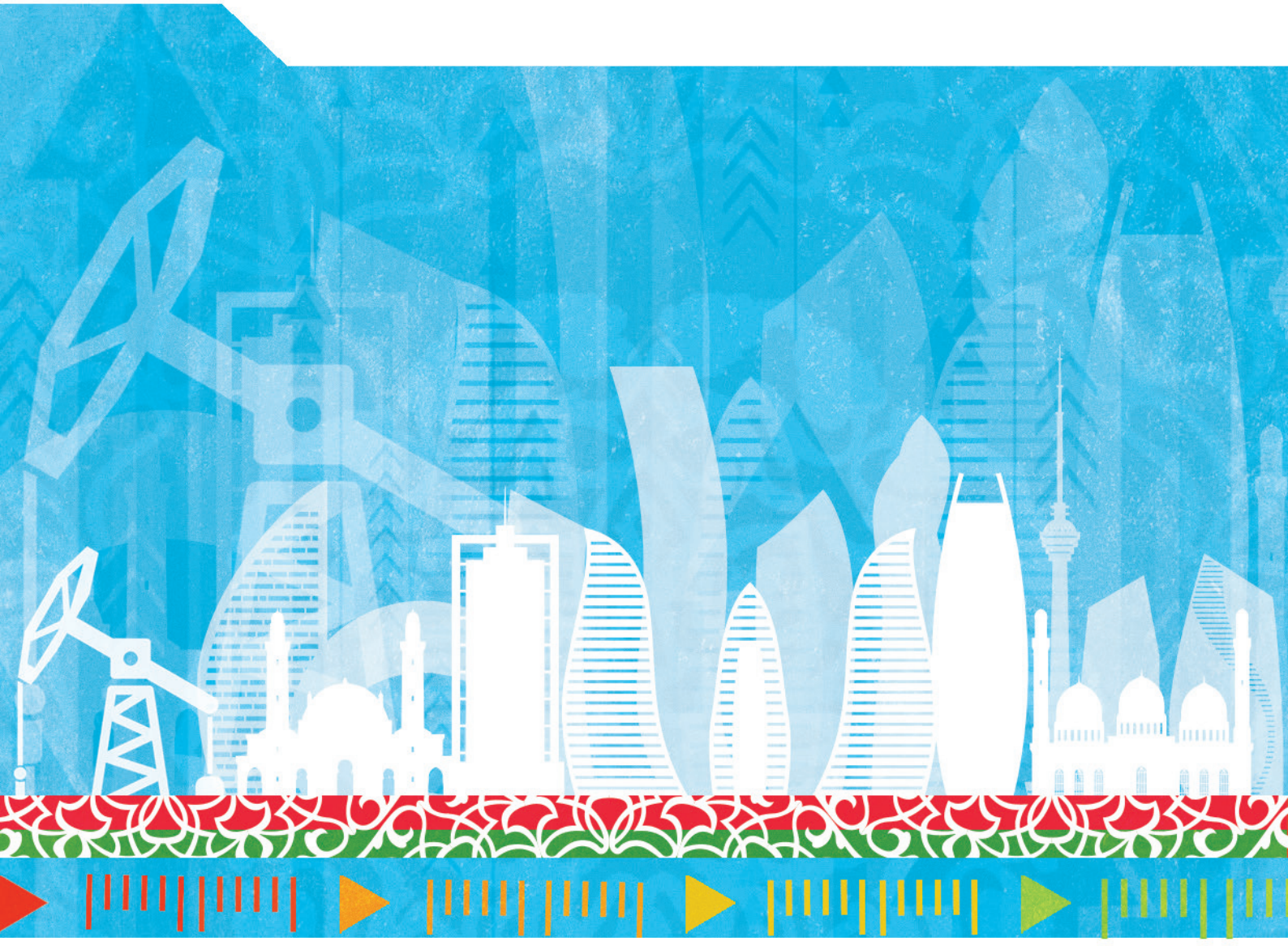
FIGHTING CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA

ANTI-CORRUPTION REFORMS IN AZERBAIJAN

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

PILOT



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Anti-Corruption Reforms in Azerbaijan

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

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Foreword

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

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

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

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

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

The pilot monitoring team for Azerbaijan included: Elena Koncevičiūtė (Lithuania), Inese Kušķe (Latvia), Heili Sepp (Estonia), Evgeny Smirnov (EBRD), Chiawen Kiew (EBRD), Vitaliy Kasko (Ukraine). From the OECD/ACN secretariat, Jolita Vasiliauskaite was the team leader for the pilot monitoring, Dinara Afaunova helped during the monitoring process and worked on performance area “Enforcement of Liability of Legal Persons”, the OECD/ACN manager Olga Savran helped to finalise the text of the performance areas 5–8, Arianna Ingle provided communications and editorial support and Tamara Shchelkunova provided administrative support.

The national coordinator of Azerbaijan for the pilot monitoring was the Office of Prosecutor General of the Republic of Azerbaijan (focal point Isfandiyar Hajiyev).

"Transparency International Azerbaijan" (Executive Director A. Nuriyev) and “MG Consulting” (Director M. Guluzade) filled out the non-governmental questionnaires. Number of other CSOs, international partners and business representatives contributed to the monitoring.

The pilot assessment of Azerbaijan was launched in December 2020. Azerbaijan provided replies to the questionnaire and supporting materials (laws, statistics, etc.) in February 2021. The virtual on-site visit to Azerbaijan took place on 17-31 May 2021 and included sessions with governmental and non-governmental representatives. Civil society organisations, business and international representatives provided replies to the monitoring questionnaire, participated in the on-site visit and commented on the draft assessment report. Following bilateral consultations, the plenary meeting of the OECD/ACN held on 26-28 October 2021 and additional bilateral consultations the pilot monitoring report of Azerbaijan was adopted through the written procedure on 18 January 2022.

Executive summary

The pilot 5th round monitoring covers 13 areas of anti-corruption activities (performance areas - PAs) split into indicators, which, in turn, consist of benchmarks. The assessment report is based on the pilot monitoring indicators and methodology approved by the participating countries and available on the OECD/ACN website[1].

The main strengths and weaknesses are shown below. More details on the performance indicators and benchmarks follow in the report.

Strengths Indicators with the highest score	**Weaknesses** Indicators with the lowest score
The anti-corruption policy development is inclusive and transparent	Legal and institutional framework on conflict of interests is in place
Coordination and support to implementation of anti-corruption policy is ensured	Unbiased and vigorous enforcement of conflict of interests regulations is ensured
Regular monitoring and evaluation of anti-corruption policy is ensured	Asset and interest disclosure applies to high corruption risk positions
Effective mechanisms are in place to ensure that whistleblower protection is applied in practice	Asset and interest disclosure is comprehensive and regular
The whistleblower protection system is operational and protection is ensured in practice	Status, composition and operation of the Prosecutorial Council guarantee the independence of the public prosecution service
Status, composition, mandate and operation of the Judicial Council guarantee judicial independence and integrity	The Prosecutorial Council has broad responsibility for the functioning of the public prosecution service, is transparent and impartial
Judges are held accountable through impartial decision-making procedures that protect against arbitrariness	State fulfils its role of an active and informed owner of SOEs and ensures the integrity of their governance structure and operations
The budget of the public prosecution service and remuneration of prosecutors guarantee their financial autonomy and independence	Liability for corruption offences is effectively enforced
Prosecutors are held accountable through impartial decision-making procedures that protect against arbitrariness	Identification and tracing of corruption proceeds are effective
Sanctions for legal persons are proportionate and dissuasive	The anti-corruption specialisation of prosecutors is ensured

[1] Istanbul Anti-Corruption Action Plan 5th Round of Monitoring "Pilot Performance Indicators" (2021); "Pilot Overview and Procedures" (2021).

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Acronyms

AC	Anti-Corruption
AC	Anti-corruption
ACD	Anti-Corruption Directorate by the Prosecutor General
ACN	Anti-corruption network for Eastern Europe and Central Asia
AIH	Azerbaijan Investment Holding
AML/CFT	Anti-money laundering and combating the financing of terrorism
AZN	Azerbaijani manat (AZN 1.9706 = EUR 1)
CC	Criminal Code
CEO	Chief executive officer
CoE	Council of Europe
COI	Conflict of interest
CPC	Criminal Procedure Code
CSO	Civil society organisation
EBRD	European Bank for Reconstruction and Development
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GRECO	Group of States against Corruption
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
OECD	Organisation for Economic Co-operation and Development
PA	Performance Area
PEPs	Politically Exposed Persons
PGO	Prosecutor's General Office
SOE	State-owned enterprise
UNCAC	United Nations Convention Against Corruption

Country Assessment

Azerbaijan has updated anti-corruption policy document in 2020 by adopting the new document for 2020-2022. The update process is public and comprises some public consultations but would profit from the broader involvement of different SCOs and proactive engagement with the public. The policy should be more evidence based. There is good level of implementation. System of coordination and monitoring of policy implementation is established and operative.

The laws of Azerbaijan provide very basic provisions for preventing conflict of interest of public officials in individual situations. Special COI regulations target judges, prosecutors, MPs but do not regulate management and resolution of *ad hoc* COI. Specialised institutional capacity for policy development, methodological guidance and individual counselling is not established. Legal regulation on financial disclosure of public officials was adopted in 2005. The scope of declarants is broad. However, even for the categories of officials who are required to declare by the law, the disclosure system is not operational for the lack of bylaws.

Whistleblower protection has stronger legal basis for public sector. External channels are available in anti-corruption bodies and seem to work in practice. Available protection measures are rather limited. In practice, protection was not requested by whistleblowers and guaranteed so far. The trust in reporting channels depends from channels.

The judicial tenure is guaranteed by the law. There are some concerns about the lack of clarify regarding the confirmation of judges in their positions after the initial 3 year nomination and promotion of judges. The Judicial Legal Council is a self-governance body that is responsible for several aspects of judicial career and discipline. The role of the Council is only advisory in the appointment and dismissal of judges. The remuneration of judges and ban to reduce it is set by the law. Grounds and procedures for the disciplinary liability of judges are clearly stipulated in the law. Judges have due process guarantees in the disciplinary process. Concerns remain about the grounds and procedure of dismissal of judges.

The public procurement law regulates the procurement of goods, works, and services. It applies to some state owned enterprises and entities. The law provides for several procurement methods. It should be ensured that procurement via methods with limited competition would comprise minimum share. The law provides for electronic procurement and the use of e-Procurement system is mandatory, but the system is yet to be made fully operational. The complaint review system has all essential elements for its efficient operation but more efforts are needed to ensure its efficiency and trust of participants of procurement. Essential information on public procurement should be published in order to ensure transparency. Business integrity is still in early development stages in Azerbaijan, as in other countries of the region. The Azerbaijan Investment Holding (AIH) was established in 2020 in order to improve the management of state-owned enterprises. By the end of 2021, twelve SOEs have been transferred to the AIH.

Competitive procedure is open for external candidates who apply to enter the prosecutorial service. Recruitment or promotion to all other positions is internal and not transparent. The funding received by the public prosecution service is sufficient to ensure its autonomy. The law does not stipulate clear grounds

for disciplinary liability and dismissal of prosecutors. At the same time, application of disciplinary and dismissal procedures is perceived by the main stakeholders as impartial.

The track record of enforcement of active and passive bribery in public and private sectors was low in Azerbaijan in 2020 possibly because the majority of trials were adjourned due to the pandemic. Deprivation of liberty sanctions set by the law are dissuasive in Azerbaijan. Monetary sanctions were increased in 2017 but remain rather mild. More detailed enforcement statistics should be collected, analysed and published. The law of Azerbaijan establishes criminal liability of legal persons but some elements are still not fully covered. Liability of legal persons is not autonomous. Sanctions for legal persons are proportionate and dissuasive. The due diligence (compliance) defence is not foreseen. The practice of enforcement of corporate liability for corruption crimes is at the early but promising steps.

The Special Confiscation Coordination Department subordinated to the Prosecutor General was established in 2020 in Azerbaijan in order to improve efficiency of asset recovery practice. The asset recovery function remains as function of investigators. Efforts of identification and tracing of corruption proceeds should be strengthened including *inter alia* direct access to different sources of information, mechanisms to obtain bank data, active and secure exchange of information among financial intelligence unit, investigative and prosecutorial bodies. Seizure and various confiscation measures in corruption cases application should be applied more actively. Management of seized and confiscated assets is executed by the state bodies and include selling or transfer for state needs. Confiscated assets are sold through e-auctions.

The authorities of Azerbaijan informed about more efforts to counter high-level corruption in the country during the recent years that were also routinely communicated to the public. However, these efforts should be more consistent, supported by the relevant detection and investigation as well as policy tools, and still need to be confirmed by the respective convictions.

The Anti-Corruption Directorate by the Prosecutor General (the ACD) is the specialised unit for investigation of corruption and related offences and operational activities related to corruption. Specialisation of prosecutors is not ensured. The ACD has powers to conduct covert operations. Nevertheless, its capacities, including expert/technical to conduct analytical work and financial investigations should be further strengthened.

Introduction

Since the previous 4th round monitoring report on Azerbaijan under the Istanbul Anti-Corruption Plan in 2016, Azerbaijan updated its anti-corruption policy document in 2020 adopting the National Action Plan on Open Government Partnership 2020-2022. Year 2019 was not covered by the anti-corruption policy document. Almost 90 percent of measures of the National Action Plan 2016-2018 were implemented. 86 percent of measures of the National Action Plan 2020-2022 were implemented as planned in 2020. The new purely anti-corruption long-term policy document for 2021-2025 was under development at the period of monitoring.

In order to incentivize whistleblowing, a Guide on whistleblowing has been elaborated in Azerbaijan in 2021. The Guide was disseminated among NGOs and relevant state bodies. The Guide is targeted at raising awareness on whistleblowing and encouraging the public and private sector actors aware of wrongdoing to come forward and speak up. There were no cases of protection provided to whistleblowers in 2020 in Azerbaijan.

Azerbaijan continued to develop infrastructure of courts and material maintenance of judiciary. The funding of judiciary was increased during the last years. Remuneration of judges was raised more than twice in 2019. Prohibition to reduce salary of judge in the period of judge's activity was introduced in the law. The new court buildings (so far for up to 40 courts) with separate administrative and public zones were put into operation. The anti-corruption structure of the Office of the Judicial-Legal Council of Azerbaijan was reformed and additional human resources were provided in 2019 aiming to ensure prompt investigation of complaints on corruption related violations by judges. Special hotline was introduced to facilitate reporting of violations. E-tools were further implemented in the activity of judiciary. 2/3 of all courts of the country currently use the "Electronic Court" information system, in which cases are distributed automatically and randomly.

In 2020, the holding "Azerbaijan Investment Holding" (AIH) was established in order to improve the management system of state-owned enterprises, to increase their efficiency and transparency, optimize their costs and risks. Seventeen SOEs are expected to be transferred under AIH to be managed by a Supervisory Board. To date, eight state-owned entities have been transferred under the management of AIH.

The new Prosecutor General was appointed in 2020. The new internal legislation "Rules on activity of the Prosecutor`s Office" regulating activity of the Prosecutor`s Office was adopted in 2020. It replaced various legal acts regulating the activity of the Prosecutor`s Office. The rules were prepared on the basis of international standards and aimed to ensure transparency of prosecutors' activity. Pursuant the rules all vacancies at the Prosecutor`s Office are subject for the internal competition, except for the Constitution based appointments. In 2020, the human resources of the Public Prosecution Department were reformed through internal competition. The Competition Commission was established for this with the representatives of the Supreme Court, the Judicial-Legal Council and the Judges' Election Committee. 44 percent of the staff of the said department was renewed. An additional monthly payment (in the amount of monthly salary) was introduced for employees of the Prosecutor's Office by the decision of government in 2020.

Legal regulation of liability of legal persons still have some deficiencies but enforcement that is more active has started in practice. Five proceedings against legal persons were initiated in 2019-2020 and were sent to court with trial pending in four of them. The final decision has been made in one case and the legal entity was found guilty.

The Special Confiscation Coordination Department subordinated to the Prosecutor General was established in 2020 in Azerbaijan in order to improve efficiency of the asset recovery practice. Responsibility to identify, trace and organise return of corruption proceeds remains the function of investigators. Mandate of the Department is coordination and support for investigators.

1 Anti-Corruption Policy

Azerbaijan has updated its anti-corruption policy document in 2020. After the completion of the Action Plan on Open Government Partnership (the Action Plan) 2016-2018, country adopted the Action Plan 2020-2022. Year 2019 was not covered by the anti-corruption policy document. No substantial review of anti-corruption policy has been conducted at the end of the policy cycle. The monitoring found that the policy was not sufficiently based on evidence. There is no justification for selecting particular measures. It is mainly compilation of the recommendations that country received participating in the international initiatives. Policy document do not acknowledge nor address the problem of high-level corruption. The draft policy documents are published online. Some public consultations are held but would profit from the broader involvement of different SCOs and proactive engagement with the public. There is good level of implementation of the action plan. The assessment by government reports 86% of measures of the current action plan as fully implemented in 2020. The policy document does not have budget estimates. Nevertheless, no measures have not been implemented for the lack of funding. Coordination and monitoring functions are assigned to the Secretariat of the Commission on Combating Corruption, which deals with some other matters and may not have sufficient resources for the assigned policy coordination and monitoring functions. The coordination powers of the Secretariat are not explicitly enough covered by the legislation. There are focal points designated in all implementing agencies. An electronic system has been established for the monitoring of implementation of the National Action Plan.

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

Background

The country indicates the Action Plan as the anti-corruption policy document. It cannot be considered as either a genuine strategic anti-corruption policy document or a pure anti-corruption action plan. It is an action plan for implementation of various recommendations that the country received as a result of participation in international initiatives. Its focus is not on purely on anti-corruption but rather anti-money laundering and anti-terrorism funding measures, good governance and financial transparency measures. The document also lacks the essential elements of a long-term strategic policy paper such as situation analysis and risk assessment, long-term objectives and tasks, priorities, monitoring, coordination and review mechanism, impact assessment methodology.

As there are no other national anti-corruption policy documents, the Action Plan on Open Government Partnership will be reviewed for the purposes of assessment under the indicators of PA 1.

Assessment of compliance

Benchmark 1.1.1.

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

No corruption risk assessment nor national survey on corruption was conducted as the basis for the National Action Plan 2020-2022. Recommendations of a number of international organisations and their monitoring mechanisms, including OECD/ACN, CoE, Moneyval, GRECO, US Fiscal Transparency Report, the Open Budget Survey, as well as reports of the Anti-Corruption Directorate of the Prosecutors Office (e. g. information of complaints, corruption cases), analysis of implementation of the previous National Action Plan were used while preparing the National Action Plan 2020-2022. However, it is not clear from the National Action Plan or other materials available for the monitoring team why certain objectives and measures have been chosen, why they are needed and what impact they aim to achieve. The country could not provide any written situation analysis that served as the basis for the current policy document. National sources used in the policy development are mainly law enforcement data. Analysis of implementation of the previous National Action Plan contains information only on nine measures which are more process rather than result-oriented. It does not contain any clear criteria and assessment that would reflect corruption risks at the national level. The methodology and guidelines for the assessment of National Action Plan on Open Government was developed by the Council of Europe four years ago (in April 2017) but has been applied to a very limited extent (only to assess the measures undertaken on a 5-point scale) without taking a qualitative approach. Non-governmental stakeholders at the virtual onsite visit also noted the lack of situation analysis and risk assessment for the anti-corruption policy development. They said that this leaves many high-risk areas (e.g. fiscal transparency, public procurement, public financial control, management of state-owned companies) without attention. The Authorities of Azerbaijan found this opinion of the non-governmental stakeholders groundless noting that the second part of the valid Action Plan is dedicated to measures on fiscal transparency, measure to improve functionality of the single Internet portal of public procurement and measure to ensure financial disclosure of the large state-owned companies are included (Action Plan for 2020-2022, Measures 2.1-2.12). Azerbaijan shall consider the application of a broader scope analysis and usage of a diversity of information sources, especially surveys and research that would help to identify the main areas and issues at stake.

The National Action Plan was not updated based on the need during its implementation. It was updated after its expiry when a plan for the new period was prepared.

The National Action Plan for 2020-2022 is available on the official website of the Commission on Combating Corruption in the national official language. Copies of the previous plans are also published in English. It is recommended to also publish the English version the National Action Plan 2020-2022.

Benchmark 1.1.2.

The policy addresses high corruption risk areas and sectors

No convincing material was provided demonstrating that corruption risk analysis or surveys were conducted to identify high corruption risk areas and sectors. Just plans of having such assessments performed regularly and respective preparation steps were reported by the country. Measure 1.1. of the National Action Plan for 2020-2022 indicates the aim to develop a corruption risk assessment

methodology. Measure 1.3. aims to support NGOs specialised on corruption research. At the country on-site visit, the non-governmental stakeholders and the representatives of the international organisations spoke about the lack of focus on high-risk corruption areas in the anti-corruption policy of Azerbaijan.

Benchmark 1.1.3.

The policy addresses high-level corruption

The National Action Plan for 2020-2022 does not address high-level corruption. The high-level corruption remains a problem in the country like in the most countries of the region . The non-governmental stakeholders of Azerbaijan also noted it. Therefore, Azerbaijan should consider having its anti-corruption policy document more focused on high-level corruption.

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

Assessment of compliance

Benchmark 1.2.1.

Draft policy documents are published online

In May 2019, the Commission on Combatting Corruption announced on its website about start of process of drafting a National Action Plan and invited all civil society institutions to submit proposals. No interim drafts were made public. The final draft of the National Action Plan for 2020-2022 was published on the official website of the Commission on Combating Corruption.

Benchmark 1.2.2.

Public consultations are held with adequate time for feedback

Azerbaijan reports that almost one year was being given for the stakeholders to provide their comments on the draft National Action Plan 2020-2022, starting from 23 May 2019. The National Action Plan 2020-2022 was adopted 27 February 2020, i.e. nine months after the launch. Comments were received mainly orally during the meetings of stakeholders to discuss the draft and at dedicated consultations between the Commission on Combating Corruption and NGOs. Seven meetings of the governmental and non-governmental stakeholders were held while preparing the draft. Government informed that at the meetings thirteen NGOs were represented and consulted. At the country on-site visit, the non-governmental and international stakeholders noted that selected NGOs were involved in the preparation of the draft National Action Plan.

On October 3, 2019, online discussions about the new National Action Plan were launched. However, it were held in Q&A form and aimed to inform the public more than collect the proposals. Public discussion of representatives of civil society and government agencies of the proposals for the new National Action Plan was held November 11, 2019. The final draft of the National Action Plan for 2020-2022 was published on the official website of the Commission on Combating Corruption in December 2019. The CSOs

consulted during the country onsite visit confirmed that public consultations for the elaboration of the draft National Action Plan 2020-2022 were held with the sufficient time for them to provide their feedback.

Benchmark 1.2.3.

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

Azerbaijan reports that NGOs and civil society organisations were provided with the relevant feedback if their suggestions were not reflected in the National Action Plan 2020-2022. It was done orally during the meetings held for the preparation of the draft National Action Plan. The Authorities noted that almost all the suggestions of NGOs/CSOs were accepted. Therefore, there was no need for written explanation on comments that were not accepted. However, it is recommended in future for the communication with the CSOs involved in anti-corruption policy development to use publicity based traceable methods in order to enhance transparency, accountability thus encouraging broader public participation.

Indicator 1.3. The anti-corruption policy is effectively implemented

Assessment of compliance

Benchmark 1.3.1.

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

At least 80% = 6 points

At least 60% = 3 points

Azerbaijan reported that 86 percent of the measures of the National Action Plan 2020-2022 were implemented as planned in 2020. However, the document provided to demonstrate assessment of implementation was more of a descriptive nature. It had no criteria nor clear assessment with the respective statistics and sources of evidence.

Benchmark 1.3.2.

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

The government of Azerbaijan informs that the national branch of Transparency International and Constitution Research Foundation carry out independent yearly assessment of implementation of the National Action Plans and publish results of assessments on their web-sites. As the body responsible for the oversight over the implementation, the Commission on Combating Corruption regularly receives and considers assessment reports from civil society organisations. However, representatives of the civil society organisations stated that anti-corruption policy is not really evidence-based, lacks concrete measures and

is not focused on having a clear impact. They also noted that the governmental assessment of the policy implementation is rather skin-deep analysis that is mostly based on some quantitative rather than qualitative data. This assessment does not include impact evaluation which is its key deficiency.

Benchmark 1.3.3.

The policy has its estimated budget

The National Action Plan 2020-2022 does not have individual budget and is funded from the budgets of implementing institutions.

Benchmark 1.3.4.

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

89 percent of the measures of the National Action Plan 2016-2018 were reported by Azerbaijan as implemented. The year 2019 was not covered by the anti-corruption policy document. 86 percent of the measures of the National Action Plan 2020-2022 were implemented as planned in 2020. In the provided analysis of the impediments to the implementation of the National Action Plan, the country has not identified any financial reasons for non-implementation of any of the measures envisaged in the National Action Plan 2016-2018.

Indicator 1.4. Coordination and support to implementation is ensured

Assessment of compliance

Benchmark 1.4.1.

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

Coordination and monitoring functions are assigned to the Secretariat of the Commission on Combating Corruption (the Secretariat) at the central level. Powers of the Secretariat specified in the questionnaire by government do not explicitly cover coordination. The Secretariat has very general power to “to eliminate the identified shortcomings in the fight against corruption”, yet coordination seems to be working in practice. The Commission on Combating Corruption has established several intergovernmental working groups on individual issues.

The Secretariat is composed of the Secretary and three staff members. As discovered during the virtual on-site visit, human resources are hardly sufficient, especially considering that they assist also intergovernmental working groups established by the Commission and are responsible for other task besides the monitoring and coordination of anti-corruption policy. Some non-governmental stakeholders also raised the issue of insufficient resources of the Secretariat that prevent efficiency in the functions assigned.

The Secretariat receives information on the implementation of the National Action Plan from the implementing agencies and based on it monitors implementation of policy. Monitoring should, in general terms, encompass assessments made (or collected) and recommendations provided (or lessons learned shared) on how to move forward. The government of Azerbaijan claims that "when it is necessary [Secretariat] renders assistance and gives practical advice to implementing bodies". This is mainly organised in the form of "trainings and educational programs". However, the capacity and resources of the Secretariat should be strengthened, as believed by NGOs. This will become a genuine issue once a more comprehensive and targeted national anti-corruption action plan (2021-2025) is adopted.

Benchmark 1.4.2.

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

As reported by Azerbaijan, all state bodies that participate in the implementation of the National Action Plan have the focal points at middle or higher management level for coordination with the Secretariat assigned. These focal points regularly report to the Secretariat on the implementation of the National Action Plan. The meetings are held on a quarterly basis. However, coordination function was not described by the country clearly enough to demonstrate its effectiveness in practice.

Benchmark 1.4.3.

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

The Secretariat of the Commission on Combating Corruption is responsible for the monitoring of anti-corruption policy implementation and respective methodological guidance as well as practical advice for the implementing agencies. Azerbaijan provided some information to demonstrate that the implementing agencies received methodological guidance and practical advice to support policy implementation from the Secretariat. It was indicated, "when it is necessary [Secretariat] renders assistance and gives practical advice to implementing bodies. /…/ [because of the] restrictions imposed for prevention of "COVID 19", the number of trainings and educational programs organized by the Secretariat" decreased. However, it is not sufficient to prove that implementing agencies receive methodological guidance and practical advice to support policy implementation.

Indicator 1.5. Regular monitoring and evaluation is ensured

Assessment of compliance

Benchmark 1.5.1.

Regular monitoring reports based on outcome indicators are published online

The National Action Plan monitoring reports are produced yearly. No proper outcome indicators are specified in the National Action Plan 2020-2022. Azerbaijan indicates that the reports on the assessment of implementation of measures of National Action Plan by the Commission are published on the website of the Commission. The webpage indicated http://commission-anticorruption.gov.az/view.php?lang=az&menu=49 seems to contain documents in the national official language that look like the assessment reports of implementation of measures of the National Action Plan. However, these reports are not based on outcome indicators and therefore cannot be qualitatively measured.

Benchmark 1.5.2.

Evaluation reports based on impact indicators are published online

The government of Azerbaijan reported that the Commission on Combating Corruption has developed a dedicated methodology for the assessment of the National Action Plans. The country shared with the monitoring team the "Methodology and Guidelines for the Assessment of Implementation of National Action Plan on Promotion of Open Government (2016-2018)" prepared within the framework of the CoE/EU PCF Project "Strengthening capacities to fight and prevent corruption in Azerbaijan". No material was provided to demonstrate how this methodology is applied in practice. The document provided as the example of evaluation of implementation of current National Action Plan in 2020 does not contain any impact indicators. No information to confirm publication of the evaluation reports was provided.

Benchmark 1.5.3.

Reports include information about budget spent

The National Action Plans do not have an individual budget. Budgets of the implementing institutions are the funding sources of these plans (see also benchmark 1.3.3.). No evidence was provided to demonstrate that reports include information about the budget spent for the implementation of the National Action Plans.

Benchmark 1.5.4.

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

Azerbaijan reports that the external analysis of the implementation of the National Action Plans was carried out by two CSOs annually, namely the national branch of Transparency International and the Constitution Research Foundation. The non-governmental monitoring reports were published on the websites of these two organisations. The country affirmed that the Commission on Combating Corruption considered these reports when conducting monitoring. The country also indicated that the Commission distributes the draft evaluation report to civil society organizations for their feedback. However, no information substantiating this was provided.

However, the non-governmental stakeholders informed the monitoring team at the country onsite visit that they were not involved in monitoring of implementation of the National Action Plan 2020-2022 in 2020.

Benchmark 1.5.5.

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

Azerbaijan informs that the Commission on Combating Corruption takes into account independent evaluations submitted by NGOs and other civil society organisation while preparing government evaluation report. However, this statement was not substantiated. The country explained during the country onsite visit that evaluations of NGOs are discussed at the meetings of the Commission and meetings of the dedicated working group. Some CSOs confirmed their involvement in evaluation of policy implementation.

However, the representatives of the country were not very clear whether the evaluations conducted by the NGOs are funded by the NGOs themselves or by the state in form of the grants of the Commission. As indicated by the NGOs at the country on-site visit, the cap of the grants (EUR 5,000) provided by the Commission to them is not sufficient to ensure proper monitoring of the national action plan.

