an oligarch attempted to blackmail the country by refusing to sell chlorine from one of his companies that is necessary to treat the water, due to the conflict he had with the government following the privatisation of his bank.³⁶³

In **Kazakhstan**, the acquisition of controlling stakes in two of three mobile operators by Kazakhtelecom led to the situation when state-owned company was controlling two-thirds of the market. This in turn translated to unequal treatment of the companies bidding for 4G licenses.³⁶⁴ A similar situation can be seen in **Uzbekistan**, where the state owns three out of four mobile operators through the state-owned company Uzbektelecom.

While protecting open and fair competition is crucial to fighting political corruption, only few examples were identified in the ACN countries, e.g. **Romania** and **Serbia**, that demonstrated the efforts of the anti-corruption bodies in this area and their co-operation with competition authorities.³⁶⁵ While competition is not the mandate of anti-corruption authorities, it is futile to fight individual instances of bribery or other corruption offences in the environment where systemic political corruption is used to siphon public resources. It is therefore important for the anti-corruption authorities to work together with competition bodies, to identify common challenges, strategies and actions.

Corporate governance

The G20/OECD Principles of Corporate Governance, originally developed in 1999, and updated in 2004 and 2015, provide a globally recognised benchmark for improving corporate governance. They embrace corporate governance as means to support economic efficiency, sustainable growth and financial stability. The principles cover the set of relationships between a company's management, board, shareholders and stakeholders, within which these actors set, pursue and monitor objectives.

Fundamental for business integrity, the Principles address, among other things: the responsibilities of boards, directors and any audit committees in mitigating risks to achievement of objectives, including risks related to corruption and fraud; disclosure and transparency requirements, which help provide assurance and facilitate accountability, and the rights and equitable treatment of all shareholders that can work to curtail impunity and abuses of power.³⁶⁶

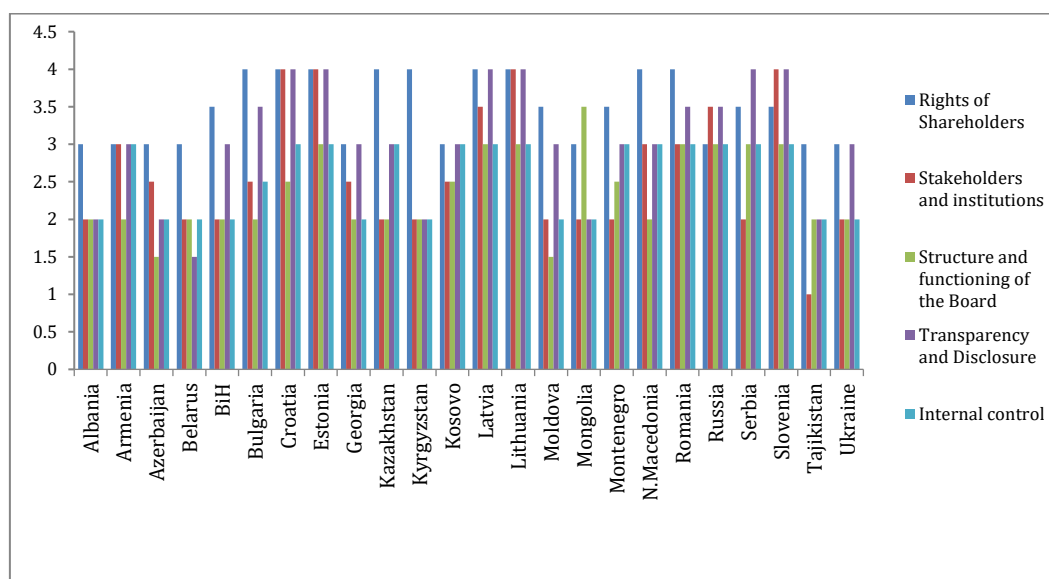
Good corporate governance is essential because no commitment to integrity and good corporate citizenship can be stronger than the governance mechanisms necessary to implement the commitment. Conversely, weaknesses in corporate governance can expose companies to opportunistic behaviour and pressure for

non-compliance, while weaknesses in national corporate governance frameworks can be representative of, or opportunities for, entrenchment of grand corruption.

A precondition for good corporate governance is usually the rule of law supplemented by strong and consistently enforced market regulation. In 2017, the EBRD conducted an assessment of corporate governance in the countries of its operation, which include the ACN countries. The results showed that countries where capital markets are more developed, where rules for companies are well designed and supervisory functions are well determined show better performance. For example, Corporate Governance in **Lithuania** is regulated by a set of laws including the Civil Code; the Law on Companies; the Law on Banks; the Law on Audit; and the Law on Securities, the Law on Markets and Financial Instruments. The Bank of Lithuania's Supervision Service is a responsible authority in the capital market. Corporate Governance Code is effective for companies listed in Nasdaq Vilnius exchange that is hosting 30 companies, the exchange may delist companies for non-compliance.³⁶⁷

In several countries in the region corporate governance is less developed. E.g. in **Albania**, the legal framework for corporate governance is almost complete but the enforcement of corporate governance rules remains poor due to the lack of capital market (as there is only one stock exchange recently licensed) and of supervisory authority for enforcement of the corporate governance rules.³⁶⁸ Many IAP countries are also lagging behind, internal controls and structure and functioning of the board are the weakest areas in the region.³⁶⁹ For example, the independence of the boards, internal controls and the functioning of the audit function were assessed as very weak in **Ukraine**.³⁷⁰

Figure 23. Corporate governance policies and practices in ACN countries



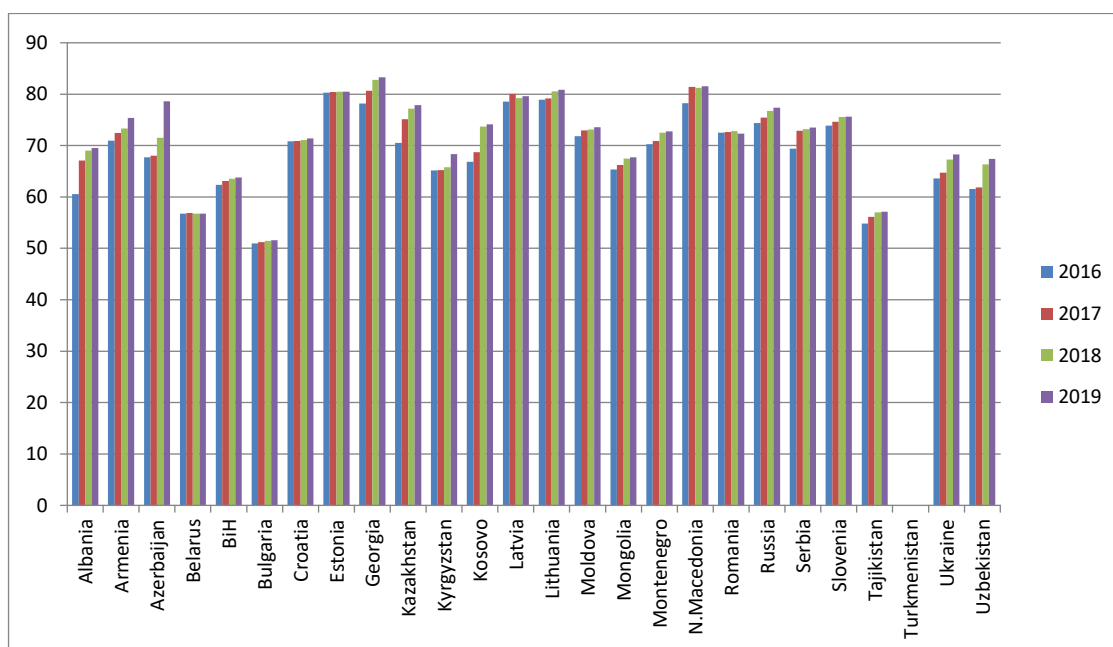
Note: Ratings were given from Very Weak (1) to Very Strong (5). The scores between the positions were adjusted to +/- 0.5 (e.g. Weak/Fair is scored with 2.5) “Strong to very strong” - The corporate governance framework / related practices of companies are fit-for-purpose and consistent with best practice. “Moderately strong” - Most of the corporate governance framework / related practices of companies are fit-for-purpose but further reform is needed on some aspects. “Fair” - The corporate governance framework / related practices of companies present some elements of good practice, but there are a few critical issues suggesting that overall the system should be assessed with a view of reform. “Weak” - The corporate governance framework / related practices of companies may present few elements of good practice, but overall the system is in need of reform. “Very weak” - The corporate governance framework / related practices of companies present significant risks and the system is in need of significant reform. Source: EBRD, Corporate Governance Sector Assessment, www.ebrd.com/what-we-do/sectors/legal-reform/corporate-governance/sector-assessment.html.

Business regulations

Overregulation and red tape are most common reasons for administrative corruption in the region. Rules established by the state for opening and closing companies, for issuing permits and licenses, various inspections such as tax, labour, environmental, sanitary or fire protection – all provide possibilities for abuse and corruption. IAP monitoring reports demonstrate that simplification of business regulations is one area where all countries have made progress. Introduction of various e-tools, reducing the number of and simplifying the procedures related to taxes, licenses and permits, restricting inspections were the main approaches that were used by the governments to improve business environment, which have also produced positive results for the reduction of opportunities for corruption.

The World Bank's Doing Business survey³⁷¹ shows positive trends across the ACN region where almost all countries have made considerable progress (e.g. **Albania** and **Azerbaijan** have improved the most) with some exceptions (e.g. **Belarus** and **Tajikistan** remain the worst performers).

Figure 24. Doing Business rating scores for ACN countries in 2016-2019



Source: World Bank, Doing Business, www.doingbusiness.org.

Integrity risks

In addition to general business risks such as lack of economic freedom, poor protection of property rights and competition, and inefficient regulatory environment, the OECD/ACN Business Integrity Study³⁷² also identified integrity risks specific to the ACN region, including grand and petty corruption. It is important to note that the high-level or grand corruption, such as state capture by business and business capture by state were considered by companies and business associations as more important integrity risks than petty corruption or individual instances of offering, promising, giving and asking for bribes. This confirms the systemic nature of corruption in the region.

Table 24. Business integrity risks for companies and business associations in the ACN region

		Average score	
		Companies	Associations
1	Legal uncertainty and selective application of the law by the law-enforcement and judiciary	3,79	4,40
2	Insufficient development of competitive environment	3,58	3,20
3	Poor protection of property rights	3,53	3,80
4	State capture by business, including illegal lobbying and other forms of influencing the state decisions in favour of business interests	3,26	3,87
5	Business capture by state, including illegal corporate raiding and other forms of takeover of companies by the state officials	3,21	3,07
6	Offering, promising and giving bribes and other illegal advantages to the public officials by companies	3,16	3,17
7	Bribe solicitation by public officials and other ad-hoc demand of bribes in individual cases	3,06	3,93
8	Private-to-private corruption between companies	3,05	3,14
9	Rent seeking by public officials and other regular claim of official for economic benefits produced by companies	2,89	3,40
10	Bribe solicitations by foreign public officials while doing business abroad	2,89	2,80
11	Financing of political parties by companies, political donations and contributions	2,53	3,33

Source: OECD/ACN (2016), Business Integrity in Eastern Europe and Central Asia, p. 32, cited above.

Grand and political corruption

The IAP monitoring reports identified grand or political corruption as a problem in the majority of countries. In different countries this phenomenon takes different forms, but ultimately it involves political persons who control large businesses; sometimes business oligarchs or even alleged criminals will reach this goal by becoming politicians or putting their own people into politics to protect or benefit their business interests, or the other way around, politicians may use their position to gain control over businesses.

Panama Papers published in 2016, exposed examples of high-level corruption and complex schemes used by the politicians and businessmen in many countries around the world to enrich themselves, often illegally, and to hide the benefits abroad. For example, one of the Panama Papers showed that consortium of companies established under **Azerbaijan** International Mineral Resources Operating Company Ltd. is controlled with majority stake (56%) by the President's family. In 2006, Azerbaijan's government granted mining leases to this consortium where the consortium will keep 70 percent of the gold mine's profit and the government will receive the remaining 30 percent, according to a 30-year production agreement.³⁷³

Petty and administrative corruption

Regarding petty or administrative corruption, various surveys conducted by business associations and international organisations show that all sectors where business interacts with the public administration suffer from various forms of corruption in the ACN countries. Companies and business associations see public procurement, tax and customs administration, systems of permits and licenses, courts, law-enforcement bodies, and state-owned enterprises as sectors with the highest corruption risk.³⁷⁴

The sectoral studies which were conducted during the fourth round of monitoring under the Istanbul Action Plan, provided multiple examples of administrative corruption. For example, the State Tax Committee of **Uzbekistan** collects about 75 per cent of revenues in the budget, controls and offers services to over 15 million taxpayers, and employs more than 11,000 workers. It was identified by various studies as one of the most corrupt services in the country. The most widespread corruption risks for the State Tax Committee staff included control procedures; drafting and taking decisions to postpone the payment of taxes; consideration of administrative offense etc.³⁷⁵

Private sector corruption

Private to private corruption was not yet identified as the main risk in the region, perhaps not because it does not exist, but because it is perceived as a lesser problem by the businesses. However, awareness about this risk is growing, and future business integrity work will need to focus on these issues as well.

Due diligence during mergers and acquisitions, and in assessing potential business partners is one of the powerful tools to prevent corruption. Many companies in the ACN region that wish to work with large foreign firms strive to improve their performance, including compliance, when they prepare to undergo due diligence. The 2016 OECD/ACN Business Integrity study confirmed that the risk that poor integrity presented in due diligence was the most important corruption risk for companies.

The 2016 Business Integrity study identified that companies operating in the ACN region never use private sector channels, like stock exchanges, to report about corruption, and almost never take legal actions against other companies involved in corruption, partly because they do not trust courts. It appears that they do not use private sector resolution mechanisms like ICC arbitration rules and international court of arbitration in corruption-related cases.³⁷⁶

One form of private sector corruption that is common in the OECD countries is collusion between companies in the public procurement and bid rigging. The OECD Recommendation on Fighting Bid Rigging in Public Procurement can help ACN countries develop effective rules to promote competition and reduce the risk of bid rigging by companies.³⁷⁷

Trends in business integrity

The 2016 Summary Report and the thematic study on business integrity provided a set of recommendations for the governments of the ACN countries as well as to the private sector aiming to promote business integrity. The following sections will examine progress and challenges using these recommendations as benchmarks. Findings of the IAP monitoring reports and the discussions at the BI seminars conducted by the ACN together with the EBRD and UNDP during the reported period will be used as the main information for this analysis.

Business integrity policy

The 2016 Summary Report recommended the ACN governments to undertake the following measures:

- Private sector corruption should be given higher priority in national anti-corruption strategies and plans. Measures should be developed in consultations with the business sector and NGOs.
- Governments should develop risk-based business integrity policy, e.g. as a part of anti-corruption strategy or another national, sectoral or local policy:
 - Give higher priority to business integrity in national anti-corruption and law-enforcement policy.
 - Implement meaningful measures to ensure predictable legal environment, including stable legislation and uniform court case law.
 - Establish a system to control implementation and monitor the impact of the business integrity policy, in dialogue with business.
 - Governments should measure the impact of business integrity measures.³⁷⁸

The 2016 thematic study on business integrity noted that “[e]fficient state policies on business integrity which developed inclusively and based on the strong research data communicates understanding and political will of the state to promote business integrity principles. International standards place extensive obligations on states as well as pose expectations in the form of recommendations.”³⁷⁹ The Study made the following recommendations to the governments:

- Develop clearly formulated state policy on business integrity, as a part of anti-corruption or other national strategy/action plan or a programme, including measures, performance indicators, resources and responsible bodies, and monitoring instruments;
- Conduct of state commissioned regular surveys to ensure evidentiary basis for the business integrity policies;
- Hold regular consultations held with private sector while developing business integrity policies.³⁸⁰

Policy documents

Business integrity measures are included in the anti-corruption policy and strategy documents of 11 ACN countries and in four IAP countries. This is a positive development. However often these measures provide only declarations rather than concrete actions. They do not include measurable targets or performance indicators that will allow monitoring and assessing the progress. Often there are no state bodies that are made responsible for the implementation of business integrity policies.

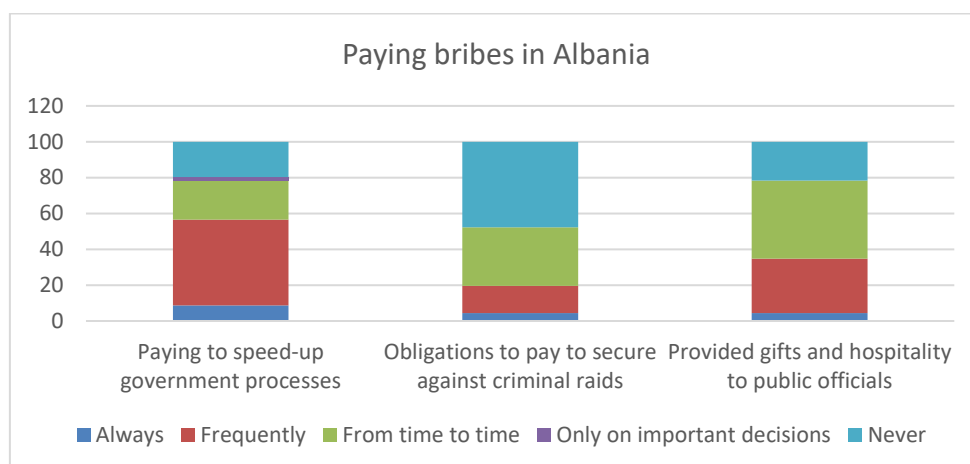
For example, in **Mongolia**, business integrity is a part of the Anti-Corruption Action Plan, but no benchmarks, timelines and performance indicators have been set, nor has any further action been taken.³⁸¹ In **Georgia**, despite business integrity measures being integrated in the Anti-Corruption Action Plan, the lack of allocated responsible entity makes its implementation unsystematic and fragmentary.³⁸² In 2019, the Georgian Government approved a new Anti-Corruption Action Plan for 2019-2020 which defined the Business Ombudsman as the responsible institution on business integrity.³⁸³ The National Anti-Corruption Strategy of **Serbia** foresees stimulating measures for the companies which adopt the Integrity Plan, rules of the Code of Business Ethics, Code of Corporate Governance of the International Chambers of Commerce for combating corruption, as well as rules of the Declaration on Combating Corruption (Global Agreement Serbia) with support of Serbian Chamber of Commerce. However, it is not clear what kind of incentives, and there is no information that any action was taken to implement this provision.³⁸⁴

Surveys and other sources of evidence

As a positive trend, it is important to note that in many countries business associations and donor funded non-governmental programmes conduct surveys about business integrity risks. For example, in 2018 in **Mongolia** Asia Foundation conducted the Study of Private Sector Perception of Corruption Survey³⁸⁵ and Transparency International Mongolia conducted the Business Integrity Country Agenda report.³⁸⁶ In **Ukraine** the Ukrainian Network of Integrity and Compliance (UNIC) conducted the survey “Corruption Risks in the Government Work: Business Point of View”. The research was carried out by UNDP in Ukraine.³⁸⁷ In many countries in the region, chambers of commerce conduct business integrity researches, e.g. the National Chamber of Entrepreneurs “Atameken” in **Kazakhstan**, **Mongolian** National Chamber of Commerce and Industry and **Uzbek** Chamber of Commerce and Industry.

At the same time, the governments most often do not conduct such surveys, or if they do conduct them, they do not publish the results of these surveys. For example, in **Uzbekistan** the Inter-Agency Commission for Combating Corruption has conducted a systemic corruption survey every six months since 2017, but the results are not publicly available to the date.³⁸⁸

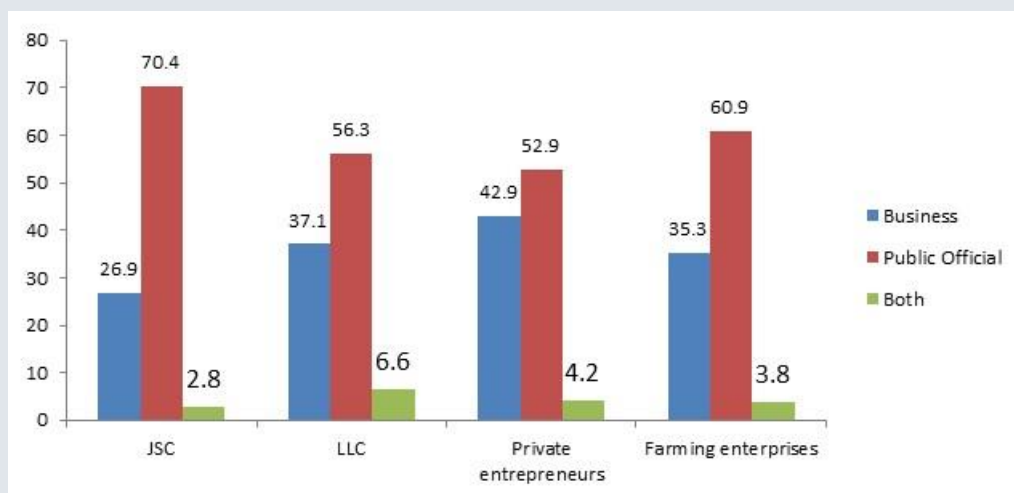
Unfortunately, governments never use these existing surveys as evidentiary basis for the official business integrity policies to identify the problems, establish objectives and design measures. They are not used to monitor the implementation of these policies either.

Figure 25. Survey on business compliance in Albania

Source: Foreign Investors Association of Albania, <http://fiaalbania.al/wp-content/uploads/2019/01/fiaa.pdf>

Box 22. Business integrity survey in Kazakhstan

In 2016-17 Kazakh NGO “Researches Centre SANGE” was contracted by the National Chamber of Entrepreneurs “Atameken” to conduct a country-wide survey on corruption perception by entrepreneurs. The survey showed that in 2017 frequency of corruption has increased compared to 2016 and number of businesses encountering corruption increased to 12% and interestingly the most cases where bribes were initiated by public officials were with JSCs (70.4%) while private entrepreneurs were the ones who initiated bribery the most (42.9%). No public information is available as to how this information was used by the public authorities in their efforts to develop anti-corruption policy and to conceive business integrity measures.



Source: <https://inbusiness.kz/ru/news/v-kakom-regione-proshe-kupit-biznesu-spokojctvie>.

Participatory process

Participation of business in the development of business integrity policies is not systemic in the IAP countries. In **Georgia** development of the business integrity section of the Anti-Corruption Action Plan was conducted in co-operation with business associations. However, it appeared that the private sector had lost interest in this process, as few meaningful activities followed which was probably due to the fact that no implementing body in the government was identified for this area.³⁸⁹ The Government informed that in 2019 the Business Ombudsman actively engaged in consultations with the companies regarding corruption prevention and business integrity.

More generally, there are many different platforms in the ACN countries for the private sector to discuss anti-corruption and business integrity measures. Some of these platforms are very centralised and dominated by the governments. For example, there is a Council for protection of entrepreneurs' rights and fight against corruption operating under the National Chamber of Entrepreneurs "Atameken" in **Kazakhstan**. The Council - established under a business association - is composed of the parliament members, a deputy Prosecutor General, a deputy Head of the Agency for Civil Service Affairs and Anti-Corruption, heads of government bodies, as well as public activists, business community and mass media representatives. Over the past three years, the Council considered over 17,000 petitions and claims filed by businessmen, with the majority of them concerning land and urban development/architectural issues, as well as public procurement.³⁹⁰

In many other countries there are multiple platforms for business consultations, such as consultative councils created by various state bodies. They usually address practical matters of immediate concern for companies and their success in influencing the policy agenda is mixed. E.g. in **Kyrgyzstan** every power centre – president, prime minister, parliament, individual ministries – had "their own" business council, formal or ad-hoc. Such a strong voice of business probably did influence decision making in the country, however, there was no focused and sustained effort so far to promote business integrity in the country.³⁹¹

Regulatory simplification

The 2016 Summary Report and the Study on business integrity recommended the following business integrity measures to the government:

- Continue work to simplify and increase transparency of business regulations and public service provisions, on-line tools for tax, inspections, etc.
- Governments should use online tools to ensure as much transparency as possible regarding the implementation of regulatory policies that place burden on the private sector – inspections, requests for information from private-sector entities, rules and practice of sanctioning. Governments should strive for mandatory on-line publication of procurement notices and on-line access to tender documents.
- Efforts to increase the use of e-tools in business-official contacts and simplify common business procedures such as tax payment should be continued.
- In the area of lobbying, at least the status of lobbyist should be defined and persons with this status should be known to the public. Countries should give due consideration to the adequate types and amount of information about lobbyists' activities that should be subject to disclosure and introduce respective transparency rules.

Regulatory simplification and e-tools are the area of the most significant progress in the ACN countries. These measures were introduced not with the primary objective of fighting corruption, but in order to improve various public services and to improve business climate. They were normally introduced by sectoral ministries, while anti-corruption bodies were not involved in their design or implementation. At the same time, they probably produced the most important effect for preventing corruption in the region.

Inspections, registrations, permits and licensees

Many countries reduced the number of inspections and other checks on business that often provide opportunities for corruption. For example, in 2015, **Azerbaijan** suspended almost all government inspections in the field of entrepreneurship for two years with the exception

of those concerning tax, threats to life and health, national security and economic interests.³⁹² **Tajikistan** adopted a risk-based system for inspections using IT solutions and data analysis.³⁹³

Table 25. Reducing administrative possibilities for corruption: IAP country examples

Armenia	Moratorium on inspections of SMEs Reduced frequency of inspections by tax authorities due to the new risk-based tax methodology (the number reduced by 2.5 times) via the utilization of checklists. Obligation to publish annual inspection programs, reports on inspections.
Azerbaijan	Risk-based inspections (except for food safety sector)
Georgia	Government put restrictions on the number of unplanned inspections Many inspectorates in Georgia cannot inspect the same business twice in the same year for the same licenses and permits.
Kazakhstan	The Business Code prohibits conducting inspections not established by the law.
Kyrgyzstan	Number of inspections decreased by 5 times in 2018 New entrepreneurs are exempted from inspections for 3 years Prohibition of unscheduled inspections without supporting information Reduction of the time for conducting inspections – 15 days (instead of 30), for small businesses – up to 5 days.
Mongolia	Professional Inspection Organization conducts planned, unplanned and execution inspection activities based on risk classification (High risk – once per year; medium risk – once per 2 years; low risk – once per 3 years)
Tajikistan	A two-year moratorium on inspections of production facilities enterprises in case of suspicion of violation of consumer rights.
Ukraine	A pilot module of an Integrated System of Business Inspections (IAS) was launched. The business can check whether it is exposed to a scheduled inspection by any government agency according to the inspections plan for a year at https://inspections.gov.ua/ (except tax audits) The State Fiscal Service has to publish a plan for scheduled inspections of taxpayers on http://sfs.gov.ua/en/ . Moratorium on scheduled inspections of businesses. The Cabinet of Ministers determined a list of agencies-exceptions to the rule, which can carry out scheduled inspections in spite of the moratorium. Unplanned inspections are possible because of individual complaints received by the State Regulatory Service.
Uzbekistan	Temporary moratorium on tax inspections and transferring their coordination to the office of Prosecutor General.

Source: IAP monitoring reports; OECD/ACN secretariat research.

Many ACN countries reduced the number and simplified procedures for issuing permits and licenses. For example, the number of permits and licenses in **Kyrgyzstan** was reduced from 586 in 2012 to 98 in 2018.³⁹⁴ In **Uzbekistan** since 2016 all registrations, permits and licensing are simplified can be obtained through the single portal of public services and, since 2018, the government started providing 37 types of services in “one-window” at the Centres of Public Services under the President.³⁹⁵ **Belarus** has also been simplifying business registration, in particular by implementing on-line registration and abolishing some of the bureaucratic requirements while registering a property.³⁹⁶

E-tools and disclosure of public registers

The use of e-tools boosted across the region and contributed in a major way to promoting business integrity. For example in **Ukraine** introduction of e-procurement system ProZorro (<https://prozorro.gov.ua/en>) radically improved transparency in public procurement and allowed preventing many corruption cases.³⁹⁷ While e-tools simplify various transactions between business and the public administration, reduce the ‘human factor’ and help deal with low level corruption, these measures cannot resolve grand corruption issues.

Transparency of state institutions and business registries has also improved significantly across the region. Various public registers are now open. The example of such implementation is e-Business Register in **Estonia** run under by the Centre of Registers and Information Systems under the Ministry of Justice. The Centre develops and administrates registries and information systems and make it publicly available for the citizens by logging with ID. For instance, the registry includes e-Business Register, the e-Notary system, the e-Land Register, the information system of courts, the Probation Supervision Register, the Prisoners Register, the Criminal Records Database, the e-File, etc.³⁹⁸

Table 26. Deregulation and e-governance initiatives: IAP country examples

Country	Licences and permits	E-tools
Armenia	Simplification of requirements and procedures to obtain permits 96 activities are subject to licensing	Electronic procurement platform (Armeps); electronic verification system of asset declarations; e-bankruptcy; e-license; e-court; e-system for customs declaration, etc.
Azerbaijan	Simplified licensing procedure and reduction of licensable activities from 37 to 29. Introduction of the requirement of state permits for 86 types of activities. Reduction of the period of issuance of: licenses - 10 working days permits – 7 working days. Introduction of the Electronic Portal on Licenses and Permits	Introduction of up to 70 new e-services
Georgia	N/A	Unified electronic system of state procurement, electronic communication platform (e-portal) with the business representatives and Business Ombudsman
Kazakhstan	Light form of deregulation	Electronic public procurement system
Kyrgyzstan	Reduction of the number of licenses from 586 in 2012 to 98 in 2018 Permits and licenses are not permanent	189 electronic services (including electronic tax reporting)
Mongolia	No improvement on procedures to obtain a license or a permit (time required to complete each procedure, cost and assessment criteria did not change)	Electronic system of declarations, on-line payment system in customs, online tax returns, e-procurement 9not for all the
Tajikistan	Single State Electronic Registry for business licenses and permits. Legal entities can access detailed information on business licenses and permits, including requirements, costs, application forms, and contact details for the relevant regulatory authority at http://www.ijozat.tj	Electronic business registration and electronic tax reporting system (Single Window); e-procurement; e-customs.
Ukraine	Massive deregulation process in the food industry, agriculture, oil and gas, IT industry as a part of the EU-Ukraine Association Agreement. The Deregulation Plan and reports on its implementation are available at http://www.drs.gov.ua/ . Introduction of the principle of "silent consent"	Electronic asset declarations system; transparency in public procurement (ProZorro); electronic system of application for licenses.
Uzbekistan	A complex of information systems "license" was launched in 2017 (One Stop Shop information system) Most licenses are issued without limitation of their validity Licenses for 7 types of activities and 35 permitting documents were cancelled	Unified register of Electronic State services total of 308 services: Office of an Entrepreneur of the Single Portal electronic applications for public services in the sections of customs (E-Nazorat) e-taxes, e-licensing system of state registration of business entities

Source: IAP monitoring reports; OECD/ACN secretariat research.

Lobbying

The 2016 Thematic Study on business integrity recommended the following:

- In the area of lobbying, at least the status of lobbyist should be defined and persons with this status should be known to the public. Countries should give due consideration to the adequate types and amount of information about lobbyists' activities that should be subject to disclosure and introduce respective transparency rules.

Lobbying is one area that did not see major developments in the ACN region during the reported period. To date only one ACN country – **Slovenia** - has adopted regulation on lobbying. A draft law on lobbying was developed in **Ukraine**, but it was never adopted. This could be partly due to the fact that lobbying of business interests in the parliaments and governments often takes forms that does not fall simply under the lobbying regulations that is in place in some of the OECD countries. However, some of the recent scandals, e.g. prosecution of Mr. Manafort in the USA for acting as an unregistered agent of Ukraine's ex-president Yanukovich, present a good lesson for the ACN countries on how lobbying legislation can be effective in sanctioning corruption.³⁹⁹ As and when ACN countries decide to address this issues, the OECD standards on lobbying may provide them with the useful policy guidance.⁴⁰⁰

Beneficial ownership

Inspired by the OECD corporate governance standards and emerging good practice, the 2016 Summary Report recommended the following:

- Introduce business integrity measures in corporate governance policies (e.g. corporate disclosure on, inter alia, beneficial owners, the role of corporate boards and financial audits in preventing and detecting corruption in companies).

The 2016 Thematic Study on business integrity further recommended that

- Countries should require the registration of data on beneficial ownership and control of legal persons and consider providing access to this information to everyone with legitimate interest.

The EU Eastern Partnership (EaP) "20 Deliverables for 2020"⁴⁰¹ stipulate as targets for the EaP countries to have public registries of beneficial ownership of legal entities and legal arrangements developed in at least three Partner Countries.

Beneficial ownership disclosure requires that companies disclose their ultimate beneficiaries, and that this information is verified and made public. Beneficial ownership is an important tool to combat money laundering⁴⁰² and tax evasion.⁴⁰³ Since the London Anti-Corruption Summit⁴⁰⁴ it has also emerged as the powerful tool against corruption. The 5th EU Anti-Money Laundering Directive became a major trigger to move forward beneficial ownership transparency requiring EU members to provide public access to their registers by 2020.⁴⁰⁵

Remarkable example is **Ukraine's** transparency in the public access to the registry of beneficiary ownership that helps businesspeople and citizens find out who stands behind the nominal management of the company, and thus who they deal with when working with this or that company. Ukraine was the first country to introduce through the law universal disclosure of the beneficiary ownership information when registering business. The self-declared information is recorded in the register that is open to the public, including in machine-readable format. However, there is no verification mechanism, sanctions for not providing information are ineffective.⁴⁰⁶ In its OGP action plan for 2018-2020 the Government committed to introduce verification of the beneficial ownership information.⁴⁰⁷ See the box below.

Several more ACN countries accomplished or committed to disclosure of beneficiary owners, including **Bulgaria, Serbia, and North Macedonia**.⁴⁰⁸ In **Armenia** there are regulations regarding disclosure of beneficial ownership in connection with the public procurement for the winners of tenders and money

laundering/terrorism financing for certain transactions.⁴⁰⁹ However, Armenia committed within the OGP to pass legislation requiring publishing information on companies' real owners in a national registry and make this information publicly available.⁴¹⁰ The Armenian Government also committed in its letter to the IMF to pass legislation (June 2019) to require the establishment of a registry of beneficial ownership information which is adequately resourced and staffed, and can conduct verification, first beginning with companies in the extractive industry, as identified in the EITI 2016 Standard.⁴¹¹ In **Azerbaijan, Kazakhstan, Kyrgyzstan and Mongolia** governments undertook commitments within the EITI to improve transparency of the ultimate owners of extractive sector companies.⁴¹² Azerbaijan withdrew from EITI in 2017.⁴¹³ In **Georgia, Tajikistan and Uzbekistan** there are no requirements or mechanisms to disclose information about ultimate beneficial owners of legal entities.

Box 23. Regulation of beneficial ownership in Ukraine

Ukraine introduced the requirement of beneficial ownership (BO) disclosure through self-declaration during the legal entity registration through amendments adopted in 2014-2015. The open register of beneficial ownership was fully launched in 2016. In 2017 Ukraine became the first country to integrate BO data with the OpenOwnership Register. In July 2019, the Government agencies (including Ministry of Justice, Ministry of Finance, FIU, National Bank, Asset Recovery and Management Agency, Fiscal Service) and anticorruption NGOs signed a Roadmap to introduce BO data verification by the end of 2019.

The system of company BO registration has the following deficiencies:

- Data is incomplete and unverified
- Company can declare that it has no BO without explanation
- Individuals - founders of companies are automatically recognized as Bos
- ID of beneficial owner is not requested and not verified
- Requirement of the annual update of the company registration data was revoked in 2016
- Deficiencies of the electronic database (e.g.: no unique identifier of BO, no search by BO's name, no built-in validation or red flag analysis, limited details on the type of BO,
- Limited free-of-charge access for the general public, paid access per data entry
- Low sanctions, no enforcement.

Beneficial ownership requirements go beyond the company register and have a cumulative effect. For example:

- Lack of BO information in the company register is a ground to refuse tender submitted under the Public Procurement Law.
- Non-submission of BO information can lead to the refusal in approving merger or concerted actions under the Competition Law.
- The National Bank can deny or revoke registration of banks with non-transparent ownership structure including BO.
- Non-transparent ownership structure leads to denial or revocation of audiovisual broadcasting license under the Broadcasting Law.
- Legal entities beneficially owned by a public official or a foreigner are prohibited from making donations to political parties.
- Under the Corruption Prevention Law, public officials are required to disclose BO in companies and assets in the asset and interest declaration with a false statement sanctioned under criminal law.

Source: OECD/ACN secretariat research; [https://ti-ukraine.org/en/blogs/why-improve-the-register-of-beneficial-owners](https://ti-ukraine.org/en/blogs/why-improve-the-register-of-beneficial-owners;); www.openownership.org/news/ukraine-becomes-the-first-country-to-integrate-with-openownership; www.openownership.org/uploads/improving-beneficial-ownership-transparency-in-ukraine.pdf.

In July 2019 a new anti-money laundering law in **Romania** introduced an obligation of legal entities to declare their ultimate beneficial owner: the legal entities registered or to be registered with the Romanian Trade Register (except for autonomous state companies, national companies or companies wholly or majority owned by the Romanian State) are obliged to submit (i) upon incorporation, (ii) annually, or (iii) each time a relevant change occurs, an affidavit regarding the identity of the ultimate beneficial owner. The affidavit must include the identification data of the ultimate beneficial owner and the manner in which such person exercises control over the legal entity. Failure to comply with the filing obligation is an administrative offence sanctioned by a fine from RON 5,000 to RON 10,000 (approx. EUR 1,050 – EUR 2,100).⁴¹⁴

Box 24. Anti-Letterbox Companies Act of the Slovak Republic

Anti-Letterbox Companies Act of the Slovak Republic entered into force in 2017. The Act is based on the principle that only those companies that voluntarily and reliably reveal their beneficial owners can “do business” with the state. Every person who has a business relation with the state specified in law, or who wishes to enter into such a relation, is obliged to register his beneficial owner. Such person is called a Partner of the Public Sector (PPS). Among other things, eligible relations with the state specified in law include receiving funds from the public budget, receiving property rights from the public sector, being a supplier in a public procurement, or fulfillment of other statutory criteria (for example, a mining permit owner). To be considered a PPS, the person has to receive financial means exceeding EUR 100,000 in one installment or EUR 250,000 per year, acquire property or rights in value exceeding EUR 100,000. The register is managed by the District Court Zilina and is publicly accessible via Internet.

A beneficial owner (BO) is a natural person who benefits from the activities of a PPS. The BO either has control over a legal entity (solely or jointly with another person) or receives an economic benefit from the business of another legal entity. An “authorized person” (AP) entitled to conduct a registration of PPS into the register can be an attorney-at-law, a public notary, banks or branches of a foreign bank, an auditor, or a tax advisor. The AP must have a registered seat or place of business in the Slovak Republic and independently collect and assess all available information about the BO in a verification document. In this document, the AP determines the basis upon which the BO has been identified or verified and identifies the PPS shareholders and management structure.

Incorrect or incomplete information on the BO in the register is punished with a court-imposed fine in an amount corresponding to the economic benefit gained or, if not possible to determine such benefit, from EUR 10,000 to 1 million. In addition, the PPS executive bodies can be fined from EUR 10,000 to 100,000 and banned from the executive body function, followed by a registration into the “disqualification registry.” The AP acts as a guarantor of payment of the fine imposed on the PPS executive body, unless the AP proves it acted with professional diligence. Anybody can file a qualified motion to the court asking to verify the registration of the BO. Facts justifying the doubts about the accuracy and validity of registration must be presented. In such case, the PPS bears the burden of proof regarding the accuracy and completeness of the BO registration.

An amendment to the Act came into force on 1 September 2019 to improve certain provisions and narrow down the possibilities of circumventing the law, eliminate deficiencies uncovered by the application practice.

Several court proceedings forced persons to admit their status of beneficial owners in companies receiving funds from the public sector. The recent investigation of the European Commission on a possible conflict of interest of the Czech Prime Minister, Mr Babis, was based on the data from this special registry. The application of the Act also led to first fines imposed by the District Court Zilina, making the Act an effective tool for controlling those who benefit from public funds.

Source: Andrej Leontiev, Radovan Pala, Taylor Wessing Slovakia, First Years and Future of Anti-Letterbox Companies Act in Slovakia, September 2019, <https://slovakia.taylorwessing.com/en/press-releases/first-years-and-future-of-the-anti-letterbox-companies-act-in-slovakia>

Audit

Auditors and accountants, both internal and external, state or independent, can play an important role in detecting corruption, if they are sufficiently trained to do so, if the managers of the company are willing to act on auditor' reports about possible corruption, and if auditors can disclose this information outside the company if case the management is not acting on their reports. The International Standards on Auditing establish the duty of external auditors regarding communication to the law-enforcement authorities: If the auditor has identified or suspects a fraud, the auditor shall determine whether there is a responsibility to report the occurrence or suspicion to a party outside the entity. Although the auditor's professional duty to maintain the confidentiality of client information may preclude such reporting, the auditor's legal responsibilities may override the duty of confidentiality in some circumstances.⁴¹⁵ The OECD report 'The Detection of Foreign Bribery' presented good practices regarding detection of corruption by internal and external auditors, accountants and by the legal profession.⁴¹⁶

The 2016 Thematic Study on business integrity identified that that the awareness of companies about the role that audit can play in preventing corruption was low: 33% of the respondents to the survey believed that audit committees are not obliged to react to reports on corruption risks, a fifth of respondents indicated that reporting suspicions of integrity breaches and corruption to law enforcement bodies was not relevant, and only 20% answered that they were required to report externally, for example, to law enforcement bodies.⁴¹⁷ This suggests that many companies have not exploited effective compliance tools that would help ensure better compliance and decrease the financial burden of corruption and bribes, which, as pointed out before, by the majority of associations is regarded to be high or medium. The Thematic Study recommended that:

- Governments should analyse the role of audit in preventing corrupt practices in companies and consider strengthening requirements for the role and independence of internal and external audit.⁴¹⁸

However, it appears that the role of audit remains insignificant in detecting and prevention of corruption in companies in the ACN region. The fourth monitoring round examined the implementation of the above recommendation but did not find any evidence that governments or private sector have strengthened the role of auditors, or that auditors – particularly external audit companies – made any efforts to strengthen their anti-corruption role.

Reporting of corruption and protection of reporters

The 2016 Summary Report and Thematic Study on business integrity recommended that the governments:

- Provide and use reliable channels to report corruption as well as independent review bodies (e.g. business ombudsmen).
- Protection and encouragement of whistleblowing needs to be strengthened in most countries. ACN countries should study the experience of countries that provide awards to private-sector whistleblowers who report corruption and other offences. Taking into account risks, opportunities and the national context, countries should consider possibilities to introduce such rewards.

Reporting channels

In many countries, companies can complain about corruption-related abused by the public administration to the same reporting channels as all other citizens, e.g. to the higher level of hierarchy of the same state institution, police or prosecution service, or anti-corruption bodies where they exist. However, these channels have many shortcomings: companies do not feel safe to report and these bodies can be corrupt themselves, which will lead to more bribe solicitation. Companies also do not believe that the responsible authorities will act on their reports and that anything will be done to the corrupt officials. Statistics about reporting channels is incomplete and confusing – reports about corruption are usually not separated from

the reports about other violations, there is no information about the follow-up and outcomes of the reports, especially if they indeed uncovered corruption and were transferred to the law-enforcement bodies.

Several countries, mostly in Latin America, developed a solution to the above problems. Argentina and Colombia have adopted so-called High Level Reporting Mechanisms (HLRM).⁴¹⁹ While these mechanisms vary across the countries, they share the following main features: it is a non-judiciary mechanism for companies to send an alert about possible corruption in one of the state bodies, usually in relation to public procurement; the alert is sent to a high level authority above the state body that is alleged in bribe solicitation; the HLRM does not exclude judiciary investigations, but allows the procurement process to continue.⁴²⁰

The HLRM has not yet been applied by an ACN country. One of the reasons may be that its success is determined by the political commitment at the highest level, and the trust of business – and citizens more generally – to the integrity of the High Level, which is not available in the ACN region. That said, an HLRM works well when it is narrowly focused on a specific sector, such as public procurement in a specific state body, which does not provide a comprehensive solution to all the complexity of corruption violations in the ACN region. As such, it will be useful for the ACN countries to study closer the HLRM experiences and to explore how ACN countries might adopt such a reporting mechanism to raise integrity and build trust among business by developing and applying an HLRM to specific high-value public tenders.

Business ombudsmen

While ombudsman institutions exist all around the world,⁴²¹ they usually deal with human rights violations. The active development of institutions that protect the rights of entrepreneurs began in the 1990s when some of the OECD countries have created ombudsman institutions that have mandate involving business.⁴²² For example:

- **US** Small Business Administration provides services of SME ombudsman to assist them with excessive federal regulatory issues,⁴²³
- **Australia** has an Ombudsman for small and family enterprises,⁴²⁴
- **Korea** established an SME ombudsman in 2007,⁴²⁵
- **Canada** recently established an Ombudsman for Responsible Enterprise,⁴²⁶
- **Poland** created an SME ombudsman,⁴²⁷
- The **UK** has established a Financial Ombudsman Service (www.financial-ombudsman.org.uk) that settles individual disputes between consumers and businesses that provide financial services.

Recently, many ACN countries have established similar institutions. This trend responds to strong demand from the private sector for the protection of their rights and legitimate interests from various abuses by public administrations in countries where the justice system is not able to provide such a protection.

The recently created Business Ombudsman institutions in Eastern Europe and Central Asia are all very different. One of them – the Business Ombudsman Council in Ukraine – became very well-known due to the important achievement in improving business environment in this country.

The establishment of the Business Ombudsman Council (BOC) in **Ukraine** (<https://boi.org.ua>) was an important development for this country and for the region as it has established important benchmarks for successful operation of such bodies, including the following:

- Independence of BOC from any vested interests – which is a rare achievement in Ukraine.
- Professionalism and high technical qualification of BOC staff.
- Ability to provide effective help to companies, mostly SMEs, for free and very quickly.
- The role that BOC plays in identifying systemic problems and proposing solutions.

Box 25. Ukraine's Business Ombudsman Council

The BOC of Ukraine is an independent institution established by a Memorandum of Understanding between the Cabinet of Ministers, European Bank for Reconstruction and Development, OECD and main business associations, including Chamber of trade and commerce, Union of industrialists and entrepreneurs, American Chamber and European Business Association. Important feature of the BOC is that the Business Ombudsman is selected by the Supervisory board established by the founding organisations among expats.

The BOC receives alerts, assesses them to establish if there are good grounds for taking the case for protection, and brings them to the attention of the relevant authorities. BOC follows up on cases until they are completed. The average time to process a complaint is about three months. During 2018, BOC investigated 1,792 complaints, and resolved 1,439 of them, the complaints in 2018. The majority of complaints (62%) were concerning the tax issues. In 2018 BOC helped companies to return 2 billion Ukrainian Hryvna of unjustified financial claims from state bodies.

In addition to helping companies in specific cases, BOC analyses the most common problems and prepares systemic reports about the reasons of these problems and proposes solutions. So far, BOC has prepared reports about such issues as tax, customs, illegal use of law-enforcement against companies, access to electricity, land use, conducting business in occupied territories, and others. BOC presents these reports to the relevant state bodies for follow up; Business Ombudsman also brings them up in meetings with the Prime Minister which helps to implement the recommendations.

BOC's activities in Ukraine since 2016 have showed to the companies that it is possible to do business in Ukraine without corruption, if they chose to do so. While a lot still has to be done about pervasive corruption in Ukraine, this possibility has contributed significantly to the change in the overall business environment, where clean companies can prosper and invest into their long-term operations both in the Ukrainian and international markets.

Source: OECD/ACN secretariat research; <https://boi.org.ua>; <https://www.collective-action.com/initiatives/hlrm/ukraine>; <https://biz.liga.net/ekonomika/all/article/biznes-jaluetsya-kto-obijal-predprinimatelev-v-2018-m-godu>.

Inspired by the Ukrainian model, and with the support from the EBRD, in 2018 **Kyrgyzstan** also created an independent Business Ombudsman institution headed by an expat.

Many other ACN countries have created Business Ombudsman institutions but using different models. For example, the Business Ombudsman of **Georgia** (<http://businessombudsman.ge/en>) is appointed by the government. Previously he dealt only with tax issues, but his mandate and resources were expanded recently to deal with other issues as well, including corruption related complaints of companies and promoting business integrity in the country.⁴²⁸ There is a Business Ombudsman in **Russia** established under the President, he deals mostly with illegal detentions of businesspeople which is often used as a means for extorting businesses by competitors or corrupt public officials.⁴²⁹ **Kazakhstan's** Business Ombudsman (<https://ombudsmanbiz.kz/eng/>) is also appointed by the President, but it is based in and financed by the business association Atamaken. It has a broad mandate and large resources to protect companies from various abuses. In **Uzbekistan** the Business Ombudsman institution operates since 2017 and is entitled to participate in development of policies, control observance of the rights of entrepreneurs, provide legal support to businesses during inspections, prepare proposals for improvement of the legislation.⁴³⁰ **Armenia** also considered introducing a business ombudsman but decided against it quoting constitutional obstacles, as the Human Rights Defender has a specialized department in charge of receiving complaints from business sector. These complaints mostly concerned improper administration of taxes; however, it was impossible to assess how efficient this mechanism has been in practice due to lack of data.⁴³¹

Albania created a ministry for the protection of entrepreneurship. It is another model where there is a state body with a mandate similar to the business ombudsman.

Box 26. Ministry for the protection of entrepreneurship in Albania

The small ministry without portfolio was created in 2017. The rationale for its creation was the combination of the weak public administration and ongoing reform of the judiciary system that do not allow companies to use normal mechanisms to protect their legitimate rights. In the future, the Ministry could be transformed into business development or promotion body. The minister is a member of the parliamentary majority. The capacity of the Ministry as of January 2019, when the new minister was appointed, was rather limited – it included 6 staff members. The mandate of the Ministry is to receive complaints from companies related to various disagreements with the state bodies, including complaints about performance of duties by individual public officials or state institutions, about legal issues, or corruption; most common complaints are related to tax and customs issues. During January-August 2019, the Ministry received 200 complaints and resolved 130 of them. To resolve the complaints, the Ministry analyses their nature and then facilitates communication between the involved companies, state bodies, associations to find solutions. The Ministry is aware of its dilemma – while being a member of the government, it has to fight against different parts of the same government. The structure of the Ministry does not provide for any special provisions for its independence, and a question remains how powerful the Ministry could be in case when a major conflict.

Source: interview with Mr. Eduard Shalsi, Minister for Protection of Entrepreneurship of Albania, August 2019.

Georgia hosted the first ever meeting of business ombudsman institutions from Eastern Europe and Central Asia in 2019. Albania, Georgia, Kazakhstan, Kyrgyzstan, Poland, Ukraine and Uzbekistan participated in the meeting. All participants, whatever model they represented, were eager to find out how to become more independent and more influential. The trend of establishing a business ombudsman is set to grow and countries should discuss good practices for these institutions.

Whistle-blower protection in companies

The 2016 Summary Report recommended the following:

- Promote company compliance programmes, whistle-blower protection, and business integrity throughout the supply chain.

While many ACN countries have made good progress in developing and adopting whistle-blower protection legislation during the past several years, often the focus of these laws is on the public sector. So far little attention was given to the protection of whistle-blowers in the private sector. Moreover, the implementation of the whistle-blower legislation is a challenging task, it requires clear institutional mechanisms and strong awareness raising campaigns to change the negative image of reporters in the countries.

For example, businesses in **Georgia** can report corruption via the recently established whistle-blower portal (<https://mkhileba.gov.ge/>), which has also been incorporated into the web pages of all governmental bodies. At the same time, while legal guarantees for the protection of whistle-blowers in the public sector were strengthened, the protection of private sector corruption reporting is not properly ensured by the law and should be further addressed by the Government.⁴³²

At the same time, according to the Association of Certified Fraud Examiners, around 40 percent of all detected occupational fraud cases are identified by whistle-blowers.⁴³³ Reports by whistle-blowers also provide a unique source of information about corruption to the law-enforcement bodies.

International experience also proves that private sector employees are willing to report corruption committed in their companies, if they are sure that they will not be persecuted for their actions, and that their reports will help punish the corrupt individuals. Several countries also provide financial rewards to whistle-blowers. E.g. the USA Securities and Exchange Commission has awarded more than USD 300 million to whistle-blowers since the inception of the agency's whistle-blower program in 2011. Enforcement actions from whistle-blower tips have resulted in more than USD 2 billion in financial remedies.⁴³⁴

Integrity of state-owned enterprises

Corruption risks can be particularly high in state-owned enterprises that are responsible for a large share of the economy in many ACN countries. SOEs' vulnerability to corruption can be attributed to complex ownership structures, governance rules that may not be very clear, proximity to politicians, deficient risk perception due to soft budget constraints, frequent operation in high-risk sectors and management of large asset flows.

The OECD Guidelines on Corporate Governance of State-Owned Enterprises is a set of recommendations to governments to ensure efficiency, transparency and accountability in operation of SOEs.⁴³⁵ The guidelines emphasize the following key recommendations:

- The states should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review;
- The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness;
- Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities;
- Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information;
- The state ownership policy should fully recognise SOEs' responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs;
- State-owned enterprises should observe high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance and auditing standards as listed companies;
- The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.⁴³⁶

Recognising the high risk of corruption associated with the SOEs, in 2019 OECD issued Guidelines on Anti-Corruption and Integrity in State-Owned-Enterprises.⁴³⁷ The Guidelines recommend to:

- Apply high standards of conduct to the state;
- Establish ownership arrangements that are conducive to integrity;
- Ensure clarity in the legal and regulatory framework and in the State's expectations for anti-corruption and integrity;
- Act as an active and informed owner with regards to anti-corruption and integrity in state-owned enterprises;
- Encourage integrated risk management systems in state-owned enterprises;

- Promote internal controls, ethics and compliance measures in state-owned enterprises;
- Safeguard the autonomy of state-owned enterprises' decision-making bodies;
- Establish accountability and review mechanisms for state-owned enterprises;
- Take action and respect due process for investigations and prosecutions;
- Invite the inputs of civil society, the public and media and the business community.

The 2016 Summary Report and the Thematic Study paid special attention to the integrity of SOEs and recommended the following:

- Develop, implement and monitor anti-corruption measures in state and municipally owned (or controlled) enterprises.
- Governments should pay special attention to integrity risks in state-owned enterprises. Where it is not the case, countries should consider applying freedom of information legislation to state-owned companies to strengthen accountability for the use of invested public assets. Exceptions to disclosure should be permitted as far as needed for normal business operation in market conditions. Corruption risk assessments of state-owned enterprises should be carried out in order to determine what anti-corruption measures are needed.

The fourth round of monitoring examined what measures governments have taken to improve integrity of SOEs. In one case – **Ukraine** – integrity of SOEs was selected as the sector for an in-depth examination. Integrity of SOEs was also discussed at one of the business integrity seminars organised by OECD/ACN, EBRD and UNDP during the reported period, which helped identify good practices. Eastern European countries, especially new OECD members and candidates, have progressed in reforming the ownership, management and integrity of their SOEs.

The main findings indicate that some countries in the region, such as **Croatia, Latvia and Lithuania** have progressed in reforming the ownership, management and integrity of their SOEs. Often these reforms were triggered by serious corruption scandals, and in case of Latvia and Lithuania were facilitated by accession to OECD that holds the SOE governance standards as a part of its acquis. For example, Latvia undertook a review of SOE governance using the OECD guidelines as benchmarks, it further introduced a centralized governing structure, created supervisory boards for the large SOEs and improved their reporting. Only at that state the regulations for improving internal controls, prevention of conflict of interest and corruption were introduced. Croatia provided an example of how internal control procedures of SOEs can be made more efficient using IT solutions for financial and other reporting and evaluation of their performance.

The IAP countries were lagging behind. Some countries took measures to improve integrity of SOEs, e.g. **Mongolia, Kazakhstan, Kyrgyzstan, Ukraine** introduced a mandatory requirement for SOEs to adopt their anti-corruption or integrity plans. In Ukraine, the corruption prevention agency developed and disseminated a model anti-corruption programme for companies, and SOEs hired their first anti-corruption commissioners.⁴³⁸ In Mongolia, SOEs are subject to Glass Account Law and are obliged to disclose a set of data, including financial reports, remuneration of the Board of Directors members and executives. Conflict of interests, assets declaration and ethics code regulation apply to managers.⁴³⁹

However, the results of the fourth-round monitoring suggest that these measures, while positive in general, were often formalistic and limited. It appeared that they could not be effective in the context where the overall framework of SOE ownership and management remains unreformed and creates rich soil for large-scale political corruption.

The analysis of SOEs in **Ukraine** provide a clear example. SOEs comprise a substantial part of the economy, provide key public services, and represent the largest employer in the country. Various ministries and state bodies have inherited many SOEs during the transition period and in some cases created more SOEs from scratch or via corporatisation of parts of the general government sector. In many cases, there

was no clear rationale for continued public ownership, which they often manage directly, without any harmonised supervision; although some boards of directors have been established with independent directors. There are roughly 3,200 SOEs in Ukraine at the national level, but less than half of them are actually functioning or are in the process of liquidation. Moreover, many of them operate at a loss either due to corruption, mismanagement and/or onerous public policy objectives carried out by SOEs. Efforts to reduce their number through mergers, privatisation and liquidation have recently been started but met resistance. There are many forms of SOEs, and some forms are particularly prone to corruption, for example so-called unitary enterprises where state property is given to a company that is managed by one director who is subordinate to one public official, without any external controls and accountability. Although recent legal amendment to the state property management law introduced some general principles applicable to all SOEs of economic importance, including unitary, and some large unitary enterprises, like e.g. Ukrenergo, put in place a proper corporate governance system. Despite these good examples, many SOEs serve prey to political corruption and are regularly involved in corruption scandals that involve a shadow proprietor who exploits opaque procurement of transfer pricing schemes. For example, a recent scandal involved Ukroboronprom, a defence industry SOE that was purchasing from companies created by corruption individuals connected to powerful politicians spare parts for military equipment that were stolen from their own stores or smuggled from abroad at hugely inflated prices.⁴⁴⁰

The Anti-Corruption Strategy of Ukraine targets corruption in SOEs and includes measures to reduce it. The implementation of these measures, however, remained limited or formalistic. One of the introduced measures was adoption of anti-corruption programmes in the SOEs and appointment of Anti-Corruption Commissioners in SOEs. However, when implemented, these measures were done formalistically, they did not have much impact for actual prevention of corruption as the ownership and management remained unreformed and open to political abuse. For example, introduction of mandatory anti-corruption programme and appointment of an anti-corruption commissioner did not help prevent the major corruption scandal in Ukroboronprom (see above).

At the same time, Ukraine also provided examples of substantial reform efforts of SOEs, notably of its oil and gas giant Naftogaz.⁴⁴¹

Box 27. Governance reform of the Ukraine's Naftogaz

It is the largest SOE in Ukraine, fully owned by the Government. It contributed 16.3% of the state budget revenue in the first seven months of 2019. For years Naftogaz was performing at a loss: under its public service obligation Naftogaz was buying natural gas from Russia at politically motivated high prices and selling it to local intermediaries which then resell it to households and district heating companies at significantly lower prices set by the Government which led to the accumulation of a huge debt that was regularly written off by the government.

In 2014, the government stated the liberalization of the gas market, abolishment of public service obligations regarding prices to households and introduction of targeted subsidies; in 2016, the gas prices reached the market level and European suppliers entered Ukrainian market. In 2015, the Government embarked on a corporate governance reform of Naftogaz benchmarked with OECD Guidelines on Corporate Governance of State-Owned Enterprises. The Corporate Governance Action Plan (CGAP) for Naftogaz was adopted in 2015. In the course of its implementation, the government adopted the Law which made establishment of Supervisory Boards obligatory for SOEs, where majority of members of Supervisory Boards should be independent and includes requirements regarding disclosure of information, audit of financial statements, etc. The new Supervisory Board was elected in 2016 – it later resigned, and a new board was put in place indicating a lack of stability – and appointed CEO and Executive Board who

implemented important reforms that allowed to improve the efficiency of Naftogaz operations and turn the company into profit making.

Naftogaz approved its new Anti-Corruption Programme in 2017; it has established several internal control functions: audit, risk management, financial control and compliance that are a part of the overall reform of internal management. Naftogaz adopted a Code of Corporate Ethics, Compliance Programme, Conflict of Interest Policy, Compliance Risk Management Policy and Regulations on Compliance Office and Chief Compliance Officer (available at www.naftogaz.com).

However, prior to the elections in 2019, due to extremely sensitive nature of reforms, energy prices for consumers as well as high salaries of the company's management, that included large bonuses, the government amended the Charter of Naftogaz, in what the international community perceive as a backsliding of reform. The amendments to the Charter risk undermining corporate governance reforms intended to insulate management from political intervention and establishing clear lines of accountability between the state and the governing bodies of the company.

Source: OECD/ACN (2018), Fourth monitoring round report on Ukraine, Prevention and Prosecution of Corruption in State-Owned Enterprises, pp. 56-59, www.oecd.org/corruption/acn/OECD-ACN-Ukraine-4th-Round-Bis-Report-SOE-Sector-2018-ENG.pdf; OECD/ACN secretariat research.

In some countries, e.g. in **Uzbekistan**, governments create advantages for SOEs, like VAT tax exemptions, custom exemptions in various industrial and extractive sectors, which not only lead to inefficiency in these sectors, but also increases risk of corruption and undermine healthy business climate.⁴⁴²

Box 28. Governance reform of the Kazakhstan's Samruk Kazyna

Sovereign Wealth Fund Samruk Kazyna is a giant conglomeration of SOEs that operate in all branches of national economy, including several monopolies. Its assets are estimated to account for 50-80% of GDP and revenues are in the range of 20-30% of total GDP, perhaps higher. While some reporting by Samruk Kazyna has improved, overall its transparency is low. Many parts of Samruk Kazyna operate in a closed circle trading among themselves in a centrally planned manner and without open competition. E.g. one of its companies may produce coal, another SOE buys this coal for further production and consumption, SK's rail company transports the coal from producer to consumer, and one more build wagons and rails and sells it to the railroad.

Kazakhstan made serious efforts to improve the efficiency of SK, it has a supervisory board composed of ex-pat independent directors, and it has recently strengthened its compliance function as well, though it is challenging to create conditions for compliance under such governing structure. SK also announced an ambitious privatization programme that is expected to 'optimize' its assets.

Experience of many ACN countries shows that privatization of such important state assets presents a very high risk of corruption that can influence major shifts in the power structures of the countries. It is therefore of utmost importance to ensure fair and transparent privatization process that should benefit all the citizens of the country and not only the connected and powerful individuals. The OECD Policy Maker's Guide to Privatisation could be a useful tool for setting a framework for this process (see at www.oecd.org/corporate/a-policy-maker-s-guide-to-privatisation-ea4eff68-en.htm).

Source: OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, pp. 111-118, 124; OECD (2017), Integrity Scan of Kazakhstan, www.oecd.org/countries/kazakhstan/oecd-integrity-scan-of-kazakhstan-9789264272880-en.htm; OECD (2017), Multi-dimensional Review of Kazakhstan: Volume 2. In-depth Analysis and Recommendations, <https://dx.doi.org/10.1787/9789264269200-en>.

Municipally owned enterprises are a specific form of publicly owned enterprises that so far received less attention regarding governance and integrity standards. At the same time, ACN delegates to various expert seminars have highlighted that these enterprises present very high risk of corruption. It will be important to address these issues in the near future.

Small and medium size enterprises

Small and medium size enterprises (SMEs) are important players in the modern economies. Flexible and creative, they can create jobs and generate wealth for the society. At the same time, they are particularly vulnerable for corruption as their resources to protect themselves are limited. The 2016 OECD/ACN Summary Report and OECD/ACN thematic study on business integrity recommended the following:

- Provide support to small and medium enterprises to prevent corruption
- Burden and challenges of ensuring compliance and upholding business integrity faced by small and medium enterprises should be assessed in order to identify adequate measures for assistance, for example, training.

During the fourth monitoring round and in the framework of the seminar about integrity of SMEs that was organized by the OECD/ACN and EBRD together with the UNDP in 2018 in Georgia, experts were struggling to identify measure to promote business integrity that can be specific for SMEs. A forthcoming OECD report assessing the SMEs development in Eastern Europe and Caucasus also analysed measures that can help SMEs prevent corruption.⁴⁴³

To date, the ACN did not identify any business integrity measures that were developed specifically for SMEs in the region. At the same time general business integrity measures that were implemented, like simplifications of business regulations and creation of business ombudsmen were particularly useful for SMEs, e.g. SMEs are among the main clients of the Business Ombudsman in **Ukraine**.⁴⁴⁴ Business integrity training also often attracts SMEs, who do not have resources to develop their own training programmes or to pay for commercial offers. For example, a training on business integrity for businesses in healthcare sector was provided in **Uzbekistan** in 2018.⁴⁴⁵

It appears that awareness-raising and training are the main avenues that can help SMEs to improve their integrity. The good practice from the **UK**, presented below, shows how such awareness and training can be targeting SMEs specifically.

Box 29. United Kingdom: Business integrity consultancy service for SMEs

The UK Government has launched the Business Integrity Consultancy Service for SMEs willing to work in emerging markets in order to make them aware of the risks of bribery and corruption as well as on how to mitigate those risks.

The service provides access to consultancy for companies that employ up to 250 people and has a turnover up to 44 million British Pounds. The services are provided by Basel Institute on Governance at a reduced fee where small companies can pay 20% of the total costs of the services and medium-sized companies pay 40%.

SMEs that meet the eligibility criteria can submit an application to receive subsidised anti-corruption guidance services in three areas: anti-corruption compliance; corruption and bribery prevention; anti-corruption Collective Action.

They also receive guidance to help them improve companies' compliance with the UK Bribery Act, detailed information on corruption risks in specific countries or sectors and assistance in developing mitigation strategies and guidance on how to do due diligence assessments on supply chain partners.

Source: www.great.gov.uk/advice/manage-legal-and-ethical-compliance/helping-companies-do-business-with-integrity; www.baselgovernance.org/compliance/sme-guidance-services.

Incentives for business integrity

Incentives for business integrity is a controversial issue. Law-enforcement officials from the OECD countries hold the view that there is no reason why companies should be given any incentives for simply complying with the law. This is indeed the valid position in countries where governments are not systematically corrupt, bribe solicitation by public officials is rare and it is more common that companies actively offer and promise bribes in exchange for various business advantages.

In contrast to this situation, companies operating in many ACN countries face very different conditions where governments or oligarchs extort bribes and use other forms of corruption on a regular basis. In these conditions, companies – which chose to run clean business - have to resist corruption and use additional resources for these purposes, possibly finding themselves in worse competitive position. Therefore, requests for companies for special treatment or incentives for compliance may be legitimate.

Indeed, the ACN recommendations provided in its 2016 Summary Report and the Thematic Study on business integrity are based on the combination of “sticks and carrots”. such as sanctions for corrupt behaviour by companies and incentives that can be developed for companies who adhere to and promote business integrity standards:

- Introduce and enforce corporate liability for corruption, where effective compliance programmes can be used as defence for prosecution of legal entities.
- Countries should consider legislation that requires companies to make sure that no bribes are promised, offered and given on behalf of or in the interest of the companies. When an entity can demonstrate that it had implemented measures to prevent corruption, it should be considered at least as a mitigating factor for the legal entity and its management unless the management was personally involved in the offence. The same should apply when private persons voluntarily report engagement in corruption (effective regret).
- Governments should provide guidance for good corporate governance and business integrity standards expected from companies and increase incentives for business integrity.
- Government should consider possibilities of providing preferences based on integrity and trustworthiness in public procurement (for example, white lists).
- Introduce anti-corruption conditions and incentives in the public procurement and other programmes that involve state subsidies and benefits.

DPAs and other non-trial resolutions

One specific incentive that emerged in the OECD countries and is gathering prominence over the past several years is the use of deferred prosecution agreements (DPAs) and other non-trial resolutions during corruption investigations of companies with effective compliance programmes. While DPAs emerged as a tool for law-enforcement practitioners to deal with complex cases that cannot be completed without co-operation from the companies, they generated a growing number of self-disclosures by companies and active introduction of compliance programmes by companies. They can therefore be considered as a powerful incentive for integrity and compliance.

DPAs or other settlements do not exist in the ACN countries. In fact, corporate liability for corruption is still a relatively new tool in many countries, and its enforcement is still weak to be able to send a strong signal to the companies about the threat of prosecution. However, as enforcement of corporate liability improves, countries should consider introducing settlements as well. At the same time, a number of ACN countries have provisions that exclude corporate liability or lower sanctions if the company introduced or committed to introduce systemic compliance measures (see chapter on criminalisation of corruption in this report).

Box 30. DPAs and other settlements as incentive for compliance

Deferred Prosecution Agreements and other forms of ‘settlements’ refer to mechanisms to resolve criminal matters without a full court proceeding, based on an agreement with an individual or a company and a prosecuting or another authority. Settlements are widely used in foreign bribery cases as they provide an effective and efficient mechanism to complete investigations of these highly complex form of corruption crime with a benefit for both the law-enforcement authorities and for the companies.

DPAs were first introduced by the Foreign Corrupt Practices Act where a company can avoid law enforcement procedures or obtain a reduction of the fine if it can demonstrate its efforts to prevention corruption by a pre-existing compliance program, voluntary self-disclosure and full co-operation with the prosecutors. 27 parties to the OECD Convention on Foreign Bribery have used settlements in foreign bribery cases, and the share of settlements is growing. The OECD Study “Resolving Foreign Bribery Cases with Non-Trial Resolutions” provides a useful guide (see at www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm).

Settlements provide an opportunity for companies to avoid very lengthy investigations which take significant resources and spoil image. They allow reducing the fine and avoiding a criminal record that can prevent them from participation in public procurement. These benefits were important incentives for companies to improve their internal control and compliance procedures and to self-report corruption cases to the law-enforcement authorities.

Green corridors, fast tracks, white lists and other simplified procedures

Discussions about possible incentives for companies with integrity often involve such proposals as creating ‘green corridors’, ‘fast tracks’ or ‘white lists’ that can be used in various sectors, such as e.g. customs or tax inspections, public procurement and other areas. While the discussion about incentives is popular among companies in the region, the fourth round of monitoring and the business integrity seminars conducted during the reporting period did not identify actual good practice that would demonstrate the use of incentives in any of the ACN countries. For example, in **Kyrgyzstan**, to encourage the introduction of compliance programmes, the Government was considering setting up “green corridors” in the customs, in registration, at the tax service and in the public procurement system. However, it has not progressed much beyond general plans.⁴⁴⁶

One possible explanation for this could be that the compliance is not yet widespread among the companies and they cannot claim any simplified procedures from the governments. Even when companies do develop internal compliance procedures, it is difficult for the state bodies to assess the quality of practical compliance and to distinguish authentic anti-corruption efforts from window-dressing paperwork.

However, some examples of incentive from other sectors show that this approach can work in the ACN region. For example, the Anti-Monopoly Committee of **Ukraine** has introduced a leniency programme where a company can be relieved of responsibility for anti-competitive behaviour under specific conditions, e.g. when the company self-reports its involvement in a collusion and cooperates with the Committee in its investigation.⁴⁴⁷

China provides an interesting, yet controversial, example of encouraging companies’ compliance by extending its Social Credit System to enterprises. Under this system, which is expected to become fully operational by the end of 2020, “the Corporate Social Credit System uses real-time monitoring and processing systems to collect and interpret big data, which facilitates immediate detection of compliance and raises or decrease a company’s score. Higher scores can mean lower tax rates, better credit conditions, easier market access and more public procurement opportunities for companies. Lower scores lead to the opposite and can even result in blacklisting.”⁴⁴⁸ While many question remain about the operations of this system, such as the

burden it poses on companies – especially SMEs – to collect data, additional risks it may create in state inspections of companies, it nevertheless provides a unique example of the government attempt to build an objective assessment of companies' compliance and to provide incentives for better performance.

Incentives by companies

The 2016 Thematic Study on business integrity included a hypothesis that multi-national corporations and other large companies that operate in the ACN region might be interested to support the development of honest business partners in through their supply chains, but selecting to work only with compliant companies, including compliance conditions to their suppliers and other partners, and possibly even providing capacity building. However, no such examples were identified through the fourth round of monitoring or expert seminars on business integrity.

Another hypothesis is that banks and other financial institutions can play a role in promoting business integrity by including relevant conditions in their loans and other financial products. No examples of such practice were identified either. However, examples of such preferential loans are available in other sectors, such as e.g. sustainable and environmentally friendly business.⁴⁴⁹

Certification and labelling

Certification of company compliance programmes, such as the ISO 37001 Anti-Bribery Management Systems adopted in 2016, provides a tool for independent quality control. At the same time, even such certification cannot guarantee that the compliance programme is genuine and will be able to prevent, detect or sanction corruption and can be used as a defence in case of law-enforcement actions. But it can reassure company owners or managers that they take all possible measures to prevent corruption risk and help company deal with law-enforcement.

No information is available yet about the number of companies in the ACN region that were certified with ISO 37001, but the number cannot be high yet, as there are not many auditors who were authorized to conduct anti-bribery certification, and incentives for compliance are still weak, as discussed above.

At the same time, the interest in certification is growing, and national certification initiatives emerge. In addition to the Lithuanian Clear Wave labelling initiative hosted by the Investors forum⁴⁵⁰, there is a new initiative in **Ukraine** – Ukrainian Network for Integrity and Compliance (UNIC)⁴⁵¹ that engaged in certification. Established in 2016, UNIC developed a certification programme as one of its main activities. Its certification programme is inspired by ISO 37001, but it is simplified and adjusted to the needs of domestic companies in Ukraine. While no companies have yet been certified by UNIC, several have already used a pre-certification training in order to prepare for the actual certification. See more information on UNIC below.

Business associations, collective action for integrity

Private sector action towards promoting business integrity standards is an important initiative to push both governments and companies towards a more ethical and transparent transactions. The 2016 Summary Report recommended to:

- Promote the role of business associations regarding business integrity, such as studying corruption risks, disseminating good integrity practices, supporting awareness raising and training, as well as effective reporting mechanisms.
- Promote collective actions.

The Thematic Study on business integrity further developed recommendations for business associations:

- Study corruption risks and present results to all stakeholders and advocate improvements;
- Raise public awareness on the corruption issues and assist companies through training and guidance on good corporate governance and implementation of business integrity policies;

- Assist companies in addressing violations of their legitimate rights and interests by public authorities and explore possibilities to expand the use of high-level reporting mechanisms to address the demand side of corruption;
- Together with companies explore successful examples of collective actions such as business certification or labelling initiatives and integrity pacts.

In the reporting period business associations in many countries actively engaged in promotion of business integrity. Many chambers, including country offices of ICC, AmCham's and national Chambers of commerce, business associations of investors, employees and industrialists, bar associations took active part in business integrity activities. Civil society groups, such as Transparency International, also engage in business integrity promotion. These associations and NGOs study corruption risks, raise awareness about business integrity and compliance, raise anti-corruption issues on the political agenda of governments, and represent interests of the private sector in various legislative reforms. Bilateral donors, international organisations including EBRD, UNDP, OSCE, RAI, and business associations from other OECD countries like TRACE, CIPE, TEID provide support for such activities.

There are several international industry initiatives that are active in the ACN region. The Extractive Industries Transparency Initiative (EITI) sets global standard for open and accountable management of oil, gas and mineral resources sector and requires the disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public.⁴⁵² Currently EITI covers 7 ACN countries (Albania, Armenia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan and Ukraine). The Maritime Anti-Corruption Network has recently extended its operations to several ACN countries with ports in the Mediterranean and Black seas.⁴⁵³ The Infrastructure Sector Transparency Initiative (CoST) operates in Ukraine.⁴⁵⁴

Box 31. Ukrainian Network for Integrity and Compliance

One collective action against corruption emerged in Ukraine in 2017 with the creation of Ukrainian Network for Integrity and Compliance (UNIC). UNIC is a private sector initiative that as of August 2019 united 56 private companies who commit to operate corruption-free and to promote integrity in the country; one SOE recently became an associated member as well.

UNIC members pay membership fees that finance various activities, the OECD and EBRD, as well as the Netherlands also provided financial assistance to the establishment of UNIC. UNIC has its own Secretariat, executive and ethics committees.

UNIC members have adopted the methodology for external evaluation inspired by ISO 3700 and are preparing to undergo this procedure. In addition, UNIC has organised various promotional activities during the past year, including the business integrity weeks and business integrity meetings in the regions. UNIC also has an intention to develop a compliance academy that will train Ukrainian companies, especially SMEs from the region, to develop their own integrity plans and activities adapted to Ukrainian realities.

UNIC is an outstanding initiative that shows that there is a growing number of companies in Ukraine who chose compliant business as their strategic development choice, which is the only long-term business development strategy for large international companies that need to meet FCPA, UK, SAPIN II and other obligations, as well as for the Ukrainian SMEs who want to enter European markets and cooperate with global business partners. Effective support provided by Business Ombudsman of Ukraine to the companies who chose to be clean of corruption was crucial in convincing companies to join UNIC as it became possible to do business without corruption, together with growing public demand for integrity and strengthening of anti-corruption bodies in Ukraine.

In several other countries, attempts were made to build collective actions around integrity charters for companies, e.g. in **Kyrgyzstan**, but they did not materialize, as there was not enough interest among companies and compliance was not a realistic option for business operations.

Box 32. Integrity Pacts in the EU

The European Commission's pilot project 'Integrity Pacts – Civil Control Mechanism for Safeguarding EU Funds' supports the use of integrity pacts to oversee public tenders for 17 projects piloted in 11 EU Member States (Bulgaria, Czech Republic, Hungary, Greece, Italy, Lithuania, Latvia, Poland, Portugal, Romania and Slovenia). Integrity pacts are contracts between contracting authorities and companies bidding in public tenders that require all parties to refrain from corrupt practices and appoint an independent monitor to oversee compliance with the high integrity standards. In the European Commission project, independent civil society organizations have been appointed to the monitoring role to ensure legitimacy and accountability. The Transparency International has co-ordinated the pilot project.

The 7.2 million euros project covers 920 million euros EU funded projects in such sectors as transport, institutional building, culture, monitoring, environment, energy, education, research and development, integrated territorial investment, administrative capacity and health care. The project's main activities include: Training and capacity building of country-level civil society organizations; Development and further signature of Integrity Pacts by civil society organizations and relevant public authorities; Training of relevant stakeholders on anti-corruption and transparency in the context of Integrity Pacts; Independent monitoring of Integrity Pacts by civil society organizations; Ensuring access to information on the process of Integrity Pacts for the citizens of EU Member States and periodic sharing of impact lessons learnt and best practices to a broader public.

The European Commission's pilot integrity pact project has been widely recognised as a success story in bringing EU administration closer to public and received European Ombudsman's Award for Good Administration 2019 in the category "Excellence in open administration. Integrity pacts have also been endorsed by the G20 in the G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development in 2019.

Through this and other projects, integrity pacts have been used as an effective tool to monitor anti-corruption compliance in public contracting in the following countries in Eastern Europe: Bulgaria, Czech Republic, Hungary, Latvia, Lithuania, Poland, Slovenia, and Romania. In light of their widespread use, ACN countries are encouraged to consider using the integrity pact tool to oversee anti-corruption compliance in public procurement in the region.

Source: OECD/ACN secretariat research with contribution of Mirna Adjami, Basel Institute on Governance; https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/, www.oecd.org/g20/summits/osaka/G20-Compendium-of-Good-Practices-in-Infrastructure-Development.pdf.

Role of companies

All the business integrity recommendations for the governments and for the business associations have an ultimate goal – to enable individual companies to conduct their business without corruption. The Thematic Study on business integrity included several recommendations directly addressed to the companies:

- Assess their integrity risks, develop and implement measures to minimize the risks and business integrity measures should reflect the size of the company, characteristics of the sector/s and country/ies of its operation;
- Do not approach compliance only formally but rather strive for effective enforcement proactively;

- Due consideration for the local context and business environment, consider including rules on conflict of interest and gifts, rules on due diligence and managing of other aspects of relations with partners, principles of procurement for company needs, internal channels for reporting irregularities, etc.
- Commit to transparency and disclose, among other things, information on the implementation of their integrity policies (at least a general description of enforcement efforts), provided donations and political contributions.

While there are many examples and anecdotal evidence that more and more companies engage in integrity in compliance in the region, there is no reliable data about the spread of this trend. Neither governments nor business associations collect or analyse such data. The number of companies from the ACN region that participated in the UN Global Compact did not change between 2016 and 2019. It would therefore be useful for the ACN governments to work together with the business associations and other state bodies to develop reliable sources of information about companies' compliance programmes, in order to understand the obstacles and opportunities that can be used to further promote these efforts.

Conclusions and recommendations

Overall conditions for business integrity remain unfavourable in the ACN region, especially in the IAP countries, due to incomplete economic transition which resulted in poor economic freedom, insufficient protection of property rights and of fair and open competition.