Benchmark 1.5.6.

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

An electronic system has been established for monitoring and evaluation of the National Action Plans in Azerbaijan. It serves mainly for the exchange of documents among the implementing agencies, the Commission on Combating Corruption and experts (including non-governmental) involved in monitoring and evaluation. Implementing state agencies upload relevant documents on implementation to this system. The access to the system is provided to all the stakeholders involved. However, the analysis of implementation of anti-corruption policy is conducted manually. At the country onsite visit, representatives of Azerbaijan informed the monitoring team about the plans to upgrade electronic system for monitoring and evaluation of anti-corruption policy implementation.

2 Conflict of Interests

The laws of Azerbaijan provide very basic provisions for preventing conflict of interest of public officials in individual situations. The Law on Rules of Ethics Conduct of Civil Servants and the special Law on the Rules of Ethical Conduct of a Deputy of the Milli Majlis of the Republic of Azerbaijan contains some limited provisions on reporting COI. The primary law does not provide methods resolving COI situations. The primary law does not establish General COI definition and definition of private interest. Special COI regulations targeting judges, prosecutors, MPs do not contain regulation of management and resolution of *ad hoc* COI. There are no special COI regulations applicable to members of government, members of local and regional councils. Institutional capacity is not developed either – policy development function is not implemented, methodological guidance and individual counselling by specialised staff are not foreseen. There is no formally assigned function of individual counselling, oversight and other functions are not performed by dedicated agencies (units) with staff specialised on COI matters. The State Examination Center's mandate relevant to COI is limited, and the Center does not play the role of a central institution. Enforcement of COI regulations is poor. There is no sufficient evidence to confirm practice of routine application of dissuasive and proportionate sanctions for COI-related violations across public sector.

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

Background

There is no single legally established definition of conflict of interest at the primary law level applicable to persons working in the public sector in Azerbaijan. Only some elements are dispersed in the Law on Combating Corruption and the Law on Rules of Ethical Conduct of Civil Servants. The specialised Law on the Rules of Ethical Conduct of a Deputy of the Milli Majlis of the Republic of Azerbaijan regulates some conflict of interest related issues in activity of parliamentarians.

Azerbaijan indicated that majority of state bodies and SOEs "have rules on ethics in which regulations on conflict of interest are reflected. However, such rules are not publicly available as internal documents". Consequently, conflict of interest regulation is established mainly at the level of secondary legislation in country and is not public.

A draft Law on the Prevention of Conflict of Interest has been under development for several years already. Azerbaijan indicated that this law is expected to enter into the force in near future.

Assessment of compliance

Benchmark 2.1.1.

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

Three primary laws relevant to COI were indicated by country, i. e. Law on Combating Corruption, Law on Rules of Ethics Conduct of Civil servants, and Law on the Rules of Ethical Conduct of a Deputy of the Milli Majlis of the Republic of Azerbaijan.

The Law on Combating Corruption that applies to all natural and legal persons in Azerbaijan contains prohibition of direct subordination of close relatives in office (Article 7), except of election positions, and restriction of gifts (Article 8). Law does not contain definition of conflict of interest. It does not address ad hoc conflict of interest. Law does not establish duty of official to report about such COI situation or risk of such situation nor duty of an official abstain from decision-making until the COI is resolved.

The Law on Rules of Ethics Conduct of Civil Servants contains an article on prevention of conflict of interest applicable to civil servants. It stipulates that “Civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for his/her private interests”. Civil servant shall report “contradiction between service duties and private interests of civil servant when recruited to civil service, also including future period, and when offered new position”. Law does not establish duty of civil servant to abstain from decision-making until the COI is resolved. No duty of the managers and dedicated bodies/units to resolve conflict of interest situation is set by law. Only provision of very general nature is foreseen stipulating that “Civil servant shall implement other actions provided for by the legislation to prevent conflict of interests”. Law also indicates that civil servant “shall apply to his/her direct or superior supervisor for any questions regarding the observance of these acts if they arise”.

Special Law on the Rules of Ethical Conduct of a Deputy of the Milli Majlis of the Republic of Azerbaijan stipulates that “A deputy shall not allow conflicts of interest during his / her term of office /…/”. The law establishes duty of parliamentarians to report in two cases, i. e. (i) “In cases where there may be a conflict between the performance of official duties and the interests of a deputy, he shall inform the Disciplinary Commission of the Milli Majlis” and (ii) “a deputy must disclose to the chairman of the meeting orally the interest that may arise on the issue discussed before his speech at a meeting of the Milli Majlis, its committee and commission or public discussion”. In case (i) the Disciplinary Commission shall provide its opinion to the parliamentarian. Two ways to resolve COI can be suggested to parliamentarian, i. e. “refrain from speaking on the issue of his interest or participating in the voting”. However, it does not fully cover process of decision-making. Case (ii) does not foresee any COI resolution measures. The statement of the parliamentarian on COI is included in the record of meeting or parliament and published on the official website of the Milli Majlis. It is not clear how this requirement to inform chairman, record in the minutes and publish it should be implemented in case of public discussion.

The remaining legislation listed by the country is secondary legislation such e.g. Code of Ethics for Judges or Code of Ethics for employees of the Ministry of Internal Affairs. It is not taken into account because the benchmark requires relevant regulation in the primary law.

The representatives of the government of Azerbaijan stated about the plans to have a single draft law regulating the issues of conflict of interest, with a comprehensive definition and the mechanism of enforcement. The plans should be reflected in the new national anti-corruption action plan of 2021-2025.

Benchmark 2.1.2.

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

The primary law in country does not provide methods for COI resolution. While the process of developing procedures for COI management, as stated by the government of Azerbaijan, underway, it is too early to judge the quality of it. At present, the requirement, for example, for prosecutors to refrain from acting in a COI situation not to undermine the quality of investigation or the requirement for report such a situation to the superior are important but not sufficient means to address the COI issues with regard to either management or resolution.

Benchmark 2.1.3.

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

Primary law in Azerbaijan does not establish conflict of interest definition and definition of private interest.

There is no universally applicable definition of COI applicable to all public officials.

Law on Combatting Corruption Article 7 is very narrow in scope and only covers prohibition to be employed in direct subordination of a close relative. In contrast, with regard to Members of Parliament, the Law “On rules of ethical conduct of the Members of the Milli Majlis” was revised in 2018 with a more elaborate definition and regulation of COI in Article 11. However, as noted above and as planned by the authorities, a more comprehensive and clear approach applicable to all public officials should be pursued.

Benchmark 2.1.4.

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

COI provisions regarding judges are included in the Constitution of Azerbaijan (Article 126, incompatibility of position with any other public, private or political activity), the Criminal Procedure Code (Article 103) and the Civil Procedure Code (Article 19) regarding recusal or withdrawal from hearing a case in the event of doubt of impartiality, the Law on Combating Corruption (Article 7 regarding prohibition of next of kin to work together and Article 8 regarding gifts) as well as a special Code of Conduct for Judges of 2007.

Similar COI provisions regarding prosecutors are included in the Code of Criminal Procedure, the Code of Civil Procedure, the Law on Combating Corruption and the Code of Conduct for Prosecutors (Article 30).

The Law “On rules of ethical conduct of the Members of the Milli Majlis” revised in 2018 governs COI issues regarding MPs (Article 11).

Some COI issues with regard to members of local and regional councils also regulated by the Law on Combatting Corruption (Article 7 regarding prohibition of next of kin to work together or Article 8 regarding gifts). However, the legal regulation is not explicit (see also benchmarks 2.1.1. and 2.1.2.).

However, the mentioned special COI regulations targeting judges, prosecutors, MPs do not contain regulation of management and resolution of ad hoc COI. No evidence of special COI of members of government, members of local, regional councils' was provided.

Benchmark 2.1.5.

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

The functions of policy development, oversight of the implementation of COI regulations, including the application of sanctions, methodological guidance and individual counselling are not assigned to a dedicated agency or unit(s) in Azerbaijan. The national legislative framework in Azerbaijan regarding COI policy development and implementation is decentralised.

The Law on Rules of Ethics Conduct of Civil Servants assigns oversight of the implementation of COI regulations, application of disciplinary liability, methodological guidance and individual counselling functions to the head of state body. Representatives of government of Azerbaijan informed the monitoring team during the country onsite visit that internal investigation units implement control and sanctioning for the COI functions in state bodies. Staff of these units and immediate supervisors can also provide individual counselling if needed. However, they are not specially trained on COI issues and counselling nor provided with other special material. There is no evidence that these units have specialised staff who deal only with COI matters.

The State Examination Center is the central monitoring and coordination body for the implementation of the Law on Rules of Ethics Conduct of Civil Servants. The law assigns the Center with some policy development related functions including inter alia to study information and data on implementation the Law on Rules of Ethics Conduct of Civil Servants and to make proposals on improvement of legislation related to the ethics conduct issues of civil servants. However, there is no evidence that these functions are assigned to sufficient specialised staff of the Center and applied in practice for COI policy development. Representatives of the government of Azerbaijan informed the monitoring team at the country onsite visit that the Center can also provide individual counselling on COI. However, this was not confirmed by any practical material or data.

According to the government of Azerbaijan, all state bodies are obliged to organise trainings of conflict of interest and combatting corruption issues. About 600 persons received such training last year. According to the Civil Service Law, public servants undertake exams every five years conducted by the State Examination Centre and those exams include questions on conflicts of issues and how to hand them.

Other legislation containing COI provisions available to the monitoring team are silent about the assignment of functions listed by the benchmark 2.1.5.

Implementation of COI regulations is decentralised in the country. COI regulation is implemented through the management system and other structural elements (e.g. Scientific and Educational Centre of the General Prosecutor's Office is mandated to advice prosecutors on COI issues). As stated by the government of Azerbaijan, the majority of state agencies have dedicated units (internal security units or inspections), dealing mostly with disciplinary violations. They are mostly reactive to the issues that occur and no practice of counselling could be corroborated, as this is a direct responsibility of a direct supervisor. With regard to methodological guidance, some trainings on ethical issues were mentioned as organised for civil servants, prosecutors, judges and MPs, yet they were not systematic and did not include all

employees. It could not be validated that direct supervisors who are directly responsible for providing counselling have the necessary knowledge and skills to fulfil this function, as they are not provided any targeted training. With regard to, e.g. prosecutors, compulsory ethics training is organised only for the newly recruited staff. Therefore, there is no evidence on existence of dedicated specialised on COI staff at national nor institutional level. No evidence was provided to demonstrate how the functions listed by benchmark 2.1.5. are applied in practice.

Benchmark 2.1.6.

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

There is no specialised staff assigned for individual counselling on COI and sanctioning functions in Azerbaijan except parliamentarians who in case of potential COI can seek opinion of the Disciplinary Commission of the Milli Majlis. Law on Rules of Ethics Conduct of Civil Servants intrusts application of disciplinary liability and individual counselling functions to the head of state body by, i. e. the same person. Representatives of government of Azerbaijan informed the monitoring team at the country onsite visit that internal investigation units implement sanctioning for the COI function in the state bodies. Staff of these units can also provide individual counselling if needed. Individual counselling on COI and sanctioning functions may be separated in practice in some of state agencies (e.g. in the Office of Prosecutor General) depending on the size of organisation and its structure. Separation of functions is not addressed by legislation. Hence, individual counselling on COI and sanctioning functions generally are not separated in practice.

Indicator 2.2. Unbiased and vigorous enforcement of regulations is ensured

Assessment of compliance

Benchmark 2.2.1.

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

There was no information available for the monitoring team about the public allegations in the year previous to monitoring on which the Authorities did not follow up.

Benchmark 2.2.2.

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

The Law on Combatting Corruption (Article 10.1) foresees possibility of application of sanctions with various severity, including disciplinary, civil, administrative or criminal liability, for violation of anti-corruption restrictions, including some of COI situations. However, there is no centralised information on sanctions for violations of COI rules or other anti-corruption restrictions applied. Some statistic on sanctions applied for violations of COI rules was provided to the monitoring team, namely of Ministry of Internal Affairs (94 employees sanctioned in 2020), of the State Examination Center that is mandated to summarise respective information for all civil servants (1 civil servant sanctioned in 2020), and of judiciary (3 judges sanctioned during the last 3 years). The disciplinary measures applied to employees of the Ministry of Internal Affairs ranged from dismissal from office (25), expel from the ministry (52), lowering in ranks (3), other disciplinary actions (14). No information about the type of sanction applied to the said civil servant was provided. Admonition, reprimand, change of work place were applied to judges. No information about violations of COI rules, i. e. types of violations that were sanctioned was provided. Therefore, it is not possible to evaluate if applied sanctions were dissuasive and proportionate.

Since the statistics made available for the monitoring was limited and did not cover the entire public sector, it was not possible to verify the compliance of the country with the criteria of the benchmark “sanctions are routinely applied in practice”.

Benchmark 2.2.3. – 2.2.10.

BENCHMARK	Country Data 2020	
	Total number of issued recommendations	Number of implemented recommendations
2.2.3. Track record of the implemented individual recommendations/instructions issued by the central body regarding COI resolution	n/a	n/a
BENCHMARK	Country Data 2020	
	Total number of issued recommendations	Number of implemented recommendations
2.2.4. Track record of sanctions imposed on high-level officials for violations of COI rules or other anti-corruption restrictions (i.e. restrictions related to gifts, incompatibilities, divestment of corporate rights, post-employment restrictions)	n/a	n/a
2.2.5. Track record of sanctions imposed for failure to report or resolve COI	n/a	n/a
2.2.6. Track record of sanctions imposed for violation of post-employment restrictions including terminated employment contracts	n/a	n/a
2.2.7. Track record of sanctions imposed for violation of incompatibilities	n/a	n/a
2.2.8. Track record of sanctions imposed for violation of the rules on gifts and hospitality, including confiscated illegal gifts	n/a	n/a
2.2.9. Track record of imposed ban on holding public office for serious or repeat violations of COI rules and other anti-corruption restrictions	n/a	n/a
2.2.10. Track record of invalidated decisions/contracts as a result of COI	n/a	n/a

Indicator 2.3. Information on COI is published

Assessment of compliance

Benchmark 2.3.1.

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

There is no legal requirement to publish information about the resolution of the reported COI in Azerbaijan. Government noted that "in the cases when such information arouses public interest, it might be published". No examples provided to confirm existence of such regular practice.

The Law on the Rules of Ethical Conduct of a Deputy of the Milli Majlis of the Republic of Azerbaijan requires publishing the opinion of the Disciplinary Commission of the Milli Majlis that this commission issue on the request of parliamentarian who faces potential COI on the official website of the Milli Majlis. There is no obligation to publish information on the actual COI resolution measures taken by parliamentarian. No examples provided to confirm existence of such regular practice.

Participants of the specialised sessions with non-governmental stakeholders at the virtual country on-site visit noted that no information on implementation of COI regulations is published.

Benchmark 2.3.2.

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

There is no requirement to publish information about the gifts reported by officials in national legislation of Azerbaijan.

The obligation to report the gifts is established by the Law on Combating Corruption (Article 8). Because of the technical translation related reasons, the monitoring team received the full text of the respective provisions after the bilateral consultations before the 21st OECD/ACN Plenary Meeting and could not asses it properly. Therefore, the said regulations and respective practice will be evaluated in future monitoring.

Benchmark 2.3.3.

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

The benchmark requires regularly publication of at least the following statistics:

- Number of detected violations disaggregated by type of violations of COI rules and other anti-corruption restrictions;
- Number of disciplinary administrative, criminal sanctions imposed disaggregated by type of punishment imposed for violations of COI rules and other anti-corruption restrictions;
- Number of offenders sanctioned with the disaggregated by type of public officials;
- Number of administrative decisions or public contract invalidated due to the COI violations;
- Number of officials dismissed from office due to violation of COI rules and other anti-corruption restrictions;
- Number of employment contracts invalidated due to violation of post-employment rules.

The country reported that information about civil servants who were disciplined for the violation of the Law on Rules of Ethics Conduct of Civil servants, including that one civil servant was disciplined for the violation of COI rules in 2020, was published in the yearly report of the State Examination Centre. No information about publication of other statistics on violations of COI rules and other anti-corruption restrictions was

provided. The data published in the yearly report of the State Examination Centre provides statistics limited to the civil service only.

3 Asset and Interest Disclosure

Legal regulation on financial disclosure of public officials was adopted in 2005 in Azerbaijan. However, it is still not operational. The scope of declarants is broad. However, even for the categories of officials who are required to declare by the law the disclosure system is not operational for the lack of bylaws. The content of the disclosure set by laws excludes several important categories (for example, all types of bank accounts besides bank deposits, cash, gifts, paid or unpaid activities, indirect control of assets). The law requires disclosing participation in the activity of economic entities as a shareholder or founder but ultimate indirect ownership is not covered. A form of the declaration is not adopted in Azerbaijan. Therefore, asset declaration is still not implemented in practice.

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

Background

The Law on Combating Corruption of Azerbaijan introduced asset declarations in 2005. Law on Approval of Procedures for Submission of Financial Information by Public Officials was adopted in 2005.

In accordance with the Law on Approval of Rules for Submission of Financial Information by Public Officials, the Cabinet of Ministers of Azerbaijan should adopt a form of the declaration. However, it has failed to do since 2005. Asset declaration is still not implemented in practice in Azerbaijan. The government of Azerbaijan states that they are debating the inclusion of an objective of creating a fully-fledged functioning declaration system in the new Anti-Corruption Action Plan 2021-2025.

Azerbaijan also needs to address the issue of declaration of interests by public officials which has been left limited only to declaration of participation in companies, funds and economic entities (Law on Combatting Corruption, Article 5.1.4) and does not cover the entire range of other conflict of interest situations.

Assessment of compliance

Benchmark 3.1.1.

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

List of persons that are required to submit asset declarations is established by the Law on Combating Corruption (Article 2) and the Law on Approval of Rules for Submission of Financial Information by the Public Officials, Article 3.1, lay down the reporting requirement for the following officials relevant to the

benchmark 3.1.1.: President of the Republic, members of Parliament, members of government and their deputies, heads of executive authorities and their deputies, regional heads, judges, prosecutor general. The Civil Service Law of Azerbaijan establishes a general duty of civil servants to submit annual declarations of income and assets, yet not of interests. Azerbaijan also needs to properly address the issue of declaration of interests by public officials in order to cover the entire range of other conflict of interest situations.

The staff of private offices of political officials (such as advisors) are not covered by the list of persons that are required to submit asset declarations. The representatives of the government of Azerbaijan claims that "valid [national] legislation does not envisage notion "private offices of political officials (advisors)". However, there is no clear evidence that such positions are not operational in practice no matter how such positions are called. Besides there is possibility that such category of positions will be introduced in practice in future. Considering the corruption and COI risks inherent to this type of positions it shall be required to disclose.

Even for the categories of officials mentioned in the benchmark 3.1.1. who are covered by the law of Azerbaijan the disclosure system is not operational for the lack of bylaws.

Benchmark 3.1.2.

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

The Law on Combatting Corruption, Article 5, and the Law on Approval of Rules for Submission of Financial Information by Public Officials, Article 3.1, provide for the financial (assets) reporting requirement of the following categories of officials: judges, the Prosecutor General and his/her deputies, district and military prosecutors, prosecutors, heads of economic enterprises with state holding control interests.

Azerbaijan ensured that asset disclosure requirement stipulated by the Law on Combating Corruption (Article 2) applies to the remaining high corruption risk positions as defined by the Benchmark 3.1.2. However, the list of persons who are required to submit asset declarations that is established by the Law on Combating Corruption (Article 2) does not explicitly cover anti-corruption investigators, officials responsible for public procurement, member or board members of independent regulators and supervisory authorities.

There is no individual requirement for members of judicial governance bodies to declare assets. Therefore, this requirement does not apply to non-judicial members of judicial governance bodies if they are not required to declare owing to their position in state authorities (e.g. lawyer appointed by the Collegial Board of Bar Association of the Republic of Azerbaijan).

Interest disclosure is not established in Azerbaijan. The requirement provided for in the law is limited to declaration of participation in companies, funds and economic entities (the Law on Combatting Corruption, Article 5.1.4) and does not cover the entire range of other conflict of interest situations.

Indicator 3.2. Asset and interest disclosure is comprehensive and regular

Assessment of compliance

Benchmark 3.2.1.

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

The Law on Combating Corruption (Article 5.1.) stipulates scope of asset disclosure. Just taxable assets have to be declared (this includes vehicles as required by the benchmark 3.2.1.). Only bank deposits (not all types of the bank accounts) shall be disclosed. Law does not require disclosure of gifts, cash, paid or unpaid activity. Disclosure of financial liabilities is required for “a debt exceeding 5500 manats and other property of financial liabilities exceeding 1100 manats”.

Despite legal regulation, asset declaration is still not implemented in practice in Azerbaijan. The form of asset declaration has not been adopted. Therefore, it is not possible to evaluate if information that should be included in the form based on current legal requirements would meet the requirement of the draft Guide on benchmarks, i. e. would be sufficient for detecting conflict of interests and illicit enrichment.

Benchmark 3.2.2.

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

Scope of asset disclosure as stipulated by the Law on Combating Corruption (Article 5.1.) does not include information on beneficial ownership of companies. The law requires disclosure of information on “participation in the activity of companies, funds and other economic entities as a shareholder or founder, on their [i. e. of officials] property share in such enterprises”. Ultimate indirect ownership or control is not covered by the legislation.

Legislation of Azerbaijan does not require including information about the beneficial ownership in the state register of legal entities. Information about the beneficial ownership is not obtained during registration of legal entities (see also the benchmark 8.2.1. of PA 8 “Business Integrity”).

Benchmark 3.2.3.

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

Benchmark 3.2.4.

Scope of the disclosure includes expenditures

Benchmark 3.2.5.

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

Benchmark 3.2.6.

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

Scope of disclosure does not cover information on indirect control (beneficial ownership) of assets; expenditures; trusts to which declarant or a family member has any relation; virtual assets (cryptocurrencies, etc.).

Benchmark 3.2.7.

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

The Law on Approval of Procedures for Submission of Financial Information by Public Officials (Article 5.2.) sets that asset declaration of declaring person “shall also include data on financial information of family members (spouse, parents and children living together) of the public official, thus their property, financial and asset liabilities”. Asset disclosure does not cover other relatives of the declarant living in the same household as the declarant; civil partner of the declarant who lives in the same household with the declarant.

Benchmark 3.2.8.

Assets and interests are disclosed in one form

Despite legal regulation, asset declaration is still not implemented in practice in Azerbaijan. The form of asset declaration has not been adopted. The requirement for interest disclosure provided in the law is limited to declaration of participation in companies, funds and economic entities (the Law on Combatting Corruption, Article 5.1.4) and does not cover the entire range of other conflict of interest situations.

Benchmark 3.2.9.

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

The Law on Approval of Procedures for Submission of Financial Information by Public Officials (Article 6.2.) stipulates that public officials shall submit their statements within 30 days of taking the position. Declaration shall also be submitted "within the period of one year from their dismissal, termination of authority or retirement" (Article 6.4.).

The law does not explicitly say that declarations shall be submitted annually. Article 6.1. stipulates that "statements are submitted within the period from 1st to 31st of January". Article 5.3. indicates that "Public officials shall input all information on their profits and incomes obtained upon the submission of the financial statement into the statement to be submitted following year". Law on Combating Corruption (Article 5.1.1.) stipulates that information on income, indicating the source, type and amount thereof shall be submitted yearly. Legislation is silent about the periodicity of declaration of the remaining financial data that shall be disclosed. It is not possible to evaluate the practice, as the asset disclosure is not implemented in Azerbaijan. However, based on current legislation it is possible that except for the income remaining financial data may be disclosed just upon entering the office and within one year after the termination of employment leaving changes while in office not disclosed.

The law does not foresee declaration before or immediately after leaving the office.

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

Assessment of compliance

Benchmark 3.3.1.

Declarations are filed through an online platform

Benchmark 3.3.2.

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

Benchmark 3.3.3.

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

Benchmark 3.3.4.

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

Benchmark 3.3.5.

Functionalities of the electronic system include automated cross-checks with government databases, including at least registers of companies, civil acts, land titles, vehicles and tax database

Despite legal regulation, asset declaration is still not implemented in practice in Azerbaijan. Interest disclosure is not established in Azerbaijan.

Besides it should be noted that:

- On benchmark 3.3.1. - Law on Approval of Procedures for Submission of Financial Information by Public Officials (Article 4.2.) sets that "public officials shall develop the [financial] statement [i. e. asset declaration] in writing".
- On benchmark 3.3.2. – Public disclosure of asset declarations is not foreseen in Azerbaijan. Law on Approval of Procedures for Submission of Financial Information by Public Officials (Articles 9.1. and 9.2.) stipulates that "financial information submitted by public official shall be considered as private information. Authorities receiving the financial information shall maintain its confidentiality. Specified information may be provided under reasonable enquiries of the Commission [on Combating Corruption], prosecutor office and courts in association with corruption related violations".

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

Assessment of compliance

Benchmark 3.4.1.

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

Law on Approval of Procedures for Submission of Financial Information by Public Officials (Article 7.1.) establishes that "control over submission of financial information shall be implemented by receiving authority". The said law sets receiving authorities depending on position of declaring person. Verification

of asset and income declarations should be carried out by the Commission on Combating Corruption (with respect to top-level officials listed in Article 3 of the law) and by respective authorities responsible for collecting (receiving) declarations (others). Verification system is highly decentralised, as “other public officials shall submit their financial information to the relevant financial (accounting) authority determined by heads of their respective state authorities. However, the said law is not operational since the form of declaration has not been adopted by the Cabinet of Ministers.

Moreover, even theoretically the Commission on Combating Corruption or other respective bodies (units) would not be able to perform proper verification of asset and interest declarations as they have also many other tasks to fulfil. The Commission on Combating Corruption alone would have to check more than 30,000 declarations and for that, it would require more dedicated staff and technical means (electronic) to help them handle the verification process through, at least, the process of automated risk-based analysis and automated cross-checks with government databases.

Law obliges the receiving authorities to conduct the initial investigation aiming to determine the accuracy and completeness of information provided in the [financial] statement and to compare current statement with financial information submitted previously. Receiving authorities have the right to request the public official to provide verbal or written clarifications. The law stipulates no other powers. Article 8.5 stipulates that “Authorities receiving financial information, in implementation of investigation shall submit the information on findings to relevant authorities for further actions”. Legislation provided by country contains no further regulations on in-depth analysis of declarations beyond the initial examination and respective powers.

No evidence was provided by country to prove that verification is assigned to dedicated units (or shall be assigned when implemented) with a sufficient number of specialized staff within the receiving authorities.

Benchmark 3.4.2.

The following declarations are routinely verified:

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

Benchmark 3.4.3.

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

Benchmark 3.4.4.

Anonymous complaints that include verifiable information trigger the verification

Benchmark 3.4.5.

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

Benchmark 3.4.6.

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

Asset disclosure is still not implemented in practice in Azerbaijan. There is no practice of verification of asset declarations.

Benchmark 3.4.7.

BENCHMARK	Country data 2020	
	Total number of cases	Per 1 million of population
3.4.7. Track record of cases referred to law enforcement bodies based on the verification of declarations	n/a	n/a

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Indicator 3.5. Dissuasive and proportionate sanctions are enforced

Assessment of compliance

Benchmark 3.5.1.

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

Law on Combating Corruption (Article 6.3.) establishes disciplinary liability for "failure, without any reasonable excuse, to timely submit the information /…/, or the wilful submission of incomplete or distorted information". The Commission on Combating Corruption can publish "in the official press information of the persons who fail to comply" with the requirement to submit financial information (asset declaration). Law does not specify if the Commission can publish such information on all public officials obliged to declare or just on public officials who submit their declarations to the Commission (high-level officials).

The Law on Approval of Procedures for Submission of Financial Information by Public Officials (Article 10) stipulates criminal, administrative and disciplinary liability for the violation of the said procedures. No respective provisions of criminal nor administrative laws were reported by country. Azerbaijan plans to incorporate the special norm into the Code of Administrative Offences. It is planned that it will envisage administrative liability of official for non-submission, late submission or false statement in declarations.

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

Benchmark 3.5.2. – 3.5.7.

BENCHMARK	Country Data 2020	
	Total number of cases otal	Per 1 million of population
3.5.2. Track record of sanctions imposed for non-submission or late submission of declarations	n/a	n/a
3.5.3. Track record of sanctions (measures) imposed for conflict of interests (including for violation of rules on incompatibilities, gifts, divestment of corporate rights, post-employment restrictions) based on the detection through verification of declarations	n/a	n/a
3.5.4. Track record of sanctions (measures) imposed for illicit enrichment (unjustified assets) based on the detection through verification of declarations	n/a	n/a
3.5.5. Track record of administrative sanctions for false or incomplete information in declarations imposed on high level officials	n/a	n/a
3.5.6. Track record of criminal sanctions for false or incomplete information in declarations imposed on high level officials	n/a	n/a
3.5.7. Track record of sanctions following verification of declarations based on media or citizen reports	n/a	n/a

Comments: Asset disclosure is still not implemented in practice in Azerbaijan. Actual legislation does foresee in-depth analysis of declarations. Therefore, the requested statistic was not provided by country.

Note: Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Benchmark 3.5.8.

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

Asset disclosure is not implemented in practice in Azerbaijan.

4 Protection of Whistleblowers

Azerbaijan includes provisions on whistleblower protection in its Law on Combating Corruption. Persons can also inform about corruption offences based on the Criminal Procedure Code. Available protection measures are rather limited. In practice, protection was not requested by whistleblowers and guaranteed so far. External channels are available in anti-corruption bodies and seem to work in practice. Whistleblower protection has stronger legal basis for public sector. Focus in Azerbaijan is on detection of criminal offences. There is no dedicated authority in Azerbaijan that would be responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers. The trust in reporting channels depends from channels. There is some fear to report serious cases. Statistics are not collected systematically. Little information is available on internal reporting.

Indicator 4.1.The whistleblower protection is guaranteed in law

Background

The main legal basis for whistleblowing and whistleblower protection in Azerbaijan is the Law on Combating Corruption. Article 11-1 regulates reporting internally to authorised persons. Article 11-2 sets out prohibition of retaliation and covers some aspects of protection. In principle, the law guarantees protection for reporting persons in public and private sector. However, protection was not applied so far based on this law. Without practical application, it is hard to say with certainty how efficiently it is guaranteed.

Assessment of compliance

Benchmark 4.1.1.

The law guarantees protection of individuals who reported about a corruption-related wrongdoing that they believed true at the time of reporting and who disclose this information using internal or external channels

All listed elements should be provided for in the primary law for the benchmark to be met.

The law defines that any person can provide information on corruption offences (Article 11-1). Corruption related offences are defined in Article 9 and include corruption offences and offences conductive to corruption (acts or inaction listed in the law). The material scope is broad enough to meet “corruption-related wrongdoing” requirements of the benchmark.

The law covers the use of internal channels to make the disclosure – submitting information on corruption to authorised persons in state and municipal bodies, as well as legal entities and budget organisations owned by state or municipality.

Reporting externally is also possible and takes place in practice, but it is not provided in the "Law on Combating Corruption" or in another way in the primary law. The "Law on Combating Corruption" refers to anti-corruption bodies only in relation to need to provide confidentiality of persons providing information on corruption offences. The Authorities of Azerbaijan informed that such obligation is also stipulated in the Statute of the Anti-Corruption Directorate. External channels are based on the Criminal Procedure Code (Article 204) stipulating that natural person can provide information on committed or prepared crimes, which is considered a reason to initiate criminal proceedings. The Government informs that the ACD is the main body responsible for receiving and reviewing information on corruption based on the Article 11-1 of the Prosecutor's Office Act and Article 5.1 of the Statute of the ACD.

There are no conditions such as reasonable belief, public interest or good faith in Azerbaijani law.

The link between reporting through external channels and provision of protection for whistleblowers in Article 11-2 is not clear. The Statute of the Anti-Corruption Directorate establishes analyses and review of information received in connection with corruption related legal offenses as the obligations of the Department. The monitoring team cannot attest that protection is granted to persons reporting through external channels. However, the Authorities of Azerbaijan assured that whistleblower protection is ensured also to persons reporting through external channels.

Benchmark 4.1.2.

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

Pursuant to the Article 11-1 of "Law on Combating Corruption", any person may provide information on corruption offenses. Therefore, both public and private sector employees are covered, namely can report corruption and benefit from protection.

According to the Article 11-1.2., internal channels are to be established in state and municipal institutions, as well as organisations and enterprises owned by state and budget organisations. The report by private sector employees can be made through external channels, for example, the ACD, since no requirement to have internal channels in the private sector exists.

In 2019-2020, the ACD received 100 applications by employees of various organizations (whistleblowers) on corruption facts and on other violations in the organisations they work. 92 of 100 whistleblowers disclosed information on public sector, and 8 on private sector.

As said before, external reporting (reporting to designated state authorities) is not explicitly provided in the "Law on Combating Corruption", which does not include private sector. Hence, there is no clear legal basis to request protection by a private sector employee, for example, in case of dismissal or any other discriminatory measure.

"Employees" should cover categories listed in the draft pilot monitoring Guide - self-employed persons, shareholders and board members, volunteers and trainees, contractor, suppliers, persons who's employment has ended or persons engaged in recruitment process, - but this cannot be said with certainly as practice or relevant guidance is lacking.

Benchmark 4.1.3.

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

According to the Law on Combating Corruption (Article 11-2.4.) employer must substantiate the grounds for the measures taken against a whistleblower. The Law provides that in cases of reprisal, a whistleblower may appeal administratively and (or) may appeal to the court (Article 11-2.5.). In addition, the Labour Code (Article 187) provides that an institution, enterprise or organisation that imposes a disciplinary sanction on an employee of a department, enterprise or organization that has provided information on corruption offenses shall substantiate that the disciplinary sanction arises from circumstances established by law and is not relevant to information on corruption offenses.

Benchmark 4.1.4.

The law provides for the following key whistleblower protection measures:

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

All listed protection measures must be explicitly provided in the primary law for the benchmark to be met.

Articles 11-2 of the Law on Combating Corruption provide the following protection guarantees mentioned in this benchmark: protection of identity and protection from various forms of retaliation at the workplace.

Persons participating in criminal proceedings (with a status of witness in criminal proceedings) can benefit from protection of personal safety in line with the Law "On State Protection of Persons Participating in Criminal Proceedings". Also, the Law on Combating Corruption in its Article 11-2.3. extends such protection of personal safety in the meaning of Law "On State Protection of Persons Participating in Criminal Proceedings" to persons who reported corruption or his/her close relative(s). Whistleblowers may benefit from the safety measures enshrined in the law "On State Protection of Persons Participating in Criminal Proceedings" without the need to have the status of a witness. Meanwhile, there should be sufficient basis to expect that the person will be threatened with death, violence, destruction or damage to his/her property. Such protection can be applied on the basis of the applicant's request to the prosecutor's office.

Release from liability is not provided in the law.

Benchmark 4.1.5.

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

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

All listed pre-retaliation measures must be provided in the primary law for the benchmark to be met.

As explained by Azeri government, providing consultations on protection to whistleblowers is not a legal obligation, however, it can be provided in practice.

Provisional protection means that court or responsible authority could stop dismissal or any other form of reprisal provisionally until final judgement whether it was due to whistleblowing. Monitoring team was explained at the on-site visit that reporting persons could contest unfair dismissal in a civil court. Court would decide whether person's dismissal was fair and shall be preserved. The Authorities did not provide any provisions attesting that court can take any provisional measures before it decides, for instance, ask to restore the person after dismissal.

As to possibility of whistleblowers to obtain state legal aid, monitoring team was informed that in accordance with Article 61 of the Constitution everyone has the right to receive qualified legal assistance. In specific cases envisaged by legislation legal assistance shall be provided free of charge, at the expense of the state. However, whistleblowing is not such specific case.

Benchmark 4.1.6.

The law provides for the following post-retaliation remedies:

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

All listed post-retaliation remedies must be provided for in the primary law for the benchmark to be met.

The Law on Combating Corruption (Article 11-2.5.) states that in case of violation of the requirements of Article 11-2 (which relates to State protection of a person providing information on corruption offenses), which can include material or moral damage (Article 11-2.2.), by departments, enterprises or organizations, authorized structural units and bodies specialized in combating corruption, the person reporting corruption-related offenses may appeal administratively and (or) may appeal to the court. As part of such appeal, a person could claim compensation and ask to be reinstated (see above on provisional protection).

Pursuant to Article 21 Compensation for damage of the Civil Code, any person can claim compensation for damage (expenses incurred). Moral compensation is covered in Article 23.

A whistleblower can apply to court for a reinstatement in case of unfair dismissal based on Labour Code Article 74. Reinstatement claim of state bodies and public associations must be reviewed in one month as provided in the Civil Procedure Code Article 172.2.

Azerbaijani Authorities note that in most cases protection is not solicited by the whistleblowers.

It is difficult to ascertain how compensation and reinstatement would work for persons reporting corruption. Currently, no case is available on reinstatement or compensation of a whistleblower.

The law does not provide for medical and psychological aid for whistleblowers who suffer retaliation.

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

Assessment of compliance

Benchmark 4.2.1.

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

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

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

The Law on Combating Corruption clearly provides legal grounds for internal reporting at the workplace in the public sector (Article 11-1). State and municipal bodies, state or municipalities-owned legal entities and budget organizations are obliged to create internal channels for their employees.

Internal reports can be made to authorised structural unit. However, number of corruption related reports received by state authorities from whistleblowers through internal channels is not indicated by Azerbaijan. Little is known about existence and work of these channels in practice.

External channels are available in anti-corruption bodies, as well as in investigation and prosecution bodies.

In most cases, people disclose information on corruption-related wrongdoing known to them through the ACD. As Azerbaijani Authorities stated during the on-site visit, the ACD is open to everybody. In addition, reports can be made to other anti-corruption bodies. At the on-site visit, representatives of the Anti-Corruption Commission explained that any citizen can report to the Commission and that reports are submitted through its website. In addition, external channels are available in investigatory bodies under the Ministry Internal Affairs and in the State Security Service.

Whistleblowers can use various hotlines available in Azerbaijan, such as “161-Hotline” run by the ACD and hotline of the PGO.

Disclosure may be made in writing, orally or electronically.

Possibility of public disclosure (reporting corruption to media, public associations) exists, but it is not stipulated in the law. Monitoring team learned that it is quite popular to report in media and social media (Facebook, Twitter). However, is not regulated and it cannot be attested that protection will be provided to reporting persons in such cases.

Benchmark 4.2.3.

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

There is no legal provision that would allow anonymous whistleblower reports in Azerbaijan.

Benchmark 4.2.4.

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

There is no dedicated authority in Azerbaijan that would be responsible for providing protection and ensuring oversight, monitoring, collection of data regarding the protection of whistleblowers.

The ACD is dedicated authority in general in the field of anti-corruption and receives most of whistleblower reports. The ACD statute provides that its duties are to analyse information received in connection with corruption related legal offenses, as well as to collect data on corruption related offenses, analyses, summarizes relevant data. Azerbaijani authorities claim that ACD is the dedicated authority. The draft Guide on the benchmarks provides that to be compliant, dedicated authority has to be assigned and perform all of the following functions: provide protection to whistleblowers; ensure oversight over compliance with whistleblower protection legislation; monitor and collect data regarding the protection of whistleblowers.

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

Assessment of compliance

Benchmark 4.3.1.

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

Azeri authorities explained that many citizens express their concerns to various authorities and often use hotlines and applications such as ASAN application. Awareness raising specifically about whistleblowing channels is not sufficient, but continues. A guide on whistleblowing was issued recently and is publicly available, as well as training based on it are planned to raise awareness.

Monitoring team interviewed various non-governmental stakeholders about efficiency and trustworthiness of reporting channels. Generally, the public opinion is positive about existence of protection. It was attested that reporting mechanism to prosecutors is working. However, internal reporting in public sector (to authorised structure units) do not work in practice and people fear reporting internally.

The monitoring team remains with an impression that generally citizens are reluctant to report corruption and that certain caution exists as to what and to whom to report. Smaller violations (traffic police, education sector) can be reported without fear and reports will be listened to, while the business sector would fear

consequences. For instance, employees of state-owned enterprises would fear to report corruption. Nepotism remains a problem.

Benchmark 4.3.2.

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

Statistics were made available about how many reports were received by the ACD and led to investigations in 2019-2020. Detailed statistics about corruption reports from citizens received in the country do not seem to be collected systematically. Information on whistleblower protection is not collected, analysed, and used as a basis for reform of anti-corruption policy, aggregated information is not published. The Azerbaijani Authorities refer to the ACD semi-annual and annual reports. These reports could occasionally include information on whistleblowers, but the monitoring team did not study this and doubt these reports cover national statistics required by this benchmark.

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

Assessment of compliance

Benchmark 4.4.1. – 4.4.4.

BENCHMARK	Country Data 2020	
	Total number of cases	Per 1 million of population
4.4.1. Track record of whistleblower reports received by public authorities through internal channels	n/a	n/a
4.4.2. Track record of whistleblower reports that were received by the central authority[2]	76	7,6
4.4.3. Track record of consultations to whistleblowers provided by the central authority	n/a	n/a
4.4.4. Track record of criminal cases for corruption offences that were started as a result of whistleblower reports	2	0,2

Comments: number of corruption related reports received by state authorities from whistleblowers through internal channels is not indicated by Azerbaijan.

In 2020, the Preventive Measures and Inquiry Department of the ACD received 66 whistleblower reports. 4 of the reports were related with private sector. On the basis of 3 reports, initial investigations were carried out but no criminal case was initiated on the basis of whistleblower reports.

In 2020, the Operational Department of the ACD received 7 whistleblower reports. 6 of them were related with public sector and 1 was on private sector. On the basis of 2 reports criminal cases were initiated (1 case was initiated on the basis of report on private sector and 1 case was initiated on the basis of report on public sector).

In 2020, the Operational Support Division of the ACD received 3 whistleblower reports and all of them were related with public sector. No criminal case was initiated by the Division on the basis of the whistleblower reports.

As established by the draft Guide to the ACN Performance Indicators, the evaluation team should have access to the total number of corruption related whistleblower reports and complaints of retaliation received by external channels, as collected by the central authority, for the calendar year preceding the monitoring, i. e. 2020.

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

[2] The data of the Anti-Corruption Directorate of PG were considered for the assessment though the monitoring team has solid doubts that the ACD is the central authority for whistleblowers' protection (see also benchmark 4.2.3.).

Benchmark 4.4.5.

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

According to information available to the monitoring team, protection was not requested or provided. In addition, civil society confirmed that there were no (known) reports of harassment.

Benchmark 4.4.6.

BENCHMARK	Country Data 2020	
	Total number of cases	Per 1 million of population
4.4.6. Track record of at least one of the protection measures from those listed under 4.1.4-4.1.6	n/a	n/a

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Benchmark 4.4.7.

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

The monitoring team is not aware of any cases when the confidentiality of whistleblower identity was breached.

Azerbaijan informed that in 2020 no administrative proceeding was initiated on violation of the Code of Administrative Offences A. 594-2.0.1. for disclosure of information about a whistleblower (breach of confidentiality).

Box 4.1. Guide on whistleblowing

In 2021, in order to incentivize whistleblowing a Guide on whistleblowing has been elaborated in Azerbaijan. The Guide was disseminated among NGOs and relevant state bodies. The Guide is targeted at raising awareness on whistleblowing and encouraging the public and private sector actors aware of wrongdoing to come forward and speak up. During the elaboration of the Guide experience of more than 14 various countries were analysed in detail and experience found to be successful was reflected in the Guide. Recommendations of various international organizations such as Transparency International, OECD and EU have been taken into account while developing the Guide and were reflected in it to the degree possible.

Source: https://genprosecutor.gov.az/storage/pages/9JfGTc0R0riejmGCpqAeUsTCN7ieNI4NGib5HirT.pdf

5 Independence of Judiciary

The judicial tenure is guaranteed by law, but there are concerns about the lack of clarify regarding the confirmation of judges in their positions after the initial 3-year nomination and the role of the executive in this process. The Judicial Legal Council is a self-governance body that is responsible for several aspects of judicial career and discipline. The Council is composed of 15 members, including 9 judges. 7 judicial members are suggested by their peers with the final selection of candidates done by the respective courts and the Judicial Legal Council. The role of the Judicial Legal Council is only advisory in the appointment and dismissal of judges. There are also deficiencies in the selection and promotion of judges since the primary law does not establish clear merit based competitive procedures. Court presidents are appointed by the President of the Republic upon proposals of the Judicial-Legal Council. The funding received by the judiciary was increased during the last years. However, it is still not sufficient to ensure sound autonomy of the judiciary. The remuneration of judges is set by the law. The law also prohibits the reduction of their salaries. However, there are payments for the stationary costs for the judges that involve executive authorities in the decision-making procedure. Electronic case distribution system is implemented in 66 percent of courts in Azerbaijan. The anonymised judicial decisions are published online. Grounds and procedures for the disciplinary liability of judges are clearly stipulated in the law. Concerns remain about the unclear grounds of dismissal of judges. Judges have due process guarantees in the disciplinary process. The final decisions regarding judicial discipline are published online including justification.

Indicator 5.1. Judicial tenure is guaranteed in law and practice

Assessment of compliance

Benchmark 5.1.1.

Judges are appointed until the legal retirement age

Benchmark 5.1.2.

If not, clear criteria and transparent procedures for confirming in office following the initial (probationary) appointment of judges are set in the law and used in practice

According to the Law on Courts and Judges of Azerbaijan, judges initially are appointed for a period othree years. At the end of this period, they are assessed in accordance with the "Rules for the evaluation of

judges' performance" endorsed by decision of the Judicial-Legal Council, i. e. the criteria and procedure for confirming in the office are not set in the primary law. If the evaluation does not reveal any professional shortcomings in the judge's activity, his / her powers shall be extended until the age limit at the proposal of the Judicial-Legal Council. The age limit for judges of the Supreme Court is 68, and for judges of other courts is 66.

At the country on-site visit, the representatives of the government of Azerbaijan ensured that powers of judges shall be extended until the maximum age limit set by law, i. e. until 66 years for judges in general and 68 for judges of the Supreme Court, and there is no discretion in extension for a shorter period.

As noted above, the criteria applied for the assessment of judges are stipulated in the "Rules for the evaluation of judges' performance" endorsed by the Judicial-Legal Council, i. e. not the primary law. The rules establish multiple quantitative and qualitative criteria. The list of criteria is not exhaustive. It includes several criteria that may allow for the personal judgements. For instance, the "Rules for the evaluation of judges' performance" stipulates that:

"1.6. During the evaluation the information at the disposal of members of Judicial-Legal Council can be used as well. For this purpose, members of the Council may obtain relevant documents and other information provided by the law".

"2.3. Other information about the judge, including his reputation, hard-work, diligence, ability to control his emotions is included to the opinion as additional notes".

"2.5. Other information about the judge, including organizing of the work, existence of cases of procrastination, creation of artificial barriers to citizens in implementing their rights, damaging reputation of the justice and judge's prestige while considering cases, as well as, information positively characterizing judge is included to the opinion as additional notes".

Pursuant the Law on Courts and Judges, the Judicial-Legal Council is responsible for the organization of electing candidates for the position of judge and evaluation of the activity of judges. The Judicial-Legal Council establishes the Judges Selection Committee to carry out selection of candidates for the judicial posts. The law with the reference to the Constitution of Azerbaijan stipulates that the President of the Republic appoints judges.

The Law on Judicial-Legal Council of Azerbaijan, stipulates that the activities of judges who are first appointed for a 3-year term are evaluated by the Judicial Legal Council at the end of the specified period and that the Judicial-Legal Council determines the procedure and methodology of evaluation of the work of judges, i. e. the same procedure and methodology that also applies for confirming in office following the initial (probationary) appointment of judges.

The Judicial-Legal Council establishes the Judges Selection Committee that is vested with selection of candidates for the vacant judicial posts. The Committee is composed of 11 positions, including judges, representatives of executive power and the Prosecutor's Office, defence lawyer and academician. During 2020, the Committee had 8 active members and 3 vacancies. The law stipulates: "Judges Selection Committee shall collect the application documents of the candidates for the vacant judicial posts, and organize written test and oral exam, in a transparent manner, in order to examine their aptitude and worthiness of occupying judicial post, engage judicial candidates in long-term training, determines their professional aptitude by means of interview". The primary law does not set the procedures of written test and oral exam and interview; these procedures are regulated by the bylaw adopted by the Council. The Judges Selection Committee shall submit its proposals to the Judicial-Legal Council regarding every candidate who has successfully passed the preliminary training course and the final interview.

The Judicial-Legal Council considers and makes motions for appointment of candidates to the vacant judicial posts to the relevant executive body on appointment of the candidates who have gained minimum or higher marks. While the procedure for the decision-making by the Judicial-Legal Council is set by the

law, the decision making procedures of the Judges Selection Committee are regulated by the bylaw. The law foresees appeal of decisions of the Judges Selection Committee and the Judicial-Legal Council.

It is commendable that the procedures of judge confirmation in the office foresee participation of the judge under the evaluation in the meeting of the Judicial-Legal Council and justification of the respective decision. Publication of decisions about confirmation of judges in the office is not required by law. The monitoring team was not able to assess the practice of the above due to insufficient time for the assessment; it will be important to assess it next year by reviewing sample decisions.

The President of the Republic appoints judges based on the motion of the Judicial-Legal Council on extension of judicial powers after the initial appointment. The national law does not stipulate that the President should be bound by the proposal of the Judicial-Legal Council. Azerbaijan claims that there were no cases when judges proposed by the Judicial-Legal Council were not confirmed in office following the initial (probationary) appointment of judges by the President of the Republic. According to the Judicial-Legal Council, the executive can only reject its proposals, but cannot appoint judges outside the JLC's proposal. However, even this theoretical possibility of involvement of the executive in appointment of judges outside the Judicial-Legal Council's motion is not a good practice for ensuring the independence of the judiciary. This practice will need to be assessed further next year.

At the country on-site visit, the representatives of government of Azerbaijan informed that 14 (3 percent) from the initially selected 459 judges were not confirmed in the office following the initial 3-year appointment since Judicial-Legal Council's creation in 2005. No decisions of assessment after the initial 3 years appointment of judges or on non-confirmation were appealed during the last years. The monitoring team was not able to form an opinion about criteria and procedures that were used in practice for confirming judges in office following their initial appointment.

Benchmark 5.1.3.

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

The Constitution of Azerbaijan (Article 127) stipulates that judges "may not be replaced during their term of office". The Law on Courts and Judges reiterates that judges shall not be dismissed from their positions and their authorities shall not be terminated but also stipulates some exceptions (Article 79). The Law on Courts and Judges allows judges to be removed from the office before the end of term of appointment in the exceptional cases on the bases set by the law including inter alia professional shortcomings evaluation of which is regulated by the bylaw and may potentially leave discretion for evaluators and other entities providing material for evaluation. The primary law does not sufficient regulate main aspects of the exceptional procedures, e.g. it does not require a clear justification for such a measures and objective grounds (see also benchmark 5.2.2.).

The monitoring team was concerned about the practice of rotation of judges. Every 5 years judges are evaluated and considering results of evaluation may be rotated to other courts, upon their consent. Judge willing to be transferred or promoted can also apply for performance evaluation before the 5-year term. During the country visit, representatives of the government explained that the rotation aims to prevent too close bonds of judges with local communities in small districts. After the country visit, the Government clarified that in practice, judges who have difficulty working in the same place for a long time, or those with family or health reasons are considered for rotation. The monitoring team has some concerns about the impact that the practice of rotation of judges may have at to the irremovability of judges. At the country onsite visit, the monitoring team was informed that two judges were removed from the office before the

end of term in office on their own volition in 2020 and two in 2019 – one his/her own volition and one for the disciplinary liability.

The Government stated that, the principle of irremovability of judges is fully observed in Azerbaijan, and stressed that there are about 200 judges in the judicial system in Azerbaijan (more than 1/3 of the existing judiciary) who have been working at the same court for more than 5 years. It will be important to examine the practice of rotation of judges from lower level courts during the next monitoring round.

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

Assessment of compliance

Benchmark 5.2.1.

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

According to the Law on Courts and Judges (Article 93-3), the Judicial Legal Council plays advisory not a decisive role in the appointment of judges: "The Judicial-Legal Council proposes to the relevant executive body of the Republic of Azerbaijan the appointment of the candidates". Pursuant the Constitution of Azerbaijan, President of the Republic appoints the judges of first instance courts and Milli Majlis of the Republic appoints judges of the Supreme Court, the NAR Supreme Court and the courts of appeal, upon the advice of the President of the Republic.

Pursuant the Law on Courts and Judges, chairmen of courts of the Republic of Azerbaijan, deputy Chairmen of the courts of the Republic of Azerbaijan, Board Chairmen shall be appointed, subject to the proposal of the Judicial-Legal Council except the Chairmen of the Supreme Court and NAR Supreme Court. GRECO "Fourth evaluation round report / addendum to the second compliance report. Azerbaijan" stressed that the Judicial Legal Council should be involved in the appointment of all categories of judges[3].

The national law does not stipulates the President of the Republic being bound by the proposal of the Judicial-Legal Council. Azerbaijan claims that there were no cases when judges proposed by the Judicial-Legal Council were not confirmed in office following the initial (probationary) appointment of judges by the President of the Republic.

The Judicial Legal Council plays advisory not a decisive role in the appointment and dismissal of judges and does not have even the advisory role in appointment of the Supreme Court presidents.

Benchmark 5.2.2.

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

[3] Council of Europe "Azerbaijan : GRECO publishes its Addendum to the Second Compliance Report of Fourth Evaluation Round" (2021)

The benchmark requires that the primary law should regulate main issues of the selection and promotion of judges, including principles, main stages, requirements to candidates, grounds for refusal/rejection of candidates, criteria for decision-making.

The Law on Courts and Judges establishes the judge selection procedure and participating bodies. However, the primary law does not determine criteria for the evaluation of the exam and interview results of candidates for judicial training or after such training. The law indicates only that after the initial training "The applicants shall be classified according to their merit, based on the mark obtained". The primary law established only general requirements to judge candidates based on the Constitution of the Republic (such as citizenship, age limit, education requirement, etc.) that also serves as the initial grounds for refusal/rejection of candidates.

Candidates for judicial position and judges in the office are assessed in accordance with the "Rules of selection of non-judicial candidates to vacant judicial posts" endorsed by the decision of the Judicial-Legal Council, i.e. the criteria and procedure for confirming in office and promotion are not set in the primary law.

The Government stated that the website of the Judicial-Legal Council (http://jlc.gov.az/shtatjlc.php) lists the number of judges in each court, as well as the number of vacancies in higher, appellate, specialized and general courts. In addition, the single judicial portal (courts.gov.az) lists the number of actual sitting judges in each court.

The monitoring team was concerned that while information about the procedures for the initial selection and appointment of judges is announced online and available for general public (see also benchmark 5. 2.3), there is a lack of full publication of judicial vacancies for promotion (including terms and conditions for participating) online that should allow any eligible person to participate in the competitive promotion. The practice of publication of vacancies should be further examined in the next round of monitoring.

The Law on Courts and Judges also foresees two non-competitive appointment procedures by the Judicial Legal Council: (1) of some prominent in legal area persons to the high judicial posts based, and (2) of person who voluntary resigned from the post of judge and worked in the authorities by interview conducted by the Judicial Council, for re-appointment to the post of judge. The law does not specify how "high moral qualities" in the first appointment option are established or how the interview shall be conducted in the second appointment option and based on what criteria the decisions should be made.

The "Rules for the evaluation of judges' performance" endorsed by decision of the Judicial-Legal Council regulates evaluation of judges but, as already mentioned above, is not the primary law.

Benchmark 5.2.3.

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

Azerbaijan informed that information on all stages of the judicial selection is published on the official website of the Judicial-Legal Council and in the mass media. The authorities provided links online publication of relevant information on the website of the Council (jlc.gov.az). Information is published in the national official language of Azerbaijan. It is understandable but impedes evaluation for the monitoring team. Internet translation allows assuming that some essential information about the steps of selection of candidates is published. However, information about the final stages of selection of candidates (especially interviews) are quite general and justified respective decisions are not provided.

The law available to the monitoring team does not require publication of judicial vacancies, with the terms and conditions, and results of all stages of the judicial promotion. The Government stated that the website of the Judicial-Legal Council (http://jlc.gov.az/shtatjlc.php) lists the number of judges in each court, as well

as the number of vacancies in higher, appellate, specialized and general courts. The non-governmental stakeholders noted that “Vacancies are published from time to time. However, substantiating decisions on appointments to these vacant positions are not published”. The practice of publication of judicial vacancies needs to be further examined in future monitoring to determine if the terms and conditions, and results of all stages of the judicial promotion are announced online with their justification.

Indicator 5.3. Court presidents do not interfere with judicial independence

Assessment of compliance

Benchmark 5.3.1.

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

The Chairmen of the Supreme Court and NAR Supreme Court are appointed by the President of the Republic among the judges of the said courts (Paragraph 32 of Section 109 of the Constitution of the Republic and Article 94 of the Law on Courts and Judges). The President of the Republic also appoints the chairpersons of the remaining courts. Pursuant the Law on Courts and Judges, chairpersons of courts, except the Chairmen of the Supreme Court and NAR Supreme Court, shall be appointed, subject to the proposal of the Judicial-Legal Council. Hence, the Judicial Legal Council plays advisory not a decisive role in the appointment of court presidents. There is no open competition to fill in position of court chairperson. Pursuant the Law on Courts and Judges, “Chairpersons of the courts of the Republic of Azerbaijan shall be elected from among the judges of the appropriate courts”. However, the law of Azerbaijan does not foresee election of court presidents by the judges of the respective courts.

Benchmark 5.3.2.

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

It seems that the primary law available for the monitoring team, i. e. the Law on Courts and Judges sets the remuneration of judges without the decision-making role of court presidents (Article 106). Law commendably also indicates that “In the period of the judge activity, the amount of his/her salary cannot be reduced”.

However, pursuant the Law on Courts and Judges, presidents of some courts have some influence on other benefits of judges in the form proposing individual judges for the benefits and awards. Namely the Supreme Court of the Nakhchivan Autonomous Republic “proposes the Judicial-Legal Council to reward judges of the NAR Supreme Court and the first instance courts, related to its territorial jurisdiction” (Article 57). The Chairman of the Court of Appeal “proposes the Judicial-Legal Council to reward judges of the Court of Appeal and first instance courts, related to the territorial jurisdiction of such court of appeal, military courts, as well as, First Instance Board on Serious Crimes of the NAR Supreme Court” (Article 66). The chair of the Supreme Court submits proposals to the Judicial-Legal Council on awarding judges of the Republic of Azerbaijan (Article 83). The authorities of Azerbaijan ensured that these rewards are not of the financial nature.

In addition, the monitoring team still has some doubts if influence of court presidents is fully excluded in decision making about other benefits received by judges regulated by the primary law or secondary law that was not available for the monitoring team. The Law on Courts and Judges besides the remuneration of judges also foresees "a tax-free monthly allowance of 25 percent of salaries of judges to cover the costs of exercising judicial powers". At the country on-site visit, the representative of the government of Azerbaijan explained that judges are also entitled to the allowance for the stationery costs. The Law on Courts and Judges does not contain any relevant provision. The authorities referred to the Law on Public Procurement as the legal basis of these allowances:"1.4. Funds provided in the state budget for the purchase of stationery related to clerical work in the courts of first instance shall be transferred directly to the bank accounts of judges. The procedure for transferring funds provided for in the state budget directly to the bank accounts of judges in connection with the clerical work in the courts of first instance shall be determined by the body (institution) determined by the relevant executive authority"[4]. The size of allowance depends on the particular court and judge and is regulated by secondary legislation. Based on all this, the monitoring team is not sure if the primary law sets all other benefits besides the remuneration of judges.

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

Assessment of compliance

Benchmark 5.4.1.

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

Azerbaijan informed that funding of judiciary was 54,35 mln. AZN in 2018, 65,29 mln. AZN in 2019, and 106,61 AZN in 2020. It was not indicated if it was the judiciary budget (a) requested, (b) allocated, (c) de facto disbursed at the end of each of the indicated years. The requested comparative data on budget of judiciary per one judge and prosecution service per one prosecutor in 2020 were not provided.