While more attention was given to promoting business integrity in the anti-corruption policies across the region, stand-alone business integrity measures cannot be effective without the improvement of framework conditions in which companies operate. To be successful, business integrity measures should be a part of general policies to fight monopolization of economic and political powers by oligarchs and other vested interests. It is therefore important to put this objective high on political agenda and to ensure that anti-corruption authorities work closely with other state bodies to coordinate the development and implementation of business integrity policies.

ACN countries have achieved good progress in reducing administrative corruption through various regulatory simplifications of business registration, inspections, permits and licenses, use of e-tools to reduce 'human factor' and greater transparency of state bodies, such as publication of various public registers, e.g. regarding beneficial owners of companies. These measures aimed to improve general business environment but were also the most effective in removing the possibilities for bribe solicitation by public officials. However, a lot still remains to be done to remove administrative corruption, especially in such areas as taxation, customs, public procurement and land use. Besides, many potential tools for business integrity were not used yet in the region, such as strengthening the **role** of audit in detection and reporting of corruption, improving rules for whistle-blowers protection in the private sector, improving reporting channels for companies and adopting regulation of lobbying.

Creation of business ombudsman institutions was the main trend in the ACN region over the past several years. Some of these institutions are established as independent bodies, others are a part of the government. Example of the Business Ombudsman Council of Ukraine shows the advantages of an independent body in providing effective protection to companies through individual assistance and proposals addressing systemic issues.

Integrity of SOEs has gained more attention of the ACN countries during the reported period. Some countries introduced specific anti-corruption measure for SOEs, however, this experience shows that they can only be effective if they become a part of the overall reform of ownership and governance of SOEs, a part of internal management and control systems.

Integrity of SMEs is recognized as an important challenge. While general measures to improve business environment are also important for the SMEs, no specific measures were developed in the region to address specific needs of these companies. Education and training are probably the most important measures that can target SMEs.

Incentives for compliance might be legitimate in the countries where governments are corrupt and extort bribery from companies, and companies should invest extra efforts and resources in resisting corruption than just complying with the law. Incentives could combine ‘sticks and carrots’, such as effective corporate liability for corruption with the possibility of using compliance as a defence from liability, as well as various ‘green corridor’ and ‘fast track’ systems. However, to date, no such incentives were developed or applied by the governments in the region. Compliance is developing mostly due to market incentives, such as due diligence by large international companies and compliance requirements for companies from the ACN region who want to operate in global markets, certification and labelling initiatives.

Business associations across the ACN region recognized the growing demand in compliance and engaged more actively in business integrity promotion. They assess corruption risks, provide compliance trainings to companies and raising business integrity issues to the agendas of the governments. However, collective actions by companies – where they publicly commit not to bribe and to promote compliance and integrity – are not yet common in the region. Such collective actions require a combination of conditions such as strong public demand for integrity, enforcement of corruption in the public sector and effective protection of companies from administrative abuses, and ultimately the appearance of business leaders who perceive compliance as long-term business development strategy. Ukrainian Network of Integrity and Compliance is one such collective action that emerged in the ACN region during the past several years.

There are many individual examples of company compliance programmes in the region. Usually large international companies have such programmes as required by their headquarters. More and more domestic companies also introduce compliance programmes, especially if they work with international financial institutions, large transnational companies or go to the foreign markets. However, there is no sound information to assess this trend in the region. Governments in co-operation with business associations may consider studying these trends in order to design effective business integrity policies.

Table 27. Business Integrity summary for IAP countries

	BI section in national anti-corruption strategies	Disclosure of beneficial owners	Mechanisms to protect companies against administrative abuse	Anti-corruption requirements for SOEs
Armenia	No	No	No	No
Azerbaijan	No	No (except for extractive industries)	No	No
Georgia	Yes	No	Business Ombudsman	No
Kazakhstan	Yes	No	Business Ombudsman	No
Kyrgyzstan	Yes	No	Business Ombudsman	Yes
Mongolia	No	No (except for extractive industries)	No	?
Tajikistan	No	No	No	No
Ukraine	Yes	Yes	Business Ombudsman	Yes
Uzbekistan	Yes	No	Business Ombudsman	No

Source: IAP monitoring reports; OECD/ACN secretariat research.

Building on the progress achieved by the countries in promoting business integrity, and noting the existing shortcomings, the following **recommendations** are proposed for the future activities:

- A. Develop and implement strong national business integrity policy; ensure that business integrity is high on the political agenda as a part of the policies to free economic and political decision-making from control of oligarchs and monopolies.
- B. Set objectives of business integrity policies on the basis of sound evidence such as regular and comparable surveys and studies; ensure that coordination of business integrity policy is clearly allocated to a state body, and that business sector is involved in both the development and the monitoring of this policy.
- C. Coordinate business integrity policy with the development of corporate governance regulation; ensure that responsibility of boards, directors and auditors for the prevention of corruption risks is clearly included in the company rules; ensure that transparency and disclosure rules cover business integrity issues, like conflict of interest and beneficiary ownership.
- D. Improve reporting channels to ensure that companies do not feel threatened to report corruption allegations and that they are confident their reports will lead to impartial and professional investigation and protection of their legitimate rights;
- E. Explore the potential for establishing or further strengthening business ombudsman or similar institutions by ensuring their independence and adequate resources.
- F. Elevate the concerns of corruption in SOEs to the political agenda, emphasising the necessary role for the state as an active and informed owner. As a part of the general reform of ownership and governance arrangements of SOEs, develop and promote anti-corruption requirements as an integral part of internal management and control systems.
- G. Develop awareness raising and training programmes to help SMEs address corruption risks.
- H. Promote active engagement of business association in business integrity work, support collective actions of companies against corruption.
- I. Consider developing incentives for business integrity, including settlements as a part of corporate liability and various green corridors and fast tracks for administrative procedures for companies with effective compliance programmes.

Chapter 4. Enforcement of criminal responsibility for corruption

This chapter analyses the state of play with criminalisation of corruption in Eastern Europe and Central Asia, including bribery and other corruption offences, corporate liability, the definition of a public official, sanctions and confiscation, statute of limitation and immunities, international co-operation and mutual legal assistance. The chapter reviews the procedures for investigation and prosecution of corruption, focusing mostly on practical aspects of their implementation. The chapter also examines the access of law enforcement agencies to different information during investigations and recovery of corruption proceeds.

The chapter describes general trends of the law enforcement practice, including the areas where most of the detected corruption offences have been committed, types of offences, application of sanctions, public access to the official law enforcement statistics on corruption. The chapter also analyses the institutional framework for enforcement of corruption offences in Eastern Europe and Central Asia, including models of specialisation, institutional and operational autonomy of specialised law enforcement bodies, their mandates and delineation of substantive jurisdiction, allocated resources, powers, as well as necessary tools to carry out their tasks. It also looks into the accountability and transparency of these agencies and assessment of their performance. A separate consideration is given to emerging practice of establishing asset recovery and management offices and specialised anti-corruption courts.

Criminal law against corruption

The fourth round of monitoring under the Istanbul Action Plan revealed that further progress had been made in meeting international standards in the area of criminalisation of corruption. However, despite all their previous efforts, several countries have yet to fully align their criminal law with the relevant well-established international standards.

Criminalisation of corruption

Curbing corruption requires taking appropriate measures. The international standards require that such measures include law enforcement through criminal sanctions. Only criminal sanctions provide the necessary level of deterrence and punishment of such serious wrongdoing as corruption. Criminal law and procedures provide the most effective means available to detect, investigate and prosecute corruption.

Therefore, systems that tackle corruption through administrative sanctions have been recognised to be deficient. Even when coupled with the criminal law measures administrative sanctions for corruption do not represent an appropriate response. They may overlap with the criminal sanctions. Administrative sanctions also send a wrong signal that certain corruption offences can be treated on a par with minor breaches of administrative rules.

Systems in which administrative and criminal sanctions for bribery and other corruption offences exist in parallel been consistently criticised in the Istanbul Action Plan monitoring reports of the fourth round. From the IAP countries, only **Kazakhstan**, **Tajikistan** and **Uzbekistan** preserve administrative liability for core corruption offences like bribery, along with sometimes competing criminal law provisions.

Ukraine initially had similar provisions, but gradually removed them to comply with IAP and GRECO recommendations. The last competing provisions were revoked in 2014, when the law removed the administrative sanctions for receiving illegal gifts by a public official (which could also qualify as accepting a bribe).

While relevant provisions (either general covering all administrative offences or relating to the specific corruption-related administrative offence) often state that the administrative offence is applicable only when the criminal one is not, this is not a satisfactory delineation of two types of infringements. Such an arrangement may itself facilitate corruption because it assigns discretion to the prosecution or courts in qualification of the offence.

In some countries (e.g., in Uzbekistan), the criminal law applies if the person was punished for the same offence with an administrative sanction prior to committing the same offence (for example, bribery of a serviceman of a private commercial or other non-state organisation). The report on Uzbekistan noted, in particular, that the requirement of such prior administrative sanction may also impede mutual legal assistance, as it would be hard to compare Uzbek law with the law of other jurisdictions that do not have such a requirement and directly criminalise bribery of private sector employees.

In other cases (e.g., in Kazakhstan), the two types of offences are separated through a threshold approach, i.e. the offence becomes criminal when it involves a benefit in excess of a certain threshold. The goal is supposedly not to punish minor offences with a criminal sanction. However, such an approach fails to meet the international standard that requires criminalisation of bribery regardless of the value of the benefit. Moreover, all countries in the region use the concept of *de minimis* crime, which allows authorities to drop prosecutions of misdeeds that have all the formal elements of a crime but are considered negligible.

Box 33. Administrative liability for bribery offences in Kazakhstan

Kazakhstan revised its Code of Administrative Offences in 2014 but kept the administrative offences that compete with the criminal bribery offences. Chapter 34 of the Code is called Administrative Corruption Offences and includes certain offences which should have been criminalised. For example, the provision by a natural or legal person to a person authorised to exercise state functions (or the latter's receipt of) illegal material benefits, gifts etc., if such action does not contain the elements of a criminal act. This is mirrored in the Criminal Code (also revised in 2014), which explicitly excludes the first-time receiving of a gift by a public official if there was no prior agreement and if such gift was provided for prior legal action (inaction) and was less than about EUR 12 (in 2019).

The IAP monitoring report found elements “no prior agreement”, “legal action (inaction)”, as well as the gift's value to be ambiguous that could be misinterpreted for various motives, including corruption-related. The report also noted that allowing low value gifts in exchange for official action promotes the culture of corruption in the public sector thus eroding the understanding that gratitude in the form of a gift should not be required or expected when public services are provided.

Source: Code of Administrative Offences of Kazakhstan, 2014, as amended; OECD/ACN (2017), Fourth monitoring round report on Kazakhstan.

Another way to address this issue is to reform the criminal and administrative law and introduce the concept of minor criminal offences (misdemeanours) that will cover some minor crimes and serious administrative offences (which are often of criminal nature anyway). However, the countries need to take a cautious approach and not classify as misdemeanours corruption offences that better fit in the category of crimes (felonies). See the box on Kyrgyzstan below.

Box 34. Corruption misdemeanours in Kyrgyzstan

In 2017, Kyrgyzstan adopted a new Code of Misdemeanours (“prostupky”) that entered into force in 2019. This code criminalises minor offences, i.e. crimes that inflict lesser injury to an individual, society or state compared to proper crimes. The fourth IAP monitoring round report on Kyrgyzstan welcomed a separation of criminal offences into two types and referring some offences that were previously treated as administrative ones to the criminal sphere. However, experts did not accept classification as minor offence of certain such corruption crimes, namely:

- bribery of an athlete, sport arbiter, coach, team manager or any other participant in or organiser of a professional sports event, or else organiser or jury member of a commercial competition show, for a purpose of influencing the outcome of such competition or contest;
- abuse of powers in a commercial or other organisation, including by an official or a state-owned or municipal enterprise or business with a state or municipal equity;
- bribery of parties to the criminal process.

The maximum penalty for such minor offences is a class II fine (300-600 calculation index units, i.e. 30,000 – 60,000 som, or circa EUR 350-700). The statute of limitations for such offences is set at two years. The person who committed a misdemeanour is discharged from the liability, at the request of the victim, provided such person has compensated the damage or rectified the injury inflicted and has been reconciled with the victim. The report found that these and other provisions in the new Code of Misdemeanours of Kyrgyzstan made the liability for such offences ineffective.

Source: Code of Misdemeanours of Kyrgyzstan; OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan.

Several IAP countries have established a category of “corruption crimes” that attract special general rules about sanctioning, release from liability, statute of limitations, etc. **Ukraine** in 2014 introduced a list of “corruption crimes” which included the following offences: Misappropriation or embezzlement of property by abuse of service position; Misappropriation of weapons using one’s office; Misappropriation of various types of drugs using one’s office; Misappropriation of documents using one’s office; Misappropriation of weapons by military servicemen; as well as the “core” bribery or abuse of office offences and the diversion of budgetary funds. Not all of these crimes constitute “corruption” in a strict sense or may not be even related to corruption.

Such “corruption crimes” are excluded from a number of Ukrainian Criminal Code provisions that allow for the release from criminal liability or punishment, in particular: provisions on effective regret; conciliation with the victim; transfer of person to one’s bailment; change of situation; the possibility to impose a milder sanction than the one provided for in the law, if a person is recognized as not socially dangerous; release from serving the punishment with probation; conditional release from serving the sentence; replacement of the unserved part of a sentence with a milder sanction; release from serving the punishment due to amnesty; etc.

The 2015 Criminal Code of **Kazakhstan** revised the list of “corruption crimes” that existed since 2003. The new list included: Misappropriation or embezzlement of other person’s property entrusted to a public official; Fraud by a public official; Fake entrepreneurship by a public official; Issuing of fake invoice by a public official; Creation and leadership of a financial pyramid when committed by a public official; Money laundering by a public official; Smuggling when committed by a public official; Raidership of a legal entity when committed by a public official; Organisation of illegal gambling business by a public official; Abuse of office; Excess of authority in order to obtain benefits; Illegal participation in the commercial activity; Hindering of entrepreneurial activity; Passive and active bribery; Intermediation in bribery; Forgery in office; Official inaction; Abuse and excess of office by a military serviceman. The 2015 Criminal Code also prohibited applying to corruption crimes provisions concerning: conditional release; release from the criminal liability due to conciliation with the victim; release from the liability due to bailment; and release from the liability due to expiration of the statute of limitations.

The IAP monitoring report criticised the lack of coherent criteria in Kazakhstan for identifying crimes as ones involving corruption. Unlike the previous Criminal Code, the new Code does not contain the condition of “obtaining by the offenders of material benefits and advantages” to identify a “corruption crime”. In addition, the new Criminal Code (like the previous one) does not consider as corruption offences those committed in the private sector (*e.g.* offences in Chapter 9 “Criminal offences against the interests of service in commercial and other organisations”, including commercial bribery). Nor is the offence of “Obtaining illicit remuneration”, which effectively covers bribery of employees who are not officials (*i.e.* do not perform managerial, administrative or financial functions), deemed corruption.⁴⁵⁵

The fourth monitoring round report on **Armenia** criticised the fact that in 2017 the order of the Prosecutor General classified 70 crimes as corruption (an increase from 31 offences in the original list issued in 2008). The list has been used for the specialisation of prosecutors. The monitoring team believed that the list should be narrowed down for the benefit of further specialisation of the law enforcement bodies and for the purposes of criminal statistics.⁴⁵⁶

In 2018, **Uzbekistan** has also introduced the notion of “corruption crimes”. Although the term is used only for statistics purposes and has been established by a joint order of the law enforcement agencies and Prosecutor’s General Office. The list of offences is wide and includes not only the core corruption offences but also any crime committed through an abuse of office or powers. The fourth-round monitoring report noted that only some of the offences included on the list can be considered as corruption.⁴⁵⁷

Box 35. Criminalisation of corruption in Kyrgyzstan

Kyrgyzstan is the only IAP country that has a specific offence called “corruption”; it exists in addition to ‘traditional’ bribery offences. The 2019 Criminal Code of Kyrgyzstan preserved this crime (Article 319). Corruption is defined as ‘an intentional act of creating a stable illegal nexus of one or several officials who have authority with separate persons or groups in order to illegally obtain material or any other benefits and advantages, as well as provision by them of such benefits and advantages to natural and legal persons, when it creates a threat to interests of society or state’. It is punished with severe sanctions – imprisonment of 10-12.5 years for basic offence and 12.5-15 years of imprisonment for aggravated offence.

The IAP fourth round monitoring report repeated conclusions of the previous reports that such an offence overlapped with other corruption crimes (e.g. bribe-giving and receiving of a bribe, elements of organised crimes) and was contrary to the rule of law principle of legal certainty. “Despite the convenience, which such a broadly formulated offence may bear for the law enforcement bodies, it goes against fundamental principles of fair trial to keep it in the law and use in practice. If there are loopholes in other corruption offences, they should be filled but not compensated with such a “catch-all” offence.” The offence had been used in practice and court considered 3 such cases in 2015, 2 cases in 2016 and 4 cases in 2017.

Source: OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan.

Bribery offences and their elements

Active and passive bribery is criminalised in all IAP countries. However, as before, the relevant offences often lack certain mandatory elements required by international standards. The wording of offences sometimes also has other deficiencies that hinder their effective enforcement in practice. During the fourth monitoring round, several IAP countries have conducted major overhaul of their criminal law. For example, new criminal codes were adopted in Kyrgyzstan and Kazakhstan, Uzbekistan plans to finalise drafting of the new code in 2019. Other countries introduced individual amendments. Many of the said changes approximated the law of the IAP countries to the international standards. Armenia, Azerbaijan, Georgia and Ukraine have reached full compliance and received no further recommendations in this regard.

Offer, promise or giving / acceptance, request

According to the OECD Anti-Bribery Convention, the CoE Criminal Law Convention and the UN Convention against Corruption, an active bribery offence should cover the intentional offer, promise⁴⁵⁸ or giving of an undue advantage, directly or indirectly, to a public official. Each element should be criminalised as a complete and autonomous active bribery offence. This is mirrored by the requirement to criminalise as complete and autonomous offences the request (solicitation) of an undue advantage and acceptance of an offer/promise of such advantage, as well as the receipt of the undue advantage as such. The request (solicitation) is different from extortion, i.e. situations where the bribe-taker coerces another person to give a bribe under threat of adverse consequences.

Such requirements are explained by the need to clearly denounce such acts and eliminate any possible legal loopholes. The autonomous nature of such offences means that, for example, the request of an undue advantage, offering or promising of an undue advantage do not require the other side to respond positively to or even to have knowledge of such request, offer or promise.

"Promising" occurs where the briber commits himself to give an undue advantage later (for instance, after the official performed the act requested by the briber) – whether solicited by the bribe-taker or not. "Offering" may cover situations where the briber shows his readiness to provide the undue advantage. "Giving" occurs when the briber actually transfers the undue advantage. "Requesting" (or "soliciting")

occurs when an official indicates to another person, explicitly or implicitly, that he will have to pay a bribe in order that the official act or refrain from acting. “Acceptance of an offer or promise of a bribe” occurs when the official, in response to such offer or promise, indicates his willingness to accept the future bribe. “Receiving” means the actual taking of the undue advantage by the official or someone else.⁴⁵⁹

The offence of promising or offering a bribe should not require the acceptance of such an offer or promise from the bribe-taker. Otherwise, the offence of offering or promising would not be a completed offence in its own right, as it would require reciprocal action on the part of the intended recipient. This would also violate the general criminal law understanding of bribery that should not require mutual agreement of the both parties: the actions of the person initiating bribery in any form should be sufficient and should be prosecuted. For instance, in its evaluation report on **Latvia** GRECO recommended deleting the words “if the offer is accepted” from the active bribery incriminations and this recommendation was implemented with amendments enacted later.⁴⁶⁰

Similarly, the offence of giving a bribe should be deemed to be completed when the briber actually takes steps to transfer the undue advantage and does not require the actual receipt of the bribe by the official or a third party on his behalf to be proven.⁴⁶¹

The OECD WGB explained the difference between “offer” and “promise” in the following way: An offer occurs when a bribe-giver on his/her own initiative expresses his/her readiness to pay the public official. A promise is broader and includes a bribe-giver’s definitive commitment to pay that is prompted by the public official.⁴⁶² A “promise” also covers situations where the briber commits him/herself or agrees with the official to give an undue advantage later, e.g. after the public official has performed the act requested by the briber. An “offer” may cover situations where the briber shows his/her readiness to give the undue advantage at any moment.⁴⁶³ In **Lithuania**, in addition to “promise/offer/acceptance”, the situations when the briber “agreed to give” bribe in response to solicitation or when the bribe-taker “promises to accept” a bribe are also explicitly covered.⁴⁶⁴

All IAP countries have criminalised the giving and receiving of a bribe in public sector. In 2011, **Azerbaijan** and, in 2012, **Armenia** criminalised request and acceptance of offer/promise of a bribe; in 2013-2014, **Ukraine** criminalised promise of undue advantage and acceptance of offer/promise, as well as the request of undue advantage, in all bribery offence (in the public and private sectors). In its new Criminal Code enacted in 2017, **Mongolia** also criminalised the offering and promising of a bribe, as well as acceptance (but not solicitation) of the bribe. See the table below for an overview of all IAP countries.

The new Criminal Code of **Kyrgyzstan** (enacted in 2019) introduced liability for an offer or promise of a bribe and for the consent to accept a bribe as autonomous completed crimes. However, the offence of passive bribery covers only acceptance of the bribe’s offer. Also, the new code extended the definition of the bribery offence only to the public sector bribery.⁴⁶⁵

Ukraine is the only IAP country that included a definition of the terms “offer” and “promise” in the Criminal Code: *an offer* means expressing to the person who is an employee of an enterprise, institution or organization, or a person providing public services, or to a service person [public official] of an intention to give unlawful benefit, while *a promise* means – an expression of such intent with indication of the time, place and manner of giving unlawful benefit (note to Art. 354 CC).

Countries lacking relevant provisions often refer to inchoate (incomplete) offences – attempt and preparation – which in conjunction with active/passive bribery offence are supposed to cover offer/promise, their acceptance, as well as the request of a bribe. However, such approaches have generally not been accepted by the IAP monitoring. This was confirmed in the third round of the IAP monitoring.

The IAP monitoring is based on the conclusion that the inchoate offences in case of bribery are not functionally equivalent for the following reasons:

Table 28. Criminalisation of elements of bribery offences in IAP countries

	Offer	Promise	Request (solicitation)	Acceptance of offer or promise
Armenia	●	●	●	●
Azerbaijan	●	●	●	●
Georgia	●	●	●	●
Kazakhstan	○	○	○	○
Kyrgyzstan	●	●	○	● (only offer)
Mongolia	●	●	○	●
Tajikistan	○	○	○	○
Ukraine	●	●	●	●
Uzbekistan	○	○	○	○

● Yes ○ No

Source: IAP monitoring reports, OECD/ACN secretariat research.

Firstly, preparation of a bribery offence is typically only prosecutable as an inchoate offence with regard to bribery offences of certain gravity (e.g. in **Kazakhstan** and **Tajikistan** – only grave and especially grave offences).

Secondly, attempted bribery takes place when the offence was not completed due to reasons beyond the person's control. In addition, some criminal codes also provide for the exclusion of liability in case of voluntary abandonment of the crime, i.e. ceasing by perpetrator's own will of preparation or attempt at the bribery. This means that, for instance, if a person requests a bribe, but then withdraws his request before receiving payment, he is exempted from liability. Equally, a person will avoid criminal liability if he withdraws his offer or promise of a bribe before receiving an unambiguous refusal from a potential bribe-taker.

Thirdly, incomplete crimes often draw lower sanctions. In **Tajikistan** for example, the term or amount of sanction cannot exceed half (for preparation) or three-fourths (for an attempted crime) of the maximum term or the amount of the most severe sanction envisaged by the respective article of the Special Part of the Criminal Code for the completed offence. In **Uzbekistan**, the sanction for both preparation and attempt will only be three-fourths of the penalty foreseen for the crime. In **Mongolia**, the sanction cannot exceed half (for preparation) or two-thirds (for attempted crime) of the most severe sanction envisaged for the offence. As noted in one of the IAP second monitoring round reports, such a 'discount' is disproportionate to the gravity of the offence in the form of promise or offer of a bribe (since it concerns an intentional attempt to bribe an official, which was not completed due to circumstances beyond the control of the offender).⁴⁶⁶ The OECD Working Group on Bribery, with regard to similar provisions in the Criminal Code of the **Russian Federation**, noted that such criminal penalties might not be effective, proportionate and dissuasive.⁴⁶⁷

Fourthly, liability for the promise or offering of a bribe is much more effective than trying to cover the same acts through attempt. It is sufficient to prove the intentional promise or offer of a bribe, rather than trying to prove intention to give a bribe which was not realised due to circumstances beyond the person's control. The same is true concerning the request (or the acceptance of an offer or promise) of a bribe.

Finally, the prosecution of a promise or offer of a bribe as an incomplete crime does not cover all practical situations. For example, an oral promise or offer alone, without the performance of minimal actions that may be needed to constitute preparation for bribery or attempted bribery, will go unpunished.⁴⁶⁸

One of the arguments used against criminalising the offer or promise of a bribe (or its request) as an autonomous offence is that the simple offer or promise shows only an intention on which the persons has not acted yet. And such intention does not bear sufficient danger to be fully criminalised.⁴⁶⁹ But this goes directly against the international standards, which treat the promise, offer, solicitation, and acceptance of a bribe (as well as the acceptance of the promise or offer itself) as actions that pose sufficient public danger to be treated as complete offences and punished accordingly. For instance, in its report on the third evaluation round of the **Russian Federation**, the GRECO noted that “the offer and the promise, the request and the acceptance of an offer or promise which are key components of the bribery offences established under the Convention need to be explicitly criminalised in order to clearly stigmatise such acts, submit them to the same rules as the giving and receiving of a bribe and avoid loopholes in the legal framework”.⁴⁷⁰

A slightly different approach can be found in the explanatory materials to the UNCAC. The Legislative Guide for the Implementation of the UNCAC states that some national legislation might cover the promise and offer under provisions covering the attempt to commit bribery. In this view, separate offences for promising or offering a bribe would only be needed when this is not the case.⁴⁷¹ At the same time, in a later UNODC publication, it was noted that it may be possible to cover related acts under the provisions of the general part of the national penal code, for example, regarding preparation for or attempt to commit a crime, “although it may warrant further study as to whether this approach can be a substitute for full criminalization. Moreover, one should be aware of the fact that the use of such general provisions runs the danger of applying significantly lower sanctions and raises issues of disparate sentencing regarding comparable transgressions. This is the reason why the autonomous incrimination of the different forms of basic corrupt behaviour is generally viewed as a better practice. Having said that, the provisions on attempt and preparation that are used should be clearly delineated and not contain limitations (e.g. ‘subject to the condition that public danger results from the act’) or make exceptions (e.g. for ‘crimes of lesser gravity’) that restrict criminal liability as foreseen by the Convention.”⁴⁷²

None of the four IAP countries that have criminalised these offences are currently enforcing them actively; countries continue to rely on the traditional offences of giving and receiving of a bribe, while being reluctant to prosecute the mere offer or promise of a bribe. For example, the Third Round Monitoring report on **Azerbaijan** noted that the authorities reported about four cases that had been opened under this qualification. However, the discussions held with the practitioners met at the on-site visit highlighted the fact that the practice of investigating bribery offences is rather traditionally oriented to proving the offence of giving or receiving a bribe, and not instances when the transaction – or pact – is incomplete. The prosecutors and investigators also pointed out that, in practice, the stages of this offence are difficult to qualify, and they are faced with evidentiary challenges. Although there is no legal requirement for the prosecutor to prove the existence of a “pact” between the bribe-giver and the bribe-taker, it appears that, in practice, the bribery offence is only considered proven when the bribed public official is caught in the act of receiving the bribe. The courts seem to expect this level of evidence.⁴⁷³

The monitoring report recommended Azerbaijan to develop training curricula and organize training sessions for investigators and prosecutors with regard to detecting, investigating and prosecuting of bribery offences, when the bribe was merely offered or promised, as well as cases based on non-material benefits as an object of bribery. Azerbaijan conducted only few relevant activities with no practical results in terms of the number of the cases of offer/promise and the fourth-round monitoring report reiterated this recommendation.⁴⁷⁴

Directly or indirectly

According to international instruments, active and passive bribery should be explicitly criminalised when committed either directly or indirectly, *i.e.* through intermediaries. Intermediaries are often used as a conduit to deliver a bribe or otherwise arrange a bribery act. Therefore, the fact that an undue advantage

was promised, offered, or given (or requested or accepted) indirectly, via an intermediary, should not preclude the liability of the bribe-giver or bribe-taker.

When the words “directly or indirectly” or their equivalent are not included in the bribery offence, bribery through intermediaries may still be covered through provisions on complicity. In such cases, it should not matter whether the intermediary acted in good or bad faith, (*i.e.* whether the intermediary was aware that the benefit was intended to bribe or not). The use of complicity provisions should also not lead to the exclusion of the liability of the main offenders – the briber and bribe-taker. Therefore, to eliminate any loopholes and inconsistent enforcement, it is recommended to include words “directly or indirectly” in the text of the relevant offences.

The criminal codes in all the IAP countries, except for **Ukraine** and **Mongolia** (for passive bribery), explicitly cover bribery committed directly or indirectly through intermediaries. At the same time, for Ukraine the IAP monitoring report accepted the conclusion of GRECO that situations involving indirect commission of corruption offences are criminalised in Ukraine through general rules on complicity. In particular, Article 27.2 of the Criminal Code of Ukraine provides that a criminal offence can be committed by the principal offender “directly or through other persons, who cannot be criminally liable”. If the intermediary knows about the bribery, he is regarded as an accomplice according to Article 27 of the Criminal Code.⁴⁷⁵

Though not required by international standards, active and passive bribery through intermediaries can be supplemented with a special offence of mediation in bribery. This exists in **Armenia, Kazakhstan, Kyrgyzstan, Uzbekistan**, as well as in other ACN countries, such as **Belarus, Croatia, Estonia, Latvia, and Russia**. However, in this case, the legislators should avoid creating an overlap with provisions on complicity in the bribery offences, in particular, avoiding the possibility of applying different sanctions.⁴⁷⁶ While providing a useful tool to prosecute the acts of intermediaries, such an approach should not lead to focus being shifted away from the main acts of bribery.

Third party beneficiaries

Another necessary element of bribery offences is that the intended recipient of the undue advantage (namely, for the official himself or another person or entity) should not matter, as long as the advantage is provided in exchange for the official to act or refrain from acting in the exercise of official duties. The goal of this requirement is to cover situations when the official solicits an advantage for a relative, a political party, trade union, charity, company, or even a third party to whom the official owes a debt, etc. The third-party beneficiary can be a natural person or an entity, and it should also be immaterial whether the third-party beneficiary had a criminal intent or participated in the corruption offence.

Criminal code provisions on bribery in **Armenia, Azerbaijan, Georgia** and **Ukraine** explicitly cover bribery for other persons; the Criminal Code of **Kazakhstan** includes this element only in the passive bribery offence. As for other IAP countries, **Mongolia's** criminal code does not specifically include third party beneficiaries. **Kyrgyzstan's** criminal code (including the new code enacted in 2019) includes mentioning of the third-party beneficiaries only for the active bribery offence.

Third-party beneficiaries sometimes are partly covered in these countries through explanatory resolutions of the respective Supreme Courts.⁴⁷⁷ These resolutions establish that a bribe may be intended for persons close to an official (e.g., relatives, friends, etc.) rather than for the official *per se*. However, such a clarification is not fully compliant with international instruments, which state that third party beneficiaries can be any persons, natural or legal, close to the official or otherwise.⁴⁷⁸ A similar resolution of **Uzbekistan's** Supreme Court provides a different clarification and states that bribery should cover situations where a bribe is received by “other persons” with an official’s knowledge or upon the official’s instruction.

Finally, the criminal codes of some IAP countries (**Kyrgyzstan, Tajikistan, and Ukraine**) specify that a bribe may be received by an official in exchange for an action or omission for the benefit of the bribe-giver or persons represented by him. However, this concept of the third-party beneficiaries is different from what is required by international standards and relates rather to the bribery through intermediaries.

Undue advantage

One of the elements of bribery offences required by international standards, which IAP countries have difficulty transposing into their law, is the concept of an “undue advantage”.⁴⁷⁹ Their laws often do not capture the broad scope of the notion “advantage”, which includes a benefit that is intangible (i.e. a benefit not constituting or represented by a physical object and having a value that cannot be precisely measured) and/or non-pecuniary (not relating to or consisting of money). As noted in the Explanatory Report to the CoE Criminal Law Convention, the key aspects of the term “undue advantage” is that the offender (or any other person, for instance a relative) is placed in a better position than he was before the commission of the offence and that he is not entitled to the benefit.⁴⁸⁰ According to another explanation, the term “advantage” is intended to apply as broadly as possible and to cover all instances “insofar as they create or may create a sense of obligation on the side of the recipient towards the giver”.⁴⁸¹

Examples of intangible advantages include: sexual relations; any form of preferential treatment, such as handling a case within a swifter timeframe than normal; better career prospects, including promotion and horizontal transfer to another post within the organisation; symbolic or honorific advantages like titles or distinctions; positive mass media coverage; scholarships; unremunerated internships; passing school or other selection procedures; etc.

Practice in some ACN countries extends the notion of an advantage to include any benefit as long as it can have a market value, thus, in principle, including some intangible benefits. However, such an approach hardly satisfies the full extent of international requirements, because there is no legal market for some benefits (*e.g.* prostitution) and some are difficult to assess in terms of the market value (*e.g.* an honorary distinction).⁴⁸²

The definitions in ACN countries vary considerably. Some in fact define “advantage” broadly. Thus, in **Lithuania**, a “bribe” means “any unlawful or undue advantage in the form of any property or other personal benefit (whether material or immaterial, of an identifiable market value or without such value) ...”. From the IAP countries, **Armenia** (“money, property, property right, securities or any other advantage”), **Azerbaijan** (“any material or other values, privileges or advantages”), **Georgia** (“money, securities, property, material benefit or any other undue advantage”) and **Ukraine** (after amendments in 2015: “monetary funds or other property, advantages, privileges, services, intangible assets, any other benefits of non-tangible or non-pecuniary character”) cover tangible and intangible, pecuniary and non-pecuniary benefits. Other IAP countries, however, exclude non-material and non-pecuniary advantages either directly in the criminal code or in the explanatory resolution of the Supreme Court.

The advantage treated as an object of a bribery offence should also qualify as “undue”. For the purposes of the CoE Criminal Law Convention “undue” means “something that the recipient is not lawfully entitled to accept or receive”. Therefore, “undue” aims at excluding advantages permitted by the law or by administrative rules as well as gifts of very low value and socially acceptable gifts.⁴⁸³ This allows countries to authorise acceptance of small value gifts not exceeding certain amount that are not being given in exchange for an act or omission by an official. In other words, if an advantage is aimed at influencing a public official it should be qualified as an “undue” one and trigger liability. The limit for acceptable gifts is usually set in the civil service laws, laws on prevention of corruption and conflict of interests (See section of this report on acceptable gifts – chapter on integrity in the civil service).

Other elements

According to international instruments, bribery offences are committed in order for the official “to act or refrain from acting in the exercise of his or her official duties” (UNCAC).⁴⁸⁴ The intention is to encompass not only situations when officials act inside their competence but also situations when an official, in exchange for a bribe, acts outside his competence (duties, functions). Such acts or omissions are made possible in relation to the official’s function (duties), but not necessarily included in his formal scope of authority. Therefore, laws that limit bribery to situations when an official is induced to act (or refrain from acting) within the scope of his powers (competence) are considered to not be compliant with international standards.⁴⁸⁵

From the IAP countries, criminal codes of **Azerbaijan** and **Georgia** use the wording similar to that of the conventions. Other countries use provisions which, if taken literally, narrow the scope of the bribery offences.⁴⁸⁶

The IAP countries of **Armenia**, **Kazakhstan**, **Kyrgyzstan**, **Mongolia** and **Tajikistan** provide for aggravated bribery offences when they involve illegal actions (or inaction) committed by officials. This partly addresses possible problems with definition of bribery, which is narrower than provided in the international standards.

The IAP countries also commonly include—again either directly in the criminal law or through interpretative judicial resolutions—alternative elements in the bribery offences such as “patronage or connivance” carried out by the official in exchange for a bribe. The intention is to cover situations when the official receives a bribe from a subordinate or another person under his control for providing support or protection of interests of the latter during an extended period of time or for non-reaction to wrongdoing, bad performance of the bribe-giver. While not strictly required by the international instruments, such a concept allows for broadening of the scope of bribery offences and should therefore be welcomed.

Definition of an official

Domestic public official

International standards require that bribery offences cover a broad range of public officials. The definition of a national public official should include any person who:

- Holds a legislative, executive or administrative office, including heads of state, ministers and their staff.
- Is a member of a domestic public assembly.
- Holds a judicial office, including prosecutors and investigative magistrates.
- Holds an office in local self-government bodies.
- Performs a public function, including for a public agency. A public agency may include an entity constituted under public law to carry out specific tasks in the public interest.
- Performs a public function for a public enterprise, whether as an executive, manager or employee. A public enterprise should include any enterprise in which the government holds a majority stake, as well as those over which a government may exercise a dominant influence directly or indirectly. It should also include an enterprise that performs a public function and which does not operate on a normal commercial basis (i.e., in a manner is substantially equivalent to that of a private enterprise, without preferential subsidies or other privileges) in the relevant market.
- Performs any activity in the public interest delegated by a public authority, such as the performance of a task in connection with public procurement.

- Provides a public service as defined in the domestic law and as applied in the pertinent area of law of that country, e.g. domestic arbitrators, jurors, notaries, forensic experts.
- Meets the definition of a “public official” in the domestic law of the country, including the definitions for “official”, “public officer”, “mayor”, “minister” or “judge”. It also includes law enforcement officers and the military.⁴⁸⁷

In determining whether a person is a national public official, it is irrelevant whether that person is: appointed or elected; in a permanent or temporary position; paid or unpaid; a low-level or high-level official; or in a core or auxiliary position.

A common problem for IAP countries is the dispersed definition of the “officials” subject to bribery offences, as some elements of definition may refer to various laws, e.g. on the civil service, on the fight against corruption, on various public authorities. For the sake of legal certainty, it is preferable to have an autonomous definition included in the Criminal Code.

This was confirmed in the fourth monitoring round report on **Mongolia**. The Criminal Code of Mongolia does not provide a definition of “national public official”. The Mongolian authorities explained that the notion of public official refers to the persons subject to the Anti-Corruption Law. However, the monitoring experts noted that the purpose of the Anti-Corruption Law is not to enforce criminal law, but to set up prevention activities and enhance detection of corruption. In order for the criminal norm to be clear and predictable, the Criminal Code should cover the definition of all the elements of crime or, at least, refer explicitly to another piece of legislation.⁴⁸⁸

Box 36. Definition of a national official in the new criminal code of Kyrgyzstan

Kyrgyzstan included a detailed definition of the term “official” and its elements in the new criminal code that was enacted in 2019. “Officials” as defined in the annex to the Code mean “persons who are performing, permanently, temporarily or by special authority the functions of a representative of the authority, or carrying out management and administrative, administrative and economic, or controlling and audit functions at state authorities, bodies of the local self-government, at state and municipal institutions or in the Armed Forces of the Kyrgyz Republic or other army formations.” “Management and administrative functions” mean exercising powers in managing the subordinate persons. “Administrative and economic functions” mean exercising of powers to manage and dispose of assets and cash. “Controlling and audit functions” entail exercise of powers in conducting inspections, audits of individuals and legal entities. The “representative of authority” is a person vested, according to the procedure stipulated in the law, with regulatory powers with respect to persons who are not in his subordination or departmental affiliation, or a person who is involved in the administration of justice as a juror.

The monitoring report criticized the fact that this definition excluded those employees that perform ancillary or other functions not covered by those spelled out in the definition of officials (e.g., specialists, secretaries, typists, drivers, archive workers, members of private offices, assistants). This issue may be partly addressed by the offence of “Unlawful taking of remuneration by a serviceman” (Art. 238 of the new CC). However, to achieve legal certainty the report recommended to define the term “serviceman”, to make sure to cover all due categories of persons who perform work for (render services to) a state or non-state organisation.

Source: OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 164.

In several IAP countries (**Armenia, Kyrgyzstan, Tajikistan, Ukraine**), “officials” are limited to public employees with managerial, administrative, organisational or financial functions, thus excluding auxiliary employees (e.g. clerks, secretaries, typists, couriers, drivers, archivists). This falls short of international

standards. As was noted in the IAP monitoring of **Kazakhstan**, the definition of public officials should also cover jurors, because they perform important public functions.

Some IAP countries (e.g. **Azerbaijan, Georgia, Kazakhstan**) extend the definition of an official even to candidates for political offices, like the President, members of the parliament and local representative bodies. This is a good practice that should be spread*

Box 37. Definition of public official in Ukraine

The 2011 reform of anti-corruption legislation in Ukraine amended the definition of an official relevant for bribery offences. The new framework law on the prevention and combating of corruption contained a list of persons liable for corruption offences and included a broad range of domestic and foreign officials and public employees. Domestic officials and public employees were in general defined as “persons authorised to perform functions of the state or local self-government”. At the same time, the Criminal Code preserved an autonomous definition of officials (“service persons”), in particular, referring to (1) “persons who perform functions of representatives of power or local self-government” and (2) persons who hold in state authorities, local self-government bodies, state and municipal enterprises, establishments and organisations offices connected with organisational, managerial, administrative or economic functions. According to the Ukrainian Supreme Court’s Resolution on judicial practice in bribery cases, first category means, in particular, “employees of public organs and their establishments who are entitled to set demands and make decisions binding on natural and legal persons regardless of their departmental affiliation or subordination”. Such definition of officials, as used in the Ukrainian Criminal Code (“service persons”), was limited to employees with managerial, administrative, organisational or financial functions, thus excluding auxiliary employees.

This deficiency was addressed in 2014 amendments to CC. The amended provision covers active and passive bribery of an employee of an enterprise, institution or organization, who is not a service person, or a person who works for the benefit of an enterprise, institution or organization. According to the definition included in the Note to Article 354, person who works for the benefit of an enterprise, institution or organization should mean a person who carries out work and has labour relations with such enterprise, institution or organization. The definition of the “person who works for the benefit” created an inconsistency as it referred to labour relations, which were already covered by the reference to “employee”. To correct this, yet another amendment was adopted in 2015, which provided that a person who works for the benefit of an enterprise, institution or organization should mean a person who carries out work or provides service according to an agreement with such enterprise, institution or organization. The Third Monitoring Round report found the final provisions, as amended, to be compliant with international standards.

Source: IAP monitoring reports on Ukraine; OECD/ACN secretariat research.

Foreign official

According to international standards, corruption offences should also cover officials of foreign states and officials of public international organisations. The definition of a foreign public official is comparable with that of a domestic public official with reference to a foreign state. A “foreign public official” is defined in the UNCAC (Art. 2) as “any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise.”

According to international instruments, the foreign official definition should cover the following groups:

- Persons holding legislative, administrative, or judicial office in a foreign country (regardless of whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of seniority);⁴⁸⁹
- Officials and agents of public international organisations (including those authorised by such organisations to act on their behalf);⁴⁹⁰ and
- Persons who perform public functions (such as for a public agency or enterprise);⁴⁹¹
- Members of parliamentary assemblies of international and supranational organisations;⁴⁹²
- Holders of judicial office or officials of an international court;⁴⁹³
- Persons who provide a public service (such as a notary, attorney, or auditor);⁴⁹⁴
- Domestic and foreign arbitrators;⁴⁹⁵ and
- Jurors in the judicial system of another country.⁴⁹⁶

It is important that the term “foreign official” have an autonomous meaning within the prosecuting country’s legal system, that is, determining whether an individual is a foreign official should not depend on an external legal source (such as proof of law of the foreign official’s country). While most ACN countries use an autonomous definition, **Albania**, **Armenia** and **Bosnia and Herzegovina** do not. For example, under Armenian law “foreign officials are persons performing functions of public official of a foreign state in accordance with the internal law of the state concerned, as well as members of legislative or other representative body of a foreign state exercising administrative authorities” (Article 308 CC).⁴⁹⁷

International standards allow the bribery of foreign public officials to be covered either through separate offences or by extending the definition of persons covered by bribery offences to encompass foreign public officials. All the IAP countries that have already criminalised the bribery of foreign public officials have chosen the latter approach and extended the definition of an official to cover foreign public officials.

The Criminal Code of **Uzbekistan** includes foreign officials in the general definition of officials who are subjects of the corruption offences: “a person appointed or elected permanently, temporarily or based on a special authorization performing the functions of a representative of an authority or performing organizational, administrative and economic functions in government bodies, self-government bodies of citizens, in enterprises, institutions, organizations, regardless of forms of ownership and authorized to commit legally binding actions, as well as a person performing these functions in an international organization or in a legislative, executive, administrative or judicial body of a foreign state. The fourth monitoring round report found this definition not to be in full conformity with international standards.⁴⁹⁸

The definition in the Criminal Code of Uzbekistan is much narrower than that stipulated in the conventions, since it does not contain the element “holding a legislative, executive, administrative or judicial office of a foreign country”, restricting public functions to “organizational, administrative and economic ones”. The definition in terms of officials of a public international organization does not meet the standards as well. The monitoring report recommended Uzbekistan to bring the definition of a foreign official and an official of an international organization in compliance with international standards and to include in the Criminal Code autonomous definitions of these concepts without mixing them up with the definition of a national official. These changes should also be reflected in *corpus delicti* of corruption cases, which should be extended to such persons.⁴⁹⁹

Other corruption offences

Private sector bribery

The UNCAC (Art. 21) includes bribery in the private sector as a non-mandatory offence. The CoE Criminal Law Convention (Art. 7-8) contains similar provisions, but they are binding on the State-Parties to the Convention that did not use their right to make a reservation when signing or ratifying the Convention.⁵⁰⁰

Since the IAP monitoring mechanism is not formally limited to any of the conventions and covers broad international anti-corruption standards, it considers bribery in the private sector as a standard that should be implemented in all IAP countries.

The criminalisation of bribery between two private entities is a reaction to the privatization of public services and important sectors of the economy. It addresses harm caused by corruption to economic development, business relations and society in whole.

The IAP countries, coming from the former Soviet Union, which did not recognise private property, had already criminalised private sector bribery, as bribery offences did not differentiate between officials of public and private entities. However, the enforcement of bribery provisions against officials of private entities was almost non-existent. Most of the IAP countries have later introduced a separate private-sector bribery offence (sometimes called “commercial bribery”). In 2015, for instance, **Uzbekistan** amended its Criminal Code and introduced a separate offence of commercial bribery. Now, only **Azerbaijan and Mongolia** continue to cover private sector bribery through a broad definition of an official in the general bribery offence. The fourth monitoring round report on Mongolia found that the wording used in the 2017 Criminal Code was ambiguous and did sufficiently confirm that representatives of private sector were covered by the bribery provisions.⁵⁰¹

The criminalisation of private sector bribery through general provisions on bribery that do not differentiate between officials of the private and public sectors does not formally contradict international standards. However, it raises an issue of clarity and visibility. Stand-alone criminal offences of private sector bribery appear to better address non-public corruption.⁵⁰²

In this regard, GRECO recommended to **Azerbaijan and Bosnia and Herzegovina** in its Third evaluation round reports to consider including specific provisions on bribery in the private sector in the Penal Code. The GRECO evaluations expressed the view that the system would doubtless benefit from the introduction of separate and clearly identifiable provisions designed specifically to cover private sector bribery, along the lines of Articles 7 and 8 of the Council of Europe Criminal Law Convention on Corruption.⁵⁰³ However, GRECO was satisfied with the Azerbaijan authorities’ decision not to introduce separate offences despite its recommendation (the Azerbaijan authorities also provided statistics on a number of cases of private sector corruption prosecution proving that it had been enforced).⁵⁰⁴

Another feature of private-sector bribery criminalisation is that all IAP countries extend these offences to any non-public entity, commercial or not (thus covering charities, citizen associations, other organisations). Even when the offence is called “commercial bribery” it often goes beyond the for-profit sector. This is more than required by the UN and CoE conventions, which deal with private-sector bribery “in the course of economic, financial or commercial activities” (UNCAC) or “in the course of business activity” (CoE Criminal Law Convention⁵⁰⁵). Such an approach is not unique for the IAP countries, as other ACN states employ it too, for instance: Albania, Croatia, Latvia, Lithuania, Moldova, Romania and Slovakia.

In addition, the IAP countries often omit in their criminal codes another element contained in the relevant provisions of the international treaties, namely that the private sector bribery be committed in breach of the duties of the perpetrator working for the private entity. Since both of these approaches extend the scope of the bribery offences, they do not breach international standards.

According to international standards, the bribery offences in the private sector should also include other elements, similar to public sector offences: the promise, offer or giving of a bribe (active bribery); the request, receipt, and acceptance of an offer or promise of a bribe (passive bribery); intangible and non-pecuniary undue advantage; directly or indirectly; and third party beneficiaries.

One additional element is that private sector offences concern active or passive bribery of “any person who directs or works, in any capacity, for a private sector entity”, which includes low-level and auxiliary employees and such people as consultants and agents working for the private entity. Many IAP countries

do not include this element, extending relevant provisions to bribery of or by persons exercising managerial, administrative or other similar functions. In 2014, **Ukraine** revised its offence of private sector bribery (Article 354 CC, “Bribery of an employee of an enterprise, institution or organisation”) to cover not only employees of a company or other organisation but also “persons who work in favour of the enterprise, institution or organisation” (meaning persons who carry out work or provide a service in accordance with an agreement with such enterprise, institution or organisation).

Below is the table reflecting IAP countries’ compliance with the necessary elements of private-sector bribery offences.

Table 29. Elements of private sector bribery offences

Elements of private-sector bribery offences	ARM	AZ	GEO	KAZ	KGZ	MNG	TAJ	UKR	UZB
Active bribery: promise, offer	●	●	●	○	○	○	○	●	○
Passive bribery: request, acceptance of offer/promise	●	●	●	○	○	○	○	●	○
Undue advantage (intangible and non-pecuniary)	●	●	●	○	○	○	○	●	○
Directly or indirectly	●	●	●	○	○	○	○	●	○
Third party beneficiaries	●	●	●	○	○	○	○	●	○
“any person who directs or works, in any capacity, for a private sector entity”	●	●	●	○	○	○	○	●	○
● Yes ○ No									

Source: IAP monitoring reports, OECD/ACN secretariat research.

It is important that countries can engage in *ex officio* prosecution of private sector bribery (i.e., without requiring a complaint for, or the consent of, the aggrieved entity or other such restrictive conditions).

For example, in the **Russian Federation**, for “commercial bribery” that has caused harm exclusively to the interests of a commercial organisation that is not a governmental or municipal enterprise, prosecution can only be instituted upon the organisation’s request or with its consent. In its report on Russia, GRECO found this arrangement problematic, as this formal requirement may constitute an obstacle to prosecution which is against the spirit of the CoE Convention. Also, according to GRECO report, there is no justification for subjecting the prosecution of corruption in the private sector to a regime different from the general regime applicable to other corruption offences.⁵⁰⁶

Similar provisions were criticised also with regard to **Austria, Italy and Switzerland**.⁵⁰⁷ Following GRECO comments, in 2017 Italy amended its legislation to include new provisions of private sector bribery. GRECO, however, regretted that under the new provision the admissibility of prosecution was only possible upon individual complaint, unless the fact gives rise to distortion of competition in the acquisition of goods and services. GRECO found this not to be in line with the Convention, but Italy made a reservation in this respect at the time of ratification of the Convention. GRECO encouraged the Italian authorities to reconsider the reservation.⁵⁰⁸ Italy removed such limitation in 2018.⁵⁰⁹

From the IAP countries only **Kyrgyzstan** applies such a limitation to private sector bribery offences. Under the 2019 criminal code of Kyrgyzstan, if the act qualified under any article of Chapter 34 “Offences against the interests of the service in commercial or other organisations” should cause damage to the interests of a commercial organisation only, which is neither a state or municipal enterprise nor a business with a state or municipal equity or interest in the charter capital, the criminal prosecution shall be instituted following the request of this organisation or with its consent. The IAP fourth monitoring round report found this provision not aligned with international standards that view corruption in the private sector as no less harmful to public interests than corruption in the public authorities. The report stressed that it is important

that law enforcement agencies should be in a position to start a prosecution of bribery in the private sector on their own (without any complaint by the victim, or consent of the company, or any other restricting circumstances).⁵¹⁰

Also, some IAP countries (for example, **Kazakhstan, Ukraine**) restrict the prosecution of abuse of powers in the private sector to situations when an aggrieved entity lodges a relevant request.

Several IAP countries (**Armenia, Tajikistan, Ukraine**) established a separate offence of **bribery in sport and/or commercial contests** (e.g., bribery of participants and organisers of professional sport events and commercial competitions). This is a good practice which allows the countries to cover a broad range of persons who may not be included in the public- or private-sector bribery offences, such as sportspersons, referees, trainers, team managers, organisers and jury members of commercial competitions (e.g. television contests, beauty pageants), etc. In November 2015, **Ukraine** established a new criminal offence (Art. 369-3 CC) of “Illegal influence on results of official sport competitions”, which sanctions influence in the form of bribery, coercion or incitement, collusion with regard to official sport competition’s results “in order to obtain an undue advantage for oneself or a third person” or the obtaining of an undue advantage as such as a result of the above mentioned acts.⁵¹¹

Kyrgyzstan used to have a similar offence but following the reform of the criminal law enacted in 2019 such an offence was relegated to criminal misdemeanours. The IAP fourth monitoring round report found this to be a step back in the criminalisation of corruption.⁵¹²

In 2014, the Council of Europe adopted a Convention on the Manipulation of Sports Competitions that required from its parties to criminally sanction “manipulation of sports competitions when it involves either coercive, corrupt or fraudulent practices”.⁵¹³ Manipulation of sports competitions means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others. From the IAP countries **Armenia, Azerbaijan, Georgia** signed the new Convention, while **Ukraine** was the first among IAP countries to ratify it in 2017 (the other IAP countries are not members of the Council of Europe).

Ukraine has established a separate offence of active and passive bribery of persons who are not public officials but who provide public services, namely auditors, notaries, appraisers, experts, bankruptcy administrators, labour arbitrators, etc.

Enforcement of private sector bribery offences remains uneven in the IAP countries. Most countries have no prosecutions or a very low number of them. Only Ukraine and Kyrgyzstan show a significant number of cases of private sector bribery. Available statistics are presented below.

The IAP countries are not unique in having a low enforcement practice in private sector bribery. For example, the European Commission research found that there have been only very few convictions for private sector corruption in the EU member states in 2014-2016.⁵¹⁴

The study by GRECO summarized implementation issues with the private sector bribery offences, which are also relevant for the IAP countries. In particular, investigators in the countries that provided cases for the study indicated the following problems:

- While public corruption is considered unacceptable by society, attitudes towards private sector corruption are less stringent. Therefore, police receive fewer reports, which makes evidence collection complicated.
- The difficulties in investigating private corruption are mostly of a practical nature. Reporting of corruption in the private sector is relatively rare and private entities generally treat this issue as "an internal affair". Participants in corruption schemes have often no interest to report them, because they benefit from them. Decision-makers in private companies fear that their business would be

negatively affected if they reported. Employees avoid reporting as well for fear of losing their job or being stigmatised.

- An additional difficulty is that foreign or offshore companies are often used for corruption activities. This makes it easier to manipulate documentation and prolongs or blocks the investigation, as information has to be collected through mutual legal assistance from countries that are sometimes uncooperative.⁵¹⁵

Table 30. Statistics on enforcement of private sector bribery in some IAP countries

	Number of investigations opened				Number of cases sent to court				Number of convictions (persons)			
	2015	2016	2017	2018	2015	2016	2017	2018	2015	2016	2017	2018
Armenia (Art. 200 CC – Commercial bribery)	9	6	5	n/a	4	21	4	n/a	3	1	1	n/a
Georgia (Art. 221 CC – Commercial bribery)	7	n/a	n/a	n/a	9	10	13	18	22	n/a	n/a	n/a
Kazakhstan (Art. 253 CC 2014 – Commercial bribery)	7	4	n/a	n/a	0	3	n/a	n/a	1	5	n/a	n/a
Kyrgyzstan (Art. 224 CC 1997 – Commercial bribery; Art. 225 CC 1997 – Illegal receipt of reward by a serviceman)	51	18	16	n/a	27	9	11	n/a	38	25	15	n/a
Ukraine	n/a	n/a	n/a	n/a	66	34	35	27	45	15	16	10
Uzbekistan (Art. 192-9 CC – Commercial bribery; Art. 192-10 CC – Bribery of serviceman of commercial or other non-state organisation)	n/a	2	12	2*	n/a	2	11	0	n/a	2	2	1

Notes: * - for 9 months of 2018. Columns “Number of cases sent to court” for Georgia reflects the number of prosecutions. Source: IAP fourth monitoring round reports; OECD/ACN secretariat research; comments by countries.

Foreign bribery

All IAP countries have criminalised active and passive foreign bribery offence either by extending definition of the official used in the general bribery provision (e.g. **Uzbekistan** in 2015) or by introducing a standalone offence of foreign bribery (e.g. **Mongolia** in 2016). The main issues with the foreign bribery offence in the region are the narrow definition of the foreign public official (see above) and poor enforcement record.

Only very few IAP countries report cases of foreign bribery. For example, monitoring report on **Uzbekistan** mentioned one foreign bribery case initiated. An Uzbek citizen, during his stay in the Russian Federation, was stopped an inspector of the patrol service for violating traffic rules while driving and attempted to give money to the police officer as a bribe when drawing up a protocol on administrative offense. By a court sentence of April 2017, the person was found guilty and sentenced to two years imprisonment and then released from penalty due to the act of amnesty.

Enforcement of foreign bribery laws is also low in other ACN countries. As noted in the OECD/ACN study, in some instances, it appears that government authorities are not aware of or acting upon publicly available reports of foreign bribery. It also appears that law enforcement bodies may not be sharing information with other enforcement bodies—both in country and abroad—which could lead to more effective investigations and prosecutions, as well as an increase in awareness of the offence among law enforcement authorities. Some countries do not keep separate records of foreign bribery versus other kinds of corruption cases, which may make understanding the various types of corruption at play in a country difficult.⁵¹⁶

The ACN study found that the poor track record of enforcement is not necessarily due to a lack of possible cases or allegations. For example, the two incidents discussed in the box below could have led to the opening of an investigation into foreign bribery.

Box 38. Possible foreign bribery cases under jurisdiction of Ukraine

Case 1. In 2013 a federal grand jury in Chicago, US, charged six foreign nationals (including a Ukrainian businessman) with conspiracy to engage in international racketeering and money laundering. The scheme involved bribery of officials in India related to obtaining mining licenses. According to the indictment, the scheme began in 2006 and involved at least USD 18.5 million in bribes to state and federal officials. Expected revenues from the project were over USD 500 million annually, based on the sale of titanium products to a Chicago -based company. The Ukrainian national, Dmitry Firtash, was arrested in Austria in 2014. He was later released on bail, after agreeing to remain in Austria until the end of extradition proceedings. The extradition proceedings were pending in 2019.

According to the US court documents, Firtash was the leader of the conglomerate of companies that was used to transfer and conceal the bribe payments. He allegedly met with the Indian officials and authorised the bribe payments. Firtash also allegedly directed others to falsify documents in order to conceal the true nature of the payments. US enforcement authorities opened up an investigation and begin prosecutorial proceedings relating to Firtash and five other individuals.

Case 2. In 2013, two employees of Ukrspetseksport, a Ukrainian state-owned arms export company, were arrested in Kazakhstan on suspicion of giving a USD 200,000 bribe to a high-level official of the Kazakh Ministry of Defence in order to obtain a contract to repair aircrafts. Later that year, they were convicted in Kazakhstan and were each sentenced to six years of imprisonment. A Kazakh Ministry of Defence official was convicted as well and sanctioned with an 11-year prison term. The two Ukrainian nationals were later transferred to Ukraine for execution of their sentences.

Source: OECD/ACN (2016), Thematic Study, Foreign Bribery Offence and Its Enforcement in Eastern Europe and Central Asia, pp. 43-44; OECD/ACN secretariat research.

The lack of investigation of foreign bribery could indicate the need for further training and greater awareness of the foreign bribery crime. The fourth monitoring round reports encouraged IAP countries to conduct training of investigators, prosecutors, judges, representatives of the diplomatic missions on the effective detection, investigation, prosecution and adjudication of criminal cases concerning foreign bribery.⁵¹⁷

The report on **Georgia** also recommended expanding awareness in the business community as well as among investigators and prosecutors, and other public officials of the need to report information of suspected foreign bribery engaged in by Georgian firms or by other foreign firms to the detriment of Georgian firms. Such education and awareness programs should include the message that the vigorous investigation and prosecution of such offenses involving businesses in Georgia either as victims or offenders is important to ensure a level playing field for other Georgian and foreign legal entities trying to operate in an increasingly global marketplace.⁵¹⁸

Trading in influence

Trading in influence is another corruption offence that is binding under the CoE Criminal Law Convention (Art. 12) but optional under the UNCAC (Art. 18). Trading in influence, according to the CoE Convention, is one of the provisions to which states are allowed to make a reservation when signing or ratifying the treaty and exclude or attach certain conditions to its application. From the IAP, of countries that are Parties to the Convention, **Armenia** and **Azerbaijan** had originally reserved their right not to establish as a

criminal offence trading in influence, but later both countries did criminalise this offence in 2008 and 2006 respectively and withdrew their reservations. Since the IAP monitoring mechanism is not formally limited to any of the conventions and covers broad international anti-corruption standards, it considered trading in influence as a mandatory standard which should be implemented in all of the IAP countries.

Box 39. Trading in influence offence in Armenia

Armenia criminalised passive trading in influence under Article 311-2 (Use of real or supposed influence for mercenary purposes) of the CC in 2008 and introduced Article 312-2 to CC criminalising active trading in influence in 2012. The current versions of both articles cover situations when an undue advantage is given (promised, offered) to anyone who asserts or confirms that he is able to exert an improper influence over the decision-making of a public official, as well as when such advantage was received (its offer or promise accepted) in consideration of that influence – whether or not the influence is actually exerted and whether or not the supposed influence leads to the intended result.

The IAP third round of monitoring report on Armenia noted deficiencies in the criminalisation of passive trading in influence, namely, the limitation of its scope to acts committed for “mercenary purposes” only and absence of a reference to third party beneficiaries. By the amendments made to the Criminal Code in 2017, the above-mentioned shortcoming regarding “mercenary purposes” was rectified.

According to the official statistics, during 2014-2017 there was one case of passive trading in influence investigated and sent to the court with an indictment in 2016, the case was in the process of trial at the moment of drafting this report. One more case in 2016 was terminated. One case of active trading in influence was opened in 2017.

Source: IAP monitoring reports on Armenia.

As the bribery, the trading in influence offence also includes active and passive sides and covers situations when an undue advantage is given (promised, offered) to anyone who asserts or confirms that he is able to exert an improper influence over the decision-making of a public official, as well as when such advantage was received (its offer or promise accepted) in consideration of that influence – whether or not the influence is actually exerted and whether or not the supposed influence leads to the intended result.⁵¹⁹

As noted in a UNODC publication on the UNCAC implementation reviews, Article 18 of the Convention is intended to encourage the creation of a separate and distinct offence and its emphasis is not so much on actual bribery, be it direct or indirect, but rather on the personal influence that a public official or any other person has by virtue of his or her position or status.⁵²⁰

In the active part, a person gives an undue advantage to the influence peddler who claims, by virtue of his professional position or social status, to be able to exert an improper influence over the decision-making. In the passive part, the influence peddler receives the undue advantage for influencing the decision-making. In both cases the undue advantage goes to the influence trader, not the public official, and not for the influence trader to act or refrain from acting as in the bribery offences. As described in a judgment of the French Court of Cassation, the offence of trading in influence is committed if the person concerned “is considered or describes himself or herself as an intermediary whose actual or supposed influence is such as to be able obtain an advantage or a favourable decision from a public authority”.⁵²¹

As was noted in the Explanatory Report to the CoE Criminal Law Convention on Corruption, “[c]riminalising trading in influence seeks to reach the close circle of the official or the political party to which he belongs and to tackle the corrupt behaviour of those persons who are in the neighbourhood of power and try to obtain advantages from their situation, contributing to the atmosphere of corruption”.⁵²² Examples of trading in influence include: a leader or functionary of a political party trading influence over

the party regarding a vote in the parliament; an official selling influence over the awarding of honorary decorations; an individual receiving money in exchange for promising to exert influence over the award of a public procurement contract by the ministry where the individual's friend is working in the senior position, etc.

Influence trading should be separated from legitimate lobbying activity. The CoE Convention achieves this by using the concept of “improper influence” meaning that lawful lobbying activity aims to exert “proper”, i.e. not prohibited, influence.⁵²³ The UNCAC provides that in exchange for an undue advantage an official or any other person “abuse” his or her real or supposed influence with a view to obtaining from a public authority an undue advantage. However, the line between acknowledged lobbying activities and trading in influence is rather thin.⁵²⁴ As noted in one of the GRECO reports, it is only when the lobbying or the attempt to exert influence results in holding out the prospect of specific advantages to public officials who are involved in the decision-making process, that the bounds of propriety are overstepped.⁵²⁵

Out of the IAP countries, trading in influence has been criminalised by **Armenia, Azerbaijan, Georgia and Ukraine**. No progress was made by other IAP countries in this regard since the previous monitoring round.

In most of the IAP countries, interpretative resolutions by the supreme courts (or, occasionally, as in the case of **Armenia**, the criminal codes themselves) extend bribery offences to situations when the official does not have the powers to carry out the act (or omission) in exchange for a bribe, but can facilitate such an act (or omission) through his official position. It may be argued that such a broad understanding of the bribery offences in fact covers trading in influence offence. However, such approach is deficient and cannot be considered as functionally equivalent to trading in influence offence, in particular because it covers only officials (in most cases – public officials), excluding other persons.⁵²⁶ Recent draft Set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption also call on countries to consider adopting a specific offence, separate from bribery, covering all elements of art. 18, in particular the abuse of real or supposed influence.⁵²⁷

As an example of good practice, trading in influence offence could be extended to foreign public officials as an object of influence exerted or promised. Such provision is included in the criminal code of **Georgia**, where the offence of influence peddling (Article 339-1) extends to an unlawful influence on the decisions of an official or a person equal thereto. Persons equal to officials include a foreign official (including an employee of a public authority exercising legislative and/or administrative powers), any person performing any public duty for another state, an official of an international organisation or agency, or an employee hired on a contractual basis, as well as any seconded or non-seconded person performing the duties relevant to the duties of this official or employee, foreign jury members who perform their duties based on a foreign legislation, a member of the international parliamentary assembly, a representative of the International Criminal Court, a judge or official of the international court or judicial body. Similar provision extending trading in influence on foreign officials exists also in **Armenia**.

As to enforcement of the trading in influence offence in the IAP countries, **Ukraine** has had a number of prosecutions and convictions (see statistics in the table below), while **Armenia, Azerbaijan and Georgia** had none or very few prosecutions in 2016-2018. In **Georgia**, there were two prosecutions resulting in three persons convicted in 2014, and three prosecutions resulting in two convictions in 2015.

Table 31. Enforcement of trading in influence offence in Ukraine

	Number of final convictions (convicted persons)		
	2016	2017	2018
Ukraine (Art. 369-2 CC)	153	157	176

Source: OECD/ACN secretariat research based on official judicial statistics (https://court.gov.ua/inshe/sudova_statystyka).

Below are several examples of real-life cases⁵²⁸ of trading in influence in Ukraine, which prove that this offence happens quite often and should be actively pursued. It should also be noted that Ukrainian courts tend to impose relatively mild sanctions for this offence.

Box 40. Examples of trading in influence cases in Ukraine

- A student of a university was charged with attempted active trading in influence and an assistant professor of one of the university's departments with attempted passive trading in influence. The assistant professor demanded a payment from the student for successful presentation of her master's research paper and passing of the state exam.
- A state inspector of the tax control department of the regional state tax inspection demanded and received illegal benefit for influencing an official of the regional state tax inspection in order to accelerate the adoption of a positive decision on the on-site inspection of the individual entrepreneur. The tax inspector was convicted and sentenced to four years of imprisonment and conditionally released with the probation period of 18 months.
- A therapist of a medical expert commission demanded and received an illegal benefit in order to influence a positive decision concerning the assignment of a life-long disability to the individual. The court sentenced the offender to 3 years of imprisonment with conditionally release during the probation period.
- Several convictions of judicial assistants (judge's clerks) of the local courts who received illegal benefits in order to influence the decision of the judge in civil or criminal cases.
- A CEO of a private company operating in the area of land surveying was found guilty of receiving illegal benefit for exerting influence on the local office of the State Agency of Land Resources in order to obtain a permit for land development (passive trading in influence). The person was sanctioned with a fine based on the plea agreement with the prosecutor.
- A person was convicted of passive trading in influence for receiving an illegal benefit in exchange for the promise to exert influence on his acquaintance – the head of the local military enlistment office – to postpone the conscription of a third person. The person was convicted to a fine and a special confiscation.
- A person was convicted of passive trading in influence for receiving illegal benefit in exchange of the promise to influence a judge in a criminal case (to obtain a milder sanction); the convicted did not actually plan to exert the influence and intended to appropriate the money. He was convicted and fined.
- A head of the local criminal police unit was convicted of receiving several payments from the local entrepreneur who organised poker games for the promised influence over the leadership of the local police and prosecution office. Gambling is prohibited in Ukraine under threat of criminal sanction, so the policeman promised to use his influence to ensure that the criminal prosecution is not started. He was convicted, and fined, and a special confiscation was also imposed.

The deputy head of the department in the Ministry of Justice was convicted of passive trading in influence for receiving an illegal benefit from a businessman for using her influencing and arranging the sale of several vehicles by the regional bailiff's service at a reduced price. She exerted her influence over the head of the regional office of the Ministry of Justice. She entered plea agreement with the prosecutor and was sanctioned with a fine.

Source: OECD/ACN (2015), Third monitoring round report on Ukraine, pp. 43-44; OECD/ACN secretariat research.

Illicit enrichment

The UN Convention against Corruption (Art. 20) provides for the non-mandatory offence of illicit enrichment—that is, a significant increase in the assets of a public official that cannot be reasonably explained in relation to the official’s lawful income. An offence of illicit enrichment may be a powerful tool in prosecuting corrupt officials, as it does not require proving that the corruption transaction actually happened and instead allows the court to draw inferences from the fact that an official is in possession of unexplained wealth, which could not have been gained from lawful sources

Table 32. Offence of illicit enrichment in ACN countries

Kyrgyzstan	Criminal Code 1997	Criminal Code 2017
Lithuania	<p>In 2010, Lithuania established offence of illicit enrichment in its Criminal Code (Article 189-1): “A person who, by right of property, possesses property in the amount exceeding 500 minimum subsistence levels [about EUR 18,000] and was aware or ought to have been aware and could have been aware that the property could not have been acquired legitimate income, shall be punished by a fine or by arrest or by imprisonment for a term of up to four years.</p> <p>A person, who has taken over the property specified in Paragraph 1 of this Article, shall be exempted from criminal liability for illicit enrichment if, until the delivery of the notice on being suspected, he informed about that the law and order institutions and actively participated in establishing the origin of this property.”</p> <p>Such property is subject to mandatory confiscation. A legal entity can also be held liable for the acts provided for in this Article. If the property’s value is less than the established threshold for the criminal liability, the person will be ordered to pay taxes from the assets and may be sanctioned in administrative proceedings with a fine from 10 to 50% of the property’s value. Under Article 190 CC, the legitimate income referred to in Article 189-1 means income derived from activities not prohibited by legal acts, irrespective of whether or not it has been accounted for in accordance with the procedure laid down by legal acts.</p>	
Moldova	<p>Moldova enacted Article 330-2 CC “Illicit enrichment” in 2014. It provides that possession by a person with a high responsibility position or by a public official, personally or through third parties, of property the value of which significantly exceeds the funds he received and with regard to which it was established based on evidence that it could not have been received in a legal way, shall be punished with a fine of 6,000-8,000 standard units or deprivation of liberty for a term from 3 to 7 years with the deprivation – in both cases – of the right to hold certain offices or engage in certain activities for a term of 10 to 15 years. Higher sanctions are established for the same actions committed by persons with public dignity functions.</p> <p>The amount of “significant” excess is not defined in the Criminal Code. However, the significant discrepancy was defined in the Asset and Interest Disclosure Law as 20 or more average salaries.</p>	
Mongolia	<p>Article 270-1 CC “Improvement in the financial state by illegal means” was introduced in 2012: “1. If it is established that an official received material and pecuniary income in a large amount by illegal means, besides the lawful income, this official shall be punished with the deprivation of the right to hold certain offices for the term of 3 to 5 years and a fine of 51-250 minimum</p>	

salaries or deprivation of liberty up to 3 years.” Higher sanctions are established for aggravated offence of receiving by an official of material and pecuniary income in especially large amount by illegal means, besides the lawful income.

In 2015, Mongolia adopted a new Criminal Code (entered into force on 1 September 2016), Article 22.10 of which provides:

“Article 22.10. Illicit Enrichment

1. If a government official cannot justify major increase of his/her income and assets as lawful, such income and assets shall be confiscated and the relevant official's right to be appointed in public office shall be suspended for up to two years and be fined an amount of 2700 -14000 units equal to tugriks or restriction of travel from 6 months to 3 years or imprisonment for a period of 6 months to 3 years.

2. If this crime has been committed by politically exposed person, such person's right to appointed or elected in public office shall be suspended for 2 to 5 years and be fined an amount of 5400 to 27000 units equal to tugriks, or restriction of travel from 1 to 5 years or imprisonment for a period of 1 to 5 years”⁵²⁹

Ukraine

The offence was first introduced in 2011 and then revised twice (see below for more details). The wording introduced in 2015 read:

“1. Acquiring by a person authorised to perform functions of the state or local self-government in ownership of assets in significant amount, the lawful grounds of acquiring of which was not confirmed by evidence, as well as transfer by such person of such assets to any other person shall be punishable by deprivation of liberty for the term of up to two years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years with forfeiture of property.”

Two additional aggravated offences when committed by high-level officials attracted higher sanctions. Assets in the significant amount meant monetary funds and other property, as well as proceeds from them, if their amount (value) exceeds 1,000 untaxed minimum personal incomes [about EUR 23,000]. The transfer of assets meant concluding any agreements based on which right of ownership or right of use of assets emerges, as well as providing other person with monetary funds or other property to conclude such agreements.

In February 2019, the Constitutional Court of Ukraine found this wording of the illicit enrichment offence unconstitutional on a number of grounds.

In October 2019, the parliament introduced a new offence of illicit enrichment along with the civil non-conviction-based confiscation of unjustified assets. The new illicit enrichment offence reads:

“Acquiring by a person authorized to perform functions of the state or local self-government of assets, the value of which for more than 6,500 untaxed income minimums [about EUR 260,000] exceeds the person's legal income shall be punishable by deprivation of liberty for the term from 5 to 10 years with the deprivation of the right to occupy certain offices or engage in certain activities for the term of up to three years.”

Acquiring of assets means their acquiring in ownership by the person authorized to perform functions of the state or local self-government, as well as acquiring of assets in ownership by another natural or legal person if assets were acquired upon assignment of the person authorized to perform functions of the state or local self-government or if the person authorized to perform functions of the state or local self-government may directly or indirectly take regarding such assets actions which are identical in substance to exercising the right of their disposal. Legal income means income lawfully received from legal sources, including income sources that are mentioned in the Law on Corruption Prevention (provision on disclosure of assets and interests of public officials). When determining the difference between the value of acquired assets and legal income, assets that are subject to the civil law proceedings on unjustified assets and their confiscation or assets confiscated in such proceedings should not be taken into account.

Armenia

In December 2016, Armenia introduced the offence of illicit enrichment in its Criminal Code (Article 310.1):

“Article 310.1. Illicit enrichment

1. Illicit enrichment – increase in property and/or reduction in liabilities — during the reporting period — substantially exceeding the lawful income of a person having the obligation to submit a declaration prescribed by the Law of the Republic of Armenia “On public service” and which are not reasonably justified thereby and where there are no other elements of crime serving as a ground for illicit enrichment — shall be punished by imprisonment for a term of three to six years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years, with confiscation of property.

2. In this Article, the amount (cost) exceeding five-thousand-fold of the minimum salary as set at the time of the crime shall be deemed as substantial”.

The amendment entered into force on 1 July 2017. Five-thousand-fold of the minimum salary equals about EUR 9,000.

Source: information of Government of Lithuania; IAP monitoring reports on Kyrgyzstan, Mongolia, Ukraine; OECD/ACN secretariat research.

The introduction of an illicit enrichment offence can pose a number of legal problems, as it may be seen as contradicting human rights standards. The IAP monitoring has, however, held that these obstacles can be overcome by a careful wording of the offence. The elements of this crime should be formulated in such a way that the fundamental human rights to the presumption of innocence and the guarantee against self-

incrimination are not violated.⁵³⁰ For this purpose, it is necessary to put the burden of proof on the prosecutor to ascertain the existence of certain assets, the absence of lawful sources of income, which could have explained them, criminal intent to acquire the assets, etc. (thus creating a rebuttable presumption of illicit enrichment). In case of sufficient evidence, the court has the right to infer person's guilt, in particular, from the absence of explanation of such person with regard to legality of the mentioned assets.⁵³¹

Ukraine was the first among the IAP countries to introduce the offence called "illicit enrichment" in 2011 (new Article 368-2 CC). However, despite its name, the offence had nothing in common with the illicit enrichment offence recommended by the UN Convention Against Corruption.⁵³² In its original wording, the offence was very similar and overlapped with incrimination of passive bribery of public official. The IAP monitoring report found that this in itself was unsatisfactory as it created legal uncertainty as well as the conditions for corruption, because law enforcement authorities and courts could apply the different articles to produce different sanctions.⁵³³ In October 2014, Ukraine introduced new wording for the offence. The IAP monitoring report concluded that the final wording seemed to reflect the concept promoted by the UNCAC.

In February 2019 the Constitutional Court of Ukraine found the 2015 wording of the illicit enrichment offence to be unconstitutional and revoked it immediately. The main arguments adduced by the Constitutional Court concerned the lack of legal certainty and violation of the principles of presumption of innocence and the right not to self-incriminate.⁵³⁴ At the time of the issuing of the Court's decision, the National Anti-Corruption Bureau and the Specialised Anti-Corruption Prosecution Office concluded four cases under Article 368-2 CC with indictments submitted to the courts. 65 more cases were under investigation. There were no convictions under the illicit enrichment offence. All the proceedings had to be discontinued following the Constitutional Court's decision.

In October 2019, the newly elected parliament adopted a new illicit enrichment offence based on the proposal which the President of Ukraine submitted. The same law also introduced a new regime of civil confiscation of unjustified assets without any links to the criminal proceedings (for assets below threshold for criminal illicit enrichment and assets which were targeted by illicit enrichment criminal investigation if the investigation was discontinued). The law entered in force in November 2019 (see the table for the text of the new provision).

The provisions on illicit enrichment have been challenged on the constitutional grounds also in other ACN countries, namely in Kyrgyzstan, Lithuania, Moldova.

In 2014, the Constitutional Chamber of the Supreme Court of the **Kyrgyz Republic** found no violation of the constitutional guarantee of the presumption of innocence and other provisions with the offence of illicit enrichment.⁵³⁵ This decision concerned the previous wording of the offence which was closer to the UNCAC definition and directly referred to the public official not being able to justify the increase in assets as compared with lawful income.

The Constitution of **Moldova** includes an explicit presumption of the legality of assets in possession of the person (Art. 46). Despite such strong presumption that is absent in most of the European countries' constitutions, the Constitutional Court of Moldova, in 2015, concluded that such presumption is not absolute and is rebuttable and that the public authorities have the duty to trace and confiscate criminal proceeds. The offence was found to be constitutional and not in violation of either the constitutional principle of the presumed legality of assets or the general presumption of innocence. The Court also stated that the interests of public security and the fight against corruption justified the offence. The Court, however, noted that the wording of the offence was not sufficiently clear (as the notion of "significantly exceeding" the legally received funds was not defined anywhere in the law) and that this may obstruct its application.⁵³⁶

In 2017 the Constitutional Court of **Lithuania** also found the offence of illicit enrichment to be constitutional, having considered in particular such aspects as presumption of innocence, freedom from

self-incrimination, principles of fair trial and equality of arms, principle of legality, double jeopardy, non-retroactivity.⁵³⁷

An interesting approach to establishing criminal liability for acts comparable with the illicit enrichment can be found in **Georgia**. While the Georgian Criminal Code does not contain a separate offence of illicit enrichment, its elements can be found in the money laundering offence (Article 194 CC). Money laundering is defined in Georgia as “the legalization of illicit income, i.e. giving a legal form to illegal and/or undocumented property (use, acquisition, possession, conversation, transfer or other action) for purposes of concealing its illegal and/or undocumented origin and/or helping any person to evade the legal consequences, as well as concealing or disguising its true nature, originating source, location, allotment, circulation, ownership and/or other related property right.” The “undocumented property” is defined as “property, also the income derived from that property, stocks (shares) [in relation to which] an offender, his/her family members, close relatives or the persons affiliated with him/her are unable to present a document certifying that the property was obtained legally, or the property that was obtained by the monetary funds received from the realization of the illegal property.” Under Georgian system there is no legal requirement to prove any predicate criminal act. According to Georgian authorities, the offence can apply when the prosecutor is able to show that there is no evidence to establish the legitimate source of the property.⁵³⁸

From the few countries that have criminalised the illicit enrichment, **Lithuania** has had the best track record in enforcing the offence.

According to the official statistics of **Kyrgyzstan**, there was one open criminal case each year in 2015 and 2016 alleging illicit enrichment; in 2017 there were no such cases. Not a single case was submitted for trial or tried in courts under the previous criminal code in 2015-2017. According to the Kyrgyz prosecutors, the practice of criminal prosecution under article 308-1 of the 1997 CC revealed challenges in investigating this category of cases. Kyrgyz authorities mentioned the case initiated in 2015 against a former deputy minister of defence whose close relatives between 2013-2014 multiplied their assets many times in excess of their legitimate income. In 2016 the case was suspended. In the course of investigation, the relatives who had the unlawfully gained assets transferred officially in their name, testified that they allegedly acquired these assets with their own or borrowed money.⁵³⁹

Practitioners in the IAP countries sometimes treat illicit enrichment as a consequence of the predicate offence and try to establish during the investigation that assets had been gained unlawfully, and based on that, bring criminal charges for corruption, abuse of office, misappropriation or embezzlement of entrusted assets, etc. One of the fourth monitoring rounds reports noted in this regard that it was a misunderstanding of the offence of illicit enrichment, which was devised expressly so as to eliminate the need to prove the fact of the commission of a corruption offence due to which the unlawful assets were acquired. Bribery, abuse of influence and other corruption crimes are difficult to investigate after the fact. But there may be some objective characteristics (significant assets whose origin cannot be attributed to legitimate sources of income) which help to state and prove the presumption of their illegality and, subject to this, prosecute the public official. If the predicate offence has to be proved first, liability of unlawful enrichment loses its sense (similar to money laundering as an offence).⁵⁴⁰

In **Armenia**, since 2016 when the new offence was introduced, only four cases have been brought before the courts without any convictions as yet.⁵⁴¹

Embezzlement, misappropriation or other diversion of property, abuse of powers

The UN Convention against Corruption defines the embezzlement, misappropriation or other diversion of property by a public official (Article 17) as a mandatory offence, whereas the embezzlement of property in the private sector (Article 22) is an offence that State Parties have to consider adopting. These offences are criminalised in all the IAP countries.

Another non-mandatory⁵⁴² offence under the UNCAC is **abuse of functions or position**, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity. All the IAP countries have established an offence of abuse of functions (powers, office), including in the private sector.

The abuse of function (powers or office) offences in IAP countries typically include elements such as causing substantial harm to rights and legitimate interests of citizens or organizations or other interests of the society or state protected by law. This “substantial harm” element, which may be non-pecuniary, is defined in the codes only with regard to material, pecuniary damages. There is also usually no need to obtain an undue advantage – the abuse of power is considered committed when it pursued private interests or interests of other persons. These additional elements may be seen as narrowing down the incrimination obligation contained in the UNCAC and also raise issue of legal certainty.⁵⁴³

Kyrgyzstan, in its new criminal code of 2017, made an attempt to define the substantial harm regarding non-pecuniary damages by adding an annex to the code with a list of such harm. The fourth monitoring round report raised the issue of legal certainty concerning some of the examples of harm mentioned in the list (e.g., “violation of constitutional human rights and civil liberties”, “other consequences clearly pointing to the considerable extent of the harm done, if they are not spelled in the law as grievous or particularly grievous harm”).

A special feature of the IAP countries is that besides having an offence concerning the abuse of functions, there is a separate offence of exceeding one’s authority, which includes: the commission of acts that belong to the competence of a superior official in the same public institution or an official of another institution; the commission of acts that are only allowed in specific circumstances, or with special permission, or under special procedure without fulfilling the necessary conditions; the commission individually of actions which may only be committed collectively; and the commission of actions which no one has the right to commit.⁵⁴⁴ The difference between the two offences – abuse and excess – as in other Istanbul Action Plan countries - is that excess of official authority implies actions clearly beyond the official’s scope of authority.

In the IAP countries, this offence contains the same condition as the abuse of functions offence (‘causing substantial harm to rights and legitimate interests of citizens or organizations or protected by law interests of a society or state’), but also another element – that the actions must be patently outside of official’s scope of powers. These two elements may also raise issue with regard to compliance with the legal certainty requirement as they can be interpreted broadly and inconsistently. As noted in the IAP reports on **Kyrgyzstan** and **Uzbekistan**, such vague wording may itself instigate corruption, as it allows wide discretion in criminal prosecution.⁵⁴⁵

In 2014, **Ukraine** revised its abuse of office offence by replacing the element that it had to be committed for “mercenary motives or other personal interests or interests of third persons” with the requirement that it is committed for “the purpose of obtaining any unlawful benefit for oneself or for other natural or legal person”. This approximated the incrimination to the UNCAC definition, although the element of “significant harm” was preserved. In its 2017 criminal code Kyrgyzstan also added an element of receiving benefits or advantages but only as an aggravated offence and in combination with the substantial harm inflicted.

In **Romania**, Article 297 of the Criminal Code defines the abuse of office offence as “the deed of the public official who, in the exercise of his/her duty attributions, does not fulfil an act or he/she fulfils the act in a defective manner and thus produces a damage or a violation of the rights or of the legitimate interests of a natural or a legal person”. Such offence is punished with imprisonment from 2 to 7 years and the deprivation of the right to hold a public office. Additionally, Article 13-2 of the Law no 78/2000 on prevention and sanction of corruption provides for an aggravated abuse of office offence, that is the offence

where, by committing the offence of abuse of office, the public official obtained for himself or for another person a material or non-material advantage. The latter offence attracts higher sanction and it is also closer in definition to the UNCAC.⁵⁴⁶

In most IAP countries the offence of abuse of office is the main offence used to prosecute corruption.⁵⁴⁷ Statistics from countries that a large number of investigations are opened under offences of abuse/excess of office, although the eventual number of prosecutions is much lower.⁵⁴⁸ It proves that the wording of the offence is wide and allows law enforcers to establish corrupt acts without proving the exchange of benefit. This often fulfils the purpose of tackling corruption but also creates ample opportunities for abuse. One of the avenues to address this issue is to develop prosecutorial guidelines to provide guidance on the interpretation of the concepts used in the offences of abuse/excess of office. Such work has been conducted in **Georgia**, as recommended by the IAP fourth monitoring round report; although as of beginning of 2019 the guidelines were developed but not yet adopted.⁵⁴⁹

The offence of abuse/excess of office, therefore, requires special attention in the follow up monitoring activities.

Money laundering

Both the CoE Criminal Law Convention (Art. 13) and the UN Convention against Corruption (Art. 23) cover the offence of money laundering. The CoE Convention refers to the conduct determined in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime. It requires the criminalisation of such conduct when the predicate offence consists of any of the corruption crimes established in accordance with the CoE Criminal Law Convention against Corruption. The UNCAC sets forth the necessary elements of the money laundering offence and urges its application to “the widest range of predicate offences” and makes it mandatory to apply it to corruption offences established in accordance with the UNCAC.

All IAP countries have criminalised the laundering of proceeds from bribery or other corruption offences (on corporate liability for money laundering, see the next section of this report). **Armenia, Azerbaijan, Georgia and Ukraine** are parties to the Council of Europe’s anti-money laundering convention and are subject to mutual evaluations by the MONEYVAL.⁵⁵⁰ **Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan and Uzbekistan** undergo mutual evaluations as members of the Eurasian group on combating money laundering and financing of terrorism.⁵⁵¹

One of the issues reviewed during the IAP monitoring was the autonomous nature of money laundering, which means that the laundering of corruption proceeds should be a stand-alone crime that is not dependent on a prior conviction for the predicate offence. All IAP countries have difficulty in achieving this standard. Although not legally required under relevant criminal law provisions, court practice in money laundering cases usually requires a conviction for the predicate offence or that at least the predicate and money laundering offences should be prosecuted and tried jointly. Therefore, often only self-laundering is prosecuted and other forms of laundering of corruption proceeds are not enforced.

The very formulation of the money laundering corpus delicti often facilitates such non-autonomous approach. The words “criminal” and “criminal activity” are commonly used in the title and in the text of the offence, and this can be regarded as an indication of a need to prove the predicate offense.⁵⁵²

However, **Ukraine and Georgia** have had successful autonomous prosecutions of money laundering cases. **Tajikistan** and Ukraine are the only IAP countries that explicitly allow money-laundering prosecution separately from the predicate offence (see the box below).

Box 41. Autonomous nature of money laundering offence in Tajikistan and Ukraine

In Tajikistan, Article 262 of the Criminal Code specifically states (Note no. 8) that the criminal liability under the money laundering offence ensues regardless of whether the perpetrator was held criminally liable for the main (predicate) crime that resulted in the criminal proceeds.

In 2014, Ukraine adopted new wording for the AML/CFT Law, which entered into force in 2015. The new law introduced important changes in the Criminal Procedural Code (Article 216), providing that the investigation of money laundering should be carried out without prior or simultaneous bringing to liability of the perpetrator of the predicate offence in cases, in particular, when: 1) the predicate offence was committed outside of Ukraine, while the money laundering – on the territory of Ukraine; 2) the fact of the predicate offence was established by court in the relevant procedural decisions.

Source: IAP monitoring reports.

Armenia also demonstrated a positive example of approaching the autonomous nature of the money laundering offence (see the box below).

Box 42. Money laundering offence in Armenia

According to the Armenian authorities, in practice the laundering of criminal proceeds can be a stand-alone crime that is not dependent on a prior conviction for the predicate offence. A Methodological Guide on Peculiarities of Investigating Money Laundering Crimes developed by the working group of the Interagency Committee on Combating Money Laundering, Terrorism Financing and Proliferation Financing in the Republic of Armenia (Interagency Committee), supported this approach with a reference to the case law. In particular, the Guide states that “within the framework of the investigation of money laundering cases, a criminal case may be sent to the court whereby the predicate offence cannot be unequivocally proven, but the court may come to the conclusion about the existence of the predicate offence on the basis of presented facts and circumstances”.

Source: OECD/ACN (2017), Fourth monitoring round report on Armenia, p. 123.

The lack of autonomous nature of the money laundering offence also affects the enforcement practice. The number of cases investigated and prosecuted remains low in the region (see, however, examples of Kazakhstan and Uzbekistan where the number of cases was relatively high⁵⁵³).

The IAP fourth round monitoring reports recommended countries to:

- Establish directly in the criminal law the possibility of bringing to liability for money laundering without the need of prior or simultaneous conviction for the predicate act.
- To conduct training of investigators, prosecutors and judges on effective prosecution of money laundering cases, including on the autonomous nature of such liability according to international standards.
- Explain in the resolution of the Plenary Assembly of the Supreme Court and in other guidelines for the investigating authorities, the prosecutor's office and the courts the need to conduct a financial investigation and the autonomous nature of the crime of money laundering with a view to its more active use in practice.

Liability of legal persons

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

As was noted in the OECD/ACN Thematic Study on Corporate Liability, “it is not self-employed entrepreneurs, but mostly commercial entities that compete for public procurement contracts, apply for different licences and contest government authorities’ regulations or determinations in various supervision procedures. Large corporations, often having global operations, typically dominate transportation, construction, telecommunication, mining, energy, production of chemicals, and many other sectors of the economy. Therefore, it is a reality that high-level corruption in most cases serves the interests of legal persons. In such a world, it is not adequate for the criminal law to only reach the wrongdoing of natural persons.”⁵⁵⁴

The G20 High Level Principles on the Liability of Legal Persons for Corruption state that ensuring that a legal person, as well as the culpable individuals, can be held liable can have an important deterrent effect, motivating and incentivizing enterprises to make compliance a priority along with investing in adequate and effective internal controls, ethics and compliance programmes or measures to prevent and detect corruption. Fighting corruption would fall short if only the natural persons involved were punished while the legal person was exempt from sanctions.⁵⁵⁵

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

Analysis of implementation of the relevant standards can be found, in particular, in the UNODC Study on the state of implementation of UNCAC⁵⁵⁶ and OECD/WGB stocktaking report on the Liability of Legal Persons for Foreign Bribery.⁵⁵⁷

None of the aforementioned instruments require a specific form of liability for legal entities. They allow states to choose from criminal, administrative and civil liability. However, the CoE Convention and UNCAC impose a specific obligation to establish liability for criminal corruption offences as described by the conventions (under CoE Convention for active bribery, trading in influence and money laundering; under UNCAC, for all offences established in accordance with that Convention). This means that even if administrative corporate liability is established, it should apply to relevant criminal offences.⁵⁵⁸

The initial review and assessment within the Istanbul Action Plan recommended that countries consider how to introduce effective liability of legal persons for corruption-related criminal offences into their legal system. During the second round of monitoring, the IAP states were recommended to introduce corporate liability in line with international standards. The third-round reports mainly repeated these recommendations with a focus on the implementation where the law has already provided the corporate liability. The fourth-round monitoring aimed to assess the implementation of such recommendations, as well as to review in more detail the practice of the corporate liability enforcement.

There are overall three main forms of corporate liability in the ACN and OECD countries (see the table below):

- administrative punitive liability as a part of the general administrative offences act or a special law on administrative corporate liability (e.g. Bulgaria, Germany, Greece, Italy, Russia). This type of liability does not concern such administrative sanctions as debarment from the public procurement (hence the “punitive” element);

- criminal liability with relevant provisions included in the criminal code (e.g. Estonia, Georgia, Latvia, Lithuania, Moldova, Romania) or as a separate law (e.g. Albania, Croatia, Hungary, Montenegro, Serbia, Slovenia);
- quasi-criminal (*sui generis*) liability, which is not considered to be a criminal liability as such because the *mens rea* element is not attributed to legal persons, but it is applied for the commission of criminal offences by courts dealing with criminal matters according to the criminal procedure (e.g. Poland⁵⁵⁹, Slovakia until 2015⁵⁶⁰, Sweden⁵⁶¹).

The latter form of the corporate liability is chosen to avoid the main stumbling block in establishing corporate liability – the issue of attributing guilt to entities that by definition do not have psychological attitude to the committed act. The quasi-criminal liability model allows incorporating corporate sanctions in the criminal law without calling corporations direct perpetrators (subjects) of the crime.

Table 33. Provisions on corporate liability in international legal instruments

<p>OECD Instruments</p>	<p>Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997 Article 2: Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official. Article 3.2: In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.</p> <p>Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Annex to OECD Council Recommendation, 2009) <i>B) Article 2 of the OECD Anti Bribery Convention: Responsibility of Legal Persons</i> Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted. Member countries' systems for the liability of legal persons for the bribery of foreign public officials in international business transactions should take one of the following approaches: a. the level of authority of the person whose conduct triggers the liability of the legal person is flexible and reflects the wide variety of decision-making systems in legal persons; or b. the approach is functionally equivalent to the foregoing even though it is only triggered by acts of persons with the highest level managerial authority, because the following cases are covered: - A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official; - A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; and - A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures.</p>
<p>Second Protocol to the EU Convention on the Protection of the Financial Interests of the European Communities, 1997</p>	<p>Article 3 - Liability of legal persons 1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for fraud, active corruption and money laundering committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on — a power of representation of the legal person, or — an authority to take decisions on behalf of the legal person, or — an authority to exercise control within the legal person, as well as for involvement as accessories or instigators in such fraud, active corruption or money laundering or the attempted commission of such fraud. 2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of a fraud or an act of active corruption or money laundering for the benefit of that legal person by a person under its authority. 3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the fraud, active corruption or money laundering.</p>

	<p>Article 4 - Sanctions for legal persons</p> <p>1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:</p> <p>(a) exclusion from entitlement to public benefits or aid;</p> <p>(b) temporary or permanent disqualification from the practice of commercial activities;</p> <p>(c) placing under judicial supervision;</p> <p>(d) a judicial winding-up order.</p> <p>2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 3 (2) is punishable by effective, proportionate and dissuasive sanctions or measures.</p>
<p>Council of Europe Criminal Law Convention on Corruption, 1999</p>	<p>Article 1.d: ... "legal person" shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.</p> <p>Article 18 – Corporate liability</p> <p>1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <ul style="list-style-type: none"> – a power of representation of the legal person; or – an authority to take decisions on behalf of the legal person; or – an authority to exercise control within the legal person; <p>as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.</p> <p>2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.</p> <p>3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.</p> <p>Article 19 – Sanctions and measures</p> <p>... 2 Each Party shall ensure that legal persons held liable in accordance with Article 18, paragraphs 1 and 2, shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.</p>
<p>United Nations Convention against Corruption, 2003</p>	<p>Article 26 - Liability of legal persons</p> <p>1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.</p> <p>2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.</p> <p>3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.</p> <p>4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.</p>
<p>G20 High Level Principles on the Liability of Legal Persons for Corruption</p>	<p>Principle 1: A robust legal framework should be in place for holding legal persons liable for corruption, including domestic and foreign bribery, and related offences.</p> <p>Principle 2: Corporate liability legislation should capture all entities with legal rights and obligations.</p> <p>Principle 3: Liability of legal persons should not be restricted to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted.</p> <p>Principle 4: Liability of legal persons should not be limited to cases where the offence was committed by a senior manager.</p> <p>Principle 5: A legal person should not be able to avoid responsibility by using intermediaries, including other legal persons to commit a corruption offence on its behalf.</p> <p>Principle 6: Companies should not be able to escape liability by altering their corporate identity.</p> <p>Principle 7: Effective jurisdiction should be provided over legal persons.</p> <p>Principle 8: Legal persons should be subject to effective, proportionate, and dissuasive sanctions.</p> <p>Principle 9: The bribe and proceeds of corruption should be able to be seized and confiscated from legal persons or monetary sanctions of comparable effect should be applicable.</p> <p>Principle 10: Introducing additional measures against legal persons should be considered.</p> <p>Principle 11: International co-operation in corruption cases should be provided to the fullest extent possible where appropriate and consistent with a country's legal system, including with respect to proceedings involving legal persons.</p> <p>Principle 12: Where more than one country has jurisdiction over a legal person, countries should consult with each other.</p> <p>Principle 13: Development of effective internal controls, ethics, and compliance programmes or measures to prevent and detect corruption should be encouraged.</p> <p>Principle 14: Concrete incentives should be considered to foster effective compliance by businesses.</p>

Box 43. Imputation of guilt to legal persons

The usual objection against the introduction of corporate liability is the reference to the individual nature of criminal liability. Guilt in traditional understanding (psychological attitude to the committed) indeed cannot be attributed to legal persons, which are fictional entities. However, the legislation of some countries, which find it difficult to establish criminal liability of legal persons due to that reason, provides for the “guilt”-based liability of legal persons for administrative offences. For example, relevant code of **Tajikistan** establish that legal persons are liable for administrative offences (though not for corruption ones), which require establishment of guilt; legal persons enjoy the presumption of innocence guarantees. The standard of liability is that a legal person is subject to liability where it has been established that it had the possibility to observe requirements whose violation triggers administrative liability but did not take all possible measures to observe them. A similar model is used in the Code of Administrative Offences of **Russia**.

Other countries (like **Georgia**) provide for the corporate liability when relevant acts were directly committed by a company’s responsible (leading) persons or through the negligence of such persons (e.g. a lack of supervision or control). A crucial element that links personal wrongdoing to a corporate entity is that such offences have to be committed for the benefit of the legal person. In **Moldova**’s Criminal Code, legal entities are held liable for a criminal offence if one did not carry out or carried out improperly the direct dispositions of the law, which establish the obligations or interdictions regarding the performance of a certain activity and at least one of the following conditions existed: a) the deed was committed in the interest of the respective legal person by a natural person empowered with management positions, who acted independently or as part of a body of the legal person; b) the deed was admitted or authorized, or approved, or used by the person empowered with management positions; c) the deed was committed due to the lack of supervision and control on the part of the person empowered with management positions. The 2017 Code of the **Kyrgyz Republic** on Offences (Art. 18) explicitly stipulate that a legal person is considered guilty “if a natural person employed by it or a natural person performing certain actions in interests of the legal entity according to a contract was aware or could and should have been aware of the unlawful nature of its act (action or inaction).”

The models above provide for the objective imputation of guilt, or strict liability that does not require guilt as such, thus showing how traditional concepts of legal liability can be adjusted to accommodate new realities and establish effective corporate liability.

Source: IAP monitoring reports; OECD/ACN secretariat research.

Administrative corporate liability is considered to be weaker than criminal liability because it has a narrow set of available investigative tools (which generally excludes coercive and covert measures) as compared with those available under criminal procedures.⁵⁶² Also, administrative sanctions are usually not sufficiently dissuasive. For example, in its monitoring reports on **Kazakhstan**, the IAP found that administrative liability under the Kazakh Code of Administrative Offence was not effective and dissuasive for a number of reasons: the liability applies only for one offence (active bribery of a public official); the liability only arises if the offence was committed, authorised, endorsed by the managing body/person; the sanctions are neither dissuasive, nor proportionate (a fine up to USD 5,000 for the first offence, but dissolution for a repeated offence); the administrative liability is triggered if there are no elements of a criminal offence, while no criminal liability of a legal person is provided in the Kazakh law. Finally, the liability does not refer to criminal corruption offences as established by the international instruments while also not providing for similar administrative offences.⁵⁶³

Table 34. Form of corporate liability in ACN countries

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Criminal liability		Administrative punitive liability		Quasi-criminal liability
Albania	North Macedonia	Bulgaria		<i>Azerbaijan</i>
Bosnia and Herzegovina	Moldova	Russia		<i>Kyrgyzstan</i>
Croatia	<i>Mongolia</i>			Latvia
Estonia	Montenegro			<i>Ukraine</i>
<i>Georgia</i>	Romania			
Lithuania	Serbia			
	Slovenia			
13		2		4

Source: OECD/ACN (2015), *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, pp. 20-21, cited above; IAP monitoring reports.

There are four basic models of corporate liability:

1. The Identification model where the liability of a legal person can be triggered only by the offence committed by its controlling officer, i.e. the person belonging to company's top management or having representative powers.
2. The Expanded identification model where the liability of a legal person can also be triggered by management's failure to supervise its employees ('lack of supervision rule').
3. The Vicarious liability model where the liability of a legal person can be triggered by an offence of any employee acting within the scope of his employment and with the intent to benefit the corporation.
4. The Organisational model where the liability of a legal person is established through deficiencies in its corporate culture.

Among the ACN countries, the majority of States (14) use some version of the identification model (see the table below). Nine of them – Azerbaijan, Bosnia and Herzegovina, Georgia, Latvia, Lithuania, North Macedonia, Slovenia, Serbia and Ukraine – have explicitly established in their law that lack of supervision by the management can trigger the corporate liability as well. The Russian and Bulgarian systems of administrative punitive liability and the new criminal provisions on the criminal law measures applied to legal entities in Kyrgyzstan and criminal sanctions applied to legal persons under the criminal code of Mongolia follow the vicarious liability model. Romania is the only country where the corporate liability has been developed in the light of the organisational model.

Table 35. Models of corporate liability in ACN countries

Identification model	Expanded identification model	Vicarious model	Organisational
Albania	Azerbaijan	Bulgaria	Romania
Croatia	Bosnia and Herzegovina	Kyrgyzstan	
Estonia	Georgia	Mongolia	
Montenegro	Latvia	Russia	
	Lithuania		
	Moldova		
	North Macedonia		
	Serbia		
	Slovenia		
	Ukraine		

Source: OECD/ACN (2015), *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, pp. 20-21, cited above; IAP monitoring reports.

The OECD/ACN study on the corporate liability made the following policy recommendations with regard to the model of the liability:

- Ensure the effectiveness of the corporate liability regime, by covering the actions of lower level agents. The liability model combining vicarious liability (“*respondeat superior*”) with a due diligence defence is an effective tool in fighting corporate crime. It minimises the risk that corporate liability can be evaded because of a complex corporate structure, while enabling legal persons to defend themselves. It also motivates corporations to develop proper compliance rules and corruption prevention mechanisms.
- Alternatively, if the circle of agents who can trigger the corporate liability is restricted to “responsible persons” (*e.g.*, directors, managers, etc.), the following points should be ensured: a) the legal person should be liable when a responsible person’s lack of proper supervision made the commission of the offence possible; b) the definition of “responsible person” should be broad enough to cover all persons who are *de facto* authorised to act on behalf of the legal person, as well as persons who can be reasonably assumed to be authorised to act on behalf of the legal person or who are effective controllers of the legal person (such as a “shadow”, a directing mind, or a beneficial owner). The definition should not be restricted to formal appointments defined by the business law or the company’s statutes.⁵⁶⁴

Table 36. Liability of legal persons for corruption offences in ACN countries

Country	Liability, Year of introduction /Type (Legal basis)	Liability for lack of supervision	Defence of preventive measures	Monetary sanctions	Other sanctions
Albania	Criminal, 2007 (Criminal Code, Law on Responsibility of Legal Persons)	○	○	Fine up to about EUR 360,000.	Dissolution; suspension or prohibition of certain activity; submission to administrative control; debarment from public procurement; exclusion from receipt or use of licences, authorisations, concessions or subsidies; publication of the judgment; confiscation.
Armenia	<i>Absent</i> (draft Criminal Code provide for liability of LPs)	-	-	-	-
Azerbaijan	Quasi-criminal, "criminal law measures", 2012 (Criminal Code)	●	○	Fine from about EUR 26,000 to EUR 106,000 or of one to five times the damage inflicted (income obtained) as a result of commission of the crime.	Confiscation; deprivation of the right to engage in certain activities; dissolution.
Bosnia and Herzegovina	Criminal (Criminal Codes)	●	○	Fine from EUR 2,550 to EUR 2.5 million	Dissolution; confiscation; debarment from public procurement; publication of the judgment.
Bulgaria	Administrative, 2005 (Law on Administrative Offences and Sanctions)	●	○	If the advantage that the LP has or would obtain as a result of the crime is in the nature of "property", then fine is up to approx. EUR 500,000, but not less than the value of the advantage. If the advantage is not in the nature of "property" or if the value of the advantage cannot be ascertained, the fine is up to approx. 500,000.	Confiscation
Croatia	Criminal, 2003 (Law on Responsibility of Legal Entities for Criminal Offences)	○	○	Fine from EUR 650 to about EUR 680,000.	Dissolution; professional bans; bans on transactions with beneficiaries of the national or local budgets; ban on obtaining licences, authorisations or concessions; publication of the judgment; confiscation.
Czech Republic	Criminal, 2012 (Act on Criminal Liability of Legal Persons and Proceedings against Them)	●	○	Fine from EUR 800 to EUR 58.6 million.	Debarment from public procurement, prohibition from receiving public endowments and subsidies; dissolution; prohibition of

Country	Liability, Year of introduction /Type (Legal basis)	Liability for lack of supervision	Defence of preventive measures	Monetary sanctions	Other sanctions
					activity; publication of a judgment; confiscation.
Estonia	Criminal, 2002 (Criminal Code)	○	○	Fine from 4,000 to EUR 16 million	Confiscation; debarment from public procurement
Georgia	Criminal, 2006 (Criminal Code)	●	○	Minimum fine of EUR 44,000, no upper limit of fine.	Dissolution; deprivation of the right to exercise an activity; confiscation of property.
Hungary	Criminal, 2004 (Act on Measures Applicable to Legal Persons under Criminal Law)	●	○	Minimum fine of EUR 1,585, no upper limit of fine.	Winding up the LP; limiting the LP's activities; debarment from public procurement. Confiscation
Kazakhstan	Absent (draft amendments in Criminal Code, later withdrawn)	-	-	-	-
Kyrgyzstan	Quasi-criminal, "criminal law measures", 2019 (Criminal Code)	○	○	Fine from EUR 2,300 to 17,700	Restriction of rights: prohibition to carry out certain activities, take part in public tenders, receive credits, tax breaks, subsidies from the state budget. Dissolution of the legal entity. Confiscation.
Latvia	Quasi-criminal, "coercive measures applicable to legal persons", 2005 (Criminal Code)	● (since 2013)	○	From 10 to 100,000 times the minimum monthly wage (in 2015: from EUR 3,600 to EUR 36 million).	Liquidation; limitation of rights; confiscation of property. Debarment from public procurement.
Lithuania	Criminal (Criminal Code)	●	○	Fine from EUR 38 to EUR 1.9 million.	Restriction of operation; liquidation. Confiscation
Moldova	Criminal, 2003 – for a number of offences, 2012 – for corruption offences (Criminal Code)	○	○	From 1,500 to 60,000 of "standard units" (1 unit equals 50 Moldovan Leu or EUR 2.5; i.e. from EUR 3,750 to EUR 150,000).	Deprivation of the right to engage in certain activities; dissolution.
Mongolia	Criminal, 2016, for active bribery and money laundering	○	○	Fine from EUR 670 to EUR 133,000	Deprivation of the right to engage in certain activities

Country	Liability, Year of introduction /Type (Legal basis)	Liability for lack of supervision	Defence of preventive measures	Monetary sanctions	Other sanctions
Montenegro	Criminal, 2007 (Criminal Code and Law on Liability of Legal Entities for Criminal Offences)	○	○	<p>A fine from two times the amount of the caused damage or acquired illegal material benefit to 100 times the amount of the caused material damage or acquired illegal material benefit.</p> <p>If no damage was caused or no illegal material benefit was acquired through the criminal offence, or if it is difficult to set the amount of such the damage or material benefit within a reasonable period of time, given the nature of the committed criminal offence as well as other circumstances, the court shall impose the fine in the amount from EUR 1,000 to EUR 5 million.</p>	Dissolution of legal entity; suspended sentence; and as a security measures - design and implementation of a program of effective, necessary and reasonable measures; confiscation of objects; publication of the judgment; prohibition to conduct certain business or other activities.
Poland	Quasi-criminal, 2002 (Law on Liability of Collective Entities for Acts Prohibited under Penalty)	●	○	Fine from around EUR 242 to EUR 1.21 million (but no more than 3% of the revenue generated in the tax year when the offence which is a ground for the LP's liability was committed).	Bans on activity; confiscation.
Romania	Criminal, 2006 (Criminal Code)	●	○	Fine from EUR 4000 to EUR 334,000	<p>Dissolution; suspension of the activity from 3 months to 3 year, or suspension of one of the activities related to the offence committed; closing of a workstation from 3 months to 3 years; ban on the participation to public procurement procedures for a period from 1 to 3 years; placement under judicial supervision; publication of the conviction decision.</p> <p>As a safety measure, confiscation of the proceeds of crime and extended confiscation can be ordered.</p>
Russia	Administrative, 2011 (Code of Administrative Offences)	○	○	<p>For bribes less than EUR 13,500 - fine up to 3 times the amount of bribe (but not less than EUR 13,500); for bribes from EUR 13,500 to 272,000 – fine up to 30 times the amount of bribe (but not less than EUR 272,000); for bribes of more than EUR 272,000 – fine up to 100 times the amount of bribe (but not less than EUR 1,358,000).</p> <p>No upper limit of fine.</p>	Confiscation of bribe.

Country	Liability, Year of introduction /Type (Legal basis)	Liability for lack of supervision	Defence of preventive measures	Monetary sanctions	Other sanctions
Serbia	Criminal, 2008 (Criminal Code, Law on the Liability of Legal Entities for Criminal Offences)	●	○	From EUR 9,000 to EUR 4.4 million.	Prohibition of certain registered activities or operations; confiscation; publication of the judgment.
Slovak Republic	Quasi-criminal, "protective measures" to LPs, 2010 (Criminal Code) A new Act on Criminal Liability of Legal Persons, 2015	●	○	Under 2010 law: Confiscation of all property of the LP and forced bankruptcy or a fine from EUR 800 to EUR 1.66 million. Under 2015 law: Fine up to EUR 1.6 million.	Under 2015 law: dissolution of the legal person, confiscation of assets, ban on trade or other activities requiring an authorization or license, temporal ban on participation in public procurement tenders, disqualification from the ability to receive grants, subsidies or other benefits such as contributions from EU structural funds, publication of a sentencing judgment.
Slovenia	Criminal, 1999 (Legal Persons' Liability for Criminal Offences Act)	●	○	Amount of fine depends on sanctions for the natural person under relevant offence: - in case where imprisonment up to three years is prescribed for natural person, fine from EUR 10,000 to EUR 500,000 or – if material damage was caused or property benefit was gained through criminal offence – up to 100-times the amount of damage caused or property benefit obtained; - in case where imprisonment more than three years is prescribed for natural person, fine from EUR 50,000 EUR to 1 million or – if material damage was caused or property benefit was gained through criminal offence – up to 200-times the amount of damage caused or property benefit obtained; instead of fine confiscation of property can be applied to the legal person.	Dissolution; debarment from public procurement; exclusion of from officially supported export credits (for foreign bribery).
Tajikistan	Absent (administrative liability of LPs is provided in the Code of Administrative Offences but not available for bribery offences)	-	-	-	-

Country	Liability, Year of introduction /Type (Legal basis)	Liability for lack of supervision	Defence of preventive measures	Monetary sanctions	Other sanctions
North Macedonia	Criminal, 2004 (Criminal Code)	●	○	Fine from EUR 1,600 to EUR 478,500.	Temporary or permanent ban on LP to perform certain professional activities; dissolution. Confiscation.
Turkey	Administrative, 2009 (Code of Misdemeanours). Also "special security measures" to LPs under Criminal Code "in relation to offences committed for the benefit of such entities."	○	○	Fine from approx. EUR 4 830 to 966 000 (in 2014).	Debarment from public procurement.
Ukraine	Quasi-criminal, "measures of a criminal law nature" applied to LPs, 2014 (Criminal Code)	●	○	Fine in the amount twice the undue benefit received. If no benefit was received or if it is not quantifiable, a fine from about EUR 3,000 to about EUR 45,000 (depending on the gravity of offence)	Confiscation of proceeds and instrumentalities of corruption offences (but only in the proceedings against natural persons)
Uzbekistan	Absent (draft new Criminal Code includes criminal law measures applied to LPs)	○	○	-	-

● Yes ○ No

Note: LPs – Legal Persons.

Source: OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, Annex 2; IAP monitoring reports; research by the OECD/ACN Secretariat.

Since the previous monitoring round two more IAP countries have introduced corporate liability for corruption – **Kyrgyzstan** (2019) and **Mongolia** (2016). Three other IAP have introduced such liability earlier (**Georgia, Azerbaijan** and **Ukraine**). New draft Criminal Code of Uzbekistan developed in 2019 includes provision on the criminal measures to be applied to legal entities.

Georgia was the first IAP country to introduce the liability of legal persons in line with international standards. In 2006, Georgia amended its Criminal Code to establish criminal liability of legal persons for money laundering, private sector bribery and active bribery in the public sector where the act was “committed by a responsible person⁵⁶⁵ on behalf of or through a legal person and/or for the benefit of it”. In 2008, the Criminal Code was further amended to add corporate liability for the lack of supervision or control on behalf of the ‘responsible person’, which led to the commission of the offence.

In 2012, **Azerbaijan** passed amendments in the Criminal Code establishing criminal liability of legal persons (see the box below). The corporate liability could be applied to legal persons for the lack of the procedural rules. The IAP fourth round monitoring report recommended Azerbaijan to introduce without delay criminal procedure provisions for the enforcement of the criminal liability of legal persons. Such rules were finally introduced by amendments in the Criminal Code and Criminal Procedure Code that entered into force in December 2016. Further amendments were adopted in 2018 to the Code of Execution of Punishments, including a new chapter on the execution of criminal-law measures applied to legal entities.

Box 44. Liability of legal persons in Azerbaijan

In 2012, Azerbaijan introduced amendments in the Criminal Code that established liability of legal persons for a number of offences, including corruption. According to new Chapter 15-2 of the Criminal Code, “criminal law measures” may be applied to legal persons for commission in its favour and interests of a crime by the following natural persons: official authorised to represent the legal person; official authorised to make decision on behalf of the legal person; official authorised to oversee the activity of the legal person; and any employee of the legal person when the offence was committed as a result of failure to oversee such employee by the mentioned officials.

The following “criminal law measures” are applicable to legal persons: fine; special confiscation; deprivation of the legal person of the right to engage in certain activity; dissolution of a legal person. The fine is provided in the amount of 50,000 to 200,000 Manats □about EUR 26,000 to 105,00 in 2019□ or at the rate of one to five times of the damage inflicted (income obtained) as a result of the commission of the crime. Fine applied to a legal person shall not exceed in value more than half of the property belonging to the legal person.

Case specific sanctions will depend on the following circumstances: nature and degree of public endangerment; size of the gain of the legal person as a result of crime commission as well as nature or degree of realization of its interests; number of perpetrated offences and gravity of their consequences; contribution by the legal person to the clearance of crime, dismantling the participants thereof, as well as tracing and discovering of the crime proceeds; voluntary compensation or settlement of the material and psychological damage, measures taken by the legal person to reduce the damage inflicted to the victim; characteristics of the legal person, including whether “criminal law measures” have been previously applied to it, benevolent or other publicly useful activities it was involved in.

Source: information of the Government of Azerbaijan, IAP monitoring reports on Azerbaijan.

Importantly, according to the new provision of CPC of Azerbaijan in case of termination of the criminal case against a natural person on certain grounds (when a natural perpetrator cannot be prosecuted), if the collected evidence is considered sufficient for application of criminal-law measures in respect of the legal entity the investigator adopts a decision on sending the case to the court with indictment formulated in accordance with the requirements of legislation.⁵⁶⁶

Ukraine introduced a *sui generis* liability of legal persons for criminal corruption offences in a separate law in 2009; however, the law was abolished in 2011, having been effective only for five days. In 2013, the new amendments in the Criminal Code of Ukraine introduced “measures of criminal-law nature applicable to legal persons”. The amendments were supposed to enter into force in September 2014, but then the date was changed, and the amendments became effective in April 2014 (the provisions were again changed in May 2014). For description see the box below. No amendments in the legislation were introduced since the previous monitoring round.

Box 45. Liability of legal persons in Ukraine

In 2014, Ukraine enacted a quasi-criminal corporate liability for corruption: relevant provisions are included in the Criminal Code, but legal persons are not considered as subjects of criminal offences on par with natural persons, instead “measures of criminal law nature” are applied to them in the following cases:

- commission by its authorised person on behalf and in the interests of the legal person of any of the designated crimes (active bribery of a public official, active bribery of official of the private law entity or a person providing public services, trafficking in influence);
- failure to carry out duties assigned to its authorised person by law or statutory documents with regard to taking measures to prevent corruption, which resulted in commission of any of the designated crimes.

An “authorised person” of a legal entity means service persons of a legal person, as well as other persons who according to the law, statutory documents of the legal person or contract have the right to act on behalf of the legal person. The above-mentioned corruption offences are considered committed in the interests of legal persons if they resulted in obtaining by the legal person of undue benefit or created conditions for obtaining such benefit or were aimed at avoiding liability provided for in the law.

For corruption offences, only one type of “measures of criminal nature” – a fine – applies to legal entities; other sanctions – confiscation and liquidation – are not applicable for corruption crimes. The amount of fine was originally established in absolute terms depending on the gravity of crime committed by the “authorised person” and ranged from about EUR 4,400 to EUR 67,000. It was revised in 2014 establishing as the main rule for sanctioning that a fine is applied in the amount twice the “illegally obtained unlawful benefit”; if the benefit cannot be calculated or was not obtained – then a range of fines is applied depending on the gravity of offence (from about EUR 3,000 to 45,000 according to mid-2019 currency exchange rate).

Source: OECD/ACN (2015), Third monitoring round report on Ukraine, pp. 50-53.

The new Criminal Code of **Mongolia**, enacted in 2016, provided that, when specified in the Special Part of this code, criminal liability can be imposed on a legal entity. Corporate liability is expressly mentioned in Article 22.5, incriminating bribe giving, and Article 18.6 on money laundering. Article 22.5 states that “If this crime is committed in the name of or on behalf of a legal person, the legal person’s right to conduct certain types of operation shall be dismissed and be fined amount of 20000 400000 units equal to tugriks”. Translated in local currency, the monetary sanction is between 2.000.000 – 400.000.000 tugriks, which is about EUR 670 to EUR 133,000. Art. 5.1.5 of the Criminal Code specifies that legal persons are sanctioned based on the characteristics of the crime, as well as the level of harm and circumstance of the crime.⁵⁶⁷

Kyrgyzstan introduced liability of legal entities for corruption offences in 2019 with the enactment of the new criminal code. A legal entity is subject to compulsory criminal enforcement measures if it has committed acts qualified under specific CC articles, in particular: Articles 215 (Legalisation (laundering) of illicit proceeds), 233 (Abuse of authority in a commercial or other organisation), 234 (Breach of the procedures for public bidding, auctions or tenders), 237 (Commercial bribery), 238 (Unlawful taking of remuneration by an employee), 327 (Intermediation in bribery), 328 (Bribe giving). Under the new Criminal Code of Kyrgyzstan, the legal entity is subject to criminal enforcement measures if the act has been committed “in the name of or through the legal entity by an individual in the interests of such legal entity, irrespectively of having this individual prosecuted or not”.

Several other IAP countries have contemplated the introduction of corporate liability for corruption. In **Kazakhstan**, a draft law to amend the Criminal Code was adopted in the first reading in 2010, but it was later withdrawn, and no new proposals were made. In 2017-2018, **Armenia** drafted a new Criminal Code which includes provisions on the criminal liability of legal entities. Similarly, in 2019 **Uzbekistan** started drafting a new criminal code that will include criminal law measures applicable to legal persons.

Autonomous liability

One of the main issues in establishing an effective corporate liability is ensuring its autonomous nature. The autonomy of corporate liability includes two dimensions.⁵⁶⁸ First, corporate liability should not be dependent on prosecution and conviction of the natural person who committed the criminal act. Second, there should be a possibility of separate proceedings with regard to the natural person and the legal entity.

The Good Practice Guidance for implementing the OECD Anti-Bribery Convention⁵⁶⁹ states that the liability of legal persons should not be “restrict[ed] ... to cases where natural persons who perpetrate offences are prosecuted or convicted”. According to the OECD Working Group on Bribery, “a regime that requires the conviction and punishment of a natural person fails to address increasingly complex corporate structures, which are often characterised by decentralised decision-making.”⁵⁷⁰ The conviction of a natural person as a prerequisite to the liability of a legal person also prevents the application of effective, proportionate and dissuasive sanctions to legal persons. Back in 1988, the Council of Europe’s Committee of Ministers recommended that its Member States should hold enterprises liable, “whether a natural person who committed the acts or omissions constituting the offence can be identified or not”.⁵⁷¹

Similarly, in its evaluations GRECO, has expressed a similar concern about liability regimes that require the identification of “a physical perpetrator” before holding an enterprise liable because “in large corporations, the sheer potential for persons being responsible for only a fraction of the completed offence as well as collective decision-making processes could make it impossible to identify with certainty a particular natural person as a suspect and/or prosecute him/her”.⁵⁷²

According to the G20 High Level Principles on the Liability of Legal Persons for Corruption, liability of legal persons should not be restricted to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted. Corporate liability regimes should allow for proceedings to take place against legal persons irrespective of any proceedings against any natural person or outcomes of such proceedings. Corporate operations and decision-making are becoming increasingly diffuse and complex, which can pose serious difficulties in identifying specific individuals involved in corporate wrongdoing.⁵⁷³

Therefore, any legal regime that makes the conviction of the natural person a necessary condition for proceedings against the legal person would contradict international standards. On the contrary, the regime with the highest level of autonomy (which would, arguably, also be the most effective) would be the one that does not even require the identification of the perpetrator.

A good practice in this regard is the Criminal Code of **Georgia** (Art. 107-1), which provides that a legal person shall be subject to criminal responsibility if a crime is committed on its behalf, for its benefit and/or through it, whether the perpetrator is identified or not. In **Latvia**, a separate proceeding against a legal

person can be initiated “if the circumstances have been determined that do not allow ascertaining or holding criminally liable a concrete natural person.”⁵⁷⁴ Fully autonomous liability should be possible also in **Romania**, because corporate liability is not necessarily linked to the responsibility of any one person under the organisational model.⁵⁷⁵ Finally, to take an example from the Working Group on Bribery, **Italy**, under Article 8 of Legislative Decree No. 231/2000, provides for corporate liability when either (a) the offender has not been identified or is not chargeable, or (b) the offence extinguishes for a reason other than amnesty.⁵⁷⁶

Such an approach makes corporate liability possible in cases where it was established that a crime has been committed in the interest of the corporation, but it is impossible to ascertain the full course of events. This could occur, for instance, where the criminal decision was made by the management board, but it remains unclear which members participated in the decision. Such an approach also adapts to large corporations, in which policies or decisions are often, due to their complex structure and delegation of powers, the product of several individuals acting collectively. Therefore, it may happen that no human being would qualify as a perpetrator when analysing a particular case from the perspective of criminal law.⁵⁷⁷

Other ACN countries provide for a lower level of autonomy of corporate liability. Some require – in one way or another – the identification of the individual perpetrator. For instance, a legal person can be declared to be liable even if the individual perpetrator “is not criminally liable” (**Bosnia and Herzegovina, Bulgaria, North Macedonia**), “has not been convicted” (**Montenegro, Russia**), “is not guilty” or acted “under the force or threat by legal person” (**Slovenia**). All these provisions presume that the responsible person has been identified and, at least to some extent, investigated.⁵⁷⁸

In **Serbia, Azerbaijan and Croatia**, the principle of autonomy is established through procedural rules. According to Serbian law, a legal person shall be held accountable “even though criminal proceedings against the responsible person have been discontinued or the act of indictment refused”. The Criminal Code of Azerbaijan establishes that the “termination of criminal prosecution in respect of the physical person shall not prevent application of the criminal law measure to the legal person.”⁵⁷⁹ In Croatia, the law provides an exceptional possibility of initiating and conducting the proceeding against the legal person “if no criminal proceedings may be initiated or conducted against the responsible person for legal or any other reasons whatsoever.”⁵⁸⁰

The quasi-criminal form of corporate liability may be problematic in terms of its autonomous nature, unless there are explicit provisions that separate the investigation and prosecution of the legal entity from those against the natural person offender. For example, while it is not directly stated in the new provisions on corporate liability in the Criminal Code of **Ukraine**, it is clear that corporate liability is linked to that of the “authorised person” who committed the offence. The very model used (“measures of a criminal nature”) presumes that such measures are secondary to individual liability. This model requires the “commission of the crime” by the authorised person on behalf and in the interests of the legal entity. The court, when applying such measures to a legal entity, must take into account, *inter alia*, the gravity of the crime committed and the degree of the perpetrator’s criminal intent. Under the CPC, the proceedings with regard to the legal entity are carried out simultaneously with the proceedings concerning natural person and should be closed if criminal proceedings against the natural person have been closed or relevant person was acquitted.⁵⁸¹

Similar issues were established regarding the new regime of corporate liability in **Kyrgyzstan**. The fourth-round monitoring report noted that having a quasi-criminal model of liability where the legal entity is not the offender from the outset links enforcement of measures against the legal entity with the liability of the individual. This model of liability therefore requires clearer safeguards to its autonomous nature.

The 2017 CC stipulates that the legal entity shall be subject to criminal enforcement measures “no matter whether such individual has been prosecuted or not”. However, provisions in the new CPC link procedurally the prosecution of the legal entity with the criminal proceedings against the individual. For

example, under one of the CPC provisions, the proceedings in the criminal enforcement measures against the legal entity shall be conducted as part of the pre-trial process with respect to the suspect. On the other hand, according to another provision, when the case against the accused is dismissed or suspended as the whereabouts of the accused are unknown, the proceedings in the criminal enforcement measures against the legal entity must be considered by the court on the merits. The monitoring report did not find these provisions sufficient to ensure autonomous nature of the liability.

The Kyrgyz CPC provisions require that the individual be identified and charged; hence prior to that stage of the criminal process, independent prosecution of the legal entity is impossible. But in practice there could be situations when it is impossible to identify a specific individual responsible for the crime, although it may be known, e.g., that the bribe giving in the interests of the legal entity did take place. Or take another example: the company's collective governing body decided to give a bribe, but it was not handed over and it is impossible to establish who of the members of that body has made that decision.⁵⁸²

An example of regulation that separates the two proceedings can be found in **Latvia**, where the Criminal Procedure Law specifies that the proceedings for the application of coercive measures to the legal person may be separated in the following cases: 1) criminal proceedings against a natural person are terminated for non-exonerating reasons; 2) if the circumstances have been determined that do not allow to ascertain or hold criminally liable a concrete natural person, or the transfer of the criminal case to court is not possible in the near future (in a reasonable term) due to objective reasons; 3) in the interests of solving in timely manner criminal-legal relations with a natural person who has rights to defence; 4) it is requested by a legal person's representative.⁵⁸³

In conclusion, there should be no general rule requiring that the legal person and the individual perpetrator have to be investigated and tried jointly, as this unreasonably complicates the proceedings in a complex case. It should be possible to investigate, prosecute, convict and punish a legal person regardless of what procedural decision has been taken with respect to the individual perpetrator. In such separate proceedings, all investigation techniques should be available.⁵⁸⁴

Legal entities covered

According to international standards, the liability should cover the broadest possible range of entities, not only those that have legal personality, but also funds, associations, partnerships and other unincorporated entities lacking legal personality. As long as such entities have the legal capacity to perform legal actions, conclude agreements, etc., they should be liable for corruption. The liability should cover both commercial and non-profit organisations, private companies as well as enterprises that are wholly or partially owned or controlled by states or municipalities. Many ACN countries exclude from the scope of liability public authorities and international organisations, which is an acceptable exception.

“In the interests”

Corporate liability should be triggered only when the underlying offence was committed in the interests of the entity; the legal person is not liable for the actions of its agents that are committed solely in their own private interests. Usually, this connection is established by the interest criterion, which means that the acts of a representative can be attributed to the legal person only if they have been committed, at least in part, in the interest of the legal person. The ACN countries use different wording (“on behalf of”, “in the name of”, “in the interest of”, “for the benefit of”, “for the sake of”, “in favour of”, etc.), but “in the interest of” or “for the benefit of” are the most adequate ones, as others may excessively narrow down the liability.⁵⁸⁵ To cover affiliated entities, it is important to ensure that a legal person can be held liable not only for offences that were committed in its interest, but also for offences that its relevant agent committed in the interest of any other entities that are associated or related to the legal person.

Box 46. Standard of corporate liability in Kyrgyzstan

Under CC of Kyrgyzstan, the legal entity is subject to criminal enforcement measures if provided the act has been committed “in the name of or through the legal entity by an individual in the interests of such legal entity, irrespectively of having this individual prosecuted or not”. The CC links liability with actions of any individual, not such legal entity’s employee or agent. The monitoring report found this to be an uncommon approach. On the one hand, it helps to avoid problems with the narrow definition of the “responsible person” whose actions lead to the corporate liability, but on the other, it may broaden unreasonably the liability of the legal entity.

It is compensated by another mandatory element: the act must have been committed “in the name of or through the legal entity”. However, this element sets the liability threshold too high: the element “in the name of” requires that the individual, at the time of commission, clearly identified his or her actions as actions “in the name of” the organisation; “through the legal entity” is too vague as a definition which, too, may unreasonably narrow the liability down. The report therefore recommended either the mandatory criterion of the act committed “in the name of or through the legal entity” be excluded or made an alternative to the criterion “in the interests of”. It also advised to narrow the circle of persons whose acts may lead to corporate liability down to the organisation’s employees and persons authorized to act on behalf of the legal entity (or who may be reasonably believed to be authorized to act on behalf of the legal entity) or who effectively control such legal entity (e.g. its beneficiary owner).

Source: OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 177.

Sanctions

Legal persons should be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions. The effectiveness and dissuasiveness often depend on the amount of monetary measures imposed on the legal person, which may include a fine and the confiscation of the profit or proceeds obtained as a result of the offence. Monetary sanctions should be sufficiently severe to have an impact on large corporations. According to the OECD WGB, to ensure a level playing field of commerce and prevent “regulatory arbitrage” monetary sanctions have to be compared on an international level. The OECD WGB considered maximum sanctions of EUR 1 million (**Germany, Italy**, Phase 2 reports), EUR 1,660,000 (**Slovakia**, Phase 3 report) and EUR 700,000 (**Austria**, Phase 2 report) to be insufficient. On the other hand, the OECD WGB found the maximum criminal sanctions of about EUR 16 million (**Estonia**, Phase 2 report) and EUR 10 million (**Belgium**, Phase 2 report) to be sufficient. It should be kept in mind that confiscation of the bribe and its proceeds was also available in both of the above cases. In the ACN countries, the minimum fine ranges from EUR 38 (**Lithuania**) to EUR 1,000 (**Montenegro**) and the maximum from EUR 17,700 (**Kyrgyzstan**) to EUR 36 million (**Latvia**). See table above for details on other countries.

A more progressive approach is to set the monetary sanction in proportion to the bribe involved, damaged caused or other value (e.g. the company’s turnover). Some countries have a default fine, which is set at a fixed amount or range, as well as an alternative, proportionate sanction, which can be imposed if the circumstances call for a higher sanction. In addition, several ACN countries distinguish between offences that result in a property benefit or material damage and crimes that cause harm whose value cannot be ascertained. In the first case, the fine depends on the amount of the benefit gained or damage caused, while the punishment for the latter crimes is determined by a fixed sum of money.⁵⁸⁶ See table below for details on the combined system of fines.

Table 37. Mixed (fixed/proportionate) corporate fines for corruption offences in ACN and OECD countries

Country	Minimum (EUR)	Maximum (EUR)	Alternative minimum	Alternative maximum	
Azerbaijan	26 000	106 000	Or	The value of the illicit benefit obtained or damage inflicted	5 times the value of the illicit benefit obtained or damage inflicted
Australia	-	9 180 000			Three times the benefit received by the LP (or affiliated person) directly or indirectly and which reasonably related to the criminal conduct – if the court can establish the amount of the benefit; if the court cannot establish the amount of such benefit – 10% of the LP's annual turnover received during previous 12 months before the offence was committed
Brazil	2 000	20 000 000	Or		Fine from 0.1% to 20% of the annual gross revenue of the legal person. The fine may not be lower than the benefit received if it can be quantified. If the gross revenue criterion may not be used, then the fixed scale of fines is used (from EUR 2,000 to 2 million)
Bulgaria	-	500 000	Or	Not less than the value of the benefit obtained (if benefit is of financial nature)	EUR 500 000
Hungary					Up to three times the benefit received from the crime
Israel	-	443 000			Up to four times the benefit received from the crime
North Macedonia	1 620	972 500	But		Not more than 10 times the value of the illicit benefit or damage
Montenegro	1 000	5 000 000	Or	Two times the value of the illicit benefit or damage	100 times the value of the illicit benefit or damage Fixed amounts of fines are used if no material damage was caused or no illicit material gain was obtained, or if it is difficult to determine the amount of such damage or material gain within a reasonable period of time due to the nature of the criminal offence committed and other circumstances. Amount of the fine (either using fixed sums or multiplier of the benefit) is linked to the gravity of the underlying offence.
Russian Federation	13 500	-		Three times the value of the bribe	100 times the value of the bribe
Slovenia	10 000	1 000 000	Or	-	200 times the value of the illicit benefit or damage
Spain	21 000	9 000 000	Or		From 3 to 5 times the proceeds obtained, if the amount of proceeds is higher than the fixed amount of fines

Country	Minimum (EUR)	Maximum (EUR)	Alternative minimum	Alternative maximum
Ukraine	3 000	45 000	Or	2 times the value of the illicit benefit (The fixed amount fines are used only when the benefit was not received or is not quantifiable)
USA	USD 500 000	USD 2 000 000	Or	<p>A legal person violating the FCPA's foreign bribery provisions is punishable by a criminal fine of USD 2 million or twice the gross pecuniary gain or loss resulting from the offense whichever is greatest. The legal person may also be subject to a civil penalty of up to USD 10 000</p> <p>Wilful violation of other FCPA provisions (including those on books and records and/or internal controls) and wilfully and knowingly making a statement that was false or misleading with respect to a material fact is punishable by up to USD 25 million for legal persons. As with foreign bribery offences, the maximum fine may be increased to twice the pecuniary gain or loss resulting from the offence. The gain or loss is also interpreted as the amount of the bribes that were received by any persons as a result of the offence or, if they can be calculated, the benefits secured as a result of the offense (such as profits), whichever is greater. The legal person can also be subject to a civil penalty of up to USD 250 000 or the gross pecuniary gain, whichever is greatest.</p>

Source: OECD/ACN (2015), *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, p. 36; IAP and OECD/WGB monitoring reports.

With regard to **Azerbaijan**, the IAP report stated that, in theory, fines that can be calculated up to five times the damage caused, or the income obtained, could establish an effective and dissuasive deterrent.⁵⁸⁷

In **Georgia**, the lower limit is also determined by a fixed sum of money (EUR 44,000). However, the law does not set a maximum fine, but provides general guidelines on how the maximum should be calculated by the court (“taking into consideration the gravity of crime, the benefit obtained from crime and the material condition of legal person, which shall be defined based on its property, income and other circumstances”).⁵⁸⁸

When the monetary fine is calculated by multiplying the value of the benefit obtained by the legal person, such “benefit” should be understood broadly to include the value of the contract obtained as result of bribery, tax relief, subsidies, licenses, etc.⁵⁸⁹ Also the calculation of the fine should not be limited to the benefit “obtained”, because it would exclude offences of offer/promise of the bribe and their acceptance: it should also cover the benefit that could have been obtained, if it can be calculated.⁵⁹⁰

The fine is only one type of monetary sanction; the confiscation of the instrumentalities and proceeds of the offence is another important monetary sanction. Effective and robust confiscation can complement the fine and make the sanctions effective overall. For more details on what effective confiscation measures should include, see the section below on “Confiscation”.

In addition to monetary sanctions, countries often employ various restrictions of the company’s rights as criminal sanctions or additional administrative consequences of the criminal sanctions. Below is the list of possible additional sanctions used in the ACN countries⁵⁹¹:

1. A prohibition on obtaining permits, licenses, concessions, authorisations or any other right prescribed by a special law;
2. A prohibition on participating in public bidding procedures or on the awarding of public procurement agreements and agreements for public-private partnerships;
3. A prohibition on establishing new legal entities;
4. A prohibition on using subsidies and other favourable credits;
5. The revocation of a permit, license, concession, authorisation or other right regulated by a special law;
6. The temporary or permanent prohibition on conducting certain activity.
7. The development and implementation of a programme of effective, necessary and reasonable measures;
8. The closing of a legal person’s branch office;
9. Placing the legal entity under judicial supervision;
10. The prohibition of transactions with the beneficiaries of the national or local budget;
11. The prohibition of trading with securities belonging to the legal person.

Exemption from liability

Corporate liability for the lack of supervision or control committed by leading persons (i.e., persons with the highest level of managerial authority) promotes implementation in companies of adequate internal control, ethics and compliance programmes or measures.⁵⁹²

Compliance system can be used as an element that negates the offence as such. For example, in **Chile**, prosecutors “must prove that a company failed to properly design and implement an offence prevention model”.⁵⁹³

Existence of such internal control systems may be established as a defence exempting company from liability for actions of its employees. For example, in **Italy** a legal person is not liable for an offence committed by a person holding a managing position or persons who are under their direction or supervision if it proves that before the offence was committed (i) the body’s management had adopted and effectively implemented an appropriate organisational and management model to prevent offences of the kind that occurred; (ii) the body had set up an autonomous organ to supervise, enforce and update the model; (iii) the autonomous organ had sufficiently supervised the operation of the model; and (iv) the natural perpetrator committed the offence by fraudulently evading the operation of the model.

Following new amendments introduced in Italy in 2018, if the legal person actively collaborated during the investigation to secure the evidence of the crime, to identify other offenders involved, to ensure the seizure of the transferred benefits, and has eliminated the organisational deficiencies that led to the crime through the adoption and implementation of a compliance and ethics program to prevent further crimes of the kind to occur before the verdict at the first instance, the restraining sanctions against the legal person will have the duration of two years maximum.⁵⁹⁴

Among the ACN countries, only **Montenegro** provides for a “due diligence defence”: the court may exempt a legal entity from punishment if the entity has undertaken all effective, necessary and reasonable measures aimed at preventing and revealing the commission of the criminal offence.⁵⁹⁵

Another approach is to take into account compliance system or individual measures as mitigating circumstances during sentencing of the legal entity. Such approach is applied in some ACN countries (e.g. in **Latvia, Montenegro, Serbia** and **Ukraine**).⁵⁹⁶

The IAP monitoring has recommended to the countries to implement such defence or at least to consider it (e.g. **Azerbaijan, Georgia, Kyrgyzstan**). An additional measure could be to establish provisions that allow the court to defer the application of sanctions imposed on a legal person if the latter complies with organisational measures to prevent corruption as determined by the court. The legal person is punished in this case only if it fails to implement relevant measures or if it commits a new offence.⁵⁹⁷

There can be also other grounds for exemption from the liability: 1) the legal entity reveals and reports a criminal offence before finding out that criminal proceedings have been initiated (**Croatia, Montenegro, North Macedonia, Slovenia**⁵⁹⁸, **Romania**); 2) the legal entity voluntarily and immediately returns the illegally obtained material gain or rectifies the harmful consequences caused, or delivers data significant for liability of another legal entity with which it is not connected organizationally (**Montenegro, North Macedonia, Slovenia**).⁵⁹⁹

Other standards

Corporate liability, be it administrative or criminal, should allow for effective use of mutual legal assistance.

The liability of legal persons should not be limited to cases when the legal person has actually obtained a benefit from bribery. Such restriction may exclude liability when, for instance, a company won a contract due to bribery, but the contract did not generate any revenues because it was a poor business decision or the scheme was uncovered before operations commenced.⁶⁰⁰

Corporate restructurings, such as dividing the legal person or merging it with another legal person, cannot be used to avoid liability. This can be achieved either through special provisional or security measures applicable during the criminal proceeding, or through a general rule that ensures that the successor entity or the reorganised body or bodies will inherit the original legal person’s liability.

Enforcement

Enforcement of corporate liability provisions remains low in the region and is almost absent in those few IAP countries that have introduced it (see the table below).

The monitoring report on **Ukraine** found information about two cases:

- A private university (as legal entity) attempting to bribe a Deputy Minister of Education and Science. Case has been sent to court.
- A representative of a private company promised a bribe in the amount of monthly payment of UAH 130,000 to the official of the Security Service of Ukraine (and transferred the first payment of USD 400) for the inaction regarding violation of the weight restrictions for transporting goods on the public roads. By the court sentence the company was fined in the amount of UAH 19,840 (twice the amount of the bribe given), while the natural perpetrator was sanctioned in the same decision by a fine.⁶⁰¹

Enforcement has been limited also in **Mongolia** and **Georgia**. Authorities of Mongolia referred to a case where a trade company transporting coal to China paid a 57 million tugrik bribe in order to obtain the license for transport. Prosecutors indicted both the CEO of the company and the company for bribery, yet the court asked the prosecutor to choose between the two. The natural person was eventually released from liability.

In Georgia, in 2013-2015, one legal entity was prosecuted for a corruption-related offence; in 2015-2016, two legal entities were convicted for the crimes other than corruption. In 2018, one legal entity was convicted for money laundering.

It is clear that the countries continue to rely on the traditional prosecution of natural offenders and are reluctant to pursue legal persons. The OECD/ACN study on the corporate liability noted that in almost all the countries that were reviewed, instructional materials, such as commentaries, official guidelines, and academic writings were available and extensive training was conducted. This suggests that trainings and guidelines alone are not enough to encourage the policemen and prosecutors to go after legal persons.⁶⁰²

To address this, the IAP monitoring reports recommended raising awareness of corporate crime and the liability of legal persons among law enforcement officers, prosecutors and judges, conducting regular legal training to explain corporate liability provisions, their purpose, their enforcement, and the added value of prosecuting legal persons. Trainings should be as practical as possible and target various groups of officials, such as investigators, prosecutors, and judges. Combined trainings, featuring the participation of different groups of officials, may be especially beneficial.

For **Georgia**, the IAP monitoring report recommended including practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for further in-service training; providing investigators and prosecutors with manuals on effective investigation and prosecution of corruption cases involving legal persons; ensuring that the enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.⁶⁰³ Similar recommendations were given to **Azerbaijan**, **Kyrgyzstan** and **Ukraine**.⁶⁰⁴

In 2018, the Prosecutor General's Office of Georgia issued a manual on effective investigation and prosecution of corruption cases involving legal persons; investigators and prosecutors have been trained according to the manual.

Table 38. Corruption cases involving legal persons in ACN countries

Countries	2017			2018		
	Opened	Sent to Court	Sanctioned	Opened	Sent to Court	Sanctioned
Albania				n/a	n/a	n/a
Azerbaijan	0	0	0	0	0	0
Bosnia				382	226	172
Croatia	548	1328	n/a	0	1	1
Estonia	n/a	n/a	0	n/a	n/a	0
Kazakhstan	0	0	0	0	0	0
Kyrgyzstan	32	15	0	186	186	n/a
Latvia	1	2	n/a	0	1	n/a
Lithuania	1	0	6	1	7	11
North Macedonia	n/a	n/a	n/a	n/a	n/a	n/a
Montenegro	n/a	46	n/a	n/a	n/a	n/a
Romania	n/a	91	47	n/a	65	10
Serbia	15	0	0	4	0	0
Ukraine	3	2	0	n/a	4	n/a
Uzbekistan	n/a	n/a	n/a	n/a	n/a	n/a
Total	600	1484	53	573	490	194

Source: OECD/ACN Annual report 2018. Based on data submitted by ACN countries.

Sanctions

International conventions consider corruption offences to be serious offences and require that sanctions for such offences, when committed by natural or legal persons, be effective, proportionate and dissuasive.⁶⁰⁵ For natural persons, the CoE Criminal Law Convention (Art. 19) and the OECD Anti-Bribery Convention (Art. 3) specifically require that the offence be punishable by a deprivation of liberty sufficient to enable effective mutual legal assistance and extradition. The UN Convention against Corruption (Art. 30) also provides for the possibility of disqualifying persons convicted of corruption offences from holding a public office or office in a state-owned enterprise. Sanctions against legal persons can be penal, administrative or civil in nature and should include monetary sanctions (see the discussion above concerning the effective sanctions against legal persons).

When evaluating whether established sanctions comply with international standards, the following issues must be taken into account:

- the level of sanctions for bribery offences compared with other economic crimes (fraud, embezzlement, etc.);
- differences between sanctions for private and public sector bribery offences;
- sanctions for various bribery offences, including the promise, offer, and giving of a bribe (and the request, receipt, and acceptance of a promise or offer of a bribe);
- whether minimum and maximum limits of sanctions for bribery offences are sufficiently dissuasive without being so excessive as to breach proportionality principle;
- differences between sanctions for active and passive bribery offences;

- whether sanctions provide for a term of imprisonment sufficient to allow extradition; and
- if the statute of limitations is linked to the severity of sanctions, that the sanctions enable a statute of limitations that does not render liability ineffective; etc.

As shown in the table below, bribery and other corruption offences in most IAP countries provide for a wide range of sanctions that are effective, proportionate and dissuasive. The level of penalties often depends on whether a legal or illegal act or omission by the official is involved. A number of other aggravated offences are provided as well. At the same time the sanctions provisions in several IAP countries fall short of the international standards.

In **Kyrgyzstan**, the new criminal code enacted in 2019 raised sanctions for some bribery offences. The sanction stipulated in Part 1 of Article 325 of the Criminal Code provides for the following possible penalties for bribe taking: a category VI fine [from 2600 to 3000 calculation index units, i.e. from about 3068 to 3540 euros] or category II imprisonment [from 2.5 to 6 years] with deprivation of the right to hold certain official positions or to engage in certain activities for up to two years and with a category II fine. Part 1 of Article 325 establishes criminal liability for taking a bribe in the absence of qualifying elements, that is, in particular, if the bribe does not exceed 1,000 calculation index units [about 1180 euros]. The monitoring report found this level of sanctions for passive bribery as satisfactory.

As to the active bribery, the sanction in the Part 1 of Article 328 of the Criminal Code provides for the following possible penalties for basic offence: category IV correctional labour [from 2.5 to 3 years] or a category V fine [from 2200 to 2600 calculation index units, i.e. from about 2596 to 3068 euros], or category I imprisonment [up to 2.5 years]. In general, taking into account the insufficient statute of limitations for the basic bribe giving (3 years), the monitoring report found the sanctions in part 1 of Article 328 to be considered insufficient.⁶⁰⁶

Moreover, in the new Criminal Code of Kyrgyzstan, the sanction regarding unlawful receipt of reward by a serviceman was not revised (Article 238). For the basic and aggravated elements of the crime the maximum penalty is stipulated in the form of a fine. Only a particularly aggravated offence (unlawful receipt of reward in a particularly large amount) is punished by imprisonment.⁶⁰⁷

In **Ukraine**, the sanctions for basic, non-aggravated offences of active and passive bribery, active trading in influence, active and passive bribery in the private sector did not provide for imprisonment and in general were too lenient to be considered effective and dissuasive. They were also too lenient to support extradition for these corruption offences since under the Ukrainian Criminal Procedure Code extraditable offences must be punishable by imprisonment of at least 1 year. The level of sanctions also conditioned the duration of the statute of limitations, which could not exceed 3 years if the sanction is restriction of liberty or imprisonment less than 2 years. Another shortcoming was that offering a bribe resulted in a less severe sanction than giving a bribe. In 2013-2014, Ukraine revised the relevant sanctions and significantly increased them. In particular, the sanction of deprivation of liberty was included in all basic (non-aggravated) offences as an optional sanction, which made these offences extraditable. In addition, the parliament increased fines and introduced special confiscation. Also, importantly, the sanctions for offering and promising a bribe (as well as for the acceptance of the offer or promise or requesting an unlawful benefit) were equalised with the sanctions for giving and receiving an unlawful benefit in compliance with international standards.⁶⁰⁸

The sanctions should not only be sufficiently strong to be dissuasive, but also be proportionate. In **Georgia**, the minimum sentence for basic passive bribery is 6 years of imprisonment. This was found to be disproportionate, not leaving room for an appropriate sanction for small value bribes. It was noted that there was a risk that the case would not be brought to the attention of a court because the minimal sentence was inappropriate.⁶⁰⁹

While most IAP countries provide dissuasive sanctions (if sanctions for aggravated offences are taken into account), their enforcement is uneven. In practice, courts often apply conditional release from

imprisonment and tend to apply sanctions closer to the lower margins. For example, the IAP report on **Ukraine** noted that the courts often release perpetrators of corruption on parole, apply sanctions below the minimum punishment provided by the specific offence or release convicted persons after they serve a short period of imprisonment, or even simply impose other sanctions instead of imprisonment. According to experts, only about a quarter of the corruption cases detected by law enforcement result in an indictment and only very few of those result in a conviction with “real” imprisonment terms. To address this policy of leniency, the parliament of Ukraine amended the Criminal Code in October 2014 to introduce the category of “corruption crimes”, to which a number of provisions on discharging liability or punishment are not applicable. This was found to be a welcome development and should be used as a best practice.⁶¹⁰

The fourth monitoring round report on **Armenia** referred to the official statistics for 2014-2017, according to which only fines (124 cases or about 55%) and imprisonment (103 cases or about 45%) are applied for major bribery and corruption related offences. Conditional release from serving the sentence was applied in 37 or about 16% of cases; release from serving the punishment due to amnesty was applied in 39 or about 17% of cases. Thus, in the vast majority of corruption cases imprisonment is not enforced and only very few of those result in a conviction with “real” imprisonment terms. The monitoring team concluded that sanctions for corruption offences are not dissuasive in practice. The Government argued that this was because of many bribery cases with very low amount of bribe. The monitoring team also expressed its concern over legislative initiatives aimed at introducing public works as a sanction for corruption offences.⁶¹¹

Leniency of sanctions is also an issue in **Mongolia**. The fourth monitoring round report noted that for corruption crimes the law often provides for the cumulative punishments, including fines, deprivation of rights to hold public offices and, alternatively, restriction of travel or imprisonment. It results from the law that imprisonment is considered as an *ultima ratio* measure. In practice, the courts usually order fines and restrictions of rights in corruption cases. Mongolian prosecutors rarely appeal too lenient sentences. Representatives of the civil society complained about the leniency of the sanctions applied in corruption cases.⁶¹²

In **Kyrgyzstan**, under the new Criminal Code (Article 83), the court when imposing a prison sentence for a period not exceeding five years, taking into account the gravity of the crime, the identity of the perpetrator, his agreement to accept probation supervision, as well as other circumstances, may come to the conclusion that it is possible to reform the convicted individual without enforcing the sentence. The court may decide then to release the perpetrator from serving the punishment through the use of probation supervision. Probation supervision does not apply to individuals convicted of serious or particularly serious crimes. Thus, for less serious corruption offences with a possible imprisonment up to 5 years, exemption from serving a sentence can be applied. The fourth monitoring round report recommended to consider excluding corruption offences from those for which probation supervision can be applied.⁶¹³

Kazakhstan recently carried out a significant revision of sanctions for corruption and other offences. Its new Criminal Code, which was enacted in 2015, introduced the following changes:

1) Fixed amounts of fines (fixed number of monthly calculation rates) have been replaced by fines calculated by multiplying the amount of the bribe (e.g. the basic offence of bribe taking is fined with 50-fold amount of the bribe; the basic offence of bribe giving, with 20-fold amount). In view of the definition of the “large” and “particularly large” amount of bribes, the minimum fine for the basic offence will be about EUR 182,500; for the basic offence of bribe giving – about EUR 73,000; the minimum fine in case of aggravated bribe-taking (by a criminal group or in a particularly large amount) would equal to about EUR 5,840,000; and a similar offence of the bribe-giving – about EUR 3,650,000.

2) The fine (a multiplier of the bribe amount) is applied as an alternative sanction for all offences of bribe taking or giving, whereas previously aggravated offences were only punished with custodial sentences.

3) Instead of bans on holding certain offices or being engaged in certain activities for a period of time, all corruption offences entail mandatory life-time deprivation of the right to hold office or be engaged in certain activities.

4) The thresholds for the “large” and “particularly large” bribes were changed: the “large” amount was raised from a sum of approximately EUR 3,650 to any amount between approximately EUR 21,900 and approximately EUR 73,000; while the “particularly large amount” was increased from approximately EUR 14,600 to an amount that is at least a sum equivalent to approximately EUR 73,000.

5) It is prohibited to apply conditional sentencing, or discharge of criminal liability on grounds of bail, or discharge against surety, or use statute of limitations to release from the criminal liability for corruption offenders.

6) For minor and medium gravity crimes (which include several corruption offences) the Code prohibits the imposition of imprisonment if the person had voluntarily compensated property damages or “mended moral and other harm” caused by the crime.

The IAP monitoring reports on Kazakhstan noted that the overall result of the reform described above was a relative lessening of sanctions for bribe taking and giving, particularly with regard to officials and persons holding a responsible public office. The latter include members of the Government, members of Parliament, judges, political public servants, i.e. top public officials. Taking or giving bribes by such officials inflicts serious public harm and must be punished seriously. While the above sanctions are reinforced by other punishments (confiscation and a lifetime ban on holding certain offices), it may send a wrong signal concerning corruption in the public sector and undermine the effectiveness of the sanctions. Besides, it creates an environment where punishment could become exclusively financial: for some corruption offences, the compensation of pecuniary damages will allow the offender automatically to avoid imprisonment.⁶¹⁴

As noted in another OECD report, limiting sanctions for bribery to financial compensation may not be dissuasive and could allow corrupt officials to avoid harsh sanctions by paying off. This may negative other positive provisions on sanctioning included in the new code of Kazakhstan, e.g. calculation of the amount of fine in relation to the amount of the bribe, mandatory lifetime ban to hold public office in case of a bribery conviction, excluding the bribery offences from the possibility to apply for conditional releases, and the non-applicability of statute of limitations to corruption crimes.⁶¹⁵

The IAP fourth monitoring round report on **Uzbekistan** found the existing sanctions insufficient. Sanctions for certain corruption offences (Article 192-10 “Bribing a serviceman of a non-state commercial or other non-governmental organization”, Part 1 of Article 213 “Bribing a serviceman of a state body, organization with the state participation or self-government body”, Part 1 of Article 214 “Illegal receipt by a serviceman of a state body, an organization with state participation or a self-government body of material values or property benefits”) do not fully meet international standards, since, in principle, they do not provide for punishment of imprisonment.⁶¹⁶

The IAP countries, as many other countries in the ACN region, continue to apply lower sanctions for active bribery, compared with the passive bribery, considering that passive bribery of public officials is more detrimental and deserves stronger punishment.⁶¹⁷

Table 39. Maximum sanctions for basic (non-aggravated) offences in IAP and ACN countries

	Active bribery of public official	Passive bribery of public official	Active trading in influence	Passive trading in influence	Active private-sector bribery	Passive private-sector bribery	Money laundering	Embezzlement	Abuse of powers
Istanbul Action Plan countries									
Armenia	Up to 3 years	Up to 5 years	Up to 3 years	Up to 3 years	Up to 3 years	Up to 3 years	2-5 years	2-5 years	Up to 4 years
Azerbaijan	2-5 years	4-8 years	2-5 years	3-7 years	2-5 years	4-8 years	6-9 years	n/i	Up to 3 years
Georgia	Up to 3 years	6-9 years	Up to 2 years	3-5 years	Up to 3 years	2-4 years	3-6 years	3-5 years	Up to 3 years
Kazakhstan	Up to 3 years	Up to 5 years	n/a	n/a	Up to 5 years	Up to 5 years	Up to 3 years	Up to 3 y.	Up to 3 years
Kyrgyzstan	Up to 2.5 years	2.5 to 5 years	n/a	n/a	Up to 2.5 years	2.5 to 5 years	2.5 to 5 years	Up to 2.5 y.	Up to 2.5 years
Mongolia	6 months to 3 years	6 months to 3 years	n/a	n/a	6 months to 3 years	6 months to 3 years	6 months to 1 year	2 to 8 years	1 to 5 years
Tajikistan	Up to 5 years	Up to 5 years	n/a	n/a	Up to 2 years	Up to 3 years	Up to 4 years	Up to 2 y.	Up to 2 years
Ukraine	2-4 years	2-4 years	Up to 2 years	2-5 years	Up to 2 years	Up to 3 years	3-6 years	Up to 4 y.	Up to 3 y.
Uzbekistan	Up to 5 years	Up to 5 years	n/a	n/a	Up to 3 years	Up to 3 years	5-10 years	Up to 6 m.	Up to 3 years
Anti-Corruption Network countries									
Albania	6 months to 3 y.	2-8 years	6 months to 2 y.	6 months to 4 y.	3 months to 2 y.	6 months to 3 y.	3-10 years	Up to 8 years	Up to 5 years
Belarus	Up to 5 years	Up to 7 years	n/a	n/a	n/a	Up to 3 years	2-4 years	Up to 4 y.	2-6 years
Bulgaria	Up to 6 years	Up to 6 years	Up to 3 years	Up to 6 years	Up to 3 years	Up to 5 years	1-6 years	n/i	n/i
Croatia	6 months to 5 y.	1-8 years	6 months to 3 y.	6 months to 3 y.	Up to 3 years	6 months to 5 y.	6 months to 5 y.	n/i	n/i
Estonia	Up to 5 years	Up to 5 years	n/a	Up to 3 years	Up to 5 years	Up to 5 years	Up to 5 years	Up to 5 years	n/i
Latvia	Up to 6 years	Up to 8 years	Up to 1 year	Up to 2 years	Up to 3 years	Up to 3 years	Up to 3 years	Up to 5 y.	Up to 3 y.
Lithuania	Up to 2 years	Up to 4 years	Up to 4 years	Up to 5 years	Up to 2 years	Up to 4 years	Up to 7 years	Up to 2 y.	Up to 5 y.
Moldova	Up to 6 years	3-7 years	Up to 3 years	Up to 5 years	Up to 3 years	Up to 3 years	Up to 5 years	Up to 3 y.	Up to 3 y.
Poland	6 months to 8 y	6 months to 8 y.	6 months to 8 y.	6 months to 8 y.	3 months to 5 y.	3 months to 5 y	6 months to 8 y.	n/i	n/i
Romania	2-7 years	2-7 years	2-7 years	2-7 years	8 -28 months	8 -28 months	3-12 years	1-15 years	6 months to 5 y.
Russia	Up to 2 years	Up to 3 years	n/a	n/a	Up to 3 years	Up to 7 years	Fine	Up to 2 y.	Up to 4 years
Slovenia	6 months to 3 y	1-5 years	Up to 3 years	Up to 3 years	Up to 3 years	3 months to 5 y	Up to 5 years	Up to 5 y.	Up to 5 y.

* Number of years refers to term of deprivation of liberty (imprisonment) unless specified otherwise. Sanctions for relevant offences may also include additional elements, like mandatory confiscation and disqualification from holding an office or performing certain activity.

“n/a” – not applicable (offence not established); “n/i” – no information available

Source: prepared by the OECD/ACN secretariat based on IAP monitoring reports, GRECO Third evaluation round reports and MONEYVAL reports, review of criminal codes of countries.