The law does not provide for the safeguard to prevent reduce of funding of judiciary as compared to budget of the previous year without inevitable decrease of all national budget because of economic recession. The reduction of judges' salaries is prohibited (Article 106 of the Law on Courts and Judges).

The funding of judiciary clearly increased during the last years in Azerbaijan. However, non-governmental stakeholders indicated that although the budget allocated to judiciary was increased significantly in recent years, the funding is still not sufficient. Besides the representative of the government of Azerbaijan highlighted the need to further increase funding of judiciary, especially remuneration of judges and other staff of courts, and continue to develop and update the infrastructure of courts.

Benchmark 5.4.2.

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

[4] Law of the Republic of Azerbaijan "About state owned Satellites "

The remuneration of judges is set by the Law on Courts and Judges and seems to exclude any discretionary payments at least based on the discussions with the representative of the government of Azerbaijan at the country onsite visit. Nevertheless, the monitoring team is not sure if the primary law sets all other benefits besides the remuneration of judges. There seems to be at least one allowance (for the stationery costs) that is regulated by the bylaws (see also benchmark 5.3.2.). In general, scheme of remuneration of judges looks rather complicated because of the various supplements and is unfavourable for transparency and impartiality of reward of judges.

The provision of the Law on Courts and Judges indicating that "In the period of the judge activity, the amount of his salary cannot be reduced" is welcome in the context of independence of judiciary.

Based on information provided by the country, "pursuant the Law on Courts and Judges, the wage of the Chairman of the Supreme Court is equal to the wage of the Chairman of the Parliament whose is 2'475 AZN (around 1'230 EUR). Monthly wage of the chairman of specialized courts, including grave crimes courts is equal to 80% of the wage of the Chairman of the Supreme Court" (i. e. 1'980 AZN (about 984 EUR)). "Monthly wage of chairman of the district court is equal to 70% of the wage of the Chairman of the Supreme Court", i. e. 1'733 AZN (around 861 EUR). "Wage of judge is equal to 80% of the wage of relevant court chairman", i. e. 1'386 AZN (around 689 EUR) in case of the district court.

"Each judge (chairman and deputy chairman) according to the said law is paid monthly additional payment in the amount of aforementioned monthly wage". The monitoring team assumes that it means that each judges receives double monthly remuneration, i. e. principal monthly remuneration of district court judge shall be 2'772 AZN (around 1'378 EUR).

The Law on Courts and Judges established that "For every five years of judicial experience, as well as, for academic degrees, judges receive surplus payment at the rate of 15 percent of official wage, on the condition that surplus does not exceed 45 percent. At the same time judges are provided with a tax-free monthly allowance of 25 percent of their salaries to cover the costs of exercising their powers". Besides judges are also entitled to the allowance for the stationery costs so called "clerical expenses".

The requested data on the factual average amount of monthly salary for judges of different levels (including main salary and all supplements) were not provided. Azerbaijan informed that "the requested depersonalised data on the monthly salary of individual judges of different courts are not available for the Judicial-Legal Council". It is important to note that transparency of public sector remunerations is among the anti-corruption indicators in general and should apply also to remuneration of judges. Besides, the Judicial-Legal Council as self-governance body of the judiciary is expected to be well informed about the situation in the judiciary in country, including inter alia remuneration of judges of different courts.

Azerbaijan also informed that remuneration of judges was increased more than twice in 2019. Without the actual comparative data is not possible to decide if the judicial remuneration is sufficient to ensure judicial independence and reduce the risk of corruption. Different internet sources provide different information about the average salaries in Azerbaijan[5]. Some internet sources indicate that average monthly remuneration could be around 3-4K AZN. The authorities of Azerbaijan informed that according to the official data of the State Statistics Committee dated 11.08.2021, the average monthly nominal salary in Azerbaijan in January-June 2021 was 724.4 AZ. The authorities stressed that the CEPEJ report noted that the gross salary of a judge at the beginning of a career of the lowest instance court for the first time in 2018 was about 4 times higher than the average gross salary in the country. Certainly, remuneration of judges may look good enough in the context of the average salary in the country or of public sector remuneration

[5] For instance, "Average salary in Azerbaijan is AZN 48'503 per year" (i. e. 4'041 AZN (2'008 EUR) per month) (https://www.averagesalarysurvey.com/azerbaijan). "A person working in Azerbaijan typically earns around 2'950 AZN (1'466 EUR) per month. Salaries range from 750 AZN (lowest average) to 13'200 AZN (highest average, actual maximum salary is higher)" (http://www.salaryexplorer.com/salary-survey.php?loc=15&loctype=1).

but most probably is still not very competitive if compared with remunerations of lawyers in the private sector or profitable SOE.

Non-governmental stakeholders noted that despite recent increase the level of judicial remuneration is still not sufficient to ensure judicial independence and reduce the risk of corruption. They noted that private sector lawyers earn significantly more than judges do. Therefore, positions of judges are not attractive for good lawyers that consequently negatively affect professionalism and quality of work of judiciary. Based on discussion with the representative of the government of Azerbaijan at the country onsite visit, it is possible to conclude that the number of judges in the country is deficient. The workload of judges is huge. Insufficient level of judicial remuneration can be among the main causes of this. The representative of the government of Azerbaijan also informed about the plans to further increase remuneration of judges.

Benchmark 5.4.3.

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

The requested data on the average amount of monthly salary for judicial assistants and court staff (including main salary and all supplements) were not provided. As indicated by the country, “judicial employees, including assistant judges, are civil servants and their salaries are determined depending on the classification of civil service positions, qualification level and length of service. All guarantees (bonuses, allowances, etc.) provided for in the legislation for civil servants shall apply to them. The salaries of civil servants have also been increased regularly, including by 50 percent in the last time in 2019”.

Without the more specific data (at least comparative), it is not possible to decide if level of remuneration of the court staff and judicial assistants is sufficient to reduce risk of corruption. Non-governmental stakeholders noted that despite the recent increase level of remuneration is still not sufficient especially of non-judicial staff of courts. They noted that private sector lawyers earn significantly more. Therefore, it is difficult to hire competent court staff.

The representative of the government of Azerbaijan during the discussion at the country onsite visit themselves agreed that the level of remuneration of court staff and judicial assistants is not sufficient and referred to the plans to further increase it.

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

Background

The Law on Courts and Judges of Azerbaijan establishes the Judicial-Legal Council as “an institution responsible for ensuring the organization of the judicial system and the independence of the judges and court system in Azerbaijan, organization of selecting candidates for the position of judge, evaluating the activity of judges, changing their place of work, promotion in position, bringing to disciplinary liability, as well as carrying out other functions of self-governing of the judicial authority, resolving other issues within their powers related to the courts and judges”. “Organization, legal foundations of the work and authorities of the Judicial-Legal Council are contained in this Law and the Judicial-Legal Council Law of the Republic of Azerbaijan” (Article 93-1 of the Law on Courts and Judges).

There were no other judicial councils or similar bodies in the country that should have been considered for the evaluation.

Assessment of compliance

Benchmark 5.5.1.

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

The Judicial Legal Council is established by and functions based on the Law on Courts and Judges and the Law on Judicial-Legal Council. The Law establishes functions and powers of the Council. It also covers main provisions of operation of the Council, in particular how decisions are made, organisation of work of the Council, publication of the decisions on disciplinary proceedings, appeal of decisions of the Council, some limited rules on recusal and conflict of interests. However, the law does not require publication of all decisions and does contain measures for transparency of work as required by the benchmark.

Benchmark 5.5.2.

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

The Judicial-Legal Council, as established by the Law on Judicial-Legal Council, consists of 15 members, including nine judges and six non-judicial members. Candidates to seven positions of judicial members of the Council are suggested by the associations of judges, i. e. less than half composition of the Council.

Pursuant the Law on Judicial-Legal Council, the association of judges suggests the candidates to members of the Judicial-Legal Council and based on these suggestions the Supreme Court selects two positions from cassation instance court, Judicial Council selects two positions from appeal courts and two from the first instance courts, the NAR Supreme Court selects one position from the NAR Supreme Court. All levels of the judicial system are represented in the composition of the Council but disproportionately. This raises concerns of the monitoring team especially since the non-governmental stakeholders met during the country on-site visit indicated that court system of Azerbaijan is still very hierarchical in practice. Above all, judges do not directly elect their representatives to the Council's composition which is not in line with the benchmark. They are selected from among the candidates suggested by the associations of judges by the respective nominating courts or the Council.

At the country on-site visit, the representatives of the government of Azerbaijan explained that there are two associations of judges in the country. In 2020, the number of members of the Public Union (Association) of the Specialized Judges of Azerbaijan was 113, and the number of members of the Public Union (Association) of the General Judges was 364. 477 judges (91 per cent of all acting judges in 2020) were the members of associations of judges. There is no information on how the associations are represented in the selection of candidates.

The monitoring team has concerns about the impact that the composition of the Council has to the independence and impartiality of decision-making of the Council in practice. Based on information published on the English version of the website of the Council (http://jlc.gov.az/e_mhs_terkibi.php) at the time of monitoring (before and during the country on-site visit), there were 12 members in the council, 6 of

which were judges (three positions of judicial members were vacant). The Government updated that by the end of 2021, there were 14 members, including 8 judges and that the Council was operational. The representatives of the government of Azerbaijan ensured the monitoring team that the chairperson of the Council who is not a judge does not have a decisive vote. However, the described situation proves that legal regulation of the composition of the Judicial-Legal Council and of modus operandi of the Council shall be improved to ensure independence and impartiality of decision-making.

In addition, GRECO "Fourth evaluation round report / addendum to the second compliance report. Azerbaijan" stressed that "composition of the Judicial Legal Council needs to be changed to strengthen role of the judiciary within this body, so that the Judicial Legal Council is composed of a majority of judges directly elected or appointed by their peers and is chaired by a judge"[6].

Benchmark 5.5.3.

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

The Judicial-Legal Council, as established by the Law on Judicial-Legal Council, is set of 15 members. Nine of these members are judges. Candidates to seven positions of the judicial members are proposed by their peers. However, they are elected only as candidates but not directly appointed as the members of the Judicial-Legal Council. The respective nominating courts and the Judicial-Legal Council selects the judicial members from among the candidates suggested by the associations of judges.

Arranging election of the judicial candidates to the Council through the general assembly of the associations ensures quite good representation of judiciary of the country, as 91 per cent of all acting judges were the members of the associations of judges in 2020 in Azerbaijan. However, this method does not guarantee the widest representation of the judiciary at all levels as only the members of the associations of judges are participating in the election.

As discussed with the representatives of the government of Azerbaijan during the country on-site visit, judicial candidates to the Council are elected at the general assembly of the associations by the open ballot. Virtual meetings of the associations were held on some other issues but not for the election of candidates to the Council. The draft Guide to the ACN Performance Indicators recommends to organising general vote of judges through an internet vote to avoid a general assembly of all judges which may be impractical. Besides, the Venice Commission suggests to do the election by the secret ballot (see the draft Guide to the ACN Performance Indicators on respective benchmark).

Benchmark 5.5.4.

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

The Judicial-Legal Council, as established by the Law on Judicial-Legal Council, includes six non-judicial members. The benchmark requires that more than 1/3 of the Council's composition would be non-judicial

[6] Council of Europe "Azerbaijan : GRECO publishes its Addendum to the Second Compliance Report of Fourth Evaluation Round" (2021)

members, provided that the non-judicial part of the council is substantial enough to influence the decision-making of the council, i. e. more than 5 non-judicial members in case of the Judicial-Legal Council of Azerbaijan. One non-judicial member, i. e. head of the relevant executive body of the Republic, is ex officio member of the Council. Remaining 5 non-judicial members are appointed by the executive and legislative bodies, prosecutor's office, and bar association from their representatives. The benchmark requires that the non-judicial members would represent the civil society or other stakeholders that have public trust. Therefore, non-judicial members representing the executive and legislative bodies, prosecutor's office cannot be considered for the assessment. The bar association may conditionally meet the requirement of the benchmark. However, one non-judicial member is not enough to meet the requirement of the benchmark.

Non-judicial part of the council cannot be considered substantial enough to influence decision-making of the council as required by the benchmark. The Law on Judicial-Legal Council does not set any requirement on participation of the non-judicial member in decision-making. The Law on Judicial-Legal Council stipulates that "Subject to the exceptions contained in this ACT, the session of the Judicial-Legal Council shall be considered authorized, if eight of its members are present.", i. e. the presence of judicial members is sufficient for the legitimate session of the Council. The Law also established that Judicial-Legal Council passes decisions by way of open voting and subject simple majority of the votes of those Council members present, except for the cases prescribed for in this Act".

Benchmark 5.5.5.

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

As established by the Law on Judicial-Legal Council, the Judicial-Legal Council is assigned with the decision-making on evaluation, rewards (except promotion), disciplinary liability of judges. However, the Council does not have decision-making role on selection, transfer, dismissal and promotion of judges.

Benchmark 5.5.6.

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

The non-governmental stakeholders met during the country on-site visit disagreed that the Judicial-Legal Council operates independently and impartially without political or other undue interference in its work. They noted a big part of the representatives of the executive power and absence of civil society representatives in the composition of the Council and the role of the executive power in the process of nomination, selection and appointment of members of the Council. The Judicial-Legal Council noted that the executive has 3 members including 1 ex officio member, and that they do not have a role in disciplinary procedures of judges. Even though the non-governmental stakeholders agreed that the Judicial-Legal Council is important ensuring independence and self-governance of judiciary, they stressed that not all the public and SCOs trust the Council. While there are no domestic studies regarding the public trust in the judiciary, the available international studies identify the influence of the executive on the judiciary among key problems[7].

[7] https://www.bti-project.org/en/reports/country-report-AZE-2020.html

Benchmark 5.5.7.

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

The Law on Judicial-Legal Council foresees "communication of the time, venue and issues to be considered at the session [of the Council] to the members of the Council three days before the session at the latest" but not for the public. Azerbaijan also informed that "/…/ representatives of civil society are invited to the meetings of the Council" but did not provided material substantiating this statement. The Law on the Judicial-Legal Council foresees that "Apart from the members of the Judicial-Legal Council other persons may be invited to the sessions". The law requires publication of the results of the disciplinary proceedings within one month after the decision comes into the force. There are no further requirement on the transparency of the activity of the Council in the law.

The English version of the official webpage of the Judicial-Legal Council contains information on sittings of the Council and issues discussed at it. Agendas of the forthcoming sittings of the Council are not published at least on the English version of the webpage. Information about the disciplinary decisions of the Council are published with justification.

The non-governmental stakeholders confirmed that "press-releases on the meetings of the Council are disseminated via the official website of the Council, mass media, online media, etc. The members of the NGOs are occasionally invited to the meetings of the Council (but at the session of the country on-site visit only one NGO acknowledged experience of participation in the sitting of Council). Information on upcoming meetings of the Council and agendas are not announced beforehand. During the country on-site visit, the Authorities confirmed that only press releases are provided summarising issues discussed and decisions made by the Council after the sittings. Information about the forthcoming sittings with agendas, minutes of sittings of the Judicial-Legal Council are not published. Information about the decisions of the Council except for the disciplinary decisions is published without the justification of decisions. There is no information if media persons are allowed to attend sittings of the Council. Meetings of the Council are not broadcasted.

Only some information about the proceedings and decisions of the Judicial-Legal Council, without justification, are available for the public. The non-governmental stakeholders also noted that information about decisions of the Council is published too late, e.g. the decisions made in 2019 were not on the website of the Council during the monitoring, i. e. in 2021. However, this was addressed promptly by the Authorities of Azerbaijan updating the public information on the activity of the Judicial Legal Council.

Benchmark 5.5.8.

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

The Law on Judicial-Legal Council sets some rules on conflict of interests and recusal. "Refraining from participation of session" of the Council is foreseen as measure to approach conflict of interest situation. It shall be developed to cover the entire process of decision-making, e.g. acting as judge-rapporteur in the process of disciplinary procedure of judges.

At the country on-site visit, the representatives of the government of Azerbaijan informed the monitoring team that there were no conflict of interest situations in the activity of the Council.

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

Assessment of compliance

Benchmark 5.6.1.

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

The order of the President of the Republic dated 13 February 2014 “On the establishment of the “Electronic Court” information system” stipulates application of the said system in courts. Thus, according to Instruction on clerical work in courts of Republic of Azerbaijan “In courts with two or more judges, where the "electronic court" information system is applied, the distribution of cases between judges is carried out randomly and automatically electronically through this system” (Paragraph 180-1).

As reported by Azerbaijan, “66% of courts in the country use the "Electronic court" information system which ensures distribution of cases randomly and automatically in an electronic way. By the end of the year 2021 the application of the said system in all courts is expected”.

“In courts where the "Electronic court" information system is not applied, cases are distributed randomly in accordance with the requirements of the Instruction, using the coding method. /…/ the random and automatic distribution of cases is regularly monitored” by the Judicial-Legal Council. The representatives of the government of Azerbaijan assured the monitoring team that no impact of the individual person is possible while distributing cases by the "Electronic court" information system. However, it was admitted that exceptions such as for instance allocation of cases of minors to the more experienced judges, etc., are possible. Besides, based on the discussion during the country on-site visit, it seems that reallocation of cases is still possible. It is not clear, whether it is executed in the framework of the electronic automated cases’ distribution system or outside and how. Therefore, there is still possibility to manipulate the case distribution system in practice. In addition, pursuant the national legal regulation, “the system ensures the differentiation of types of proceedings and equal distribution of cases, taking into account the number of cases submitted to the judges in the current year. The judge's illness, business trip or vacation excludes his participation in the distribution of cases”. The monitoring team does not have clear evidence that the differentiation of the types of proceedings and exclusion of judge participation in the distribution of cases in cases set by legislation is fully automated and eliminates possibility of manipulation by undue internal or external interference.

The order of the President of the Republic “On the establishment of the “Electronic Court” information system” regulating distribution of cases among judges is published (http://e-qanun.az/framework/26996). The representatives of the government of Azerbaijan ensured that operations of case allocation are recorded, and results of it are available to anyone interested.

The non-governmental stakeholders confirmed that the Judicial-Legal Council has started to monitor electronic distributions of cases at the courts. They also noted that “2 court presidents in 2020 were brought to disciplinary liability for manipulating electronic case distribution. Therefore, it proves that it is still possible to manipulate the system”. Regular monitoring by the Council and appropriate address of violations was appreciated by the CSOs with hope that electronic case distribution system will be applied properly and will ensure transparent and objective case assignment excluding any undue internal or external interference.

The monitoring team commends efforts of the government of Azerbaijan implementing automated electronic case distribution at the court and plans to extend this system to all courts of the country. However, the monitoring team still has no strong confidence that the automated distribution of cases among judges ensures objective case assignment excluding any undue internal or external interference in Azerbaijan in practice. Possibility of the exceptions in the automated case distribution system and some violations of the system referred by the non-governmental stakeholders prove that the electronic case distribution system and its application should be developed further. The respective monitoring and control function of the Judicial-Legal Council is commendable in this context.

Distribution of cases among judges in 34 percent of courts is still not automated in Azerbaijan.

Benchmark 5.6.2.

All judicial decisions delivered in open proceedings are published online

The Law "On Courts and Judges" establishes that "All court decisions must be disseminated electronically no later than one month from the date of their adoption". All judicial decisions delivered in open proceedings are published online at https://e-mehkeme.gov.az/Public/Anonymizedecisions?courtid=. The court decisions are available online for the general public to access without technical barriers as required by the benchmark. The court decisions are published anonymised even in case of perpetrators.

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

Assessment of compliance

Benchmark 5.7.1.

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

The primary law in Azerbaijan regulates grounds and procedures for disciplinary liability and dismissal of judges. However, grounds and procedures for dismissal are not sufficiently clear and detailed.

The Law "On Courts and Judges" establishes the grounds and procedures for the disciplinary liability of judges with the details of procedure further set in the Law on Judicial-Legal Council. The benchmark establishes that the clear grounds of disciplinary liability mean that law expressly states all the actions or inaction that can result in the liability, that grounds are formulated narrowly and unambiguously. "Breach of the judge ethics" and "commission of actions unworthy of the good name of the judge" as the grounds for the disciplinary liability set by the law of Azerbaijan are vague and prone to prone to abuse.

The monitoring team considers that "Complaints of the natural and legal persons" and "information published in mass media" are too general as the grounds for initiating the disciplinary procedure. However, the Government stated that complaints and information published in mass media are reasons, but not legal grounds, for initiation of disciplinary proceedings. The Authorities further clarified that the Judicial-Legal Council may initiate disciplinary liability on the complaints of natural and legal persons only in relation to violations that may facilitate corruption offences, e.g. creating artificial barriers to implementing the rights,

as provided in Articles 111 and 112, para 2, which further refer to the Law on Combatting Corruption (Article 9 (3)).

The procedures for the disciplinary liability of judges are clearly stipulated in the law in Azerbaijan and describe main stages of the proceedings as required by the benchmark, including who can initiate, who investigates an allegation, who makes a report, who considers and decides on the allegation, how decision-making is organised, what is the role of the judge in questions.

Procedure and grounds for dismissal of judges as the result of disciplinary proceedings are regulated by Article 113 (paragraphs 6-11) and Article 114, and according to the monitoring team are less clear. The Law "On Courts and Judges" sets "proposing the relevant executive body of the Republic to terminate authorities of the judge among the decisions of the Judicial-Legal Council in the disciplinary procedure" (Article 112). However, the law is silent about the grounds of such proposition. The listed punishments to the judges that may be prescribed depending on the grounds for the disciplinary liability do not include suggestion to terminate authorities of the judge (Article 112). Grounds for terminating of judicial authorities (Article 113) stipulated by the Law "On Courts and Judges" encompass also "dismissal from the office of a judge". The role of the Judicial-Legal Council in decision-making on dismissal of judges is limited to submitting of proposals to the relevant executive body of the Republic. The law does not expressly state grounds and procedures for dismissal of judges.

Non-governmental stakeholders indicated the need to clarify the procedure for the disciplinary liability of judges since some uncertainty exists. For instance, they noted that procedures for initiating disciplinary proceedings against judge following the complaints of individuals and legal entities are not clear to them.

The monitoring team notes that the above analysis will need to be further clarified next year to make sure that the legal terminology used in Azerbaijani originals and the English translation are well understood.

Benchmark 5.7.2.

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

During the on-site visit, the authorities ensured the monitoring team that application of disciplinary and dismissal procedures to judges is perceived by the judiciary to be impartial.

The non-governmental stakeholders do not find application of disciplinary and dismissal procedures to judges impartial. They referred that "Among the penalties imposed on judges is the change of the judge's place of work. Some decisions of the Judicial-Legal Council indicated that the judge was dismissed from the position of a judge of the appellate court for corruption and appointed a judge of the district court".

Benchmark 5.7.3.

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

As established by the Law "On Courts and Judges", "Only Judicial-Legal Council shall be entitled to institute disciplinary proceedings against judge. /…/ Only the Judicial-Legal Council with its decision may call judges to disciplinary liability" (Article 112). There was no information available to the monitoring team that this regulation is not followed in practice in Azerbaijan.

However, “chairmen of the Supreme Court, courts of appeal, NAR Supreme Court shall be bound, within their competence, to apply to the Judicial-Legal Council with motion to institute disciplinary proceedings” (Article 112 of the Law “On Courts and Judges”). This conflicts with the requirement of the benchmark that court presidents, including Supreme Court Chief Judge, should not be able to initiate disciplinary proceedings or participate in such proceedings.

The Authorities further clarified that court presidents only apply to the Judicial-Legal Council in order to consider initiation of such proceedings, and in practice not all the motions of court presidents are accepted by the Council. There were cases when Judicial-Legal Council did not even initiated the disciplinary proceedings upon the motion of court presidents. This matter will require further examination in the next round of monitoring.

Benchmark 5.7.4.

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

The Law “On Courts and Judges” and the Law on the Judicial-Legal Council set the fair proceedings guarantees for judges, including the right to be heard and produce evidence, the right to employ a defence counsel, the right to appeal disciplinary decision. At the country on-site visit, the representatives of the government of Azerbaijan ensured the monitoring team that these rights are respected in practice.

In the next round of monitoring, it will be important to examine the practical application of the procedural guarantees of due process for a judge in the disciplinary proceedings.

Benchmark 5.7.5.

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

Pursuant to the Article 17.6 of the Law on Judicial-Legal Council, decisions of the Judicial-Legal Council on disciplinary proceedings are published within one month after their entry into force. The benchmark requires that published decision would provide information about what was the alleged disciplinary violation, was it confirmed or not confirmed and why, name and position of the judge who was the alleged offender, and the sanction applied or other decision taken as a result of the disciplinary proceedings. Requirements established by the Law on Judicial-Legal Council (Article 23) for the decisions of the Law on Judicial-Legal Council on the disciplinary proceedings satisfy requirements of the benchmark. The final decisions regarding judicial discipline are published online on the website of the Judicial-Legal Council.

Internet translation of some of the decisions regarding judicial discipline published online allows concluding that the practice meets the requirements of the benchmark.

The monitoring team note that in the past, there were important delays with the publication of the decisions of the Judicial-Legal Council on disciplinary proceedings against judges, but the Authorities addressed these shortcomings during the pilot monitoring. It will be important to continue monitoring the practice of publication of these decisions in the future including information about the alleged disciplinary violation, was it confirmed or not confirmed and why, name and position of the judge who was the alleged offender, and the sanction applied or other decision taken as a result of the disciplinary proceedings.

Benchmark 5.7.6.

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

Criminal liability for judicial decisions (including for wrong decision or miscarriage of justice) is foreseen in the Criminal Code of Azerbaijan (Article 295). Monitoring team had no access to English translation of the Administrative offence code of Azerbaijan. Azerbaijan claims, “Over the past five years, no judge was convicted or prosecuted in connection with their judicial work”. No other material was provided that would prove that criminal or administrative sanctions for judicial decisions (including for wrong decision or miscarriage of justice) are not used in practice to exert undue influence on judges.

The non-governmental stakeholders had no strong opinion on whether criminal or administrative punishment for judicial decisions and such sanctions are used in practice to exert undue influence on judges. However, they have not rejected possibility of such practice.

No evidence that criminal or administrative sanctions for judicial decisions (including for wrong decision or miscarriage of justice) are used in practice to exert undue influence on judges was available for the monitoring team.

Benchmark 5.7.7.

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

The Law on Courts and Judges of Azerbaijan (Article 112) sets five types of the disciplinary sanction and respective motions to apply some of the sanctions:

- reprimanding of the judge;
- reproofing of the judge;
- proposing the relevant executive body of the Republic of Azerbaijan to demote the judge;
- proposing the relevant executive body of the Republic of Azerbaijan to transfer to different judicial post;
- proposing the relevant executive body of the Republic of Azerbaijan to terminate authorities of the judge.

Hence, the different types of disciplinary sanctions are available as established by the benchmark. The law also assigns different types of sanctions depending on the offence.

Sanctions can be evaluated as proportionate to some extent as it is based on the nature and gravity of the offence. However, motion to transfer judge to different judicial post in case of the corruption offences is not proportionate and dissuasive as required by the benchmark.

The authorities of Azerbaijan provided some information regarding the grounds of motions to initiate disciplinary proceedings against judges by the Judicial-Legal Council in 2020. In addition, the statistics on application of separate sanctions during 2018, 2019, and 2020 by type of sanction was provided. The practice of application of sanctions will need to be examined further in future monitoring in order to confirm that proportionate and dissuasive sanctions are routinely applied, i. e. the nature and gravity of the offence is taken into account and correspond to severity of sanctions applied.

Benchmark 5.7.8.

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

The representatives of the government of Azerbaijan informed that “No specific well-reasoned and justified public allegation has been identified in connection with the commission of corruption offenses by judges in 2019-2020”. The non-governmental stakeholders indicated that there were some public allegation on which the authorities did not follow up. However, they have not provided information on specific allegations. There was no information about the public allegations on which the authorities did not follow up available for the monitoring team.

6 Independence of Public Prosecution Service

The Prosecutor General is appointed and dismissed by the President of the Republic with the consent of the Parliament for a five-year term and can be reappointed for the consecutive term. At the time of the pilot, there was no self-governing body of prosecutors in Azerbaijan. Instead, attestation and disciplinary commissions established by the Prosecutor General were responsible for the career of prosecutors. Competitive procedure is open for external candidates who apply to enter the prosecutorial service. Recruitment or promotion to all other positions is internal and not transparent. The funding received by the public prosecution service is sufficient to ensure its autonomy. The law stipulates the elements of remuneration of prosecutors. However, the heads of structural units can propose bonuses to their subordinates without a clear link to the performance evaluation. They also have broad rights to allocate cases among them. The law does not stipulate clear grounds for disciplinary liability and dismissal of prosecutors. At the same time, application of disciplinary and dismissal procedures is perceived by the main stakeholders as impartial.

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

Assessment of compliance

Benchmark 6.1.1.

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

Current Prosecutor General was appointed on 1 May 2020. Pursuant the Constitution of the Republic of Azerbaijan (Article 133) the Prosecutor General is appointed by the President of Republic with the consent of the Milli Majlis (Parliament). There are no bodies of prosecutorial governance, such as a prosecutorial council or, as an alternative – independent expert committee, in Azerbaijan that would have any role in the process of selection and appointment of the Prosecutor General[8].

[8] Prosecutor General's Office of the Republic of Azerbaijan "Leadership"

Benchmark 6.1.2.

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

The Prosecutor's Office Act (Article 16) sets five-year tenure of the Prosecutor General. There are no legally established limits for reappointment of the Prosecutor General for the next term.

Benchmark 6.1.3.

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

Pursuant the Constitution of the Republic of Azerbaijan (Article 133), the President of the Republic with the consent of the Milli Majlis (Parliament) dismisses Prosecutor General. Law does not regulate procedure for dismissal of Prosecutor General.

Benchmark 6.1.4.

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

The participants of the special sessions with the non-governmental stakeholders of the virtual country on-site visit were very positive in general about the current Prosecutor General considering his long-term experience in Prosecution Service, including as the head of Anti-Corruption Directorate with the Prosecutor General, and his personal professional values and capacities. At the same time, they noted that the laws did not provide for a detailed regulation necessary to ensure a transparent and merit-based procedure of appointment and dismissal of the Prosecutor General.

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

Assessment of compliance

Benchmark 6.2.1.