Confiscation

Confiscation of the proceeds derived from corruption is one of the most effective measures to combat corruption offences and stop the laundering of the proceeds of corruption, since it represents a tool that deprives perpetrators of the illicit and unjust gains. Confiscation of the proceeds from offences establishes the principle whereby nobody must obtain gains from committing an offence.⁶¹⁸

International anti-corruption instruments require ensuring the possibility of confiscating the proceeds of corruption crimes (or of property of equivalent value) and of the instrumentalities used in such offences.⁶¹⁹ International instruments contain the following definitions:

- “confiscation” means a final deprivation of property ordered by a court in relation to a criminal offence (EU Directive 2014/42/EU⁶²⁰);
- “proceeds” means any economic advantage, derived from or obtained, directly or indirectly, through the commission of a criminal offence, including any savings by means of reduced expenditure derived from the crime. It may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits (EU Directive 2014/42/EU, CoE Convention, CETS No. 198⁶²¹);
- “instrumentalities” means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence⁶²² (CoE Convention, CETS No. 198);
- “property” includes assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such property (UNCAC, Art. 2).

Box 47. The EU Directive on the freezing and confiscation of instrumentalities and proceeds of crime

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union covers a number of criminal offences, including public and private sector corruption, and money laundering. According to the Directive, the EU Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds of crime (or property the value of which corresponds to such instrumentalities or proceeds), subject to a final conviction for a criminal offence, which may also result from proceedings in absentia.

Non-conviction based confiscation: Where confiscation on the basis of a final conviction is not possible, the Directive provides that, at least where such impossibility is the result of illness or the absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to an economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

Extended confiscation: For public sector corruption, the Member States are also required to adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.

Confiscation from third parties: Under the Directive, Member States shall also take the necessary measures to enable the confiscation of proceeds (or other property the value of which corresponds to proceeds),

which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value. This shall not prejudice the rights of bona fide third parties.

Source: Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0042>.

The OECD/ACN thematic study on confiscation (cited above) proposed the following typology of the confiscation measures:

- A. Criminal confiscation:
 - a. criminal confiscation as a sanction for committing crime
 - b. criminal confiscation of instrumentalities and proceeds of crime (special confiscation)
 - c. extended criminal confiscation
 - d. conviction or non-conviction-based confiscation
 - e. confiscation resulting from satisfaction of a civil suit in a criminal trial
 - f. confiscation arising from a plea bargain
 - g. confiscation arising from the trial in absentia.
- B. Civil forfeiture:
 - a. based or not based on the conviction in criminal proceedings
 - b. extended civil confiscation.
- C. Administrative forfeiture:
 - a. based or not based on the conviction in criminal proceedings
 - b. administrative forfeiture as a sanction or administrative confiscation of instrumentalities and proceeds of corruption offences
 - c. extended confiscation.

In some ACN and IAP countries, confiscation continues discharging a punitive function by targeting not only the instrumentalities and proceeds of corruption offences, but all property of a convicted person, including the one that has been acquired on a legal basis and from legitimate sources. Such countries include Armenia, Belarus, Kazakhstan, Latvia, Tajikistan, Turkmenistan, Ukraine. Recent reform of the criminal law in **Kyrgyzstan** removed confiscation as a sanction, introducing special confiscation of proceeds and instrumentalities of corruption offences. The IAP fourth monitoring round report welcomed such a change, recognising that confiscation of all property of the perpetrator is a disproportionate measure.⁶²³

Confiscation provisions usually cover the instrumentalities and proceeds of bribery. However, they often do not explicitly cover proceeds that were transformed into other assets (*e.g.* residential property bought using proceeds from bribery) or were intermingled with property acquired from legal sources (converted or mixed proceeds).

Table 40. Types of confiscation measures in ACN countries

Type of confiscation measures	ACN countries
Criminal confiscation as a sanction	Armenia, Kazakhstan, Kyrgyzstan, Latvia, Ukraine
Criminal confiscation of instrumentalities and proceeds (special confiscation)	Azerbaijan, Armenia, Bosnia and Herzegovina, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, Serbia, Slovenia, Ukraine, Croatia, Montenegro, Estonia
Criminal confiscation not based on conviction	Kazakhstan, Latvia, Moldova, Montenegro, Croatia, Slovenia, Ukraine
Extended criminal confiscation	Bosnia and Herzegovina, Latvia (since 2017), Lithuania, Moldova, Poland, Romania, Serbia, Croatia, Montenegro, Estonia, Ukraine
Civil confiscation, conviction based	Georgia, Ukraine
Civil confiscation, non-conviction based	Albania, Bulgaria, Moldova, Slovenia
Administrative confiscation	Azerbaijan, Bulgaria (confiscation from legal persons), Kyrgyzstan, Romania, Estonia
Confiscation resulting from satisfaction of a civil suit in a criminal trial	Armenia, Kyrgyzstan, Serbia, Montenegro, Ukraine
Confiscation arising from a plea bargain in criminal proceedings	Georgia, Serbia, Croatia, Montenegro, Estonia, Ukraine
Confiscation resulting from a criminal trial in absentia	Azerbaijan, Bulgaria, Kazakhstan, Kyrgyzstan, Georgia, Lithuania, Romania, Serbia, Slovenia, Montenegro, Estonia, Ukraine

Source: OECD/ACN (2018), Thematic Study, Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia, p. 51, cited above; OECD/ACN secretariat research, country comments.

As stated in the recital 11 to Directive 2014/42/EU, there is a need to clarify the existing concept of proceeds of crime to include the direct proceeds from criminal activity and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds. Proceeds should include any property including that which has been transformed or converted, fully or in part, into other property, and that which has been intermingled with property acquired from legitimate sources, up to the assessed value of the intermingled proceeds. It can also include the income or other benefits derived from proceeds of crime, or from property into or with which such proceeds have been transformed, converted or intermingled.

As the OECD/ACN study showed, most of the ACN countries confirmed that, under their respective legislations, confiscation theoretically covers the derivative proceeds of corruption, such as the following:

- a) savings earned thanks to lowering of costs as the result of a crime (for example, the amount of tax payments or customs fees exempted due to bribery);
- b) income generated from investment of the direct proceeds of crime (for example, bank deposit interest, income from securities or any other property purchased on account or as the result of a crime);
- c) increase of the company's value following a crime (for example, thanks to lucrative government contracts and/or entry to a new market);
- d) subsequent income from exercising the rights based on a licence or permit obtained through a crime (for example, incomes generated from operating an oil or gas based on the rights obtained due to a bribery).

Several IAP countries also do not allow for a value-based confiscation, which permits the confiscation of proceeds that were hidden, destroyed, spent or transferred to a *bona fide* third party. An overview of the national confiscation regimes in IAP countries is provided below.

In addition to the “traditional” confiscation of the instruments and proceeds of the crime, the new standards also advocate for establishing **extended confiscation** (see e.g. box above on the EU Directive), which allows the confiscation of a convicted person's property when its legal origin cannot be proven. This type of the confiscation does not require proof that the assets subject to confiscation were actually acquired through the crime for which the owner was convicted. The illegal origin of the property is assumed due to the certain facts (including the disproportionality between the value of the property in a person's possession and his lawful income). Thus, the burden of proof to rebut this assumption is placed on the owner, and the court will make inferences from the accused's failure to explain the origin of the assets at issue.⁶²⁴

Table 41. Provisions on confiscation in IAP countries

	ARM	AZ	GEO	KAZ	KGZ	MNG	TAJ	UKR	UZB
Confiscation of instrumentalities and proceeds of bribery	●	●	●	●	●	●	●	●	●
Value-based confiscation	●	●	●	●	●	●	○	●	●
Confiscation of converted or mixed proceeds	○	●	●	●	●	○	○	●	○
Confiscation of benefits derived from proceeds	●	●	●	●	●	○	○	●	○
Confiscation from a third party	●	○	●	●	●	○	○	●	○

● Yes ○ No

Source: IAP monitoring reports; OECD/ACN secretariat research.

The reversal of the burden of proof in confiscation proceedings is one of the effective instruments to deprive the perpetrator of corruption offences of ill-gotten proceeds. The UN Convention against Corruption (Art. 31) requires States Parties to consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation.

This mechanism is similar to the offence of illicit enrichment, as it leads to confiscation measures due to possession of unexplained wealth, albeit linked to a specific crime. It allows presumption of illicit origin of assets if a person, who has been convicted or even just charged with a certain crime, cannot explain their lawful origin. Such mechanism, when properly construed (through a rebuttable presumption), was found to be compatible with the European Convention of Human Rights.⁶²⁵

The following ACN countries have established such confiscation regime: Bosnia and Herzegovina, Croatia, Estonia, Lithuania, Moldova, Montenegro, Poland, Romania, Serbia, Ukraine.

For instance, in **Lithuania**⁶²⁶ extended confiscation is applied if the following conditions are met: 1) the perpetrator committed a less grave, grave and especially grave crime, from which he had obtained or could have obtained a pecuniary advantage; 2) the perpetrator possessed (or transferred to third parties) property which was gained during, after or 5 years before commission of the offence and such property is disproportionate to his lawful income and the difference exceeds about EUR 18,000; 3) the perpetrator fails to justify the lawfulness of acquiring the property.

In **Poland**, according to the Criminal Code (Art. 45), if the offender was convicted of a crime as a result of which he acquired, even indirectly, a property-related benefit of considerable value, it is assumed that the property he obtained during, or after the commission of the offence, but before the judgment, constitute property acquired through a crime, unless the offender or another interested party shows evidence to the contrary.⁶²⁷

In **Romania**⁶²⁸ extended confiscation in the criminal law provides for the mandatory confiscation of assets when: 1) the person is found guilty for having committed an act punishable with imprisonment of at least 4 years which falls under the 21 categories of offences designated in the new legislation (including corruption, money laundering); 2) the accused has, over the last 5 years preceding the criminal act, accumulated property which exceeds what he has earned in a legitimate manner (confiscation is applicable to those additional assets); 3) the court is convinced that the property in question has been derived from one or more of the designated offences. This new mechanism includes third-party and value-based confiscation, and it allows for the confiscation of assets derived from the criminal proceeds.⁶²⁹

Box 48. Extended confiscation in Moldova

According to Article 106-1 of the Criminal Code of Moldova, if the person was convicted for one of the crimes listed therein, and if the offence was committed with mercenary motives, the property other than the one described in Article 106 of the Criminal Code is subject to confiscation as well (Article 106 describes special confiscation of instrumentalities and proceeds of crime). Such extended confiscation basically applies to all corruption offences (passive and active bribery, abuse of power or official position, trading in influence, illicit enrichment, fraudulent receipt of money from external funds, and others) and money laundering.

Application of the extended confiscation requires combined presence of the following conditions: a) value of the property acquired by the convicted person during 5 years prior to the date of crime and period after committing crime till the sentencing date substantially exceeds his income; and b) judicial body based on evidence produced in the case determined the origin of the corresponding property obtained through crime stipulated in the provisions of the criminal code mentioned in the Article.

Upon application of extended confiscation, value of property transferred by a convicted person or third person to family member, legal persons, controlled by the convicted person, or other persons that knew or ought to have known of illegitimate origin of the property, is to be taken into consideration. Upon establishing a difference between legitimate income and value of acquired property, value of the property on the date of its acquisition and all expenses borne by the convicted, including by informed third persons, are to be taken into consideration.

If property subject to extended confiscation is not found and intermingled with legitimate property, money and property covering its value is subject to confiscation. At that, it is to be noted that property and money acquired as a result of use of such property, including the property, into which property obtained through crime has been transformed or converted, as well as the proceeds and benefits from such property are subject to confiscation. In accordance with Article 106-1 of the Criminal Code, confiscation cannot go out of the limits of the value of the property obtained within stipulated by law period making excess over legal income amount of the convicted person.

Source: OECD/ACN (2018), Thematic Study, Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia, pp. 68-69, cited above.

According to the Law of **Montenegro** on Seizure and Confiscation of Pecuniary gains Deriving from Criminal Activity, pecuniary gain may be confiscated from the offender provided there is reasonable suspicion that it has been acquired through crime activity, and the offender cannot provide a credible justification of the legitimate source of its origin, and the offender had been convicted of one of the crimes specified therein (including crimes against property and official misconduct). Specified benefit is also subject to seizure and confiscation from the predecessors, transferees and family members of the offender, as well as from third persons.

Extended confiscation was introduced in **Latvia** in 2017. According to Article 70-11 of the Criminal Code, the property that is obtained by criminal means is subject to confiscation. When committing a crime with the nature of obtaining financial or other benefit, property, the value of which does not correspond to the legitimate income of the person and the person cannot prove that it was acquired legally, can be considered as property obtained by criminal means. This also applies to the property of third persons in permanent family, economic or other relationship with the offender.

The OECD/ACN study summarised the conditions used in the ACN countries for application of the extended criminal confiscation:

- It is applied primarily upon conviction of a person for committing corruption offences and money laundering of particular severity and/or resulting in pecuniary gain.
- It is applied to the property of a convicted person and informed third persons.
- It is applied in cases when value of the property is disproportionate to the legal income of a person (in some countries difference is to exceed the limit stipulated by law).
- Property acquired within the time limits stipulated by law is considered.
- A presumption of criminal origin of property is raised with reversal of the burden of proving the opposite upon the convicted person or third persons concerned.
- All property is subject to confiscation unless it is proved that it has been acquired with use of a legal income of a person.

In addition to confiscation (of instrumentalities, proceeds of crime, extended confiscation) based on the final conviction of the offender, international standards also allow the **non-conviction-based confiscation**. Sometimes such confiscation is implemented through civil proceedings.

The possibility of confiscation of assets in civil proceedings, which is not based on the conviction, is provided in the Law of **Albania** ‘On Prevention and Fight Against Organized Crime and Trafficking Through Preventive Measures Against Property’ (the so-called Anti-Mafia Law), which came in force from 2010. The Law provides for the possibility of confiscation of assets from the persons, who are reasonably suspected of committing serious crimes, listed in Article 3 of the Law, including corruption and money laundering.

During the court proceedings the civil procedure rules are applicable; and the competent court is the court of first instance for serious crimes (the court of criminal jurisdiction). The decision to arrest the assets is taken by the judge of this court at his own discretion, while the decision about confiscation is taken by a panel of three judges. Provisions of the Law are applicable to the assets of individuals and their close relatives (up to fourth-degree relatives), and the legal entities as well through the Law on the Criminal Responsibility of the Legal Entities.

In accordance with Article 5 of the Albanian Law, this procedure of confiscation is independent of the criminal proceedings against the persons, whose assets may be the subject to such confiscation. The procedures of confiscation under the Law may be applied only in cases of termination of the criminal proceedings or when the person found not guilty from the criminal point of view (Article 24 of the Law). The claim about confiscation of assets is brought to the court by the prosecutor including justification of the grounds for confiscation. Whereas, the burden of proof is reversed on the party, whose assets are intended for confiscation and who should prove the lawful source of earnings for their acquisition.

The court proceedings may be conducted irrespectively of whether a person is physically present in the territory of Albania or not (*in absentia*); nevertheless, the court may allow the relatives of defendant to give authorisation to the lawyer to represent the interest of the defendant. The court will take a decision to confiscate the assets in cases, when the following criteria have been met: a) there are reasonable suspicions, which are based on the indication of the person’s participation in the criminal activity, as stipulated in Article 3 of the Law; b) when it was not proven that assets had the lawful origin, or the person did not prove that available assets or proceeds did not clearly correspond to the level of earnings, profits or declared legal types of activity and are justified; and c) when it was found out that assets are fully owned or partially owned by the person, directly or indirectly.

The court may also satisfy the claim about confiscation of assets in the following cases, when: a) the commenced criminal investigation against the person was terminated due to the lack of evidence, death of the person, or it is impossible to impose a liability upon this person or convict him; b) a person found non-guilty in terms of the criminal law due to the lack of evidence or commission of the crime by a person, who cannot be accused and convicted; c) the criminal proceedings have been commenced against a person

for commission of the crime, which is included in the scope of this Law but was reclassified later, and a new crime fall outside the scope of this Law.⁶³⁰

A mechanism for non-conviction based civil forfeiture of illegally acquired assets was introduced in **Bulgaria** in 2012.⁶³¹ This mechanism was retained in the new Law for Combating Corruption and Illegal Assets Forfeiture, adopted in 2018. The new law established the Commission for Anti-Corruption and Illegal Assets Forfeiture as an independent, specialized, permanently acting state body. According to this law, civil forfeiture proceedings are conducted without prejudice to other criminal or administrative proceedings against the person under examination. The civil forfeiture proceedings target specified assets and aim to identify the means and the sources for the acquisition of these assets. An enforceable criminal conviction is not a pre-condition for the forfeiture of assets. Such a non-conviction-based confiscation by way of civil proceedings targets the assets which are reasonably presumed to be the proceeds of unlawful conduct when criminal proceedings against a person have been brought or an administrative violation of at least BGN 50,000 (approximately EUR 25,000) has been committed. The definition of "unlawfully acquired assets" is based on a disproportion between the assets of a person and his net income which is in excess of BGN 150,000. The persons under examination must prove the legitimate nature of the assets. This procedure can also be used if the suspect/defendant is dead, mentally ill or for other reasons (including amnesty, prescription, immunity, unknown address and person cannot be found or in case of an admitted transfer of the criminal proceeding to another state). An examination shall furthermore commence where an instrument of a foreign court concerning any of the criminal offences or administrative violations covered in the Act has been recognised according to Bulgarian legislation. Civil forfeiture proceeding could also be launched in case of suspicions about corruption of public officials.⁶³²

Slovenia adopted the Law on forfeiture of assets of illegal origin in 2011 and amended of 2014. Civil forfeiture of the assets of illegal origin in Slovenia does not depend on the conviction of the person and it is applicable to corruption crimes and any other intended crime, which is punishable by imprisonment of 5 years or more, in case it was the origin of the property of doubtful origin, and provided that the person is suspected of owning the assets of illegal origin to the amount exceeding EUR 50,000. The procedure established by the Law is directed against the assets and not against a particular person, owning the assets (confiscation *in rem*).

In accordance with Article 5 of the Law of Slovenia, the assets shall be considered to have illegal origin unless it is demonstrated that these assets have been acquired from legitimate sources. With respect to the assets, it is presumed that they have been acquired from illegitimate sources (illegally acquired), if the apparent discrepancy is found between the total value of assets and income net of taxes and tax-related expenses, which have been paid by the persons, against whom the proceedings have been commenced in accordance with the Law, during the period of the assets acquisition. During the assessment of such discrepancy it is necessary to take into account the total value of all assets, which are owned by, or are being possessed of, or belong to, or are used, held or transferred to the affiliated persons or are being intermingled with their assets or are being transferred to their successors. Moreover, in accordance with Article 6 of the Law, it is presumed that the assets of illegal origin are being transferred free of charge or at prices, which do not correspond to the actual value, in such cases, when transferred to the close affiliate or the immediate relative.

The procedure of civil forfeiture in Slovenia includes a financial investigation, a provisional arrest of the property, civil court proceedings, and confiscation itself. The financial investigation is conducted by the prosecutor, who is competent to commence the pre-trial or trial proceedings of the relevant crimes, in cooperation with the competent prosecutor of the Specialised State Prosecutor's Office of Slovenia. The latter shall act as a claimant in the proceedings for civil forfeiture. Such civil claims on the merits shall be heard in the Regional Court of Ljubljana city.⁶³³

Procedure for the special non-conviction-based confiscation in **Montenegro** and **Croatia** is not established by the Criminal Code or Criminal Procedure Code, but by special law regulating matters of confiscation

of the proceeds of crime by court's decision, which is made according to the rules of criminal proceeding. According to Article 10 of the Law of Montenegro on Seizure and Confiscation of Proceeds from Crime (non-conviction-based confiscation), there are two grounds for special non-conviction based confiscation: 1) if a person, who is the subject of a criminal proceeding, dies before the date of completion of the criminal proceeding, or 2) if the proceeding cannot be continued due to the circumstances hindering criminal prosecution for long. At that, the proceeds of crime can be confiscated provided for a probability based on the evidence, which constitutes the basis of the case, that criminal proceeding would result in conviction, if the person would be alive (property is confiscated from inheritors as well) and there would be no circumstances hindering criminal prosecution (property is confiscated from a person criminal prosecution cannot be continued against). It should be noted that provisions of the Law apply only to the crimes listed in Article 2 thereof, which however include both corruption offences and corruption money laundering (legalisation).

According to Article 2 of the Act of Croatia on the Proceedings for the Confiscation of Pecuniary Benefit Resulting from Criminal Offences and Misdemeanours, if criminal proceeding cannot be started due to offender's death or other circumstances excluding a possibility of criminal prosecution, then at the proposal of a prosecutor, victim and civil plaintiff, the court is obliged to take measures in accordance with Article 6 of the Law, if the amount of probable pecuniary gain resulting from corresponding crime makes not less than 5,000 Croatian kunas (around EUR 670). Decision on instituting criminal proceedings in such case shall be made by a judge of the court that would have an authority to hear criminal proceedings on their merits.

The IAP countries have started introducing relevant instruments as well. **Georgia** was the first to introduce in its Civil Procedure Code (Chapter XLIV-1) provisions on confiscation of illegal property and unexplained wealth of public officials, as well as their family members, close relatives and other "related persons". Such confiscation is possible after criminal conviction, when a prosecutor may apply to the court for confiscation of property supposedly derived from the proceeds of crime. After prosecutor has established *prima facie* evidence of unexplained property, the burden of proof shifts to the convicted (or related persons). If the latter fail to prove the lawful origin of the property and court concludes that there is a reasonable doubt as to its lawful origin, it orders the confiscation of such property.⁶³⁴

The new Criminal Procedures Code of **Kazakhstan**, enacted in 2015, introduced confiscation without a sentence (Section 15 CPC "Confiscation prior to sentencing"). Under the new CPC, in the event that the suspect or the accused is put on an international arrest warrant, or if criminal charges are dismissed following an act of amnesty, expiration of the statute of limitations or with respect to a deceased, given evidence of property obtained by illicit means, the person conducting the pre-trial investigation starts the confiscation proceedings before sentencing. The confiscation before sentencing is ordered by the court if the following elements are proved: 1) that the property in question belonged to the suspect, or the accused, or a third party; 2) the link between the said property and the crime which serves the grounds for the confiscation; and 3) that the circumstances of the acquisition of that property by a third party give reasons to believe it was acquired illicitly.⁶³⁵

The IAP Third Monitoring Round report recommended that **Ukraine** introduce extended (civil or criminal) confiscation of assets of perpetrators of corruption crimes in line with international standards and best practice.⁶³⁶ Such confiscation – both civil and criminal conviction-based confiscation – was indeed introduced in 2015. After an amendment to Criminal Procedure Code, Article 100.9, provides that when a person is convicted of a criminal offence, the court should also order confiscation of assets (including proceeds from them) belonging to the convicted person or to a legal entity related to the convicted person, if the legal grounds for acquiring such assets have not been established in the court. Similarly, the Civil Procedure Code was supplemented with new Chapter 9, Section III, authorising proceedings to recognise assets as unjustified and forfeit them. According to these new provisions, a prosecutor may file a lawsuit with a civil court after the criminal conviction of a public official for corruption or money laundering. The

court will recognise the assets as unjustified if, based on the evidence submitted, it cannot establish that the assets or the money used to acquire the assets was obtained on a legal basis.⁶³⁷

Statute of limitations, immunities and effective regret

Statute of limitations

A statute of limitations provides a term during which a person can be held liable for the commission of a crime. Expiration of this term is a ground for releasing the perpetrator from liability. It may become an obstacle to effective prosecution of corruption offences when it is too short or cannot be interrupted or suspended in certain circumstances. Even when sanctions for corruption offences are dissuasive, the possibility of exemption from liability due to expired statute of limitations makes liability for such offences ineffective, taking into account long pre-trial and court proceedings in complicated cases, especially involving cases with an international dimension (*e.g.* requiring MLA). Similarly, when, for instance, immunity of a person does not interrupt statute of limitations for committed crime, the offender may avoid responsibility. Prosecution in these situations becomes futile and a waste of resources.

The UN Convention against Corruption (Art. 29) provides that each State Party shall establish a long statute of limitations period in which to commence proceedings for corruption offences and establish a longer period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice. According to the OECD Anti-Bribery Convention (Art. 6), any statute of limitations applicable to the offence of bribery of foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

In the IAP countries, the statute of limitations period is tied to the gravity of the crime, which is in turn determined by the applicable sanction (its type and amount/duration). In most cases, the statute of limitations is sufficiently long to allow effective investigation and prosecution of corruption offences (see table below).

Table 42. Statute of limitations for corruption offences in IAP countries

	ARM	AZ	GEO	KAZ	KGZ*	MNG	TAJ	UKR	UZB
Active bribery (basic offence)	5	7	15	10	3	5	6	5	4
Active bribery (aggravated offence)	10	12	15	10-15	3-7	20	10	10	8-14
Passive bribery (basic)	5	12	15	10	3	5	6	5	4
Passive bribery (aggravated)	10-15	12	25	10-15	7	20	6-10	10-15	8-14
Active trading in influence (basic)	5	7	15	n/a	n/a	n/a	n/a	3	n/a
Passive trading in influence (basic)	10	7	15	n/a	n/a	n/a	n/a	5	n/a
Active private-sector bribery (basic)	5	7	6	5	3	5	2	3	2
Passive private-sector bribery (basic)	5	12	6	5	3	5	6	5	2
Money laundering (basic)	5	7	10	5	3	5	6	10	8
Money laundering (aggravated)	10-15	12	10-25	5-10	7	20-30	10	15	n/a
Abuse of powers (basic)	5	7	15	10	3	1	2	5	2
Abuse of powers (aggravated)	10	12	15	10-15	3-7	5	6-10	10	4
Embezzlement (basic)	5	2	6	5	3	1	2	5	2

Notes: Numbers indicate duration of statute of limitations in years. When a range of years is provided, it shows statute of limitations for various aggravated offences. Aggravated offences may include crimes committed by a high-level official, for illegal action (or inaction), by a group of persons, in large amount, repeatedly, through extortion, etc.

* According to the 2017 Criminal Code of Kyrgyzstan, statute of limitations does not apply to certain corruption offences: “corruption”; abuse of office by the official holding a responsible position; illicit enrichment by the official holding a responsible position; passive bribery or extortion of a bribe by the official holding a responsible position.

n/a – not applicable (offence not established); n/i – no information available.

Source: IAP monitoring reports; OECD/ACN secretariat research.

The IAP monitoring found that a statute of limitations period of 2 years or less is insufficient.⁶³⁸ GRECO reports on **France, Hungary, Latvia, Monaco, and Russia**⁶³⁹ and OECD WGB reports on **France, Japan, and Spain**⁶⁴⁰ have found that statute of limitations of 3 years or less is also insufficient. Arguably, a limitation period of at least 5 years should provide adequate time for the investigation and prosecution of corruption offences, at least if it provides for the possibility of suspending or interrupting the period in certain situations.⁶⁴¹

A special approach to corruption offences is applied in **Georgia**, where it is specifically provided that, regardless of sanctions, statute of limitations for bribery and some other corruption offences is 15 years (unless it is an especially grave crime, *i.e.* when the maximum sanction is more than 10 years of imprisonment, then the limitations period is 25 years).

The criminal codes of the IAP countries usually establish an exception for certain serious crimes (e.g. against national security and against peace and humanity), for which the statute of limitations is not applied at all. In 2015 **Kazakhstan** extended this exception in its new Criminal Code to corruption criminal offences. The fourth monitoring round report called this a good practice.⁶⁴² (Although, as explained above in this Criminalisation Section, not all corruption offences are actually defined as such in Kazakhstan). However, in 2018 Kazakhstan reverted this provision and re-introduced statute of limitations for corruption crimes with a minimum duration of limitation period for such offences (even if of minimum gravity) of 10 years and maximum of 15 years.

In **Armenia, Tajikistan, Ukraine and Uzbekistan**, the statute of limitations is not suspended if the alleged perpetrator is a person with immunity. **Azerbaijan's** Criminal Procedure Code (Art. 53) provides for the suspension of the statute of limitations in cases when procedures for lifting immunity are initiated. Similarly, in **Georgia**, the statute of limitations is suspended as long as person enjoys immunity (Art. 71 of the Criminal Code). In **Kazakhstan**, even though the Criminal Code does not envisage a possibility of interrupting the statute of limitations period in the case of a failure to lift immunity from the person, the IAP monitoring did not find this to be a problem since the agreement to lift immunity is not required for grave and especially grave crimes, to which most of the corruption crimes belong.⁶⁴³ In 2013, **Kyrgyzstan** amended its Criminal Code, in response to the IAP monitoring recommendation, to establish that the statute of limitations is suspended if the criminal proceedings were suspended due to the immunity of the relevant person. This provision was preserved in the new criminal code enacted in 2019.

In the report on **Kyrgyzstan** the monitoring team found problematic the calculation of the period of limitations until the time when the judgment of the court becomes final. The number of cases dismissed in the court on the grounds of the statute of limitations (38 in 2015 - 2017) suggests that periods of limitations in the CC often turn out to be too short to see the judgments in criminal case to become final. The calculation of the limitations to the time when the sentence becomes final gives the defence a lot of opportunities to drag out the criminal proceedings until the period of limitations has run its course, allowing offenders to avoid liability, particularly in cases where there are multiple offenders. The report recommended to consider other options for the calculation of the periods of limitations which would make it impossible dismissing corruption cases already sent for trial under the statute of limitations.⁶⁴⁴

The fourth monitoring round showed that the insufficient statutes of limitation for corruption offences affect effective prosecution of such crimes. For example, in **Uzbekistan**, in 2016-2018, 36 cases were terminated on this ground. In **Kyrgyzstan**, 38 cases were terminated in 2015-2017.

An insufficiently long period of limitations may also present an obstacle for effective mutual legal assistance in countries having dual criminality requirements because MLA requests may not be satisfied if the limitations period has expired for the crime under the legislation of the requested country.⁶⁴⁵

To ensure that the statute of limitations does not hinder effective investigation and criminal prosecution, countries employ various provisions. For example, in **Croatia, Czech Republic, Finland, Latvia, Netherlands, Poland, Slovakia** and other countries, the limitations time period is interrupted by

procedural actions taken in order to institute criminal prosecution (*e.g.* decision to prosecute). Interruption means that the statute of limitations begins to run anew after a certain event. In **Germany**, the statute of limitations is interrupted by the following facts: the first interrogation of the accused, the notice of the initiation of an investigation against him/her, a judicial order of search and seizure, an arrest warrant, a public indictment, the institution of trial proceedings, a judicial request of an investigative act abroad, etc. However, the prosecution is barred by the absolute lapse, which is ten years for bribery offences.⁶⁴⁶ In **France**, for “concealed” crimes (which currently does not include corruption offences) the statute of limitations begins to run not from the day of commission of the offence, but from the time it was discovered. In **Latvia** the period of limitations is calculated from the day of commission of the offence till the time when the offender is charged or when the accused is officially informed about the extradition request, if the accused is abroad and put on the wanted list, following which the course of the limitations is terminated. In **Georgia**, the statute of limitations for prosecution is calculated starting from the day when the crime is committed up to the day when charges are brought against the person. **Italy** amended its legislation in 2018 (to be enacted in 2020) to stipulate that the statute of limitations will be frozen at the end of the judgement at first instance, so that the appeals process can continue.⁶⁴⁷

Immunities

Immunity from investigation, prosecution or arrest is often granted to various public officials in order to exempt them from liability during their time in office and ensure in this way independence of certain institutions/officials who may otherwise face the risk of politically motivated prosecution. This, however, may prevent the effective investigation or prosecution of corruption offences and foster impunity among high-level officials, especially in the states with high level of corruption.

International standards, therefore, call for a limited scope of immunities and efficient procedures to lift them. The UN Convention against Corruption (Art. 30) mandates State Parties to establish “an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting or adjudicating” corruption offences. The Council of Europe’s Committee of Ministers Resolution No. (97) 24, recommends limiting immunity from the investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.⁶⁴⁸

A number of standards can be formulated with regard to immunities, which should:

- be functional, that is concern actions (or inaction) committed during or in relation to the exercise of the official’s duty;
- not cover situation *in flagrante*, when perpetrator is apprehended during the commission of a crime or immediately after;
- not extend beyond the period when the public official is serving in office;
- allow investigative measures to be carried out against those with immunity;
- provide for swift and effective procedures for lifting the immunity, with clear criteria based on the merits of the request to lift immunity. For persons with absolute immunity (like Presidents in many countries) there should be an effective impeachment procedure.

The IAP countries preserve a wide scope of immunities for various officials (see table below), which can be explained by the transitory stage of their development and the risk of political abuses of power.⁶⁴⁹ While immunity remains a concern in terms of ensuring effective prosecution of corruption offences, the general trend in the region is towards limiting immunity.

In 2010, **Armenia** limited the number of categories of persons enjoying immunity by revoking the privilege for parliamentary candidates, members of the Central, Regional and Local Election Commissions, mayoral candidate, candidates to the local councils, members of the Special Investigative Service.⁶⁵⁰ Also,

the Armenian Constitution was amended in 2005 to allow for the apprehension of members of parliament who are caught in the act (with immediate notification of the parliament). The scope of immunities was further limited in 2015 (see table below).

Table 43. Scope of immunities of MPs and judges in Armenia

Members of Parliament	
Before 2015	After the amendments of 2015
<p>Deputies (Parliamentarians) may not - during the term of their powers and thereafter — be prosecuted and subjected to liability for actions deriving from their status of deputy, including for any opinion expressed in the National Assembly, unless it contains defamation or insult.</p> <p>Deputies may not be involved as an accused detained, nor may a matter on subjecting them to administrative liability through judicial procedure be initiated without the consent of the National Assembly. Deputies may not be arrested without the consent of the National Assembly, except for cases when the arrest is affected at the moment of committing a crime. In this case, the Chairperson of the National Assembly shall be informed promptly.</p>	<p>During and after the term of his powers, a parliamentarian may not be prosecuted and held liable for the voting or opinions expressed in the framework of parliamentarian activities.</p> <p>Criminal prosecution of a parliamentarian may be initiated only with the consent of the National Assembly. Without the consent of the National Assembly, a parliamentarian may not be deprived of liberty, unless caught at the time of or immediately after committing a crime. In this case, the deprivation of liberty may not last longer than 72 hours. The Chairman of the National Assembly shall be notified immediately of the parliamentarian's deprivation of liberty.</p>
Judges	
<p>A judge and the member of the Constitutional Court may not be detained, involved as an accused or subjected to administrative liability through the judicial process except with the consent of the Council of Justice or the Constitutional Court respectively. The Judge and the member of the Constitutional Court shall not be arrested save for cases when caught in the act or immediately after that. In this case the President of the Republic and the Chairman of the Cassation Court or Constitutional Court, respectively, shall be notified immediately about the arrest.</p>	<p>A judge may not be held liable for opinions expressed or judicial acts rendered in the course of administering justice, unless features of a crime or disciplinary offence are present.</p> <p>With respect to performance of his duties a judge of the Constitutional Court may be criminally prosecuted only with the consent of the Constitutional Court. With respect to performance of his duties a judge of the Constitutional Court may not be deprived of liberty without the consent of the Constitutional Court, except when caught at the time of or immediately after the commission of a crime. In this case, deprivation of liberty may not last longer than 72 hours. The President of the Constitutional Court shall be immediately informed when a judge of the Constitutional Court has been deprived of liberty.</p> <p>With respect to the performance of his duties, a judge may be criminally prosecuted only with the consent of the Supreme Judicial Council. With respect to the performance of his duties, a judge may not be deprived of liberty without the consent of the Supreme Judicial Council, except when caught at the time of or immediately after the commission of a crime. In this case, deprivation of liberty may not last longer than 72 hours. The President of the Supreme Judicial Council shall be immediately informed when a judge has been deprived of liberty.</p>

Source: OECD/ACN, Fourth monitoring round report on Armenia, p. 128.

Azerbaijan limited the range of individuals enjoying immunity (by excluding members of the government, while preserving immunity for the Prime Minister) and limited the duration of immunity for MPs to their term of office.⁶⁵¹ At the same time, there has not been any reform of the immunity of judges, despite the IAP monitoring report's recommendation. In particular, it is still impossible to investigate a judge unless the immunity is lifted.⁶⁵² Since the previous round, Azerbaijan introduced changes in the law to limit the duration of consideration of the request to lift immunity of judges from 10 to 3 days.⁶⁵³

Georgia has reduced the categories of persons enjoying immunity by excluding prosecutors and investigators; in 2004, Constitution of Georgia was amended to allow arrest of MPs caught committing crimes. In **Kazakhstan**, immunity does not apply in cases where the offender is apprehended at the scene

of crime or when the offence committed is grave or especially grave (this covers most corruption offences).⁶⁵⁴

Following a constitution and judicial reform in 2016, **Ukraine** has limited immunities of judges. Judges may now be remanded in custody in case of commission of grave and especially grave crimes and if apprehended in flagrante delicto. In all other cases the approval by the High Justice Council must be obtained.⁶⁵⁵ The monitoring reports criticised the fact that the Criminal Procedure Code of Ukraine, as well as the Law on the Status of People's Deputies of Ukraine, continued to provide additional immunities which were broader than the ones stipulated in the Constitution: a personal search of a member of parliament of Ukraine, inspection of his personal belongings and luggage, personal transport, residence or work place, as well as breach of privacy of letters, telephone conversations, and other correspondence, and imposing other measures, including covert investigative actions, which, according to the law, restricted the rights and freedoms of an MP, may be applied only if the parliament has given its consent to bringing the MP to criminal liability and if it is not possible to obtain information by other means.⁶⁵⁶ In September 2019 the newly inaugurated parliament of Ukraine, as one of its first decisions, adopted in the final reading constitutional amendments that fully revoked the immunity of MPs, leaving only exemption from the liability for statements made in the parliament; the amendments will be enter into force in January 2020.⁶⁵⁷

Table 44. Persons with immunities in IAP countries

Persons enjoying immunity	ARM	AZ	GEO	KAZ	KGZ	MNG	TAJ	UKR	UZB
President	●*	●	●	●	●	●	●	●	●
Members of Parliament	●	●	●	●	●	●	●	●	●
Ministers	○	Prime Minister only	○	○	●**	●	○	○	○
Judges	●	●	●	●	●	●	●	●	●
Prosecutors	○	○	○	Prosecutor General only	●**	●	○	○	●
Ombudsman	●	●	●	○	●	○	○	○	●
Other persons	Candidates for President	Election candidates	Auditor General; election candidates; Board members of the National Bank	○	Investigators**	○	Election candidates	○	Deputies of local councils

● Yes
○ No

* Including after termination of office for actions related to office.

** May not be apprehended or arrested, subjected to search, interrogation or personal examination, except for cases when caught *in flagrante* for commission of a grave or especially grave offence.

Source: IAP monitoring reports; OECD/ACN secretariat research.

Effective regret and other defences

A number of countries provide for special defences exempting from liability perpetrators of active bribery and trading in influence offences. One defence arises when a person was solicited or extorted (forced under duress) to give a bribe. A second defence arises when a person denounces the bribe-giving he committed by coming forward to the law enforcement authorities. The latter defence is often called "effective regret" or, under another translation, "active repentance". While most IAP countries make this a general defence applicable to all crimes,⁶⁵⁸ this report will use the term "effective regret" also for the defence of denouncing the offence of active bribery by the bribe-giver.

While the effective regret exemption stimulates the reporting of bribery and allows for the prosecution of public officials who receive bribes (a crime considered in some countries as being more dangerous than active bribery), it creates potential for abuse. This is especially the case when the defence is automatic, leaving no discretion for the prosecutor or judge to assess specific circumstances of the case.⁶⁵⁹ A briber may misuse this defence by blackmailing or exerting pressure on the bribe-taker to obtain further advantages or by reporting the crime long after it was committed when he found out that law enforcement authorities might uncover the offence on their own.⁶⁶⁰

The defence of *extortion* may also be seen as problematic if it is allowed even in cases when the extorted briber did not report it.⁶⁶¹ In its report on **Latvia**, the OECD WGB was concerned that many individuals who commit foreign bribery could qualify for immunity from prosecution as extortion victims. Latvian criminal law "defines extortion to cover bribe demands associated with threats to harm the "lawful interests" of a person, which could conceivably include interests of an economic nature. A threat by a foreign official to breach a contract or to deny participation in a tender might thus be sufficient. Extortion may also cover bribe demands in order that an official perform "legal acts". This would thus cover the mere solicitation of bribes by an official to perform his/her duties."⁶⁶²

If a country decides to retain an effective regret provision, this defence should provide for certain guarantees against possible abuse:

- It should not be applied automatically – the court should have the possibility to take into account different circumstances, *e.g.* the motives of the offender.
- It should be valid only during a short period of time after the commission of a crime and, in any case, before the allegation was brought to the attention of the law enforcement authorities through other sources.
- The briber who denounces the crime should be obliged to co-operate with the authorities and assist in the prosecution of the bribe-taker.⁶⁶³
- It should not be applicable in cases when bribery was initiated by the briber; in other words, should apply only in cases of solicitation or extortion.
- The bribe should not be returned to the perpetrator and should be subject to mandatory confiscation.⁶⁶⁴

The OECD WGB has categorically objected to applying effective regret to *foreign bribery offences*. While in cases of domestic bribery, the effective regret defence may allow uncovering the bribery and prosecuting domestic public officials, in case of bribery of a foreign official there is no guarantee that the official who took the bribe will be prosecuted. "If this occurs the defence serves no useful purpose: the crime may come to light, but the offenders remain unpunished and the ends of justice remain unserved".⁶⁶⁵ As it prepares its candidacy to become an OECD member, Lithuania has introduced amendments to remove the possibility of release from criminal liability for bribery of a foreign officials and for trading in influence, even in the event where the person was demanded or provoked to give the bribe or the person notifies a law enforcement institution after giving the bribe (and before a notice of suspicion is raised against the person).⁶⁶⁶ From the IAP countries, only **Ukraine** (in 2015) explicitly excluded foreign bribery from the

defence of reporting active bribery to investigative authorities. The **Russian Federation** has explicitly excluded foreign bribery from the application of the effective regret exemption in the provisions on the administrative liability for legal entities (Article 19.28 of the Code of Administrative Offences), but while not including such exception in the Criminal Code for the bribery offence.

All IAP countries provide for release from liability of perpetrators of active bribery offences. And in most cases, this defence falls short of the standards mentioned above, except for mandatory confiscation of the bribe which is applied in all IAP countries in such cases.

In **Armenia**, the provisions on effective regret were amended in the Criminal Code in 2014 to address. The law allowed for the defence of effective regret only in respect of active bribery, the bribe must in all circumstances be linked to conditions of extortion, the bribe giver was obliged to report the offence before the law enforcement authorities have been made aware of it and such a report must be made not later than within three days from the commission of the crime. GRECO concluded that “a number of limitations have been introduced in order to avoid abuse of this instrument and that the current provisions have become uniform.”⁶⁶⁷

In **Azerbaijan**, the effective regret defence is provided for private and public sector active bribery. This defence may be applied in situations where the briber reports the offence either before it is discovered or before he learns that the offence has already been discovered. GRECO recommended revising the automatic – mandatory – exemption.⁶⁶⁸ The IAP Second Monitoring Round also recommended that Azerbaijan exclude application of this defence to foreign bribery.⁶⁶⁹ These recommendations have so far not been addressed.⁶⁷⁰

In **Georgia**, for active bribery in the private and public sectors, as well as for trading in influence, a perpetrator is exempted from liability if he voluntarily informs law enforcement authorities before authorities become aware of the offence. Another requirement is that the facts reported by the briber must be sufficient to build a *‘prima facie’* case of bribery.⁶⁷¹ The Criminal Code provisions on effective regret were amended in 2011 to accommodate concerns expressed in the GRECO report. Namely, a provision was added that the decision to exempt a person from the criminal liability is made by the prosecuting body. According to the Georgian authorities, this means that the prosecutor is given discretion whether or not to apply effective regret exemption making it no longer automatic. Later the Ministry of Justice also prepared mandatory guidelines for prosecutors for the application of provisions on effective regret. The guidelines are supposed to prescribe that the decision on the release from criminal liability in cases of effective regret will not be automatic but depend in each case on an assessment of the following criteria: the offender shall report voluntarily, plead guilty and regret committing the offence; the offence must be reported immediately or in a reasonable time; the offence is to be reported before it is discovered or the offender has to believe that the offence has not been discovered; the facts reported must be sufficient to start a prosecution; the offender must reimburse the proceeds, etc. The law enforcement agency will also need to assess whether the offender is the instigator of the crime. Benefit obtained through the offence will not be returned to the bribe-giver unless this benefit is “legitimate”.⁶⁷²

During the IAP fourth monitoring round, Georgian authorities reported that the main guarantees that are in place against the abuse of effective regret provisions are the following:

- Existence of the criteria for the use of effective regret as a defence.
- Existence of the mechanism for monitoring the compliance with the criteria (the General Inspection Unit of the Prosecutor’s General Office and its functions).
- Applicable disciplinary sanctions and related procedures.⁶⁷³

In **Kazakhstan**, if the briber voluntarily informed the body, which has the right to initiate a criminal case, about the briber he is released from criminal liability. In this regard, the IAP report noted that provision of such a significant “indulgence” as release from criminal liability, especially when granted automatically

without obligating the person to provide further assistance to law enforcement bodies in the course of prosecution of the bribe-taker, will not always be justified since a briber who initiates the crime can evade liability using this provision.⁶⁷⁴ The IAP Third Monitoring Round report on Kazakhstan also noted that the provisions stipulating liability for bribery in Kazakhstan tend to aim at detecting the fact of a bribe taken by officials, whereas those who incite bribery and give bribes, under certain circumstance, avoid prosecution, which undermines efforts to prevent such crimes.⁶⁷⁵ The monitoring report recommended Kazakhstan to analyse application of provisions on effective regret in administrative and criminal corruption offences and, if necessary, introduce changes which will exclude possibility of unjustified avoidance of liability.

In the fourth monitoring report on Kazakhstan, the monitoring experts analysed the two concurrent regimes of exemptions from the liability for corruption offence – the general effective regret provision applicable to all crimes (Article 65 CC) and special exemption for active bribery (note 2 to Article 367 CC: release of a bribe giver from liability if an official has been extorting a bribe from him, or if the person has voluntarily informed a law enforcement or special state body of bribery). For the bribe-giving crime, there are two competing provisions for the release of liability. Article 65 is much broader and contains a list of grounds for release from liability. According to the monitoring group, note 2 to article 367 can be retained, but it should be brought in line with the international standards. There is no need to extend the provisions of Article 65 of the Criminal Code to corruption crimes, since this article contains too broad and unclear grounds for release from liability. From the standpoint of prosecution of corruption crimes, the main value of the effective regret provision is the stimulation of reporting about of receiving or requesting of an undue advantage and thus revealing a corrupt act that would otherwise be difficult or impossible to identify. Note 2 to Article 367 CC (special exemption) can fulfil this task. The report also found problematic the release from liability in case of extortion of a bribe under Article 367 of the Criminal Code, because it is envisaged even if the bribe-giver has not voluntarily reported the fact of extortion.⁶⁷⁶

In **Kyrgyzstan**, “a person who gave a bribe” is released from criminal liability if the official extorted the bribe or if the person voluntarily informed the agency authorised to open a criminal case “about upcoming giving of a bribe”. A Resolution of the Supreme Court of Kyrgyzstan contains an important commentary that information about bribe giving cannot be considered as voluntary if the law enforcement authority had already become aware of the bribe giving. As noted in the IAP report, it is not clear from the Criminal Code’s wording whether the release from liability due to effective regret is applicable only when the reporting took place before the bribe-giving had taken place. If it were the case, then there is a contradiction in the wording of this provision (which refers to a person who “gave” a bribe and also to “upcoming” bribe-giving).⁶⁷⁷

Since the previous round the law was amended and the word “upcoming” was removed from the new criminal code enacted in 2019. Mandatory exemption from criminal liability extends to a person who has actually given the bribe (committing active bribery) and who possibly has got the benefit required from the official. This provision may also be applied whenever the bribe was initiated by the bribe giver himself. These provisions were found to be incompatible with the standards and prior recommendations. The report also noted that the Criminal Code of the Kyrgyz Republic, unlike many IAP countries, does not include the general ground for release from the liability based on effective regret. The report found this to be a positive feature, since effective regret may be seen as an inadequate ground for releasing from criminal liability for corruption offences which, by definition, pose a great public threat.⁶⁷⁸

In **Ukraine**, in 2014, the Criminal Code was amended to exclude application of the general effective regret defence to corruption crimes. Also, in 2015, the special defence for active bribery (both in the public and private sectors) and active trafficking in influence was revised to provide that a person who offered, promised or gave unlawful benefit will be discharged from criminal liability if that person (1) comes forward to voluntary report the crime after committing the offence – but before the relevant law enforcement agent obtained information about this crime from other sources and (2) actively facilitated the

solving of the crime committed by the person who received unlawful benefit or accepted its offer or promise. The 2015 amendments also explicitly prohibited application of this defence to foreign bribery.

In **Uzbekistan**, both general effective regret provisions and the special release for bribery offences apply. Under the latter, the briber will be released from liability for active bribery under the following conditions: if a bribe was extorted by a bribe taker, and if a bribe giver within 30 days after the commission of criminal act voluntarily informed about the offence, sincerely repented and actively contributed to solving the crime. According to the Uzbek authorities, this provision can be applied to a person who committed the crime only in case all the conditions specified in these articles give grounds for discharging from liability. The special ground for release from the liability is actively used in practice: in 2016-2018, it was applied more than 120 times for the offence of bribery of an official (Article 211 CC). The general effective regret provision was applied for bribery offences to 12 persons during the same period.⁶⁷⁹

The monitoring report found the following issues with the relevant provisions of Uzbekistan:

- There is no direct reference that information on giving a bribe should be made before it became known to law enforcement agencies from other sources.
- The 30 days limit for submitting information on bribery to activate the release is unjustified. This period is too long and in practice it can be difficult to establish at what time this period starts. Such a long period for filing information may lead to a situation when the bribe giver will declare giving a bribe only in case of an unsatisfactory solution for him of the issue in question. The best option would be to establish a requirement to report the extortion of giving a bribe before giving or at the first opportunity after giving a bribe, but no later than the moment when it became known to law enforcement agencies.
- The terms “sincerely repent” and “actively contributed to solving the crime” are not explained either in the Criminal Code or in the ruling of the Plenum of the Supreme Court, and therefore can be arbitrarily applied in practice.
- The above provisions can be applied in case of giving a bribe to a foreign official – this is not in conformity with the standards, formulated by the OECD Working Party.

Similar issues are raised in other ACN countries. For example, in 2013 **Latvia**, to comply with the OECD standards, amended the relevant provisions of its Criminal Code so that the exemption from liability would be discretionary, not automatic. The provision has also been narrowed by requiring an individual to actively further the disclosure and investigation of the offence in order to benefit from the defence.⁶⁸⁰ In 2014, KNAB issued guidelines for investigators to ensure that this provision is applied consistently. “These guidelines require investigators to consider specific factors such as whether the bribe-payer provided information not known to investigators, whether obtaining such information in another way would have been difficult or impossible, the motives for engaging in bribery and for reporting the crime etc.”⁶⁸¹

Table 45. Effective regret provisions in IAP countries

Country	General exemption of effective regret (general part of criminal code)		Special exemption for active bribery offences / conditions of application if applied
	Provided in CC	Exception for corruption offences	
Armenia	● Minor or medium gravity offences	○	If there was extortion and the person, before it became known to criminal prosecution bodies but not later than within 3 days, notified the criminal prosecution bodies and assisted in solving the crime.
Azerbaijan	● Minor gravity offences	○	If there was extortion or if the person voluntarily informed the respective state body about the bribe-giving.
Georgia	● Minor gravity offences	○	If the person voluntarily declared about it to the authorities conducting criminal proceedings. A decision to discharge a person from criminal liability shall be taken by the authorities conducting criminal proceedings.
Kazakhstan	●	○	If there was extortion or if the person voluntarily informed the law enforcement or the special state body about the bribe-giving.
Kyrgyzstan	○	n/a	If there was extortion or if the person voluntarily informed the agency authorised to open a criminal case about the bribe-giving.
Mongolia	No information	No information	If bribe offeror voluntarily confesses to the competent authority that he/she gave the bribe to receive public service as a result of impediments created by the public official, the bribe offeror will be released from criminal sanctions and the received public service will not be undone/confiscated. If bribe offeror gave the bribe in order to have public official commit an unlawful act, such bribe offerors shall not be released from sanctions/liability. If bribe offeror voluntarily confesses his/her crime to the competent authority, such confession will be the basis for mitigating relevant sanctions/liability.
Tajikistan	● Minor or medium gravity offences	○	If there was extortion or if the person voluntarily informed the agency authorised to open a criminal case.
Ukraine	● Minor or medium gravity offences	●	If the person, having offered, promised or given an unlawful benefit, (1) came forward to voluntary report the crime to the body whose official is authorised by law to issue a notice of suspicion – but before the relevant authority obtained information about this crime from other sources and (2) actively facilitated the solving of the crime committed by the person who received unlawful benefit or accepted its offer or promise (except foreign officials).
Uzbekistan	● Minor gravity offences	○	If there was extortion and the bribe giver within 30 days after the commission of criminal act voluntarily informed about the offence, sincerely repented and actively contributed to solving the crime.

● Yes ○ No

Source: IAP monitoring reports; OECD/ACN secretariat research.

Procedures for investigation and prosecution of corruption offences

The fourth round of the IAP monitoring focused on actual enforcement of criminal responsibility for corruption. It examined different available tools, methods and procedural rules of the detection, investigation and prosecution of corruption, their practical application and impact on the overall results in combating corruption.

One of the issues the monitoring paid particular attention to was how corruption offences were detected, namely what sources of information were available, and which of them were most commonly used in practice.

The monitoring also looked into different aspects of investigation and prosecution of corruption, such as access of law enforcement agencies (LEAs) to bank, financial and commercial records, prosecutorial discretion, time limits and other obstacles to effective investigation/prosecution, inter-agency co-operation in criminal proceedings, international co-operation and asset recovery in corruption cases.

Detection of corruption

International standards

While all international anti-corruption standards highlight the importance of effective detection of corruption, they do not contain any exhaustive or indicative list of sources of information or approaches to be used for this purpose.

UNCAC requires each State Party to consider establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions (Article 8(4)). It also encourages countries to facilitate reporting of any facts concerning corruption through protection of reporting persons (Article 33) and ensure effective co-operation between national authorities (Article 38), as well as their co-operation with the private sector (Article 39), emphasizing reporting the commission of corruption offences as one of essential elements of such co-operation. In relation to reporting by national authorities, the Convention encourages provision of the information when there are reasonable grounds to believe a corruption offence has been committed.

Moreover, the Convention requires the anti-corruption bodies to be known and accessible to the public for the reporting, including anonymously, of corruption behaviour (Article 13), and mentions promoting co-operation between law enforcement agencies and private entities, and ensuring efficient auditing control of private enterprises to assist in preventing and detecting acts of corruption (Article 12).

The Technical Guide to UNCAC further elaborates that early notification of any potential offence to those agencies with the powers and expertise to investigate and prosecute such offences is essential to ensure that perpetrators do not flee the jurisdiction or tamper with evidence and the movement of assets can be prevented or monitored. Many corruption cases are complex and covert; early notification by relevant public bodies or early co-operation at the request of investigative agencies is standard good practice.⁶⁸²

Mentioning the importance of early notification by private sector bodies, the document also underlines the role of the financial institutions – or those institutions involved in high-value commercial activity – as central to the effective prevention, investigation and prosecution of corruption offences, encouraging countries to involve the private sector, in particular financial institutions, in developing standards for the format and contents of material provided.⁶⁸³

Similar provisions regarding effective and appropriate protection to reporting persons, and ensuring that public authorities and officials inform law enforcement bodies, on their own initiative, where there are reasonable grounds to believe that a corruption offence has been committed, are contained in the Council of Europe Criminal Law Convention on Corruption (Articles 21 and 22).

However, as the Explanatory Report to the Convention clarifies, the provision on reporting by public authorities does not carry out an obligation to modify those legal systems, which do not provide for a general obligation of public officials to report crimes or have established specific procedures for so doing, as the respective article of the Convention contains alternative instruments of co-operation. The report also explains that the terms "reasonable grounds" mean that the obligation to inform has to be observed as soon as the authority considers that there is a likelihood that a corruption offence has been committed. The level of likelihood should be the same as the one that is required for starting a police investigation or a prosecutorial investigation.

The Explanatory Report to the CoE Convention expounds that the authorities responsible for reporting corruption offences are not defined but national legislatures should adopt a broad approach. It could be tax authorities, administrative authorities, public auditors, labour inspectors... whoever in the exercise of his functions comes across information regarding potential corruption offences. Such information, necessary for the law enforcement authorities, is likely to be available, primarily, from those authorities that have a supervisory and controlling competence over the functioning of different aspects of public administration.⁶⁸⁴

The Council of Europe guiding principles for the fight against corruption directly mention the role of audit procedures in detecting corruption outside public administration, providing a more general recommendation regarding application of those procedures in the public sector.⁶⁸⁵

In terms of the foreign bribery detection, the standards in the OECD Anti-Bribery Convention and 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions (the 2009 Recommendation) primarily focus on reporting of suspected foreign bribery offences to law enforcement and different mechanisms of effective detection of such offences by private companies, whistle-blowers, certain agencies (e.g., foreign representations, tax authorities) and professionals (e.g. external auditors).

The 2009 Recommendation urges countries to ensure that:

- easily accessible channels are in place to report suspected acts of foreign bribery to law enforcement authorities, in accordance with their legal principles;
- appropriate measures are in place to facilitate reporting by public officials, directly or indirectly through an internal mechanism, to law enforcement authorities of suspected acts of bribery of foreign public officials in international business transactions detected in the course of their work, in accordance with their legal principles;
- appropriate measures are in place to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions.

It also recommends that accounting, external audits, internal controls, ethics and compliance programmes and measures be used for detecting foreign bribery.⁶⁸⁶

The issue of co-operation between tax and law enforcement authorities is addressed in the 2010 OECD Recommendation to Facilitate Co-operation between Tax and Other Law Enforcement Authorities to Combat Serious Crimes that recommends to establish an effective legal and administrative framework and provide guidance to facilitate reporting by tax authorities of suspicions of serious crimes, including money laundering and terrorism financing, arising out of the performance of their duties, to the appropriate domestic law enforcement authorities.⁶⁸⁷

The FATF Recommendations provide for the establishment of a legal framework and mechanisms to alert the authorities to suspicious activities in the financial system, and to provide them with sufficient powers to investigate and prosecute such activities, and the seizure or freezing and confiscation of criminally derived assets. This includes the criminalisation of money laundering, with corruption and bribery as predicate offences, a legal framework for the confiscation of criminal proceeds, and the institutional and legal framework to obtain information and to collect and analyse reports on suspicious financial activity.⁶⁸⁸

Procedure of initiating the pre-trial investigation

In most IAP countries, pre-trial proceedings must be initiated by a body of inquiry, an investigator or a prosecutor if there is a statutory ground and sufficient information about an alleged crime. Whether there is sufficient information to start pre-trial proceedings depends on whether a reasonable assumption can be

made that a crime has been committed. When there is no sufficient information, as a rule, relevant authority or official is obliged to conduct preliminary checks or so-called pre-investigation inquiry, either personally or through the competent authorities. The quality of such checks differs greatly from one case to another in most IAP countries, and the diligence exercised as well as making decision to open a case often depends on the willingness of the investigator and prosecutor to pursue the case. Another problem in this regard is that some information, including explanations from potential suspects or witnesses, is collected at the inquiry stage which is outside a criminal investigation.

At the same time, **Ukraine, Kazakhstan and Kyrgyzstan**, eliminated the procedure of pre-investigation inquiry and now apply a different model of automatic commencing the criminal proceeding with entering information into the registry of pre-trial investigations.

And new version of the Criminal Procedure Code of **Mongolia** has shortened the term of pre-investigation check from 19 to 5 days. This change appeared to be challenging for investigators who informed during the monitoring about the lack of resources to ensure proper analysis within so short timeframe. One more procedural feature of the respective stage in Mongolia is that the decision whether to open the investigation may be made only by the prosecutor.⁶⁸⁹

Usually the statutory grounds for instigation are reports about offences from any natural or legal persons, including self-reporting or voluntary surrenders, media reports. However, all these grounds are not utilised equally, and the potential of many sources is not fully tapped.

Sources of information

In view of the dynamic nature of corruption that takes new more sophisticated forms, the diversification of sources of its detection should be one of the essential elements of the effective anti-corruption work.

Results of tax and other inspections, as well as audits is particularly valuable source of information for the detection of serious financial and corruption crimes as it is based on the examination of underlying financial and accounting records that may contain traces of illegal payments. The effective detection of corruption with the use of these sources requires strong co-operation in sharing information among different agencies.

According to the data examined in the framework of the fourth round of monitoring, the reports of crime submitted by individuals and legal persons, as well as law enforcement intelligence, remain the main source of detection for a vast majority of corruption cases. At the same time, the potential of many sources of detection, in particular analytical ones, as well as means of international co-operation, is largely untapped.

Positive examples of new approaches to the detection of corruption may be found in **Ukraine and Georgia**.

A new law enforcement anti-corruption body – the National Anti-Corruption Bureau of Ukraine (NABU), created in 2015, achieved significant results in proactive detection of corruption. One of the factors contributing to this is that NABU is staffed with detectives, which is a new “procedural position” in Ukraine; it combines the functions of the intelligence officers (operatives) and investigators. This position ensures that the primary job of detectives is to detect. Secondly, along with detectives, NABU has been staffed with analytical officers (analysts) working within NABU’s Department on analytics and information processing. Both detectives and analysts have access to and use in their work government-held registries and databases. One of these databases is the Unified Registry of Asset Declarations which, following the comprehensive reform of the financial disclosure system for public officials in 2015, contains vast amounts of information about assets of public servants and their family members.⁶⁹⁰

One of important sources of information for initiating criminal investigation in **Georgia** is the analysis of risk profiles carried out by the State Audit or other government agencies. In 2014 about 12 % of corruption cases were launched based on information from this source.⁶⁹¹

Table 46. Main sources of information used in IAP countries for the detection of corruption

	Armenia (2014- 2017)	Azerbaijan (2013-first half of 2016)	Georgia (2014- 2015)	Kazakhstan (2015-2016)	Kyrgyzstan (2015-2017)	Mongolia (2015- 2018)	Tajikistan (2014- 2016)	Ukraine (2015-1 st half of 2017)	Uzbekistan (2016-2018)
Operative measures (criminal intelligence), pre-investigation inquiry		●	●	●	●	●	●	●	●
Reports from natural and legal persons, public officials	●	●	●	●	●	●	●	●	●
Voluntary surrender									●
Analysis of risk profiles			●					●	
Information revealed in other investigations	●		●						●
Referrals from other law enforcement bodies								●	
Immediate detection of elements of crime by the prosecution officers during inspections					●				
Court decisions								●	
Referrals from tax authorities	●	●							
Referrals from auditors	●	●	●		●				
FIU reports			●		●	●	●		●
Media reports	●				●	●		●	●
Anonymous reports						●			
International co-operation									
Asset declarations								●	

Source: IAP monitoring reports; OECD/ACN secretariat research.

Another example of well-developed analytical work is the Anti-Corruption Department under the Prosecutor General of **Azerbaijan** (ACD). All information gathered in cases and the complaints received by ACD are fed into an electronic database and used every six months for preparing analytical reports and submitting motions to various authorities when a certain law violation appears to be committed. The authorities are obliged to answer within one month and report about the corrective measures that they have

been taken.⁶⁹² This work has been further improved after the IAP fourth monitoring round report. During 2017, the ACD summarised and analysed information on planned and committed corruption offences in areas of social protection, state property management, state registry of real estate, state land cadastre and monitoring, banking, energy supply and health sectors. In 2018, the ACD conducted such analysis concerning education, agriculture, health and social protection sectors were also conducted. However, the fourth monitoring round follow-up report also found unclear how much it helped ACD to identify and further investigate complex corruption cases, systemic corruption, and high-level cases.⁶⁹³

Most IAP countries do not maintain comprehensive statistics on sources of the detection of corruption and were not able to provide precise information in this regard.

A different experience of the OECD WGB countries is reflected in the recent Study on detection of foreign bribery that covered the period of 1999-2017. The aggregate figures of the study showed that the most of foreign bribery schemes had been detected via self-reporting by companies (22%) and mutual legal assistance (7%). The other important sources described in the study are whistle-blowers, confidential informants, cooperating witnesses, media and investigative journalists, tax authorities, FIUs, other government agencies, criminal and other legal proceedings, professional advisers.⁶⁹⁴

Media reports

Media reports are often mentioned among the statutory grounds for instigating criminal proceedings. The only exception is **Tajikistan** where reports in internet media are not included yet in the list of such grounds. During the monitoring it was explained as a minor shortcoming that had no influence on practice, however no examples of cases started on the grounds of internet media reports were provided.⁶⁹⁵

While several IAP countries, namely **Ukraine** and **Mongolia**, use media for the purposes of detecting corruption quite actively, and few more also had corruption cases triggered by media reports, this is far from being a common practice yet. In general, the low use of media reports as a possible source of information remains a worrying problem for most of IAP countries.

This situation may be explained by the weak legal framework protecting freedom, independence of the press, enforcement of the severe defamation laws and ineffective tools for accessing information in the public administration. The Eastern Europe and Central Asia region continues to rank low in the global media freedom ranking.⁶⁹⁶

Moreover, some jurisdictions do not provide any protection to journalists from unfounded lawsuits or even liability for their professional activity and oblige them to disclose their sources.

In **Azerbaijan** media articles and journalist investigations cannot be used as a source of information in criminal investigations, as the country's Criminal Procedure Code requires the journalist to provide a witness statement to the investigator, disclose his/her source of information, and provide supporting documents. However, in fact law enforcement practitioners regularly look for information in the media, which they may use for detective activity.

Nevertheless, several big corruption and money laundering scandals implicating Azerbaijan public officials and Azerbaijan companies, extensively covered in international press, appeared to have no law enforcement response from Azerbaijan. This supports the original opinion of the IAP monitoring experts that press allegations do not constitute detection sources, otherwise these cases have not been pursued for political or other considerations.⁶⁹⁷

Cases of prosecution of investigative journalists who uncover corruption were reported over last five years in **Tajikistan**⁶⁹⁸, **Azerbaijan**⁶⁹⁹, and **Russia**.⁷⁰⁰

As a comparison, between the entry into force of the OECD Anti-Bribery Convention in 1999 and June 2017, two per cent of foreign bribery schemes resulting in sanctions, amounting to a total of six schemes, were initiated following media reports on the alleged corruption.⁷⁰¹

The OECD Survey of Investigative Journalists that was conducted in 2017 and received a total of 101 responses from journalists in 43 countries, including 28 out of the 43 Parties to the OECD Anti-Bribery Convention, indicated the following as main obstacles to investigation and reporting on corruption: confidentiality of law enforcement proceedings (21%), inadequate freedom of information legislation (21%) and poor communication/relationship with law enforcement authorities (18%). 54% of respondents had contacted law enforcement authorities with information on corruption. Those who reported to law enforcement mainly did so in order to obtain more information in the case or because they knew that information they had could be useful. The next most common reason for reporting was because of a desire to see justice done, followed by concern at the inactivity of law enforcement in the case. And 54% of respondents considered protection of sources a concern when interacting with law enforcement authorities in corruption cases.⁷⁰²

While fear for personal safety was indicated as an obstacle for reporting only by 10% of the respondents of the mentioned survey, crimes against journalists investigating corruption schemes remains to be alarming. According to the Committee to Protect Journalists, 69 such journalists were killed around the world during 2014-2019.⁷⁰³

Box 49. Examples of journalists reporting on corruption (Panama and Paradise papers)

The Panama Papers investigation by the International Consortium of Investigative Journalists (ICIJ) published the internal operations of one of the world's leading firms in incorporation of offshore entities, Panama-headquartered Mossack Fonseca. The 2.6 terabytes of data that make up the Panama Papers files were obtained by German newspaper Süddeutsche Zeitung and shared with ICIJ and more than 100 media partners. The leak contains more than 11.5 million internal files of the company and revealed the offshore links of 140 politicians and public officials from 50 countries to offshore companies in 21 tax heavens. Publication of the Panama Papers triggered investigations in a number of jurisdictions that have reportedly resulted in above \$1.2 billion in fines and back taxes.

A similar ICIJ global investigation called the Paradise Papers includes nearly 7 million loan agreements, financial statements, emails, trust deeds and other paperwork from nearly 50 years at Appleby, a leading offshore law firm with offices in Bermuda and beyond. The documents also include files from a smaller, family-owned trust company, Asiatici, and from company registries in 19 secrecy jurisdictions. The records range from complex, 100-page corporate transaction sheets and dollar-by-dollar payment ledgers to simple corporate registries of countries, such as Antigua & Barbuda, that do not publicly list names of company shareholders or directors. As a whole, the Paradise Papers files expose offshore holdings of political leaders and their financiers as well as household-name companies that slash taxes through transactions conducted in secret.

The ICIJ's investigations have involved more than 380 journalists working on six continents in 30 languages highlighting the importance of collaborative networks for investigative journalists working on complex cross-border investigations.

Source: OECD/ACN secretariat research; www.icij.org/investigations/panama-papers/panama-papers-helps-recover-more-than-1-2-billion-around-the-world; www.icij.org/investigations/paradise-papers/about.

Anonymous reports

Another effective instrument that may be used for the detection of corruption is anonymous reporting to law enforcement agencies. While anonymous complaints may contain too indefinite information and make it difficult to obtain additional information which is essential for further investigation, they may encourage those persons who are not willing to disclose their identity to provide important information about possible corruption-related crimes, in particular those which are difficult to identify due to their nature.

Therefore, it is worthwhile to establish the possibility of commencing criminal proceedings for corruption-related crimes based on such messages. The condition for their consideration may be an indication in the message of verifiable facts. It also makes sense to expand the channels for receiving such messages, including via Internet.

Criminal investigations may be commenced based on anonymous communication in **Georgia, Ukraine, Kyrgyzstan** and **Mongolia**. Although only the latter had corruption investigations initiated due to anonymous reports in practice. In **Armenia, Kazakhstan** and **Uzbekistan** anonymous complaints may be used for intelligence gathering and result in opening of a criminal investigation if the information is confirmed.

There is no common practice in the OECD countries regarding the acceptance of anonymous reports of corruption behaviour. At the same time, a number of them accept and follow up on anonymous reports using different communication platforms. For example, in **Austria** the Ministry of Justice uses an external service provider for its reporting platform, which enables encrypted anonymous reporting and follow-up and feedback through a case numbering system.⁷⁰⁴

Box 50. Reporting about corruption via mobile app in Lithuania

In 2016, the Special Investigation Service (STT) with the purpose to make reporting about corruption more active launched a user-friendly mobile application “Pranešk STT” (Inform STT). By using the mobile app “Pranešk STT” on their smart phone people can inform STT about the demand to give a bribe, offer of a bribe, abuse of office or any other corruption offence, take a picture and attach a file with evidence and if necessary use the navigation that will take them to closest office of STT. The mobile application, financed by the EU Internal Security Fund 2014-2020, is suitable for devices using Android and iOS software. The mobile app can be also used and remain anonymous but STT encourages informants to provide more details about themselves. In that case, confidentiality can be ensured, and every informant will be notified about the actions performed by STT and decisions taken.

Source: www.stt.lt/en/news/?cat=1&nid=2454.

Information from the financial intelligence units (FIU)

Serious and complex corruption offences are very often combined with the laundering of criminal proceeds. According to international standards countries are required to criminalize money laundering in relation to corruption offences. Therefore, anti-money laundering mechanisms can support the detection of corruption via effective co-operation between law enforcement agencies and FIUs that may be a powerful tool in the fight against corruption.

One of fundamental elements of anti-money laundering and countering the financing terrorism (AML/CFT) systems is the reporting of suspicious transactions by financial institutions as well as designated non-financial businesses or professions to FIUs. The respective reports and their analysis provided by FIUs are often an important source of information disclosing corruption activity and triggering corruption investigations or supporting ongoing investigations of corrupt activity. Apart from that, FIUs also provide the respective data and analysis on request of LEAs.

164 FIUs around the world are members of a united platform of secure and quick exchange of financial intelligence – the Egmont Group, which allows to obtain quickly necessary information from another jurisdiction. The information from another jurisdiction received through this channel may also help detecting different predicate offences including corruption ones. To facilitate this work, the Egmont Group has compiled a set of indicators that may, when considered in the context of a transaction or customer interaction, assist in the identification of corruption and of the laundering of the proceeds of corruption.⁷⁰⁵

All IAP countries established the rules on co-operation between law enforcement bodies and FIUs, which regulate information exchange, joint actions and mutual assistance.

However, the IAP fourth monitoring round found that in some jurisdictions the co-operation is to be improved yet. For example, in **Kazakhstan** the co-operation procedure envisages that submission of requests to the FIU on provision of details and information on a transaction subjected to the financial monitoring shall be carried out by LEAs with the approval of the General Prosecutor of the Republic of Kazakhstan and his deputies. The monitoring report found this procedure too complicated that may be an obstacle to an operative investigation of corruption crimes.⁷⁰⁶ In **Mongolia** the FIU mentioned about the lack of feedback from the Independent Authority Against Corruption on the FIU materials shared with the agency.⁷⁰⁷

Box 51. Mechanisms for co-operation between FIUs and LEAs/prosecutors

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The World Bank/StAR survey identified the following mechanisms that are used in several jurisdictions to strengthen the co-operation between the FIU and competent LEAs/prosecutors:

- LEA's and/or FIU's staff serving as a liaison officer.
- Designating contact points in FIUs and competent LEAs to deal with operational and other bilateral issues of common interest.
- Periodic meetings, and daily and direct formal and informal contacts, to provide a forum for exchange of case-related information, obtain feedback, discuss practical problems and obstacles, and promote training activities.
- Signing of bilateral or multilateral Memoranda of Understanding (MoUs) between FIUs and competent LEAs. MOUs are mostly used in jurisdictions where the FIUs are not located at LEAs. They are usually intended to enhance the exchange of information. Often such MOUs also seek to establish specific “inter-agency mechanisms” to improve the co-operation and coordination of activities between the parties.
- Establishing joint working groups or task forces to deal with operational/case-based issues (such as joint analysis and/or investigation of complex money laundering and terrorist financing cases) or other, more strategic issues (such as assessing the risk of money laundering and financing of terrorism on a national level, developing IT solutions for sharing of information, and the like).
- Holding joint trainings, including exchange of staff for training purposes and promoting internship programs.
- Conducting internal surveys to understand the FIUs' needs and how to improve co-operation with the FIUs.

Note: Based on the survey with participation of FIU representatives from 91 jurisdictions and LEA representatives from 58 jurisdictions.

Source: World Bank (2018), Klaudijo Stroligo, Chin-Lung Hsu, Theodore Kouts, Financial Intelligence Units Working With Law Enforcement Authorities and Prosecutors, p. 23, <https://star.worldbank.org/sites/star/files/fius-report-04-sk1.pdf>.

During the IAP monitoring most countries did not provide exact figures about the number of corruption cases initiated based on materials from FIU. Only **Uzbekistan** informed about 23 such cases and **Tajikistan** informed about one case. **Ukraine** appeared to be the only IAP country where the FIU made significant efforts in order to facilitate detection of corruption cases confirmed by data. For instance, in 2018 the Ukrainian FIU submitted to LEAs 420 materials with the total amount of about 277 billion UAH (9,5 billion EUR).⁷⁰⁸ However, as it is indicated in the external evaluation report of NABU in 2017 only one criminal proceeding was initiated by the Bureau based on the information provided by the FIU, and no such cases were opened in 2015-2016.⁷⁰⁹

Some jurisdictions explained that such statistics were absent because the FIU materials are confidential, and therefore may not be used as evidence or incorporated in the case file but need to be further legalised by conducting investigative actions.

In this regard the monitoring report on **Kyrgyzstan** referred to the FATF Report on Operational Issues – Financial Investigations Guidance, according to which although in most countries suspicious transaction reports are used for operational purposes and are not used as evidence in courts, in some countries suspicious transactions reports (STR) are directly admissible as evidence in court.⁷¹⁰ Thus, the use of the STR as evidence does not contradict the FATF standards and monitoring experts considered it as a tool to improve the effectiveness of the financial investigations.⁷¹¹

Box 52. FIU detection of corruption and influence peddling by a politically exposed person

In 2016 TRACKFIN, which is the French FIU, received information concerning amounts received without proper justification by a local elected official, Mr A, from a non-profit training organisation officially managed by Ms B, his associate. The investigations, that covered all Mr A's accounts and those of two other non-profit organisations that he managed, led to the following findings.

On Mr A's personal accounts:

- Credits widely in excess of his official income, essentially comprising cash deposits and payments received from both non-profit organisations and companies, totaling almost €250,000 over a three-year period
- Expenditure that was non-commensurate with his known circumstances, with large amounts being gambled
- On the accounts of the non-profit organisations managed by Mr A or his associate:
 - A non-profit training organisation, the main payments of which were in favour of its manager, Mr A, either directly or through a third party, without a clear reason
 - A political group with few bank transactions but again with the majority of payments being sent to Mr A, its head
 - A non-profit cultural organisation funded by companies under sponsorship arrangements, with the amounts being inconsistent with its actual activity.

The investigations, which focused on the companies making payments to the latter non-profit organisation and to Mr A himself, revealed that they had all won procurement contracts awarded by the local authorities to which Mr A had been elected.

The evidence gathered was sent to the public prosecutor's office with territorial jurisdiction on the grounds of presumption of influence peddling, favoritism or corruption

Source: TRACKFIN, 2016 Annual Report, p. 40, www.economie.gouv.fr/files/ang-ra-tracfin-2016.pdf.

Table 47. Legal status of FIU information/report

Legal status of FIU information/report	Number (%) of FIUs
The FIU information/report can be used by the recipient only as intelligence.	53 (58)
The FIU information/report can be used by the recipient as evidence in the criminal procedure.	2 (2)
The FIU information/report and the attached documents obtained from the reporting entities and other sources can be used by the recipient as evidence in the criminal procedure.	6 (7)
The FIU information/report and the attached documents obtained from the reporting entities can be used by the recipient both as intelligence and as evidence, depending on the content of information.	22 (24)
Other	13 (14)

Note: Based on the survey with participation of FIU representatives from 91 jurisdictions; five FIUs selected multiple answers. Source: World Bank (2018), Klaudijo Stroligo, Chin-Lung Hsu, Theodore Kouts, Financial Intelligence Units Working With Law Enforcement Authorities and Prosecutors, p. 41, <https://star.worldbank.org/sites/star/files/fius-report-04-sk1.pdf>.

Access to bank, financial, commercial records

International standards

The minimal standards set by UNCAC require from States Parties to encourage co-operation between, on the one hand, public authorities and entities of the private sector, in particular financial institutions, and, on the other hand, national investigating or prosecuting authorities. With regard to public authorities the Convention specifies that such co-operation may include providing, upon request, to the investigating or prosecuting authorities all necessary information (Article 38).

In relation to bank secrecy, UNCAC highlights the need for appropriate mechanisms available within domestic legal systems to overcome obstacles that may arise out of the application of bank secrecy laws in the case of domestic criminal investigation of corruption offences (Article 40).

The Technical Guide to the Convention highlights that effective implementation of the Article 40 would require an assessment of the following issues:

- a list of agencies empowered to overcome bank secrecy, the circumstances and purposes of access to banking information;
- procedural requirements to lift bank secrecy;
- automatic disclosure of the information or upon request;
- use of centralised databases;
- the content of a request
- implementation of the preventive principles of “know your customer and know your beneficial owner”;
- specificities of access to banking information of the professional advisors (e.g. lawyers, auditors).⁷¹²

The Council of Europe Criminal Law Convention on Corruption stipulates that courts or other competent authorities must be empowered to order that bank, financial or commercial records be made available or be seized in order to carry out criminal investigation, while bank secrecy shall not be an obstacle to investigative measures (Article 23).

The 2009 OECD Anti-Bribery Recommendation also urges countries to examine their laws and regulations on banks and other financial institutions to ensure that adequate records would be kept and made available for inspection and investigation.

The FATF recommendations, besides instructing to provide FIUs with information related to suspicious transactions with the possibility to further transfer this information to LEAs, also contain following requirements related to law enforcement activities when pursuing money laundering, associated predicate offences and terrorist financing:

- to develop a pro-active parallel financial investigation when pursuing money laundering, associated predicate offences and terrorist financing;
- to ensure that competent authorities have responsibility for expeditiously identifying, tracing and initiating actions to freeze and seize property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime;
- to make use, when necessary, of permanent or temporary multi-disciplinary groups specialised in financial or asset investigations;
- to enable competent authorities to obtain access to all necessary documents and information for use in their investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions, DNFBPs and other natural or legal persons, for the search of persons and premises, for taking witness statements, and for the seizure and obtaining of evidence;
- ensure that competent authorities conducting investigations are able to use a wide range of investigative techniques suitable for the investigation of money laundering, associated predicate offences and terrorist financing. These investigative techniques include undercover operations, intercepting communications, accessing computer systems and controlled delivery.
- to have effective mechanisms in place to identify, in a timely manner, whether natural or legal persons hold or control accounts;
- to ensure that competent authorities have a process to identify assets without prior notification to the owner;
- to enable competent authorities to ask for all relevant information held by the FIU.