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

The Law on the Service in the Prosecutors' Office (Article 4) foresees that "The candidates who applied for recruitment to the service whose documents had been accepted are to pass competition, on transparent

basis. The Competition consists of qualifying examinations and interviews". The Prosecutor's Office Act (Article 29) establishes general requirements for the candidates for prosecutors: citizens of Azerbaijan with a university degree in law, voting rights, relevant professional skills and fluent in the official language of the Republic of Azerbaijan may be appointed prosecutor, investigator and detective of prosecutor's office.

The main steps of the recruitment process, including principles, specific requirements to candidates, grounds for refusal/rejection of candidates, participating/deciding bodies and criteria for evaluation of candidates are guided by the "Statute on rules of competition for candidates for recruitment for the prosecutor's office" approved by the Presidential Decree dated 19.06.2001 and "Rules on activity of the Prosecutor's Office". Representatives of the Prosecutor's Office during the country on-site visit confirmed that competitive procedure where external candidates can participate applies only for the initial (entry-level) recruitment. Recruitment to all other positions is internal and regulated by internal legislation.

Benchmark 6.2.2.

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

The Law on the Service in the Prosecutors' Office establishes the right of prosecutor to apply for promotion and right of the Prosecutor General to approve promotions. The said law in the Article 11 stipulates that: "When nominating prosecutors for the position in accordance with the class rank efficiency, professionalism, results of labour, moral qualities are taken into account /…/". There are no further detailed criteria and procedure for evaluation of these qualities are set in the laws to ensure a competitive promotion of prosecutors based on merit. Moreover, according to the mentioned Law in exceptional cases, substantiating a need and with the consent of the Board of the General Prosecutor, the Prosecutor General can promote employee of Prosecutor's office without any restrictions.

According to the Constitution of the Republic, deputies of the Prosecutor General, prosecutors heading specialised republican prosecutor`s offices and Prosecutor of Autonomous Republic of Nakhchivan are appointed by the President upon the proposal of the Prosecutor General. The Prosecutor General with the consent of the President appoints the territorial and specialised prosecutors. The mentioned promotions are conducted outside the competitive procedure. It seems that, as described in the Law on Service in the Prosecutors' Office, promotion of prosecutors is the consequent step of evaluation of professional activity of prosecutors based on the internal competition.

Benchmark 6.2.3.

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

Announcements about the external vacancies at the entry-level, results of two-stage examination and final results of candidates selection must be published online based on "Regulations on the rules of competition with candidates for recruitment to the Prosecutor's Office" approved by the Presidential Decree. While the Authorities did not provide information demonstrating such publications for the year 2020, they provided examples from the previous period[9].

[9] Vacancy announcement example can be found on the Prosecutor General's Office Website ; example of publication of the results for test exam in 2019; results for written exam in 2019; final results in 2019.

The published vacancy announcements provided by the Authorities contained the general requirements for the candidates but did not provide more detailed information on terms and conditions. At the same time, the Authorities informed that pursuant the "Rules on the activity of the Prosecutor`s Office" the list of legislation that serves as the basis of the examination tests is published at least one month before the examination. They also provided examples of such publication.

The monitoring team was not provided with information that would demonstrate that announcements about internal vacancies or promotions and results of the selection process are published online.

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

Assessment of compliance

Benchmark 6.3.1

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

The public prosecution service operates an autonomous budget funded from the state budget. Budget of the public prosecution service in 2020 was 70.098.434 AZN (approximately 34,331,524.14 EUROS), in 2019 - 65.597.828 AZN (approximately 32,126,915.63 EUROS), in 2018 - 59.598.563 AZN (approximately 29,188,908.72 EUROS). The budget is published on the webpage of the Prosecutor's Office.

At the country on-site visit, the representatives of the Prosecutor's Office explained that the budget is developed based on the estimate established every year by the Ministry of Finance. The primary laws do not contain procedures for requesting and negotiating the budget needs for the Prosecution Service.

Representatives of the Prosecutor's Office claims that the budget received is sufficient. Participants of the special sessions with non-governmental stakeholders and international organisations of country on-site visit could not say if the budget received by the public prosecution service is sufficient to ensure its autonomy. However, they noted that funding of prosecution service is quite good comparing to funding of other state agencies.

Benchmark 6.3.2.

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

The Law on the Service in the Prosecutors' Office (Article 21) stipulates that remuneration of prosecutors consists of salary, bonuses for rank and seniority and other benefits provided by the legislation. The salary of prosecutors is set in accordance with the position occupied by them. The mentioned Law entitles the Prosecutor General to appoint bonuses for prosecutors (up to 25% of their salaries) "for the distinguish oneself in service, high quality work, work of a particular importance". Heads of structural units (superiors) nominates prosecutors for such bonuses, without a clear criteria based on performance evaluation.

In addition, according to the information provided by the country "by the decision of the Cabinet of Ministers taken on 17 July 2020 an additional monthly payment (in the amount of monthly salary) was established

for employees of Prosecutor's Office at the expense of the state budget. The monitoring team expressed concerns that additional payments which are not based on primary laws coming from the executive power without no further clear legislative rules on distribution may cast doubts on the independence/autonomy of prosecutors. During the on-site visit, the Authorities ensured that it was common raise of public sector salaries and provisions setting these additional payments were incorporated in the law on 7 May 2021.

Representatives of prosecutors ensured that the level of their remuneration is sufficient to ensure autonomy and reduce risk of corruption. Non-governmental stakeholders during the country on-site visit confirmed that prosecutors are rather well paid as compared to remaining public sector employees.

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

Assessment of compliance

Benchmark 6.4.1.

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

Benchmark 6.4.2.

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

Benchmark 6.4.3.

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

Benchmark 6.4.4.

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

Article 11 of the Prosecutor's Office Act establishes the Collegial Board under the Prosecutor General's Office as "a consultative body presided over by the Prosecutor General. Collegial Board under the Prosecutor General's Office comprises of the Prosecutor General, his/her deputies and all other senior employees ex officio". President of the Republic approves the composition of the Collegial Board under the Prosecutor General's Office. Prosecutor General chairs the Collegial Board.

The Collegial Board is a management body of the GPO, and not a self-governing body of prosecutors that, as defined by the draft guide of the pilot, shall be composed of prosecutors elected by their peers representing all levels of the public prosecution service, would have non-prosecutorial members and would be operating independently from the Prosecutor General and the executive. It can therefore be concluded that at the time of the pilot, Azerbaijan did not have a prosecutorial self-governing body.

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

Assessment of compliance

Benchmark 6.5.1.

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

Benchmark 6.5.2.

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

Benchmark 6.5.3.

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

Benchmark 6.5.4.

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

As noted above, a self-governing body of prosecutors did not exist in Azerbaijan during the current pilot. Career and discipline, performance and evaluation of prosecutors is the responsibility of internal commissions. The Prosecutor General approves the statutes of these internal commissions and appoints members of commissions based on the proposal of the Collegial Board under the Prosecutor General's Office. The Prosecutor General`s Office has the following Commissions: the Certification (Attestation) Commissions, the Disciplinary Commission, the Ethical Conduct Commission, the Competition Commission, the Labor Affairs Commission, and the Inspection Commission.

The Authorities informed that the activity of the commissions is regulated by the internal "Rules on the activity of the Prosecutor`s Office". There is no explicit legal requirement to publish decisions of the commissions. However, pursuant the Rules, the Competition Commission and Labor Affairs Commission should publish information about the meetings on the official website of the Prosecutor`s Office. The Rules establishes COI rules applicable to the Commissions. For instance, under Article 321 of the Rules, the Chairman of the Disciplinary Commission declares the disciplinary proceedings open, checks the presence of the required number of members of the commission, and whether there is any conflicts of interest.

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

Assessment of compliance

Benchmark 6.6.1.

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

Pursuant the "Rules on the activity of the Prosecutor`s Office" assignment and re-assignment of cases among prosecutors are carried out by senior prosecutors taking into account individual and professional abilities, experience in specific areas, caseload of prosecutors as well as other necessary circumstances. The monitoring team found the wording of criteria "other necessary circumstances" as too broad. The Authorities explained that nature and complexity of the case may be also considered while assigning and re-assigning cases among prosecutors as "other necessary circumstances". There are no further rules that would provide specific guarantees of impartiality and autonomy from both external and internal pressure for assignment/reassignment of cases. In addition, the "Rules on the activity of the Prosecutor`s Office" is an internal legislation that is not public.

Benchmark 6.6.2.

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

There are no judicial or other independent procedures in Azerbaijan allowing prosecutors to challenge orders from the superiors.

The Prosecutor's Office Act stipulates that "the Prosecutor's Office operates based on the subordination of inferior prosecutors to superior prosecutors," meaning inter alia the "mandatory execution of instructions

of superior prosecutors by inferior prosecutors on issues concerning activity of prosecutors and organization. /…/ Execution of all legal requirements and instructions of superior prosecutors are mandatory for subordinated prosecutors".

Criminal Procedure Code stipulates the right of prosecutor to send the reasoned objection to the senior prosecutor in case of disagreement with the instructions of the superior prosecutor on procedure of investigation. At the country on-site visit, representatives of the Prosecutor's Office informed that there were no recent cases when prosecutors challenged orders of the superiors.

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

Assessment of compliance

Benchmark 6.7.1.

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

The primary laws formulate grounds for the disciplinary liability of prosecutors. Some of it as, for example, criteria "For violation of service discipline and improper performance of their duties in relation to the prosecutor's office employee /…/" (Article 26 of the Law on Service in the Prosecutors' Office) shall be formulated in a more clear, narrow and unambiguous way.

The Prosecutor's Office Act (Article 34) and in the Law on the Prosecutor's Office Service Act (Article 29) stipulate grounds for dismissal of prosecutors, including the following: "inaptitude for the post, as decided by the Attestation Commission"; "a gross or systematic disciplinary breach" (in the Prosecutor's Office Act) or "gross or regular infringements of service or labour discipline" (in the Law on Service in the Prosecutors' Office); "being engaged in /…/ misconduct" (available in the Prosecutor's Office Act but not available in the Law on Service in the Prosecutors' Office). Broad formulations overlap and contradictions between different grounds in the primary laws (e.g. engagement in misconduct as a ground for dismissal in one of them and lack of this ground in another one) contribute to the lack of clarity regarding the grounds for dismissal of prosecutors.

Regarding the procedures for the disciplinary liability of prosecutors, the Law on Service in the Prosecutors' Office establishes that the Prosecutor General carries out the application of disciplinary measures and the procedure for conducting an official investigation of disciplinary offences is defined by the Prosecutor General. Further details such as who can initiate the disciplinary procedure, who investigates an allegation, who makes a report, who considers and decides on the allegation, how decision-making is organised, what is the role and rights of the prosecutor under disciplinary proceedings etc., are provided in the internal regulation "Rules on activity of Prosecutor's Office". As noted earlier, there was no body of self-governance of prosecutors that could ensure the rights and independence of prosecutors at the time of the pilot.

The primary laws (the Prosecutor's Office Act and the Law on Service in the Prosecutors' Office) do not stipulate procedures for dismissal of prosecutors.

Benchmark 6.7.2.

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

The representatives of the Prosecutor's Office during the country on-site visit stated that the application of disciplinary and dismissal procedures was impartial as confirmed by the fact that there were no recent complaints or appeals of disciplinary and dismissal decisions. Non-governmental stakeholders had no explicit opinion on this issue. Most of them agreed that while the internal organisation of activity of the Prosecutor's Office improved significantly during the recent years, it is still not transparent enough to public.

Benchmark 6.7.3.

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

There is no legally established right of prosecutors to be heard in the disciplinary proceedings. The Authorities noted that internal regulations enshrined in the "Rules on the activity of the Prosecutor`s Office" requires to inform a prosecutor engaged in the disciplinary proceedings about the date and venue of meeting of the Disciplinary Commission and establishes the right to be heard. At the same time, the Law on the Service in the Prosecutors' Office (Article 27) provides that prosecutors can submit written explanations in the disciplinary process; his/her refusal to provide explanations does not prevent the application of a disciplinary sanction.

Regarding the right to defend themselves and to employ a defence, the Authorities referred to a right to receive qualified legal assistance ensured for everyone by the Constitution of the Republic. However, application of such right in practice during the disciplinary procedures of prosecutors' was not demonstrated by data.

The right to appeal the disciplinary decision to the higher-ranking prosecutor or court is foreseen for prosecutors in the Law on Service in the Prosecutors' Office. No statistic was provided to confirm that this right is applied in practice.

Benchmark 6.7.4.

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

The final decisions regarding discipline of prosecutors are taken by the senior management of the Prosecutors' Office based on the proposal of the Disciplinary Commission. As there was no special section at the website of the Prosecution Service on the disciplinary proceedings and its outcomes during the pilot, the monitoring team assumed that publications on disciplinary sanctions were made on the website under the news section, which changes frequently and makes it difficult for the general public to follow and analyse this information.

Information provided by the authorities allowed the monitoring team to conclude that some final decisions or case summaries regarding discipline of prosecutors are published online (https://genprosecutor.gov.az/az/post/2483). While the published decisions included general information about the nature of the disciplinary violation, e. g. "/…/ committed inappropriate acts on behalf of the prosecutor's office", no justification of the disciplinary decision was provided. It was just stated that the

particular prosecutor “did not comply with the requirements of the Code of Ethics of the Prosecutor's Office of the Republic of Azerbaijan, as well as did not draw conclusions from previous orders of the Prosecutor General's Office”. Information about the prosecutor sanctioned and type of the sanction applied were provided clearly.

The CSOs confirmed that general information about discipline of prosecutors is published, such as for example, how many employees were disciplined. More detailed justification of the final decision or case summaries are not published.

Benchmark 6.7.5.

Proportionate and dissuasive disciplinary sanctions are routinely applied to prosecutors

The Law on the Prosecutor’s Office Service Act sets eight types of the disciplinary sanctions ranging from “reproof” to dismissal (the mere dismissal and dismissal with deprivation of a rank). The law also foresees application of warning in writing or orally, but it is not considered as a disciplinary sanction.

The Law on the Prosecutor’s Office Service Act stipulates that “When bringing prosecutors to disciplinary liability personal qualities, the gravity of the offense, the conditions of its commission and other circumstances are to be taken into account”. There is no clear criteria for application of sanctions of different severity established by legislation. Representatives of Azerbaijan during the country on-site visit informed that violation of the provisions of Criminal Procedure Code and ethic code of prosecutors are the basis for dismissal of prosecutors.

Persons (general public) cannot file a complaint directly to the Disciplinary Commission of prosecutors. Complaints of individuals would be considered by the Commission if assigned by the Prosecutor General. Participation of person which filed complaint in the meeting of the Commission is not allowed.

According to the data provided by the Authorities, 30 employees of the PO were disciplined for various violations in 2020, including 11 prosecutors among them. The authorities reported that the following sanctions were applied to prosecutors: 2 were subject to admonition, 3 were reprimanded, 4 were severely reprimanded, 2 were dismissed from office. However, information provided about the grounds for sanctioning of prosecutors in 2020 was too general (e.g. “requirements of the criminal procedure code” or “violation of the Code of Ethics”). According to the Authorities, dismissal from the office of 2 prosecutors in 2020 was caused by the violation of the requirements of the criminal procedure code (however, it’s not clear what provisions exactly). While the violation of the labour discipline and requirements of the Code of Ethics (1 case), violation of the Law on application of citizens and the Code of Ethics (1 case) and violation of the orders of the Prosecutor General were sanctioned by reprimands. However, it is not possible to evaluate if the sanctions applied were proportionate and dissuasive since the information about the violations is not detailed enough.

The Authorities ensured that there are no impediments to apply the disciplinary sanction on prosecutors for the disciplinary violations in practice.

Benchmark 6.7.6.

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

The Authorities informed that there was no public allegation of corruption of prosecutors in 2019-2020. Non-governmental stakeholders and desk research did not provide any information about any public allegations of corruption of prosecutors that were not thoroughly investigated with justified decisions made and explained to the public.

7 Integrity in Public Procurement

The public procurement law was enacted in Azerbaijan in December 2001, and further amended in 2016 and 2018. It regulates the procurement of goods, works, and services. It applies to state owned enterprises and entities, with state share in excess of 30 percent and in case of using the state funds. Special (exception based) regime is provided for the procurement of food through centralized orders at the budget expense. The law provides for several procurement methods, such as open and limited tenders (and some modifications of these methods), requests for proposals and quotations, as well as direct contracting. The law does not impose any restrictions in respect of the participation by foreign companies. The law provides for electronic procurement and the use of e-Procurement system is mandatory, but the system is yet to be made fully operational. The complaint review system has all essential elements for its efficient operation. However, a low number of complaints as compared to the total number of procurement contracts may lead to perception that the system is not entirely efficient and yet to earn trust of participants of the procurement. The public procurement law includes limited provisions with regard to the conflict of interest. However, there is no evidence that it is applied and works in practice. Published information on public procurement is not sufficient to ensure transparency. Engagement of civil society organizations in public procurement oversight is limited.

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

Background

The Ministry of Economy through the State Service for Antimonopoly and Consumer Market Control (the "State Service") is acting as the regulatory body and oversee the public procurement. The State Service contributes to improvement of procurement laws, rules, regulations and instructions governing and supervising public procurement, including electronic procurement. It reviews the procurement related complaints. The State Service conducts procurement training for the staff of the procuring entities.

According to the information provided by the Authorities, 9,203 contract were placed in 2020 in the amount of AZN 6.57 billion. This include:

- 2,414 contracts placed through an open tender procedure, in the amount of AZN 2,153 million, that include 2,321 contracts, in the amount of AZN 930 million, placed via e-procurement system;
- 201 contracts placed through requests for proposal procedures in the amount of AZN 1,236 million;
- 5,161 contacts placed through requests for quotation in the amount of AZN 112 million.

In addition to the above volume, 895 contracts were placed in 2020 for procurement of food through centralized orders. Their total value was about AZN 73 million.

Assessment of compliance

Benchmark 7.1.1.

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

The public procurement law was enacted in Azerbaijan in December 2001, and further amended in 2016 and 2018. It regulates the procurement of goods, works, and services.

Scope of the Law on Public Procurement includes "procurement of goods (works and services) by state enterprises and entities (institutions) in the Republic of Azerbaijan, the enterprises and entities whose State share in the authorized fund is 30 % or more, by means of state funds received by the state and guaranteed state loans and grants", except for the "procurement of foodstuffs by state enterprises (institutions) in a centralized order (save for wheat procured for State Grain Stock Fund) at the expense of State Budget".

The Authorities confirmed that non-classified area of the security and defence sector are also subject of public procurement law, whilst the respective procurement plans are not made public and the procurement is run through the closed (limited) tendering procedures or directly.

The Authorities noted that procurement financed by internal budget of utilities, natural monopolies, SOEs and MOEs is not subject to procurement law procedures, whilst it is carried out in accordance with their internal (corporate) procurement policies. The Authorities informed that corporate management standards including the principles of these procurement policies were established by the Presidential decree No 1120 of 07 August 2020.

9,203 public procurement contracts were placed in 2020 for the total value of AZN 6.57 billion. Given that the GDP of Azerbaijan is about AZN 72.4 billion. Therefore, the reported volume of the public procurement represents about 10 per cent of GDP, when it is expected to cover about 50 per cent more, as compared to similar countries and OECD country average (about 15 per cent of GDP).

Benchmark 7.1.2.

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

The law provides for several procurement methods, such as open and limited (closed) tenders (and some modifications of these methods), requests for proposals and quotations, as well as direct contracting. The public procurement law stipulates open tendering as the default procurement method. At the same time, the law provides for exceptions from the competitive procurement procedures, subject to appropriate justification and a validation by the State Service (as regulated by the Presidential decree of 10 April 2019).

Although open tendering is a default procurement method, the published data suggests that direct contracting was extensively used in 2020. The cumulative volume of contracts placed through competitive processes amounts to AZN 3.5 billion, or just 53 per cent of the total value, when 47 per cent appear to be contracted directly without using competitive procedures. The Authorities informed that a substantial part of these direct contracting in 2020 was attributable to the COVID-19 pandemic situation and geopolitical events in the region, which required application of emergency procurement, usually carried out through direct contracts.

It is commendable that the law (Article 21) provides only four reasons for single source procurement, i. e. emergency, exclusive property rights, absence of alternatives, and impossibility of advance planning. At the same time, the application of these provisions (at least in 2020 and before) appears to be much broader than intended. The Public Procurement Law is the only source regulating application of single source procedures. Albeit the wording derived from UNICTRAL Model Law (1994), the provisions of the Law appear to be broadly interpreted, which provide for an extensive use of an uncompetitive procurement method. There is no regulation nor criteria to determine if absence of alternatives or impossibility of advance planning were applied reasonably and were justified sufficiently as the reason for single source procurement. Moreover, it appears that there is no mechanism to ensure the value for money when the direct contracting is applied. The only safeguard against the misusing the single source procurement is its approval by the State Service. It has been observed that on many occasions, the single source procurement may be a result of the existing budgetary and planning approach based on one-year timeline.

Total number and value of procurement contracts concluded under the exemptions from the competitive procurement procedures (direct contracting) in 2020 under each type of direct contracting as stipulated by the law is presented in the table below.

		Total number in 2020	Total value in 2020 (AZN)
		1.427	3.066.734.049,5
i	Continuation of the previous works	234	479.359.643,2
ii	Defence and security	180	560.307.329,9
iii	Sole source	290	115.933.529,4
iv	Partly meeting the need till open tender	2	12.545.000,0
v	Emergency situation	9	33.519.822,9
vi	Urgent need	712	1.865.068.724,1

The Law on Public Procurement allows for a broad use of procurement methods other than open tender subject to the approval by the authorised state body. Albeit the use of such methods requires justification and approval, the absence of a comprehensive guidance for application of some criteria set in the Law provides for subjectivity and individual discretion in decision-making, thus increasing the risks of corruption.

Particularly high volume of procurement under exemptions from the competitive procurement procedures shows that respective national legal regulations did not (based on the data of 2020) ensure limited exceptional application of procurement procedures with limited or without competition.

Benchmark 7.1.3.

Public procurement procedures are open to foreign legal or natural persons

The Law on Public Procurement establishes the prequalification requirements of suppliers (contractors) and does not differentiate between local and foreign entities (Article 8).

Representatives of the government of Azerbaijan ensured the monitoring team that e-procurement system is fully open to foreign participants and does not require legal registration. Foreign legal or natural persons can acquire e-signature at the embassies of Azerbaijan.

It was reported that 115 contracts in the amount of AZN 934 million were signed in 2020. That represents a fair share of about 14 per cent of all procurement.

At the same time, the Law on Public Procurement also provides for exceptions “in cases specified in regulatory documents governing the government procurement”. The regularity of the application of these exemptions and it implications are unclear.

Moreover, the law provides for the domestic preferences, if applied broadly, appear to provide for unequal treatment of foreign participants vis-à-vis local companies.

Benchmark 7.1.4.

Electronic procurement system is functional and encompasses all procurement processes

According to the law (Article 50), e-procurement shall be used for the procurement of the contracts estimated below USD 3 million equivalent. The minimum threshold is set for AZN 50,000 (about USD 30,000 equivalent). However, the law allows the procuring entities not to apply e-procurement (subject to following paper bases process) where the procuring entity can demonstrate that electronic procurement is not possible due to the technical difficulties and functionality of the e-procurement portal. The State Service shall certify such decision. The Authorities reported that no such exemptions were granted in 2020.

The use e-Procurement system is mandatory for all procuring entities for the contracts under the thresholds specified above. The system is yet to be further developed to cover the entire procurement cycle, including the contract implementation phase, as currently, as reported by the Authorities, it covers the procurement procedure until signature of contract.

In 2020, about one quarter of all contracts (2,321 contracts) were concluded through e-procurement system with the total value of AZN 930 million (14 per cent of the total value).

It is understood that open tender procedure, requests for proposals and request for quotations are currently covered by e-procurement system. Use of the system for other procurement procedures, provide for by the public procurement law, was under the development during the assessment.

Benchmark 7.1.5.

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

In 2020, 1,427 contracts out of 9,203 (16 per cent) for the amount of AZN 3.07 billion out of AZN 6.57 billion (47 per cent) were placed directly.

Albeit the reported increase of the share of direct contracting in 2020 was due to COVID-19 pandemic situation and geopolitical events in the region, the share of direct (single-source) contracting is particularly high in the total procurement value in the country.

Benchmark 7.1.6.

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

Despite substantial improvements in the public procurement system in the recent years and introduction of the e-procurement, the perception is that procurement system of Azerbaijan is still not entirely effective and exposed to corruption risks. Recent statements of the officials of Azerbaijan confirm such observations. For instance, the Acting Head of the State Service for Antimonopoly Policy and Consumer Market Supervision under the Ministry of Economy of Azerbaijan at an online event in 2021 informed that “Due to the revealed violations, the State Service for Antimonopoly Policy and Consumer Market

Supervision cancelled the results of 230 tenders and 1,061 quotation polls. He noted in this context the importance of meeting with representatives of companies involved in the implementation of infrastructure projects"[10].

The last report of the Accounts Chamber of Azerbaijan also spotlighted some issues in procurement sector:

"In 2020, the amount of contracts on a competitive basis concluded by government agencies with 23 contractors amounted to 33.2% of the total amount of contracts on a competitive basis, the Accounts Chamber said in a report on its 2020 activities. According to the report, in some cases in 2019 the same contractor provided goods (works or services) related to specific industries. These contractors signed 463 contracts for AZN 95 million 238.9 thousand. "The presence of these cases means that in the use of public funds there may be a risk of violation of the competitive environment and lack of transparency. Analysis of the data showed that the date of conclusion of 161 procurement contracts in the amount of 60.7 million manats for 26 structures coincides with the date of the protocol; in 12 structures in general there are no competitive purchases, which raises doubts that procurement procedures form a full-fledged competitive environment"[11].

Conversely, the above examples demonstrate pro-active operation of the procurement control system which aims to improve public procurement sector.

The non-governmental stakeholders in response to the questionnaires and during the country on-site visit expressed concerns that public procurement system is not fair and transparent in Azerbaijan.

Indicator 7.2. Procurement complaints are addressed

Background

The public procurement law provides for tender complaint review mechanism. Participants can lodge a complaint if they believe that the procuring entity has not conducted the procurement process in accordance with the rules and regulations. The law does not allow challenging the decisions on restriction of procurement procedures for state affiliation or a decision of procuring entity to reject all tenders.

A bidder can file a complaint with the procuring entity, the executive body or with a common court. There are two explicit limitations to the subjects of complaint. Based on the provisions of the law it appears that the choice of the procurement method cannot be challenged, whilst the large part of public procurement is contracted through a single source method.

It is understood that a complaint must be filed with the procuring entity before a contract becomes effective. After a contract becomes effective, a complaint about any action or decision by the procuring entity can be filed with the State Service, which is an oversight body.

The law requires a complaint to be posted on the procurement website.

Assessment of compliance

Benchmark 7.2.1.

[10] Menafen "Azerbaijan shares data on cancelled tender, quotation poll results" (2021)

[11] Annual Report by Chamber of Accounts was heard by Milli Majlis Economic Policy, Industries and Enterprising Committee (meclis.gov.az)

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

The complaint review mechanism provides for the following approach: the primary review of the complaints rests with the procuring entity (Article 56 of the Law on Public Procurement). The next step appears to be an elevation of complaint to the State Service (Article 57). The primary procurement law provides an option for the State Service to refuse a complaint. While the Authorities informed that the internal regulations and practice of the State Service require mandatory justifications of rejections, it is recommended to enhance the respective provisions of the law to explicitly articulate reasons for rejection. In any case, the law allows elevating any complaint to a common court (Article 60).

The Law on Public Procurement stipulates that "the Conforming Executive Body makes decision in written form on the considered complaint within 20 banking days" and within 10 banking days in relation to e-procurements. The Authorities informed that in 2020 the average time for reviewing procurement complaints was 24-28 calendar days. In 2020, 322 of total 501 complaints were reviewed by the procurement complaints review body within the time set by the law. 110 (22 per cent of all complaints) were reviewed during longer period of time, which is a worrying sign. 69 complaints were rejected.

Benchmark 7.2.2.

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

The respective data were not provided during the assessment due to their reported absence. The Authorities later informed that none of the decisions of the State Service were challenged in courts in 2020.

Benchmark 7.2.3.

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

In respect of 9,203 procurement procedures carried out in 2020, 501 complaints were filed by the participants that doubles the number of complaints filed in 2019. No cases appear to be filed to challenge single source procurement, which represents a large part of public procurement.

According to the State Service, 1,313 procurement procedures were cancelled by them in 2020 due to violations of the procurement procedures. 21 out of these cases were cancelled due to the complaints. This statistic appears to be at the lower edge for similar countries and OECD country average, which suggest that the trust into complaint system is limited, albeit, is growing.

Non-governmental stakeholders expressed their opinion that procurement complaints review system is not entirely user friendly and trustworthy. They noted that "As a rule, very few complaints are satisfied. Therefore, the participants in procurement processes prefer not to complain". No statistical data were provided by the NGOs to substantiate their statement. Yet, it shall be noted that the monitoring methodology does not require such justifying information from the SCOs.

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

Background

The public procurement law includes limited provisions with regard to the conflict of interest excluding suppliers (contractors), who are in legal, financial or organizational dependence on the procuring entity from participation in the procurement procedures conducted by such entity (Article 13). The law bans execution of procurement related duties in procurement procedures by three types of interested persons and requires to record rejection and its reasons in the report on the procurement procedures. However, there is no evidence that legal regulations of conflict of interests in public procurement are applied and work effectively in practice.

The law also required the Code of conduct of public officials involved in government procurements to be established (Article 13-1). The Code of Conduct shall be approved by the executive power and shall be made public. It shall stipulate elimination of issues conducive for conflict of interests; declaration if officials involved in procurements have interests in specific procurement; responsibility and professional qualification of officials involved in procurements and respective control procedure.

The Authorities referred to “Code of Conduct for officials involved in public procurement” № 118, dated 19.03.2019, as legislation containing provisions regulating conflict of interest. It is reported to aim at preventing corruption and regulate conflict of interest situations in the process of public procurement. Commitment to the rule of law, loyalty, honesty, impartiality, public trust, confidentiality, professionalism and personal responsibility and cultural behaviour are described as the standards of behaviour required for officials involved in public procurement.

The law includes sanctions in case of falsification of documents or other misrepresentations.

Assessment of compliance

Benchmark 7.3.1.

BENCHMARK	Country Data 2020	
	Total number of cases	Per 10 000 of contracts
7.3.1. Track record of sanctions imposed public officials for violations of COI rules in public procurement	n/a	n/a
7.3.2. Track record of enforcement of corruption offences in the public procurement sector with final convictions	n/a	n/a

Comments: The respective statistics was not provided. Azerbaijan confirmed that such data are not available.

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Benchmark 7.3.3.

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

Debarment of persons convicted for corruption offences from the award of public sector contracts is not established in the law.

There were no publicly available materials or information provided to demonstrate that all legal and natural persons convicted for corruption offences were debarred from the award of public sector contracts.

The law does not limit participation for reasons linked to the corrupt or other prohibited practices, e.g. money laundering, terrorism financing, etc. At the same time, Article 6 of the law provides for the elimination of a participant from the procurement process for the convictions in respect of crime related to professional activities, as well as misrepresentations. The Authorities also stated that legislation prohibits participation of legal persons established in certain countries or regions that have links to corrupt practices, money laundering, terrorism funding, etc. (the Resolution of the Cabinet of Ministers of the Republic dated 25 June 2010).

No register or other list of debarred natural and legal persons or a register of persons convicted of corruption exists in the country. The Authorities informed about the plans to establish such register in the forthcoming amendments to the public procurement law.

Indicator 7.4. Public procurement is transparent with independent oversight

Background

Some procurement information is available to different stakeholders, including participants, on the government website, procuring entity website, and national and regional newspapers.

The Ministry of Finance's State Financial Control Service is responsible for internal audit and the Chamber of Accounts carries out external audit but that is limited to government agencies' financial transactions. It does not cover public procurement; nor do the Chamber of Accounts auditors have the necessary capacity to conduct procurement audit.

Engagement of civil society organizations in public procurement is limited. Fraud and corruption reporting appears to be weak.

The Ministry of Economy has established the Civil Council consisting of highly regarded people and representatives of civil society, acting on an elected basis. As such, the Civil Council is perceived as a forum for, inter alia, direct involvement of civil society into activities of the State Service including procurement matters.

In 2020, Azerbaijan was ranked 129 (out of 180 countries) in the Transparency International Corruption Perception Index.

Assessment of compliance

Benchmark 7.4.1.

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

- procurement plans (=point 2)
- complete procurement documents (=point 3)
- outcome of the tender evaluation, the contract award decision and the final contract price (=point 2)
- appeals and the results of their review (=point 1)

information on contract implementation (=point 2)

The law requires publishing a limited volume of procurement information. It seems to involve only "the advertisements on tenders, bids request and quotation request and the information on their results", annual procurement plans and their monthly updates.

Reportedly, this information is not provided not regularly or timely. It appears to be not easily accessible. The wide practice by procuring entities not to respect legal requirements regarding publication of information, procurement plans in particular, was noted by the Minister of Economy of Azerbaijan in his speech in a conference held in 2021[12]. This demonstrates that the Authorities are vigilant of the violation of the requirements for publication of all essential information on the e-procurement portal.

The web site https://etender.gov.az/ provides more information than required by the law, but seem to be lacking the comprehensive search tools and provision of information in the machine-readable format. In depth analysis of the information availability was inhibited since information is largely presented in the national official language (which is reasonable but was an impediment for the evaluation).

Based on a limited review of the indicated website publications, procurement plans, invitations for tenders, requests for bids or quotations, information on completed and cancelled procurement exercises (however, without any apparent details concerning justification) are published to some extent. However, these data are not published in open-data (machine-readable) format, mostly presented in a form of documents. Tender documents are not published nor the appeals or results of their review. No information on public contract implementation is available.

Benchmark 7.4.2.

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

The public procurement law does not require disclosure of the beneficial ownership. The Authorities informed that the new law, drafting of which is in progress, would address this issue.

[12] Sputnik news "Procurements, tenders and work at a loss: the Ministry of Economy took up corruption in state companies" (2021)

Scope of asset disclosure as stipulated by the Law on Combating Corruption (Article 5) does not include information on beneficial ownership of companies, albeit requiring the information about the direct ownership or control.

During the assessment, the Authorities clarified that no beneficial ownership information is required upon company registration, whilst under certain laws (e.g. the Law on Combating Money Laundering and Terrorist Financing), companies have an obligation to verify beneficial ownership information in order to comply with anti-money laundering legislation. However, these requirements are not transposed into the procurement legal framework or practice.

Benchmark 7.4.3.

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

Some statistics on public procurement is published on the official website indicated by the country (https://etender.gov.az/report) on an annual basis. Very few public procurement and competition level type of indicators are covered.

Although, the total number of complaints received is published, no details in their respect or information on their review are available.

No statistical data on transparency and integrity indicators, efficiency of public procurement system, its openness to SME, e-procurement, prevention and control indicators are published.

During the evaluation, the representatives of the government of Azerbaijan informed that some statistics on public procurement is collected by the Ministry of Economy for the own purposes of the ministry and for annual reporting to the Cabinet of Ministers. Considering this, the monitoring team has reasoned doubts that detailed public procurement statistics is collected and analysed in Azerbaijan. Hence, regular publication of detailed statistics is even more doubtful.

8 Business Integrity

Business integrity is still in early development stages in Azerbaijan, as in other countries of the region. The Corporate Governance Standards of Azerbaijan establish responsibility of supervisory boards of joint stock and limited liability companies to ensure risk management. These standards are voluntary and there is no mechanism to monitor their implementation by the private sector companies. However, these standards are mandatory for the companies in which the Azerbaijan Investment Company is a shareholder. Financial institutions, designated non-financial businesses and professions, other obligated entities under the anti-money laundering legislation have an obligation to identify and verify the beneficial ownership and report discrepancies. Public disclosure of beneficial ownership of companies is not ensured in Azerbaijan. While the government has established incentives for good tax payers, green corridors in customs, and developed a training on anti-corruption standards for companies, it has not yet implemented incentives for companies to improve integrity in their operations. The Ministry of Economy and several other institutions under its umbrella are authorised to receive, conduct administrative investigations and in this manner resolve complaints from companies related to various problems they encounter when dealing with public administration. However, the monitoring team was not able to assess the effectiveness and impact of their operations during this pilot. The Azerbaijan Investment Holding (AIH) was established in 2020 in order to improve the management of state-owned enterprises. By the end of 2021, twelve SOEs have been transferred to the AIH. As the reform of SOEs' management develops, the forthcoming annual monitoring of Azerbaijan will be able to examine how it helped improve the governance structures, internal controls and disclosure requirements that are key for addressing corruption risks.

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

Assessment of compliance

Benchmark 8.1.1.

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

The Azerbaijan Government noted that its Corporate Governance Standards adopted in 2011 are based on the OECD Corporate Governance Principles and international standards in this field. Given the rapid development and reforms in the field of corporate governance, the Government noted that there may be changes in governance standards in the future.

The current Corporate Governance Standards of Azerbaijan were drafted by a Task Force comprised of representatives of Azerbaijani governmental authorities and the International Finance Corporation for the purpose of implementing corporate governance practices in Azerbaijan joint stock companies and limited

liability companies. The application of the Standards is voluntary for the private companies, i. e. joint stock companies and limited liability companies. Order No. F-23 of the Azerbaijan Investment Company dated October 21, 2014 introduced the application of Corporate Governance Standards in the companies in which the Azerbaijan Investment Company is a shareholder as a mandatory requirement.

The Azerbaijan Government cited the Azerbaijani Corporate Governance Standards as establishing the responsibility of boards of directors of listed companies to oversee the management of corruption risks. The Azerbaijani government explained that according to the Corporate Government Standards, the Supervisory Board "decides what risks should the company accept or deny".

Chapter 3, Section 1.1 of the Corporate Government Standards provides that "the supervisory board should focus on oversight of the work of executive bodies, strategic guidance and direction to the management team, especially in the areas of internal control and risk management," Chapters 5 and 6 of the Azerbaijan Corporate Governance Standards also address financial reporting, transparency and disclosure, internal control, internal audit function and risk management. Further sections address the fiduciary duties of directors (Section 3) and conflicts of interests and related party transactions (Section 7). Chapter 6, Section 2.1 of the Corporate Governance Standards provide that:

"[s]upervisory board is responsible for the total process of risk management ensuring that all risks of essential internal and external operations, financial and legal compliance and other risks are evaluated and managed adequately by a stable internal mechanism. Supervisory Board should decide that risks the company should or should not take in pursuit of its goals and objectives. Supervisory board should ensure that the company should have processes in place by which they can identify and assess potential risks, measure their impact potential and adopt responsive measures to mitigate those risks."

The requirements for listed companies are stipulated under the "Law of the Republic of Azerbaijan on Securities Market" which requires transparency and preventing circumstances of abuses; the Law is mandatory for listed companies. Nevertheless, that law does not establish that the Supervisory Board is responsible for risk management, compliance or corruption-related risks. Moreover, requirements for the listing of shares are settled on "Rules of listing, delisting, and organizing trading of securities on Baku Stock Exchange". Their application is voluntary. There are also "Corporate Governance Standards in Banks" that were approved by the Resolution of the Chamber of Control over Financial Markets of the Republic of Azerbaijan No. 1951100027 dated June 27, 2019, that aim *inter alia* at ensuring the effectiveness of internal control and risk management. These rules are mandatory for 10 banks listed on the Baku Stock Exchange.

Benchmark 8.1.2.

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

The Central Bank of Azerbaijan is the regulator of the securities market. In this capacity, it ensures monitoring of requirements established by the Law on Securities Market by the companies issuing in the Baku Stock Exchange related to transparency and prevention of market abuse. However, as noted above, this Law does not establish a requirement for the boards to ensure corruption risk management. Therefore, there is no authority responsible for these matters, which is an aspirational standard for many countries around the world.

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

Assessment of compliance

Benchmark 8.2.1.

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

The Government's responses regarding the recording of beneficial ownership were confusing and contradictory. For instance, the Government explained that Article 5.4 of the Law of the Republic of Azerbaijan "On State Registration and State Register of Legal Entities," a legal entity is not required to provide information about the beneficial owner. Furthermore, pursuant to Article 14 of the Law, information on the beneficial owner is not included in the state register of legal entities.

However, in another response, the Government suggested that such information is collected because "during the inspections for the purpose of determining the beneficial owner, [the entity's] charter and state registration document are compared with the information included in the state register of legal entities." In support of these statements, the Government cited the Law on Combating Money Laundering and Terrorist Financing (Section 1.1.12), and the Law on Investment Funds (Article 1.1.18), and the Law of the Republic of Azerbaijan on the Securities Market (Article 1.0.3). However, these provisions merely define beneficial ownership, and do not explain whether the government or other public agency routinely collects such information. For instance, the Law on Combating Money Laundering and Terrorist Financing defines beneficial ownership as:

„natural or legal person who ultimately obtains economic or other benefit from the transactions with funds or other property as well as the natural person who owns the legal person for the benefit of which transactions are conducted or controls the customer and (or) on whose behalf financial or other transactions are conducted or exercises ultimate effective control over a legal person".

At the on-site visit, the Government clarified that no beneficial ownership information is required upon company registration. Rather, under certain laws, companies have the obligation to verify beneficial ownership information in order to comply with anti-money laundering legislation. For instance, Article 9.2 of the Law on Combating Money Laundering and Terrorist Financing requires "monitoring entities" to identify and verify customers and beneficial ownership in certain instances. Companies may also have an obligation to make such information available to tax authorities.

Despite the legislative sources and information provided on this indicator, the Government has not addressed the public disclosure of beneficial ownership.

Benchmark 8.2.2.

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

As discussed, the Government responses do not address the public disclosure of beneficial ownership.

Benchmark 8.2.3.

Beneficial ownership information is verified routinely by public authorities

In its written responses, the Government explained that there are "inspections for the purpose of determining the beneficial owner", but it these inspections are conducted on an ad hoc basis in limited circumstances, and public authorities do not routinely verify beneficial ownership information. The Government cited provisions of the Law on Combating Money Laundering and Terrorist Financing, which requires the submission of certain information to financial monitoring organ, including "information about the beneficial owner" (Chapter 11, Article 11.1.5). Therefore, it is not possible to assess whether such inspections are done "routinely". The Government also cites Ordinances 112 and 123 concerning the "Regulation on determination of the list of countries (territories) that are suspected in either legalization of criminally obtained funds or other property, financing of terrorism, support of the dangerous trends of transaction organised /…/".

The laws and ordinances provide that monitoring entities are required to provide certain information to the Financial Monitoring Service under certain circumstances. However, they do not establish routine inspections of beneficial ownership information by government authorities. In fact, the Government acknowledged that as "information on the beneficiary of a legal entity is not submitted to the registration authority during the state registration of legal entities in practice it is currently not possible to verify the accuracy of the information submitted to the audit by the monitoring participants and other persons involved in the monitoring audits".

Benchmark 8.2.4.

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

Article 9 of the Law on Combating Money Laundering and Terrorist Financing requires "monitoring entities" to take measures on identification and verification of customers and beneficial owners. Articles 4 and 5 of the same law provides that "[m]onitoring entities" include financial and certain non-financial entities engaged in sectors at high risk of money laundering. In addition, Articles 9.15 and 11 require monitoring entities not to engage with, or to terminate relationships with, parties where "there are doubts about the veracity or adequacy of previously obtained customer identification data" and to inform the financial monitoring organ.

Benchmark 8.2.5.

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

In its written responses, the Government initially cited the sanctions that are provided for in the Code of Administrative Offenses and the State Register of Legal Entities. The Government now acknowledges that the sanctions in the Code of Administrative Offenses would not apply to incorrect information about

beneficial ownership in company registration documents because such information is not required upon registration of a company.

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

Assessment of compliance

Benchmark 8.3.1.

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

During the assessment, the monitoring team was provided with the examples of incentives for compliance related to tax and customs regulations. For example, the Government provided tax incentives for companies to encourage compliance with the tax code. The Authorities also cited a "Green Corridor" clearance system created for the purpose of facilitating cross-border trade that *inter alia* aims to form voluntary compliance culture among the foreign trade participants.

The government has further cited a Coordination Group established by the Minister of Economy according to Order No. F-63 dated 3 May 2021, which is seeking "to eliminate the risk of corruption, unreasonable bureaucratic obstacles, abuses and conditions that cause dissatisfaction of citizens (entrepreneurs) while services provided by the Ministry of Economy and work processes that create a direct legal result for citizens, entrepreneurs, government agencies and other institutions".

The Government also notes that in 2020 the Anti-Corruption Directorate and the Prosecutor General disseminated a methodological guide entitled "Anti-Corruption Standards in Private Sector" to stakeholders, including the private sector. Training on the Guideline is planned to be organised in November 2021, with representatives of the private sector.

While these initiatives are laudable, they do not address the incentives that government have established for companies to improve their anti-corruption compliance programs, which is the focus of this indicator. Instead, the cited initiatives provide incentives for companies to improve tax compliance or reduce administrative obstacles.

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

Assessment of compliance

Benchmark 8.4.1.

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

The Ministry of Economy is the main body responsible for resolving complaints from companies. Section 3.0.46 of the Ministry of Economy charter states that the ministry has powers to demand the suspension of actions limiting (violating) the rights and legitimate interests of entrepreneurs from state entities and organizations, local self-government entities, other persons. Section 3.0.103 of the charter further highlights that to review these appeals the Ministry should apply the laws on "On appeals of citizens", "On administrative proceedings" and "On obtaining information"[13].

The Ministry has several ways of receiving complaints including corruption related ones. One of those mechanisms is called "business related discussion platform" which aims to receive complaints and appeals regarding allegations of bribery, abuse or excess of office, conflict of interest of public officials, unfair treatment and all other related issues.

In the year of 2020, there have been 21 795 appeals and complaints received by the Ministry of Economy in which more than 100 was corruption related issues within the business related discussion platform. These requests included the areas as tax, property, export, import, monopoly, public procurement and so on and all these complaints are being dealt and resolved relatively within the Ministry within a reasonable timeframe.

The Government further specified that there is also tax ombudsman in the country which operates independently and impartially and aims to resolve all the tax related concerns including corruption related issues of the civil society and stakeholders. Alternatively, all the government organizations have their hot lines by which everybody can easily deliver their complaints and requests and receive responds about their requests within a reasonable timeframe, such as the Call Centre and Taxpayer Service Centres. These lines also serve for analysing the systematic problems by considering the types of complaints received by the citizens and prepare relevant recommendations for the highest government authorities.

As the above information was provided after the bilateral consultations before the 21st OECD/ACN Plenary Meeting, it is impossible to assess if the discussion platforms and other mechanism for addressing complaints from companies provided by the Ministry of Economy can be considered designated institution responsible for receiving complaints from companies about bribe solicitation by public officials and related corruption-related matters, providing protection or helping businesses to resolve legitimate concerns. The hot lines and the tax ombudsman are welcome, however they are outside the scope of this assessment.

The Azerbaijani government has also cited the Small and Medium Business Development Agency as one of the designated institution under the umbrella of the Ministry of Economy responsible for receiving complaints from companies about bribe solicitation by public officials and related corruption-related matters. The Agency for Small and Medium Business Development of the Republic of Azerbaijan ("SMDB Agency") was established by the Decree of the President of the Republic of Azerbaijan No. 148 dated June 26, 2018.

The charter of the SMDB Agency states that it is a "public legal entity that supports the development of micro, small and medium entrepreneurship (hereinafter - entrepreneurship) in the country, takes part in its regulation, protection of the interests of micro, small and medium entrepreneurship subjects (hereinafter – entrepreneur) and solution of problems, provides a number of services to entrepreneurs, coordinates the services of government bodies and private institutions and acts as an authorized body".

Several provisions in the SMDB Agency charter suggest that the agency could be an institution that receives complaints relating to bribe solicitation and corruption. For instance, Section 3.1.15. of the SMDB Agency Charter states that the agency shall "act as an agent and representative to represent the interests of entrepreneurs at government agencies, as well as implement the functions of a competent economic operator and establish partnership relations with entrepreneurs." In addition, Section 3.130 states that the SMDB Agency shall "take measures on the flexible solution of the problems of entrepreneurs, receive and

[13] Regulations On the Ministry of Economy of the Republic of Azerbaijan

investigate their complaints, raise questions before state bodies and organizations in relation to decisions of state bodies and organizations violating the legal rights of entrepreneurs (act or omission).” Perhaps most relevant is the SMDB Agency’s ability under Section 3.1.32 to “carry out investigations, analyse and monitoring in the field of entrepreneurship development in the country, prepare reports and make suggestions related to the elimination of deficiencies”.

However, none of these provisions specifically mentions bribe solicitation and corruption-related complaints and/or investigations. The Government explained that the SMDB Agency acts as an intermediary between businesses and government, and usually forwards complaints received to the relevant agency to resolve. In relation to corruption, the SMDB Agency refers corruption-related concerns to the Anti-Corruption Directorate under the General Prosecutor’s Office in accordance with Section 4.1 of the Law on Corruption of Azerbaijan. The Government stated that in 2020, in addition to complaints addressed by the MoE mentioned above, the SMDB Agency received 5 corruption-related complaints from businesses, and 2 of these were resolved. The Government also reported that the SMDB Agency conducted 5 mediations to assist businesses to resolve legitimate concerns.

This information demonstrates that although the SMDB Agency may receive corruption-related complaints incidentally, it is not an institutional specifically designated to receive such complaints, and has limited authority to resolve such concerns on behalf of businesses. Indeed the Government states that “corruption issues are not direct scope of the [SMDB] Agency”. As a final point, the SMDB Agency is intended to provide assistance to small and medium enterprises; the Government has explained that larger companies should report complaints of bribe solicitation and corruption to the Ministry of Economy or law enforcement agencies if necessary.

The Government further added that the Ministry of Economy is an authorised body for receiving complaints related to bribe solicitation and corruption issues. However, the Government did not provide any support for this statement by the deadline established in the evaluation.

The Government advises that “SME Houses” have been established to address complaints on and increase efficiency and transparency of provision of public services with a plan to increase the number of “SME Houses” in the coming years. The purposes of the “SME Houses” is to provide G2B and B2B services to increase business efficiency.

Benchmark 8.4.2.

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

The monitoring team received information about the role of the Ministry of Economy in resolving corruption-related complaints from companies after the bilateral consultations before the 21st OECD/ACN Plenary Meeting. The monitoring team is not in a position to assess this information during this pilot, and will return to this matter in the next round of monitoring.

Based on the information provided in the questionnaire and during the on-site, the monitoring team however examined the role of the Agency for Small and Medium Business Development of the Republic of Azerbaijan (“SMDB Agency”) as the potential institution specifically designated for receiving corruption-related concerns for companies. Representatives from business and a civil society did not recognise the SMDB Agency as an agency to receive anti-corruption complaints. Rather, representatives from these two sectors mentioned that the SMDB Agency was effective in resolving administrative and bureaucratic issues on behalf of small and medium enterprises. The representatives were generally unfamiliar with the agency’s ability to receive corruption-related complaints. For reasons stated above, the SMDB Agency is

not considered a proper institution for that function. Civil society and business representatives interviewed by the monitoring team stated that minor bribery-related complaints are more likely resolved through connections to high level and influential persons rather than through the SMDB Agency.

The government believes that the above statements are speculative and not verifiable, and strongly objects to the above positions.

Benchmark 8.4.3.

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

As explained in Performance Indicator 4.1., in the questionnaire, the Azerbaijan Government has cited the Agency for Small and Medium Business Development of the Republic of Azerbaijan ("SMDB Agency") as the institution specifically designated for receiving and helping to resolve corruption-related concerns for companies. Section 3.1.32 of the SMDB Agency Charter allows the agency to "carry out investigations, analyse and monitoring in the field of entrepreneurship development in the country, prepare reports and make suggestions related to the elimination of deficiencies." The "investigations" power of the SMDB Agency includes requesting relevant documents and information from state and local self-governing bodies and raising the issue before the state bodies and organizations regarding the decisions violating the rights of SMEs. However, the Government specified later that the SMDB is designated only to receive but not resolve such concerns of companies.

In the comments provided at a later stage, the Government stated that the Ministry of Economy is the responsible institution responsible for receiving complaints from companies about bribe solicitation by public officials and related corruption-related matters. The Government referred to section 3.0.46. of the charter of the Ministry of Economy establishing the right "to demand the suspension of actions limiting (violating) the rights and legitimate interests of entrepreneurs from state entities and organizations, local self-government entities, other persons".

The monitoring team was not able to assess this new information during the pilot. This benchmark will therefore need to be assessed during the next monitoring round.

Benchmark 8.4.4.

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

In the comments provided after the bilateral consultations before the 21st OECD/ACN Plenary Meeting, the Government stated that the Ministry of Economy is the responsible institution for analysing systematic problems regarding complaints related anti-corruption concerns of businesses. Complaints on these issues are received, thoroughly analysed by the Ministry and at the end of each year relevant issues are raised before the government, if necessary, changes are made in the legislation, and instructions are given to the relevant agencies to solve the problems. This new information cannot be assessed by the monitoring team during the pilot and will be reviewed during the next monitoring round.

Benchmark 8.4.5.

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

As explained above, information about the role of the Ministry of Economy as the responsible institution for analysing systematic problems regarding complaints related anti-corruption concerns of businesses was provided after the bilateral consultations before the 21st OECD/ACN Plenary Meeting and therefore could not be evaluated by the monitoring team during this pilot. Implementation of recommendations related to business concerns about corruption, bribe solicitation and related matters will be reviewed during the next monitoring round.

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

Assessment of compliance

Benchmark 8.5.1.

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

The Resolution of the Cabinet of Ministers of the Republic of Azerbaijan No. 257 on "Corporate Governance Rules and Standards of the Legal Entities with Controlling Block Shares under State Ownership" dated 4 June 2019 contains certain provisions that address the independence and qualifications of members of supervisory boards. For instance, Paragraph 4.3 of those rules requires that "[m]embers of the Supervisory Board (Board of Directors) shall have higher economic or legal qualification appropriate to the lines of activities of the joint-stock company with the minimum five years of working experience in relevant qualification area." Furthermore, Paragraph 4.4 requires that at least half of the Board shall be independent. Paragraph 3.2.14 assigns to the shareholder the obligation to apply a proper and transparent designation procedure of candidacy of the members of Supervisory Board (Board of Directors).

The Decree states that it applies to "joint-stock companies and limited liability companies with controlling block of shares of 51% or more directly or indirectly owned by state ownership are implied" (Paragraph 1.3). Nevertheless, some charters of wholly owned state enterprises do not reflect the principles in the Decree No. 257.

The Decree of the President of Azerbaijan dated 7 August 2020 "On the establishment of the Azerbaijan Investment Holding" established the AIH in order to "deepen structural reforms to improve the management system of state-owned enterprises, increase their efficiency and transparency, optimize their costs and risks, and fully revitalize them". The Government reported about several developments that were implemented in 2021 – after the period covered by this pilot assessment – with the active role of the Azerbaijan Investment Holding. By the end of 2021, twelve state-owned entities have been transferred

under the management of AIH. The monitoring team will assess these new developments in the next monitoring.

Benchmark 8.5.2.

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

Under the "Resolution of the Cabinet of Ministers of the Republic of Azerbaijan No. 257" on "Corporate Governance Rules and Standards of the Legal Entities with Controlling Block Shares under State Ownership" dated 4 June 2019, Section 7 provides for the establishment of effective internal controls systems by supervisory boards. For instance, that section states that "[t]he Supervisory Board (Board of Directors) of the company should bear the overall responsibility for the effectiveness of the systems of internal control and risk management in the company" and should "[a]dopt an internal control policy and risk management policy of the company," "[e]stablish the tone at the top regarding the importance of the systems of internal control and risk management in the company and encourage their implementation by the executive body and personnel of the company", and "[a]dopt corporate standards of conduct (the Code of Ethics/Code of Conduct), which should be obligatorily applicable to everybody in the company, including members of the Supervisory Board (Board of Directors) and the executive body."

However, as noted above the reform of the SOEs transferred to the AIH has only started in 2021. According to the government of Azerbaijan, the AIH has started the work on developing the integrated risk management in 2021. Therefore, the progress in implementing these reforms will be assessed in the next round of monitoring.

Benchmark 8.5.3.

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

The Civil Code of Azerbaijan provides that the Supervisory Board have plenary authority of the appointment of the CEO. The Government has confirmed that CEOs report to the Supervisory Boards, who report to the General Assembly of Shareholders. However, the Government has stated that "in practice, the heads of executive bodies of large state-owned enterprises are appointed by the Presidential Decree". The Government has not provided information that would demonstrate that merit-based and transparent nomination process was applied in their selection. Therefore, there is insufficient evidence to support that CEOs of at least the 10 largest SOEs are appointed through a merit-based and transparent nomination process and report to the boards.

The Government asserts that nominations are "merit-based" because the Management Body Members are sophisticated professionals representing the areas of each SOE business. While we do not doubt that management body members are competent to perform their duties, the monitoring team was unable to evaluate whether there was a competitive and merit-based process to select the members. This will be assessed in the next monitoring round.

Benchmark 8.5.4.

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

Under the Resolution of the Cabinet of Ministers of the Republic of Azerbaijan No. 257 on "Corporate Governance Rules and Standards of the Legal Entities with Controlling Block Shares under State Ownership" dated 4 June 2019, state-controlled companies are required to conduct of an external audit by an independent auditor. However, the government has not provided information that such audits were actually conducted by the 10 largest SOEs in 2020.

The Government explains that during the transfer of twelve of the largest SOEs to the management of AIH, one of the SOEs has completed an audit of its financial statements, which found no major issues, and several more reports were finalised. The Government adds that Audit Committees have been newly established in the companies under the management of the AIH, and the functions and competencies of the internal audit service are currently being tested. The Government further adds that some audits are subject to the approval of the Supervisory Board, and therefore have not yet been released. This benchmark will need to be further assessed in the next round of monitoring, when the Government will need to provide not only the legal framework governing the external audit, but also the actual audit reports.

Benchmark 8.5.5.

The boards of 10 largest SOEs routinely deliberate about and decide on the findings of internal audit committees and external audit reports regarding integrity issues

The Azerbaijan Government has provided information that the rules require the Supervisory Board to review audit results and take measures as result of the audit. As explained above, however, 8 largest SOEs has been transferred to AIH's control, and only one company has completed an audit of its financial statements during this pilot.

While the AIH provided information that annual financial statements were elaborated during 2020 covered by the pilot monitoring, no final reports were yet available for the review of the monitoring experts. Besides, it is not known if these reports cover integrity issues. This benchmark will need to be reviewed in the next round of monitoring.

Benchmark 8.5.6.

10 largest SOEs disclose at least:

- company objectives and activities carried out in the public interest;
- financial and operating results;
- material transactions with other entities;
- remuneration of board members and key executives

The Government has confirmed that the 10 largest SOEs are obliged to submit the financial statement and other financially related information. Under the "Resolution of the Cabinet of Ministers of the Republic of Azerbaijan No. 257" on "Corporate Governance Rules and Standards of the Legal Entities with Controlling

Block Shares under State Ownership" dated 4 June 2019, entities with a controlling share by the state are required to provide disclose such information subject to restrictions within the Law of the Republic of Azerbaijan on State Secrets and the Law of the Republic of Azerbaijan on Commercial Secrets. The categories of information that shall be disclosed are:

- 5.5.1 financial indicators for the reporting period;
- 5.5.2 deals entered into with the related persons, deals with special importance and instances of conflicts of interest;
- 5.5.3 mobilised financing, including public debt and state guaranteed funds;
- 5.5.4 the composition and operation of the management and supervisory bodies and their committees;
- 5.5.5 development policy;
- 5.5.6 rate of return and dividend policy of the shareholder's equity;
- 5.5.7 authorities performing the powers of the General Meeting of the joint-stock company;
- 5.5.8 management bodies and officials, their main and extra jobs;
- 5.5.9 total value of the state's share;
- 5.5.10 payments to each of the members of management bodies;
- 5.5.11 cash flow.

However, the Government of Azerbaijan have not provided information to show that the 10 largest SOEs actually disclose the information required in Resolution No. 257 or in the benchmark for this indicator. For instance, AzTelekom provides extremely limited financial information that does not cover the categories of information in the benchmark. The evaluation team was also unable to find this information published by Azerbaijan Airlines, another large state-owned entity. AzeriGaz, another large state-owned enterprise, also publishes scant financial information, making it difficult evaluate its performance.