Moreover, the Recommendations require to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities; company registry facilitate timely access by countries' competent authorities to the public information they hold.

The EU Fifth Anti-Money Laundering Directive⁷¹³ requires member states to establish central registers containing information about beneficial owners of legal entities incorporated within their territory. The Fifth Directive also includes a requirement to put in place centralised automated mechanisms, such as central registries or central electronic data retrieval systems, that include information about customer-account holders and any person purporting to act on behalf of the customer, beneficial owners of customer-account holders, bank or payment accounts and self-deposit boxes. Both beneficial owners and accounts databases should be accessible to competent authorities of the respective countries, while the former one should be also open for general public.

A more recent EU Directive⁷¹⁴ laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences (including corruption) pays particular attention to the access of law enforcement agencies to financial data. The Directive prescribes designating the competent authorities empowered to access and search the national centralised bank account registry, as well as can request and receive financial information or financial analysis from the FIU. Such access and search shall be direct and immediate, for instance by transmitting the requested data expeditiously by an automated mechanism. The Directive also sets up the rules of information exchange between LEAs and FIUs, between FIUs of different member states, and between Europol and FIUs.

The EU Eastern Partnership (EaP) “20 Deliverables for 2020”⁷¹⁵ sets as one of the targets for the EaP countries by 2020 to have effective tools for financial investigations including centralised bank accounts registries.

Access to records and databases

The fourth round of monitoring focused on the issues of access of LEAs to different types of information that is of particular importance for the investigation and prosecution of corruption offences: bank, financial and commercial records, asset declarations, tax, customs and other public databases. Quick and, where possible, direct access to these kinds of information enables investigators and prosecutors to early detect and investigate complex corruption cases where the money passes through a chain of intermediaries, draw the financial profile of the suspect and follow the money trail. Moreover, indirect access to financial information, asset declarations, tax information and property records etc. requires disclosure of the existence of the investigation to third parties which could compromise ongoing investigative activity.

The analysis shows that most IAP countries have made some improvements granting their investigators and prosecutors easier access to some data. However, in general and taking into account the development of modern IT technologies, in many instances such access to data held by public institutions is not direct and may not be called swift.

For example, in **Armenia** only the Investigative Committee and the State Revenue Committee who deal with economic crimes have direct access to tax and customs databases, while tax and customs inspectors are granted direct access to a number of public registries. However, investigators and prosecutors dealing with corruption cases have to submit a written request to get the respective data.⁷¹⁶

On the other hand, some ACN countries have demonstrated a positive example by providing their law enforcement agencies with direct access to public registries and other databases. For instance, some progress in this respect was noted in **Albania**⁷¹⁷, **Latvia**⁷¹⁸, **Montenegro** (with a number of shortcomings that need to be addressed)⁷¹⁹, and **Ukraine**.⁷²⁰

At the same time, the OECD and WBG Report on Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption revealed that only in 10 out of 67 participating jurisdictions sharing tax information with the corruption investigation authority is ensured through granting direct access to the tax authorities' databases.⁷²¹

Recent amendments to the Criminal Procedure Code of **Azerbaijan** allowed investigating authorities to access financial information including financial transactions, bank accounts or tax payments, private life or family, state, commercial or professional secret information in the pre-investigative phase without initiation of official investigation (starting criminal case).⁷²²

Box 53. Open register of domestic Politically Exposed Persons in Ukraine

A Ukrainian NGO Anti-Corruption Action Centre in co-operation with NGO White Collar Hundred, Ukraine's FIU and Ministry of Justice has created and maintained an Open Registry of Politically Exposed Persons, a user-friendly information database listing domestic politically exposed persons (PEPs). The database is open for free use by journalists, civic activists and organisations, as well as for financial monitoring actors and law enforcement agencies.

Information contained in the Registry is based on the evidence collected by NGO Anti-Corruption Action Centre from publicly available reliable sources. The Registry contains information about professional career of PEPs, their associates (legal and natural persons including family members), incomes and assets, bank accounts and other available data. As of beginning of 2020, the Registry contained information about over 40,000 PEPs and related persons. The Registry is available at <https://pep.org.ua/en>.

Table 48. Access of LEAs to bank, financial, commercial and other records in IAP countries

Country	Central registry of bank accounts	Registry of beneficial owners	Bank secrecy	Other financial records	Commercial records	Asset declarations database	Tax database	Customs database	Others
Armenia	—	— some disclosure is already in place (within the public procurement and company registration procedures), and regulations on a new BO registry to be adopted in 2019	court order	court order	court order	indirect access upon written request	indirect access upon written request	indirect access upon written request	n/a
Azerbaijan	—	—	court order + access in the pre-investigation phase (see below)	court order + access in the pre-investigation phase (see below)	court order + access in the pre-investigation phase (see below)	n/a	direct access + access in the pre-investigation phase (see below)	direct access	direct access to land registry, criminal record, databases of the Ministry of Education, of the border police, vehicles, information of the Financial Market Supervision Chamber submitted by investment companies listed on the stock market
Georgia	—	—	court order	court order	court order	asset declarations are publicly available	direct access	direct access	
Kazakhstan	—	—	written request of the investigative body endorsed by	court order	court order	n/a	n/a	n/a	n/a

Country	Central registry of bank accounts	Registry of beneficial owners	Bank secrecy	Other financial records	Commercial records	Asset declarations database	Tax database	Customs database	Others
			the prosecutor (may be electronic) or prosecutor's resolution on performance of inspection (written or electronic)						
Kyrgyzstan	—	to be established (in relation to extractive license holders)	court order	n/a	n/a	n/a	indirect access upon written request	n/a	n/a
Mongolia	—	—	written request of the investigative body endorsed by the prosecutor	n/a	n/a	n/a	written request of the investigative body with the sanction of the prosecutor	written request of the investigative body with the sanction of the prosecutor	n/a
Tajikistan	—	+	court order	n/a	n/a	n/a	n/a	n/a	n/a
Ukraine (National Anti-Corruption Bureau)	—	+(publicly available and LEAs have direct access)	court order (some limited information may be provided upon written request)	direct access	direct access	indirect access (asset declarations are publicly available, except for certain confidential data)	direct access	n/a	databases of the Ministry of Justice, Border Guards Service (direct access)
Uzbekistan	+(operated by the Central Bank, information to LEAs is provided on written request)	—	written request of the investigative body endorsed by the prosecutor	n/a	n/a	n/a	direct access	direct access	n/a

Note: n/a – no data available. Source: IAP monitoring reports, OECD/ACN research.

Access to information on beneficial ownership and bank records

The disclosure of beneficial ownership and establishment of the central registries of bank accounts with access of law enforcement agencies to them is a positive global trend. The IAP monitoring encouraged countries to make detection and investigation of corruption more effective by following this trend.

According to the 2019 AML Index of the Basel Institute of Governance, analysis of FATF data shows that countries demonstrate their lowest performance in dealing with beneficial ownership information (IO5), with an average effectiveness score of only 23%. In terms of technical compliance, the average score for R24 (Transparency and beneficial ownership of legal persons) is 42%. For R25 (Transparency and beneficial ownership of legal arrangements) it is 44%. Information on ownership structures is largely unavailable to competent authorities.⁷²³

According to Principle 4 of the G20 High-Level Principles on Beneficial Ownership Transparency, countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons. Countries could implement this, for example, through central registries of beneficial ownership of legal persons or other appropriate mechanisms.⁷²⁴

Just few ACN countries have created databases disclosing beneficial ownership – such databases exist in **Ukraine** and **Latvia** where they are open for public and LEAs have access too. New regulations to introduce the disclosure of beneficial owners has been also recently adopted in **Bulgaria**⁷²⁵, **Croatia**, **Estonia**, **Lithuania**⁷²⁶, **Kyrgyzstan** (for extractive licenses holders)⁷²⁷ and **Romania** (see chapter on business integrity of this report for more information and references).

While there are some regulations in **Armenia** on the disclosure of beneficial ownership in connection with the public procurement and money laundering/terrorism financing, it committed to adopt a legislation to require the establishment of a registry of beneficial ownership information, first beginning with companies in the extractive industry.⁷²⁸

As to some OECD countries, the TI 2017 report analysing situation in the G20 countries indicated that central beneficial ownership registers were available for competent authorities in six countries: Brazil, France, Germany, Italy, the United Kingdom and G20 guest country Spain. Only in the United Kingdom was the register open to the public. In France, competent authorities need to request access to the register. According to the law, access should be granted “in due course”.⁷²⁹

No IAP country, except **Uzbekistan**, has established the central registry of bank accounts, which would allow quickly receiving information about if and where the person holds bank accounts. The third monitoring round report recommended Uzbekistan to consider including in the register of information about beneficial owners of the bank accounts which should be made available to the investigative authorities. Uzbekistan did not implement this recommendation. The investigative authorities can access the bank accounts register by sending a written request to the Central Bank. The fourth monitoring round report recommended to ensure that investigative authorities have a direct access to the centralised register of bank accounts which will contain, among other things, the information established by the banks on beneficial owners of their clients, and persons with the right to sign accounts, in order to quickly identify the bank accounts during financial investigations.⁷³⁰

The fourth monitoring round recommended other IAP countries to introduce central registries of bank accounts: **Armenia**⁷³¹, **Georgia**⁷³², **Kazakhstan**⁷³³, **Kyrgyzstan**⁷³⁴. The report on **Azerbaijan** noted as a positive step that the authorities were considering establishing a centralized bank database and to amend the legislation to allow prosecutors to access bank information without a court order. These measures resulted from a national risk assessment that was conducted by the FIU of Azerbaijan and were supposed to be included in a future Action Plan.⁷³⁵

Some jurisdictions during the discussion of the IAP monitoring reports expressed their concerns with respect to personal data protection when such registers being used. In this regard, it should be noted that no international standards require these databases to include information about transactions or amounts held on specific accounts.

Central registries of bank accounts operate in Lithuania, Austria, Bulgaria, Romania, Czech Republic, Croatia, France, Italy. Central banks or tax authorities in some jurisdictions maintain registries of accounts of business (e.g. Ukraine, Bosnia and Herzegovina), which may be a helpful source of information for investigative agencies.

More detailed information about financial transactions or amounts of money held in bank accounts etc. is usually protected by bank secrecy laws. In all ACN countries bank secrecy may be lifted by court/pre-trial investigation judge's order, or request of or endorsed by the prosecutor. Many countries also actively use FIUs' assistance to collect financial intelligence covered by bank secrecy. However, as it was mentioned above, many jurisdictions do not let the use of FIU referrals as evidence in the court, which requires further obtaining of the respective financial information in accordance with criminal procedural rules.

At the same time, some countries have made steps to simplify the procedure of receiving financial records by law enforcement agencies. For example, in 2017 **Lithuania** amended its Law on the Special Investigation to allow this agency to obtain bank records of legal persons in a more effective and speedy manner and without approval from a pre-trial investigation judge.⁷³⁶ Banks in **Ukraine** are obliged upon written request of LEAs to provide them with information about financial transactions of companies and individuals with the status of private entrepreneurs but not of other natural persons whose accounts may be accessed only following a court order.

Preventing abuse of prosecutorial discretion

International standards

According to paragraph 3 of Article 30 of the UNCAC each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

In some States Parties laws or guidelines prescribe in which manner a prosecutor should execute his discretionary powers. The laws or guidelines that inform such decision-making should be made publicly available. Some of these laws or guidelines, however, include clauses according to which a prosecutor may abstain from prosecuting when prosecution would not be in "the public interest". In such circumstances, States Parties may consider either to avoid such general terms or, if they choose to include such broad discretion, they may wish to qualify it through publicly stated criteria so that it is evident what factors have been taken into account to reach such a conclusion. Therefore, States Parties may wish to consider requiring that a prosecutor record his or her decision to dismiss, or not pursue, a case in order to enable appropriate internal or external review.⁷³⁷

In general, there are two main legal principles that determine the level of prosecutorial discretion in criminal procedure. Under the first one, "Principle of Legality", the system of mandatory prosecution is in place, which means that prosecutors are obliged to file charges whenever they have enough evidence to do so. Under the second one, the "Opportunity Principle", prosecutors have discretion on the decision on whether or not to prosecute, taking into consideration the seriousness of the offence in the concrete context, the public interest in pursuing the case, the reparatory effects that a conviction would bring to the society and to the victim.⁷³⁸

There are no international standards, which would guide countries on what principle to choose. However, some international organisations have adopted a set of recommendations with the purpose to ensure that prosecutorial discretion be exercised in accordance with the law and the requirements of the public interest.

Thus, according to the UN Guideline on the Role of Prosecutors, in countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.⁷³⁹

The IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors emphasize that the use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.⁷⁴⁰

Box 54. Council of Europe Recommendation concerning the simplification of criminal justice

Recommendations in relation to the principle of discretionary prosecution

- The principle of discretionary prosecution should be introduced, or its application extended wherever historical development and the constitution of member states allow; otherwise, measures having the same purpose should be devised.
- The power to waive or to discontinue proceedings for discretionary reasons should be founded in law.
- The decision to waive prosecution, under this principle, only takes place if the prosecuting authority has adequate evidence of guilt.
- This principle should be exercised on some general basis, such as the public interest.
- The competent authority, in exercising this power, should be guided, in conformity with its domestic law, notably by the principle of the equality of all citizens before the law and the individualisation of criminal justice, and especially by: the seriousness, nature, circumstances and consequences of the offence; the personality of the alleged offender; the likely sentence of a court; the effects of conviction on the alleged offender; and the position of the victim.
- The waiving or discontinuation of proceedings may be pure and simple, accompanied by a warning or admonition, or subject to compliance by the suspect with certain conditions, such as rules of conduct, the payment of moneys, compensation of the victim or probation.
- The alleged offender's consent should be obtained wherever conditional waiving or conditional discontinuation of proceedings is envisaged. In the absence of such consent, the prosecuting authority should be obliged to proceed against the alleged offender unless it decides for a different reason to drop the charges.
- In the case of conditional discontinuation, discontinuation should be final once the person has fulfilled his or her obligations. The decision should not be treated as equivalent to conviction and follow the normal rules regarding, inter alia, inclusion in the criminal record unless the alleged offender has admitted his or her guilt.
- Whenever possible, a decision to waive or discontinue proceedings should be notified to the complainant.
- The victim should be enabled to seek reparation for the injury done to him by the offence in a civil or criminal court.
- The notification of the suspect should not be necessary if the decision takes the form of a simple decision not to prosecute.

Source: Council of Europe, Recommendation No. R (87) 18, <https://rm.coe.int/16804f856c>.

Prosecutorial discretion

The Opportunity principle providing for prosecutorial discretion exists in the US and other common law countries, as well as in some civil law countries (France, the Netherlands). At the same time, different combinations of features of both systems may be also found in many legal systems.

In the ACN countries, the principle of mandatory prosecution generally prevails. The prosecutors have to take into consideration every complaint they receive and have some limited discretion while deciding of non-prosecution or non-opening of an investigation, which is however not based on opportunity, but on substantial reasons.

For example, while **Moldova**'s new law on the Prosecutor's Office included a general rule on prosecutorial "decisional discretion", the country's Criminal and Criminal Procedure Codes provide for a limited right of prosecutors to discretionarily discontinue proceedings on non-serious offences of offences of medium gravity, following the principle of legality in relation to the rest of prosecutorial powers.⁷⁴¹

Similarly, in **Armenia** investigators and prosecutors have discretionary powers to surrender or to not institute a criminal proceeding in case of repentance (for not grave or medium-gravity crimes committed for the first time), reconciliation with the aggrieved (for not grave crimes), or change of situation (for not grave or medium-gravity crimes committed for the first time).

In **Bosnia and Herzegovina** discretion may be exercised only in cases concerning minors or legal entities.

Latvia's Criminal Procedure Law details several cases where the prosecution can be waived: if a criminal offence has been committed but has not caused any harm, (Section 379(1)(1)); when the accused person has made a settlement with the victim (Section 379(1)(2)); if taking into account the nature of and harm caused by the offence, the personal characteristics of the offender and other conditions of a case, the prosecutor believes that the accused will not commit other criminal offences (Section 415); in cases when a person has substantially assisted in the disclosure of a serious or especially serious crime that is more serious or dangerous than the criminal offence committed by such person (Section 4151).

Slovenia's Criminal Procedure Act provides for three kinds of exceptions to the mandatory prosecution rule. The first one, regulated in Art. 161, concerns cases where there is disproportion between the low importance of the criminal offence and the consequences of criminal prosecution. The state prosecutor may also settle the case during the investigations stage, as prescribed in Art. 161.a, taking account the type and nature of the offence, the circumstances in which it was committed, the personality of the perpetrator and his prior convictions, as well as his/her degree of criminal liability. The third exception is regulated in Art. 162 and refers to the possibility of suspending the prosecution if the suspect agrees on performing certain actions to allay or remove the harmful consequences of the criminal offence.

In **Estonia** the Office of the Prosecutor General may, by its order, terminate criminal proceedings with regard to a person suspected or accused with his or her consent if the suspect or accused has significantly facilitated the ascertaining of facts relating to a subject of proof of a criminal offence which is important from the point of view of public interest in the proceedings and if, without the assistance, detection of the criminal offence and taking of evidence would have been precluded or especially complicated. The prosecutor still has to follow the law, so his/her discretion is not unfettered.⁷⁴²

There are only several countries – Georgia, Romania and Montenegro – where prosecutorial discretion is available to more considerable extent.

In 2014, with **Romania**'s new Criminal Procedure Code, some elements of the opportunity principle were introduced. According to the art. 318 of the CPC, the prosecutor can abandon the criminal investigation if the case regards a criminal offence punished with 7 years' imprisonment as maximum and he/she deems that there is no public interest in prosecuting.⁷⁴³ In such cases, according to the same art. 318 CPC, the prosecutor may order the suspect or defendant to fulfil obligations, such as indemnifying the victim,

providing community service, etc. If the suspect or defendant breaches the obligations in bad faith, the prosecutor can revoke the order of waiving the investigation.

Georgia is the only IAP country following the common law tradition by providing prosecutors with broad discretionary powers (“while deciding upon initiation or termination of a criminal prosecution, a prosecutor shall enjoy discretionary powers which shall be governed by the public interests”). The factors which are to be taken into account in that regard, including the criteria for assessing the public interest, are provided by the Criminal Justice Policy Guidelines adopted by the Decree of the Minister of Justice of Georgia.

In 2014 too broad discretion of Georgian prosecutors in relation to plea agreements was limited by amendments to the Criminal Procedure Code. The amendments expanded the procedural safeguards for defendants in connection with plea agreements. These included the following:

- Empowering judges with additional powers of scrutiny over the possible use of undue influence by prosecution in plea bargain procedures.
- Raising the standard of proof of the offense to be established by the prosecution.
- Making the plea-bargaining process transparent by requiring the prosecutor to draft the record on bargaining and obtaining the defendant’s and his/her attorney’s signature on it.
- Raising victim’s role in the plea bargain procedures.
- Empowering judges to refer the case back to the superior prosecutor if he/she believes that the plea agreement was concluded under duress or to assess the fairness of the penalty proposed under plea bargain.

The role of the judge in approving or rejecting plea agreements was clarified and to some degree expanded. The law was clear that the competent authority for adopting the plea agreement was the court.⁷⁴⁴

In **Montenegro** the Public Prosecutor may decide to postpone criminal prosecution for criminal offences punishable with a fine or imprisonment for a term of up to five years, when he/she establishes that it is not functional to conduct criminal proceedings, considering the nature of the criminal offence and the circumstances of its commission, the offender’s past and personal attributes, and if the suspect accepts to fulfil one or several of obligations provided by this Code. The suspect shall fulfil the accepted obligation within six months at the latest. If he fulfils his obligation within stated period, the State Prosecutor shall dismiss the criminal charges.⁷⁴⁵

As it was underlined in the previous ACN Summary Report, prosecutorial discretion has its advantages and risks. On the one hand, it enables prosecutors to control their caseload and ensure that the necessary resources are available for more important cases. On the other hand, as it is far easier for the prosecutor to terminate the case than to bring it to court for a full-scale trial, there is always a risk that discretionary powers will be overused or abused. Whenever prosecutorial discretion is allowed in any form, it is important that the decision to pursue a case may not be motivated by political considerations, such as the country’s national economic interests, the potential effect of a criminal proceeding’s relations with another country, or the identity of the natural or legal persons involved.⁷⁴⁶

The other area where prosecutorial discretion may take place is prosecutor’s authority to transfer cases between investigative bodies. For example, the Prosecutor General in Armenia, the Prosecutor General in **Moldova** (in any case) or his/her deputies (not applied to cases under the jurisdiction of the specialised prosecutor’s offices, including anti-corruption), as well as prosecutors in Georgia, Kazakhstan, Latvia, Estonia, Mongolia are vested with such powers. Similarly, in most ACN countries superior prosecutors have powers to reassign cases between different prosecutors.

While these authorities may be used to prioritise case load, or ensure more effective investigation of related offences, it may be also abused with the purpose to undermine investigations.

For instance, in **Ukraine** the Prosecutor General assigned to the office of the military prosecutor cases of high-level corruption which did not appear to be within its mandate but should have been under the jurisdiction of the National Anti-Corruption Bureau of Ukraine. This raised concerns in regard to the fact that violation of the jurisdiction renders results of the investigation conducted by the improper agency legally void: according to the CPC evidence collected by the incorrect investigative body cannot be used in court. There were also examples when persons had been acquitted because the incorrect body investigated the case, or indictments being sent back to the prosecutors.⁷⁴⁷

Georgia approved guidelines for withdrawing/referring criminal cases from/to an investigative agency. Although, the ground for removal of case from one investigative authority to another – “to promote thorough and objective investigation” – was found by the monitoring report as quite vague and that can as such be subject to abuse. Therefore, Georgia was recommended to review the guidelines to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.⁷⁴⁸

In general, it is important to ensure that the clear and transparent rules regarding mandate of prosecutors to withdraw a case from one investigative body or prosecutor and transform it to another be established, applied in exceptional cases and justified by reasons. In addition, clear legislative delimitation of jurisdiction over corruption offences, excluding multiple interpretation should be ensured.

Procedural settlements

One of the areas where the prosecutorial discretion may be used is the procedural settlements with the defendants. Most of ACN countries have incorporated such agreements in their criminal justice systems, usually with establishing judicial control over the use of this instrument, which, among other things, prevents abuse of prosecutorial authority.

When the criteria to enter a resolution are met, depending on the countries, the prosecution or other relevant authorities may or may not have discretion on whether to use a resolution in a given case. In some jurisdictions it is a discretion of the prosecutor whether to enter into an agreement, while in others – prosecutors are required by law to enter a resolution when legal criteria are met (e.g., **Austria**), discretion remains in the appreciation of most of these criteria.⁷⁴⁹

In general, when utilized properly, procedural agreements may serve as an effective instrument of fight against corruption. They allow effectively detecting all elements of corruption schemes or getting previously unknown pieces of evidence, saving resources of criminal bodies.

According to the recent OECD study, all 27 countries covered by the study⁷⁵⁰ have at least one non-trial resolution system to resolve a foreign bribery case. A substantial majority (74%) has several applicable systems. The 27 countries have 68 resolution systems for legal persons (13), natural persons (16), or both (39). Thus, the countries in the Study have in total 52 or 55 systems available for legal or natural persons, respectively. For all 44 Parties to the OECD Anti-Bribery Convention, non-trial resolution instruments have become the primary enforcement vehicle of anti-foreign bribery laws. According to the OECD database of concluded foreign bribery cases, 23 of the 44 Parties to the Convention have successfully concluded a foreign bribery action. Between the entry into force of the Convention, on 15 February 1999 and 30 June 2018, 890 foreign bribery resolutions were successfully concluded, of which 695 through non-trial resolutions (78%). The study has also found that non-trial resolutions have been the predominant means of enforcing foreign bribery and other related offences, and that the last decade has seen a steady increase in the use of coordinated multijurisdictional non-trial resolutions.⁷⁵¹

Table 49. Procedural settlements in ACN countries

	Procedural settlements	Approval procedure	Prosecutorial discretion and other features
Albania	●	Co-operation agreement is signed by the prosecutor. In this case the prosecutor shall request for the reduction of the penalty or the exclusion of the collaborator from punishment by the court.	The prosecutor may enter an agreement with the defendant charged with a serious crime committed in co-operation if the latter cooperates with the prosecutor or the court and gives full information and without reserves or condition on all the facts, events and circumstances, that serve as a fundamental evidence for the discovery, the investigation, the trial and the prevention of the serious crimes and the repair of the damages caused by them.
Armenia	-		
Azerbaijan	-		
Belarus	●	Is signed by the prosecutor, the court examines whether the accused person assisted in preliminary investigation, exposed guilty persons and certain other issues stipulated in the Code of Criminal Procedure.	The prosecutor has discretion when deciding whether to enter into the agreement
Bosnia and Herzegovina	●	The court makes final decision on the plea bargain.	The prosecutor has discretion when deciding whether to enter into the agreement. The parties may bargain over the type and scope of criminal sanction.
Bulgaria	●	Is signed by the prosecutor with further approval by the court.	The agreement would not be allowed in the case of a serious offence with intent, including bribery. A prosecutor only may propose the agreement.
Croatia	●	Is signed by the prosecutor with further approval by the court.	The settlement may be concluded only for criminal offences punishable by a fine or imprisonment for a term up to five years. It is discretion of the prosecutor whether to enter into the agreement.
Estonia	●	Is signed by the prosecutor with further approval by the court.	The agreement would not be allowed in the cases of some serious offences, not including corruption ones. The agreement requires the victim's consent. It is discretion of the prosecutor whether to enter into the agreement.
Georgia	●	Is signed by the prosecutor with further approval by the court.	It is discretion of the prosecutor whether to enter into the agreement.
Kazakhstan	●	Is signed by the prosecutor. Plea bargain should be approved by the court, and in case of the co-operation agreement the prosecutor initiates applying the respective mitigating consequences.	Two forms of settlements – plea bargain or co-operation agreement. The settlement may be initiated by the defendant and it is discretion of the prosecutor whether to enter into the settlement.
Kyrgyzstan	●	Is signed by the prosecutor with further approval by the investigative judge.	Two forms of settlements – plea bargain or co-operation agreement. Plea bargain is not allowed to apply in especially grave crimes, and co-operation agreement – in cases on certain serious criminal offences, including extortion of bribe and “corruption” (Criminal Code of the Kyrgyz Republic includes a separate criminal offence “corruption”). The settlement may be initiated by the defendant and it is discretion of the prosecutor whether to enter into the settlement.
Latvia	●	Is signed by the prosecutor with further approval by the court.	The prosecutor may enter into an agreement, on the basis of his or her own initiative or the initiative of the defendant or his or her defence counsel, regarding an admission of guilt and a punishment.
Lithuania			The CCP provides the possibility for so-called “simplified procedures” to enable a more efficient resolution of criminal proceedings. Whereas simplified procedures present some

	Procedural settlements	Approval procedure	Prosecutorial discretion and other features
			features of plea bargaining e.g. the accused's consent is necessary to issue the bill of indictment, simplified procedures do not involve negotiation of the penalty.
Moldova	●	Is signed by the prosecutor with further approval by the court.	
Mongolia	●		
Montenegro	●	Is signed by the prosecutor with further approval by the court.	It is discretion of the prosecutor whether to enter into the agreement. The agreements are not possible in cases on terrorism and war crimes
North Macedonia	●	Is signed by the prosecutor with further approval by the investigative judge.	The parties may only bargain over the type of criminal sanction and not over the composition of the indictment.
Romania	●	Is signed by the case prosecutor and the effects of the agreement are subject to the opinion of the superior hierarchical prosecutor. Afterwards, the agreement is further approved by the court	It is discretion of the prosecutor whether to enter into the agreement.
Russia	●	Co-operation agreement is signed by the prosecutor, the court during the trial verifies if the defendant concluded the agreement voluntarily and verifies if the agreement was not breached.	The settlement may be initiated by the defendant and it is discretion of the prosecutor whether to enter into the settlement.
Serbia	●	Is signed by the prosecutor with further approval by the judge.	The prosecutor has discretion when deciding whether to enter into the agreement.
Slovenia	●	Is signed by the prosecutor with further approval by the court.	
Tajikistan	-		
Turkmenistan	-		
Ukraine	●	Is signed by the prosecutor with further approval by the court.	There are two types of settlements – plea bargain and reconciliation with the victim. The Criminal Procedure Code includes restrictions that do not allow to apply a number of mitigating consequences to those who committed corruption offences. Plea bargain may be initiated by the prosecutor or defendant, while reconciliation – by the defendant or victim.
Uzbekistan	-		

Source: IBA (2018), Structured Settlements for Corruption Offences, cited above; OECD WGB Phase 2 Report on Lithuania; Criminal Procedure Codes of respective countries, OECD/ACN secretariat research.

In its evaluations, the OECD Working Group on Bribery has regularly recommended that a clear framework be developed to increase consistency and transparency in the application of a resolution system. The objective is both to ensure a consistent exercise of discretion by the prosecutors (and/or other relevant authorities) and to enhance predictability and transparency regarding its application. It should be noted that guidance does not necessarily need to be contained in materials prepared by the government, but can derive from other sources, including case precedents.⁷⁵²

Time limits and any other obstacles to effective investigation/prosecution

While there are no international standards on the duration of investigation in corruption offences, there are two aspects to be taken into account in this regard. On the one hand it is important to ensure that investigations be carried out in a timely manner, without delays. On the other hand, investigative bodies should be provided with a reasonable amount of time to be able to collect evidence and investigate corruption offences, especially complex ones, efficiently.

IAP countries have adopted different approaches to establish time limits that are usually applied to all criminal investigations, including those of corruption offences. As a rule, similarly to statute of limitations, the established time limits of investigation differ depending of the gravity of the crime. Many countries provide for the possibility to extend the time limits; however, such decision should be endorsed by high-level prosecutors (e.g., in **Tajikistan** – by the Prosecutor General). In most jurisdictions the time limits stop running when the investigation is suspended.

Table 50. Time limits of criminal investigation in IAP countries

Country	Maximum possible duration of an investigation
Armenia	not limited
Azerbaijan	18 months
Georgia	9 months after bringing charges against a defendant
Kazakhstan	statute of limitations with possible extension
Kyrgyzstan	2 months after bringing charges against a defendant + possible extension for 1 year
Tajikistan	1 year with possible extension
Ukraine	18 months before notification of suspicion to a concrete person + 12 months after that
Uzbekistan	7 months

Source: IAP Fourth monitoring round reports, Criminal Procedure Codes of the respective countries.

In its discussion of the approach adopted in **Georgia** the IAP monitoring report pointed out that any fixed terms for procedural actions that do not take into account specific circumstances of the case raise concern. This may be seen as a guarantee of defendant’s rights but may also serve as an obstacle for effective prosecution. There also seems to be a contradiction in the intent of the relevant provisions – from the moment of indictment person receives a new procedural status with different scope of rights. Limit on prosecution after the indictment results in prosecutors extending the investigation stage, possibly in an artificial way. This did not seem to be a satisfactory arrangement. At the same time, the Georgian authorities assured that taking into account the considerable time limits for investigation and prosecution of corruption offences, the rules for their interruption, as well as the relevant practice, the existing time limits do not constitute an obstacle for the effective investigation or prosecution of corruption offences.⁷⁵³

Recently **Ukraine** in response to complaints from business about abuse of powers by LEAs tightened time limits of criminal investigations. The initially unlimited timeframes of an investigation before notifying a person about suspicion now constitutes from 6 to 18 months depending of the gravity of the crime.

In 2011, **Estonia** amended the CPC to allow for termination in cases where it becomes evident in pre-trial procedure that a criminal matter cannot be adjudicated within a “reasonable time” (CPC section 205-2), which does not necessarily coincide with the relevant statutory period. It is only applicable when a case has undergone a long period of inactivity, outside of any procedural step (such as waiting for MLA). Guidelines to the Prosecutor’s Office on the subject state that criminal matters reaching 2 years of inactivity should be reviewed by a Senior Prosecutor, those reaching three years of inactivity should be reviewed by a Chief Prosecutor and those reaching four years of inactivity should be inspected by the Supervision Department, and potentially terminated, taking into account factors, such as the reasons for inactivity or delay, the actions taken by the authorities, the severity of the offence, the complexity of the case and the legal rights at stake. The lead examiners in the framework of the OECD WGB Phase 2 evaluation of Estonia assumed that this could result in the premature termination of foreign bribery cases if they are not given adequate priority. Therefore, the WGB was recommended to follow up on this issue to ensure that the “reasonable time” criteria do not improperly affect the effective prosecution of foreign bribery cases.⁷⁵⁴

In relation to the approach applied in **Lithuania** the OECD WGB Phase 2 report stressed that the basic three, six and nine-month pre-trial investigation time limits (that may be extended indefinitely) are too short for the complex nature of foreign bribery investigations. The possibility for defendants to apply for

termination of the pre-trial investigation within six months of their first interview could mean that, in aggravated foreign bribery cases, the defendant can apply for termination of the investigation before the expiry of the basic nine-month time limit. Furthermore, CCP art. 215 does not set out specific grounds for termination of a pre-trial investigation, other than “excessive length.”⁷⁵⁵

Apart from the time limits, LEAs in many ACN countries face other obstacles for effective investigation of corruption. A short statute of limitations and too extensive immunities granted to public officials are usually mentioned among such obstacles.

During the monitoring of **Mongolia**, it was found that some investigative activities, such as searches, and covert investigative activities should be authorised by prosecutors other than those usually dealing with cases of the Independent Anti-Corruption Authority (IAAC). The monitoring team found it reasonable from the perspectives of consistency of legal practice and autonomy of anti-corruption prosecutors to empower prosecutors supervising the IAAC to authorise all its investigative activities for which authorisation of a prosecutor is required, including searches and covert investigative activities. Another problem that remains valid in terms of ensuring effective enforcement of criminal responsibility for corruption in the country is the evidence threshold that does not appear to permit intent to be inferred from circumstantial evidence.⁷⁵⁶

The investigative bodies in **Ukraine** found themselves unable to use one of the potentially efficient special investigative technique introduced in the Criminal Procedure Code – the monitoring of bank accounts that allowed covertly observing financial transactions on specific bank accounts. The reason appeared to be that this instrument along with other special investigative techniques constitutes a State secret, which prevents the disclosure of its details to banks’ employees. Due to the absence of respective legislative amendments, this investigative measure remained unutilised. The external evaluation report on NABU noted that the monitoring of bank accounts in real time without alerting the person of interest was an effective measure to track money flows and facilitates investigations. It was regrettable that this new instrument had not been applied in practice.⁷⁵⁷

One more instrument to facilitate effective corruption investigations is the capacity development of law enforcement officials through systematic training activities, development of guidelines and manuals, organising professional discussions etc.

While most of ACN countries give proper attention to this issue, sometimes the lack of capacities of law enforcement staff and prosecutors may serve as a serious obstacle for effective investigation of corruption offences.

For example, in **Montenegro** the Supreme State Prosecutor indicated inability of the prosecution service to adequately understand and interpret findings of audit reports and lack of capacities of auditors to put forward sufficiently substantiated criminal charges, as obstacles to effective investigations. The Protocol on Co-operation between the State Audit Institution and the Supreme State Prosecution was signed to fix the problem.⁷⁵⁸

Fragmentation of anti-corruption investigations in **Armenia** was indicated by the IMF as a problem that leads to a dilution of analysis and lack of coordination - each of the services investigates other crimes so that analytical capabilities are spread thinly, and each transaction is processed in its own right rather than as part of a wider, discernible pattern. Crucially, there is limited analytical capacity for understanding complex financial transactions and, consequently, focus tends to be on smaller-scale and simple transactional corruption, rather than the more complicated and larger network transactions.⁷⁵⁹

Use of joint investigative teams, other forms of inter-agency co-operation

International standards

UNCAC (Art. 38) established general standards of co-operation between national authorities, focusing on information exchange, namely reporting about bribery in the public or private sector and money laundering, as well as providing LEAs with all necessary information upon their request. The Council of Europe Criminal Law Convention on Corruption (Art.21) includes similar provisions.

In the absence of more specific international standards regarding national inter-agency co-operation, a number of good practices have proven that such co-operation, when properly organised, may be very helpful instrument of effective fight against corruption.

The OECD Study on Specialised Anti-Corruption Institutions stressed that particular attention should be paid to co-operation and exchange of information among anti-corruption agencies, control and law enforcement bodies, including tax and customs administrations, regular police forces, security services, financial intelligence units, etc. Efforts to achieve an adequate level of co-ordination, co-operation and exchange of information among public institutions in the anti-corruption field should take into account the level of existing “fragmentation” of the anti-corruption functions and tasks divided among different institutions.⁷⁶⁰

Joint investigative teams

Very often complex corruption schemes involve a number of various criminal offences that fall under the jurisdiction of different investigative bodies. The successful investigations in such cases usually require joining efforts of law enforcement agencies.

The OECD and WGB joint Report on Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption found that countries that have experience using joint operations or taskforces report significant benefits with respect to both tax crime and corruption investigations. Looking across the practices and experiences of all countries participating in the mentioned report, the major benefits of joint operations and taskforces were grouped as follows:

- increased enforcement capacity
- broader set of investigative powers, tools, and offenses
- sharing of resources
- de-conflicting enforcement action
- undertaking simultaneous action
- enhancing information sharing, and
- increasing deterrence.⁷⁶¹

Some ACN countries started using domestic joint investigative teams in corruption cases more often. However, this form of enhanced inter-agency co-operation is yet to be further developed and more actively applied.

For example, the Special Investigative Service in **Armenia** during 2015-2017 participated in 37 joint investigative groups.⁷⁶² The **Mongolia**'s IAAC, General Intelligence and General Police agencies established 16 joint investigative teams on corruption cases in 2017.⁷⁶³ The practice of creating of specialized and joint investigative teams also exists in **Slovenia**.⁷⁶⁴

Similarly, the law enforcement authorities of **Georgia** use joint investigative teams when necessary, with overall 42 joint investigative teams established in the course of 2014. These teams were created on the basis of a Memorandum of Understanding between the Prosecutor's Office, Ministry of Interior, Ministry of Justice, Ministry of Finance, FIU and State Security Service.⁷⁶⁵

At the same time, in the framework of the fourth monitoring round the monitoring teams have not received information if the mentioned practices have proved to be successful.

Inter-agency co-operation

Apart from joint investigative teams, there are examples of using other forms of inter-agency co-operation between law enforcement bodies in the area of fight against corruption. Such forms include various tasks forces, professional platforms, other channels of information exchange.

In **Albania** the multi-disciplinary special task force set up in the framework of the ‘Power of law’ action plan was operational throughout 2018. Within the task force, co-operation between the State Police and the General Prosecution Office in the area of fighting organised crime has proven to be efficient.⁷⁶⁶ At the same time, the 2015-2020 Anti-Corruption Strategy acknowledged that, in spite of a number of initiatives taken in recent years, the co-operation among LEAs for proactive investigation of corruption cases has failed to show significant results.⁷⁶⁷

Estonia has taken steps to proactively gather information by encouraging Estonian agencies to exchange information among themselves and with foreign law enforcement agencies. It could, however, engage more effectively with stakeholders from the financial sector, the accounting and auditing professions, and the private sector. Estonia has also engaged with diplomats and other officials involved with Estonian companies operating abroad to raise awareness about foreign bribery.⁷⁶⁸

There are examples of enhancing inter-agency co-operation in specific anti-corruption areas. **Lithuania** has taken steps to enhance inter-agency co-operation to detect foreign bribery. In 2017, the STT, the General Prosecutor’s Office, Financial Crime Investigation Service, State Tax Inspectorate, Customs Department, Police Department and Public Procurement Office signed an Agreement for Co-operation to Reveal Bribery of Foreign Public Officials in Cases of International Business Transactions (Foreign Bribery Co-operation Agreement). Under this Agreement, the aforementioned Lithuanian institutions agree to cooperate and exchange information for the purpose of detecting and investigating cases of bribery of foreign public officials and afford each other mutual assistance to ensure the STT can effectively detect and investigate cases of foreign bribery.⁷⁶⁹

Bulgaria developed modalities for close co-operation of the prosecution with all the various relevant agencies, including the organised crime directorate of the Ministry of Interior, the new anti-corruption commission, the public inspectorates, tax and customs agencies, and the State Agency for National Security.

Some countries have started using IT tools to improve co-operation between their law enforcement bodies. For instance, in **Montenegro** an inter-agency agreement on the prevention of crime, law-enforcement agencies have a secure channel of communication with key state institutions, enabling mutual access to databases.⁷⁷⁰

Similarly, the prosecution services in **Serbia** continued to develop IT solutions with the aim of conducting investigations in a more efficient way. The operational connection between the investigative intelligence tool and the prosecution case management system software was established, allowing for an automatic data transfer. In addition, there have been further developments in the setting up of a central criminal intelligence system. The finalisation of the development of these tools and their effective use in criminal investigations is yet to be achieved. The platforms need to be secure to allow for communication between the institutions and to provide effective access to the data needed for investigations.⁷⁷¹

To increase the co-operation with law enforcement agencies and in order for the information at the disposal of the FIU to be requested more often, it was decided in **Latvia** to apply the FIU.net tool Ma3tch in the information exchange with LEAs. Essentially Ma3tch tool will allow LEAs to check whether the FIU has any information available on a specific subject (though without seeing the actual information available to the FIU); thus, in case the LEA establishes that the FIU does indeed possess information on the subject, the LEA will have to request it by the usual official procedure pursuant to the Law. However, in case the LEA establishes that no information on the subject is available to the FIU, the LEA will not compile the official request to the FIU, thus saving its own, the Prosecutors’ Offices’, and the FIU’s resources.⁷⁷²

There was also an example of concerns raised in **Romania** regarding possible abuse and illegal gathering of evidence in the framework of the co-operation in criminal cases between the Romanian Intelligence Service ('SRI') and various judicial institutions, including the DNA and the General Prosecutor's Office, regarding the use of technical surveillance measures.⁷⁷³ In 2019, the Constitutional Court examined two cooperation protocols signed between the Public Ministry and the SRI in 2009 and 2016. The Court ruled that the 2016 Protocol was legal, while the 2009 Protocol went beyond the constitutional role of the Public Ministry and that, for all future and pending cases, the courts, together with the prosecutorial offices, should verify whether the evidence gathered in the context of the protocol had been administrated with full respect of the law, and decide on appropriate legal measures.⁷⁷⁴

While domestic inter-agency co-operation has been continuing to improve, this work should be developed further with establishing robust working relationship between different institutions based on mutual understanding and trust.

International co-operation

The IAP fourth round of monitoring focused on practical aspects of international co-operation in corruption cases as a follow-up to the previous monitoring round recommendations to examine the level of implementation and to highlight major existing challenges in the monitored countries. Accordingly, this section contains new trends, achievement and challenges to the extent covered by the monitoring. Analysis of the legislative frameworks of the IAP countries to some extent is provided in the previous Summary Reports on the second and third monitoring rounds. In addition, in 2017, the OECD/ACN Secretariat prepared a regional thematic study on International Co-operation in Corruption Cases with the conclusions on achievements, existing challenges and regional recommendations.⁷⁷⁵

Findings of the ACN Study on international co-operation in corruption cases:

- All ACN countries are party to multilateral treaties that can serve as a legal basis for international co-operation.
- Countries have widely varying legislative approaches to international assistance. Some countries rely almost entirely on the provisions of international agreements as the legal basis for providing co-operation, while others have comprehensive codes dedicated to the topic.
- The procedures for international assistance vary greatly between ACN members. Some are simple, involving a single central authority and a streamlined process. Others may involve multiple agencies depending on the type of assistance sought, the stage of the proceedings, or the legal authority upon which assistance is based.
- When MLA is provided on the basis of reciprocity instead of on the basis of a treaty, many countries require a request to be submitted through diplomatic channels instead of directly to the central authority
- Central authorities for MLA in many countries lack sufficient resources
- Most ACN countries do not have formal procedures for prioritising requests for MLA. Rather, prioritisation is usually done on a case-by-case basis, depending on how the requesting state frames the request or requests are handled in the order in which they are received without regard to their complexity.
- Requesting states do have some control over how their requests for MLA are received and handled.
- Most countries' laws or regulations prescribe the form and content for requests received by its central authority, and a failure to adhere to these requirements may result in rejection or delay of the request.
- Most domestic laws and international instruments do not set forth specific timeframes for executing MLA requests. In practice, the ACN countries that participated in the Study reported average response times ranging from 10 days to four months (when executing incoming requests).

- Most of ACN countries that participated in the Study have some type of case management system for both incoming and outgoing requests. Usually, these systems only allow for the tracking and monitoring of requests, however.
- Application of the principle of dual criminality varies among ACN states⁷⁷⁶. Only some countries indicated that dual punishability can be required in corruption cases, and then sometimes only in certain instances.
- All of the countries that participated in the Study indicated that they would apply double jeopardy in a corruption case, and the ground is mandatory in a number of countries (Georgia, Kyrgyzstan, Lithuania, Moldova and Romania)
- Many countries will refuse a request for assistance that could subject an individual to particularly severe punishment or to other types of “persecution or discrimination due to race, religion, sex, citizenship, language, political belief, personal or social state or cruel, inhuman or degrading punishment or treatment or acts which constitute violation of fundamental human rights.”
- All 16 states that participated in the Study would deny assistance to another country in connection with a corruption case if providing the assistance would prejudice “essential interests” or “public order.” Most states would deny co-operation for political offences.
- Most of ACN countries that participated in the Study would allow the response to an MLA request to be postponed or declined if executing the request would interfere with an on-going investigation
- Most of ACN countries that participated in the Study do not require evidence to be submitted with a “normal” request for MLA, although they would still need to describe the circumstances necessitating the request
- Several countries indicated that they use teleconference and/or videoconference technologies to facilitate effective communication with counterparts in foreign countries.
- A group of ACN countries⁷⁷⁷ have used joint investigative teams in relation to criminal cases (although not necessarily corruption cases), and a number of these countries have used them repeatedly, while another group of countries⁷⁷⁸ had not used this instrument at the time of the Study.
- Most of ACN countries that participated in the Study indicated that in a corruption case they would regularly engage in discussions with a requested authority prior to sending a request for MLA and would informally consult with a requesting party prior to denying a request for co-operation.
- Almost all participating countries engaged in bilateral meetings with foreign counterparts to discuss corruption cases.
- Most of ACN countries that participated in the Study requested that a representative of their country be present during the execution of an MLA request related to a corruption case.

Regarding multilateral treaties that can serve as a basis for international co-operation in the region, ACN countries are parties to international and regional instruments with the provisions addressing various forms of international co-operation (see the table below). Further progress was made in the recent years in the process of accession to multilateral instruments regulating international co-operation, in particular:

- The Third Additional Protocol to the European Convention on Extradition entered into force for **Ukraine, Romania, Lithuania and Moldova**.
- The Fourth Additional Protocol to the European Convention on Extradition entered into force for **Ukraine and Russian Federation**.
- The CoE Convention on Laundering, Search, Seizure and Confiscation Crime and on the Financing of Terrorism entered into force for **Azerbaijan and the Russian Federation**.

Table 51. International co-operation in the ACN countries: treaties in force

	European Convention on Mutual Assistance in Criminal Matters	Additional Protocol	Second Additional Protocol	European Convention on Extradition	Second Additional Protocol	Third Additional Protocol	Fourth Additional Protocol	European Convention on the Transfer of Proceedings in Criminal Matters	CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	CoE Convention on Laundering, Search, Seizure and Confiscation of Crime and on the Financing of Terrorism	Minsk Convention On Mutual Legal Assistance in Civil, Family and Criminal Matters	Protocol	Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters	UN Convention Against Corruption	UN Convention against Transnational Organized Crime	CoE Criminal Law Convention on Corruption	Additional Protocol
Istanbul Anti-Corruption Action Plan Countries																	
Armenia							S										
Azerbaijan								S		2017							
Georgia						S											
Kazakhstan																	
Kyrgyzstan																	
Mongolia																	
Tajikistan																	
Ukraine						2019	2019										
Uzbekistan													S				
Other ACN Countries																	
Albania																	
Belarus																	
BiH																	
Bulgaria						S											
Croatia						S	S										
Estonia										S							
N. Macedonia																	
Latvia																	

	European Convention on Mutual Assistance in Criminal Matters	Additional Protocol	Second Additional Protocol	European Convention on Extradition	Second Additional Protocol	Third Additional Protocol	Fourth Additional Protocol	European Convention on the Transfer of Proceedings in Criminal Matters	CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	CoE Convention on Laundering, Search, Seizure and Confiscation of Crime and on the Financing of Terrorism	Minsk Convention On Mutual Legal Assistance in Civil, Family and Criminal Matters	Protocol	Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters	UN Convention Against Corruption	UN Convention against Transnational Organized Crime	CoE Criminal Law Convention on Corruption	Additional Protocol
Lithuania						2017				S							
Moldova						2018							S				
Montenegro																	
Romania						2018	S										
Russia		S					2017			2018			S				S
Serbia																	
Slovenia								S									
Turkmenistan																	

Note: treaties in force are shaded, dark shading marks the entry into force during the fourth monitoring round.

“S” - a treaty was only signed.

Source: OECD/ACN Secretariat research.

Many countries in the region demonstrated certain level of proactivity in international co-operation in corruption cases. Modern (joint investigative teams, special investigative measures, tele-, and videoconferencing) and informal direct forms of co-operation have been used more widely. This also applies to available mechanisms for co-operation under the umbrella of regional and global organisations.

For example, the main sources of information from international channels in **Albania** are revenues from INTERPOL, Europol, SELEC, Police Liaison Officers, CARIN Network, Egmont Group (through FIU), counterpart structures of the region countries based on bilateral and multilateral agreements, non-international counterparts such as the British Customs Service, FRONTEX, etc. According to the information, provided by Albanian authorities during the recent MONEYVAL evaluation, cases of referrals of criminal offenses and financial investigations with indications from the channels for the international exchange of police information were numerous, and mainly joint investigations had been conducted with Germany, the Netherlands, Greece, France, England, Italy, Belgium, etc. from joint operations were also coordinated by Europol.⁷⁷⁹

A significant number of MoUs have been signed between the **Latvian** GPO and foreign partners to enhance non-MLA relationships and promote fluent international co-operation. EUROJUST, INTERPOL and EUROPOL networks are regularly used, and Latvia has liaison officers at these networks (e.g., three liaison officers in EUROPOL from SRS, SeP and SP) and also in third countries. Latvia is a regular member of EUROJUST, and the authorities indicated that they have participated in EUROJUST's coordination and co-operation meetings a number of times which led to successful international operations against crime.⁷⁸⁰

Lithuanian LEAs were considered as active in the sphere of informal co-operation through direct communication via Europol, Interpol, SIENA and CARIN. The creation of joint investigative teams between Lithuanian LEAs and their foreign counterparts on large scale cases had become increasingly common. The EU legal instruments applicable to Lithuania (including European Investigation Order and European Arrest Warrant) provided a basis for simplified and expedited co-operation with EU member states. MLA requests were sent and received through available IT secure channels, for instance, through Eurojust, the European Judicial Network and the ARO platform.⁷⁸¹

In 2018 **Montenegro** made good progress in the international police co-operation. This was a key step in the fight against Montenegrin organised crime groups, as most of their members live, operate and launder money outside Montenegro. Montenegro also cooperates with Interpol and Europol, including through its participation in analytical work programmes.⁷⁸²

Slovenian police regularly exchanged information at the operational and strategic level with its EU and non-EU counterparts either through Interpol/Europol channels or through informal meetings such as the Anti-Money Laundering Operational Network.⁷⁸³

However, the lack of sufficient pro-activeness made such forms of co-operation underutilized in some IAP countries. The fourth monitoring round indicted this to be a problem in **Armenia, Azerbaijan, Kyrgyzstan, Mongolia and Tajikistan**.

Some countries also faced certain practical difficulties related to MLA requests. For instance, in **Azerbaijan** the monitoring noted signs of the lack of experience in dealing with MLA requests.⁷⁸⁴ It also appeared that **Mongolian** prosecutors did not engage in consultations with the executing authorities in the phase of preparing a request, in order to minimize the risks of rejection.⁷⁸⁵

Ukraine's Prosecutor General Office signed with the Basel of Governance a Memorandum of Understanding under which the Institute's experts devoted significant resources to working with investigators to prepare effective requests and increase capacity in the process.⁷⁸⁶

At the same time, in other countries legal deficiencies serve as an obstacle for effective international co-operation.

For example, **Kyrgyzstan** was not in a position to render or obtain assistance through videoconferencing, since the legislation of the Kyrgyz Republic did not have relevant rules. At the same time, Kyrgyzstan could use online videoconferences to discuss practical matters of co-operation with the competent foreign authorities. The IAP fourth round monitoring report noted that provisions of the new CPC on international co-operation in criminal corruption cases appeared not sufficient enough to ensure an efficient execution of requests from competent foreign authorities. In particular, there was the need for a more detailed description of the procedure of an interview at the request of the competent foreign authority, including with the help of video or teleconference; procedures for the search, seizure and confiscation of assets; procedures for setting a joint investigation team and for its operation, and more.⁷⁸⁷

The existing provisions of the Criminal Procedure Code of **Uzbekistan** were also not enough to provide effective mutual legal assistance in corruption cases. As the IAP monitoring report noted, it was necessary in particular to define in more detail the procedure for conducting interrogation at the request of the competent authority of a foreign state, including by means of video or telephone conference; a procedure providing for search, arrest and confiscation of property; the order of initiating and performance of joint investigation teams and so on.⁷⁸⁸

Although **Albania** has reportedly provided MLA with an appropriate level of co-operation, the general legal mechanism for executing foreign MLA requests is very complex (involving too many authorities with their respective deadlines) with the potential for delay.⁷⁸⁹

Estonia amended its legislation to narrow the grounds for refusing to provide mutual legal assistance when required by an international agreement, including the OECD Anti-Bribery Convention. According to the amendments, international co-operation shall not be denied based on considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal person involved.⁷⁹⁰

Asset recovery

International standards

UNCAC (Article 51) declares the return of assets one of its fundamental principles and requires State Parties to afford one another the widest measure of co-operation and assistance in this regard. The Convention further contains an entire chapter on asset recovery, which sets a number of provisions on prevention and detection of transfers of proceeds of crime, measures for recovery of property through international cooperation, international co-operation for purposes of confiscation, as well as on return and disposal of assets.

Among the preventive and detection measures the Convention requires financial institutions to apply customer due diligence, including verification of customer identity, identification of beneficial owners of high-value accounts, enhanced scrutiny over accounts held by PEPs. In addition, UNCAC includes provisions regarding advisories on enhanced scrutiny to domestic financial institutions, including appropriate account-opening, maintenance and record-keeping measures, financial disclosure by public officials, and prevention of the establishment of, and correspondent relationship with, shell banks.

Article 53 of UNCAC requires States Parties to ensure in their jurisdictions that other States Parties have legal standing for claiming misappropriated assets, to initiate civil actions and other direct means to recover illegally obtained and diverted assets. Prior ownership, damage recovery and compensation are different legal grounds for the victim State Party or legitimate owner to claim in the courts of the State Party to where the asset in question was diverted and victim States Parties should be granted appropriate legal standing to act as a plaintiff in a civil action on property, as a party recovering damages caused by criminal offences, or as a third party claiming ownership rights in any civil or criminal confiscation procedure.⁷⁹¹

Among the mechanisms for recovery of property through international co-operation in confiscation the Convention mentions enforceability of foreign confiscation orders, confiscation of proceeds of foreign corruption based on money-laundering or related offences, non-conviction-based confiscation, and taking provisional measures for the eventual confiscation of assets.

The Convention also contains obligations in support of international co-operation “to the greatest extent possible” in accordance with domestic law, either by recognizing and enforcing a foreign confiscation order, or by bringing an application for a domestic order before the competent authorities on the basis of information provided by another State party. In either case, once an order is issued or ratified, the requested State party must take measures to “identify, trace and freeze or seize” proceeds of crime, property, equipment or other instrumentalities for purposes of confiscation. Other provisions cover requirements regarding the contents of the various applications, conditions under which requests may be denied or temporary measures lifted and the rights of bona fide third parties.⁷⁹²

UNCAC also encourages spontaneous exchange of information on proceeds of corruption offences between jurisdictions and establishes a general rule about the return of confiscated proceeds of corruption to the requesting State party and their return to prior legitimate owner.

The UN Convention against Corruption generally requires the return of confiscated proceeds to the requesting State party, in accordance with the fundamental principle of article 51. Article 57, paragraph 3, specifies in greater detail requirements for the return and disposal of confiscated corruption-related assets, allows for compensation for damage to requesting States parties or other victims of corruption offences and recognizes claims of prior legitimate owners.⁷⁹³

Table 52. Key principles of effective asset recovery

Principle (type)	Principle	Principle
Policy Development	1	Make Asset Recovery a Policy Priority; Align Resources to Support Policy
Legislative Framework	2	Strengthen Preventive Measures against the Proceeds of Corruption
	3	Set Up Tools for Rapid Locating and Freezing of Assets
Institutional Framework	4	Establish a Wide Range of Asset Recovery Mechanisms Including Recognition of Non-Conviction Based Proceedings and Private Law Actions
	5	Adopt Laws that Encourage and Facilitate International Co-operation
	6	Create Specialized Asset Recovery Team/ Kleptocracy Unit
	7	Participate Actively in International Co-operation Networks
	8	Provide Technical Assistance to Developing Countries
	9	Collect Data on Cases; Share Information on Impact and Outcomes

Source: G20 Anticorruption Working Group (2011), www.bmjv.de/SharedDocs/Downloads/EN/G20/Benchmarking%20Survey%20on%20the%202011%20Nine%20Key%20Principles%20of%20Asset%20Recovery.pdf?__blob=publicationFile&v=1.

From a practical standpoint, the process of asset recovery includes the following components: collecting intelligence and evidence and asset tracing (domestically and in foreign jurisdictions), securing the assets (domestically and in foreign jurisdictions), court process (to obtain conviction (if possible), confiscation, fines, damages, and/or compensation), enforcing orders (domestically and in foreign jurisdictions), return of assets.⁷⁹⁴

Therefore, many international legal instruments pay attention to investigative powers and techniques to be applied for reaching successful asset recovery.

For example, the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism requires its Parties to adopt such legislative and other measures as may be necessary to enable it to:

- determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so, obtain all of the details of the identified accounts;
- obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account;
- monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts;
- ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with the activities mentioned above, or that an investigation is being carried out.

Parties shall consider extending this provision to accounts held in non-bank financial institutions. Moreover, Parties shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto, such as observation, interception of telecommunications, access to computer systems and order to produce specific documents.⁷⁹⁵

The Convention also includes the rules regarding mutual enforcement of confiscation orders.

The FATF recommendations point out that confiscation and provisional measures should include the authority to: (a) identify, trace and evaluate property that is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and (d) take any appropriate investigative measures. Countries should also have effective mechanisms for managing criminal proceeds, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets.⁷⁹⁶

As it was briefly mentioned above, another important aspect of the asset recovery process is managing seized assets aimed to preserve their value. The EU Directive on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime requires the EU Member States to ensure the adequate management of property frozen with a view to possible subsequent confiscation, including the possibility to sell or transfer property where necessary⁷⁹⁷.

Finally, one of the recent developments in the international regulations related to asset recovery became the adoption of the EU Regulation on the Mutual Recognition of Freezing Orders and Confiscation Orders, that established rules on the execution of the respective orders within the EU. According to the Regulation freezing or confiscation orders shall be executed without verification of the double criminality.

Another important novelty of the Regulation is a provision on sharing confiscated assets, according to which unless the confiscation order is accompanied by a decision to restitute property to the victim or to compensate the victim, or unless otherwise agreed by the Member States involved, the executing State shall dispose of the money obtained as a result of the execution of a confiscation order as follows:

- a) if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10 000, the amount shall accrue to the executing State; or
- b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50 % of the amount shall be transferred by the executing State to the issuing State.⁷⁹⁸

International asset recovery networks

One of the global trends that has its impact in the ACN region is establishment of informal international and regional networks of law enforcement and judicial practitioners dealing with asset recovery. The main goal of these networks is to enhance co-operation and coordination between their members to achieve successful asset recovery. The networks serve as important platforms for promoting the exchange of information, experience and good practices.

The Camden Assets Recovery Inter-Agency Network (CARIN) is the most developed among such platforms and it currently includes 57 registered member jurisdictions, including 28 EU Member States and nine international organisations. It is also linked to other regional asset recovery inter-agency networks (ARINs) across the globe.

The other regional asset recovery networks are the Asset Recovery Inter-Agency Network – Asia Pacific (ARIN - AP), Asset Recovery Inter-Agency Network in West and Central Asia (ARIN-WCA), Asset Recovery Inter-Agency Network for the Caribbean region (ARIN-CARIB), Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA), Asset Recovery Inter-Agency Network for Southern Africa (ARINSA), Asset Recovery Inter-Agency Network of West Africa (ARINWA), Asset Recovery Network for Latin America (RRAG). The Balkan countries have created an Asset Management Inter-Agency Network (BAMIN). A separate Asset Recovery Platform also operates in the European Union.

Table 53. Status of ACN countries in international asset recovery networks

Country	CARIN	ARIN-AP	ARIN-WCA	BAMIN
Albania	Observer			Member
Armenia				
Azerbaijan				
Belarus				
Bosnia and Herzegovina	Observer			Member
Bulgaria	Member			Member
Croatia	Observer			Member
Estonia	Member			
Georgia	Observer			
Kazakhstan	Observer	Member	Member	
Kyrgyzstan		Member	Member	
Kosovo	Observer			Member
Latvia	Member			
Lithuania	Member			
Moldova	Observer			Observer
Mongolia		Member		
Montenegro	Observer			Member
North Macedonia	Observer			Member
Romania	Member			
Russia	Observer			
Serbia	Observer			
Slovenia	Member			Member
Tajikistan			Member	
Turkmenistan			Member	
Ukraine	Observer			Observer
Uzbekistan			Member	

All ACN countries, except **Azerbaijan**, **Armenia** and **Belarus**, has joined at least one of asset recovery networks as members or observers. The Secretariat of the ARIN-WCA is located in the Prosecutor General's Office of **Uzbekistan**.

In addition, a joint partnership program of the World Bank Group and UNODC – Stolen Asset Recovery Initiative (StAR) - provides active support to many countries in the region through the assistance in establishing contacts and dialogue, sharing knowledge and experience, capacity building to facilitate more efficient recovery of stolen assets.⁷⁹⁹

Asset recovery in ACN countries

Recovery of corrupt proceeds has become one of the serious challenges in the global anti-corruption agenda. Hiding of illicit asset abroad features in many corruption schemes, in particular in case of high-profile corruption where complex corporate structures, shell companies and offshore centres are used for this purpose. Countries have to be active in their mutual co-operation, exploring and understanding of modern financial and corporate instruments, and as a result finding and applying appropriate response measures.

Achieving actual return of corrupt assets has proved to be very challenging for ACN countries, especially those of the IAP, due to the lack of law enforcement capacity, legal deficiencies, and in some cases – the absence or weakness of political will to fight corruption. At the same time, almost all countries of the region intensified their efforts in the area of asset recovery, which has led to some improvements and in several instances has already produced practical results. The discussion below reveals both positive developments and negative examples.

In **Armenia** the authorities informed the IAP monitoring team that there had been no corruption cases with assets allocated abroad. However, while discussing a concrete case of one former high-level official whose link to offshore companies had been revealed in Panama Papers, it was confirmed that the investigation in Armenia had been terminated due to lack of evidence which investigative bodies could not receive from another jurisdiction.⁸⁰⁰ According to the Armenian authorities, the case was reopened in April 2019 and the court granted the arrest warrant. Similarly, **Mongolia** informed that there had not been cases of corruption proceeds recovered from foreign jurisdictions⁸⁰¹, while **Tajikistan** reported about difficulties with getting information about stolen assets from foreign jurisdictions.⁸⁰²

Officials in **Azerbaijan** continued to have difficulties with timely seizure of assets before they disappear. A related obstacle is the tracing of assets. During the fourth monitoring round officials described problems when assets were held under the name of a corrupt official's relatives. In 607 cases conducted by ACD in 2013-15, compensation for damages caused was made in 488 cases. Pre-trial seizure, however, was made only in 10 cases.⁸⁰³

Recently investigative journalists revealed the so-called Azerbaijani Laundromat, a complex money-laundering operation and slush fund that allegedly handled USD 2.9 billion over a two-year period through four shell companies registered in the UK.⁸⁰⁴ The first Unexplained Wealth Order action in the UK was taken against wife of a former Chair of the International Bank of Azerbaijan convicted there for embezzlement of EUR 125 million.⁸⁰⁵

A recent study of the Regional Anti-Corruption Initiative and the OSCE revealed that with the exception of **Croatia**, it had generally not been possible to establish and utilise an adequate level of international co-operation on asset recovery in **Bulgaria**, **Moldova** and **Romania**. The trend seems to indicate an insufficient use of international co-operation mechanisms in relation to cases dealing with asset recovery.⁸⁰⁶ At the same time, the Criminal Assets Recovery Agency that started functioning within the National Anticorruption Centre of the Republic of **Moldova** at the beginning of 2018, intensified co-operation with foreign jurisdictions, and directed seizure orders abroad for a value of approx. MDL 81 million (about EUR 4.2 million).

The IAP fourth round of monitoring of **Kazakhstan** found it impossible to recognize that its Criminal Procedural Code explicitly provided for possibility of direct asset recovery in line with Article 53 UNCAC.⁸⁰⁷ Similar situation was indicated in **Uzbekistan**, where, in addition, the national legislation should also be made compliant with Article 57 of UNCAC.⁸⁰⁸

Kazakhstan has already had experience of successful recovery of stolen assets. In 2012, Kazakhstan and Switzerland agreed to return USD 48.8 million that Switzerland had confiscated in a money-laundering case involving Kazakh nationals. The money was returned under the monitorship of the World Bank as a grant for the use for an Energy Efficiency Program and Youth Corps Program with two Kazakh ministries as implementing agencies. A consortium of Kazakh NGOs has been selected to manage one of the projects being funded is a \$12 million grant program. Although the consortium only recently began making grants, questions about the integrity of the grant-making process are already being raised.⁸⁰⁹

In the framework of the IAP fourth round of monitoring **Kyrgyzstan** informed about its active co-operation on the stolen asset recovery with a number of countries, including Lichtenstein, Switzerland, the USA, UK, Latvia and some other countries.⁸¹⁰

Box 55. Return of stolen assets to Kyrgyzstan

The U.S. Department of Justice returned stolen assets to the Government of the Kyrgyz Republic arising from the corruption and theft of government funds by the prior regime of Kurmanbek Bakiyev and his son Maxim Bakiyev.

These funds were identified in the United States in the criminal prosecution of Eugene Gourevitch for insider trading in the U.S. District Court for the Eastern District of New York and a \$6 million forfeiture order was subsequently entered by the Court. Following the conviction in the prosecution led by the U.S. Attorney's Office for the Eastern District of New York, the Kyrgyz Government filed a Petition for Remission with the U.S. Department of Justice, Money Laundering and Asset Recovery Section, claiming that the funds subject to the forfeiture order traced back to monies stolen by Maxim Bakiyev from Kyrgyz state authorities and other banking institutions. On Oct. 4, 2018, the Department of Justice granted the Remission Petition.

So far, approximately \$4.5 million of the funds have been collected and are approved for repatriation of the \$6 million ordered to be forfeited will be returned. Additional efforts will be made by the U.S. Government and the Government of the Kyrgyz Republic to try to locate and return the remainder of the stolen assets in the forfeiture order. The returned assets will be used with a focus on social projects and anti-corruption and transparency. These include:

- Improving public access of the rural population to the healthcare system by buying and installing medical equipment (X-ray, diagnostics equipment, etc.) for regional hospitals to deliver better medical services to the rural area population;
- Construction of water supply facilities in order to expand access to clean drinking water for the rural population through upgrades of drinking water systems and expansion of the scope of ongoing construction of large-scale water supply facilities (water pipes, water pumps, water purification facilities) currently under way with financial support of the World Bank and other International Financial Institutions; and
- Strengthening Kyrgyz institutions responsible for anti-corruption programs and promoting the transparency of court proceedings and financial integrity of state organs, including the purchase and installation of audio and video equipment for projects in district courthouses to increase transparency and public control in the justice sector

Source: www.justice.gov/opa/pr/justice-department-repatriates-forfeited-funds-government-kyrgyz-republic.

The Asset Recovery Office (ARO) of **Latvia** was actively involved in criminal investigations. However, the number of cases was still low that might indicate that investigators were either still looking for property on their own or they were not sufficiently focusing on asset recovery. With the ARO assistance, property can be identified in a more effective way and in a timely manner. The Financial Police Department of the State Revenue Service uses the assistance of the ARO when looking for property in foreign countries. The ARO is seeking to identify all kinds of proceeds, including bank accounts, immovable property, legal entities, vehicles, ships, aircraft, tax payments, etc. Relatives of the suspected person are regularly included in the financial investigation. Around 90% of assets are however held by banks, in line with Latvia's position as a transit country for financial flows which requires rapid action.⁸¹¹

More efficient application of asset recovery and extended confiscation are stipulated among the priorities addressed by a national long-term strategic plan in **Lithuania**. Country's ARO actively cooperates with foreign jurisdictions on asset tracing.⁸¹²

The National Agency for the Management of Seized Assets – ANABI of **Romania**, that also operates as a national ARO, ensures active exchange of information with other jurisdictions. Another interesting development is the work on a national integrated system ROARMIS (Romanian Assets Recovery and Management Integrated System). The aim of this system is to provide information on the different stages of the asset recovery process, starting with the first phases of identification and tracking of assets, followed by seizing the proceeds of crime and other types of assets and ending with the procedures related to the final execution of special or extended confiscation, damages, or a decision on the reuse for public or social interest. This IT system will allow monitoring the measures taken by the authorities at each step of the asset recovery process. Using its analytical functions ROARMIS may also become a very useful tool in generating statistics and reports, best practices and identifying priority areas for the development of policies, strategies and plans to increase efficiency in the process of asset recovery in Romania. ANABI finalised detailed technical specification in September 2018 and planned to have the system in place by October 2019.⁸¹³

While **Ukraine** has not demonstrated actual results with return of stolen assets, its National Asset Recovery and Management Agency (ARMA) seems to be quite proactive in co-operation with international organisations and foreign jurisdictions. The Agency is also working on the development of the registry of seized and confiscated assets.⁸¹⁴

Financial investigations

Targeting criminal proceeds should be one of the main directions in the investigation of corruption offences. This approach is different from a long-standing tradition, existing in most of IAP countries, to focus mainly on the perpetrator, assigning a lower priority to illicit assets. More and more countries all over the world are embracing the concept of a financial investigation as an integral part of the law enforcement efforts. Stemming from international AML standards, this concept is well applicable to the investigation of corruption offences, especially complex ones, which are usually followed by the related money laundering.

The UNODC in its Manual on International Co-operation for the Purposes of Confiscation of Proceeds of Crime underlined that an asset recovery case is an essential element of an effective strategy to obtain a criminal conviction (if possible) and recover the proceeds and instrumentalities derived from organized crime offences. Specialised teams of investigators and practitioners need to develop an asset-focused approach to proceeds of crime or instrumentalities.⁸¹⁵

According to FATF, a financial investigation is an enquiry into the financial affairs related to criminal conduct. Its major goal is to identify and document the movement of money during the course of criminal activity. The link between the origins of the money, beneficiaries, when the money is received and where it is stored or deposited can provide information about and proof of criminal activity.⁸¹⁶

Financial investigations require having access to financial data, including bank or financial accounts, or other records of personal or business financial transactions. Countries should ensure that financial investigations become the cornerstone of all major proceeds-generating cases and terrorist financing cases and that their key objectives include:

- identifying proceeds of crime, tracing assets and initiating asset confiscation measures, using temporary measures such as freezing/seizing when appropriate;
- initiating money-laundering investigations when appropriate;
- uncovering financial and economic structures, disrupting transnational networks and gathering knowledge on crime patterns.⁸¹⁷

In other words, financial investigations use the “follow the money” approach and usually presume more analytical work of financial records, information received from state and public databases. Financial investigations may be conducted in parallel to a conventional criminal investigation or be a part of it. Whatever the model is, it essential to ensure that well trained financial analysts be involved in the process.

While ACN countries have started using financial investigations in corruption cases more actively, in many of them the utilization of this instrument is still not well developed with most IAP countries lagging behind.

In **Albania** the law enforcement agencies became more proactive and improved their ability to conduct parallel financial investigations. However, parallel financial investigations have not been systematically conducted in criminal proceedings, and their effectiveness was limited.⁸¹⁸ Similar problems were indicated in **Bosnia and Herzegovina**⁸¹⁹, **Latvia**⁸²⁰, **Mongolia**.⁸²¹

Financial investigations in **Montenegro** were launched in the earlier stages of criminal investigations but not systematically in all corruption cases.⁸²² Similar conclusion was made in the EU Report on **Serbia**.⁸²³

In **Kyrgyzstan** parallel financial investigations were rare, while some law enforcement bodies did not always have a clear understanding of their necessity or of the applicable procedure. Law-enforcement bodies, as a rule, did not conduct parallel financial investigations to identify, trace or evaluate the property subject to confiscation, while the rate of recovery of damages in criminal cases is low.⁸²⁴

The need to develop capacities of LEAs to conduct financial investigations was stressed in the IAP monitoring reports on **Armenia**⁸²⁵, **Azerbaijan**.⁸²⁶

According to the OSCE and RAI research, the legislation of **Bulgaria, Croatia, Moldova and Romania** contained provisions on the use of financial investigations. However, the use of financial investigations varied greatly among the four jurisdictions. Based on the available statistics indicating the amounts of proceeds and instrumentalities of crime seized over time, **Croatia** and **Romania** appeared to utilise financial investigations more proactively, while **Bulgaria** and **Moldova** less so. Ultimately, the effectiveness and efficiency of the asset recovery process was directly impacted by the results obtained in seizure orders and confiscation judgements, which in turn relied directly on the quality of the financial investigation. In this regard, attention was given to the practice in **Croatia**, whereby electronic databases relevant to the asset recovery process was set up and access to them was granted to prosecutors. Moreover, the use of specialised financial investigation units within the Tax Administration enabled a relatively quick detection of the property of defendants and associated persons.⁸²⁷

The establishment of the Criminal Assets Recovery Agency in **Moldova** contributed to utilizing financial investigations more actively, with a result of seizures in the value of approximately MDL 2.6 billion (about EUR 135.5 million) in 2018-2019.

A separate Financial Investigation Unit exists within the Bureau of Investigation of **Georgia**. The Unit is comprised of forensic auditors that provide financial analysis services in criminal investigations to all Georgia law enforcement agencies. The forensic auditors use accounting, auditing, computer, and investigative skills to assist in examining financial evidence of an alleged crime. The forensic auditors are

Certified Fraud Examiners and are extensively trained to meet the demands of complex financial investigations to include theft, embezzlement, mortgage fraud, insurance fraud, drug investigations, death and arson cases that have a financial motive.⁸²⁸

In 2015, the **Romanian** Anti-Corruption Directorate, which deals with investigation and prosecution of corruption cases, created within its structure a separate Financial Investigation Unit comprised of five police officers, one fiscal expert and one international co-operation expert. The Unit can support its ongoing investigation and performs tasks in relation to asset recovery and confiscation.

In **Lithuania** the Special Investigation Service often outsourced financial investigations to the Financial Crime Investigation Service.⁸²⁹

Some positive developments were indicated in **North Macedonia**, where with the adoption of the Strategy for Strengthening the Capacities for Conducting Financial Investigations and Confiscation of Property and the setting up of a dedicated financial investigation unit in the police, major steps were taken to prioritise financial investigations and asset recovery. The country was recommended that its law enforcement and prosecution bodies further build up operational capacity, including for systematically conducting financial investigations.⁸³⁰

In **Slovenia**, according to the Confiscation of Proceeds of Crime Act, the start of a financial investigation on reasonable grounds for suspicion may be proposed by the Police, tax administration, anti-corruption authority or FIU. A financial investigation team can be established and led by the competent public prosecutor, composed of representatives of the Police, the Financial Administration, the Specialised State Prosecutor's Office, the FIU, the Commission for the Prevention of Corruption, the Securities Market Agency, the Competition Protection Agency and Court of Audit.⁸³¹

A sort of financial investigation in **Ukraine** is conducted by NABU Analytical Department and ARMA, however this practice has to be further developed.

Conclusions

ACN countries have achieved certain progress in improving the procedures of detection, investigation and prosecution of corruption offences, and their practical implementation. However, in most cases it is difficult to describe these transformations as dynamic or proactive. Very often the respective changes took quite a long time to achieve, and in many instances, they have been made under pressure of international partners or civil society.

While more diverse sources of information are now used for the detection of corruption, the reports of crime submitted by individuals and legal persons, as well as law enforcement intelligence, continue to comprise the main detection sources for corruption cases. This is particularly the case in the IAP countries. Therefore, the potential of many other sources of detection, in particular analytical ones, as well as means of international co-operation, remains largely underutilised.

Some countries have started using media reports as a detection source for corruption quite actively, and few more also had corruption cases directly triggered by media reports. However, this is far from being a common practice yet. In general, the low use of the investigative media reports as a possible source of information remains a worrying problem for most of IAP countries. This situation may be explained by weak legal frameworks protecting media freedom and independence, harsh defamation laws and ineffective tools for journalists to access information held by the public administration.

Anonymous reports have also not been actively used for the purposes of detecting corruption.

Such relatively new databases as registries of beneficial owners and of bank accounts are being introduced quite slowly, while in the EU member states this process was intensified by the respective requirements of

the EU legal instruments. Many jurisdictions granted their LEAs with easier access to other public registries and databases, but there are countries where this yet to be done.

The co-operation of law enforcement agencies with the domestic FIUs is in general active. FIU materials in fact are very often a source of information beneficial for corruption investigations. All IAP countries established the rules on co-operation between law enforcement bodies and FIUs, which regulate information exchange, joint actions and mutual assistance.

Several countries have also improved their criminal procedures by eliminating pre-investigation inquiry phase, which means that criminal investigation should be open there immediately after receiving information about a criminal offence.

Most ACN countries have incorporated procedural agreements, such as plea bargain and co-operation agreement, in their criminal justice systems, usually accompanied by the judicial control over this instrument, which, among other things, prevents abuse of the prosecutorial authority.

Some ACN countries started using domestic joint investigative teams in corruption cases more often. However, this form of enhanced inter-agency co-operation has to be further developed and be more actively applied.

Many countries in the region demonstrated a certain level of proactivity in international co-operation in corruption cases, with modern (joint investigative teams, special investigative measures, tele-, and videoconferencing) and informal direct forms of co-operation used wider. This also applies to available mechanisms for co-operation under the umbrella of the regional and global organisations.

One of the global trends that has had its impact in the ACN region is establishing of informal international and regional networks of law enforcement and judicial practitioners dealing with asset recovery. The main goal of these networks is to enhance co-operation and coordination between their members to achieve successful asset recovery. The networks serve as important platforms for promoting the exchange of information, experience and good practices.

Achieving actual return of corrupt assets has proved to be very challenging for ACN countries, especially those of the IAP, due to the lack of law enforcement capacity, legal deficiencies, and in some cases – the absence or weakness of political will to fight against corruption. At the same time, almost all countries of the region intensified their efforts in this area, which has led to some improvements and in several instances has already produced practical results.

ACN countries have started using financial investigations in corruption cases more actively, in many of them the utilisation of this instrument is still may not be recognized as well developed, and IAP countries are lagging behind.

See recommendations at the end of this chapter.

Enforcement of corruption offences

The fourth round of the IAP monitoring had among its objectives the analysis of the law-enforcement actions with the focus on cases and law enforcement statistics. The monitoring reports paid specific attention to the measures taken by the countries to enforce criminal responsibility for corruption, as well as law-enforcement statistics, including data about opened, prosecuted and adjudicated cases and sanctions.

The monitoring also looked into the issues of public availability of such statistics, and country efforts to tackle high-profile corruption.

Statistics on investigation, prosecution and adjudication of corruption-related crimes

International standards

There are no specific international standards on what and how the law enforcement statistics in corruption cases should be collected. The UN Convention against Corruption (Article 61) calls on the states parties to consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed. States Parties should also consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise concerning corruption and information with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption.

International organisations developed principles, recommendations and good practices regarding statistics in general and criminal statistics in particular.

For example, the United Nations Fundamental Principles of Official Statistics⁸³² include the following principles:

- Principle 1. Official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy.
- Principle 2. To retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data.
- Principle 3. To facilitate a correct interpretation of the data, the statistical agencies are to present information according to scientific standards on the sources, methods and procedures of the statistics.
- Principle 4. The statistical agencies are entitled to comment on erroneous interpretation and misuse of statistics.
- Principle 5. Data for statistical purposes may be drawn from all types of sources, be they statistical surveys or administrative records. Statistical agencies are to choose the source with regard to quality, timeliness, costs and the burden on respondents.
- Principle 6. Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.
- Principle 7. The laws, regulations and measures under which the statistical systems operate are to be made public.
- Principle 8. Coordination among statistical agencies within countries is essential to achieve consistency and efficiency in the statistical system.
- Principle 9. The use by statistical agencies in each country of international concepts, classifications and methods promotes the consistency and efficiency of statistical systems at all official levels.
- Principle 10. Bilateral and multilateral cooperation in statistics contributes to the improvement of systems of official statistics in all countries.

The European Statistics Code of Practice contains 16 principles covering the institutional environment, statistical processes and statistical outputs. Among these principles: professional independence, coordination and cooperation, mandate for data collection, adequacy of resources, quality commitment, statistical confidentiality, impartiality and objectivity.⁸³³

Considering official statistics as one of valuable sources of information for broader corruption surveys, the Manual on Corruption Surveys, prepared by the UNODC, UNDP and the UNODC-INEGI Center of Excellence in Statistical Information on Government, Crime, Victimization and Justice, points out that one of the most common recommendations given to the countries in the framework of the review of the UNCAC implementation has been to enhance the gathering of data and statistics.⁸³⁴

Another UNODC paper also suggests that official statistics on corruption are mostly limited to counts of criminal justice or administrative responses, in terms of crimes reported to the police or anti-corruption bodies, persons arrested, tried and convicted. Of course, these data, although crucial for benchmarking and monitoring the implementation of anti-corruption measures, cannot be used to measure the extent of the phenomenon of corruption.⁸³⁵

These statements support the idea that criminal statistics may not serve as a sole source of information to measure level and nature of corruption. At the same time, these data, if collected and maintained properly, provide a solid benefit for comprehensive measuring corruption, as well as functions as one of core elements to assess the effectiveness of investigation, prosecution and adjudication in corruption cases. It also allows identifying legal deficiencies that create obstacles for successful combating corruption.

The European Commission in the process of preparing to collection official data on corruption offences found many differences between Member States in terms of the definitions of offences, the indicators for which data are available, and the methodology for recording data under these indicators. The collection process used the following indicators:

- a Number of opened investigations
- b Number of persons involved in opened investigations
- c Number of indictments
- d Number of first instance convictions
- e Number of first instance acquittals
- f Number of other outcomes first instance (i.e. excluding convictions and acquittals)
- g Total number of cases adjudicated first instance
- h Number of final convictions
- i Number of final acquittals
- j Number of other outcomes (final) (i.e. excluding convictions and acquittals)
- k Total number of cases adjudicated (final)
- l Number of imprisonment / custodial sentences through final convictions
- m Number of suspended custodial sentences through final convictions
- n Number of pending cases at the end of the reference year.⁸³⁶

Finally, Transparency International in its overview of practices for the collection of corruption data and statistics in EU member states noted that corruption-related data collection (criminal cases reported to law enforcement authorities as well as administrative cases of corruption) can be centralised or decentralised. Governments opting for centralising the data collection often delegate this task to their anticorruption commission or the national statistics bureau. Corruption statistics produced generally restrict analysis to criminal cases of corruption. Only in a few instances are administrative cases included in the analysis. Data is often collected regarding the source of detection of corruption cases as well as their outcome (criminal or administrative sanctions). From the conducted research, it appeared that centralising the data, as is the case in France, simplified public access to information about corruption, providing a more accurate overview of trends and patterns. However, this approach seemed to be the exception rather than the rule.⁸³⁷

Table 54. Law enforcement statistics on corruption cases in IAP countries

	Armenia (2014-2017)	Azerbaijan (2013-2018)	Georgia (2013-2015)	Kazakhstan (2015-2016)	Kyrgyzstan (2015-2017)	Mongolia (2015-2018)	Tajikistan (2014-2016)	Ukraine (2015-1st half of 2017)	Uzbekistan (2016-2018)
Number of criminal corruption cases									
Opened	1,983	2294	N/A	3,893	3,471	1,940	N/A	21,463	5,289
Sent to court	342	1,300	N/A	2,573	1,599	434	411	6,579	4765
Sanctioned	216	1,290	484	2,194	N/A	179	389	1,947	4,547
Cases involving legal persons									
Opened	N/A	N/A	1	N/A	0	N/A	N/A	N/A	0
Sent to court	N/A	N/A	1	N/A	0	N/A	N/A	N/A	0
Sanctioned	N/A	N/A	1	N/A	0	N/A	N/A	N/A	0
Cases involving foreign bribery									
Opened	0	N/A	0	N/A	0	N/A	0	N/A	1
Sent to court	0	N/A	0	N/A	0	N/A	0	N/A	1
Sanctioned	0	N/A	0	N/A	0	N/A	0	N/A	1
Asset recovery and confiscation									
Number of corruption cases involving confiscation	N/A	20	N/A	1411	N/A	N/A	2	N/A	N/A
Total confiscated value, EUR	N/A	115,100,000	7,855,234	54,709,600	N/A	10,451,954	N/A	N/A	328,370
Total recovered assets from abroad, EUR	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Source: IAP fourth monitoring round reports, information provided by countries.

Table 55. Law enforcement data on corruption cases in IAP countries (2018)

	AR	AL	AZ	BiH	CR	ES	KZ	KR	LV	LT	MAC	ML	MG	MN	RO	SE	SL	UA	UZ
Number of criminal corruption cases in 2018																			
Opened	N/A	172	518	440	74	70	1724	988	196	49	N/A	615	N/A	N/A	5928	6928	N/A	3531	1469
Sent to court	N/A	231	278	251	140	31	1510	295	143	27	N/A	250	N/A	N/A	483	3593	N/A	2264	1299
Sanctioned	N/A	583	276	186	110	54	1079	538	N/A	69	N/A	279	N/A	N/A	228	2855	N/A	766	1907
Cases involving legal persons																			
Opened	N/A	N/A	0	382	0	N/A	0	186	0	1	N/A	N/A	N/A	N/A	N/A	4	N/A	N/A	N/A
Sent to court	N/A	N/A	0	226	1	N/A	0	186	1	7	N/A	N/A	N/A	N/A	65	0	N/A	1	N/A
Sanctioned	N/A	N/A	0	172	1	0	0	N/A	N/A	11	N/A	N/A	N/A	N/A	10	0	N/A	N/A	N/A
Cases involving foreign bribery																			
Opened	N/A	0	0	0	0	0	0	N/A	1	0	N/A	N/A	N/A	N/A	0	2	N/A	N/A	0
Sent to court	N/A	0	0	0	0	0	0	N/A	1	0	N/A	N/A	N/A	N/A	0	0	N/A	N/A	0
Sanctioned	N/A	0	0	0	0	0	0	N/A	0	0	N/A	N/A	N/A	N/A	0	0	N/A	N/A	0
Asset recovery and confiscation																			
Number of corruption cases that involved confiscation	N/A	0	8	23	N/A	N/A	122	N/A	N/A	12	N/A	N/A	N/A	N/A	126	2	N/A	2852	8
Total confiscated value, EUR	N/A	0	18 mln	4383 58	1108 0856	N/A	1955 648	N/A	N/A	7174 5	N/A	9350 090	N/A	N/A	7600 0000	N/A	N/A	3848 40	2570 4
Total recovered assets from abroad, EUR	N/A	0		N/A	0	N/A	8808 2697	N/A	N/A	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

	AR	AL	AZ	BiH	CR	ES	KZ	KR	LV	LT	MAC	ML	MG	MN	RO	SE	SL	UA	UZ
Mutual legal assistance in corruption cases																			
Requests received	N/A	0	0	16	N/A	N/A	10	6	61	7	N/A	N/A	N/A	N/A	21	156	N/A	28	13
Assistance provided	N/A	N/A	0	16	N/A	N/A	10	6	49	7	N/A	N/A	N/A	N/A	19	66	N/A	20	13
Requests sent	N/A	N/A	20	3	N/A	N/A	65	66	13	7	N/A	N/A	N/A	N/A	93	133	N/A	164	3
Assistance obtained	N/A	N/A	13	3	N/A	N/A	65	40	N/A	4	N/A	N/A	N/A	N/A	56	47	N/A	74	3

Source: replies of ACN countries to the questionnaire prepared by the Secretariat, OECD/ACN secretariat research.

Statistics of ACN countries

The IAP fourth monitoring round revealed some trends and deficiencies regarding the content and maintenance of criminal statistics on corruption cases, and the enforcement of corruption offences.

In general, most of corruption offences in the region were detected in the traditionally vulnerable to corruption areas, such as public finances, natural resources, administrative services (issuing permits, licences etc.), public procurement, tax and customs, health and education. In some countries it is possible to see a clear link between corruption practices and features of the national economy.

For example, a number of high-profile corruption cases in resource-rich **Mongolia** were detected in the country's extractive industry. Recent money-laundering scandals in **Estonia** and **Latvia** were accompanied by investigations of corruption allegations in the financial sectors in those countries.⁸³⁸

In **Kazakhstan** most of the registered corruption cases during 2015-2016 were about offences committed in the internal affairs bodies, ministry of health protection, tax authorities, customs authorities, and ministry of education.⁸³⁹

Azerbaijan mostly investigated corruption and related offences in the private sector, the trading and banking activities, education and healthcare systems.

In terms of types of corruption offences, the most commonly detected were embezzlement of public funds, forgery and abuse of official authority. In addition to these, in **Georgia** it was also passive bribery.⁸⁴⁰

Most frequently detected corruption offences in **Mongolia** in 2015-2018 were abuse of powers, active and passive bribery, with a significantly increased number of cases on abuse of powers in 2018. The latter was explained by the legislative amendments which excluded damages as an element of abuse of power and assigned to its jurisdiction all criminal offences committed by police officers while fulfilling official duties. As a positive development it should be noted that IAAC has focused equally on active and passive bribery.⁸⁴¹

Most of the convictions in **Bosnia and Herzegovina** in 2017 were for abuse of office or authority.⁸⁴²

From all corruption-related offences detected in **Tajikistan** during 2014-2016, 34% were fraud, 22.5% misappropriation or embezzlement of public funds, 5.6% - forgery, and 5.1% - passive bribery.⁸⁴³

Most of high-profile cases in **North Macedonia** concerned abuse of office, abuse of position, forgery of documents, embezzlement, and large-scale fraud.⁸⁴⁴

Regarding criminal penalties in corruption cases, a general trend is the preferential application of sanctions not related to deprivation of liberty.

For example, the IAP monitoring report criticised the tendency of expansion of the scope of application of criminal penalties not related to deprivation of liberty and shifting the emphasis to financial sanctions in **Kazakhstan**.⁸⁴⁵

In **Armenia**, during 2014-2017, fines (124 cases or about 55%) and imprisonment (103 cases or about 45%) were applied for major bribery and corruption related offences. Conditional release from serving the sentence was applied in 37 or about 16% of cases; release from serving the punishment due to amnesty was applied in 39 or about 17% of cases. Thus, in the vast majority of corruption cases imprisonment was not enforced and only very few of those resulted in a conviction with "real" imprisonment terms. This led the monitors to the conclusion that sanctions for corruption offences were not dissuasive in practice. The Government explained that this was because of many bribery cases with very low amount of bribe and that average percentage of conditional release in relation to other crimes was 10% higher than in relation to corruption cases.⁸⁴⁶

Azerbaijan's statistics on the types of sanctions showed that in 2013 the most widely applied sanction was imprisonment; in 2014 it was closely followed by the application of fines, while in 2015 there was a significantly increase in the number of persons released conditionally from their punishment.⁸⁴⁷

There were 232 indictments in **Bosnia and Herzegovina** in 2017, with an increase of 18% compared to 2016, while the number of convictions was 156 (151 in 2016), a majority of which were suspended sentences.⁸⁴⁸

In **Mongolia**, most of the imposed sanctions for corruption offences during 2015-2018 were fines.⁸⁴⁹

Another trend in the law enforcement anti-corruption practice is a discrepancy in numbers of initiated cases and those submitted to the court or those where trial was finalised with a sentence.

The Government of **Armenia** explained this circumstance by the termination of the criminal cases initiated and their transfer to the next statistical reporting year in order to continue the investigation taking into account that often the investigation of cases of corruption crimes is complex.

In **Mongolia** during 2015-2018 approximately 22% of all cases were submitted to the court within the reporting period, and only 9,5% were finalised with conviction, 25% of all investigated cases were terminated at the pre-trial stage, that significantly increased last year. The increase was explained by the legislative amendments which excluded damages as an element of abuse of power and assigned to its scope all criminal offences committed by police officers while fulfilling official duties.⁸⁵⁰

Indeed, such discrepancy by itself may not serve as a ground for negative conclusions regarding the effectiveness or integrity of the law enforcement practice. Therefore, the monitoring reports encouraged the mentioned countries to analyse the situation in terms of efficiency of the use of investigative resources.

Public access to criminal statistics, including on corruption cases

The fourth monitoring round reports noted that in some IAP countries the official statistics on corruption offences have become available for the public.

This is true, in particular, for **Armenia** where the Police and the National Statistical Service publish statistical data on the registered crimes on a monthly and semi-annual basis.⁸⁵¹ However, the only specification available at the time of the monitoring was a number of sentenced officials from the total number of sentenced persons, while statistics on position/rank/occupation of the suspect/indicted/convicted person was introduced from the beginning of 2018.

In **Kazakhstan** free online access to periodically updated detailed statistical information on criminal and other corruption offenses was provided on the website of the Anti-Corruption Service www.anticorruption.gov.kz. It had the following sections: Analysis of the activities of the National Bureau and information on socially significant investigations. Also, the law enforcement statistics were available on the web-site of the Committee on Legal Statistics and Specialized Statements (<http://service.pravstat.kz/>).⁸⁵²

In **Ukraine** comprehensive criminal statistics including data on investigation, prosecution and adjudication of corruption offences were publicly available at the website of the Prosecutor General's Office and judicial web portal.

Box 56. Open registry of corruption cases in Ukraine

After the cases of NABU and SAPO are forwarded to the court information about these cases can be found at the register of cases which contains information about every case in the user-friendly aggregated form. Each case file includes brief description of the respective case, the date of opening the investigation, criminal qualification, date of indictment, name of the court where the case is tried and status of the case. The registry is publicly available free of charge on the website of NABU (<https://nabu.gov.ua/reestr-sprav>) in Ukrainian, which allows everyone interested to check the status of high-profile corruption cases. As of September 2019, the registry contained information about 186 criminal cases.

Ukraine also shows an interesting example of the civil society use of the officially published court decisions. The Unified State Register of Court decisions is published online, including in a machine-readable format.⁸⁵³ The data has been used to analyse different parameters of the criminal cases adjudication. For example, donor-funded NGOs researched the court sentences in criminal cases related to corruption. The research clearly showed that sanctions were very lenient and not dissuasive, and the trend was not improving in the past few years (see the chart below).⁸⁵⁴

Figure 26. Types of punishment or release from punishment applied for corruption crime in Ukraine



Note: Aggregated data for 2014-2018 that covers the following criminal offences: false information in asset declaration; passive bribery in the public sector; illicit enrichment; active bribery in the public sector; trafficking in influence. Source: Research by Ukrainian Centre for Social Data and Centre for Democracy and the Rule of Law funded by the USAID, May 2019, p. 12, <https://socialdata.org.ua/wp-content/uploads/2019/05/corruption-report-20-05-2019.pdf> (in Ukrainian only).

During the IAP fourth monitoring round **Azerbaijan, Tajikistan and Mongolia**⁸⁵⁵ informed that statistics were made publicly available at the regular press conferences or through press releases. It should be noted in this respect that such summaries may be of very generic nature lacking overall and concrete statistical data and cannot be considered as an acceptable alternative to publishing the official statistics.

At the same time, there are still several IAP countries where the public access to statistical information on corruption offences, their prosecution and adjudication is restricted, which contradicts the standards of openness of information and prevents public oversight of the activities of state bodies in combating corruption.

This problem, for example, was identified in **Kyrgyzstan** where criminal statistics on adjudication of corruption offences is classified “For official use”.⁸⁵⁶ In **Uzbekistan** the official criminal statistics on corruption offences is not publicly accessible either.⁸⁵⁷

At the same time, some countries made efforts to improve their regulations on statistical databases and methodologies.

To ensure comprehensive criminal statistics on corruption related crimes, the Ministry of Justice of **Armenia** developed amendments in the Law on the Prosecutor’s Office. The law states that: Prior to 1 April of each year, the Prosecutor General’s Office of the Republic of Armenia shall publish a report on

investigation of crimes on the website of the Prosecutor General's Office of the Republic of Armenia. In accordance with investigative jurisdiction, the report must contain information on the results of investigation of crimes committed during the previous year, statistical data, comparative analysis and conclusions thereon. For the purpose of drawing up the report investigative bodies shall, in accordance with investigative jurisdiction, prior to 1 February of each year, submit information and statistical data on the results of investigation of crimes committed during the previous year to the Prosecutor General's Office of the Republic of Armenia. The Law was included in the institutional anti-corruption package and entered into force in July 2017. The Armenian Prosecutor General's Office elaborated a methodological guideline on providing statistical data of the corruption crimes investigation process by all the bodies of the preliminary investigation for the placement on the Prosecutor's Office website.⁸⁵⁸

Kyrgyzstan changed the methodology of collecting statistical data on criminal acts in general and criminal acts of corruption in particular. One of the points of the reform was to transfer the duty of collecting criminal and legal statistics from the Ministry of Internal Affairs to the Prosecutor's bodies. One of the declared goals of this measure was to create a unified system for recording applications and crime reports as well as to introduce an open and automated system for recording the movement of materials and criminal cases - from the moment of registration to the announcement and execution of the court decision (verdict). A new Legal Statistics and Accounts Department with regional units was created in the central Office of the Prosecutor General to deal with these tasks.⁸⁵⁹

Similar steps to reform the system of registration and statistics on criminal offenses with the introduction of an electronic systems were taken in **Uzbekistan**.⁸⁶⁰

Enforcement of criminal measures against high-profile corruption

Tackling high-level and complex corruption remains a challenging task for many countries in the region. Law enforcement agencies in such jurisdictions still tend to investigate petty corruption far more often than high-profile cases.

The IAP monitoring found this to be the case in **Armenia**⁸⁶¹ and **Tajikistan**.⁸⁶²

However, more recently, the Armenian authorities launched a widespread investigation and prosecution of high-profile corruption cases and unearthed cases of tax fraud by companies, including some controlled by former senior public officials or their affiliates. They also initiated investigations into a number of foreign-financed public and private sector projects, including in mining and infrastructure.⁸⁶³

There was no final conviction in high-profile cases in **Bosnia and Herzegovina** during 2016-2017.⁸⁶⁴ Problems with complex corruption cases were also mentioned in relation to **Kosovo**.⁸⁶⁵ The need to show a stable record of effective investigation and prosecution of high-level corruption cases, including those targeting politicians, was also relevant for **Bulgaria**.⁸⁶⁶ Considerable efforts were also necessary to strengthen the rule of law in **Moldova** by tackling high level corruption, recovering the funds from the banking fraud and bringing to justice those responsible.⁸⁶⁷

Similarly, the criminal justice response against high-level corruption in **Montenegro** remains limited. In 2018, indictments for corruption-related offences were lodged in 12 cases of high-level corruption (10 in 2017) against 31 individuals, including mayors and public officials, and 2 legal entities. New investigations were launched in six cases (16 in 2017) of high-level corruption.⁸⁶⁸

While in **Azerbaijan** the number of cases concerning serious and complex corruption offences or high-level officials was found to be very low, the number of cases sent to trial involving mid to high level public officials in 2015 slightly increased.⁸⁶⁹

Some IAP countries have already taken important steps to address the problem of high-level corruption, and their work in this direction needs to be further intensified.

For example, the **Mongolian** Independent Anti-Corruption Authority started a number of investigations in recent years. During 2017-2018, four heads of central bodies were convicted for corruption. Moreover, the IAAC conducted criminal investigation into two former Prime Ministers on charges of abuse of office, issuing illegal decisions, providing benefits to others in the process of approving the investment agreements. Another ongoing investigation concerned the incumbent MP who was accused of abuse of power. Most of the high-profile corruption cases in Mongolia concern two types of corruption offences – passive bribery or abuse of power in relation to spending public funds.⁸⁷⁰

A low number of criminal cases on corruption-related crimes against high-ranking officials was noted in **Uzbekistan**, most of the prosecuted officials were judges and prosecutors (there was no information about the level of their positions).⁸⁷¹

In **Kyrgyzstan** the IAP monitoring found law enforcement agencies to be active in identifying and prosecuting corruption offences including those of top officials. However, according to interviewed NGOs and other sources, such criminal prosecutions were often politically motivated, especially when representatives of previous governments were persecuted.⁸⁷²

In **Kazakhstan**, 106 high-ranking officials, including 2 heads of central bodies, 1 deputy head of a central body, 5 judges and 1 prosecutor, were convicted for corruption during 2014-2016.⁸⁷³

In **Georgia**, 92 high-level public officials were convicted during 2013-2015. Although in the process of the IAP monitoring the experts heard from a variety of sources that there was a perception that not enough effort being made to address what was perceived to be a significant amount of high-level corruption.⁸⁷⁴ Moreover, more recently Georgia's progress in tackling high-level corruption was indicated to remain weak.⁸⁷⁵ A 2018 report on the implementation of the EU Association Agreement with Georgia also highlighted that high-level elite corruption remained a serious issue, while acknowledging Georgia's results in fighting low and mid-level corruption leading to a good regional ranking in perception indexes.⁸⁷⁶

In **Serbia**, courts convicted 41 individuals in relation to high-level corruption offences (based on indictments by the Prosecutor's Office for Organised Crime) in 2018 (compared to 50 in 2017). Of these, 13 were based on plea agreements. Confiscation of assets was imposed in two of these cases.⁸⁷⁷

Some IAP countries demonstrated better results in prosecution of high-level officials or tackling complex corruption.

Since the creation of the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialised Anti-Corruption Prosecutor's Office (SAPO) – specialised bodies investigating and prosecuting high-level and high-profile corruption in **Ukraine** – the number of respective cases has increased significantly. As of June 2019, detectives of NABU investigated 745 cases⁸⁷⁸; by the end of 2018, SAPO prosecutors submitted 176 cases in court.⁸⁷⁹ However, the adjudication in these cases remains slow and inactive, as by June 2019 convictions were obtained only in 28 cases, mostly based on plea agreements.⁸⁸⁰ The absence of proper adjudication was one of the reasons of the recent establishment of a specialised High Anti-Corruption Court in the country.

Some positive initial achievements on conviction of high-level state officials were recently indicated in **Albania**. In 2018, one Appeals Court judge was sentenced by the Serious Crime Court (case currently at appeal level) and one prosecutor was sentenced by the Court of Appeal for Serious Crimes (case currently at the Supreme Court). There were 102 new cases against high-level state officials sent to prosecution in 2018 (7 persons indicted), this has been an increase compared to 61 in 2017 (10 persons indicted). However, these investigations in recent years have so far not resulted in a substantial number of final convictions of high-ranking state officials. In February 2019, 12 officials and former officials of the Ministry of Justice were arrested for suspected abuse of office and violation of equality in tenders during the period 2016-17. The officials included a former secretary general of the Ministry of Justice.⁸⁸¹

A number of high-profile corruption cases were recently prosecuted in **Latvia**.⁸⁸² One of the recent examples is a corruption case against Latvian central bank governor that already went to court.⁸⁸³

North Macedonia continued to build on its track-record of investigation, prosecution and trial of high-level corruption cases. The Special Prosecutor's Office filed 18 indictments for serious criminal offences. Court hearings in several prominent cases resumed involving former senior officials such as the former Minister of Transport, the former Minister of the Interior, several former security and counterintelligence officials, prominent businesspeople and local officials. In 2018, courts issued five judgments against 19 individuals, including three verdicts based on a guilty plea. Final sentences were pronounced against the former Prime Minister, his assistant, the former Minister of the Interior and the former Director of the Bureau for Security and Counterintelligence. In total, together with four cases still under investigation since 2017, there were nine ongoing cases in 2018 involving 17 individuals. Cases mainly concerned violation of procurement rules.⁸⁸⁴

Romania has been known for proactive enforcement actions against the high-level corruption. Despite increasingly difficult circumstances in the legal and political environment, the results of the judicial institutions are comparable to previous years. From September 2017 to August 2018, the DNA sent 854 defendants to trial in 299 cases. 266 final convictions were issued against 659 defendants. Seizure was ordered for EUR 447 million and final confiscation amounted to about EUR 67,4 million, with final decisions on compensation to civil parties of EUR 109 million, including EUR 81 million (74%) as compensation awarded to public authorities and institutions and to companies with state capital. In January-August 2018, the High Court of Cassation and Justice ruled on 13 high level corruption cases at the first instance and 10 high-level corruption cases - by the final decision.⁸⁸⁵

Conclusions

During the reported period detection of corruption offences in the region was focused in the traditionally vulnerable to corruption areas, such as public finances, natural resources, administrative services (issuing permits, licences etc.), public procurement, tax and customs, health and education. In some countries it was possible to see a clear link between corruption practices and features of the national economy.

In terms of types of corruption offences, the most commonly detected offences were embezzlement of public funds, forgery and abuse of official authority.

Regarding criminal penalties for corruption, a general trend was the more frequent application of sanctions not related to deprivation of liberty. It raised concern from the perspective of proportionality and dissuasiveness of the actual sanctions.

There were still several IAP countries where the public access to statistical information on corruption offences, their prosecution and adjudication was restricted. It contradicted the standards of openness of information and prevented the public oversight over activities of state bodies in combating corruption.

Some countries made efforts to address the problem of high-level and complex corruption. However, in general it remained one of the key challenges for the region. Most ACN countries demonstrated quite limited efforts in detection, investigation and prosecution of high-profile corruption. These countries need to review their criminal justice policies and transform conclusions into real actions.

The most common obstacles for the effective tackling of high-level corruption in the region were the lack of true political will to pursue these crimes, weakness of the law enforcement institutions, lack of capacities to enforce such offences, insufficient levels of interagency and international co-operation.

See recommendations at the end of this chapter.

Anti-corruption criminal justice bodies

International standards

Responsibility to investigate and prosecute corruption-related crimes should be clearly assigned to existing or newly established institutions. The UN Convention against Corruption (Article 36) and Council of Europe’s Criminal Law Convention on Corruption (Article 20) establish criteria for effective specialisation of anti-corruption bodies, including independence, specialisation, allocation of necessary resources and adequate training. The OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions does not require specialisation; however, its Article 5 and Good Practice Guidance on Implementing Specific Articles of the Convention do stipulate the requirement of independence and adequate resources for investigation of a specific type of corruption – foreign bribery.

Box 57. Provisions of international treaties on investigation and prosecution of corruption

UN Convention against Corruption – Article 36 : Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

CoE Criminal Law Convention on Corruption – Article 20: Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

Twenty Guiding Principles for the fight against corruption, Council of Europe Committee of Ministers’ Resolution (97)24 – Principles 3 and 7: To ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences, enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations. To promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.

OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions - Article 5: Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.

Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – point D) Article 5: Enforcement

Member countries should be vigilant in ensuring that investigations and prosecutions of the bribery of foreign public officials in international business transactions are not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved, in compliance with Article 5 of the OECD Anti Bribery Convention.

Complaints of bribery of foreign public officials should be seriously investigated and credible allegations assessed by competent authorities.

Member countries should provide adequate resources to law enforcement authorities so as to permit effective investigation and prosecution of bribery of foreign public officials in international business transactions, taking into consideration Commentary 27 to the OECD Anti Bribery Convention.

The EU Eastern Partnership (EaP) “20 Deliverables for 2020”⁸⁸⁶ stipulate as targets for the EaP countries the fully operational independent specialised high-level anticorruption bodies and a track record of investigations and convictions of high-level corruption cases.

Independence broadly means that the anti-corruption body should be shielded from undue political pressure and interference. This would include institutional and operational autonomy; clear legal basis and mandate, including clear delineation of the substantive jurisdiction; transparent procedures for appointment and removal of the head (leadership); internal controls and proper human resource management. Independence should go hand in hand with accountability and ability to work with other institutions towards successful adjudication of corruption.

Specialisation means the availability of the specialised staff with specific mandate to fight corruption and with a special set of skills necessary to carry out this mandate. Necessary resources would include financial, technical, and human resources. It also implies sufficient powers to carry out agency’s tasks.

International standards do not advocate for setting up of the specialised anti-corruption law enforcement body and do not offer any one model to follow. The forms and levels of specialisation would differ from country to country and actual institutional arrangement is for each country to select depending on its legal and institutional framework and other considerations.

Specialisation

ACN countries opted for various institutional solutions in terms of specialisation in the investigation and prosecution of corruption (see the table below). Some also created specialised courts or established other forms of the judicial specialisation. This is discussed further in this report.

The models of specialisation can be divided into three groups.

The first group of countries established stand-alone specialised anti-corruption law enforcement bodies. Such agencies have either investigative powers, e.g. **Azerbaijan**’s Anti-Corruption Directorate and **Ukraine**’s National Anti-Corruption Bureau, or prosecutorial powers, e.g. **Ukraine**’s Specialised Anti-Corruption Prosecution Office among IAP countries.

There are also agencies, which combine both investigation and prosecution functions. These are common across the ACN region; their examples include **Romania**’s National Anti-Corruption Directorate and **Croatia**’s Office for the Suppression of Corruption and Organised Crime. They also exist in some OECD countries, such as **Norway**’s National Authority for Investigation and Prosecution of Corruption Crimes, **Spain**’s Special Prosecutor’s Office against Corruption and Organised Crime, and **UK**’s Serious Fraud Office.

Furthermore, some of these offices have wide competences and cover organised, economic or environmental crimes along with corruption (Croatia, Norway, Spain, and the UK), while in other models anti-corruption specialisation is narrowed to cover only particular types of corruption – most commonly high-level and high-profile corruption (Romania and Ukraine).

The second group is countries with anti-corruption specialisation within the existing law-enforcement and prosecution bodies. Some of its variations can be found in most IAP countries, in particular, in **Armenia**, **Georgia**, **Kyrgyzstan** and **Uzbekistan**.

Finally, the third group includes countries with the multi-purpose anti-corruption specialised agencies that combine preventive and repressive powers. Among the IAP countries, such a model can be found in **Mongolia** with its Independent Authority Against Corruption and **Tajikistan** with its Agency for State Financial Control and Fight Against Corruption.

Table 56. Specialised anti-corruption law enforcement bodies in the ACN countries

	Specialized anti-corruption investigative bodies	Specialized anti-corruption prosecution bodies	Specialised units/personnel within investigative agencies	Specialised units/personnel within prosecution bodies	Specialized anti-corruption multi-purpose agencies
Istanbul Anti-Corruption Action Plan countries					
Armenia			●	●	
Azerbaijan	●				
Georgia			●	●	
Kazakhstan	N/A	N/A	N/A	●	N/A
Kyrgyzstan			●		
Mongolia					●
Tajikistan			●	●	●
Ukraine	●	●	●		
Uzbekistan			●	●	
Other ACN countries					
Albania			●	●	
Belarus			●	●	
Bosnia and Herzegovina			●	●	
Bulgaria			●	●	
Croatia		●	●	●	
Estonia			●	●	
Kosovo	●	●	●	●	
North Macedonia			●	●	
Latvia			●	●	●
Lithuania			●	●	●
Moldova		●	●	●	●
Montenegro		●	●	●	
Romania			●		
Russia	●		●	●	
Serbia			●	●	
Slovenia			●	●	

Source: IAP monitoring reports; OECD/ACN secretariat research.

Despite the described various institutional arrangements, the lack of true specialisation continued to be a concern in the fourth round of monitoring, as it was at the time of the third round. Especially in countries which opted for the specialisation within the existing law enforcement bodies. It was often nominal: the specialised anti-corruption investigators and prosecutors dealt with other types of crimes or their specialisation was not ensured at the level required by international standards. The functions were

dispersed among multiple agencies with overlapping jurisdiction. This was of special concern in the area of operational and investigative activities and led to some cases falling through the cracks or being investigated simultaneously by more than one agency. Accountability also remained a challenge in such models, as each agency was pointing fingers at the others and assigning blame for high level of corruption or failed investigations and prosecutions to someone else.

Countries with stand-alone specialised law enforcement or multi-purpose bodies also faced challenges in exercising their functions effectively and to the full degree. For example, in **Ukraine**, some cases which fell within the jurisdiction of NABU and SAPO were not transferred to them and investigated by other agencies instead. Despite the recommendation to ensure strict compliance with the exclusive jurisdiction of these agencies, the problem persisted, and the subsequent progress reports cited such examples. Moreover, in one such instance “the court has acquitted the SSU officer who was charged with abuse of influence, because the case within NABU’s jurisdiction had been investigated by the Military Prosecution Office”.⁸⁸⁷ In **Mongolia**, due to lack of resources and regional representation, IAAC’s functions are carried out by the General Police Agency.

According to the fourth monitoring round reports, specialisation of prosecutors was of special concern, as most IAP countries failed to ensure such specialisation fully or in practice.

In **Azerbaijan**, prosecutors from the Department of the Public Prosecutions of the General Prosecutor’s office represent corruption cases in court; they also deal with all other criminal cases. Its monitoring report found that the lack of corresponding prosecutorial specialisation hindered the process of successful prosecution of corruption and recommended to delegate the specialised anti-corruption prosecutors to the ACD or find another solution to improve the channels of communication between the investigators and prosecutors. In **Kyrgyzstan**, **Tajikistan** and **Uzbekistan** specialisation of prosecutors was also absent.

Mongolia did not have any specialised anti-corruption prosecutorial body or unit. Since 2017, the Capital City Prosecutor’s Office supervised all IAAC cases and the IPA report recommended Mongolia to further specialise this unit in line with the international requirements.

In **Kazakhstan**, the institution of special (procedural) prosecutors who supervise the particular case, including corruption, from the start of the pre-trial investigation to presenting the case in the court has been introduced. However, due to limited resources they were assigned only to “pressing and highly complex cases, regardless of their category”.⁸⁸⁸ The IAP report recommended that Kazakhstan ensure permanent anti-corruption specialisation of prosecutors.

Another negative trend has appeared since the previous monitoring round. Namely, in several IAP countries, national security authorities are responsible for investigation of corruption offences. This is not in line with international standards⁸⁸⁹, as the work of security services is less transparent due to their specific nature and lacks effective public control. This was not in line with anti-corruption tasks and on the contrary – created corruption risks. Such was the case in **Georgia**, **Armenia**, **Kyrgyzstan** and **Uzbekistan**. Moreover, in some of these countries specialised anti-corruption structures have been set up within the national security authorities. In particular, **Georgia** set-up Anti-Corruption Agency within its State Security Service and **Kyrgyzstan** - the Anti-Corruption Service in its State National Security Committee. In 2017, **Kazakhstan** joined this list by limiting exclusive jurisdiction of its specialised anti-corruption body (National Anti-Corruption Bureau) and granting the National Security Committee with alternative jurisdiction over corruption cases.

The IAP report on **Uzbekistan** noted that functions of the state security bodies should not include countering economic and corruption crimes. This is due to the fact that the activities of the security services, as a rule, are non-transparent due to their specifics, and there is no effective public control over them. Empowering the security services with fighting criminal offenses can lead to abuse and creates in itself significant corruption risks.⁸⁹⁰ Similar conclusions were reached in the reports on **Georgia** and

Kyrgyzstan which recommended these countries to consider removing the function of the pre-trial investigation of corruption offences from the national security bodies' remit.⁸⁹¹

Some other agencies also carry out investigations and prosecutions of the corruption crimes. For example, military prosecutors in **Ukraine** carry out many of the corruption-related investigations that have no links to the military sphere and have not been committed by the military service men. Again, these cases should be investigated and prosecuted by the institutions specifically created for such tasks, as they have appropriate levels of public oversight and accountability, and the necessary qualifications.

Independence

In general, lack of independence of the law enforcement specialised agencies from undue interference remains to be one of the primary concerns in most IAP countries, as well as across the region of Eastern Europe and Central Asia. In varying degrees, investigators and prosecutors in these countries are exposed to various forms of pressure from above, experience regular interferences with their investigations and prosecutions and are vulnerable to persecution themselves. Various factors contribute to such situation and often differ depending on the model of specialisation, the mandate of the specialised agency, and regrettably their rigor of enforcement.

In most cases, where specialised anti-corruption institutions have been created, their status, their authorities and guarantees of their independence are provided by law.

Bodies with investigative powers, as well as multi-purpose agencies, are usually independent agencies with special status. Their financing is guaranteed by the law and budgets are decided by the legislative branch. This is the case with **Ukraine's** NABU, **Mongolia's** IAAC and **Tajikistan's** Agency for State Financial Control and Fight against Corruption.

As a rule, specialised prosecutorial bodies are institutionally incorporated into the system of the prosecution services with various forms of organisational and structural autonomy and guarantees of independence. Examples include **Azerbaijan's** ACD and **Ukraine's** SAPO. Both these bodies operate as autonomous departments/directorates (status of ACD has been upgraded from the level of department to that of the directorate in the fourth round of monitoring) within the structure of the Prosecutor General's Office. Both are headed by Chief Prosecutors, which also hold the title of the Deputy Prosecutor General. In addition, both are located in separate premises and financed separately from the rest of the prosecution service. This is a common arrangement throughout ACN countries. In "Albania, Moldova, Montenegro, Romania, Serbia, Slovenia ... the specialised prosecutor's offices are autonomous bodies within the countries' prosecution services."⁸⁹²

Specialised units and persons within the existing law enforcement bodies do not have special provisions regarding their status and authorities, those are provided by internal regulations. Their procedural independence is also not regulated in any special manner and is assumed by institutional laws of their host institutions or other legal acts, which regulate institutions in which they are placed. This in most cases does not provide for the necessary safeguards for investigators and prosecutors dealing with politically sensitive cases.

Procedures on appointment, promotion and removal from the office are still poorly regulated, if at all, and do not provide for necessary safeguards across the IAP countries. This is reflected in many of the fourth round of monitoring recommendations. However, **Ukraine** can be cited as good practice in this context. Heads of both its law enforcement anti-corruption bodies – NABU and SAPO – have been appointed following the transparent competitive selection procedure by the Selection Boards composed of independent experts and international dignitaries. The staff of these institutions was also selected through an open competition. This granted NABU and SAPO with unprecedented level of support from the expert community, civil society and public and empowered to take some bold actions. **Moldova** is another country in ACN, which holds open competitions for the positions of its specialised anti-corruption investigative and prosecutorial bodies, as well as for staff of these institutions.

Career development, promotion and staff evaluation are poorly regulated and most of the IAP countries need to develop relevant procedures and regulations to ensure transparency and promote merit and good performance.

There is no random assignment of cases, and even after the assignment, the case can be taken away from one investigator/prosecutor and handed over to another by their superiors; or the case can be taken away from the investigative institution altogether.

In 2019, the Prosecutor General of **Georgia** issued an order defining principles for the case distribution among prosecutors. It provided that a superior prosecutor was to ensure a fair and transparent distribution of cases in the unit under his supervision, taking into consideration the number of cases, their difficulty and volume, as well as the specialisation, competences, experience and skills required to prosecute and/or investigate the case. The order gave a list of circumstances in which a superior prosecutor could remove a case from a subordinate prosecutor and provide that such decisions had to be reasoned. In 2019, the GRECO's Compliance Report on Georgia concluded that its recommendation about the assignment and withdrawal of cases to/from prosecutors had been implemented satisfactorily.⁸⁹³

Hierarchical pressure and instructions from higher level investigators and prosecutors remain an issue in most IAP countries.

In some countries, where functions of investigation and prosecution are combined in one anti-corruption agency, their proper separation was not ensured and checks and balances against improperly motivated investigations and failure to take actions when merited are not in place. This creates room for possible or perceived conflict of interest, as prosecutors are responsible for ensuring the proper conduct of the investigations with legitimate means. To this end, IAP monitoring reports recommended **Georgia, Kyrgyzstan** and **Uzbekistan** to consider removing functions of pre-trial investigation from prosecution services.

Finally, even in systems when most elements necessary for real independence are in place – the agencies have experienced most turbulent times since the previous monitoring round. Notably, some of the best performing institutions in the region experienced enormous pressure from the government and key political figures in the recent years. Romanian DNA is one of such examples.

Similarly, among IAP countries, **Ukraine**'s NABU and to some extent SAPO have been under the constant pressure from the ruling elites. The exerted pressure included attempts to amend legal provisions on dismissal of NABU Director, initiation of criminal investigations against both the detectives and top management of NABU. Finally, the selection of external auditors to evaluate NABU was accompanied with multiple scandals and came under criticism from the civil society.

Mongolia's IAAC and its leadership has also come under multiple attacks, including attempts to dismiss its Director and cut its budget. In all cited countries, wide media campaigns have been undertaken to undermine the image of these institutions and sway the public support. Support of non-governmental activists, international organisations and donor community was of importance to help withstand some of the pressure and preserve the good reputation.

Operational autonomy

The previous Summary Report has identified issues related to the possibility of withdrawal and transferring of criminal cases of corruption offences. Unfortunately, they persisted into the fourth round. The procedure and criteria for such transfers and withdrawals are often not written out, as is the case in **Kazakhstan**. In other countries, such criteria require further clarification. In the fourth round of monitoring, **Kyrgyzstan** introduced definition of such exclusivity criteria in its Criminal Procedure Code, however, they were deemed not clear enough and **Kyrgyzstan** was recommended to specify and narrow them “either directly in the CPC or by a regulatory act/guidance of the Prosecutor General”.⁸⁹⁴ Similar recommendation was given to **Georgia** in the third round of monitoring. To implement this recommendation Georgia developed

guidelines for such withdrawals and transfers; still some of the grounds were deemed “quite vague and can as such be subject to abuse” and prompted a new recommendation in the fourth monitoring round.⁸⁹⁵

Accountability and transparency, public and other external oversight

The fourth round of monitoring has identified some emerging good practices in terms of accountability and transparency of anti-corruption specialised bodies. **Ukraine**’s NABU has developed a strong communications policy, it provides regular updates on all aspects of its operation on its Website, it prepares semi-annual and annual activity reports, which are made publicly available and it introduced one of the most innovative tools – the registry of corruption cases. This registry includes detailed information on all open investigations of the NABU and became a useful tool for civil society and the public to track progress on cases under investigation.

All IAP specialised anti-corruption law enforcement institutions set up dedicated websites, collect statistics on their work and prepare, at a minimum, annual reports on their activities making them public. Some of the IAP countries have established public councils, which carry out public oversight and provide input to the work of the agencies. Most of the IAP specialised anti-corruption institutions report to the parliament and make general information on their activities publicly available. **Azerbaijan**’s ACD holds quarterly press conferences, jointly with its preventative and policy coordination institution.

Nevertheless, most of them can improve their accountability and transparency, report better on activities of their specialised anti-corruption law enforcement agencies and provide opportunity for meaningful discussions of enforcement and other achievements and challenges with the public and civil society. As recent examples in Ukraine, Romania, Bulgaria and other countries show public support is one of the key ingredients for anti-corruption institutions maintaining independence when pursuing high-level corruption cases. Moreover, civil society, media and others can be excellent sources of reporting of corruption. International community can help hold anti-corruption institutions accountable, provide necessary technical and expert support and at times serve as observers and dignitaries in various politically sensitive processes, such as for example, selection of leadership of anti-corruption institutions, their external evaluation, etc.

Finally, the work of anti-corruption units and persons within the existing law enforcement bodies appears to be less visible and is less understandable to the public. Their results are not well publicized and often the public does not know about their existence unless having direct experience with such agencies and does not feel that corruption is adequately addressed. Accountability and transparency of such units and persons need to improve through the same means as recommended to the specialised stand-alone institutions.

Resources

Allocation of resources to the specialised anti-corruption law enforcement bodies differs across the IAP countries. In addition to **Azerbaijan** and **Kazakhstan**, **Ukraine**’s specialised investigative and prosecutorial anti-corruption bodies are now well equipped both technically and in terms of human resources.

In addition, staff of these specialised anti-corruption bodies enjoys much higher levels of remuneration, as compared to regular investigators and prosecutors. For example, in Ukraine, “an average base salary of the similar rank prosecutor amounted to one tenth of that from SAPO”.⁸⁹⁶ Such financial incentives ensure rigorous competition to the law enforcement agencies of Ukraine. The same holds true for Azerbaijan’s ACD, which is able to recruit highly qualified staff.

In **Mongolia**, although recruitment procedure of IAAC is not competitive, and does not replace a proper open competition, which Mongolia is recommended to ensure true independence of this institution – “IAAC management applies informal procedure to approach the Police and other agencies, headhunting agents who are considered among the best qualified”⁸⁹⁷ – but at least it allows hiring some high qualified staff.

In contrast, some IAP countries have seen a decrease in their human resource capacity since the third round. For example, **Mongolia**'s IAAC's staff while remaining unchanged became highly inadequate due to the almost doubled caseload of the agency. In general, Mongolia's IAAC, which currently employs 30 investigators within the Investigation Department (plus 7 newly appointed regional investigators) and 20 investigators within the Operational Department, estimated its further staff need of additional 50 investigators to handle the workload. Mongolia's prosecutorial unit, which handles IAAC cases, was also severely understaffed, and, in at least 10 percent of the cases, local prosecutors presented charges in courts in their stead. Such situation has created a backlog of cases and was clearly problematic for enforcement on corruption cases.

The fourth monitoring round reports on other countries also found that the available resources insufficient. The report on **Armenia** noted that "there do seem to be very few investigators in relation to the scope of their responsibilities, especially if major crimes with multiple suspects were detected".⁸⁹⁸

In addition to resources, specialised law enforcement institutions in the region still lack all necessary powers and investigative tools. For example, in **Ukraine** NABU lacked wiretapping technical capacity having to rely on the Security Service of Ukraine, which created the risk for information leaks and other practical problems. On the similar issue in **Uzbekistan**, the IAP monitoring report noted that the security service's monopoly on wiretapping may reduce the effectiveness of anti-corruption investigations. The report recommended to consider granting such powers and technical resources to a specific subdivision of the prosecution authorities which conducted anti-corruption investigations.⁸⁹⁹

Mongolia's IAAC is legally eligible to create its regional offices, but it has been denied funding to do so and had to rely on the police to carry out corruption investigations in the regions far-removed from the capital city.

Another problem observed across the IAP countries was the lack of or limited access to the necessary databases. In **Ukraine**, for example, NABU by law should have access to database maintained by the corruption prevention agency, however, direct access was not granted to NABU detectives at the time of the fourth round of monitoring, which prompted relevant recommendation.

On the positive side, it appears that more countries are developing analytical capacities in the law enforcement bodies in general and in the anti-corruption law enforcement agencies in particular. After the previous round of monitoring, only **Azerbaijan** had full time analysts employed in the offices of the ACD. Now in **Ukraine** NABU has staff analysts who supplement the work of detectives.

Other IAP countries can benefit from such type of expertise as well. In **Mongolia**, investigators of IAAC expressed a clear need for economic and other technical expertise and believed that such specialists could be key in the course of their complex investigations.⁹⁰⁰

Lack of the financial expertise continued to be a problem in IAP countries, as well as across the region. The recent money-laundering corruption scandals have brought to light problems with the misuse of banks in **Latvia**, **Lithuania** and **Estonia** for laundering of corruption proceeds and inability of law enforcement bodies to detect and investigate such crimes.

Financial investigations are rarely used across the region and law enforcement and prosecution services lack the necessary expertise and knowledge.

Among the IAP countries, only **Ukraine** and **Uzbekistan** reported the use of financial investigations and training of the staff for this purpose.

Overall, the anti-corruption training of investigators and prosecutes has become more consistent, continuous and oriented on complex types of corruption. IAP countries started to utilise donor and international assistance to develop sustainable training programmes, as opposed to ad hoc seminars and training events. National training expertise has built up and there are some examples of regional cross-

country sharing of expertise: experts from NABU have been invited as trainers in Kyrgyzstan and Uzbekistan. In **Ukraine, Uzbekistan, Kyrgyzstan** the OECD ACN developed specialised complex case-simulation training programmes for investigators and prosecutors.

Finally, more joint training opportunities are created in IAP countries, bringing together those responsible for detection, investigation, prosecution and adjudication. For example, in **Ukraine** most trainings bring together NABU, SAPO and other non-law enforcement bodies, such as FIU and ARMA. In **Tajikistan**, the Advanced Training Centre for Anti-Corruption Officers and Judges was established at the Institute of Public Administration under the President, which is in line with recommendation from its fourth round of monitoring, and will train investigators, prosecutors and judges on anti-corruption issues jointly.

Assessing performance

Assessment of performance is a new area for most law enforcement specialised agencies. In some countries the legislation stipulates a special procedure for performing such evaluation. For example, the law of **Ukraine** on NABU requires an annual external audit of the agency to evaluate its effectiveness, operational and institutional independence. If the audit panel concludes that NABU's operations have been ineffective or Director did not execute his duties properly, the director can be dismissed by the parliament or the president. No audits have been conducted to date; the appointment of auditors took a long time and was marred with scandals, the methodology for such audit was not developed. Meanwhile, the international donors commissioned an independent external technical assessment of NABU which was concluded in 2018.⁹⁰¹

In **Mongolia**, IAAC requested for an international external audit but it has not been conducted yet. Other institutions do not seem to have any mechanisms of assessing their performance and reviewing their strategic vision.

Asset recovery and asset management agencies and units

The UN Convention against Corruption (Article 31), the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990; ETS No. 141 (Article 4)), the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism (2009; CETS No. 198 (Articles 4, 6 and 16)), Financial Action Task Force International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation (Recommendations 4 and 38) – all require to take measures to enable the identification, tracing, freezing or seizure of proceeds and instrumentalities of corruption offences for the purpose of eventual confiscation. These instruments do not directly require the set-up of any specialised units or persons for this purpose, and do not discuss institutional frameworks as such.

Recommendations to ensure efficient administration and, when necessary, disposal of the frozen, seized and confiscated property are also included in the above listed instruments, as well as in a number of others, most notably - the G8 Best Practices for the Administration of Seized Assets (2005). Relevant provisions of these instruments focus on institutional aspect and call for:

- Adoption of efficient and cost-effective mechanisms.
- Designation and assigning of necessary powers, as well as allocating necessary resources, to the body responsible for administration.
- Ensuring strong controls over functioning of such bodies.
- Ensuring transparency of their work.

Those responsible for the management of the assets are also required to be available to provide immediate support and advice to the law enforcement in relation to freezing and seizing of assets, including their handling.

The first international organisation requiring designation or set up of asset recovery and asset management offices was the European Union. In particular, the European Union Decision 2007/845/JHA (December 2007 (Article 1)) requires the set up or designation of the National Asset Recovery Office for facilitation of tracing and identification of proceeds of crime and other crime related property, which may become the object of freezing, seizure or confiscation order of competent judicial authority. European Union Directive 2014/42/EU on Freezing, and Confiscation of Instrumentalities and Proceeds of Crime (Article 10(1)) requires establishment of the centralised office or set of offices or equivalent mechanisms to ensure adequate management of property.

The EU Eastern Partnership (EaP) “20 Deliverables for 2020”⁹⁰² stipulate as targets for the EaP countries to have:

- legal framework allowing for the effective seizure, confiscation and management of crime proceeds.
- Asset recovery offices in place with a track record for identification, freezing, management and confiscation of criminal/unjustified wealth.

Subsequently some ACN-EU countries established such offices, including **Bulgaria**’s Commission for Anti-Corruption and Illegal Assets Forfeiture, **Estonia**’s Asset Recovery Bureau, and **Romania**’s National Agency for Administration of Seized Assets, while other ACN-EU states opted for designating contact points within the existing agencies. **Croatia** has placed these functions with the Economic Crime and Corruption Department of the National Police for Suppression of Corruption and Organised Crime, **Latvia** designated the Economic Police Department of the Central Criminal Police Department of the State Police as such contact point, and **Lithuania** designated two AROs – the Criminal Police and the General Prosecutor Office.

Establishment of special offices responsible for identifying, searching and managing assets subject to confiscation is also considered a good practice in other non-EU countries. Other ACN countries, for example, Moldova embarked on establishment of such an office by enacting in 2017 of the Law on the Criminal Assets Recovery Agency, a new autonomous subdivision within the National Anti-Corruption Centre with responsibilities to recover criminal assets. In 2017, a new section on Evaluating, administering and disposing of criminal assets was introduced in the Criminal Code of Moldova establishing the respective tasks under the responsibility of the Ministry of Finance and the Criminal Assets Recovery Agency.

The IAP fourth monitoring round reviewed the existing institutional arrangements and found that in most cases the functions of identifying, searching and managing criminal assets and proceeds subject to confiscation, including abroad, remained with the investigators from the pre-trial investigation authorities (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan and Uzbekistan) and concluded that such arrangement was not effective. In these countries, the existing pre-trial investigation authorities focused on their primary investigative functions, while the tracing of criminal proceeds was not their priority. Moreover, they did not have the experience, special knowledge and time to effectively search and seize the assets and then effectively manage them during the period of seizure of property and after the adoption of the confiscation decision; this became even more complicated when assets were located abroad.

In addition, the functions of post seizure/confiscation management and disposal of such assets in IAP countries are often carried out by various non-law enforcement structures within the executive branch of government or not assigned to any central body and management of assets is dispersed throughout the country. The existing models do not take into consideration the cost of management and the depreciation of the assets. As a result, once a final judgement is received, the best value for money may not be observed.

Among IAP countries, only **Ukraine** has established a stand-alone dedicated agency – National Agency for Identifying, Tracing and Managing Assets Derived from Corruption and Other Crimes (ARMA), which combines both functions – asset recovery and asset management.

Box 58. National Agency for Identifying, Tracing and Managing Assets Derived from Corruption and Other Crimes of Ukraine (ARMA)

Legal framework: The Law of Ukraine "On the National Agency of Ukraine for the identification, investigation and management of assets derived from corruption and other crimes," came into force in November 2015. The law stipulated that the newly created body, among other things, is responsible for finding, tracing, evaluation of assets on appeal of investigator, detective, prosecutor, and court (the investigating judge). ARMA is also responsible for the evaluation, keeping of records and asset management and was required to establish and maintain the Unified State Register of assets seized in criminal proceedings. ARMA was granted powers to cooperate with similar bodies (offices for tracing and asset management) of foreign countries, other competent bodies, relevant international organizations and was authorized to be involved on behalf of Ukraine in obtaining evidence in cases relating to the return of assets derived from crime to Ukraine that is in foreign jurisdictions.

Establishment of the Agency: The agency – the Asset Recovery and Management Agency of Ukraine (ARMA) was established by the Resolution of the Cabinet of Ministers of Ukraine of February 2016. In March 2016 the Government formed the composition of the selection board for the selection of the candidate for the post of ARMA Chairman. The selection procedure was conducted and the first Chairman of ARMA was appointed in December 2016. Since its establishment, ARMA has been staffed to 64%. ARMA is comprised of the central office (126 officials) and six interregional territorial offices (33 officials). ARMA has access to 43 registers and information databases, which are managed or owned by state and local governments. A mechanism for obtaining information on the availability and status of accounts, transactions on the accounts of specific legal or natural persons, was introduced for ARMA. ARMA joined various international networks, including CARIN, StAR and Interpol Global Focal Points for Asset Recovery, and other regional asset recovery networks, as well as established bi-lateral contacts with foreign authorities.

Selected reported results (from July 2018 to January 2019):

ARMA, within the framework of the cross-border information exchange, has sent 60 requests on finding and tracing of assets within criminal proceedings at the request of law enforcement authorities to Germany, the UK, Poland, Estonia, Latvia, Panama, the US, the British Virgin Islands, Slovakia, the UAE, Greece, Spain, Montenegro, Switzerland, Cyprus, Liberia, Malta, Canada, Hungary, Czech Republic, Turkey, and Belgium. ARMA has received 10 requests from foreign authorities for finding and tracing of assets.

Assets, that have been found and traced (potential objects of seizure) in Ukraine and in foreign jurisdictions included corporate rights/shares in authorised capital of companies; securities; immovable property objects; land plots; vehicles; other property (goods); agricultural machinery; ownership of the rights to inventions, trademarks; monetary funds.

Through the electronic trading system of the state-owned enterprise “SETAM”, ARMA has sold assets in the amount of more than UAH 175 million. By September 2019, the deposit portfolio of the National Agency was more than UAH 288 million, USD 218,000, EUR 1.2 million. In 2019, ARMA’s management of seized assets generated revenues to the State budget in the total amount of more than UAH 7 million.

Source: IAP Fourth monitoring round report on Ukraine, OECD/ACN Progress Updates of Ukraine, July 2018 and March 2019, country information.

ARMA was established in 2016 and by 2018 it had built up its capacity, started to engage in international co-operation and had recovered some assets. However, the assessment of Ukraine’s progress noted concerns regarding the legality of some of the cases. ARMA was also criticised for failing to ensure enough transparency regarding asset recovery actions and their results, especially domestically to the civil society

and citizens. NGOs pointed out several problems with ARMA work, including lack of capacity to protect confiscated assets, e.g. from physical attacks from previous owners, ineffective regulations, lack of transparency and competition regarding the sale of stolen assets. ARMA's competencies were also challenged in court as described above, and concerns were raised over possible establishment of a precedent.⁹⁰³ In March 2019 ARMA was deemed quite proactive in its co-operation with international organisations and foreign jurisdictions in the area of assets tracing and finding and was actively engaged in accepting management functions over seized assets. Some of these assets were of special importance, due to their political connotation – e.g. former presidential residence Mezhyhirya, or due to their social and infrastructural importance, i.e. power plants.⁹⁰⁴

Georgia in implementing the IAP monitoring recommendation to “consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation”⁹⁰⁵ conducted “research on the asset management agencies in order to elaborate draft legislative amendments concerning its structure, powers and responsibilities”, and subsequently developed such draft legislation, which was submitted for consideration by the management of the Prosecutor General Service.⁹⁰⁶

Most other IAP countries received recommendations to consider setting up of such agencies or units. As they move forward with establishing such specialised units and agencies, it would be important to take into consideration lessons-learned from existing institutions in the IAP country (Ukraine) and in other ACN countries but most of all – in the EU, which has the most developed experience. Therefore, challenges identified by European Commission in its report prepared for the European Parliament and the Council after its members AROs have been in operation for some years – all hold relevance for the region and should be carefully considered, including the issue of resources, access to necessary databases, secure information exchange systems, central contact points for MLA related to asset recovery, access to judicial statistics, etc. (see the box below for more details).

Box 59. Main challenges for the asset recovery offices in the EU

In order to understand the main challenges that AROs face, the following features of the designated ARO should be kept in mind:

- The majority of the AROs have relatively little personnel. Only six out of 28 designated AROs have 10 or more staff members.
- The key function of the AROs is to trace and identify assets on their national territory. However, most AROs do not have access (direct or indirect) to all relevant databases that would allow them to perform their task more effectively.
- While all AROs have access to company registers, centralised land registers do not exist in all Member States. Only one ARO has access to a national register of bank accounts, which is found in only five countries.
- AROs exchange sensitive information (e.g. bank account numbers) by e-mail or fax and do not benefit from the support of a fully secure information exchange system.
- Only some AROs are central contact points at national level for the requests of mutual legal assistance related to asset recovery sent by the authorities of other Member States.
- Only a few AROs are involved in the management of frozen assets.
- About half of the AROs do not have access to judicial statistics on freezing and confiscation.

Source: Report from the Commission to the European Parliament and the Council based on Article 8 of the Council Decision 2007/845/JHA of 6 December 2007 concerning co-operation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, see at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/news/intro/docs/1_en_act_part1_v8.pdf.

Finally, the countries should keep abreast of body of standards, which is developing with the practice of such agencies and units. Of particular interest is Council of Europe's Parliamentary Assembly Resolution 2218,⁹⁰⁷ which provides for necessary elements of such institutional frameworks, including professional, multidisciplinary staff with access to information held by law enforcement, tax and social welfare authorities; availability of investigative tools; regular reporting to the public; administering and disposing of assets in the most economic efficient manner. In addition, it promotes the use of international networks of competent officials, such as the Camden Asset Recovery Inter-Agency Network and the Asset Recovery Offices platform and setting up and using more frequently joint investigation teams. These particular issues are discussed in more detail in the section of this report devoted to procedures on investigation and prosecution of corruption. A study by the UNODC on the effective management and disposal of seized and confiscated assets also provides a valuable resource.⁹⁰⁸

Specialisation of judges/courts, judicial training

Specialisation of judicial bodies is a widespread practice in different fields of law and is regulated by the relevant international standards. In accordance with the opinion of the Consultative Council of European Judges on the specialisation of judges:

“24. The CCJE stresses, above all, the fact that all judges, whether generalist or specialist, must be expert in the art of judging. Judges have the know-how to analyse and appraise the facts and the law and to take decisions in a wide range of fields...

30. The CCJE considers that the creation of specialist chambers or courts must be strictly regulated. Such bodies should not undermine the remit of the generalist judge, and must in all cases provide the same safeguards and quality. At the same time, regard must be had to all the criteria governing a judge's work: court size, service requirements, the fact that it is increasingly difficult for judges to master all legal areas and the cost of specialisation.”⁹⁰⁹

The anti-corruption specialisation of judges by either creating a specialised court or establishing specialised chambers within the existing courts is not a common practice. First specialised anti-corruption courts were established in Philippines (1979) and Pakistan (1999). In the early 2000s, the number of specialised criminal justice bodies has increased significantly. However, the anti-corruption specialisation is still a relatively new practice, mostly used in the countries where trust of society in the judicial institutions is very low.

As of today, only twenty-one countries have specialised courts for adjudication of corruption cases. Their models differ. For example, in Ukraine there is a single specialised judicial body with exclusive competence over high-profile corruption cases (High Anti-Corruption Court - HACC). In Brazil there is a set of federal-level special courts with wider competence covering corruption-related crimes and money-laundering.

Whatever the model of the specialised court is chosen, independence, integrity and unity of the judiciary should be maintained and guide the work of any specialised judge. In **Ukraine**, according to Article 2 of the law establishing the High Anti-corruption Court, the court is a “part of the unified system of courts”; the law includes additional safeguards to avoid any external influence and to protect judges, ensure autonomous budget and resources.

The issue unity of the judiciary and prohibition of setting up extraordinary courts may raise the issue of the constitutionality regarding the specialised courts. In **Slovakia**, the Constitutional Court abolished the Special Criminal Court because of its exclusive competence to try all the crimes committed by high public officials. The Special Criminal Court has been re-established and still functions after undergoing some modifications.

In the ACN region, countries with high levels of enforcement, such as Estonia, Slovenia, and Romania did not opt for the anti-corruption specialisation within their judiciaries. They maintain a high rate of adjudication of high-level corruption without any specialisation of judges due to the well-functioning judiciaries with developed case management systems.

Though examples of the anti-corruption specialisation of the judicial bodies in the ACN region exist outside of the IAP countries. In **Bosnia and Herzegovina**, Section II for Organised Crime, Economic Crime and Corruption was set up within the Criminal Division of the Court of BiH. In **North Macedonia**, according to the Law on Courts 927/2018, the Department for Organised Crime and Corruption has been set up in the Criminal Court of Skopje. In **Montenegro**, a Specialised Division was created within the High Court in Podgorica and Bijelo Polje. In **Serbia**, there is a Special Department within the High Court of Belgrade. In these countries, judges do not have exclusive competence over the corruption cases; this is why there is no clear-cut classification of such specialised divisions within the judiciary.

Bulgaria and **Croatia** chose the separate anti-corruption courts as their model for specialisation. **Albania** introduced a proposal for the establishment of the anti-corruption court as one of the components of the new package of justice sector reform.

See overview of specialised judicial bodies in the ACN countries in the table below.

Table 57. Models of the judicial anti-corruption specialisation in the ACN countries

Country	Courts of general jurisdiction	Anti-corruption specialised departments/chambers	Anti-corruption specialised courts
Albania			● Special Court (SPAK) is being set up (since 2016)
Armenia	●		
Azerbaijan	●		
Belarus	●		
Bosnia and Herzegovina		● Section II for Organised Crime, economic Crime and Corruption, criminal Division, Court of Bosnia and Herzegovina	
Bulgaria			● Specialised Court for Organised Crime and Corruption
Croatia			● Regional USKOK Courts in Zagreb, Osijek, Rijeka and Split
Estonia	●		
Georgia	●		
Kazakhstan	●		
Kosovo	●	Special Department in the Court of Appeals of Kosovo and the Basic Court in Prishtina	
Kyrgyzstan	●		
Latvia	●		
Lithuania	●		
North Macedonia		● Department for organised Crime and Corruption, Criminal Court Skopje	
Moldova	●		
Mongolia	●		

Country	Courts of general jurisdiction	Anti-corruption specialised departments/chambers	Anti-corruption specialised courts
Montenegro		● Specialised Division of the High Court in Podgorica and Bijelo Polje	
Romania	●		
Russia	●		
Serbia		● Special department for Organised Crime, High Court in Belgrade	
Slovenia	●		
Tajikistan	●		
Turkmenistan	●		
Ukraine			● The High Anti-Corruption Court (2019)
Uzbekistan	●		

Source: IAP monitoring reports; OECD/ACN secretariat research.

Selecting the specialisation model

The choice of the institutional framework for adjudication of corruption cases is based on the declared objectives, demands and motivations. The creation of the specialised court is not the only, or necessarily the best choice when selecting specialisation model. Corruption cases can be adequately tried in special divisions or court chambers, as it is done in some Latin America countries. For instance, in 2015 a specialised anti-corruption chamber has been established in the federal administrative court in Mexico.

The introduction of the specialised anti-corruption court brought **Ukraine** in compliance with conditions set by IMF, EU, GRECO and ACN recommendation from the third IAP round of monitoring. The need for the new court was further advocated by the civil society, the NABU and the SAPO due to dissatisfaction with judges' unwillingness to deal with politically sensitive cases and stalling of these cases in courts. In Ukraine, in order to avoid trying sensitive high-profile corruption cases judges blocked NABU's pre-trial investigations by releasing suspects on low bail and leaking information during the investigation stage. The public lost faith and trust in all criminal justice institutions involved and sense of impunity for high-level corruption prevailed. HACC has complemented the already existing infrastructure of the anti-corruption authorities, namely the specialised investigative and prosecutorial bodies.

Table 58. Number of corruption cases registered and sent to court in Ukraine in 2017-2018

	2017	2018
Cases of bribery and other corruption crimes registered with the prosecutor's office	9425	4748
Criminal proceedings sent to court	337	1481
Criminal proceedings registered by NABU/SAPO	909	507
Criminal proceedings sent to the court as a result of the pre-trial investigation conducted by NABU	78	35
Cases adjudicated in the court	15	N/A

Source: IAP Fourth monitoring round report on Ukraine, OECD/ACN Progress Updates of Ukraine, July 2018 and March 2019.

The leniency of the criminal procedure due to the political pressure and the lack of adequate sentencing were taken into consideration when the Special Court for Organized Crime and Corruption was established in **Bulgaria**. The interference of local elites in the work of the local courts and political pressure justified

the introduction of a Special Court in **Slovakia** in 2003; the judicial efficiency was not a big concern at that time.

The question of cost is another factor, which should be considered when deciding whether to create or maintain a special court. The expenses required for establishment of the special anti-corruption court can easily become subject of public criticism. In **Ukraine**, 318 million hryvnias (about EUR 10 million) were allocated from the budget for the HACC in 2019. To discourage bribery within the judiciary, the official salary of the HACC judges was fixed at the same level as for the Supreme Court judges (55 minimal subsistence levels, as amended in October 2019). The narrow competence of the HACC should ensure that petty corruption cases would not be tried by and that the court would focus on the high-profile cases.

Box 60. Establishment of the High Anti-Corruption Court in Ukraine

The 2016 Law “On the Judicial System and the Status of Judges” stipulated for the first time that a High Anti-Corruption Court (HACC) should exist within the court system of Ukraine. The details of its set up and operation had to be regulated in a special law not adopted at that time. According to the MoU signed between Ukraine and IMF in March 2017, the necessary legislation should have been adopted by June 2017 and the court should have been established by spring 2018. The relevant Law on the HACC was adopted in June 2018.

The number of judges in the HACC has been set at 39, of which 12 are judges of the Appeals Chamber of the HACC. The High Qualification Commission of Judges of Ukraine (HQCJU) announced a competition for vacant positions in August 2018. The selection process included anonymous written tests and a case study. The HQCJU also conducted testing of personal, moral and psychological qualities and the general abilities during the qualification evaluation.

Simultaneously in November 2018, six members of the Public Council of International Experts (PCIE) were selected with the involvement of the international organisations, including the OECD. The State Judicial Administration of Ukraine, in conjunction with the HQCJU and donors, organized the work of the PCIE. The Public Council of International Experts scrutinized all 113 candidates and blacklisted (effectively vetoed) 42 of them. Under the Law “On the High Anti-Corruption Court”, the moral, ethical and professional requirements should ensure the selection of competent judges with impeccable reputation. In April 2019, the President of Ukraine Petro Poroshenko signed a decree to appoint selected judges to the new anti-corruption court.

HACC started its work in September 2019. As of mid-November 2019, HACC accepted about 170 criminal proceedings.

The ratio between expenses and the number of corruption cases became an issue while assessing the need to maintain a special court in **Slovakia**. The Special Criminal Court has issued very few convictions for high-level corruption cases (only 3% of cases involving bribes of more than 5000 euros, and more than 50% of cases with the bribe of less than 20 euros). Therefore, in 2009, other serious crimes were added to the court’s competence to justify its cost-efficiency. Also, in 2009, the pay difference between the Special Criminal Court’s and regular judges was reduced after the Constitutional Court’s decision about its illegality.

Countries with special anti-corruption courts should ensure that both judges and the administrative staff of the court are selected through the merit-based process. The selection process of judicial candidates often slows down judicial reforms; specialisation of judges by creating special chambers, benches, departments or tracks requires fewer procedural steps and resources. Nonetheless, in **Slovakia**, the Special Criminal Court judges are appointed according to the regular procedure and only in the future judges will be subject to a security clearance requirement. In **Bulgaria**, anti-corruption judges are appointed by the majority vote

of the Supreme Judicial Council. In **Croatia**, specialised judges are assigned to the panels by the President of the County Court taking into account opinion of the Panel of experienced judges.

In **Albania**, the High Judicial Council has started the selection of candidates for the Special Anti-Corruption Court in December 2018. The selection process has been criticised due to the strong involvement of the High Prosecutorial Council in the process.

Competence of the specialised anti-corruption judicial bodies

The jurisdiction of the HACC in **Ukraine** mirrors that of NABU and SAPO. Cases that have been investigated by NABU, sent to court but have not yet been decided by the ordinary courts will be transferred to HACC. The cases of petty corruption stay under the competence of the ordinary criminal courts.

In **Bosnia and Herzegovina**, the Criminal Division of BiH court has three sections, with corruption cases handled by Section II, responsible for organized crime, economic crime and corruption. As in Ukraine, in Bosnia and Herzegovina the Prosecutor's office has the same configuration as the Section II of the BiH Court. According to the Law "On Courts of the Federation of BiH", a Special Department within the Supreme Court should be created to try cases of corruption offences committed by an elected or an appointed official or involving amounts that exceed approximately 50,000 euros.

In **Slovakia**, the Special Criminal Court hears all bribery cases.

In **Montenegro**, the Specialized Division of the High Court is competent to hear the high-level corruption if a certain type of criminal offences is committed by a public official or if the material gain resulted from the abuse of position exceeds 40,000 euros.

While opting for the anti-corruption specialisation of judges, the country needs to decide whether to establish one court with national jurisdiction or multiple decentralised courts. In **Ukraine**, the HACC has a national jurisdiction. The correlation with the NABU's jurisdiction explains this choice of the centralised special judicial body. On the contrary, in **Croatia**, the Office for the Suppression of Corruption and Organized Crime is set up at the national level, while the USKOK courts are established in five regional centres.

In **Bulgaria, Croatia, Ukraine** the anti-corruption courts are presented only at two levels of the judicial system. In **Ukraine**, the Appeals Chamber was created within the HACC, while the cassation will be heard by the Cassation Criminal Court within the Supreme Court. In **Croatia and Bulgaria**, the courts of general and specialised jurisdictions are integrated only in the third tier and the system of anti-corruption courts includes both the courts of first instance and appeal courts.

In **Slovakia**, the SCC judges have a status of the regional judges and the Supreme Court hears appeals from the Special Criminal Court.⁹¹⁰ This means that cases heard by the specialised courts return to the courts of the general jurisdiction for the appeal.

In **Bosnia and Herzegovina**, the anti-corruption courts are set up at the first instance and as appellate divisions at the state and federal levels.

Assessment of performance

The third round of IAP monitoring did not closely examine the adjudication of corruption cases and most recommendations targeted prosecutors and investigative bodies.

The HACC in **Ukraine** will start its work in September 2019 and its experience will be useful for other IAP countries. It might prove to be a transitional step in order to respond to the temporary needs of the justice system reform and be subsequently closed. It might also prove to be a long-term sustainable solution, with other IAP countries willing to follow this example. For instance, in **Mongolia** prosecutors

and investigators shared concerns that the judges are not trained to address complex corruption cases. Its fourth round of monitoring report noted that the IAAC, the Judicial General Council, Ministry of Justice, Prosecutor General's Office and the Asia Foundation are planning to launch a joint project on judicial specialisation in 2019. According to the recommendation from the fourth round of IAP monitoring, Mongolia should consider specializing the necessary number of judges to adjudicate corruption cases.⁹¹¹

The work of the specialised judicial bodies could be assessed using different indicators, for example the number of opened trials and their duration, the proportionality of the sentencing, use of conditional release, the level of convictions, etc. Other performance measurements of the anti-corruption courts can include the increase of trust of the society in the court system, the level of the decisions upheld by the courts of higher instance, the willingness and ability to consider financial and other complex forensic evidence, the number of specialised judges implicated in unethical or corruption behaviour, etc. These issues merit follow up in the next round of monitoring.

Judicial training

Regardless of the judicial specialisation, the IAP monitoring recommended to ensure that judges develop specific expertise in corruption cases, have sufficient resources and knowledge, access to needed information and cooperate with investigative and prosecutorial bodies in order to ensure proper adjudication of corruption offences.

To this end, judges should be provided with adequate, continuous training on adjudication of corruption; such trainings should specifically target complex and new corruption offences, such as the corporate liability for corruption offences, trading in influence, active bribery, etc. The judges should be provided with necessary knowledge and skills to consider evidence collected as part of financial investigations and be familiar with the asset recovery processes. Joint trainings with prosecutors and investigators should be made part of the regular curriculum of professional trainings for judges.

Conclusions

The IAP countries which opted for the specialisation within the existing law enforcement bodies, for the most part, failed to ensure appropriate level of specialisation in line with international standards. This model continues to be hindered by the duplicate roles and fragmentation of functions. The responsibility for the low enforcement results is attributed by these various institutions to one another, the practice of parallel investigations or avoidance of politically sensitive cases persists in the region. Countries which established specialised law enforcement bodies often struggle to exercise their exclusive jurisdiction or lack the resources to do so. Specialisation of prosecution is of special concern, as it is missing in almost all IAP countries. Many countries rely on informal specialisation, which is not sufficient and hinders prosecution success of corruption investigations.

While laws provide for various levels of institutional, functional and financial independence of the specialised anti-corruption bodies, units and persons in IAP countries, ensuring these guarantees in practice remains a significant challenge. With some exceptions, leadership of these institutions is not selected through a competitive merit-based selection process, but instead is appointed by political bodies, often without any set criteria. Hierarchical pressure persists. Cases are being transferred and withdrawn from individual investigators and prosecutors, as well as the agencies, without clear and objective criteria failing to ensure that this is done only on exceptional and justified grounds. Political pressure on some of the "better enforcers" in the region has been mounting in the recent years; various pressure tools have been employed. The role of the civil society, international community is becoming ever so important for these agencies, as they seek support to their independence.

Allocation of resources to the specialised anti-corruption law enforcement bodies and personnel is uneven across IAP countries. Some institutions enjoy high-level of technical, financial and human support, while

others are severely understaffed and cannot cope with their functions. Moreover, all necessary powers and investigative tools are not afforded to the specialised anti-corruption bodies and units. Analytical capacity appears to be growing, training is becoming more focused, practical and covers a range of challenging issues. Use of financial investigations is not sufficiently used across the region. However, it is key for successful confiscation and asset recovery in corruption cases and obtaining such knowledge and expertise should gain priority if high-level complex corruption is to be tackled.

Finally, just like in the case with prevention and coordination institutions, the countries are yet to address properly the issue of performance evaluation of their anti-corruption law enforcement institutions. It should also become the focus of their steps on further development and strengthening of such institutions, it will help them improve their enforcement results but also meaningfully report to the public on their progress. The issues of appropriate performance indicators for such evaluation, methodologies for evaluation and measuring the degree of success will need to be developed as well.

The institutional framework for asset recovery and management is undeveloped in the region, and especially among the IAP countries. Functions of identifying, searching and managing criminal assets and proceeds subject to confiscation, including those abroad, remained with the investigators from the pre-trial investigation authorities. Management of such assets is often not assigned to any particular centralised body and is left for the investigators, prosecutors and judges to deal with. As good practice shows, management of assets should not be the responsibility of the law enforcement officers, prosecutors or courts. They should have the ability to transfer these assets to a specialised asset management agency or function. As a result, the IAP countries and their responsible agencies do not have a good track record of managing the assets and often lack effective internal controls and transparent procedures regulating their disposals. Ukraine is the only IAP country which has established a dedicated agency to trace proceeds of corruption and manage seized and confiscated assets.

While various forms of anti-corruption specialisation of judges exist in the ACN countries, it is a new phenomenon for the IAP countries. Ukraine is the first IAP country to establish the High Anti-Corruption Court. The HACC in Ukraine may become a trial platform for other IAP countries interested in such experience.

If introduced, the specialised courts should be provided with the necessary resources, the selection of judges should be done in a transparent manner with clearly set criteria and the judges should be afforded the same level of independence, integrity and professionalism as required by international standards for judiciary. Transparency and accountability should be ensured in the functioning of such courts.

Regardless of the specialisation, targeted training on corruption offences, especially complex types of crimes or new offences, as well as the joint training with prosecutors and investigators is helpful for successful adjudication.

Recommendations

Criminalisation of corruption

- A. Eliminate provisions on administrative liability for corruption offences to ensure that corruption is pursued with criminal law measures without any duplication and regardless of the value of the undue advantage in question.
- B. Complete reform of the substantive criminal law to make it fully compliant with respective international standards on criminalisation of corruption, in particular by:
 - a. Criminalising all elements of the bribery offences (in public and private sectors) and trafficking in influence, including the offer or promise of an undue advantage, the request or acceptance of an offer or promise of such an undue advantage, the

use of intermediaries, third party beneficiaries. The undue advantage should be clearly defined in the criminal law and include benefits in intangible and non-pecuniary form.

- b. Broadening the definition of national public officials liable for corruption offences, in particular, to include all employees of public institutions and candidates for elected office regardless of their functions.
 - c. Including an autonomous definition of foreign public officials and officials of international organisations liable for corruption offences in line with international standards.
- C. Review definition of abuse or excess of office offences to ensure that they are not formulated too broadly and comply with the requirement of legal certainty.
 - D. Through legislative amendments and/or changes in case law, explicitly state that conviction for a predicate offence is not required for prosecution and conviction for money laundering. Raise awareness of prosecutors and judges on this issue.
 - E. Consider establishing an offence of illicit enrichment through a rebuttable presumption of the illegal origin of any assets that cannot be reasonably explained by the official with reference to legitimate sources of income. Consideration by policy-makers should include an official and open discussion of policy options.
 - F. Establish an effective liability of legal persons for corruption offences with proportionate and dissuasive sanctions. Ensure that corporate liability is autonomous and does not depend on detection, prosecution or conviction of the actual perpetrator.
 - G. Review sanctions for corruption offences to ensure that they are effective, proportionate and dissuasive and also make possible extradition.
 - H. Strengthen provisions on confiscation of instrumentalities and proceeds of crime, in particular by:
 - a. Ensuring that such a confiscation is mandatory for all corruption offences.
 - b. Covering converted or mixed proceeds, benefits derived directly or indirectly from crime proceeds and allowing value-based confiscation.
 - c. Introduce conviction-based extended confiscation and non-conviction based confiscation of instrumentalities and proceeds of corruption, at least in cases when the perpetrator has absconded or may not be held liable for other objective reasons, with due guarantees of the defendant's right to a fair trial.
 - d. Consider reversing the burden of proof in confiscation proceedings (criminal or civil).
 - e. Collect, analyse and make public regular statistics on the application of all available confiscation measures.
 - I. Ensure that the statute of limitations period for corruption offences, if one exists, is sufficient to allow for the effective investigation and prosecution of corruption. Stipulate that a statute of limitations period is interrupted by bringing of charges or other procedural actions and suspended when person has enjoyed immunity.
 - J. Further limit the immunity of public officials by narrowing down its scope and the list of relevant officials to the extent necessary in a democratic state. Ensure that any remaining immunities are functional, cover only period in office, exclude situations *in flagrante*,

allow effective investigative measures into persons with immunity. Establish swift and effective procedures for lifting immunity based on clear criteria.