In addition, limitations posed by secrecy laws such as "On State Secrets" and "On Commercial Secrets" could potentially prevent the disclosure of significant amounts of relevant information.

9 Enforcement of Corruption Offences

The track record of enforcement of active and passive bribery in public and private sectors was low in Azerbaijan in 2020. The Authorities of Azerbaijan explained this by the fact that the majority of the trials were adjourned in 2020 due to the COVID-19 pandemic. There were no final convictions for the other bribery offences or bribery offences with non-pecuniary undue advantage, trading influence, foreign bribery or money laundering with the predicate public sector corruption offence in 2020. Illicit enrichment is not criminalised nor is confiscation of unexplained wealth through administrative or civil proceedings applicable in Azerbaijan. Deprivation of liberty sanctions set by law are dissuasive in Azerbaijan. Monetary sanctions were increased in 2017 but remain rather mild. More clear evidence would be welcome to establish that statute of limitations, time limits for investigation and immunities do not impede in practice prosecution of corruption offences. Enforcement statistics on corruption offences is not sufficient for efficient analysis. Some enforcement statistics is available for the public in the activity reports of the Anti-Corruption Directorate by the Prosecutor General.

Indicator 9.1. Liability for corruption offences is effectively enforced

Assessment

Benchmark 9.1.1. – 9.1.8.

BENCHMARK	Country Data 2020	
	Total number of convictions	Per 1 million of population
9.1.1. Track record of enforcement of active and passive bribery offences in the public sector with final convictions	6	0,6
9.1.2. Track record of enforcement of active and passive bribery offences in the private sector with final convictions	6	0,6
9.1.3. Track record of enforcement of offence of offering or promising of a bribe, bribe solicitation or acceptance of offer/promise of a bribe with final convictions	0	0
9.1.4. Track record of enforcement of bribery offences with intangible and non-pecuniary undue advantage with final convictions	0	0
9.1.5. Track record of enforcement of trading influence offence with final convictions	0	0
9.1.6. Track record of enforcement of illicit enrichment offence with final convictions or a track record of cases of non-criminal confiscation of unexplained wealth	na	na
9.1.7. Track record of enforcement of foreign bribery offence with final convictions	na	na
9.1.8. Track record of enforcement of money laundering sanctioned independently of the predicate public sector corruption offence with final convictions	0	0

Comments: Providing substantiating data for the benchmarks 9.1.1. and 9.1.2. Azerbaijan referred to 21 criminal cases. 9 cases were not considered for the evaluation since:

- the court decisions became final not in 2020 (7 cases);
- it was not clarified by the country if case No. 11 included in the table on “In regard with Article 312“ provided as additional information after the on-site visit (K.A.R.; for 32.5, 179.3.2, 193-1.3.2 and 32.5, 313 (public sector); sentence dated 28.11.2020) was referred correctly as the offences indicated do not include Article 312 of the Criminal Code;
- no information was indicated if offence was committed in private or public sector (i. e. case of M.I.N., the CC 178.2.2, 29, 178.2.2., 310 and 32.4, 312.2.; first instance court decision dated 04.09.2020; the appellate court decision dated 15.10.2020) (1 case).

In 2020, there were no final convictions for offences indicated by benchmarks 9.1.3.–9.1.8. in Azerbaijan.

The summaries provided by Azerbaijan of cases of final convictions for offences of offering or promising of a bribe, bribe solicitation or acceptance of offer/promise of a bribe; for bribery offence with intangible and non-pecuniary undue advantage; trafficking in influence, and for money laundering sanctioned independently of the predicate corruption offence are from 2018 and 2019.

Illicit enrichment is not criminalised nor confiscation of unexplained wealth through administrative or civil proceedings is applicable in Azerbaijan. The notion of foreign bribery is not applicable in criminal law of Azerbaijan.

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Indicator 9.2. Proportionate and dissuasive sanctions for corruption are applied in practice

Assessment of compliance

Benchmark 9.2.1.

Proportionate and dissuasive sanctions are routinely applied for corruption crimes

The main offence of passive bribery is serious crime and the main offence of active bribery is less serious crimes pursuant Criminal Code of Azerbaijan. The offences of active and passive bribery with the aggravated circumstances are serious crimes. The level of sanctions, especially in case of passive bribery, is more severe than for other economic crimes. The Criminal Code of Azerbaijan foresees only imprisonment as sanction for the passive bribery offence without any alternative type of sanction. The minimum imprisonment term is 4 years under the basic offence. The Criminal Code of Azerbaijan does not differ between sanctions for private and public sector bribery offences. At the country on-site visit, the representatives of the government ensured that sanctions for corruption offences provide for a term of imprisonment sufficient to allow extradition (1 year based on the national law).

Sanctions for other corruption offences generally include alternatively fine, deprivation of the right to occupy certain positions or to be engaged in certain activities, deprivation of liberty, and imprisonment (with some exceptions since, for example, for laundering of proceeds of crime by the person with use of the official position is punishable by imprisonment exclusively).

Fines for corruption offences set by the Criminal Code of Azerbaijan were increased in 2017. Currently fines are: for active bribery offence: main composition – from 5000 AZN (~2540 EUR) to 8000 AZN (~4070 EUR), aggravated composition – from 8000 AZN (~4070 EUR) to 12000 AZN (~6100 EUR); trading in influence: main composition – from 6000 AZN (~3050 EUR) to 10000 AZN (~5090 EUR); diversion of

property by a public official: from 4000 AZN (~2030 EUR) to 7000 AZN (~3560 EUR). Despite the increase in 2017, fines for corruption offences still remain rather mild. There is no evidence that confiscation is actively applied in Azerbaijan (see also PA 11 “Recovery and Management of Corruption Proceeds”).

Limited statistical data on sanctions applied in 2020 (8 persons sentenced for active bribery in private sector; 3 persons sentenced for passive bribery and 3 persons sentenced for active bribery in public sector) does not enable to make conclusive comparison of sanctions applied for corruption offences in private and public sectors. Imprisonment prevailed as sanction applied both in private and public sector corruption in 2020 (however, mostly with conditional or another type of release. Monetary sanctions were applied just to 3 persons convicted for the active bribery in private sector. Comprehensive data on the size of sanctions applied were not provided.

Because of the limited data, it is not possible to evaluate if sanctions applied are proportionate, i. e. if they take into account and correspond to the nature and gravity of the offence. More detailed information about the amount of the undue advantage or seniority of public official was not provided.

The level of imprisonment sanctions, especially in case of passive corruption, set by the Criminal Code of Azerbaijan may be assessed as dissuasive. However, there is no clear evidence that sanctions are dissuasive in practice especially considering evaluation of the benchmarks reflecting enforcement statistics of Indicator 1. To be dissuasive sanctions also have to be effective, that is enforceable and properly addressing the offence in question as defined by the draft Guide to the ACN Performance Indicators. More detailed statistic data would be needed for the evaluation of the criteria “routinely applied” of this benchmark.

Benchmark 9.2.2.

At least 50% of punishments for aggravated bribery offences in the public sector provided for imprisonment without conditional or another type of release

Providing additional information after on-site visit, Azerbaijan reported 3 persons sentenced for aggravated passive bribery and 3 persons sentenced for aggravated active bribery (6 in total) with final convictions in 2020. Only in 2 cases out of 6 the defendants were sentenced to real imprisonment. In 3 other cases the defendants were sentenced conditionally, and in 1 case – to a restriction of liberty, that is not imprisonment.

Benchmark 9.2.3.

Public officials convicted of a corruption crime are dismissed from public office in all cases

Article 33 of the Law on Civil Service of Azerbaijan envisages a list of grounds for termination of the civil service of a civil servant. In accordance with Article 33.1.10 of the mentioned law, if there is a conviction or decision of a court on application of compulsory measures of a medical nature against a public servant which have entered into force, his/her civil service should be terminated.

Azerbaijan informed that in addition, there are special sectoral legislative acts, which foresee impossibility of continuation of holding office in respect of public officials who has convicted of a crime (as well as corruption crime). For example, in accordance with Article 29.2.6 of the Prosecutor`s Office Service Act if there is a conviction against an employee of the Prosecutor`s Office which have entered into force or when a criminal case against an employee of the Prosecutor`s Office is terminated on non-acquitting grounds his/her service should be terminated. In accordance with Article 34 of the Law on Police, if there is a

conviction or decision of a court on application compulsory measures of a medical nature against a police officer, he/she should be dismissed from the office.

The Criminal Code of Azerbaijan stipulates sanction of "deprivation of the right to occupy certain positions or to be engaged in certain activities" as autonomous sanction or sanction that is imposed with imprisonment (for passive bribery offences except aggravated offence composition stipulated in Article 311.3 of the Criminal Code). Based on data on convictions for active and passive bribery offences in public sector in 2020 provided by country, deprivation of the right to hold certain positions in state and local self-government bodies for a certain period of time was applied by courts in all 6 cases of convictions for bribery alongside with the main sanction. However, the defendants were prohibited by courts to occupy only senior and materially responsible positions in state and municipal bodies, leaving the opportunity to hold other positions in the public sector. In other words, just certain positions in public office were banned for the convicted persons.

Statistics and respective data about the convictions for other corruption crimes were not provided. Azerbaijan did not provide statistics to prove that there is a universal practice of dismissal of the convicted for corruption crimes officials from public office regardless of whether such a dismissal is a part of the criminal sanction applied by court.

Benchmark 9.2.4.

General effective regret provisions are not applied to corruption crimes

The requested substantiating statistics on number of general effective regret (active repentance) exemption applied in cases of A) Active bribery in the public sector; B) Passive bribery in the public sector; C) Trafficking in influence; D) Abuse of office by a public official; E) Embezzlement/misappropriation committed by a public official were not provided.

Effective regret (active repentance) pursuant Article 72 of Criminal Code of Azerbaijan applies to "The person who for the first time has committed the crime, not representing to public big danger, can be exempted from criminal liability if it voluntary came to confess, actively promoted disclosure of the crime, indemnified the loss or otherwise smoothed down the harm caused as a result of the crime". Therefore, it does not apply to corruption crimes (active bribery in the public sector; passive bribery in the public sector; trafficking in influence; abuse of office by a public official; embezzlement/misappropriation committed by a public official) that do not fall under the category of "crime not representing big public danger" as it is defined by the Criminal Code.

Benchmark 9.2.5

Any exemption from bribery offence, if stipulated in the law, is applied by courts taking into account circumstances of the case (i.e. not automatically) and with the following conditions:

- voluntary reporting is valid during a short period of time and before the law enforcement bodies became aware of the crime on their own,
- not possible when bribery was initiated by the bribe-giver,
- requires active co-operation with the investigation or prosecution,
- not possible for bribery of foreign officials

Article 312 of the Criminal Code of Azerbaijan establishes that "The person who has bribed is exempted from criminal liability if bribery took place owing to threats from the official or if the person voluntary reported to the relevant state body about bribery". None of the conditions specified in the benchmark is enshrined in the criminal law of Azerbaijan in the context of bribery. No case law examples were provided to prove that exemption from bribery offence is applied by courts taking into account circumstances of the case (i.e. not automatically).

Azerbaijan claims that "voluntary reporting /…/ encompasses not only notifying state authorities about the crime, but also active co-operation with them for the purposes of detection of all participants of the crime, direct proceeds and derivatives of the crime, as well as means and tools used for the commission of the crime". However, it did not refer to any legislative provisions or well-established case law to support this statement.

From the wording of Article 312 of the Criminal Code (see above) as it is presented in English version of Criminal Code of Azerbaijan, it follows that the exemption applies when bribery was initiated by the bribe-giver.

There is no provision banning exemption from bribery offence for bribery of foreign officials. The monitoring team did not have sufficient practical evidence that exemption from bribery offence is applied by courts taking into account circumstances of the case (i.e. not automatically) meeting all respective requirements of the benchmark.

Indicator 9.3. The statute of limitations period and immunities do not impede effective investigation and prosecution of corruption

Assessment of compliance

Benchmark 9.3.1.

The statute of limitations period and time limit for conducting an investigation, if they exist, are sufficient for the effective enforcement of corruption offences. The law suspends the statute of limitations in certain cases, in particular during the period when the person had immunity from prosecution

Pursuant the Criminal Code of Azerbaijan, majority of the corruption offences are serious crimes and statute of limitations applicable to them is 12 years. There are corruption crimes that are within the category of "less serious crime" (with 7 years of limitation period) such as basic abuse of power, basic active bribery, any trading in influence and embezzlement committed by public official (Article 75.1.2. of the Criminal Code of Azerbaijan). Azerbaijan claims that "According to the investigation experience /…/ statute of limitations applicable to corruption crimes is sufficient /…/. /…/ To support [this], it should be noted that, in 2020 only 1 case investigated by the Investigation Department of the ACD on office forgery /…/ was terminated due to expiration of statute of limitations. There was no case on active or passive bribery, as well as abuse or exceeding of power terminated due to expiration of statute of limitations by the Investigation Department of the ACD in 2020".

The law suspends the statute of limitations only when "the perpetrator absconds or evades administration of justice" but not for the period when the person had immunity from prosecution. The authorities noted that proceeding may be suspended based on Article 53.1.5 of the Criminal Procedure Code, when there is need to lift immunity of a perpetrator. However, it does not stop the expiration of the statute of limitations when the person had immunity from prosecution as required by the benchmark.

Pursuant the Criminal Procedure Code and the Criminal Code of Azerbaijan, initial time limits for investigation of corruption offences majority of which are set as serious crimes are 3 months with possibility to maximum extension to 13 months. Azerbaijan informs that it is "sufficiently long time limits for conducting an investigation". "/…/ in 2020 there has not been any breach of time limits during investigation of corruption offences and investigation of such offences was completed within the time limits established by legislation. The mentioned fact also indicates that time limits for conducting investigation of corruption crimes are sufficient". At the country on-site visit, the representatives of the government of Azerbaijan explained that initiation of criminal case is the starting point when the term of investigation (up to 13 months) starts to expire and claimed that it is sufficient. The Authorities indicated the case of the State Foundation for Support of Media as an example. The case was initiated on 12.06.2020 and sent to the court on 30.06.2021[14]. This example was referred to after the bilateral consultations before the 21st OECD/ACN Plenary, therefore it could not be studied and assessed for the pilot. No further recent examples of high-profile corruption cases with many defendants, episodes and foreign jurisdictions involved finished within 13 months and finally resolved in courts were provided during the pilot. The relevant practice will have to be examined further in the following monitoring.

Only one ground for suspension of statute of limitations is stipulated by the criminal law and it does not cover situation when the person had immunity from prosecution. Early starting point when the term of investigation (up to 13 months) starts to expire is applied in Azerbaijan. The claim that time limit for conducting an investigation is sufficient for the effective enforcement of corruption offences was not substantiated sufficiently by examples of practice. Persuasive substantiating practice that the existing statute of limitations period is sufficient was not presented for the monitoring team.

Benchmark 9.3.2.

Immunities do not impede the effective investigation and prosecution of corruption crimes committed by persons with immunity, in particular, immunities are lifted based on clear criteria and transparent procedures without undue delay

The benchmark requires that clear criteria and procedures of immunity lifting would be established by the national regulation and looks whether such clear and transparent procedures are applied in practice without undue delay.

The Authorities claim that immunities do not impede the effective investigation and prosecution of corruption crimes. At the country on-site visit, the Authorities informed in order not to allow the immunity to become an obstacle for a thorough and effective investigation, the scope of the officials enjoying immunities has been limited. The provided national regulation for lifting immunity of members of parliament, President and Vice-Presidents of the Republic, Prime Minister of the Republic does not establish clear criteria and transparent procedure of immunity lifting.

Mechanism to lift immunity in respect of judges (envisaged by Article 101 of "Law on Courts and Judges") and of the Ombudsman (envisaged by Article 6 of the Law on Ombudsman) sets terms and some details of process (for example, participation of the Prosecutor General or his/her deputy in the meeting of the Judicial-Legal Council hearing the motion on immunity lifting of judge caught *in flagrante delicto*). In case of the Ombudsman, law stipulates that "the immunity of the Commissioner may be terminated only by the decision of the Milli Majlis of the Republic of Azerbaijan adopted by a majority of 83 votes". However, this

[14] Report article "Vüqar Səfərli was sentenced to life in prison for the crime" (2021); Sputnik article "KİVDF's previous conviction for murder" (2021)

regulation is not detailed enough and does not stipulate main steps in the process nor provides for publication of information about the outcomes of different steps and its final outcome.

It seems that other procedural immunities (limitations on the right to arrest or detain, search, apply covert measures, etc.) do impede the effective investigation and prosecution of corruption crimes. Open and covert investigative actions against person protected with immunity before lifting the immunity are possible only *in flagrante delicto* and just the immediate investigative actions. Afterwards it is necessary to apply for lifting the immunity immediately.

The requested statistics on the number of the cases concerning public officials with immunity and examples of practice relevant to the benchmark in 2019-2020 was not available since, as indicated by the Authorities, "Despite a number of cases against high-level officials prosecuted in 2019-2020, neither of them enjoyed immunity in accordance with the domestic legislation".

The government provided an example of a criminal case against a judge convicted for the passive bribery. Pursuant the national legislation if a judge is caught in *flagrante delicto* and Prosecutor General submits motion on immunity lifting, the Judicial-Legal Council has to review it within 24 hours of the detention of the judge. In other cases if there are sufficient grounds to believe that a crime was committed by judge the motion shall be reviewed within 72 hours of its receipt. It was indicated that judicial immunity was lifted without undue delays in the case indicated. However, no material substantiating publication of information about the outcomes of different steps and the final outcome of immunity lifting procedure was provided.

The Government did not provide examples of lifting different types of immunities proving that procedures are applied without undue delay and transparently in practice.

Indicator 9.4. Enforcement statistics on corruption offences is used for analysis and available for the public

Assessment of compliance

Benchmark 9.4.1.

The authorities, on a central level, collect and analyse enforcement statistics on corruption offences, including the number of cases opened, cases terminated, sent to court, ended with a final conviction, types of punishments applied, type of officials sanctioned

Based on the criminal statistics on corruption offences provided by Azerbaijan for 2019 and 2020, the following may be concluded considering the requirement of the benchmark 9.4.1.:

- Number of cases opened under each of the corruption offences – only aggregated number of cases initiated by the ACD was provided.
- Number of cases terminated under each of the corruption offences – only aggregated number of cases on (a) abuse and exceed of power, (b) active and passive bribery terminated by the ACD was provided.
- Number of cases sent to court under each of the corruption offences – the data provided do not cover bribery of foreign public officials and officials of international public organizations, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, bribery in the private sector, laundering of proceeds of crime. Though some data on enforcement of corruption offences in private sector was provided under other benchmarks.

- Number of cases ended with a final conviction under each of the corruption offences – data were not provided.
- Number of each type of punishments applied under each of the corruption offences – data were not provided; however it should be noted that some information on sanctions applied in 2020 for active and passive bribery in public and private sectors was provided under other benchmarks.
- Number of officials of different types (level of seniority, category, place of work, etc.) sanctioned under each of the corruption offences – data were not provided.

NB Illicit enrichment offence has not been criminalized yet in Azerbaijan. Therefore, it was not considered for the evaluation of this benchmark.

Azerbaijan referred to motions and admonitions sent to enterprises and institutions necessitating to eradicate circumstances conducive to corruption based on the investigations conducted by the ACD as example of measures taken based on analysis of enforcement statistics in 2020. However, it cannot be considered as suitable example of analysis of enforcement statistics since it is based on particular investigations not enforcement statistics as such and because the measures taken, i. e. motions and admonition, are more of preventive nature and does not aim to ensure efficiency of enforcement.

Benchmark 9.4.2.

Detailed enforcement statistics on corruption offences is regularly published online

The benchmark requires at least the following statistic data to be collected on a central level:

- Number of cases opened under each of the corruption offences.
- Number of cases terminated under each of the corruption offences.
- Number of cases sent to court under each of the corruption offences.
- Number of cases ended with a final conviction under each of the corruption offences.
- Number of each type of punishments applied under each of the corruption offences.
- Number of officials of different types (level of seniority, category, place of work, etc.) sanctioned under each of the corruption offences.

Azerbaijan informs that enforcement statistics is published in form of “semi-annual and annual reports on activity of the ACD as a dedicated body on fight against corruption” and contains “Comparisons with previous years, increases and decreases in the number of cases, other analyses, proposals for increasing the efficiency /…/. The report is made available to public by being published on official web-site of the Prosecutor`s Office”. Since the report are in Azerbaijani language, it is not possible to check if the detailed enforcement statistics is published and if it meets the requirement of benchmark. Google translation of the content of the report and some information of it lets to suppose that reports do contain enforcement statistics on corruption offences but not as detailed as required by the benchmark.

10 Enforcement of Liability of Legal Persons

The law of Azerbaijan establishes criminal liability of legal persons but some elements are still not fully covered including some corruption offences, actions of agents, third parties and beneficial owners as cause of corporate liability. Liability of legal persons is not autonomous in Azerbaijan. Sanctions for legal persons are proportionate and dissuasive. There is no due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions. The practice of enforcement of corporate liability for corruption crimes is at the early but promising steps.

Indicator 10.1. The law provides for an effective standard of liability of legal persons

Background

The criminal liability of legal entities was introduced in Azerbaijan on 7 March 2012, with the adoption of the Law on the Amendments to the Criminal Code. Quasi-criminal system was adopted in Azerbaijan, where criminal law measures may be applied to a legal person when a crime has been committed on its behalf or in its interests. The respective procedure is regulated in the law of criminal procedure. The liability of a legal person can also be triggered by management's failure to supervise its employees ('lack of supervision rule').

Assessment of compliance

Benchmark 10.1.1.

Liability of legal persons for corruption offences is established in the law

To be compliant with the benchmark, the liability of legal person should extend to all corruption offences mentioned in Chapter III of the United Nations Convention against Corruption.

Article 99-4.6. of the Criminal Code sets the following exhaustive list of corruption crimes entailing liability for legal entities: Abuse of power (Article 308); passive bribery (defined as the solicitation or acceptance, directly or indirectly, by a public official of a material or other benefits, privileges or undue advantages for themselves or others in consideration for acting or refraining from acting, or providing patronage when exercising official duties (Article 311); Active bribery (defined as an offer, assurance or gift of a material or other benefits, privileges or undue advantages for themselves or others, directly or indirectly, to a public official for themselves or others in consideration for acting or refraining from acting when exercising official duties (Article 312); Exerting illegal influence on the decisions of officials (Article 312-1); Forgery (Article

313). It is also worth mentioning that Azerbaijani law does not distinguish between public sector and commercial bribery; offering a benefit to officers of commercial entities or their acceptance of a benefit in exchange for the performance or non-performance of official duties may constitute active or passive bribery.

The corporate liability as established in Azerbaijan does not cover embezzlement and misappropriation or other diversion of property by a public official (referred to as corruption offences in the United Nations Convention against Corruption). These crimes are not indicated in the list of Article 99-4.6. of the Criminal Code.

Benchmark 10.1.2.

Actions of lower-level employees, agents, third parties or beneficial owners (controllers) of the legal entity may trigger corporate liability

It should be ensured that a criminal act of any employee as well as agents, third parties or beneficial owners shall trigger corporate liability if other conditions are met. The Criminal Code introduces the criminal liability of legal entities for certain types of crimes committed for the benefit of the legal entity or in its interests by the following persons:

- Officials authorized to represent the legal entity
- Officials authorized to make decisions on behalf of the legal entity
- Officials authorized to control the activity of the legal entity
- An employee of the company, as a result of the “non-performance” of duties by the officials referred to above

Nevertheless, article 99-4 is silent on agents, third parties and beneficial owners.

Benchmark 10.1.3.

Liability of legal persons is autonomous, i.e. not restricted to cases where the natural person who perpetrated the offence is identified, prosecuted or convicted

Even though the Criminal Code of Azerbaijan provides that “termination of criminal prosecution in respect of the physical person shall not prevent application of the criminal law measure to the legal person”, the corporate liability is not fully independent (Art. 99-4.3).

According to article 487-2.2. of the Criminal Procedure Code proceedings on the application of criminal measures against a legal entity and the investigation of a criminal case under Article 99-4.1.1-99-4.1.4 of the Criminal Code in which a natural person is recognized as a suspect or accused shall be conducted in one proceeding (except as provided in Article 487-6.6 of this Code). Thus, the law does not provide for separate proceedings.

If a person is not found to be a suspect or defendant, there are no procedural rules for separate criminal proceedings against a legal entity. If a specific natural person (the perpetrator) is not found, there is no possibility to initiate corporate liability proceedings against a legal entity.

The grounds for instituting separate proceedings (Articles 487-6.6 of the Criminal Procedure Code) that Azerbaijan referred to are very limited:

- If the person dies after committing the act provided for in criminal law;
- If the person committed the offence unconsciously (excluding circumstances requiring the application of coercive measures of a medical nature to such persons);
- If there are grounds under the provisions of criminal law to absolve the suspect of criminal responsibility;
- If the person has to be released under an amnesty act.

A criminal case may not be commenced or may be discontinued if the person is absolved of criminal responsibility by decision of the preliminary investigator and investigator, with the agreement of the prosecutor, in the following circumstances covered by Articles 72-75 of the Criminal Code of the Azerbaijan Republic:

- Where the person evinces sincere remorse;
- Where the person is reconciled with the victim;
- In the event a of change in the situation;
- If time runs out.

Criminal sanctions cannot be imposed on a legal entity if an officer of the legal entity who committed a crime for the benefit of the legal entity or in its interests is discharged from liability due to the expiration of the statute of limitations (Art. 99-9 of the Criminal Code).

Azerbaijan did not provide any practical examples of cases when the criminal proceedings were terminated for the natural person but continued for the legal person.

Indicator 10.2. Sanctions for legal persons are proportionate and dissuasive

Assessment of compliance

Benchmark 10.2.1

The law provides for proportionate and dissuasive monetary sanctions for corporate offences, including monetary fines proportionate to the amount of the undue benefit

Sanctions are dissuasive, proportionate and effective if they

- depend on the amount of monetary measures that may include fine and confiscation of the profit or proceeds obtained as the result of the offence;
- express in deterrent effect i.e., the cost of bearing the sanction is higher than the benefit of the offence;
- take into account the nature and the gravity of the offence;
- enforceable and properly addressing the offence in question.

According to the Criminal Code, both fine and confiscation are introduced in Azerbaijan.

An amount of the fine applicable to legal entities may vary from AZN 50,000 to AZN 200,000 or between onefold and fivefold of the caused damage or earned income. Moreover, according to the Criminal Code fines are determined by taking into account the economic and financial situation of a legal entity.

The Criminal Code (99-6.3.) additionally sets the limits applicable in the event of imposition of a fine taking into account the gravity of the crime:

For the crimes which are not representing to public big danger – A fine in the amount between AZN 50,000 and AZN 75,000 or from one fold to twofold of the caused damage or earned income;

For less serious crimes – A fine in the amount between AZN 75,000 and AZN 100,000 or from twofold to threefold of the caused damage or earned income;

For serious crimes – A fine in the amount between AZN 100,000 and AZN 125,000 or from threefold to fourfold of the caused damage or earned income;

For especially serious crimes – A fine in the amount between AZN 125,000 and AZN 150,000 or from fourfold to fivefold of the caused damage or earned income.

Liquidation of the legal entity is an extraordinary measure of the criminal law that reflects the proportionality requirement.

At the country on-site visit, the representatives of Azerbaijan explained that judges are entitled to decide on what sanctions should be applied in each specific case, i.e. a specific fine (varying within some amounts of fines indicated in the sanction) and when should the multiplicator be used (fold of caused damages/received income). It appears that such discretion could potentially somewhat undermine the persuasiveness of sanctions for legal entities and needs to be curtailed through a kind of guidelines or well-established case law.

Benchmark 10.2.2.

Non-monetary sanctions (measures) apply to legal persons (e.g. debarment from public procurement, revocation of a license)

In terms of compliance, it is sufficient to have at least two or more non-monetary measures in the primary law. According to the article 99-5 of the Criminal code, more than one non-monetary sanction can be applied to the legal entities:

- Liquidation of the legal entity.
- Deprivation of the right to engage in certain activities. This includes a cancellation of the special permit (license) to engage in certain types of business, as well as prohibition of the conclusion of certain agreements, issuance of shares or other securities, receipt of state subsidies, or other benefits or engagement in other activities (article 99-7 of the Criminal Code).

At the virtual on-site visit, Azerbaijan confirmed that the list of activities mentioned in the article 99-7 of the Criminal Code is not exhaustive, and different prohibitions may be applied together.

Benchmark 10.2.3.

The law establishes sentencing principles specially designed for legal persons

The Law should provide for specially designed legal principles that guide courts/judges in deciding on specific sanction/measures applied for the company that held liable for corruption offence.

The Criminal code covers following issues: specific designed sanctions for different corruption crimes (e.g. 99-8.2. Liquidation of a legal entity is considered as an extraordinary measure and shall be applied when such entity is regularly used to commit crimes or hide traces of crimes, criminally obtained funds or other property, as well as when more than half of its property consists in the property confiscated according to

Article 99-1.1 of this Code), conduct of the company that was found liable and mitigating factors (art. 99-5.3).

Moreover, the Criminal Code establishes the circumstances that must be considered by the court:

- The nature and degree of social danger of the crime;
- The amount of profit received by the legal entity from the commission of the crime, or the nature and extent of its security interests;
- The number of crimes and the severity of their consequences;
- Assistance with the resolution of crime, exposure of participants, and search and allocation of property obtained through crime;
- Voluntary compensation or elimination of material and moral damages suffered as a result of crime and other measures undertaken by the legal entity to reduce the caused damage;

The characteristics of the legal entity, including its criminal records and or engagement in charitable or other social activities.

Indicator 10.3. Due diligence (compliance) defence is in place

Assessment of compliance

Benchmark 10.3.1.