- K. Revise provisions on effective regret specific for corruption offences by providing that it should not be applied automatically; that it should be valid only during the short period of time after the commission of the crime and, in any case, before law enforcement bodies became aware of the crime on their own; that the bribe-giver who reports the offence must actively co-operate with the authorities; that the defence does not apply in cases when bribery was initiated by the bribe-giver; ensure that bribe is not returned to the person who made use of the effective regret to be exempted from liability; exclude application of the special release from liability provisions to bribery of foreign officials. Exclude application to corruption offences of the general exemption from liability due to the effective regret.

Investigation and prosecution of corruption cases

- L. Ensure proactive detection of corruption through the expanded use of various sources of reliable information to open investigation into corruption, including reports in the media and from investigative journalists, as well as of analytical tools, such as asset declarations, tax and audit reports, etc.
- M. Consider establishing the possibility of commencing criminal proceedings for corruption-related crimes based on anonymous reports.
- N. Ensure direct access of investigative authorities, involved in investigation of corruption offences, to state databases that contain information necessary for effective detection and investigation of corruption, including those containing beneficial ownership and asset disclosures, tax and customs data, ownership information.
- O. Take the necessary measures to facilitate the speedy and confidential access to bank and financial information of the investigators and prosecutors dealing with corruption cases.
- P. Set up a centralized register of bank accounts that would include, inter alia, information about beneficiary owners, and make it accessible to investigative authorities without a court order for speedy identification of bank accounts in the course of financial investigations.
- Q. Require disclosure of beneficial ownership in legal persons in a central register and publish this information online; extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.
- R. Enhance the co-operation and coordination between the law enforcement authorities and competent state bodies in charge of prevention, detection, investigation and prosecution of corruption offences.
- S. Establish clear and transparent rules regarding mandate of prosecutors, establishing criteria for the execution of their discretionary powers to prevent their abuse.
- T. Expand the treaty basis for international co-operation by acceding to relevant global and regional instruments and concluding bilateral agreements, including inter-agency co-operation agreements.
- U. Ensure full implementation of the relevant provisions of the UNCAC and other international conventions into domestic legislation with a view of creating a flexible

national framework that allows for efficient international co-operation in corruption cases, including asset recovery.

- V. Ensure proactive international co-operation in corruption cases, using modern (joint investigative teams, special investigative measures, tele-, and videoconferencing) and informal direct forms of co-operation more widely.
- W. Ensure adequate resources, means of communication and capacity of central authorities, including by providing any necessary training.
- X. Collect and analyse data about the practical application of available international co-operation instruments during the investigation and prosecution of corruption cases, identify relevant challenges to co-operation (e.g., dual criminality in cases involving legal persons, asset recovery in countries with no national provisions regarding asset recovery, evidentiary value of information obtained from another state, authorisations for intrusive investigative measures).
- Y. Build the capacity of investigators and prosecutors to conduct financial investigations and use circumstantial evidence; encourage the use of in-house or outsourced specialised expertise; use IT systems to compile and analyse data for detection and investigation of corruption offences, identify corruption prone areas; consider establishing in-house analytical and/or financial investigation units.
- Z. Introduce efficient procedures for identification, tracing, seizure and management of corruption proceeds; establish asset recovery as one of priorities of a criminal investigation where appropriate.

Effective enforcement

- AA. Identify the fight against high-level corruption as a priority of the criminal justice policy and one of the key indicators for the assessment of effectiveness of the respective law enforcement agencies.
- BB. Intensify efforts to detect, investigate and prosecute high-level corruption in practice.
- CC. Collect and analyse data on corruption cases to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled, including how new types of corruption offences are being investigated and prosecuted.
- DD. Ensure collection, summarising and publication on the Internet of regularly updated statistics on corruption crimes (with a breakdown by separate offences), in particular, regarding the number of reports on such crimes, the number of cases started, the results of investigation, criminal prosecution and court proceedings (indicating the penalties imposed and the categories of the convicted depending on their position and place of work)
- EE. Ensure regular analysis of criminal statistics on corruption offences and consider introducing necessary changes in law or practice on its basis.

Anti-corruption criminal justice bodies

- FF. Ensure genuine specialisation of investigators and prosecutors, by clearly assigning responsibility for corruption offences to newly established or existing bodies, units, or persons, with powers and mandate to fight corruption and a special set of skills necessary

to carry out this mandate. Similarly ensure that such specialisation is actively exercised and strictly observed.

- GG. Clearly delineate the responsibilities of various law enforcement bodies and ensure that mechanisms for interagency co-operation and coordination are in place and function properly.
- HH. Withdraw from national security authorities the right to investigate corruption offences.
- II. Put in place effective mechanisms to shield the anti-corruption bodies, units or persons from undue political pressure and interference and prevent various forms of hierarchical pressure and undue interference with investigations and prosecutions of corruption.
- JJ. Introduce competitive and transparent merit-based selection of heads of specialised anti-corruption agencies with specific appointment procedure combining various levels of decision-making. Similarly ensure that their tenure in office is protected in law against unfounded dismissals.
- KK. Ensure operational autonomy of the specialised anti-corruption bodies, units or persons, including by establishing clear criteria for transferring the proceedings on corruption crimes, as well as their withdrawal to ensure that corruption-related cases could be removed from the designated authority or person only on exceptional and justified grounds.
- LL. Guarantee in practice fiscal and budget autonomy of specialised anti-corruption bodies by providing them with adequate financial resources and ensuring that sustainable funding is secured, with legal regulations in place precluding discretion of the executive as to the allocation of funding.
- MM. Provide such bodies with adequate resources, including continuous, need-tailored training to their staff.
- NN. Promote selection, appointment and promotion of personnel in specialised anti-corruption bodies based on objective, transparent and merit-based criteria and exclude political influence in the procedures of dismissal of specialized anti-corruption investigators and prosecutors.
- OO. Further improve accountability and reporting of specialised anti-corruption bodies, obliging them to report on a regular basis to the public and the Parliament. Step up their outreach activities and encourage the use of various innovative communication tools to make their work better known and accessible.
- PP. Conduct regular assessment of the institutional capacities and measure performance of the specialised anti-corruption law enforcement bodies. Develop performance indicators and methodologies, regularly review them with the view to improve them and ensure that procedures in place are clear, transparent and leave no room for abuse and manipulation. Use results of these evaluations for initiating the necessary changes. Make results of such assessments public.
- QQ. Set up or designate a special unit or agency or function responsible for the identification, tracing, seizure and management of assets subject to confiscation, including such assets abroad. Provide such unit or agency with professional, multidisciplinary staff with access to information held by law enforcement, tax and social welfare authorities, investigative tools, secure information exchange systems, and central contact points for MLA related to asset recovery. Ensure strong controls over functioning of such bodies and transparency of their work.

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- RR. Adopt efficient, cost effective and transparent mechanisms for management of assets by setting up a centralised office or set of offices or equivalent mechanisms to manage assets. Designate and assign to them the necessary powers, as well as allocate necessary resources. Ensure strong controls over functioning of such bodies and transparency of their work.
- SS. Provide judges with consistent, needs-tailored, targeted training on corruption offences, promoting joint trainings with prosecutors and investigators. Develop knowledge and skills of judges in areas relevant to asset recovery and evidence collected through financial investigations.

Chapter 5. Preventing and combatting corruption at the sectoral level

This chapter summarises the findings of the in-depth reviews of real live sectors - such as education, procurement for infrastructure, tax, customs, land management, SOEs and political corruption - that were conducted as part of the ACN Istanbul Action Plan fourth monitoring round. The chapter also reflects the findings of ACN thematic work on corruption prevention at the local and sectoral level. It examines how effective were sectoral and local anti-corruption policies and institutions, identifies common challenges and proposes policy recommendations for future work.

In-depth and cross-country reviews of various sectors

The IAP fourth round of monitoring aimed to examine how the anti-corruption policies and measures are implemented in practice. For this purpose, this round included in-depth analysis of anti-corruption measures in selected sectors. This analysis examined if horizontal measures conducted at the national level such as anti-corruption strategy, prevention of corruption in public administration and in business, criminal law against corruption and its enforcement, help address corruption concerns in real life sectors, and if there are other trends and good practices that can be useful for the practical anti-corruption measures.

The sectors for in-depth analysis were selected by the ACN Secretariat in consultations with the governments, civil society and international partners. The following criteria were used: the sector should represent a high risk of corruption, its management should be open to anti-corruption reforms, information and data necessary for the in-depth analysis should be available, and ACN should be able to mobilise expertise in this sector. The methodology for the in-depth analysis of the sectors was similar to the general IAP monitoring methodology and included questionnaires, meetings with relevant sectoral authorities and not-governmental partners, preparation of the draft chapters by experts, negotiation and adoption at the ACN plenary.

These chapters of the IAP monitoring reports focused on a variety of sectors, including procurement for infrastructure at the local level in Georgia, education in Armenia, Azerbaijan and Kazakhstan, customs administration in Kyrgyzstan, land management in Tajikistan, tax administration in Uzbekistan, political party financing in Mongolia, and state owned enterprises in Ukraine.

In addition to the IAP monitoring reports, this chapter also takes account of the discussions during the ACN seminar on sectoral approaches that was organised together with the OSCE in 2016 in Issyk-Kul, Kyrgyzstan and aimed to provide a forum for exchange of good practices and practical solutions among the corruption prevention practitioners with the focus on three sectors - education, extractive industry and police. A mini thematic study “Corruption Prevention in the Education, Extractive and Police Sectors in Eastern Europe and Central Asia” published in 2017 presents the overview of sectoral reforms in the region together with case studies regarding these three sectors.⁹¹²

Finally, this chapter reflects the tour-de-table discussions that took place during the ACN Steering Group meetings in the reporting period that addressed inter alia anti-corruption reforms in the judiciary sector and at the level of local governments, as well as seminars on prevention of corruption at the local level that were co-organised by the UNDP, OSCE and RAI in 2017 in Tirana, Albania and in 2018 in Vienna, Austria, and the resulting thematic study “Corruption Prevention at the Local Level” (forthcoming). References are also made to the emerging new methodologies and standards on integrity and anti-corruption in various sectors, such as the “Integrity of Education Systems: A Methodology for Sector Assessment” (INTES),⁹¹³ OECD Reviews of Integrity in Education: Ukraine 2017,⁹¹⁴ and the forthcoming OECD standards on integrity in SOEs.⁹¹⁵

Main findings regarding anti-corruption measures in real-life sectors

The ACN countries over the past decade focused their efforts at the development of anti-corruption policies, legislation and institutions at the national level, but public perception about the state of corruption remains negative. Many countries achieved important progress and created useful tools for preventing and combatting of corruption, the global corruption indexes like TI CPI show slow but steady improvements in the region. At the same time, national surveys and meeting with NGOs and business demonstrate that they continue facing serious corruption challenges in their daily lives and reports about actual reduction of corruption are rare. Citizens judge not by the quality of anti-corruption programmes or laws, but by their own experiences and media reports, they compare the wealth and lifestyle of politicians and their own quality of life, including in interactions with public services such as schools, hospitals, police, tax administration and many others.

One of the reasons of this discrepancy between the seemingly high level of anti-corruption efforts and persistent complains of citizens is that the national anti-corruption policies and horizontal measures did not trickle down to sectoral and local level yet. It is impossible to make comparisons or to summarise the findings of these chapters as analysed sectors are very diverse, and they are in different stages of reform. However, it appears that anti-corruption measures at the sectoral level suffer from similar problems that anti-corruption strategies at the national level. Some cross-cutting issues that may inform future anti-corruption work at the sectoral level are presented below.

- **Real life sectors are very complex and require equally complex anti-corruption solutions.** They involve various level of governments – from national through federal and regional to local – and therefore different rules and regulations and different applicable tools, often leaving many gaps and contradictions. Many countries are now implementing decentralisation reforms that change these relationships and further complicate structures. They also involve various entities – national or local level legislative and executive bodies, ministries and their committees and agencies, public service and academic organisations, state or locally owned and private enterprises, and various other forms of organisations like non-profit and foundations, political parties and others – that cannot be regulated by simple one-dimensional anticorruption solutions. People working in those organisations have different status from political officials and civil servants to private sector employees and civil society activists, and therefor are regulated by different laws and rules. They have different rights and duties and above all different interests and incentives, and any effective anti-corruption policy has to understand, recognise and address these differences.

Box 61. Governance structure of the higher education in Armenia

The system of higher education in Armenia comprises universities, institutes, academies, conservatories, and military and police higher education institutions. As of 2018, Armenia had 27 public and 26 private higher education institutions that enjoy high level of autonomy. The Ministry of Education and Science has regulatory responsibility for all higher education institutions. Some of the Ministry's responsibilities are delegated to subsidiary bodies, among which the State Committee of Science, the Supreme Certifying Committee, and the State Licensing Agency. In addition, the work of the Ministry is supported by various national councils, notably the National Centre for Professional Education Quality Assurance Foundation. The education authorities cooperate with a number of consultative bodies, among which the Armenian National Academy of Sciences, the Council of Rectors, and the Armenian National Students Association. Overall, the landscape in which higher education policy in Armenia is made and implemented appears highly fragmented. The education system also includes many secondary and technical schools and kindergartens that also have various controlling bodies in the general framework of the governance of the educational sector. In this setting, the communication between authorities, providers, and stakeholders around priorities, strategic decisions and their implementation is ad-hoc and often enough informal.

Source: OECD/ACN (2018), Fourth monitoring round report on Armenia, pp. 151-153.

- The sectoral governance is not transparent and supported more by informal interests, influences and relations than by formal rules. While formal rules exist for many issues, most obviously regarding the allocation of public finance and public procurement, main decisions are determined by the vested interests of politicians and business people who can direct budget resources in sectors of their interest, and important positions are 'sold' to the 'reliable people'. In this environment of pre-determined decisions, all other players, e.g. directors of schools or hospitals and ordinary teachers and doctors need to fit into the system, serve those who 'protect' their positions and find their own sources of income. For example, honest doctors in Ukraine may wish to work and live in the same conditions as their peers in the OECD countries, and one can expect that they should

be interested to follow the rules and therefore to resist corruption. But these doctors do not believe that it is possible to change their own system and prefer to adjust to it and use it instead of engaging in painful reforms that may threaten their revenues, position and influence that they struggled to create for many years.

- **Research and good planning are key for effective anti-corruption policy:** one has to understand the problem in order to find a solution. At the same time, all monitoring reports pointed out at the lack of good quality research and planning at the sectoral level. For example, the review of integrity of SOEs in Ukraine highlights that there is no information available about the total number of SOEs in the country, about their assets and operations, and many of the recommendations refer to the clarification of the governance structures and collection of data to enable proper planning and monitoring of reform. It is impossible to understand these sectors from outside, e.g. an anti-corruption body, an NGO or any other form of a public association, from a donor funded programme or international organisation are not able to conduct a proper analysis of a given sector. Buy-in of the sector leaders, managers and practitioners is the key to effective reforms, and this should start with proper self-analysis. It is however very difficult to get this buy-in as the current running of the corrupt sector is based on its internal vested interests and mutual support. Even when some research and analysis is conducted with the involvement of the sector itself, sectoral strategies are often of poor quality, they fail to establish clear objectives, effective measures and indicators that will be used to monitor progress towards the objectives.

Box 62. Corruption risk assessment in education sector in Azerbaijan

The monitoring report on Azerbaijan noted an interesting discrepancy in the analysis of corruption risks in the sector of public education conducted by the government and by the civil society. The Ministry of Education indicated that its principal corruption concern is that forged higher education diplomas are obtained abroad and presented to Azerbaijani authorities for degree recognition. The Ministry also noted such problems as low teacher salaries, poor quality of incoming students and the inadequate material-technical base. Although the Ministry did not report other dimensions of corruption in higher education, cases of corruption in universities were identified by the Anti-Corruption Directorate including embezzlement of state funds, hiring of teachers based on bribery, in addition to fake diplomas.

Civil society organisations believe that corrupt practices exist across subsectors in education. In early childhood education, they note, parents pay bribes for preschool admission. In secondary education, school principals may ignore absenteeism of students, who instead attend private tutoring, in return for bribes. In higher education admission is often transparent and test-based, but corruption persists in admission to specialised programmes that require special artistic or physical abilities, and do not employ standardized external entrance examinations.

A general lack of openness and accountability in higher education institutions is believed to create a climate conducive for integrity violations. University rectors have extensive and unchecked powers, and favouritism is widespread in university appointments. Some students are accorded preferential treatment, and in some universities more students pass exams than were enrolled in the course. Degrees are sometimes awarded solely based on bribes. Civil society organizations also argued that there is a lack of social interest in education and that parents distrust education authorities. These two factors, according to them, constitute challenges to anti-corruption policy and practice. It is obvious that if the Ministry of Education would base its anti-corruption work only on its own limited analysis of risks, objectives will be wrong, and measures will not address the real problems.

Source: OECD/ACN (2016), Fourth monitoring round report on Azerbaijan, pp. 85-100.

Box 63. Objectives of the reform strategy of the tax administration of Uzbekistan

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The fourth monitoring report on Uzbekistan commended the government for the extensive efforts to reform the public sector, in particular, taxes. The 2017-2021 Strategy for action in priority development areas provided for a phased simplification of the tax system and lower tax burden by expanding the taxable base. Decree of the President of the Republic “On Measures for Radical Improvement of Tax Administration and Higher Collection Ratio of Taxes and Other Duties” adopted in 2017 provided for further directions for the reform of this sector that should be guided by the Strategy of the Tax System Reform in Uzbekistan that was under development at the time of the monitoring.

However, monitoring expert concluded that a strategic approach was absent from the draft of the Strategy, and a more systemic approach was needed for the proposed reforms to achieve a real effect. For example, the draft Strategy aimed at “reducing the shadow sector”, but it was not clear what problems will be addressed by the proposed objective, how it were evaluated and, importantly, how the priority measures were identified. To develop an effective strategy, the State Tax Committee should approve the strategic governance and planning procedure that should specify all main steps and elements of strategic planning: period, proposing objectives, assessing risks, proposing tasks, planning activities, measuring and assessing outcomes, persons and divisions in charge, resources, IT support. Mandatory types of measuring the achievement of strategic objectives should include public opinion polls on taxpayers’ trust in the tax service, satisfaction with service delivery, perception of corruption etc.

The monitoring team further recommended that the State Tax Committee should develop a tax risk management plan (or a Compliance Strategy) as part of the said strategic plan. It normally covers a period of one or more years, with the strategy for the next year to be developed with participation of a majority of tax service divisions involved in tax administration.

Source: OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 249-278.

- **Many national anti-corruption strategies included priority sectors** (16 ACN countries report a sector-specific focus in their anti-corruption strategies, while in 3 countries strategies include all sectors).⁹¹⁶ But there is little evidence that these sectoral approaches of anti-corruption strategies had an impact on real life sectors. For example, the previous anti-corruption strategy of Ukraine included a focus on banking and energy sectors, while actual reforms happened in police, SOEs and health sectors, which were not addressed in the policy document. It may not be enough to include a specific sector into the strategy because it tops the lists of most corrupt sectors according to various surveys. It is important to involve the sector itself with its leadership and key players in the analysis of corruption risks and response measures and to build in these measures in the overall reforms in the sector. Many examples from the monitoring reports demonstrate that leaders of specific sectors ignore and even undermine the priorities established in national anti-corruption policy. For example, while the Anti-Corruption Strategy of Armenia includes focus on education, the Higher Education Strategy that was negotiated during the 4th round of monitoring does not address corruption issues. Even more worrying, the political class of Mongolia not only ignores the priorities set in the National Anti-Corruption Strategy in such areas as political party finance but also undermine the Independent Anti-Corruption Agency that is responsible for the implementation of this Strategy.
- **Sometimes top down approach in developing sectoral anti-corruption measures can be justified, but it has its limits.** For example, the Security Council under the President of Kyrgyzstan initiated and was the main driver of corruption risk assessment in individual state bodies. This was probably important as there was no interest in state bodies to undertake the work themselves, and

the Security Council empowered by the President was able to mobilise attention and resources for this work. The risk assessment and multiple concrete measures that were proposed during this work included many useful actions that helped reduce corruption in practice. However, without buy-in in those state bodies, this approach alone could not remain sustainable, as confirmed by the in-depth analysis of this sector conducted in the 4th round of monitoring. Customs officials from Kyrgyzstan noted that the risk analysis conducted by the external experts recruited by the Security Council often did not have a full understanding of the sectoral issues, and therefore their efforts had to be supplemented by the experts from the customs administration. The ACN monitoring demonstrated that this risk assessment exercise included many useful technical measures but missed many important systemic measures that were necessary for the sustainability of reforms. The implementation of the identified anti-corruption measures then was delegated to the internal security division, which did not have sufficient human resources and powers.

Box 64. Introduction of compliance programmes in SOEs in Ukraine

The National Agency for Corruption Prevention (NACP) of Ukraine is responsible for coordinating business integrity work. The Agency – in co-operation with the international donors and private sector – developed a model compliance programme for legal persons that is mandatory for SOEs and for the companies willing to take part in the public procurement process. Besides, anti-corruption officers were appointed in all major SOEs with the responsibility to promote compliance work. On the surface of it, these efforts were very commendable and the model compliance programme indeed provided a useful reference point of the minimum requirements by the state to such programmes.

However, during the review of integrity in SOEs that was conducted as a part of the fourth round of monitoring, it became clear that the anti-corruption officers installed in the SOEs examined as case studies for this review did not have a real role in promoting integrity. They were usually treated by the management as an additional layer of state controls, but they did not contribute to the important reforms that were ongoing in these enterprises. As a result, in some of these enterprises who realised the importance of the effective compliance function, e.g. Naftogaz, a separate compliance officer was hired by the management in addition to the anti-corruption officer. This example shows the limitation of the top-down approach, especially when it come from an agency with poor reputation and mechanical and formalistic implementation of anti-corruption measures.

Source: OECD/ACN (2018), Fourth monitoring round report on Ukraine, Prevention and prosecution of corruption in state-owned enterprises, available at www.oecd.org/corruption/acn/OECD-ACN-Ukraine-4th-Round-Bis-Report-SOE-Sector-2018-ENG.pdf.

- **For anti-corruption reforms to sustain, the leaders of state bodies must assume the responsibility** and to make them an integral part of the normal management as opposed to an ad-hoc campaign. Experience in the region shows that even high profile and successful reform can eventually fail if the leadership does not provide continues political support and does not allocate sufficient human and other resources. For example, the very successful of the traffic police in Ukraine that started in 2016 and produced good results initially, has slowed down and almost disappeared by 2019, following the departure of Deputy Minister of Interior who spearheaded this reform and in the absence of a similar leadership. This leadership should not be individual and personal, but institutional. Another example from Ukraine – from the Ministry of Defence – shows how the creation of a reform offices initially launched by civil society activities, but established as a structural unit of the Ministry and enjoying the support of the Minister, continues to pursue structural reforms in procurement and food supply for the army, all be it with many difficulties and slowly.⁹¹⁷ Finally, the regular anti-corruption department in the MOI of Romania provides a good example of a strong institutional model for the reform of the police sector.

Box 65. Ministry of Internal Affairs of Romania: institutional structure, risk assessment and monitoring

Anticorruption General Directorate (DGA) is a judicial police unit subordinated directly to the Minister of Internal Affairs. Its two main fields of activity are: countering and prevention of corruption. In terms of countering corruption, DGA judicial police officers carry out criminal investigation proceedings, organise professional integrity testing of Ministry of Internal Affairs (MIA) personnel and investigate corruption crimes committed by MIA personnel. DGA has been successful in dismantling complex corruption schemes in some of the units of the ministry: border police, driving license units, human resources, traffic police etc., and has received positive evaluation from audits carried out in different formats (see, for example, EU reports under the Cooperation and Verification Mechanism at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en).

DGA officers conduct integrity tests which represent a type of operational activities. Tests aim to verify the reaction and adopted behavior with regards to corruption offers from the part of the MIA personnel in virtual situations, similar to those faced by the personnel in the exercise of their duties. The integrity testing of personnel has created a powerful deterring environment.

Prevention of corruption activities focus mainly on the anti-corruption training and education of the MIA personnel, in order to identify and deter situations that might generate corruption, and also to strengthen integrity standards of its staff. Raising awareness on the causes and consequences of corruption crimes and promoting the standards of integrity among the general public represent another area of activity (more details about prevention of corruption activities see at www.mai-dga.ro/eng/archives/238).

DGA has the central role in co-ordinating efforts with regards to the National Anticorruption Strategy 2016-2020 implementation at the level of MIA using the following instruments:

- The report on risks and vulnerabilities to corruption is drafted every two years by DGA based on the results of the application of the Corruption Risk Assessment Methodology by the MIA units, and the assessment of the integrity incidents (corruption cases committed within this period at the level of MIA). The report is used as a basis for drafting the Integrity Plan for the 2-year period, which contains specific strategic measures for all the units of the ministry.
- Assessment of the integrity incidents. DGA drafted a specific procedure through which for each corruption case at the level of the MIA DGA conducts a thematic evaluation. The objectives of the assessment are to critically assess the efficiency of the control system in place, analyse the main factors that made possible the corruption act and recommend specific actions for the department/field of activity where the corruption occurred.
- Quantitative and qualitative studies with regards to the corruption phenomenon. The studies aim at analysing with scientific objectiveness the corruption phenomenon, the main corruption vulnerabilities, the causes of corruption and the efficiency of the prevention of corruption activities. DGA surveys both the general population and the MIA employees in terms of the level and impact of corruption and on the areas of action to which the resources should be allocated for better control of corruption.

Source: Information provided by the Ministry of Internal Affairs of Romania.

- **Sectoral programmes focus on low-level corruption.** This is understandable as the actual violations are most visible and painful and attract attention of citizens. The sectoral chapters of monitoring reports in all countries identified the lowest implementation level – e.g. teachers in schools and universities, customs officers at borders, local land use inspector – as the weakest point in sectoral anti-corruption systems. Public officials and private sector employees at that level have

the lowest pay and the lowest capacity, which makes them very vulnerable for corruption. Many chapters highlight the need to consider increasing the pay levels. While this measure is not always possible due to budgetary limits, it is important to highlight that if the level of pay is below the basis needs of an employee, like accommodation, food and basic social needs of the employee and his or her family, there is no reason to expect integral behaviour. Regarding the capacity, many recommendations suggest various forms of training, development of methodologies and model solutions, and other support. Finally, many sectoral anti-corruption programmes include different control measures and e-solutions to reduce ‘human factor’ in decision-making. All these approaches are useful and necessary, however, prevention of the repetition of such violations cannot be ensured without addressing the underlying reasons.

Box 66. Examples of politization in selected sectors

The monitoring report on Armenia describes a “mechanism of political control” in the higher education in Armenia, where despite formal autonomy the Governing Boards of higher education institutions were chaired by members of Government or public figures on their behalf; half of the seats on these Boards were reserved for government nominees; the board of the independent quality assurance body was occupied by political appointees; and the Prime Minister was in charge of approving all members of all Boards. The Government is also reported to have a strong influence on the selection of rectors and vice-rectors of public universities. Anecdotal evidence suggests that politisation may lead to interference in the focus and manipulation of findings of research, to curbing of dissent by means of political and administrative pressure, as well to top-down interventions in decision-making concerning budget allocations, procurement, and staff. The report also notes that politisation involves favouritism in staffing decisions: appointments are commonly based on personal and political connections, the extension of short-term contracts is known to reward loyalty over professionalism, and the termination of employment can be arbitrary.

The Uzbek monitoring report noted a considerable politization in the governance of the State Tax Committee in Uzbekistan. The senior staff were approved by the president of the Republic as nominated by the prime minister. Several candidates are nominated, they are vetted and interviewed by responsible officials at the Presidential Administration. According to the authorities, in such way a competitive selection of candidates for the above positions is ensured. However, experts believe that this procedure is only nominally competitive, since the list of candidates is drawn up administratively, in a non-transparent procedure. They recommended to consider the introduction of competitive selection to these positions in order to eliminate political influence and ensure professional and merit-based appointments. Besides, experts negatively assessed the introduction of bonuses for the staff of the State Tax Committee in the amount of 10 percent of collected taxes and other collected duties as it will encourage wrong behaviour and motivations among the staff and will create considerable risks of corruption and abuse of authority. The wage structure of the state tax service workers should be considerably reviewed to achieve a larger share of the fixed salary (that is, the total of wage supplements and bonuses should not be more than the salary). This will allow to considerably reduce corruption risks among the staff by encouraging impartial decision-making.

Source: IAP fourth monitoring round reports.

- Systemic solutions involving governance and regulations of a sector need more attention. In virtually all sectoral reviews, politisation was found as one of the main underlying reasons for corruption. And yet, this problem was not mentioned in any of the sectoral anti-corruption programmes that were reviewed. Just like ensuring protection of civil servants from undue influence of political or private interests is the foundation of all integrity in the public administration, protecting sectoral management

and staff from political influence is key for integrity in the sectors. One of the solutions is the merit-based competitive and transparent recruitment of directors of schools and hospitals, SOE boards, and other sectoral and local bodies. Another solution that was not used sufficiently yet is better development and application of conflict of interest rules at the sectoral and local level. For example, the monitoring report on Kyrgyzstan specifically noted the conflict of interest rules in the customs sector are not well developed and not used in practice.

Box 67. Examples of conflict of interest in real life sectors

Sectoral reviews conducted as a part of the fourth round of monitoring identified many situations that in anti-corruption terminology would be qualified as conflict of interest. However, in the terminology of the sectors' managers they were considered a normal practice. This highlights how the national level rules on conflict of interest that have been established in all ACN countries to a larger or lesser degree were not applied yet for the analysis and reform at the sectoral level.

Private tutoring in schools in Kazakhstan. Private tutoring as such is a legal activity, and in countries where teachers' salaries are low it is a necessary activity for the teachers to survive. However, very often the situation is complicated by the fact that teachers are offering private classes to the pupils from their own school and their own classes. In such cases there can be many concerns, such as the possibility for the teacher to provide poor education during the official classroom work, or to underrate pupils' performance thus artificially creating the need for extra private classes. This practice is common in Kazakhstan, and in fact in many other countries. At the same time there are no rules of any kind that will regulate this potential conflict of interest situation.

Regulation and control of land use by local inspectors in Tajikistan. Local land use inspectors in Tajikistan have a double subordination to the State Committee for Land Use that is responsible for regulating land use in the country and to the local administration that is responsible for allocating land plots to different users. Local land use inspectors are therefore responsible for both managing land use and for controlling it. This leads to a conflict of interest, where local inspectors has to control their own decisions about land allocation. The 4th round monitoring report for Tajikistan recommended to ensure internal independence of the bodies that exercise state control land use in the system of the State Committee of land use.

Unitary enterprises in Ukraine. In Ukraine there are some 2 000 state owned enterprises that are organized as unitary enterprises. Unitary enterprises are established by a relevant State authority, where a part of state assets is given to the enterprise for management, while assets remain in the ownership of the State. The director of the enterprise is appointed directly by the ministry of another state authority that established the enterprise and has a full control over the use of the assets without any control, and thus may have an interest to receive the maximum profit from the use of the assets that are given to uncontrolled use for free. The state authority that has created a unitary enterprise may also have an interest to gain from this uncontrolled use of state assets. Until very recently unitary enterprises in Ukraine had no obligation to have supervisory boards or external independent audit. This positioned such enterprises totally outside any independent external control, which created opportunities for corruption and rule breaking that went largely undetected. For example, international airport of Kharkov, one of the largest cities in Ukraine, is a unitary enterprise

Source: IAP fourth monitoring round reports.

- Procurement, external public financial control and audit are the areas that benefit from limited state control, while internal controls are weak. However, as these areas are known for high risk of corruption, it is extremely important to continue strengthening applicable integrity rules. It is especially important for the sectoral and local levels where the capacity necessary for effective procurement, financial and other internal control and audit is limited, and where politisation can be

strong. At the same time, all reports point out that internal controls at the sectoral level are weak, including internal security, ethics commissions, anti-corruption points and other positions or divisions that are called to help the leadership ensure integrity of sectoral or local operations. Several monitoring reports, for example the customs analysis in Kyrgyzstan and review of tax sector in Uzbekistan point out that the internal security units which are responsible for all internal controls are understaffed and undertrained. The examination of SOEs in Ukraine has shown that the anti-corruption contacts in SOEs were appointed by the NACP without any competition and do not have necessary skills and tools to ensure a meaningful contribution to integrity and compliance work.

Box 68. Public procurement for infrastructure in Georgia

Georgia was the first countries in the IAP that introduced e-procurement system. This was a major breakthrough that provided transparency and completion in this corruption-rigged sector, however, an e-system itself did not resolve all the corruption related problems. The review of procurement for infrastructure that was conducted as a part of the 4th round of monitoring of Georgia highlighted the key challenges in this area. The report stressed that bad strategic planning of procurement needs, low capacity of local council and their politisation, conflict of interest of politicians who own construction companies are among the main problems. The report further provides technical recommendations that stressed the need to develop competition in infrastructure procurement, to help local authorities to manage infrastructure procurement projects, and to ensure proper controls in this area:

- Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects
- Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators
- Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use
- Introduce a comprehensive quality control system for contract management critical decision making and overall supervision of works
- Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.

Source: OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 122-128.

- Transparency is one of the areas where ACN countries made good progress at the national level, but major challenges persist at the sectoral and local level. Many countries are opening up various state-managed registers like registers of beneficiary owners of enterprises, publish income and interest declarations of senior officials and proactively provide other information, which improves public awareness and control in many areas. At the same time transparency at the sectoral and local level remains problematic in many countries. It starts from the very fact of admitting the existence of corruption, when sectoral authorities sometimes do conduct surveys about the spread of corruption but do not publish their results, e.g. education sector in Kazakhstan. Some basic data is kept secret, like for example levels of salaries of public officials working in the customs sector in Kyrgyzstan is secret, despite the fact that this information should be published through the system of asset declarations; transparency of political party financing was not ensured in Mongolia despite an existing legal requirement. Good practices in some cases, like publication of interactive map of mineral deposits in Kyrgyzstan are overshadowed by major problems in others, cadastre with information about available land plots are only available in paper form in the local governments in Tajikistan, thus creating fertile ground for manipulations and abuses.

Box 69. Transparency in the education sector in Kazakhstan and in the use of natural resources of Kyrgyzstan

Challenges. Kazakh government informed the ACN monitoring team that a full-scale study on specific corruption risks, including in the higher education sector, were conducted for the preparation of the national anti-corruption strategy. However, they never shared the results of this study, and the monitoring team did not manage to find these results in internet or in other open data sources. While the National Statistics Committee collected various information about the higher education in Kazakhstan, it provides only limited information for the public in highly aggregated format. The decisions on what information is made public and about the degree of aggregation of data are taken in consultation with the sectoral ministers. The information selected by the Ministry of Education was much smaller than the available data. Users who wish to access more complete data need to submit an official request and pay to the external supplier for the processing and delivery of information. Only a few organizations resort to such requests or can afford it from a financial point of view. This secretive approach is extremely negative as it does not allow for a serious analysis of corruption risks in the sector or the validation of its results by the civil society, it prevents an open debate about the best solutions to the problems and undermines citizens' trust in proposed reforms.

Achievements. Kyrgyzstan's Agency for Geology and Mineral Resources has implemented a sectoral Anticorruption Action Plan. It identified 13 corruption schemes and established seven working groups to tackle those challenges. Implementation began in 2014. As of May 2016, 78.7% of actions have been completed or partly completed, 6.6% have not been completed, and 14.7% have been removed from the plan. The following good practices were reported:

Contracts and licenses: An electronic interactive map of deposits has been launched; Contracts and licenses are awarded on a competitive basis (through tenders and auctions); Applications for contracts and licenses are registered in a database that is accessible to key stakeholders; An independent administrative agency with sufficient capacity is now responsible for awarding contracts and licenses.

Procurement: Results of the bidding process, as well as information on contract and license recipients, are published; The procurement procedure for subsoil users has been improved. As a result, in 2014-2015, the budget received 400 mln som from auctions, or 10 times more than in 2013.

Revenue transparency: All payments to the government (taxes, proceeds, shares of profits) are deposited in a treasury account and are traceable and disclosed to the public; The government's share of extractive industry revenues is included in the budget. These budgets are published, e.g., through the EITI. Audit and monitoring:

An independent agency monitors the exploration, exploitation and production process to ensure regulations are complied with, effectively separating control functions from the key regulatory agency, e.g. the Ministry of Natural Resources; Extractive companies' accounts are subject to regular audits. Civil society empowerment:

There are media that are well trained in the topics related to governance of the extractive sector.

Kyrgyzstan furthermore mentioned the development - for the first time - of two interactive maps: a map of mineral resources, which includes reserves and details of site locations, and a map of licensed areas. Both were accessible on the website site of the Agency of Geology and Mineral Resources. The information on licenses and active companies could be received in a matter of minutes, whereas previously the search took more than a month.

Source: IAP fourth monitoring round reports.

- Involvement of NGOs and other partners is at the same time the most meaningful and the most difficult at the sectoral and local level. All monitoring reports stressed the importance of co-operation between the public administration and the citizens in developing and implementing anti-corruption measures. The examples of good practice are many ranging from various surveys and risk

assessments of selected sectors conducted by NGOs, civil society consultative councils at various sectoral ministries, and specific and concrete NGO projects that aim to improve transparency and to monitor the work of public. The thematic report on corruption prevention at sectoral level⁹¹⁸ provides many examples of such projects, e.g. administration of informal payments by parents in schools by Moldovan NGOs, “Check my university” NGO initiative in Mongolia, interactive integrity map of Ukrainian universities developed by an NGO, Extractive Industry Transparency Initiative that is active in Azerbaijan and Kyrgyzstan, NGO integrity and initiatives at the municipal level [examples], and monitoring of public procurement by NGOs in Georgia and Ukraine.

All these examples show that the sectoral and local level provides a possibility for NGOs to have a very meaningful and practical involvement, where their engagement helps to resolve very concrete problems that are close to the citizens and bring immediate and tangible improvement. It is much easier for NGOs to engage in this work rather than in more bureaucratic and often abstract work related to e.g. monitoring of national anti-corruption strategies. At the same time NGOs working at the sectoral and local level face multiple challenges: tradition of secrecy still persists in many sectoral ministries and agencies, donor funding is only available for short-term projects.

More importantly, NGOs working on specific corruption problems often unveil very specific cases that involve very specific interests of corrupt and powerful individuals, and sometimes civil society activities risks their lives in pursuing their work. Building open partnership with civil society in all its forms from active NGOs and business representatives, media and international partners is key for effective anti-corruption work at the sectoral and local level.

Box 70. Risk assessment in education sector of Armenia

Civil society played the key role in assessing corruption risk in Armenia’s education sector. The survey developed by the Open Society Foundation laid the ground for the elaboration of the anti-corruption plan for this sector. The 2010 survey confirmed that almost 40% of student respondents saw corruption as a systemic problem in their universities, and only 5.5% did not think that education is corrupt. In 2012, the human rights ombudsman of Armenia reported that its office continues to receive signals of numerous corruption practices, especially in higher education. Reports by non-profit and research organisations released between 2013 and 2016, and also the monitoring questionnaires by civil society and Government all conclude that corruption in Armenian higher education remains a pervasive problem. After a considering the risks and extensive consultations with civil society and research organisations, in 2017 the Task Force established under the Anti-Corruption Council prepared the Programme on Anti-Corruption Measures in Education. The Programme identified multiple corruption risks, including university management, which was found to be at risk of undue political influence; human resource policies, which the Programme notes are susceptible to favouritism; academic work, where cheating and plagiarism are a major challenge; student assessment, which can be abused for undue recognition of academic performance during exam sessions and for the awarding of diplomas, certificates and degrees; licensing and accreditation, where decisions are at risk of manipulation and even fraud; financial management and procurement, which lack transparency and accountability; professional conduct in higher education, which is at risk because of the absence of formal ethical rules; decision-making in HEIs, which is at risk because of the lack of transparency and accountability; and post-graduate education, where gaps in legislation and the institutional set-up may facilitate abuse. Recognising the role that the civil society played in the reform of the education sector and their professionalism, one of the civil society leaders who led the anti-corruption work in the sector was appointed the Minister of Education of Armenia after the change of government in 2018. The new leadership of the sector thus now has to deliver on the ambitious reform agenda

Source: OECD/ACN (2018), Fourth monitoring round report on Armenia, pp. 151-183.

Box 71. Monitoring of anti-corruption reforms in the Uzbek tax administration

The monitoring report on Uzbekistan noted that polls that were conducted across the country about the spread of corruption in tax sector and corruption risk analysis conducted by the Republican Interagency Commission contributed to the development of anti-corruption measures in this sector. The report also noted that public councils set up under the State Tax Committee and 14 regional tax departments and all state tax offices in districts, include representatives of business entities and their associations, non-state non-profit organizations, media, representatives of the creative community, including culture, arts and science, as well as indicative taxpayers. However, it was not clear if the proposals of these councils had an impact on the work of the state bodies. The State Tax Committee, in consultations with the business community, conducted a comprehensive review of the legislation and submissions of business representatives, and identified a number of systemic problems. Building on this positive experience, the report recommends that consultations with the public and with the business become a regular practice for the tax administration. In particular, it recommends the following “Conduct regular taxpayer surveys initiated by the State Tax Committee with a view to determine the levels of trust and perceived corruption in the tax service, as well as satisfaction level with the services provided. Ensure broad public consultations for development and adoption of draft Tax Code and any other measures for reforming the tax area. This recommendation echoes the ACN 2016 recommendation that civil society must be involved in a meaningful way in the monitoring of implementation of anti-corruption policies.

Source: OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 249-278.

Many scandals but no effective reporting channels, corruption investigation and sanctions are rare. There are many corruption scandals in various sectors across the region. Some of them do not lead to any sanctions at all, despite their serious nature. For example, serious campaign finance violations such as a breach of campaign spending limits or the submission of falsified campaign finance reports are not subject to sanction in Mongolia. Fines for other violations of campaign finance rules remain relatively low, and the State Audit Office does not have the power to audit campaign accounts or impose financial penalties. Many monitoring reports noted that there are no effective channels to report corruption at the sectoral level, and this may discourage citizens to submit their complaints as the only option that they may have is the law-enforcement bodies. Besides, there are no channels for the whistle-blowers to report corruption reported violations inside the sectoral institutions.

When sanctions are available in law, the actual enforcement remains low. The following quote from the Monitoring report on Azerbaijan that examined education sector is very typical for the enforcement of anti-corruption legislation at the sectoral level: “Azerbaijan has taken some enforcement action in the education sector but greater effort is needed, especially enforcement against high-level officials. Corruption in the education sector is likely widespread, based on the statements of civil society representatives and ACD at the on-site visit and the number of complaints made by citizens. The level of enforcement, however, does not correspond to this level of corruption. ACD could not provide comprehensive enforcement statistics. Some anecdotal examples were provided, but the cases do not relate to corruption by officials above the rank of university directors. Ministry of Education also could not specify the number of officials who have been sanctioned. No administrative proceedings have been opened. Azerbaijan asserts that its enforcement efforts have made an impact, but this statement is not backed up by any surveys or studies.” The Monitoring report on Kazakhstan confirmed that: “... the higher education sector is very rarely in the focus of attention when it comes to the actual application of the anti-corruption measures,” disciplinary and administrative sanctions are rare, and no criminal cases were reported.

One of the reasons of poor anti-corruption law-enforcement at the sectoral level is lack of clarity as to what behaviour constitutes a corruption violation and how different violations should be punished.

In some countries law-enforcement bodies investigate cases that become known to them. For example, the table provided below presents the cases that were investigated by the National Anti-Corruption Bureau of Ukraine in one year of 2017. However, these cases are rarely analysed by the sectoral authorities as the source of understanding of corruption risks. For example, during the monitoring of Georgia, the leaders of the State Procurement Office stated that there were no corruption offences committed in the system, while at the same time representatives of the Prosecutor General’s office provided statistics on such cases. This complacency is very common at the sectoral level and prevents from using the findings of cases for the systemic analysis and preventing them in the future.

Table 59. Investigation of corruption in SOEs in Ukraine in 2017

Month	Key developments related to the corruption in SOEs
January	6 persons have been arrested as suspects on taking over the harvest at estimated value of UAH 50 million from the SOEs in Kyrovograd oblast. Former CEO of SOE “State Food and Grain Corporation of Ukraine” and representative of the international grain trader have been arrested as suspects in incurring damages to the state in the amount of UAH 1.6 billion.
February	Uncovering of corruption scheme with alleged UAH 30 million in damages incurred by SOE “Energoatom”, 5 persons have been detained.
March	Head of Fiscal Service of Ukraine has been detained on suspicion in involvement in the “Onishenko gas scheme” case.
April	Former MP/former head of Parliament Committee on oil and energy sector has been detained on suspicion of involvement in the embezzlement of USD 17.28 billion at the mineral enrichment plant SOE “Skhidny Girnichko-Zbagachovalniy plant”.
May	Indictments against 8 persons in the “Onishenko gas scheme” case have been filed to court.
September	3 persons have been detained on suspicion in embezzlement and money laundering of over UAH 40 million from SOE “Ukrkhimtransamiac”. Indictments against former CEO and deputy CEO of SOE “Derghzovnishinform”, which are suspected of embezzlement of UAH 9.87 million, have been filed to court.
October	Former MP/former head of Parliament Committee on oil and energy sector and his possible accomplice (head of the department of the SOE) have been formally accused of taking over state assets from SOE “Energoatom” in the amount of EUR 6.4 million.
November	Four persons have been formerly accused of taking over UAH 20 million from SOE “Ukrzaliznichpostach” (currently, an affiliate of the Ukrzaliznitsya). Indictments against the head of Fiscal Service of Ukraine and the head of the department on depts. resolutions in the Fiscal Service of Ukraine have been filed to court in relation to the “Onishenko gas scheme” case.
December	Indictments against 5 persons in the criminal proceedings on damages incurred to an agricultural SOE “Chervoniy zemlerob” in the amount of UAH 50 million have been file to court. Four persons have been detained on suspicion in connection with corruption scheme to embezzle money from State investment project and SOE “State Investment Company” in the amount of UAH 259.2 million. Former CEO of the SOE bakery “Lutsky KXP #2” has been detained on suspicion of embezzlement of grains estimated at UAH 58.81 million.

Source: Source: OECD/ACN (2018), Fourth monitoring round report on Ukraine, Prevention and prosecution of corruption in state-owned enterprises, p. 56, cited above.

Conclusions and recommendations

To achieve a real impact of anti-corruption measures at the level of corruption, it is timely for the ACN region to supplement the work at the national level instruments with targeted anti-corruption measures at the level of real-life sectors and local level. Improvements at these levels will have a direct impact on the life of people and can translate in the improved ratings and indexes resulting from various opinion polls and surveys.

Analysis of the anti-corruption work at the sectoral level revealed systemic weaknesses that are very similar to the anti-corruption work at the national level. This means that many successful approaches used for the national level can be applied in selected ministries, agencies and at the local level. National anti-corruption bodies should take it as their duty to help sectoral and local level authorities by developing methodological tools and other capacity building, help exchange best practices and support professional networking. Experience shows that this is a more effective support than formalistic inspections and collection of reports for bureaucratic purposes.

At the same time anti-corruption work at the sectoral level requires very detailed technical and institutional understanding of each individual sector like customs valuation methodologies or rules for allocation of land use rights. It is therefore vital to engage the sector in the anti-corruption work and to ensure its ownership. External pressure and top-down approaches can be useful but have limitations and cannot be sustainable. The role of leaders cannot be overestimated in this regard as it is ministers, heads of state agencies and local administrations that set the example of integrity, create formal and informal rules and allocate resources, both human and financial, for preventing corruption in their institutions.

Civil society can and should play a key role in anti-corruption reforms in real life sectors and at the local level as this is where it can engage in the most meaningful way and contribute their knowledge and skills to the identification of correct targets and measures, their implementation, and monitoring of the impact of these measures on the level of corruption.

It is impossible to prescribe specific anti-corruption measures for the sectoral level as in their substance they are very different. However, it is possible to propose the general **recommendations** that can guide both the public officials and non-governmental partners when they embark at the work in real life sectors and at the local level, as follows:

- A. Focus the next generation of anti-corruption policies and measure on the sectoral and local level: prioritize and select sectors based on the corruption risk and sector's importance for the state, citizens and businesses, but also on the potential for the engagement of its leadership and the civil society.
- B. At the national level provide support and promotion, avoid reliance on formalistic top-down controls of implementation of anti-corruption sectoral and local measures:
 - a. Focus national level efforts on the development of methodologies that can help sectoral and local reforms, including such methodologies as risk assessment, performance indicators, transparency and access to information, internal controls, civil society engagement in development and monitoring of anti-corruption plans and measures.
 - b. Provide capacity building for the persons responsible for sectoral a-c reforms at sectoral and local level, promote exchange of good practices and mutual learning among the practitioners to search for effective solutions.
 - c. Coordinate regular monitoring of anti-corruption efforts at the sectoral and local level and publish the results that will enable a comparison of achievements and challenges.

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- d. Use “carrots”: Consider various incentives for anti-corruption measures at sectoral and local level, ranging from promotional to financial.
 - e. Together with “sticks”: Research exceptional measures such as sectoral sweeps and top-down forced reforms, with dismissal of ministers and other leaders and senior management in sectors that systematically fail.
- C. At the local and sectoral level apply the best practices for national anti-corruption policies, such as:
- a. Conduct a structured risk assessment, do not rely upon your own knowledge and understanding of the sector, engage practitioners, civil society, and other partners.
 - b. Develop performance indicators for any – even small – anti-corruption plan in order to measure and demonstrate its results in politically unbiased and objective manner.
 - c. Allocate resources for the implementation of anti-corruption plan, estimate needs and allocate financial and human resources.
 - d. Institutionalise anti-corruption efforts – give clear mandate with rights and responsibilities to a team inside the sector to coordinate the reforms with the support from the top.
 - e. Clean up your sector part by part, starting with quick wins, e.g. e-services, and moving to more complex and controversial areas that may expose and undermine vested interests and established corruption schemes that benefit interest groups such as oligarchs or smaller groups of fraudsters and criminals.
 - f. Pursue underlying reforms – professional merit-based recruitment and promotion, fair and transparent pay, conflict of interest rules and codes of ethics, internal audit.
 - g. Educate citizens and practitioners of the sector about the anti-corruption measures and their advantages to win their support to more difficult reforms.
 - h. Monitor reforms regularly and honestly, with the participation of civil society and using surveys among citizens, practitioners and users of various services.
- D. Develop sector specific technical solutions
- a. Search for reformers in your sector or location – they must be there!
 - b. Search advice of partner countries who had similar problems – ask ACN Secretariat!
 - c. Use intentional best practices and guides for sector-specific issues, where available, e.g. INTES methodology for education, etc.
 - d. Develop your own typologies and corruption related terminology.

Chapter 6. Anti-Corruption Network for Eastern Europe and Central Asia

This chapter discusses the impact that the ACN Work Programme's implementation had on anti-corruption reforms of the region in 2016-2019, including the performance of the Istanbul Action Plan countries that was examined in fourth monitoring round. The chapter reviews capacity and knowledge building activities regarding effective ways to prevent corruption at sectoral and local level, and in the business sphere; strengthening of the capacity of law-enforcement practitioners to sanction corruption offences and supporting reforms by country projects. The chapter further discusses the governing and funding structure of the ACN, and the results of the ACN's external assessment. Finally, the chapter identifies ways to build on the results of the current Work Programme, and to further strengthen ACN's impact in the future, including through the development of ACN anti-corruption performance indicators.

The Anti-Corruption Network for Eastern Europe and Central Asia is a global relations programme of the OECD Working Group on Bribery.⁹¹⁹ It was established in 1998 to promote anti-corruption reforms, exchange of information, elaboration of good practices and donor coordination in the transition economies. The interest for the Working Group countries in this regional work is that it helps countries reduce demand for foreign bribery and improve international co-operation on complex trans-border corruption cases; the countries in the region receive access to the OECD expertise.

The ACN Secretariat is located at the OECD Anti-Corruption Division. The ACN Steering Group is composed of National Coordinators from ACN countries, as well as representatives from OECD countries, international and non-governmental organisations. The ACN Steering Group guides the Secretariat on all matters.⁹²⁰ The ACN web site www.oecd.org/corruption/acn provides further information.

ACN Work Programme for 2016-2019

The ACN Steering Group adopted the Work Programme for 2016–2019⁹²¹ in October 2015. It was further endorsed by the High-Level Meeting of Anti-Corruption Decision-Makers “Boosting the Impact of Anti-Corruption reforms in Eastern Europe and Central Asia” that took place in April 2016. The objective of the Work Programme was the following: “continue supporting ACN countries in their anti-corruption reforms with the reinforced focus on practical implementation and effectiveness of anti-corruption policies and measures and enforcement of anti-corruption laws.”

In order to achieve the objective, the Work Programme included the following areas of activities:

- Istanbul Anti-Corruption Action Plan
- Corruption prevention in the public sector;
- Business integrity
- Law-enforcement network
- Ukrainian and other country-specific projects.

Responding to the recommendation of the external evaluation of the ACN that was conducted in 2015⁹²² regarding tracking the impact of the ACN on progress in the region, the Work Programme included a logical frame with performance indicators. Every year, ACN countries provided to the Secretariat data for the indicators. The Secretariat prepared ACN annual activity reports using country data and other data collected from monitoring and other publicly available reports. The annual reports are presented to the ACN Steering Group meetings and provided the main factual basis for this chapter.

Istanbul Action Plan

In 2003, at its general meeting in Istanbul, the ACN proposed to the countries that at that time did not participate in any international anti-corruption programme to join an initiative where they will commit to improve their anti-corruption policy, prevention and enforcement and will undergo regular monitoring against international standards and good practices. Several countries volunteered to join this initiative already at that meeting, hence the name – Istanbul Action Plan, others joined the initiative later. At the time of drafting of this report, the Istanbul Action Plan brought together Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan.

Since the launch of the Istanbul Action Plan, countries have undergone four rounds of monitoring. The monitoring is conducted by peers (public officials and experts working in respective areas in their own countries as opposed to commercial consultants) from other ACN countries, with inputs from non-governmental and international partners. Governments provide answers to the monitoring questionnaires; the peers visit the countries to interview public officials and other partners; they draft the reports and invite the countries to comment the drafts; the reports are then negotiated and adopted by the ACN plenary

meetings based on consensus. Reports are published and contain compliance ratings and new recommendations. Monitoring reports were prepared once per each monitoring round each 3 to 4 years. After their adoption, the countries are invited to report progress about the implementation of new recommendations, progress updates are also assessed by the plenary meetings and published on the ACN web site (www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm).

The fourth round of monitoring examined the practical implementation of anti-corruption policies and laws and sought to establish the impact that governments' efforts produced on the actual level of corruption in the countries. The methodology⁹²³ for this round was designed to focus on implementation: the monitoring questionnaires invited governments to provide not only copies of legal acts, but information and data about various aspects of implementation efforts, from human resources and budget allocations to different anti-corruption measures, to statistical data about their implementation and results of surveys, as well as studies about the level of corruption or trust in different public institutions as perceived by the citizens. Non-governmental partners were asked to answer the same questionnaires or to provide their own shadow or other reports. Same questions were raised during the interviews with the public officials and non-governmental partners during the on-site visits. Monitoring experts were invited to focus their assessments on the implementation as well, both when proposing the compliance ratings with the previous recommendations and when developing new recommendations for future actions.

In addition to the review of the national level anti-corruption policies and instruments, the fourth round also included **in-depth examination of sectors**. These sectors were selected by the ACN Secretariat in consultations with the governments and non-governmental partners among those that present high risk of corruption, but also provide a reform potential, including available information and openness of the leadership for anti-corruption reforms. The analysis of the real-life sectors helped to understand if the general national-level anti-corruption tools produce a positive change on the ground and in lives of citizens.

Table below provides a summary of the Istanbul Action Plan activities that were implemented during the reported period. All reports are available at www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

Table 60. Summary of the Istanbul Action Plan activities

Monitoring meetings	Monitoring reports	NGO reports	Examined sectors	Progress updates
September 2016	Azerbaijan Georgia	9: Armenia (3), Kazakhstan (1), Kyrgyzstan (2), Tajikistan (2), Ukraine (1)	Education Procurement for infrastructure projects	Armenia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine, Uzbekistan
September 2017	Kazakhstan Tajikistan Ukraine	10: Kazakhstan (3), Kyrgyzstan (1), Tajikistan (2), Ukraine (4)	Land management Higher education	Armenia, Azerbaijan, Georgia, Kyrgyzstan, Mongolia, Uzbekistan
July 2018	Armenia Kyrgyzstan Ukraine (sector evaluation)	12: Armenia (4), Georgia (3), Kazakhstan (1), Kyrgyzstan (1), Tajikistan (2), Ukraine (2)	Higher education Customs State-owned enterprises	Azerbaijan, Georgia, Kazakhstan, Mongolia, Tajikistan, Ukraine, Uzbekistan
March 2019	Mongolia Uzbekistan	14: Armenia (6), Georgia (2), Kazakhstan (1), Kyrgyzstan (1), Tajikistan (2), Ukraine (2)	Political corruption Tax	Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine
4 meetings	9 monitoring reports	45 NGO reports	7 sectors	27 progress updates

During the fourth monitoring round, the **National Co-ordinators** demonstrated a high degree of experience and commitment: they collected information from all relevant government bodies, ensured their participation in all activities, and took the lead in promoting the implementation of new recommendations. However, several challenges remained: delays with the submission of information remained frequent, and

the quality of provided information was not always sufficient to allow the experts to carry out the analysis, statistical data being the most difficult to obtain.

Peer experts play crucial role during the monitoring as they conduct the assessment of the country and propose recommendations for future actions. The fourth round of monitoring showed that the professional level of anti-corruption experts in the region has grown tremendously in terms of the knowledge of international standards and good practices, quality of analysis and drafting and negotiation skills. Many Istanbul Action Plan – and more generally ACN - countries now have excellent pools of domestic experts that are capable of designing and implementing effective anti-corruption reforms. They are also capable and willing to provide assistance to other countries in the region. Many times, their advice to other countries of the region is better adapted, more practical and effective than the advice by experts from other regions or from international organisations. One area where finding good experts was challenging was the anti-corruption expertise in sectors, which shows that this is where further capacity building should be a priority for the countries and for the donor organisations.

NGOs were very active in many countries and provided excellent contributions to the monitoring. They conduct various surveys and studies that governments do not, bring in local knowledge that peer experts lack and highlight sensitive areas, which otherwise cannot be picked up by the monitoring process. This is crucial to ensure the objectivity of the monitoring results and better targeting of the new recommendations to the practical results demanded by the citizens. Many NGOs are extremely professional and work in close partnership with the governments, especially in Georgia and in Ukraine. At the same time, civil society activists face serious challenges. Attacks on NGOs have increased in recent years in many Istanbul Action Plan countries, several activists were jailed in Azerbaijan and Kazakhstan, and even murdered in Ukraine. In addition, NGOs face difficulties ensuring sustainable funding for their work, with donor funding often changing priorities. In some countries, e.g. in Tajikistan and Uzbekistan, NGOs still require more training to become more professional. In this respect, the Istanbul Action Plan monitoring provides a useful structure, as demonstrated by the efforts of the Kyrgyz NGO “Result” that developed its research, negotiation and fundraising skills through the preparation of regular shadow reports.

Table 61. IAP recommendations implementation rate

Country	Share of implemented recommendations*				Average implementation rate
	2016	2017	2018	2019	
Armenia	83%	91%	100%	24%	75%
Azerbaijan	78%	72%	48%	68%	67%
Georgia	92%	55%	81%	73%	75%
Kazakhstan	83%	94%	38%	69%	71%
Kyrgyzstan	56%	80%	83%	50%	67%
Mongolia	41%	58%	32%	77%	51%
Tajikistan	60%	56%	42%	42%	50%
Ukraine	72%	100%	65%	58%	74%
Uzbekistan	95%	91%	78%	100%	91%
Total	73%	77%	63%	62%	69%

Note: Implemented recommendations include the following ratings: fully, largely or partially implemented recommendations as rated in the monitoring reports and recommendations rated as having significant progress or progress in the progress updates.

The measurable indicator for assessing the results of the Istanbul Action Plan is the rate of implementation of its recommendations by the countries. Overall, countries have implemented 71% of recommendations during 2016-2019. This is a positive result which confirms that countries are making efforts to implement the ACN recommendations. However, it is difficult to assess if this compliance rate is sufficient or not, as it largely depends on the type of the recommendations, e.g. some recommendations may require constitutional changes that require time and political will, while others are more technical and easier to

implement. The qualitative indicators to assess the results of the Istanbul Action Plan involve adoption and enforcement of legislation, reforming institutions, improving practical corruption-prevention measures in the public administration and in business, strengthening enforcement actions. These results were analysed in substantive chapters above.

Corruption prevention in the public sector

In 2009, ACN initiated its peer learning work to help countries build capacity through exchange of experience and identification of good practices. Since then, the ACN organized many experts' seminars, produced and disseminated a series of publications. The most recent study on prevention of corruption⁹²⁴ reviewed a broad range of corruption prevention tools that were developed and proved to be effective at the national level in the ACN region and in other countries. Building on this study, during the reported period, the ACN has deepened this work in order to identify good practices of corruption prevention at the sectoral and local level.

In May 2016, ACN together with the OSCE and UNDP organised a seminar⁹²⁵ in Kyrgyzstan that discussed effective approaches to corruption prevention at the sectoral level. Based on the presentations, results of the discussions and additional research, the Secretariat prepared a study "**Corruption Prevention in the Education, Extractive and Police Sectors**" that focused on corruption prevention at the sectoral level.

To discuss effective approaches to prevention of corruption at the local level, the ACN organized two seminars – in December 2017 in Tirana together with the UNDP and RAI, and in November 2018 in Vienna together with the OSCE and RAI. Based on the results of these events together with the data collected from countries using questionnaires and additional literature research, the Secretariat developed a study "Prevention of Corruption at the Local Level" (forthcoming).

Back in 2011, ACN published the study "**Asset Declarations for Public Officials - A Tool to Prevent Corruption**"⁹²⁶. Since then the good practice in this area has developed rapidly in the region, thus necessitating to update this study to present the most effective approaches. To help collect data for this update, the ACN together with the UNDP, the Regional Hub of Civil Service in Astana and RAI organized a seminar in Tbilisi in June 2017. The Secretariat presented the intermediary findings of the new study at the side event during the UNCAC Conference of State Parties in November 2017 in Vienna and at the OECD/DAC GOVNET seminar in 2018.

The table below provides a summary of the activities related to corruption prevention in public administration, including the expert seminars and the studies. The studies can be found at www.oecd.org/corruption/acn/preventionofcorruption.

Table 62. Summary of ACN activities related to corruption prevention

Hosts and co-organisers	Expert seminar	Study
Kyrgyzstan, OSCE (Secretariat, OCEEA and the Centre in Bishkek)	"Impact of corruption prevention measures at national and sectoral level", 26-27 May 2016, Issyk-Kul, Kyrgyzstan	"Corruption Prevention in the Education, Extractive and Police Sectors".
Georgia (Civil Service Commission), UNDP, RAI and Regional Civil Service Hub of Astana	"Assessing the Implementation and Effectiveness of Systems for Disclosing Interests and Assets by Public Officials", 6-7 June 2017, Tbilisi, Georgia	
UNODC, UNDP	UNCAC Conference of State Parties, 6-10 November 2017, Vienna, Austria (back-to-back participation)	
Albania, UNDP, RAI	"Corruption Free Cities of the Future", 6-7 December 2017 in Tirana, Albania	Prevention of corruption at the local level (forthcoming)
OSCE (OCEEA), RAI	"New Approaches and Practical Tools to Prevent Corruption at the Local Level", 5 and 6 November 2018, Vienna, Austria	
	6 seminars	2 studies

Key feature of the corruption prevention work is that the ACN organised all seminars in co-operation with many international partner organisations. This approach allowed not only pulling the scares of financial resources and sharing logistical tasks, but also sharing expertise among different organisations, reaching out to various stakeholders and producing knowledge products that can be used and shared by greater audience.

Business integrity

The ACN pioneered the business integrity work in the region. In 2016, it published the study “Business Integrity in Eastern Europe and Central Asia”⁹²⁷ that examined current practices of companies and governments aimed to prevent corruption in the business sector, and formulates recommendations on how business integrity can be boosted through specific actions, such as establishing channels for companies to report about corruption, introducing anti-corruption plans in SOEs, and many others.

To disseminate the study and to promote the implementation of its recommendations, the ACN Secretariat in co-operation with the UNDP and EBRD organised a regional conference in January 2017 in Kyiv, Ukraine. The conference provided the first-ever debate on business integrity that involved the governments of the region together with the business leaders and international partners and inspired many initiatives across the region in the following years.

In particular, the conference saw the launch of the joint capacity building project that the ACN and the EBRD implemented during the reported period. During 2017 and 2018, in the framework of the joint project, the EBRD and the ACN, in co-operation with the UNDP, organised **a series of sub-regional awareness- raising seminars**. The methodology for the seminars included the presentation of the recommendations from the 2016 Business Integrity study, international standards and national good practices on specific issues, and break-out working group sessions that allowed the participants to share their own experiences and to discuss how to implement the recommendations and use the best practices in their national context.

Upon the completion of the first phase of the joint project that helped to build the awareness about business integrity through sub-regional seminars, the ACN and the EBRD agreed to develop the second phase of the project that will offer technical training to individual countries and will be provided on demand, conditional to co-funding by the hosts. Many ACN countries have already expressed their interest to host these events. In addition to the above seminars that were organised by the EBRD and ACN in co-operation with the UNPD, many other regional and global events contributed to business integrity promotion.

In addition to the regional activities, the ACN provided assistance to business integrity work in Ukraine. ACN represents the OECD in the Board of the **Business Ombudsman Council of Ukraine** that became the key player in improving business climate in this country and inspired several other countries in the region to create similar institutions. Together with the Business Ombudsman and the EBRD, the ACN contributed to the creation of the **Ukrainian Network for Integrity and Compliance (UNIC)** that was launched in January 2017 as a collective action of companies that committed to integrity in their operations and to promoting it across the country. Throughout the reporting period, the ACN supported the development of UNIC as the member of its Executive Committee and contributed to its various activities, including annual meetings, integrity weeks, development of work programmes, fundraising and international promotion.

The business integrity work implemented during the past four years showed a strong demand both from the governments and from the private sector. For the governments, it helped to understand the role they can play to promote business integrity and to learn about the measures they can implement in practice, integrity of SOEs being one of the main challenges. The private sector in the region responded with enthusiasm to the business integrity work, many SMEs and business associations actively engaged in the discussion of key challenges, such as protection of companies from solicitation and other abuses by the state bodies. In this regard, the business ombudsman institutions that spread across the region were actively seeking to engage in exchange of experience and mutual learning.

Table 63. Summary of ACN activities related to business integrity

Hosts and co-organisers	Expert seminar	Study
North Macedonia (Ministry of Justice)	Conference on Compliance Management in the Private Sector, 10 March 2016, Skopje, North Macedonia	"Business Integrity in Eastern Europe and Central Asia"
Romania (Ministry of Justice)	Presentation of the ACN Business Integrity report, 19-20 May 2016, Bucharest, Romania	
American Chamber of Commerce in Kazakhstan	Business integrity round table with the Prime Minister of Kazakhstan, 23 September 2016, Astana	
Commercial law Development Program (CLDP), US Department of Commerce	Conference on Anti-Corruption, 26-29 September 2016, Kyiv, Ukraine (presentation of the business integrity study)	
Ukraine (Ministry of Economic Development and Trade, Business Ombudsman), EBRD, UNDP	Business Integrity in Eastern Europe and Central Asia, 25-26 January 2017, Kyiv, Ukraine	
UNODC	Business integrity event during the UNCAC COSP, 6-10 November 2017, Vienna, Austria	
BiH	Balkan Compliance and Ethics Forum, 25 May 2018, Sarajevo	
OECD	Round table on business integrity during the OECD Global Forum on Anti-Corruption and Integrity, March 2019	
Seminars organized in the framework of the EBRD/OECD joint business integrity project		
EBRD and UNDP, hosted by Serbian Chamber of Commerce,	Business Integrity in the Western Balkans, 11-12 July 2017, Belgrade, Serbia (organized in the framework of the joint EBRD-OECD project)	
EBRD, UNDP, hosted by the Georgian Government	Building Business Integrity Across the Region, 13-14 March 2018, Tbilisi, Georgia (focused on SMEs)	
EBRD, UNDP, hosted by the Kyrgyz Government	Business Integrity and Compliance in SOEs, 30-31 October 2018, Bishkek, Kyrgyzstan	
Annual meetings organized by UNIC		
UNIC, EBRD, Business Ombudsman Council	Annual Meeting of the Ukrainian Network for Integrity and Compliance (UNIC), 30 May 2018, Kyiv, Ukraine	
UNIC	Annual Meeting of the Ukrainian Network for Integrity and Compliance (UNIC), 17-19 April 2019, Kyiv, Ukraine	

Law-enforcement network

The ACN Law-Enforcement Network (LEN) was initiated in 2010 as a place for the investigators, prosecutors and other law-enforcement practitioners working on corruption cases to come together for mutual support, exchange of good practices and building of professional contacts. The ACN Secretariat also prepares thematic studies on criminalisation and enforcement to provide analytical support for the LEN discussions.

During the reported period, ACN LEN met four times: in December 2016 in Astana, in October 2017 in Baku, in November 2018 in Prague, and in October 2019 in Tashkent. In addition to full LEN meetings, ACN also contributed to the UNODC meeting for law-enforcement practitioners from the Central Asian countries that met in July 2017 in Issyk-Kul. Furthermore, selected LEN members from the ACN region were also invited to take part in the meetings of the Global Law-Enforcement Network (GLEN) in 2017 and 2019 at the OECD headquarters in Paris back-to-back with the meetings of the Law-Enforcement Officials from the WGB countries. Finally, ACN LEN members provided contribution to Asia-Pacific LEN, e.g. at the meeting in Ulaanbaatar in October 2016 and in Seoul in October 2017. The ACN Secretariat also promotes contacts between ACN and other regional LENs by inviting speakers from

different regions to their respective meetings, and sharing thematic studies, training methodologies and other knowledge products.

During the past four years, the ACN Secretariat prepared several thematic studies on confiscation and international co-operation in corruption cases as well as on the independence of prosecutors involved in prosecution of corruption cases. Studies on law enforcement are available at www.oecd.org/corruption/acn/lawenforcement.

During the reported period, the ACN LEN was strengthened institutionally. It now has a Chair from Romania and deputy chair from Ukraine. A LEN contact list was built in addition to the contact list of the ACN National Coordinators, which will make coordination more effective. Communication platform for the ACN LEN is being developed, which can be based on the password-protected website or possibly using a block chain.

Table 64. Summary of ACN activities related to law enforcement network

Hosts and co-organisers	Meetings	Studies
Kazakhstan (Agency for Civil Service Affairs and Anti-Corruption)	7th LEN meeting "Investigation and prosecution of corruption: international co-operation, confiscation of proceeds and independence of prosecutors", 19-21 December 2016, Astana, Kazakhstan	"International Co-operation in Corruption Cases in Eastern Europe and Central Asia"
OSCE, UNODC	Practical Seminar on recovering Proceeds of Corruption in Central Asia and Southern Caucasus, 29-30 June 2017, Issyk-Kul, Kyrgyzstan	
Azerbaijan (Anti-Corruption Department under the Prosecutor General)	8th LEN Meeting, 24-28 October 2017, Baku, Azerbaijan	"Confiscation of Instrumentalities and Proceeds of Corruption Crimes in eastern Europe and Central Asia".
Czech Republic	9th LEN meeting, 14-16 November 2018, Prague, Czech Republic, back-to-back with the IBA Central and Eastern Europe and Central Asia Anti-Corruption Enforcement and Compliance Conference	"The Independence of Prosecutors" (forthcoming)
South Korea (Anti-Corruption Agency) ADB, UNDP and OECD/GOV	3 rd meeting of the Law Enforcement Network for Asia-Pacific, 15-16 November 2017, Seoul, South Korea	
Uzbekistan	10 th LEN meeting, 14-17 October 2019, Uzbekistan	
OECD	GLEN meeting, 10-11 December 2019, Paris	

The key feature of the LEN meetings is that they focus on the enforcement practices based on presentations of real-life cases made by practitioners from the ACN and other countries, and not international standards or legislation. All meetings include working group sessions where participants work on hypothetical case studies. Finally, participation in the LEN meetings is open only for the law-enforcement practitioners, i.e. investigators and prosecutors who work on corruption cases, and not for the representatives from the executive or other state institutions and international organisations. LEN meetings also provide possibility for bilateral meetings for delegates to discuss their actual cases, the meetings are conducted in confidential settings, and no substantive reports are made public.

One important outcome of LEN discussions over the past several years was the consensus that high-level corruption represents the main challenge in the region, and the agreement to focus future work on this issue. This will include a thematic study on high-level corruption and the development of a regional matrix of high-level cases that the Secretariat will develop based on information about relevant allegations that

will be collected from open sources, such as media and other reports. The matrix will be used as a reference document for the discussions in LEN meetings to exchange good practices about enforcement actions that can be taken in high-level cases and to encourage law-enforcement practitioners from all the countries to take such enforcement actions.

Country projects

In addition to regional work described above, the ACN provided support for several country projects, notably for Ukraine⁹²⁸, Kyrgyzstan⁹²⁹, Latvia, Romania and Uzbekistan. These projects were tailor-made for the specific demand from the countries and benefited from targeted donor finance. In all cases, the country projects provided capacity building support in areas of ACN expertise and value-added.

Country project for **Ukraine** since its launch in 2017, focused on the support for the creation of specialised anti-corruption law-enforcement bodies. During the current Work Programme support was provided to NABU, SAPO, ARMA and BOC. The training methodology that was originally developed for NABU – that is based on a hypothetical case study and simulated investigation teams – has further been used to train law-enforcement practitioners in other countries, and for the working-groups organised during LEN and GLEN meetings. Support to business integrity work in Ukraine further informed regional work on this subject.

Country project in **Kyrgyzstan** aimed to support the country in reforming its Criminal and Criminal Procedure Codes as recommended by the ACN and training its law-enforcement practitioners to apply this new legislation in practice.

Country project in **Latvia** helped analyse shortcomings regarding investigation and prosecution of corruption offences related to money laundering and to build capacity of law-enforcement practitioners to apply them in practice.

Romanian country project helped the country to undertake an external evaluation of its national anti-corruption strategy and provide recommendations for the development of the new strategy.

Finally, the country project **Uzbekistan** build on the experience of all other country projects and provided support to a broad range of objectives, including the IAP monitoring, review of anti-corruption legislation, including criminal code, develop national anti-corruption strategy and build capacity of the anti-corruption bodies, including the Academy of the Office of the Prosecutor General and to the Inter-departmental Anti-Corruption commission.

Steering Group

The ACN Steering Group met annually back-to-back to the monitoring meetings in September 2016 and 2017, in July 2018 and in March 2019. These meetings provide an important opportunity for anti-corruption decision-makers from the region to learn what is going on in other countries and share their own experience in the framework of a Tour-de-table. The Steering Group meetings agenda always included updates about the ACN Work Programme implementation and work plans for the next year, that were supported by the Annual Activity Reports that included performance indicators and information about the implementation of the Fundraising Strategy. They also included updates from international partner organisations and various parts of the OECD about their activities and plans that helped to coordinate among various stakeholders.

Impact of ACN work

Regarding the impact of the ACN on the level of corruption in the region, it is impossible to separate and single out the role of this initiative from other factors that lead to reduction or increase in corruption, such as demand of the society for change, political response to this demand or ‘will’ to reform, technical capacity

and resources available for reform and other opportunities that create momentum for change, like national elections and changes of regimes, EU integration prospects, large investment projects, like “Belts and Roads”, and other general framework conditions. Therefore, it is necessary to assume that the impact of the ACN is one among many factors that create changes. Changes in the level of corruption in the region are measured by many international and domestic surveys.

Governments in many ACN countries conduct **domestic corruption surveys**, including “how serious is corruption among other problems”, “most corrupt and most trusted institutions” and “level of corruption as perceived by public opinion surveys about experience of corruption”. Romania, Latvia and Serbia are clear leaders in this field. Among the Istanbul Action Plan countries, Kyrgyzstan, Mongolia and Tajikistan are the only where the government regularly conducts and publishes the results of domestic anti-corruption surveys. In most of the ACN countries, governments commission domestic surveys. In all the ACN countries, NGOs with the support of international and donor organisations conduct various surveys of corruption which are extremely useful for the identification of problems and raising awareness. Unfortunately, these surveys are conducted using different methodology and only for short periods of time, and the results cannot be used for mid- or long-term analysis and comparison.

In this context, **international corruption surveys** provide unique sources of regular and comparable information about corruption trends in the region. The much-contested Corruption Perception Index (CPI) remains the main available international rating system for global use. According to the CPI, the ACN countries’ average score is approximately 36 points (including IAP countries) and 42 points (except IAP countries). Istanbul Action Plan countries show slow but steady improvement. Georgia continues to be the champion of the region, though its amazing progress has begun to flatten out. Several countries – Mongolia, Tajikistan, Ukraine and Uzbekistan – have shown moderate growth. Armenia, Kazakhstan and Kyrgyzstan remained stable. Azerbaijan showed a disappointing decline. See chapter 1 of this report for more information on the anti-corruption trends and standing of ACN and IAP countries in different ratings.

International corruption surveys are useful indicators about the general level of corruption in the countries, but they do not provide detailed information about various aspects such as spread of corruption in different sectors or effectiveness of various anti-corruption measures, which are important for assessing the impact of anti-corruption work of the governments and the impact of the ACN. To cover this gap the ACN engaged to develop **performance indicators** for the region.

The first set of indicators developed in 2016 tried to establish a link between the ACN recommendations and their implementation by the countries; however, it appeared impossible for the countries to collect such data. The second set of indicators, reviewed in 2017, aimed to trace progress in the main areas of anti-corruption activities of the governments that are also covered by the ACN activities. Governments provided data using these indicators for 2017, 2018 and 2019. This data was used for the development of the ACN annual activity reports.

These indicator-based reports provided insights into some regional trends, like the development of the national anti-corruption strategies, resources allocated to the anti-corruption work, including to the specialised anti-corruption bodies, progress regarding the implementation of asset and interest declarations, introduction of whistle-blower protection, publication of open data, sanctioning corruption offences and others. However, it is still difficult to ensure the quality of the collected data and to develop its meaningful analysis and interpretation.

To advance the development of the anti-corruption performance indicators, the ACN Steering Group adopted the outline of the new Work Programme for 2020-2024 that includes performance indicators in several areas (see below) that will be used for the Istanbul Action Plan monitoring.

Box 72. Performance areas of Istanbul Action Plan monitoring under the new Work Plan for 2020-2024

PERFORMANCE AREAS
PA-1 Anti-Corruption Policy
PA-2 Conflict of Interest
PA-3 Asset and Interest Disclosure
PA-4 Protection of Whistleblowers
PA-5 Independence of Judiciary
PA-6 Independence of Prosecution Service
PA-7 Integrity in Public Procurement
PA-8 Business Integrity
PA-9 Enforcement of Corruption Offences
PA-10 Enforcement of Liability of Legal Persons
PA-11 The Recovery and Management of Corruption Proceeds
PA-12 Investigation and Prosecution of High-Level Corruption
PA-13 Specialised Investigative and Prosecutorial Bodies

ACN funding

ACN, like other OECD global relations programmes, is funded mostly by voluntary contributions. This funding model has inherent risks, and ensuring ACN financial stability remains a challenge, as it was identified by the external evaluation in 2015. To address this challenge, the Steering Group developed and adopted ACN Fundraising Strategy⁹³⁰ as a part of the Work Programme for 2016-2019. The Fundraising Strategy includes several main directions, such as developing and diversifying existing donor base, continuing the good practice of co-funding activities with partner organisation, and – the most innovative approach – introducing annual fees for the ACN countries.

Introduction of annual fees was an important decision for two reasons. Firstly, it demonstrated to the donors that the participating countries were taking the ownership and responsibility for the ACN. Secondly, while the annual fees are relatively small, they will provide long-term stability for the ACN future funding. The implementation of the annual fees required preparatory time to allow the countries to ensure domestic approvals necessary for allocation of funding for the ACN and to find the most appropriate financial mechanism to transfer the funds. As of January 2020, the following countries provided their annual fees to the ACN: Armenia, Azerbaijan, Georgia, Kazakhstan, Lithuania, Mongolia, North Macedonia and Uzbekistan. Further work will be required to ensure that more countries provide their regular funding to this programme.

Table 65. ACN funding in 2016-2019

Donors	Target countries/programme	Year	Spending*, EUR
Voluntary contributions	Regional work	OECD ref. no	
Switzerland	ACN (2013-15 programme)	2013 (DI130423)	9,800
Switzerland	ACN (2016-19 programme)	2016 (DI160526)	850,000
United States	ACN (2017-19 programme)	2017 (D00189)	207,710
United States	ACN (2016 programme)	2016 (DI160928)	177,730
United States	ACN (2016 programme)	2016 (DI160934)	22,567
Liechtenstein	ACN (2016 programme)	2016 (DI161148)	18,301
United States	ACN (2018-19 programme)	2018 (D01082)	191,017
Liechtenstein	ACN (2018-19 programme)	2018 (D01455)	17,108
Liechtenstein	ACN (2018-19 programme)	2018 (D02468)	34,716
Liechtenstein	ACN (2018-19 programme)	2019 (D04018)	24,897
ACN countries	ACN (2018-19 programme)	2018 (DP00093)	66,123
United States	ACN (2018-19 programme)	2019 (D03421)	159,356
United States	ACN (2019 programme)	2019 (D04074)	43,041

Donors	Target countries/programme	Year	Spending*, EUR
International Investment Bank	ACN (2019 programme)	2019 (D03998)	10,000
Sub-total			1,832,365
	Country projects		
Sweden	Ukraine	2015 (DI151427)	512,890
Lithuania	Ukraine	2016 (D00032)	20,000
Sweden	Ukraine	2016 (D00075)	727,370
United States	Kyrgyzstan	2016 (DI160240)	219,306
United States	Ukraine	2018 (D01246)	32,420
Poland	Ukraine	2018 (D01449)	46,850
United States	Uzbekistan	2018 (D01244)	528,211
United States	Ukraine	2019 (D03042)	46,132
Norway	Ukraine	2019 (D02590)	148,309
Sub-total			2,281,487
In-kind funding		Location	
ACN countries	High Level Meeting	Paris, Sept. 2016	40,000
OSCE	Prevention seminar	Issyk-Kul, May 2016	30,000
Kazakhstan	LEN meeting	Astana, Dec 2017	40,000
Romania	Romania country project	Bucharest, 2016	15,000
UNDP, EBRD	Business Integrity seminar	Kiev, January 2017	13,500
EBRD	Business Integrity seminar	Belgrade, July 2017	40,000
RAI, UNPD, Kazak, Georgia	Asset declarations seminar	Tbilisi, June 2017	32,000
Azerbaijan	LEN meeting	Baku, November 2017	69,000
UNDP, Albania	Prevention seminar	Tirana, Dec 2017	38,500
UNODC, OSCE	Enforcement seminar	Issyk-Kul, July 2017	18,000
US, UNDP, EBRD, EU, Ukraine	Co-funding of various activities in Ukraine	January-December 2017	15,000
Azerbaijan, Kazakhstan, Georgia, Tajikist., Ukraine	Monitoring, return missions	February-December 2017	8,200
ACN countries, delegates	ACN Plenary	Paris, September 2017	46,000
EBRD, UNDP	Business Integrity Seminar	October, 2018	125,800
OSCE and RAI	Prevention seminars	Vienna, Nov 2019	62,585
Azerbaijan, Tajik., Ukraine	LEN Meeting	Baku, October 2018	6,241
Armen., Kazakh., Kyrgyz., Ukraine, Mong., Uzbekist.	Monitoring, return missions	Jan-Dec 2018	41,952
ACN Countries, delegates	ACN Plenary, self-funding	Paris, March 2018	92,167
NABU, Poland	Ukraine Country project	Jan-Dec 2018	1,706
ACN country funding	Estimate	2019	245,217
Sub-total:			980,868
OECD	ACN staff costs	-	465,725
OECD	ACN operational costs	-	303,404
Sub-total:			769,129
Grand Total			5,863,849

* Actual spending for 2016-2019.

External evaluation

The first external evaluation of the ACN was conducted in 2015 and proved to be useful for identifying strengths and weaknesses of this regional initiative and to address them for the development of the Work Programme. Building on this positive experience, the ACN commissioned the second external evaluation in 2019. External consultant recruited to conduct this evaluation presented the methodology and the work plan to the Steering Group meeting in March 2019, the final report was presented for the written review of the Steering Group in autumn 2019 and was published on the ACN web site. The main findings included the following:

The evaluation found numerous indications that the ACN is making meaningful contributions to the anti-corruption efforts and knowledge both in member countries and in the discipline overall. It confirmed the previously established overall relevance, high quality, and efficiency of ACN activities and outputs.

The relevance of various ACN activities was confirmed across several dimensions, even if it varies across the membership base, as not all members took part in all the programme components. The Istanbul Action Plan (IAP) was the main component where only a select number of countries took part, and for these countries, the relevance was confirmed by intense engagement with the process, among other indicators. Similar levels of engagement and ownership have been documented in connection with the Law Enforcement Network (LEN), including members requests for further in-country seminars. For both of these, the ACN peer-based methodology was seen as the most important factor in rendering the interventions relevant for the members. For other components, much relevance was drawn from the fact that thematic decisions were based on member suggestions rather than external strategies, and thus were fully responsive to member needs. Among these, the work on business integrity was additionally relevant as a less-frequently seen area of intervention, and one where the OECD and its partner (the EBRD) possessed a comparative advantage vis-à-vis other international organisations.

In terms of effectiveness, the numerous anecdotes and testimonials indicated the ACN's contribution to the fight against corruption. Most of these results concern the IAP monitoring process where the level of interaction was considerable and sustained, although evidence about other project components also existed. Much positive feedback existed in connection with the law enforcement network and the case-study based seminars, in particular. One analysis of post-seminar survey results demonstrated a striking improvement in knowledge, but such evidence was not systematically available.

The ACN continued to demonstrate efficiency through its parsimonious management of resources, identification and use of cost-free resources, and “recycling” or “re-purposing” outputs in multiple ways. It also continued to cooperate with other organisations to avoid duplication, maximise (and secure additional) funding and achieve synergies. Programme savings were also realised through member countries frequent in-kind contributions both when hosting ACN events and through covering the costs of their representatives' participation in ACN events. Member countries have also begun making voluntary financial contributions during the period under consideration (2016-2019).

An overview of the ACN's particular strengths:

- Expertise was consistently identified as the most notable asset of the ACN's team, including the experts engaged in various activities, and was reflected in the outputs such as monitoring reports and thematic seminars.
- The high quality of Istanbul Action Plan monitoring reports was also due to the overall approach (methodology): each review considered all topics comprehensively; analysis was quite in-depth; peer-based assessments by regional experts brought a profound understanding of the context and the challenges reformers faced; and, the extent of civil society inclusion was exemplary.
- The methodology of the seminars—the practical, case-study-based format of LEN seminars in particular—had likewise been highlighted by a number of respondents as more effective than other

approaches they have encountered. Limited but arguably indicative evidence confirmed that the seminars improve the participants' knowledge levels.

- ACN's engagement and cooperation with partners also stood out. Other international organisations sought to implement their own outreach mandates together with the ACN (for instance, the EBDR work on business integrity, and RAI aspiration to further integrate their efforts). ACN's convening capacity appeared to result from its long-standing presence and track record in the region, and the institutional status of the OECD.
- The Secretariat's notable aptitude in operating efficiently and maximising limited resources, including through cooperation with other partners, remained at a commendable level.

The external evaluation also provided several recommendations for further strengthening the ACN, including the following:

- The ACN work on modifying IAP monitoring methodology in order to obtain a comparable scoring system should be continued. It would be advisable to articulate explicitly (if only internally) what will be lost and what gained in comparison with the previous methodology. The Secretariat should thereafter monitor the application of the revised methodology to confirm the additional benefits and potential unintended drawbacks.
- The ACN should likewise continue its efforts to broaden its monitoring efforts to produce a Regional Outlook. It should articulate how this "league table" is to be used (by the countries themselves, by the anti-corruption community) and how it will contribute to the fight against corruption. Here too, the Secretariat should monitor the process for unanticipated benefits and potential obstacles.
- The Secretariat should review the results framework for all Work Programme components. Additional detail would be helpful: for instance, articulating distinct immediate, intermediate, and longer-term outcomes (and their indicators), and the assumed relationship between interventions and anticipated results, particularly for the thematic studies and seminars. The changes in the monitoring methodology could change the dynamics of relationships between the Secretariat and its members and affect the anticipated results.

New work programme

The outline of the Work Programme for 2020-2024 was prepared by the Secretariat and adopted by the Steering Group at its meeting in March 2019. The outline foresees several main innovations in the ACN activities, including the following:

- The 5th round of the Istanbul Action Plan will use a new methodology that will be based on performance indicators and will involve annual monitoring of all participating countries;
- A selection of performance indicators – key performance indicators – will be used for the collection of data from all ACN countries and for the development of the regional outlook, on annual basis;
- The Law Enforcement Network will focus on one theme – high-level corruption – throughout the whole Work Programme period and will develop a matrix of high-level cases from the region;
- Corruption prevention work will focus on one or two selected sectors;
- Business integrity work will focus on technical trainings that will be provided to individual countries on demand together with supporting participation of the ACN business integrity practitioners in the global networking.

Based on this outline, the Secretariat will develop the detailed Work Programme that will take into account the findings of the external evaluation. It is expected that the new Work Programme will be presented for the adoption by the Steering Group meeting and endorsement of the High-Level meeting in March 2020, in the framework of the OECD Global Forum on Anti-Corruption and Integrity.

Notes

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² Idem, pp. 7-8.

³ Idem, pp. 11 and 13.

⁴ OECD Recommendation of Council on Public Sector Integrity, www.oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf. Public sector integrity is defined as “consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector.”

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⁶ Norton Rose Fulbright (2017), Countries curbing corruption, Research comparing 41 national anti-corruption strategies, p. 5, available at www.nortonrosefulbright.com/en/knowledge/publications/96bbe202/countries-curbing-corruption

⁷ Eastern Partnership-Council of Europe Facility Project on “Good Governance and Fight against Corruption” Handbook on Designing and Implementing Anti-Corruption Policies (2013), pages 10-20, <https://rm.coe.int/16806d8ad7>.

⁸ OECD (2017), Government at a Glance 2017, OECD Publishing, Paris, page 156, http://dx.doi.org/10.1787/gov_glance-2017-en.

⁹ OECD SIGMA (2018), Toolkit for the preparation, implementation, monitoring, reporting and evaluation of public administration reform and sector strategies. The Toolkit provides practical guidance on each stage of the development, implementation, monitoring and overall management of strategies that could be used for anti-corruption policies as well. See at: www.sigmaweb.org/publications/SIGMA-Strategy-Toolkit-October-2018.pdf.

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¹² Interesting examples of public participation, including e-participation, are provided in the publication “Quality of Public Administration, A Toolbox for Practitioners”, European Union, 2015, pages 46-51, cited above.

¹³ OECD SIGMA (2018), Principles of Public Administration for European Neighbourhood Policy countries, www.sigmaweb.org/publications/principles-public-administration-european-neighbourhood-policy.htm.

¹⁴ OECD/ACN (2016), Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges 2013-2015, page 40, cited above.

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- ¹⁷ OECD/ACN (2019), Fourth monitoring round report on Mongolia, pp. 35-36; OECD/ACN (2017), Fourth monitoring round report on Ukraine, pp. 23-24 and 36-38.
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- ²⁴ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 44-47.
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- ²⁶ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 17, 20, 35.
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- ²⁹ See UN Guide for Anti-Corruption Policies (2003) for useful examples of various activities for targeted audiences, pages 69-77, available at www.unodc.org/pdf/crime/corruption/UN_Guide.pdf.
- ³⁰ OECD/ACN (2015), Thematic Study, Prevention of Corruption in the Public Sector in Eastern Europe and Central Asia, pages 73-77, www.oecd.org/corruption/acn/preventionofcorruption/.
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- ³³ OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 57.
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- ⁵⁰ OECD/ACN (2019), Progress update by Ukraine, Assessment of progress under Recommendation 3, p. 20, www.oecd.org/corruption/acn/OECD-ACN-Ukraine-Progress-Update-2019-EN.pdf.
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- ⁷⁴ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 24-40; OECD/ACN (2019), Progress update by Kyrgyzstan, pp. 14-23, <http://www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-Progress-Update-2019-RU.pdf>.
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- ¹⁰⁵ Article 26, Law LRU-419 of 3 January 2017 On Combating Corruption.
- ¹⁰⁶ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, p. 83.
- ¹⁰⁷ Articles 7.4, 8.5, 9.1, 12.
- ¹⁰⁸ Recommendations No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, Articles 8, 13, 14, 26, <https://rm.coe.int/16806cc1ec>.
- ¹⁰⁹ Actual COI refers to the situation of real conflict, apparent COI means that it appears that there is a conflict, whereas in reality there is not, and potential implies that COI may arise even if it is not the case at a given moment. All three types of COI require some form of management.
- ¹¹⁰ Available at www.oecd.org/gov/ethics/managingconflictinterestinthepublicservice.htm
- ¹¹¹ OECD (2003), Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service, www.oecd.org/gov/ethics/2957360.pdf.

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- ¹¹³ OECD Guidelines for Managing Conflict of Interest in the Public Service, Report on Implementation, www.oecd.org/gov/ethics/39691164.pdf
- ¹¹⁴ OECD/SIGMA (2007), Conflict-of-Interest Policies and Practices in nine EU member states: a comparative review, www.oecd-ilibrary.org/docserver/oecd_papers-v7-art4-en.pdf
- ¹¹⁵ Articles 432-12 and 432-13 of the Criminal Code of France.
- ¹¹⁶ OECD/ACN (2018), Fourth monitoring round report on Armenia, pp. 48-50.
- ¹¹⁷ OECD/ACN (2016), Fourth monitoring round report on Azerbaijan, pp. 37-38; OECD/ACN (2019), Progress update by Azerbaijan, p. 21.
- ¹¹⁸ OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 34-35; OECD/ACN (2019), Progress update by Georgia, pp. 43-46.
- ¹¹⁹ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, pp. 42-44.
- ¹²⁰ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 30-31.
- ¹²¹ OECD/ACN (2019), Fourth monitoring round report on Mongolia, pp. 45-46.
- ¹²² OECD/ACN (2017), Fourth monitoring round report on Tajikistan, pp. 49-50.
- ¹²³ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 75-79.
- ¹²⁴ Explanatory memorandum to Recommendation No. R(2000)10, available at: <https://rm.coe.int/16806cc1ec>.
- ¹²⁵ Post-employment restriction has been in focus of the OECD’s integrity work, see for example OECD Post-Public Employment: Good Practices for Preventing Conflict of Interests (2010). GRECO has also looked into the issue extensively as a part of its evaluations and horizontal work. See also UNCAC article 12(2)(e), which is under review in the second cycle of the Implementation Review Mechanism.
- ¹²⁶ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 46.
- ¹²⁷ OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service, paragraph 2.3.3.
- ¹²⁸ As an example, Austrian and German approach are considered good practice among OECD countries, described in OECD (2019), Integrity Review of Argentina, pp. 36-27, www.oecd.org/publications/oecd-integrity-review-of-argentina-g2g98ec3-en.htm
- ¹²⁹ New Brunswick Conflict of Interest Commissioner, 2014 Annual Report, www.gnb.ca/legis/business/currentsession/58/58-1/LegDoc/Eng/July58-1/AnnualReportCOI-e.pdf
- ¹³⁰ OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 49.
- ¹³¹ OECD/ACN (2016), Fourth monitoring round report on Georgia, p. 35.
- ¹³² OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 46.
- ¹³³ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 44.
- ¹³⁴ OECD/ACN (2017), Fourth monitoring round report on Tajikistan, p. 50.
- ¹³⁵ OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 50.
- ¹³⁶ OECD/ACN (2019), Progress update by Ukraine, p. 53.
- ¹³⁷ Data from country survey collected by the ACN secretariat in preparation of the 2018 annual report. 15 countries submitted the answers.
- ¹³⁸ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 49.

- ¹³⁹ OECD/ACN (2017), Fourth monitoring round report on Ukraine, p. 74.
- ¹⁴⁰ See at www.korrupsioon.ee/en/conflict-interests.
- ¹⁴¹ Information provided to the ACN Secretariat by the national co-ordinator of Estonia.
- ¹⁴² OECD (2019), Integrity Review of Argentina, p. 73, www.oecd.org/publications/oecd-integrity-review-of-argentina-g2g98ec3-en.htm.
- ¹⁴³ Rossi, Ivana M., Laura Pop, and Tammar Berger. 2017. Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure. Stolen Asset Recovery (StAR) Series. Washington, DC: World Bank. doi:10.1596/978-1-4648-0953-8
- ¹⁴⁴ Information on the OECD/ACN work on prevention of corruption can be found at www.oecd.org/corruption/acn/preventionofcorruption.
- ¹⁴⁵ See at www.oecd.org/corruption/anti-bribery/47489446.pdf.
- ¹⁴⁶ UNCAC, Thematic Compilation of Prevention-related Information, Article 8: Financial Disclosure / Declaration of Assets, www.unodc.org/unodc/en/corruption/WG-Prevention/financial-disclosure-declaration-of-assets.html
- ¹⁴⁷ OECD/ACN (2016), Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges, 2013-2015, pp. 178-183.
- ¹⁴⁸ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 49.
- ¹⁴⁹ OECD/ACN (2017), Fourth monitoring round report on Tajikistan, p. 54-55.
- ¹⁵⁰ OECD/ACN (2016), Fourth monitoring round report on Azerbaijan, p. 38; OECD/ACN (2019), Progress update by Azerbaijan, p. 26, www.oecd.org/corruption/acn/OECD-ACN-Azerbaijan-Progress-Update-2019-ENG.pdf
- ¹⁵¹ A document adopted in 2017 by European Commission and European External Action Service that identifies 20 key deliverables for 2020 and intends to contribute to the joint work of the EU Member States and Partner countries in key priority areas. See at https://eeas.europa.eu/sites/eeas/files/swd_2017_300_fl_joint_staff_working_paper_en_v5_p1_940530.pdf
- ¹⁵² OECD (2019), Integrity Review of Argentina, p. 127, www.oecd.org/publications/oecd-integrity-review-of-argentina-g2g98ec3-en.htm
- ¹⁵³ Rossi, Ivana M., Laura Pop, and Tammar Berger. 2017. Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure. Stolen Asset Recovery (StAR) Series. Washington, DC: World Bank, p. 25, <http://documents.worldbank.org/curated/en/517361485509154642/pdf/112302-PUB-Box402876B-PUBLIC-PUBDATE1-13-17.pdf> The term “family members” is generally understood to include the filer’s spouse and children. However, a country’s cultural and legal context may broaden that definition to include other relatives, dependents living in the same household, or domestic partners who are not legally married, to name just a few alternatives.
- ¹⁵⁴ Rossi, Ivana M., Laura Pop, and Tammar Berger. 2017. Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure. Stolen Asset Recovery (StAR), pp. 44-47, cited above.
- ¹⁵⁵ See: Kotlyar, Dmytro; Pop, Laura. 2019. E-filing Asset Declarations: Benefits and Challenges (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/448191561650076794/E-filing-Asset-Declarations-Benefits-and-Challenges>
- ¹⁵⁶ OECD (2017), OECD Integrity Review of Colombia: Investing in Integrity for Peace and Prosperity, OECD Public Governance Reviews, OECD Publishing, Paris, <https://doi.org/10.1787/9789264278325-en>.
- ¹⁵⁷ See, for example: World Bank (2016), “Asset Declarations: A Threat to Privacy or a Powerful Anti-Corruption Tool?”, Dmytro Kotlyar and Laura Pop, www.worldbank.org/en/news/opinion/2016/09/26/asset-declarations-a-threat-to-privacy-or-a-powerful-anti-corruption-tool
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¹⁵⁹ OECD (2011), *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, OECD Publishing, Paris, pp. 81-82.

¹⁶⁰ Universal Declaration of Human Rights (Art. 10), International Pact on Civil and Political Rights (Art. 14), European Convention of Human Rights (Art. 6), etc.

¹⁶¹ See, among many others, judgments in cases of *Campbell and Fell v. UK* (applications no. 7819/77, 7878/77), *Incal v. Turkey* (no. 22678/93), *Kyprianou v. Cyprus* (no. 73797/01), *Sovtransavto Holding v. Ukraine* (no. 48553/99), *Brumarescu v. Romania* (no. 28342/95), *Ryabykh v. Russia* (no. 52854/99), *Henryk Urban and Ryszard Urban v. Poland* (no. 23614/08).

¹⁶² See, in particular, Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, 2010, <https://rm.coe.int/16807096c1>.

¹⁶³ See, in particular, reports on the Independence of the Judicial System ([www.venice.coe.int/webforms/documents/CDL-AD\(2010\)004.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2010)004.aspx)), on Judicial Appointments ([www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)028-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e)) and numerous country-specific opinions, including on Armenia, Azerbaijan, Kyrgyzstan, Georgia and Ukraine (www.venice.coe.int/webforms/documents/?topic=27&year=all).

¹⁶⁴ See opinions of the CCJE (www.coe.int/en/web/ccje/home), especially Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, Opinion No. 3 (2002) on ethics and liability of judges, Opinion No. 10 (2007) on "Council for the Judiciary in the service of society", Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, Opinion No. 19 (2016) on the role of court presidents, Opinion No. 21 (2018) on preventing corruption among judges. See also *Magna Carta of Judges (Fundamental Principles)*, 2010, <https://rm.coe.int/2010-ccje-magna-carta-anglais/168063e431>

¹⁶⁵ See, e.g., the Parliamentary Assembly of the Council of Europe Resolution 1703 (2010) on judicial corruption, 2010, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17805&lang=en>; European Charter on the Statute of Judges, 1998, [https://rm.coe.int/ref/DAJ/DOC\(98\)23](https://rm.coe.int/ref/DAJ/DOC(98)23).

¹⁶⁶ Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly resolutions no. 40/32, 1985, and no. 40/146, 1985, www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx; Bangalore Principles of Judicial Conduct, 2002, www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf. See also reports by the UN Special Rapporteur on the independence of judges and lawyers www.ohchr.org/EN/Issues/Judiciary/Pages/Annual.aspx.

¹⁶⁷ See, among others: documents of Copenhagen, Moscow, Istanbul meetings of the OSCE Conference on the Human Dimension; Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, OSCE/ODIHR, www.osce.org/odihr/KyivRec.

¹⁶⁸ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 51.

¹⁶⁹ See European Commission, Eastern Partnership - 20 Deliverables for 2020, Focusing on key priorities and tangible results, SWD(2017) 300 final, 2017, p. 26, available at https://eeas.europa.eu/sites/eeas/files/swd_2017_300_f1_joint_staff_working_paper_en_v5_p1_940530.pdf.

¹⁷⁰ "Corruption in the judiciary threatens the rule of law and protection for human rights", Press-release, United Nations Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, October 2012.

¹⁷¹ Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, paragraphs 4 and 7 of the Appendix.

¹⁷² *Magna Carta of Judges*, paragraph 3.

¹⁷³ Recommendation CM/Rec(2010)12, paragraph 22 of the Appendix: "In their decision-making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary".

¹⁷⁴ OECD/ACN (2010), Second Monitoring Round report on Azerbaijan, p. 45.

¹⁷⁵ Venice Commission, Report on Judicial Appointments, paragraph 41.

- ¹⁷⁶ Venice Commission, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in “the Former Yugoslav Republic of Macedonia”, paragraph 23, [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2005\)038-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)038-e).
- ¹⁷⁷ Venice Commission (2015), Opinion on the Amendments to the Constitution of Ukraine regarding the Judiciary as proposed by the Working Group of the Constitutional Commission in July 2015, CDL-AD(2015)026-e, p. 5, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)026-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)026-e).
- ¹⁷⁸ Venice Commission (2010), Opinion No. 543/2009 on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, pp. 14-15, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)028-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)028-e).
- ¹⁷⁹ OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 45-46.
- ¹⁸⁰ OECD/ACN (2011), Second monitoring round report on Kazakhstan, p. 104.
- ¹⁸¹ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 55-56.
- ¹⁸² OECD/ACN (2012), Second monitoring round report on Kyrgyzstan, p. 71.
- ¹⁸³ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 103-104.
- ¹⁸⁴ See standards on the Councils for the Judiciary, in particular, in the CCJE Opinion No. 10, Council of Europe’s Committee of Ministers Recommendation CM/Rec(2010)12 and the OSCE/ODIHR Kyiv Recommendations on Judicial Independence.
- ¹⁸⁵ Magna Carta of Judges, paragraph 13.
- ¹⁸⁶ Report of the Special Rapporteur on the independence of judges and lawyers, 2018, p. 5, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/38.
- ¹⁸⁷ Venice Commission (2017), Opinion on the Draft Judicial Code, pp. 18-19, [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)019-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)019-e).
- ¹⁸⁸ OECD/ACN (2018), Fourth monitoring round report on Armenia, pp. 78-79.
- ¹⁸⁹ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 73.
- ¹⁹⁰ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 61-63.
- ¹⁹¹ OECD/ACN (2017), Fourth monitoring round report on Ukraine, pp. 77-79.
- ¹⁹² GRECO (2017), Fourth evaluation round, Report on Ukraine, p. 40, <https://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-1680737207>. See also Venice Commission opinions: CDL-AD(2015)026, paragraph 35, [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)026-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)026-e); CDLAD(2013)034, paragraph 35, [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)034-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)034-e).
- ¹⁹³ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 104-106.
- ¹⁹⁴ OECD/ACN (2011), Second Monitoring Round report on Kazakhstan, p. 104.
- ¹⁹⁵ OECD/ACN (2015), Joint first and second monitoring rounds report on Mongolia, p. 96.
- ¹⁹⁶ *Idem*, pp. 96-97.
- ¹⁹⁷ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 63.
- ¹⁹⁸ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 64-66.
- ¹⁹⁹ Venice Commission (2016), Opinion No. 863 /2016 on the draft law "on Introduction of amendments and changes to the Constitution, CDL-AD(2016)025, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)025-e)
- ²⁰⁰ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 67-68.

²⁰¹ Venice Commission (2015), Opinion on the Amendments to the Constitution of Ukraine regarding the Judiciary as proposed by the Working Group of the Constitutional Commission in July 2015, CDL-AD(2015)026-e, p. 4, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)026-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)026-e).

²⁰² Venice Commission, Report on Judicial Appointments, paragraph 16. See also report by the UN Special Rapporteur on the independence of judges and lawyers, pp. 8-11, <https://undocs.org/en/A/HRC/11/41>.

²⁰³ OECD/ACN (2011), Second Monitoring Round report on Kazakhstan, p. 104.

²⁰⁴ Consultative Council of European Judges, 2016, Opinion No. 19 (2016) on the role of court presidents, <https://rm.coe.int/1680748232>.

²⁰⁵ OSCE Kyiv Recommendations on Judicial Independence, ‘The Role of Court Chairpersons’, paragraph 15. OSCE Recommendations also provide (paragraph 11): “They [court chairpersons] may have representative and administrative functions, including the control over non-judicial staff. Administrative functions require training in management capacities. Court chairpersons must not misuse their competence to distribute court facilities to exercise influence on the judges.”

²⁰⁶ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 80.

²⁰⁷ OECD/ACN (2016), Fourth monitoring round report on Georgia, p. 47.

²⁰⁸ OSCE Kyiv Recommendations on Judicial Independence, ‘The Role of Court Chairpersons’, paragraph 12.

²⁰⁹ Council of Europe’s Committee of Ministers Recommendation CM/Rec(2010)12, paragraph 24.

²¹⁰ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 83.

²¹¹ Progress update by Kyrgyzstan, March 2019, pp. 32-33, www.oecd.org/corruption/acn/OECD-ACN-Kyrgyzstan-Progress-Update-2019-RU.pdf.

²¹² Progress update by Georgia, March 2019, pp. 53-75, www.oecd.org/corruption/acn/OECD-ACN-Georgia-Progress-Update-2019-ENG.pdf.

²¹³ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 121-122.

²¹⁴ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 52-53.

²¹⁵ OECD/ACN (2018), Fourth monitoring round report on Armenia, pp. 64-65.

²¹⁶ OECD/ACN (2015), Joint first and second monitoring rounds report on Mongolia, p. 99; OECD/ACN (2019), Fourth monitoring round report on Mongolia, pp. 53-54.

²¹⁷ See OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 99-102.

²¹⁸ See OECD/ACN (2017), Fourth monitoring round report on Ukraine, pp. 83-84.

²¹⁹ In 2019 the minimum subsistence level in Ukraine was equal to UAH 1,920 or about EUR 70. The final provisions of the law established that such a level of remuneration would be reached gradually with the full amount in force starting from 2020.

²²⁰ Venice Commission (2015), Opinion on the Amendments to the Constitution of Ukraine regarding the Judiciary as proposed by the Working Group of the Constitutional Commission in July 2015, CDL-AD(2015)026-e, pp. 6-7, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)026-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)026-e).

²²¹ See, for example, the IAP Second monitoring round reports on Kyrgyzstan (p. 71) and Tajikistan (p. 59).

²²² According to Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12, paragraph 55: “Systems making judges’ core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges”.

²²³ OECD/ACN (2011), Second monitoring round report on Kazakhstan, p. 109.

- ²²⁴ For comparison of remuneration of judges and prosecutors with the national average wage see: CEPEJ, European judicial systems - Efficiency and quality of justice, CEPEJ Studies No. 26, 2018, <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>.
- ²²⁵ See OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 134-135.
- ²²⁶ CCJE Opinion No. 21 (2018) on preventing corruption among judges, www.coe.int/en/web/ccje/ccje-opinions-and-magna-carta
- ²²⁷ Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12, paragraph 44.
- ²²⁸ See OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 68-71.
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- ²⁴⁸ Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12, paragraph 57.
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- ²⁵⁹ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 132-133.
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- ²⁶⁵ Idem.
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³⁵⁹ Annual Report on Competition Policy Developments in Romania, 5-7 June 2019, DAF/COMP/AR (2019)50, [https://one.oecd.org/document/DAF/COMP/AR\(2019\)50/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2019)50/en/pdf).

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- ⁴⁰⁹ OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 115.
- ⁴¹⁰ Source: www.opengovpartnership.org/wp-content/uploads/2019/05/Beneficial-Ownership-Fact-Sheet-May-2019.pdf.
- ⁴¹¹ IMF, Staff Report for the 2019 Article IV Consultation and Request for a Stand-by Arrangement, Armenia, p. 80, www.imf.org/en/Publications/CR/Issues/2019/06/05/Republic-of-Armenia-2019-Article-IV-Consultation-and-Request-for-a-Stand-By-Arrangement-46968.
- ⁴¹² Source: <https://eiti.org/beneficial-ownership>.
- ⁴¹³ Source: <https://eiti.org/azerbaijan>
- ⁴¹⁴ Source: <https://rlw.juridice.ro/15883/new-obligation-for-legal-entities-indicating-and-identifying-the-ultimate-beneficial-owner.html>.
- ⁴¹⁵ Source: www.ifac.org/system/files/downloads/a012-2010-iaasb-handbook-isa-240.pdf.
- ⁴¹⁶ Source: www.oecd.org/daf/anti-bribery/the-detection-of-foreign-bribery.htm.
- ⁴¹⁷ OECD/ACN (2016), Business Integrity in Eastern Europe and Central Asia, pp. 39-40.
- ⁴¹⁸ Idem, p. 169.
- ⁴¹⁹ See mode details at www.oecd.org/corruption/hlrm.htm
- ⁴²⁰ See at www.collective-action.com/initiatives/hlrm .
- ⁴²¹ See www.theioi.org/ioi-members.
- ⁴²² See an overview in OECD (2015), The SME Ombudsman: International profile and a policy proposal for Mexico, www.oecd-ilibrary.org/economics/the-sme-ombudsman_b07afd3d-en.
- ⁴²³ See details at www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman.
- ⁴²⁴ See details at www.asbfeo.gov.au
- ⁴²⁵ OECD (2017), Regulatory policy in Korea: Towards Better Regulation, pp. 139-142, www.oecd.org/korea/regulatory-policy-in-korea-9789264274600-en.htm.
- ⁴²⁶ Source: www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-rse-ombudsperson.aspx?lang=eng.
- ⁴²⁷ See at <http://cecgr.com/2018/06/08/poland-sme-ombudsman>.

- ⁴²⁸ OECD/ACN (2016), Fourth monitoring round report on Georgia, p. 88. See also: www.justice.gov.ge/News/Detail?newsId=7931; <https://businessombudsman.ge/en/news/biznesombudsmenis- aparati-2019-2020tslebis-erovnul-antikoruftsiul-sakmomedo-gegmashi-ertveba>
- ⁴²⁹ Source: <https://www.coe.int/en/web/corruption/projects/precop2>.
- ⁴³⁰ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, p. 208.
- ⁴³¹ OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 116.
- ⁴³² OECD/ACN (2016), Fourth monitoring round report on Georgia, p. 37.
- ⁴³³ Source: Association of Certified Fraud Examiners (2018), Report to the Nations, available at www.acfe.com.
- ⁴³⁴ Source: www.sec.gov/page/whistleblower-100million.
- ⁴³⁵ Available at www.oecd.org/daf/ca/guidelines-corporate-governance-soes.htm.
- ⁴³⁶ Idem.
- ⁴³⁷ Available at www.oecd.org/daf/ca/Guidelines-Anti-Corruption-Integrity-State-Owned-Enterprises.pdf.
- ⁴³⁸ OECD/ACN (2018), Fourth monitoring round report on Ukraine, Prevention and Prosecution of Corruption in State-Owned Enterprises, p. 7.
- ⁴³⁹ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 87.
- ⁴⁴⁰ Source: <https://nako.org.ua/en/blogs/olena-tregub-why-ukraine-s-defense-sector-corruption-is-worse-than-we-thought/>.
- ⁴⁴¹ OECD/ACN (2018), Fourth monitoring round report on Ukraine, Prevention and Prosecution of Corruption in State-Owned Enterprises.
- ⁴⁴² Source: <http://kommersant.uz/rodnoy-avtoprom-gordost-strani>.
- ⁴⁴³ OECD, SME Policy Index Eastern Partner Countries 2020: Assessing the implementation of the small business act for Europe, forthcoming in 2020.
- ⁴⁴⁴ OECD/ACN (2017), Fourth monitoring round report on Ukraine, p. 124.
- ⁴⁴⁵ Source: www.osce.org/project-coordinator-in-uzbekistan/403622.
- ⁴⁴⁶ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 154.
- ⁴⁴⁷ OECD (2016), OECD Reviews of Competition Law and Policy: Ukraine 2016 – A Report on the Implementation of Previous Recommendations, p. 48, www.oecd.org/daf/competition/UKRAINE-OECD-Reviews-of-Competition-Law-and-Policy_WEBENG.pdf.
- ⁴⁴⁸ Source: www.europeanchamber.com.cn/en/publications-archive/709/The_Digital_Hand_How_China_s_Corporate_Social_Credit_System_Conditions_Market_Actors.
- ⁴⁴⁹ See, for example: www.novethic.com/sustainable-finance/isr-rse/positive-incentive-loans-a-new-favorite-for-companies-and-banks-147019.html.
- ⁴⁵⁰ See at <https://baltojibanga.lt/>
- ⁴⁵¹ See at <https://unic.org.ua/en/>
- ⁴⁵² <https://eiti.org/who-we-are>.
- ⁴⁵³ www.maritime-acn.org.
- ⁴⁵⁴ <http://infrastructuretransparency.org>.
- ⁴⁵⁵ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 127.
- ⁴⁵⁶ OECD/ACN (2017), Fourth monitoring round report on Armenia, p. 119.

⁴⁵⁷ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 210-211.

⁴⁵⁸ GRECO in some of its Third Evaluation Round reports (e.g. on Croatia, paragraph 48; and Estonia, paragraph 69) accepted that “promise” may cover “offer” of an undue advantage, but only when unambiguous court practice was provided to prove it. At the same time in its Third Evaluation Round report on Slovakia (paragraph 104) GRECO noted that “the ‘offering’ is a particularly important element in that it covers bribes which are proposed (but not accepted) and often leads to the actual “giving” or “promising” of an undue advantage (e.g. thus referring to situations where potential offenders “test” their interlocutor)”.

⁴⁵⁹ See Explanatory Report to the CoE Criminal Law Convention, paragraphs 36, 41-42, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>, and OECD Publication “Corruption. Glossary of International Standards in Criminal Law”, 2008, pp. 26-27, <https://www.oecd.org/corruption/acn/resources/41650182.pdf>. A different interpretation of “promising/offering” can be found in the UNCAC Legislative Guide, according to which promising implies an agreement between the bribe giver and the bribe taker and offering does not imply the agreement of the prospective bribe taker (paragraph 197, www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html).

⁴⁶⁰ GRECO (2014), Addendum to the Second Compliance Report on Latvia, Third Evaluation Round, p. 3, www.coe.int/en/web/greco/evaluations/latvia.

⁴⁶¹ See, for instance, OECD/WGB (2013), Phase 2 report on Russia, p. 64.

⁴⁶² OECD/WGB (2014), Phase 1 Report on Latvia, 2014, paragraph 12.

⁴⁶³ OECD/WGB (2015), Phase 2 Report on Latvia, 2015, paragraph 198.

⁴⁶⁴ Criminal Code of Lithuania, Article 227, cited from GRECO (2013), Second Compliance Report on Lithuania, Third Evaluation Round, pp. 4 and 7.

⁴⁶⁵ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 161.

⁴⁶⁶ OECD/ACN (2011), Second monitoring round report on Kazakhstan, p. 29.

⁴⁶⁷ OECD/WGB (2012), Phase 1 Report on Russia, paragraph 12. See also GRECO (2012), Third Evaluation Round report on Russia (paragraph 55), which criticises reliance on inchoate offences to cover offer, promise, request of bribe and their acceptance. To address this, the Russian authorities developed relevant draft laws in 2016 and 2017. Commenting on one of the draft laws GRECO criticised the fact that the proposed sanctions for the offer/promise were significantly lower than those provided for by the legislation then in effect for situations where the bribe was actually handed over (See GRECO (2018), Addendum to the Second Compliance Report of the Russian Federation, p. 5).

⁴⁶⁸ Contrast, for example, an Belgian judgment of 18 May 2001, where the Oudenaarde criminal court considered that the question put by a person to the policeman accompanying him in the police car for a breathalyser test after a serious road accident (“Couldn't something be arranged? It's just the two of us”) could be deemed to be an offer. The individual was convicted of active bribery. (GRECO Third Evaluation Round report on Belgium, p. 25).

⁴⁶⁹ See OECD/ACN (2014), Third monitoring round report on Kazakhstan, pp. 36-37.

⁴⁷⁰ GRECO (2012), Third evaluation round report on Russia (Theme I), pp. 22-23.

⁴⁷¹ Legislative Guide for the Implementation of the UNCAC, paragraph 197, www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html.

⁴⁷² Study on the state of implementation of the United Nations Convention against Corruption under the topics of Corruption Criminalization, Law Enforcement and International Co-operation, p. 15, www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html

⁴⁷³ OECD/ACN (2013), Third monitoring round report on Azerbaijan, p. 29.

⁴⁷⁴ OECD/ACN (2016), Fourth monitoring round report on Azerbaijan, pp. 68-69.

⁴⁷⁵ GRECO (2011), Third evaluation round report on Ukraine (Theme I), paragraph 66; OECD/ACN (2015), Third monitoring round report on Ukraine, p. 45.

⁴⁷⁶ See, for example, GRECO Third evaluation round reports on Armenia (paragraph 82) and Estonia (paragraph 71).

⁴⁷⁷ Such resolutions, usually issued by the Plenary of the Supreme Court, constitute an established practice in most of the IAP countries. They summarise judicial practice in certain area and, while not being formally binding, are authoritative and usually are strictly followed by lower courts.

⁴⁷⁸ See, among others, the GRECO Third Evaluation Round report on Russia (paragraph 57).

⁴⁷⁹ According to the OECD Anti-Bribery Convention (Art. 1), “any undue pecuniary or other advantage”.

⁴⁸⁰ Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), paragraph 37, <http://goo.gl/qiu9KGwww.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>.

⁴⁸¹ Study on the state of implementation of the United Nations Convention against Corruption, p. 16, www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html

⁴⁸² See, for example, GRECO Third evaluation round report on Lithuania, paragraph 70.

⁴⁸³ Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), paragraph 38.

⁴⁸⁴ UNCAC, Articles 15 and 16. CoE Criminal Law Convention – “to act or refrain from acting in the exercise of his or her functions”; OECD Anti-Bribery Convention – “act or refrain from acting in relation to the performance of official duties”.

⁴⁸⁵ See, among others, GRECO Third evaluation round reports on Croatia (paragraph 51), Romania (paragraph 101), Slovenia (paragraph 80), the FYR of Macedonia (paragraph 69). See also Commentaries to the OECD Anti-Bribery Convention, paragraph 19, www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

⁴⁸⁶ GRECO in its Third Round Evaluation reports on Armenia (paragraph 83) and Ukraine (paragraph 68) accepted assurances of the authorities that despite wording of relevant provisions, bribery offences are, in practice, interpreted broadly to include situations when an official performs acts lying outside his/her scope of competence.

⁴⁸⁷ OECD, “Corruption. Glossary of International Standards in Criminal Law”, 2008, pp. 31-32, www.oecd.org/corruption/acn/corruptionglossaryofinternationalcriminalstandards.htm. See also UNCAC article 2.

⁴⁸⁸ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 94.

⁴⁸⁹ OECD Convention Article 1.4(a); COE Convention Articles 1 and 6, Explanatory Report, paragraph 28; UNCAC Article 2(a)(i), (b).

⁴⁹⁰ OECD Anti-Bribery Convention, Article 1.4(a); UNCAC, Article 2(c).

⁴⁹¹ OECD Anti-Bribery Convention, Article 1.4(a); UNCAC, Article 2(a)(ii), (b).

⁴⁹² CoE Criminal Law Convention, Article 10. The CoE Convention includes a qualifying condition that the country should be a member of such international or supranational organisation. However, the OECD Anti-Bribery Convention does not have this limitation.

⁴⁹³ CoE Criminal Law Convention, Article 11; Explanatory Report to the CoE Criminal Law Convention, paragraph 63. The CoE Convention includes a qualifying condition that the country should accept the jurisdiction of such court. To the extent that an international court is an “international organisation”, the OECD Anti-Bribery Convention does not have this limitation.

⁴⁹⁴ UNCAC, Article 2(a)(ii). Note that the idea of a person performing a “public service” being a public official is part of UNCAC’s definition of “public official,” but not an express part of UNCAC’s definition of “foreign public official.”

⁴⁹⁵ Additional Protocol to the CoE Criminal Law Convention, Articles 1, 2 and 4; Explanatory Report to the Additional Protocol, paragraph 9. From the IAP countries, Armenia, Azerbaijan, Georgia and Ukraine are Parties to the Additional Protocol.

⁴⁹⁶ Additional Protocol to the CoE Criminal Law Convention, Article 6; Explanatory Report to the Additional Protocol, paragraph 37.

⁴⁹⁷ OECD/ACN (2016), Thematic Study, Foreign Bribery Offence and Its Enforcement in Eastern Europe and Central Asia, pp. 21 and 53, www.oecd.org/corruption/acn/ACN-Foreign-Bribery-Offence-Enforcement-ENG.pdf.

⁴⁹⁸ OECD/ACN (2019), Fourth monitoring round report on Mongolia, pp. 216-217.

⁴⁹⁹ Idem.

⁵⁰⁰ From 48 State-Parties to the CoE Criminal Law Convention, Andorra, Belgium and Germany made a reservation with regard to relevant provisions. See www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173/declarations?p_auth=lqCUNYR0. Belgium reserved the right to establish as a criminal offence under its domestic law the conduct referred to in Articles 7 and 8 of the Convention only if such conduct was committed in view of the accomplishment or the omission of an act, without the knowledge and without authorisation, as the case may be, of the board of directors or of the general meeting, of the principal or of the employer. Germany declared that the phrase “in the course of business activity” in Articles 7 and 8 of the Convention is to be interpreted as making reference to activities in relation to the purchase of goods or commercial services.

⁵⁰¹ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 95.

⁵⁰² OECD/ACN (2015), Joint first and second monitoring rounds report on Mongolia, p. 35.

⁵⁰³ GRECO (2010), Third evaluation round report on Azerbaijan, p. 19. See also GRECO (2011), Third evaluation round report on Bosnia and Herzegovina, paragraph 93.

⁵⁰⁴ GRECO (2012), Compliance Report on Azerbaijan, Third evaluation round, p. 6.

⁵⁰⁵ According to the Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (paragraph 53), this «choice was made to focus on the most vulnerable sector, i.e. the business sector. Of course, this may leave some gaps, which Governments may wish to fill: nothing would prevent a signatory State from implementing this provision without the restriction to "in the course of business activities"».

⁵⁰⁶ GRECO (2012), Third evaluation round report on Russia, paragraph 61.

⁵⁰⁷ Source: GRECO (2011), Third evaluation round report on Austria, paragraph 91; GRECO (2014), Compliance Report on Italy, Third evaluation round, paragraph 23; GRECO (2011), Third evaluation round report on Switzerland, paragraphs 86-87.

⁵⁰⁸ GRECO (2018), Addendum to the Second Compliance Report on Italy, Third Evaluation Round, p. 6.

⁵⁰⁹ Source: www.fcpablog.com/blog/2019/1/14/italy-adopts-new-bribe-destroyer-law.html.

⁵¹⁰ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 166.

⁵¹¹ Amendment of the Criminal Code accompanied adoption of a special Law of Ukraine on Preventing the Influence of Corruption Offences on the Results of Official Sports Competitions (Law no. 743-VIII of 3 November 2015).

⁵¹² OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 163.

⁵¹³ Council of Europe Convention on the Manipulation of Sports Competitions, CETS No.215, www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215. The Convention was opened for signature in September 2014 and, as of August 2019, was signed by 31 states and ratified by six. The convention entered into force on 1 September 2019.

⁵¹⁴ Source: European Commission (2019), Report from the Commission to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20190726_com-2019-355-commission-report_en.pdf.

⁵¹⁵ GRECO (2017), Summary Analysis of Selected Private Sector Bribery Cases, p. 8, <https://rm.coe.int/summary-analysis-of-selected-private-sector-bribery-cases-by-sophie-me/16807720a4>.

⁵¹⁶ OECD/ACN (2016), Thematic Study, Foreign Bribery Offence and Its Enforcement in Eastern Europe and Central Asia, p. 43.

⁵¹⁷ See, for example, fourth monitoring round reports on Kyrgyzstan and Uzbekistan.

⁵¹⁸ OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 98-99.

⁵¹⁹ A slightly different definition of trading in influence is contained in the UNCAC (Art. 18): (a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; (b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

⁵²⁰ Study on the state of implementation of the United Nations Convention against Corruption, p. 37, available at www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html

⁵²¹ Judgment of 01.10.1984, case no. 277. Cited from: Experience with criminal offence of trading in influence in France, by M.Segonds and A.Riberolles, published in GRECO's Tenth General Activity Report (2009), <https://www.coe.int/en/web/greco/-/greco-publishes-its-tenth-general-activity-report-an-overview-of-2009>.

⁵²² Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), paragraph 64, www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173.

⁵²³ In its Third evaluation round report on Latvia (paragraph 94) GRECO noted that offence of trading in influence which did not include the element of "improper", and thus covering professional lobbying activities, results in a broad and far-reaching transposition of Article 12 of the Convention and may frustrate the actual purpose of the criminalization of trading in influence.

⁵²⁴ Some states even contend that criminalization of trading in influence might come into conflict with the fundamental right in a democracy to influence people in power or others through exercising the right to freedom of expression. See GRECO (2009), Third evaluation round report on Sweden, paragraph 54.

⁵²⁵ GRECO (2008), Third evaluation round report on the Netherlands, paragraph 61.

⁵²⁶ According to the Study, a serious deviation from the spirit of the Convention concerns the fact that some States parties only criminalise trading in influence acts by or vis-à-vis public officials, i.e. the offer or acceptance of advantages in order that a public official abuses his or her influence over another public official. Article 18, however, addresses the conduct of private individuals abusing their real or supposed influence over the exercise of public administration. See: Study on the state of implementation of the United Nations Convention against Corruption, p. 38, cited above.

⁵²⁷ Implementation Review Group, Tenth session, May 2019, p. 4 www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-29May2019/V1900358e.pdf.

⁵²⁸ Based on the IAP Third Monitoring Round report on Ukraine, pp. 43-44, and search of the Registry of Court Decisions available at <http://www.reyestr.court.gov.ua>.

⁵²⁹ 1 unit equals 2,000 Mongolian Tughriks (about EUR 1).

⁵³⁰ Case-law of the European Court of Human Rights should be taken into account in this regard, e.g. *Salabiaku v. France*, *Pham Hoang v. France* and others.

⁵³¹ OECD/ACN (2012), Joint first and second monitoring rounds report on Uzbekistan, p. 26.

⁵³² Original article read: “Receiving by a service person of an unlawful benefit in substantial amount or transfer by such person of such benefit to her close relatives in the absence of the elements provided in Article 368 of the present Code”.

⁵³³ OECD/ACN (2015), Third monitoring round report on Ukraine, p. 48.

⁵³⁴ A group of experts supported by the EU Anti-Corruption Initiative in Ukraine submitted Amicus Curiae for the Constitutional Court of Ukraine. The Court, however, did not consider proposed arguments. The Amicus Curiae is available at <https://euaci.eu/what-we-do/resources/amicus-curiae-on-constitutional-petition>.

⁵³⁵ Decision of 25 June 2014, No. 35-p, available at <http://constpalata.kg/wp-content/uploads/2014/06/Reshenie-po-Saatovu-27.06.14.pdf> (in Russian).

⁵³⁶ Constitutional Court of the Republic of Moldova, Resolution no. 6, 2015, available at <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=358414&lang=2> (in Russian).

⁵³⁷ Constitutional Court of the Republic of Lithuania, Ruling on the compliance of paragraph 1 of Article 189-1 CC of the Republic of Lithuania with the Constitution of the Republic of Lithuania, 2017, no. KT4-N3/2017, available at www.lrkt.lt/en/court-acts/search/170/ta1688/content.

⁵³⁸ MONEYVAL (2012), Anti-Money Laundering and Combating the Financing of Terrorism in Georgia, Report on Fourth Assessment Visit, p. 50, www.coe.int/en/web/moneyval/jurisdictions/georgia.

⁵³⁹ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 170.

⁵⁴⁰ Idem.

⁵⁴¹ IMF (2019), Selected Issues Paper on Armenia, p. 36, www.imf.org/en/Publications/CR/Issues/2019/06/05/Republic-of-Armenia-Selected-Issues-46969. See also: OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 121.

⁵⁴² Under the UNCAC, the obligation is for States parties to consider establishing the offence, so there must be some showing that the matter was considered in an official manner.

⁵⁴³ Study on the state of implementation of the United Nations Convention against Corruption, p. 44, available at www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html

⁵⁴⁴ Resolution No. 15 of the Plenary of the Supreme Court of Ukraine on court practice in cases on excess of authority or official powers, 26.12.2003, <https://zakon1.rada.gov.ua/laws/show/v0015700-03> (in Ukrainian).

⁵⁴⁵ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 167-168; OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, pp. 213-214.

⁵⁴⁶ In 2016, the Constitutional Court of Romania considered the constitutionality of the offence and found that the phrase “fulfils the act in a defective manner” is not predictable enough and it should be read as “fulfils the act by infringing the law”. The “law” should mean only the acts issued by the Parliament or the Emergency Ordinances issued by the Government, which have the same power as the law. The Constitutional Court did not nullify the Criminal Code’s provision, but the courts will have to interpret the provision in line with the new finding.

⁵⁴⁷ See, for example, IAP fourth monitoring round reports on Georgia and Kyrgyzstan.

⁵⁴⁸ See, for example, OECD/ACN (2016), Fourth monitoring round report on Georgia, p. 93.

⁵⁴⁹ See IAP fourth monitoring round report on Georgia and country’s progress updates on the implementation of the recommendations, available at www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

⁵⁵⁰ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), www.coe.int/en/web/moneyval/home.

⁵⁵¹ See www.eurasiangroup.org/mers.php.

⁵⁵² See: OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, p. 215; OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 174.

⁵⁵³ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, p. 215; OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 137.

⁵⁵⁴ OECD/ACN (2015), Thematic Study, Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, p. 11, www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf.

⁵⁵⁵ G20 (2017), High Level Principles on the Liability of Legal Persons for Corruption, www.g20.utoronto.ca/2017/2017-g20-acwg-liberty-legal-persons.html.

⁵⁵⁶ UNODC (2017), State of Implementation of the United Nations Convention against Corruption Criminalization, Law Enforcement and International Co-operation, pp. 85-92, www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html

⁵⁵⁷ OECD/WGB (2016), The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, www.oecd.org/corruption/liability-of-legal-persons-for-foreign-bribery-stocktaking-report.htm.

⁵⁵⁸ GRECO (2010), Compliance Report on Russia, Joint first and second round of Evaluation, paragraph 122.

⁵⁵⁹ Act on Liability of Collective Subjects for the Acts Forbidden under a Penalty, 2003.

⁵⁶⁰ Sanctions (“protective measures”) against legal persons were originally included in the Criminal Code, although legally criminal liability of legal persons was not recognised. They were considered as result (or “collateral effect”) of criminal liability of a natural person. See in this regard concern of the OECD Working Group on Bribery that such arrangement may fall afoul of the legality principle pursuant to which there is no crime and therefore no criminal sanction without law. (OECD/WGB (2012), Phase 3 report on Slovakia, paragraph 42). In 2015, Slovakia adopted a stand-alone Act on Criminal Liability of Legal Persons. The new Act directly imputes a criminal act to the legal person. A legal person commits a criminal offence if the offence is committed “for its benefit, on its behalf, as part of or through its activities by (a) its statutory body or a member of its statutory body; (b) a person performing control or supervision within the legal person; or (c) another person authorised to represent the legal person or make decisions on its behalf.” A legal person also commits an offence if a person referred to (i.e. a statutory body or its member, or a person with relevant level of control, supervision, or authority etc.) “fails, even if by negligence, to properly perform its control and supervision duties, thus allowing a criminal offence... [to be] committed by a person acting within the scope of authority conferred by the legal person.” Source: OECD/WGB (2017), Phase 1bis Report, www.oecd.org/corruption/anti-bribery/Slovak-Republic-Phase-1bis-Report-ENG.pdf.

⁵⁶¹ Although included in the Swedish Criminal Code, provisions on liability of legal persons are viewed as quasi-criminal, because only natural persons can commit crimes in Sweden. Liability is applied to legal persons for a “crime committed in the exercise of business activities” by a natural person belonging to the legal person. There is no requirement that a natural person has to be convicted or even prosecuted for a corporate fine to be applied. A “corporate fine” is described as a “special legal effect of crime”.

⁵⁶² See conclusions on Bulgaria in the Phase 3 Report by the OECD/WGB (2011), paragraph 31.

⁵⁶³ OECD/ACN (2014), Third monitoring round report on Kazakhstan, pp. 50-51.

⁵⁶⁴ OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, p. 65.

⁵⁶⁵ Person authorised to manage, represent a legal person, take a decision on behalf of a legal person and/or member of supervisory, control and revision body of the legal person.

⁵⁶⁶ OECD/ACN (2019), Progress update by Azerbaijan, pp. 81-84, www.oecd.org/corruption/acn/OECD-ACN-Azerbaijan-Progress-Update-2019-ENG.pdf.

⁵⁶⁷ OECD/ACN (2019), Fourth monitoring round report on Mongolia, pp. 99-100.

⁵⁶⁸ For the detailed analysis see OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, pp. 26-29.

⁵⁶⁹ Annex I to the OECD Council Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2009, www.oecd.org/daf/anti-bribery/oecdantibriberyrecommendation2009.htm.

⁵⁷⁰ OECD/WGB (2012), Phase 3 Report on Hungary, paragraph 21. See also OECD/WGB (2007), Phase 2 Report on Poland, paragraphs 161-163.

⁵⁷¹ Recommendation No. R (88) 18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities, 1988, <https://rm.coe.int/16804c5d71>.

⁵⁷² GRECO (2009), Addendum to the Compliance Report on Latvia, Second evaluation round, paragraph 39. At the same time GRECO's position has been that such situation, while unsatisfactory, is not in contravention of the letter of Article 18 of the CoE Criminal Law Convention.

⁵⁷³ G20 (2017), High Level Principles on the Liability of Legal Persons for Corruption, www.g20.utoronto.ca/2017/2017-g20-acwg-liberty-legal-persons.html.

⁵⁷⁴ Section 439, paragraph 3, point 2, of the Latvian Criminal Procedure Law.

⁵⁷⁵ OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, p. 28.

⁵⁷⁶ Other countries where identification of the perpetrator is not necessary are, for example, the United States, Finland, Switzerland, the Netherlands.

⁵⁷⁷ OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, p. 27.

⁵⁷⁸ *Idem*, p. 28

⁵⁷⁹ Article 99-4.4 of the Azerbaijan's Criminal Code; see also OECD/ACN (2013), Third monitoring round report on Azerbaijan, p. 30.

⁵⁸⁰ OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, p. 28.

⁵⁸¹ See OECD/ACN (2015), Third monitoring round report on Ukraine, p. 52.

⁵⁸² OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 178-179.

⁵⁸³ Section 439, paragraph 3, of the Latvian Criminal Procedure Law. Cited from: OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, p. 29.

⁵⁸⁴ OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, p. 66.

⁵⁸⁵ In its Third Monitoring Round report on Ukraine the IAP monitoring noted that the element "on its behalf", which is required to trigger the corporate liability in addition to "in the interests of the legal person", is excessive and is also not provided in any international standards (*e.g.* the CoE Convention). See: OECD/ACN (2015), Third monitoring round report on Ukraine, p. 52.

⁵⁸⁶ For more details see: OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, pp. 35-36.

⁵⁸⁷ OECD/ACN (2013), Third monitoring round report on Azerbaijan, p. 31.

⁵⁸⁸ OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, cited above; country comments.

⁵⁸⁹ OECD/WGB (2012), Phase 3 report on Greece, paragraph 49.

⁵⁹⁰ See OECD/ACN (2015), Third monitoring round report on Ukraine, p. 53.

⁵⁹¹ Source: OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, pp. 43-44, cited above.

⁵⁹² See Good Practice Guidance on internal controls, ethics, and compliance, contained in OECD Council Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2009.

⁵⁹³ OECD/WGB (2016), The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, p. 66, cited above.

⁵⁹⁴ Source: www.fcpablog.com/blog/2019/1/14/italy-adopts-new-bribe-destroyer-law.html.

⁵⁹⁵ Article 23, paragraph 3, of the Law on Criminal Liability of Legal Entities.

⁵⁹⁶ See other examples of different approaches in OECD/WGB (2016), *The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report*, pp. 66-70, cited above.

⁵⁹⁷ See also OECD/WGB (2019), *Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention*, www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm.

⁵⁹⁸ In Slovenia, this defence is possible only for liability based on the “lack of supervision rule”.

⁵⁹⁹ Source: OECD/ACN (2015), *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, p. 49, cited above.

⁶⁰⁰ OECD/WGB (2012), Phase 3 report on Greece, paragraph 34.

⁶⁰¹ OECD/ACN (2017), Fourth monitoring round report on Ukraine, p. 131; court decision of 1 September 2016, available at <http://reyestr.court.gov.ua/Review/60185433> (in Ukrainian).

⁶⁰² OECD/ACN (2015), *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia*, pp. 33-34, cited above.

⁶⁰³ OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 95-98.

⁶⁰⁴ OECD/ACN (2016), Fourth monitoring round report on Azerbaijan, p. 71; OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 182; OECD/ACN (2017), Fourth monitoring round report on Ukraine, p. 133.

⁶⁰⁵ The UN Convention against Corruption (Art. 26, paragraph 4, Article 30, paragraph 1) provides for sanctions that take into account the gravity of the offence.

⁶⁰⁶ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 203.

⁶⁰⁷ *Idem*.

⁶⁰⁸ OECD/ACN (2015), Third monitoring round report on Ukraine, p. 46.

⁶⁰⁹ OECD/ACN (2010), Second monitoring round report on Georgia, p. 22; OECD/ACN (2016), Fourth monitoring round report on Georgia, pp. 94-95.

⁶¹⁰ OECD/ACN (2015), Third monitoring round report on Ukraine, p. 73.

⁶¹¹ OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 204.

⁶¹² OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 105.

⁶¹³ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 131.

⁶¹⁴ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, pp. 164-166.

⁶¹⁵ OECD (2017), *OECD Integrity Scan of Kazakhstan: Preventing Corruption for a Competitive Economy*, OECD Public Governance Reviews, OECD Publishing, Paris, pp. 303-304; <http://dx.doi.org/10.1787/9789264272880-en>.

⁶¹⁶ OECD/ACN (2019), Fourth monitoring round report on Uzbekistan, p. 220. The report reminded that Uzbekistan is a State Party to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Minsk, 1993). Article 56 of the Convention states that “extradition for criminal prosecution is carried out for such acts which, according to the laws of the requesting and requested Contracting Parties, are liable to punishment and for which the punishment is imprisonment of *at least one year or more*. Extradition to execute a sentence is made for such acts which, in accordance with the law of the requesting and requested Contracting Parties, are liable to punishment and for which the person whose extradition is required has been sentenced to imprisonment for *at least six months or more*.”

⁶¹⁷ As was noted in the Study on the state of implementation of the United Nations Convention against Corruption under the topics of Corruption Criminalization, Law Enforcement and International Co-operation (p. 11), this reflects “the traditional view (in both civil law and common-law systems) that corruption primarily constitutes a

misuse of power or an offence linked to the extortion of money during the administration of public authority (*crimen repetundarum* or *crimen extraordinarium concussionis* in Roman law)". Source: www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html

⁶¹⁸ OECD/ACN (2018), Thematic Study, Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia, p. 7, www.oecd.org/corruption/acn/OECD-Confiscation-of-Proceeds-of-Corruption-Crimes-ENG.pdf.

⁶¹⁹ UN Convention against Corruption (Art. 31), CoE Criminal Law Convention (Art. 19), OECD Anti-Bribery Convention (Art. 3; as an alternative to confiscation of the bribe and the proceeds of the bribery, provides for "monetary sanctions of comparable effect"). See overview of international standards in OECD/ACN (2018), Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia, cited above.

⁶²⁰ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0042>.

⁶²¹ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), www.coe.int/en/web/conventions/full-list/-/conventions/treaty/198.

⁶²² This may include not only the bribe itself, but any property used in any way during preparation or commission of a crime. For example, if a briber calls an official on his/her mobile phone and offers a bribe, then phone could be subject to confiscation. At the other extreme, if a briber takes his/her private jet to meet an official and delivers the bribe, then the jet might also be subject to confiscation. (OECD Publication "Corruption. Glossary of International Standards in Criminal Law", p. 45, www.oecd.org/corruption/acn/resources/41650182.pdf).

⁶²³ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, pp. 186-188.

⁶²⁴ OECD/ACN (2015), Liability of Legal Persons for Corruption in Eastern Europe and Central Asia, pp. 40-41, cited above.

⁶²⁵ See, among others, judgments of the European Court of Human Rights in cases of *Salabiaku v. France* (10519/83), *Phillips v. UK* (41078/98), *Welch v. UK* (17440/90), *Raimondo v. Italy* (12954/87), *Minhas v. UK* (7618/07).

⁶²⁶ Article 72-3 of the Criminal Code of Lithuania.

⁶²⁷ See MONEYVAL (2007), Third Round Detailed Assessment report on Poland, pp. 36-38, www.coe.int/en/web/moneyval/jurisdictions/poland.

⁶²⁸ Law No. 63/2012 on amending the Criminal Code adopted in 2012.

⁶²⁹ 2nd Assessment Report of the Conference of the Parties to CETS No. 198 on Romania, 2012, paragraph 43, www.coe.int/en/web/cop198/implementation/reports.

⁶³⁰ OECD/ACN (2018), Thematic Study, Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia, pp. 76-77, cited above.

⁶³¹ Report from the European Commission to the European Parliament and the Council on the Progress in Bulgaria under the Co-operation and Verification mechanism, Technical report, COM(2012) 411 final, 2012, pp. 34-35, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en.

⁶³² See European Commission, Staff Working Document, Analysis of non-conviction based confiscation measures in the European Union, p. 12, <https://ec.europa.eu/transparency/regdoc/rep/10102/2019/EN/SWD-2019-1050-F1-EN-MAIN-PART-1.PDF>.

⁶³³ OECD/ACN (2018), Thematic Study, Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia, pp. 77-78, cited above.

⁶³⁴ See also information on previous provisions of administrative confiscation of unexplained wealth, allowed even before the conviction: GRECO (2006), Second Evaluation Round report on Georgia, pp. 4-5.

- ⁶³⁵ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 148.
- ⁶³⁶ OECD/ACN (2015), Third monitoring round report on Ukraine, p. 61. See also: OECD/ACN (2017), Fourth monitoring round report on Ukraine, pp. 136-137.
- ⁶³⁷ OECD/ACN (2016), Foreign Bribery Offence and Its Enforcement in Eastern Europe and Central Asia, pp. 40-41.
- ⁶³⁸ See, for instance, the OECD/ACN (2011) Second monitoring round report on Armenia, p. 33.
- ⁶³⁹ Third evaluation round report on France, paragraph 95; Third evaluation round report on Hungary, paragraph 96; Third evaluation round report on Latvia, paragraph 95; Third evaluation round report on Monaco, paragraph 116; Third evaluation round report on Russia, paragraph 64. However, in the Third evaluation round reports on Slovenia (paragraph 88) and the former Yugoslav Republic of Macedonia (paragraph 72) GRECO found limitations period of 3 years to be sufficient for some offences taking into account lack of practical problems in prosecution of corruption crimes due to statute of limitations.
- ⁶⁴⁰ Phase 1 report on France, p. 31; Phase 2 report on Japan, p. 55; Phase 2 report on Spain, p. 32. See also Phase 1 report on Russia, paragraph 81.
- ⁶⁴¹ It appears that the OECD Working Group on Bribery practice calls for even stricter standard for foreign bribery offence. For instance, 12 of 22 countries with limitations periods of 5 to 10 years received recommendations on this issue, whereas none of the 10 countries with at least 10 years limitation period received a recommendation on this point.
- ⁶⁴² OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 153.
- ⁶⁴³ OECD/ACN (2011), Second monitoring round report on Kazakhstan, p. 42.
- ⁶⁴⁴ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 186.
- ⁶⁴⁵ See, for instance, OECD/WGB (2000), Phase 1 report on Denmark, p. 27.
- ⁶⁴⁶ See OECD/WGB (2003), Phase 2 report on Germany, paragraph 151.
- ⁶⁴⁷ Source: www.fcpablog.com/blog/2019/1/14/italy-adopts-new-bribe-destroyer-law.html.
- ⁶⁴⁸ Council of Europe's Committee of Ministers Resolution No. (97) 24 on the twenty guiding principles for the fight against corruption, 1997, <https://rm.coe.int/16806cc17c>.
- ⁶⁴⁹ The IAP Third Monitoring Round report on Ukraine (p. 64) noted that in the Ukrainian context immunity of parliamentarians has been considered as an important guarantee against repression of the opposition MPs. As the prosecution service and courts lack genuine independence and often operate through political instructions and "phone law", broad immunity of MPs and difficult procedure for its lifting have been viewed as a safeguard.
- ⁶⁵⁰ OECD/ACN (2011), Second Monitoring Round report on Armenia, p. 34.
- ⁶⁵¹ GRECO (2006), Joint first and second evaluation round report on Azerbaijan, paragraph 62.
- ⁶⁵² OECD/ACN (2010), Second monitoring round report on Azerbaijan, p. 47.
- ⁶⁵³ OECD/ACN (2019), Progress update by Azerbaijan, pp. 88-91, available at www.oecd.org/corruption/acn/OECD-ACN-Azerbaijan-Progress-Update-2019-ENG.pdf.
- ⁶⁵⁴ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, pp. 153-156.
- ⁶⁵⁵ OECD/ACN (2017), Fourth monitoring round report on Ukraine, p. 138.
- ⁶⁵⁶ Idem.
- ⁶⁵⁷ Source: www.president.gov.ua/en/news/volodimir-zelenskij-pidpisav-zakon-pro-skasuvannya-deputatsk-57181.
- ⁶⁵⁸ For example, under Article 72 of the Armenian Criminal Code, "a person having committed a criminal offence of minor or medium gravity for the first time may be released from criminal liability where, following the committal of an offence, he or she has voluntarily surrendered by acknowledging guilt, has assisted in disclosing

the crime, has compensated or otherwise settled the damage caused as a result of the crime.” Similarly, under Article 65 of the Criminal Code of Kazakhstan, “a person having committed a criminal misdemeanour or having committed for the first time a crime, may be released from criminal liability taking into account the personality of the perpetrator, his surrender with acknowledgement of guilt, if he facilitated in disclosing and investigation of the criminal offence, compensated the damage caused by the criminal offence”.

⁶⁵⁹ See also, UNODC (2017), *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Co-operation*, p. 27, www.unodc.org/unodc/en/corruption/tools_and_publications/state_of_uncac_implementation.html

⁶⁶⁰ See, among others, GRECO Third evaluation round reports on Croatia (paragraph 57), Latvia (paragraph 96), the former Yugoslav Republic of Macedonia (paragraph 74), Moldova (paragraph 64), Poland (paragraph 70), Romania (paragraph 112).

⁶⁶¹ See, for instance, GRECO (2010), *Third evaluation round report on Armenia*, paragraph 90.

⁶⁶² OECD/WGB (2014), *Phase 1 report on Latvia*, paragraph 76.

⁶⁶³ In its Third Round Evaluation report on Russia (paragraph 66), GRECO noted that amendments in the Russian law requiring the briber to actively facilitate the detection and/or investigation of the crime (to be eligible for the effective regret defence) might limit the risks of abuse of this defence. At the same time, GRECO had misgivings about other aspects of this defence present in the Russian law. Also UNCAC article 37 encourages cooperation of offenders in supplying information for investigative and evidentiary purposes and in providing factual, specific help that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

⁶⁶⁴ See, among others, IAP Second Monitoring Round reports on Kazakhstan (pp. 30-31) and Kyrgyzstan (p. 22).

⁶⁶⁵ OECD WGB (2005), *Phase 2 report on Slovakia*, paragraph 160.

⁶⁶⁶ OECD/ACN (2016), *Thematic Study, Foreign Bribery Offence and Its Enforcement in Eastern Europe and Central Asia*, p. 24. Relevant amendments entered into force in 2015.

⁶⁶⁷ GRECO (2014), *Second Compliance report on Armenia, Third evaluation round*, paragraph 9.

⁶⁶⁸ GRECO (2010), *Third Round Evaluation report on Azerbaijan*, paragraph 61.

⁶⁶⁹ OECD/ACN (2010), *Second monitoring round report on Azerbaijan*, p. 22.

⁶⁷⁰ See OECD/ACN (2013), *Third monitoring round report on Azerbaijan*, pp. 36-37; GRECO (2017), *Second Addendum to Second Compliance report on Azerbaijan, Third evaluation round*, p. 3.

⁶⁷¹ GRECO (2011), *Third evaluation round report on Georgia*, paragraph 80.

⁶⁷² GRECO (2015), *Second Compliance report on Georgia, Third evaluation round*, paragraph 13.

⁶⁷³ OECD/ACN (2016), *Fourth monitoring round report on Georgia*, pp. 102-103.

⁶⁷⁴ OECD/ACN (2011), *Second monitoring round report on Kazakhstan*, p. 31.

⁶⁷⁵ OECD/ACN (2014), *Third monitoring round report on Kazakhstan*, pp. 48-49. Kazakhstan noted in its comments that the new Criminal Code of Kazakhstan (Article 65), enacted in 2015, stipulated that the perpetrator may be released from liability due to effective regret for the first commission of a crime, taking into account the personality of the perpetrator, his confession, facilitation to the detection and investigation of the crime, compensation of the damage caused by the crime. However, monitoring reports' conclusions concerned provisions on the release from liability included in the bribery offences, which do not include conditions mentioned in Article 65 CC.

⁶⁷⁶ OECD/ACN (2017), *Fourth monitoring round report on Kazakhstan*, p. 22.

⁶⁷⁷ OECD/ACN (2012), *Second monitoring round report on Kyrgyzstan*, p. 22.

⁶⁷⁸ OECD/ACN (2018), *Fourth monitoring round report on Kyrgyzstan*, pp. 183-184.

⁶⁷⁹ OECD/ACN (2019), *Fourth monitoring round report on Uzbekistan*, pp. 229-231.

- ⁶⁸⁰ OECD/WGB (2014), Phase 1 report on Latvia, paragraph 28.
- ⁶⁸¹ OECD/WGB (2015), Phase 2 report on Latvia, paragraph 158.
- ⁶⁸² UNODC, Technical Guide to UNCAC, p. 122, www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf
- ⁶⁸³ *Idem*, pp. 123-124.
- ⁶⁸⁴ Council of Europe, Explanatory Report to the Criminal Law Convention of Corruption, pp. 20-21, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cce44>
- ⁶⁸⁵ Council of Europe, 20 Guiding Principles for the Fight against Corruption, <https://rm.coe.int/16806cc17c>
- ⁶⁸⁶ See at www.oecd.org/investment/anti-bribery/anti-briberyconvention/oecdantibriberyrecommendation2009.htm.
- ⁶⁸⁷ See at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0384>
- ⁶⁸⁸ FATF (2013), The Use of the FATF Recommendations to Combat Corruption, p. 11, www.fatf-gafi.org/media/fatf/documents/recommendations/BPP-Use-of-FATF-Recs-Corruption.pdf
- ⁶⁸⁹ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 106.
- ⁶⁹⁰ OECD/ACN (2017), Fourth monitoring round report on Ukraine, p. 141.
- ⁶⁹¹ OECD/ACN (2016), Fourth monitoring round report on Georgia, p. 103.
- ⁶⁹² OECD/ACN (2016), Fourth monitoring round report on Azerbaijan, pp. 76, 81.
- ⁶⁹³ OECD/ACN (2019), Progress update by Azerbaijan, pp. 99-100, available at www.oecd.org/corruption/acn/OECD-ACN-Azerbaijan-Progress-Update-2019-ENG.pdf.
- ⁶⁹⁴ OECD (2017), The Detection of Foreign Bribery, www.oecd.org/corruption/the-detection-of-foreign-bribery.htm.
- ⁶⁹⁵ OECD/ACN (2017), Fourth monitoring round report on Tajikistan, p. 115.
- ⁶⁹⁶ See, for instance, World Press Freedom Index 2019, Reporters without Borders, <https://rsf.org/en/2019-rsf-press-freedom-index-glimmers-hope-amid-overall-decline-eastern-europe-and-central-asia>.
- ⁶⁹⁷ OECD/ACN (2019), Progress update by Azerbaijan, p. 96, available at www.oecd.org/corruption/acn/OECD-ACN-Azerbaijan-Progress-Update-2019-ENG.pdf.
- ⁶⁹⁸ Source: www.rferl.org/a/media-watchdogs-condemn-12-year-sentence-for-tajik-journalist/29368385.html.
- ⁶⁹⁹ Source: www.occrp.org/en/27-ccwatch/cc-watch-briefs/4290-azerbaijan-supreme-court-upholds-ruling-against-absent-ismayilova
- ⁷⁰⁰ Source: www.rferl.org/a/russian-investigative-journalist-golunov-appeals-house-arrest/29993261.html.
- ⁷⁰¹ OECD (2018), The Role of the Media and Investigative Journalism in Combating Corruption, p. 4, www.oecd.org/corruption/The-role-of-media-and-investigative-journalism-in-combating-corruption.htm.
- ⁷⁰² OECD (2017), The Detection of Foreign Bribery, pp. 59-60, 63-64, cited above.
- ⁷⁰³ Source: Committee to Protect Journalists, <https://cpj.org>.
- ⁷⁰⁴ OECD (2017), The Detection of Foreign Bribery, p. 41, cited above.
- ⁷⁰⁵ Egmont Group (2018), Set of Indicators for Corruption Related Cases, From the FIU's Perspective, available at <https://egmontgroup.org/en/content/new-publication-set-indicators-corruption-related-cases-fius-perspective>.
- ⁷⁰⁶ OECD/ACN (2017), Fourth monitoring round report on Kazakhstan, p. 158.
- ⁷⁰⁷ OECD/ACN (2019), Fourth monitoring round report on Mongolia, p. 107.
- ⁷⁰⁸ The State Financial Monitoring Service of Ukraine, 2018 Annual Report, p. 27, www.sdfm.gov.ua/content/file/Site_docs/2019/20190411/zvit_2018_ukr.pdf (in Ukrainian).

- ⁷⁰⁹ Report on the technical assessment of NABU, 2018, p.32, https://nabu.gov.ua/sites/default/files/page_uploads/25.04/nabu_assessment_report_en.pdf.
- ⁷¹⁰ FATF (2012), Operational Issues – Financial Investigations Guidance, paragraph 63, www.fatf-gafi.org/media/fatf/documents/reports/Operational_Issues_Financial_investigations_Guidance.pdf.
- ⁷¹¹ OECD/ACN (2018), Fourth monitoring round report on Kyrgyzstan, p. 193.
- ⁷¹² UNODC, Technical Guide to UNCAC, pp. 124-129, www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf
- ⁷¹³ See at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0043.01.ENGhttps://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849.
- ⁷¹⁴ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, available at <https://eur-lex.europa.eu/eli/dir/2019/1153/oj>.
- ⁷¹⁵ See European Commission, Eastern Partnership - 20 Deliverables for 2020, Focusing on key priorities and tangible results, SWD(2017) 300 final, 2017, p. 25, available at https://eeas.europa.eu/sites/eeas/files/swd_2017_300_f1_joint_staff_working_paper_en_v5_p1_940530.pdf
- ⁷¹⁶ OECD/ACN (2018), Fourth monitoring round report on Armenia, p. 135
- ⁷¹⁷ European Commission (2019), Albania 2019 Report, 2019 Communication on EU Enlargement Policy, pp. 18-19, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>.
- ⁷¹⁸ MONEYVAL (2018), Mutual Evaluation Report on Latvia, p. 12, www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Moneyval-Mutual-Evaluation-Report-Latvia-2018.pdf.
- ⁷¹⁹ European Commission (2019), Montenegro 2019 Report, 2019 Communication on EU Enlargement Policy, p. 35, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-montenegro-report.pdf>.
- ⁷²⁰ OECD/ACN (2017), Fourth monitoring round report on Ukraine, p. 144.
- ⁷²¹ Improving Co-operation between Tax Authorities and Anti-Corruption Authorities in Combating Tax Crime and Corruption. Paris: Organisation for Economic Co-operation and Development, and The World Bank; 2018, p. 55, www.oecd.org/tax/crime/improving-co-operation-between-tax-authorities-and-anti-corruption-authorities-in-combating-tax-crime-and-corruption.htm.
- ⁷²² OECD/ACN (2019), Progress update by Azerbaijan, p. 96, www.oecd.org/corruption/acn/OECD-ACN-Azerbaijan-Progress-Update-2019-ENG.pdf.
- ⁷²³ Basel Institute of Governance, 2019 AML Index Report, p. 21, www.baselgovernance.org/sites/default/files/2019-08/Basel_AML_Index_2019.pdf
- ⁷²⁴ G20 High-Level Principles on Beneficial Ownership Transparency, 2014, Principle 4, https://star.worldbank.org/sites/star/files/g20_high-level_principles_beneficial_ownership_transparency.pdf.
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⁹¹⁴ Available at www.oecd.org/publications/oecd-reviews-of-integrity-in-education-ukraine-9789264270664-en.htm.

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⁹¹⁶ Source: OECD/ACN (2017), Corruption Prevention in the Education, Extractive and Police Sectors in Eastern Europe and Central Asia, www.oecd.org/corruption/acn/OECD-ACN-Study-Corruption-Prevention-Sector-Level-2017-ENG.pdf.

⁹¹⁷ See at <https://defense-reforms.in.ua/en/>.

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⁹¹⁹ The OECD Working Group on Bribery in International Business Transactions is made up of representatives from the Parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. For information about the Working Group, please refer to www.oecd.org/daf/nocorruption.

⁹²⁰ The ACN is open to all countries in Eastern Europe and Central Asia, including Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Kazakhstan, Kosovo (This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution), Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Montenegro, North Macedonia, Romania, Russia, Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. OECD countries participate in the ACN as partners or donors. The ACN is open for participation by international organisations, such as the Council of Europe and its Group of States against Corruption, the Organisation for Security and Co-operation in Europe, the UN Office on Drugs and Crime, and the UN Development Programme, as well as multi-lateral development banks, such as the

Asian Development Bank, Council of Europe Investment Bank, European Bank for Reconstruction and development, and the World Bank. The ACN is also open for participation by non-governmental partners, including Transparency International and other non-governmental and business associations.

⁹²¹ See the Work Programme for 2016-2019 in English and in Russian at www.oecd.org/corruption/acn/aboutthenetwork.

⁹²² See the external evaluation report for the 2013-2015 Work programme at www.oecd.org/corruption/acn/ACN-External-Evaluation-Report-2015-ENG.pdf.

⁹²³ Available at: <http://www.oecd.org/corruption/acn/OECD-ACN-4th-Round-Monitoring-Methodology-Amendments-2017-ENG.pdf>.

⁹²⁴ This and other studies on the topic are available at www.oecd.org/corruption/acn/preventionofcorruption.

⁹²⁵ See the seminar's proceedings at www.oecd.org/corruption/acn/OECD-ACN-Corruption-Prevention-Seminar-Proceedings-May-2016.pdf.

⁹²⁶ Available at www.oecd.org/corruption/acn/assetdeclarationsforpublicofficialsatooltopreventcorruption.htm.

⁹²⁷ Available at www.oecd.org/corruption/acn/businessintegrity.

⁹²⁸ See more information at www.oecd.org/corruption/acn/ukraine-oecd-anti-corruption-project.htm

⁹²⁹ See more information at www.oecd.org/corruption/acn/kyrgyzstananti-corruptionproject.htm.

⁹³⁰ Available at www.oecd.org/corruption/acn/aboutthenetwork/.

www.oecd.org/corruption/acn