The law allows due diligence (compliance) defence to exempt legal persons from liability or mitigate sanctions

The law should provide for a defence that a company could use to argue against imposition of sanctions or to mitigate them. This defence means that the company has effective compliance programme, rules or internal controls and it did everything to prevent the crime. The Criminal Code establishes the circumstances that must be considered by the court:

- The nature and degree of social danger of the crime
- The amount of profit received by the legal entity from the commission of the crime, or the nature and extent of its security interests
- The number of crimes and the severity of their consequences
- Assistance with the resolution of crime, exposure of participants, and search and allocation of property obtained through crime
- Voluntary compensation or elimination of material and moral damages suffered as a result of crime and other measures undertaken by the legal entity to reduce the caused damage
- The characteristics of the legal entity, including its criminal records and or engagement in charitable or other social activities

The Criminal Code is silent on any compliance “model” of prevention of the crime and any opportunities for due diligence defence.

Benchmark 10.3.2.

The law allows the court to defer the application of sanctions on legal persons if the latter complies with organisational measures to prevent corruption as determined by the court

The Criminal Code does not provide for any suspension of application of corporate sanctions. Article 99-5.3 sets the circumstances that should be taken into account when determining the type and extent of criminal law measures applied to legal entities but the law is silent on deferment/suspension of corporate sanctions and imposition on the company an obligation to implement certain measures to prevent future violations.

Indicator 10.4. Statute of limitations period and investigation time limits do not impede effective corporate liability

Assessment of compliance

Benchmark 10.4.1.

The statute of limitations period and time limit for conducting an investigation, if exist, are sufficient for the effective enforcement of corporate liability

Time limits for conducting an investigation are envisaged by Article 218 of the Criminal Procedure Code and vary by gravity of the crimes. For corruption offences listed in article 99-4.6, investigation of a crime has to be completed no later than 3 months after the commencement the criminal proceedings. The time limits can be extended to maximum 13 months by following the procedure envisaged by Article 218 of the Criminal Procedure Code on account of complexity, special complexity and exceptional complexity of cases. At the country on-site visit, the representatives of the government of Azerbaijan explained that initiation of criminal case is the starting point when the term of investigation (up to 13 months) starts to expire.

The statute of limitations varies between four levels of classified crimes (article 75 of the Criminal Code). Corruption offences listed in article 99-4.6 are classified as less grave and grave crimes, with a corresponding statute of limitations of 7 years and 12 years (complex bribe-related offences), respectively. The period of limitations is estimated from the date of commission of a crime up to the moment when a valid court decision is introduced. The statute of limitations is suspended if the defendant conceals himself from the investigation or court and other reasons specified in law. In this case, the limitation period resumes running from the moment of detention or from the time that the defendant surrenders himself.

According to the data provided by the country, five proceedings against legal persons were initiated in 2019-2020. All of five were sent to courts to be heard. However, only in one of them the final decision has been made (“State Oversight and Security Department” LLC). Trials on other four cases are still underway and final decisions on the mentioned cases have not been made yet. According to the answers to the questionnaire, there has not been major breach of the time limits in recent years.

As for the time of the virtual on-site, there was just one complete case against legal entity. This case was not barred by the statute of limitations.

Criminal sanctions cannot be imposed on a legal entity if an officer of the legal entity who committed a crime for the benefit of the legal entity or in its interests is discharged from liability due to the expiration of the statute of limitations.

There are corruption crimes that are still within the category of “less grave crime” (with 7 years of limitation period). Only one ground for suspension of the statute of limitations is stipulated by the criminal law and it does not cover situation when the person had immunity from prosecution. Early starting point when the term of investigation (up to 13 months) starts to expire is applied in Azerbaijan. The existing practice shall be examined further during the following monitoring based on the case examples provided by the Authorities in order to establish if the applied statute of limitations period and time limits for investigation are sufficient.

Indicator 10.5. Liability of legal persons is enforced in practice

Assessment

According to the information provided by Azerbaijan, five proceedings against legal persons were initiated in 2019-2020 and were sent to court with trial pending in four of them. Only in one case the final decision[15] has been made (“State Oversight and Security Department” LLC) and the legal entity was found guilty. However, the court decision became final not in 2020.

[15] The judgement of the Baku Court on Grave Crimes was upheld by the Baku Court of Appeal by decisions dated 03.03.2021.

Benchmark 10.5.1. – 10.5.5.

BENCHMARK	Country Data 2020	
	Total number of cases	Per 1 million of population
10.5.1. Track record of corporate sanctions applied for corruption offences	0	0
10.5.2. Track record of proportionate and dissuasive sanctions imposed on legal persons, including monetary fines	0	0
10.5.3. Track record of confiscation of direct and indirect corruption proceeds, value-based confiscation applied to legal persons	0	0
10.5.4. Track record of due diligence (compliance) applied in practice as a defence or a mitigating factor	0	0
10.5.5. Track record of non-monetary sanctions applied to legal persons	0	0

Comments: There were no final convictions of legal entities in 2020 (that is within the period under monitoring) in Azerbaijan. In one case of conviction, (see footnote) it became final only in 2021.

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Indicator 10.6. Enforcement statistics on corporate liability is used for analysis and available for the public

Assessment of compliance

Benchmark 10.6.1.

Authorities collect, analyse and regularly publish online detailed statistics on detection, investigation, prosecution, trial and sanctions applied to legal persons

The country referred to ACD reports that reflects *inter alia* its activity on liability of legal persons, and the methodological guide on liability of legal persons. The monitoring team was informed that the methodological guide contains theoretical information on liability of legal persons, detailed analyses of

legislation, as well as information on activity of the ACD in the area of liability of legal persons (including summaries of various cases). The guide related practice will have to be followed up during the following monitoring in order to evaluate the regularity.

According to the country's answers to the questionnaire, the ACD report reflects its activity in general. However, the statistics should be detailed and include at least the following data for the previous year:

- Number of detected cases of corruption offences committed by legal persons.
- Number of cases of corruption offences committed by legal persons, which were investigated.
- Number of cases of corruption offences committed by legal persons sent to court.
- Number of court decisions finding legal persons liable for corruption offence or denying the liability, number of appeals in such cases and their outcome.
- Number of each type of punishments applied to legal persons for corruption offences, including number of monetary sanctions and non-monetary sanctions (measures) applied.
- Number of sanctions applied to legal persons under each type of corruption offences.

According to the data provided by the country all these figures above are not covered by any statistical report.

11 Recovery and Management of Corruption Proceeds

The Special Confiscation Coordination Department subordinated to the Prosecutor General was established in 2020 in Azerbaijan in order to improve efficiency of the asset recovery practice. Responsibility to identify, trace and organise return of corruption proceeds (asset recovery function) remains the function of investigators. Mandate of the Department is coordination and support for investigators. Thus, Azerbaijan currently has no dedicated bodies, units, or groups of specialised practitioners dealing with identification, tracing and return of corruption proceeds. The data available for the monitoring were not sufficient to confirm that identification and tracing of corruption proceeds were effective in practice in 2020. Authorities do not have direct access to different sources of information or mechanisms to obtain bank data without obstacles. Active and secure exchange of information among financial intelligence unit, investigative and prosecutorial bodies is not ensured in practice. Cooperation in practice comprises special requests of the investigative units and communication on ad hoc basis. There is not sufficient evidence that seizure and confiscation are routinely applied to the corruption crime instrumentalities and proceeds. There is no track record of cases of more complicated confiscation measures (indirect proceeds, value-based confiscation, mixed proceeds confiscation). Non-conviction based confiscation and extended confiscation are not established in Azerbaijan. No assets were recovered from abroad in 2020. Management of seized and confiscated assets is executed by the state bodies and include selling or transfer for state needs. Confiscated assets are sold through e-auctions. Comprehensive statistics on the application of seizure and confiscation measures in corruption cases is not available and is not analysed nor published online.

Indicator 11.1. The functions of identification, tracing, management and return of illicit assets are performed by specialised officials

Assessment of compliance

Benchmark 11.1.1.

Dedicated bodies, units or groups of specialised officials dealing with identification, tracing and return of corruption proceeds (asset recovery practitioners), as well as with the management of seized and confiscated assets in corruption cases are established and function in practice

Azerbaijan reports establishment of the Special Confiscation Coordination Department subordinated to the Prosecutor General in 2020. It aims to improve “efficiency of the asset recovery practice and compensation

of material damage caused as a result of the crime within the investigations". Mandate of this department *inter alia* includes:

- coordination of the structural units of the Prosecutor`s Office for the purpose of compensation of material damage caused as a result of the crime, as well as for the special confiscation that may be applied;
- to render assistance to investigative bodies in identification, tracing and return of corruption proceeds;
- to oversee the movement of the property object of special confiscation;
- to take necessary measures for asset recovery;
- to collect information from various networks that governmental bodies have access, as well as from international and foreign resources;
- to apply for conducting operations when it is necessary;
- to keep records of material evidence that is the object of special confiscation, oversee the storage of material evidence, as their protection and movement;
- to render assistance to investigative bodies in seizure of properties and in substantiation of motions going to be submitted to courts for seizure of properties.

Department has six staff members: 4 prosecutors, 1 senior prosecutor and 1 deputy head. There are plans to develop the capacities of the Department in the future.

Responsibility to identify, trace and organise return of corruption proceeds (asset recovery function) remains the function of investigators. Mandate of the Department is coordination and support for investigators. Investigators can send the respective asset recovery requests via the Department. Nevertheless, they still can do it directly. The Department cannot be considered as "dedicated unit" as required by the benchmark with a clearly established mandate and responsibility to identify, trace and organise return of corruption proceeds in Azerbaijan. However, the Department just started its activity and more time is needed to see how its mandate is implemented in practice.

Azerbaijan does not have any specialized body, unit or group of specialized officials dealing the management of seized and confiscated assets in corruption cases. Management of seized and confiscated assets except for selling or transfer for state needs is not possible in the country. Confiscated assets usually are transferred for using it for state needs or sold.

Indicator 11.2. Identification and tracing of corruption proceeds are effective

Assessment of compliance

Benchmark 11.2.1.

Investigative bodies and asset recovery practitioners use direct access to state databases for corruption investigations and recovery of proceeds of corruption

The specialised anti-corruption investigators of Azerbaijan do not have direct access to any of state databases for corruption investigations and recovery of proceeds of corruption. The Government assured that the Operational Department of the ACD has access to some of the databases. There are no dedicated asset recovery practitioners in country (see also benchmark 11.1.1.).

Recently established the Special Confiscation Coordination Department subordinated to the Prosecutor General uses passport registration system. Azerbaijan reports plans to undertake legislative and technical measures to ensure access for this department to the following databases: property registration database; database of Tax Services; vehicle registration database; database of Customs Services.

Benchmark 11.2.2.

Investigative bodies and asset recovery practitioners use direct access to financial information, including a central registry of bank accounts, and mechanisms to overcome bank secrecy for corruption investigations and recovery of proceeds of corruption

Azerbaijan did not report any direct access to financial information that investigative bodies and asset recovery practitioners use for corruption investigations and recovery of proceeds of corruption.

The ACD investigators do not have direct access to the state databases necessary for corruption investigations. Based on internal regulation, information and data shall be requested through the Operational Department that is the integral part of the ACD. Nor the Operational Department has access to all the necessary databases (i. e. no access to the financial types of databases, to real estate databases, to bank accounts). The Investigation Department of the ACD can send inquires to the Operational Department in paper form or by email. Paper form dominates in practice. The Operational Department carries out the received requests immediately if it is possible. If it is not possible, requests are executing within 7 days based on the term set by the Law on Obtaining Information (article 24).

Benchmark 11.2.3.

Active and secure exchange of information among asset recovery practitioners, financial intelligence units, investigative and prosecutorial bodies is ensured in practice

There is no regular active exchange of information among asset recovery practitioners, financial intelligence units, investigative and prosecutorial bodies set by law or in practice in country. On the basis of inter-agency agreement, the Financial Monitoring Service, i. e. FIU of Azerbaijan, forwards the materials to competent bodies (to Prosecutor's Office inter alia) when suspicions on respective violations rise. In practice, exchange of information is carried out in two ways, i. e. dissemination of STRs and requests of for information that the ACD sends to the Financial Monitoring Service. Seven STRs were send in 2020. None of it was related to corruption. The ACD sent seven requests for information to the Financial Monitoring Service in 2020. Security of information exchange is ensured by specialized state courier service delivering hard copy documents.

Cooperation between the ACD (i. e. specialised investigative body) and the Special Confiscation Coordination Department (i. e. that is not the full-fledged asset recovery body yet but may develop into it in future if the current aims of country are implemented successfully) as the structural units of the Prosecutor`s Service is regulated by "Rules on Activity of the Prosecutor`s Service". However, it does not seem to be active, i. e. based on established operational instruments of information sharing, which are systematically and regularly applied in practice as required by the benchmark. Cooperation in practice comprises requests of the investigative units and communication on ad hoc basis. No other forms of communication that could be evaluated as systematic and regular are used.

No recent examples of multi-disciplinary groups or task forces, joint online communication platforms, regular joint meetings and joint investigative teams as forms of information exchange during pre-trial

investigations of corruption cases were provided. The authorities informed about the "regular deliberations held among the employees of the ACD and the Special Confiscation Coordination Department within the framework of the investigations". Azerbaijan also referred to participation of the Special Confiscation Coordination Department in national and in international initiatives and meetings intended for promotion of development asset recovery (e. g. the event on "Assessment and Recommendations of the Institutional and Legislative Framework for Asset Recovery in Azerbaijan" within the framework of the "Partnership for Good Governance II" program jointly implemented by the Council of Europe and the European Union "Strengthening Anti-Money Laundering and Asset Recovery in Azerbaijan", the events and meetings organized by ARIN (Asset Recovery Inter-agency Network) and CARIN (Camden Asset Recovery Inter-agency Network), meeting between the Azerbaijan Prosecutor's Office and the Financial Monitoring Service where issues related to the parallel investigation teams, money laundering etc. was discussed).

Benchmark 11.2.4.

BENCHMARK	Country Data 2020	
	Total number of cases	Per 1 million of population
11.2.4. Track record of the use of parallel financial investigations conducted with the involvement of financial analysts or financial investigators and other relevant experts	n/a	n/a

Comments: Parallel financial investigation institution is not established by the valid legislation of Azerbaijan. Therefore, benchmark 11.2.4. is not applicable. Azerbaijan reported plans to establish financial investigation institution in order to strengthen AML/TF system.

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Benchmark 11.2.5.

Requests of foreign jurisdictions for the identification tracing, seizure, other restraints or confiscation orders concerning assets in corruption cases, if received, are executed without delay

During the on-site visit, representatives of the government of Azerbaijan referred to six requests of foreign jurisdictions (Latvia, Luxemburg, Czech Republic, and US) in corruption cases in 2020. All these requests were reported as executed. However, just limited information on requesting countries, number of requests, and short description of the essence of requests was provided in writing. The requested remaining substantiating data describing the discussed asset recovery requests of foreign jurisdictions such as values and average terms were not provided. Therefore, it is not possible to assess the timeliness of execution of requests.

During on-site visit, the Government representatives stated that 1-month term is set by the "Rules on the activity of the Prosecutor`s Office" for executing foreign requests for legal assistance in corruption cases for the asset recovery. The deputy of the Prosecutor General can extend this term in exceptional cases. Representatives of the country stated that 98 percent of incoming requests of foreign jurisdictions are executed in the timeframe indicated by the national legislation. Causes of delays were mostly because of the disturbed and slowed down post related to the pandemic COVID-19 situation. However, this information was not confirmed in writing after the on-site visit.

Benchmark 11.2.6.

Requests to foreign jurisdictions for asset identification, tracing, seizure or confiscation in corruption cases (including non-conviction based forfeiture, if available) are made without delay

Azerbaijan referred to one corruption case with the requests for legal assistance sent to other countries in 2020. The former ambassador of Azerbaijan to the Republic of Serbia, Montenegro, Bosnia and Herzegovina was indicted for abuse of power and misappropriation of state budget. Initial charges were changed during investigation into misappropriation and money laundering. The value of illegal benefits prosecuted was 18 MM AZN. For the purposes of investigation requests on legal assistance were sent to Serbia (4 requests), Montenegro (4 requests), Bosnia and Herzegovina (4 requests), Romania (2 requests), Turkey (3 requests), and Moldova (1 request). Alongside the requests on legal assistance, requests on identification of the property of the accused and his close associates were sent. At the country on-site visit, Azerbaijan referred to assets of 411'000 AZN identified in Montenegro (registered on the name of other person) thanks to requests to foreign jurisdictions. The Authorities informed, that relevant request on seizure of the mentioned property was sent to the country concerned but remained unexecuted to date. The requests to foreign jurisdictions for information or legal assistance were sent during timeframe starting from 31.08.2020 until 29.12.2020 when the last requests were sent. All the requests except the one sent to Moldova were executed at the moment when this report was prepared. Investigation in this criminal case was still ongoing during the evaluation.

At the country on-site visit, the representatives of the government of Azerbaijan specified that the timeframe for preparing and sending the requests to foreign jurisdictions for legal assistance in corruption cases for the asset recovery is not regulated by law. The authorities referred to the Criminal Procedure Code provisions obliging the investigator in charge of the investigation to conduct the investigation or other procedural actions in a lawful and timely manner (Article 85.3). Azerbaijan claims that there were no delays in the preparing and sending out mentioned MLA requests. The requested information about the date when the criminal proceeding of the referred case were initiated and date when the suspect was notified on suspicion (charged) were not provided. Therefore, it is not possible to evaluate if requests were made promptly and without delay.

Incomplete data were provided to substantiate that in practice requests to foreign jurisdictions for asset recovery are made without delay. There is limited respective practice (1 on-going criminal case).

Indicator 11.3. Confiscation measures are enforced in corruption cases

Assessment of compliance

Benchmark 11.3.1.

Provisional measures are routinely applied to prevent the dissipation of assets

Azerbaijan informed that 15 land plots, 50 apartments, 16 individual houses, 10 non-residential areas and 24 vehicles were arrested in 16 criminal cases investigated by the ACD in 2020. The value of part of this arrested property has been determined and amounted to 20'111'991 AZN (around 9'952'318 EUROS). It is not clear if this is the data of corruption cases or of all the criminal cases investigated by the ACD (see

also Benchmark 13.1.1. of PA 13 “Specialised Anti-Corruption Investigation and Prosecution Bodies”). In order to fully assess the routine application of provisional measures to prevent the dissipation of assets, more detailed data are needed on (a) value of property in corruption cases arrested (seized) upon the decisions of courts; (b) corruption case (type of crime) with property arrested (seized); (c) what property was arrested and its value in for each of corruption cases; (d) if was the arrest (seizure) still pending at the time of bringing the accused to trial (for each case individually).

Benchmark 11.3.2.

Confiscation of instrumentalities and proceeds of corruption offences is routinely applied and executed

The Authorities informed that “18 criminal cases have been completed in 2020. The ACD received only 5 decisions which contain information on the confiscation of 4,100 AZN (approx. 2.050 EUROS) in cash and gold-jewellery worth a total of 21,354 AZN (approx. 10.582 EUROS)”. All these confiscation orders has been executed and as a result, 25,454 AZN (approx. 12.614 EUROS) in total was confiscated. No further data were provided to prove that this confiscation was confiscation of instrumentalities and proceeds of corruption as required by the benchmark.

There is no centralised statistics on confiscation of instrumentalities and proceeds of corruption offences applied and executed in Azerbaijan (corruption offences can also be investigated not just by the ACD but also by other investigative bodies in Azerbaijan).

The Authorities referred to two criminal cases as the examples of confiscation listed in benchmarks 11.3.3-11.3.8 applied in corruption cases in 2020:

Case 1 (confiscation corruption proceeds and value based confiscation):

“By the decision of Baku Court on Grave Crimes of 05.02.2020 Z.S.F, B.E.E and I.P.T [i. e. public officials of the agency of the Ministry of Agriculture] were found guilty in commission of /…/ [embezzlement by abuse of power and money laundering as specified during the country onsite visit]. Alongside with sentencing the offenders, the court decided to impose confiscation. It was decided to confiscate properties belonging to Z.S.F and her associates and sell through auction. The money gained through auction was decided to be diverted to the relevant agency of the Ministry of Agriculture (it was recognized a civil plaintiff in this criminal case). Following properties were subject to confiscation: 6 models of cars, 1 motorcycle, 2 apartments in Baku and Goychay”. Information received during the country on-site visit confirmed that convictions in this case were final. There was no changes in the classification of the imputed criminal offences in the decision of the Court of Appeal (24 September 2020). Real punishment was applied. Property of total value of 623’000 AZN belonging to the arrested persons (value-based) and corruption proceeds were confiscated.

Case 2 (damage was compensated to the state through civil claim, no other type of confiscation applied in the case):

“By the decision of Lankaran Court on Grave Crimes, of 28.10.2020 H.C.G, A.M.L, H.S.S [i. e. public officials from the ministry of labour] were found guilty in commission of /…/ [abuse of power and embezzlement as specified during the country onsite visit]. Alongside with sentencing, the court decided to impose confiscation. According to the mentioned decision, the civil claim in the amount of 243.883,26 AZN (approximately EUR 118.755) against the offenders was upheld. Land plots and other properties belonging to the offenders were decided to be sold for the purpose of compensation of material damage caused by the relevant crimes”. Information received during the country on-site visit clarified that the court decision was not appealed and convictions in this case became final in 20 days. This case example shows

compensation of damage but does not reflect confiscation as criminal law instrument aiming to ensure that crimes would not pay.

The provided information does not substantiate that confiscation of instrumentalities and proceeds of corruption offences is applied "routinely" as defined by the draft Guide to the ACN Performance Indicators. Only 5 confiscation orders were applied in 18 criminal cases and the value of confiscation was just 25,454 AZN (approx. 12.614 EUROS) in 2020. The authorities explained that the reason of the low number of the orders with confiscation is that in most cases material damage inflicted by the crime is compensated during pre-trial stage. No further evidence was provided on this.

Execution of confiscation orders meets requirement "routinely applied" considering assertion of Azerbaijan that all the confiscation orders received in 2020 were executed. However, no evidence was provided that these orders were on confiscation of instrumentalities and proceeds of corruption offences.

Benchmark 11.3.3. – 11.3.8.

BENCHMARK	Country Data 2020	
	Total number of cases	Per 1 million of population
11.3.3. Track record of confiscation of derivative (indirect) proceeds of corruption offences	n/a	n/a
11.3.4. Track record of confiscation of the instrumentalities and proceeds of corruption offences transferred to informed third parties	n/a	n/a
11.3.5. Track record of confiscation of property the value of which corresponds to instrumentalities and proceeds of corruption offences (value-based confiscation)	0	0
11.3.6. Track record of confiscation of mixed proceeds of corruption offences and profits therefrom	n/a	n/a
11.3.7. Track record of non-conviction based confiscation of instrumentalities and proceeds of corruption offences	n/a	n/a
11.3.8. Track record of extended confiscation in criminal cases	n/a	n/a

Comments: Non-conviction based confiscation (benchmark 11.3.7.) and extended confiscation (benchmark 11.3.8.) are not established in Azerbaijan.

The requested statistical data substantiating application of types of confiscation listed in the benchmarks 11.3.3., 11.3.4., and 11.3.6. in 2020 were not provided. Azerbaijan confirmed that statistic data relevant to benchmarks 11.3.3. – 11.3.6. are not included in the national statistics and therefore not available.

Under benchmark 11.3.5., the Authorities indicated that "in 6 completed criminal cases, the confiscated property was equal to the damage or income". However, this statement was not substantiated by any materials as referred by the draft Guide to the ACN Performance Indicators, including dates when the referred value-based confiscation orders became final (entered into legal force); real case examples and confiscation orders, data about value of instrumentalities and proceeds of corruption offences and confiscated property. One criminal case was referred as example of a value-based confiscation. However, data provided were not sufficient to prove that property the value of which corresponds to instrumentalities and proceeds of corruption offences was confiscated in the case. In general, confiscation is not actively applied. For example, in 12 cases with convictions for active and passive bribery in public and private sectors in 2019-2021 that were reflected by country in more details, confiscation was applied in 3 cases. Therefore, referred 6 cases are not considered for the evaluation.

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Indicator 11.4. The return and further effective and transparent disposition of the corruption proceeds is ensured

Assessment of compliance

Benchmark 11.4.1.

BENCHMARK	Country Data 2020	
	Total number of proceeds	Per 1 million of population
11.4.1. Track record of the return of corruption proceeds from abroad	0	0

Comments: There were no return of corruption proceeds from abroad in Azerbaijan in 2020.
Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Benchmark 11.4.2.

There is a wide perception among the main stakeholders that the transparent and effective use, administration and monitoring of returned proceeds is ensured, and their disposition does not benefit persons involved in the commission of the respective corruption offence.

The non-governmental stakeholders in Azerbaijan in their responses to the questionnaire disagreed with the statement that transparent and effective use, administration and monitoring of returned proceeds is ensured, and that their disposition does not benefit persons involved in the commission of the respective corruption offence referring to not sufficient transparency and accountability in the Azerbaijani practice. The Authorities noted that this observation of the CSOs is too general and may not reflect true practice

relevant to the benchmark as there were no returned proceeds in 2020. Non-governmental stakeholders also noted lack of information available for general public on confiscation in corruption cases. It was noted that public accountability is not sufficient in this field and therefore raises suspicions in obligatory and impartial application of confiscation in corruption cases.

It was clarified at the country on-site visit that there is no legal framework allowing to involve civil society in discussion and decisions about use of recovered funds. Azerbaijan informed about the plans to use confiscated proceeds of crimes for purposes of the society (currently returned proceeds are transferred to state budget). Decision of the Cabinet of Ministers of Azerbaijan adopted on 31 December 2020 established that confiscated assets that were not sold on auctions can be used for refugees and socially vulnerable families. Information about availability of such assets shall be disseminated among the relevant public agencies to identify the needs and possibilities to use the assets. Representatives of the government of Azerbaijan referred to several cases when the confiscated property was handed over to socially vulnerable families in practice.

Indicator 11.5. Management of seized or frozen assets is cost-efficient and transparent

Assessment of compliance

Benchmark 11.5.1.

Regular audit of the management of assets subject to provisional measures and confiscated assets in corruption cases, including on its cost-efficiency, is conducted by external independent auditors and its results are publicly available

Management of assets subject to provisional measures and confiscated assets is not foreseen by the national legislation and therefore is not possible in Azerbaijan. Confiscated assets usually are transferred for using it for state needs or sold.

Benchmark 11.5.2.

Where possible, contracting of private sector actors as asset managers and disposal of seized or confiscated assets is conducted on a competitive and transparent basis

Contracting of private sector actors as asset managers of seized or confiscated assets is not possible in Azerbaijan. Management that includes selling or transfer for state needs is executed by the state bodies.

Azerbaijan informs that “after the damage caused by the crime is fully compensated, the remainder of the confiscated property is transferred to the state in accordance with relevant legislation and Regulations. Pursuant to Regulations, confiscated property is registered and assessed. After the property is registered and assessed, the scope of properties determined by Articles 3.1.1-3.1.4-1 of the Regulations is given to relevant bodies” (NB the respective national legislation was not available for the monitoring team). It looks as the essential part of the confiscated assets is transferred to the state.

Assets remaining after crime damage compensation and mandatory transfer to the state based on respective national legislation that was not available for the monitoring team, are sold through auctions

that are carried out by the Auction Center for the Organization of Auctions under the State Service for Property Issues. “All natural and legal persons who have submitted their orders and other necessary documents and have paid deposit in the amount of 10% of the start price of the property no later than three banking days prior to the start of the auction may participate in the auction. Registration for participation in auctions is carried out through electronic system. The list of properties offered and sold at auction is published online”.

Invoke of auction if applied properly and in a transparent manner is welcome way for disposal of confiscated assets and meets criteria of the benchmark “conducted on a competitive basis”. Description of application for participation in auction seems to ensure competition if documents that are required to be provided are not obstructive. E-registration of auction participants advanced way to ensure transparency and limit discretion. The link provided (auksion.gov.az) is in national Azeri language. Therefore, it is not possible to evaluate if the information published is relevant to the benchmark and if it meets the requirement of the benchmark “conducted on a transparent basis” namely if disposal procedure is published online and available to the general public in advance, any eligible person can participate in the competitive bidding, results of the sale are announced shortly after the decision was made.

Benchmark 11.5.3.

A database of assets in corruption cases placed under the management of the state, which contains data on location, value, and other relevant information about the respective assets, is maintained and published online

The benchmark requires the creation and maintenance of an electronic database of seized, frozen or confiscated assets in corruption cases that are placed under the management of the state. In Azerbaijan, management of criminal assets executed by the state bodies includes only selling or transfer of assets for the state needs. There is no dedicated entity mandated to register frozen and seized assets in corruption cases in Azerbaijan. Such assets are registered just by the investigative bodies individually (8 of such bodies in the country). At the country on-site visit, representatives of Azerbaijan said that some of these bodies has electronic databases for this purpose and some of them reports some information on frozen and seized assets in the annual activity reports. No evidence was provided that information about frozen and seized assets in corruption cases required by the benchmark is published online. There is no centralised register of frozen and seized assets in corruption cases.

The Ministry of Finance of Azerbaijan executes registration of confiscated property. Azerbaijan claims that this register contains data listed in benchmark 11.5.3. including: A. name and location (if applicable) of the asset; B. value of the asset; C. details of the freezing, seizure or confiscation order (who and when issued); D. asset manager; E. record of the asset’s ultimate disposition; F. in the event of a sale, a record of the date and value realised. However, no material substantiating this was provided. At the country on-site visit, the representatives of government of Azerbaijan specified that information about confiscated property managed by the Ministry of Finance is not register as it is commonly understood. It’s confidential information intended for the internal use only. The information is updated as the information comes in.

Indicator 11.6. Data on asset recovery and asset management in corruption cases is collected, analysed and published

Assessment of compliance

Benchmark 11.6.1.

Comprehensive statistics on the application of seizure and confiscation measures in corruption cases is collected, analysed and regularly published online

The benchmark requires that statistics on the application of seizure and confiscation measures in corruption cases shall be collected on a central level and include at least the following annual data:

- Number of final (entered into force) seizure, freezing of other restraint orders in corruption cases and the total estimated value of assets they concern.
- Number of final (entered into force) confiscation orders in corruption cases and the total estimated value of assets they concern.
- Number of confiscation orders in corruption cases actually executed and the total estimated value of confiscated assets.
- Number of different types of disposal methods used for confiscated assets in corruption cases and the value of confiscated assets.

The link to the online publication of comprehensive statistics according the benchmark 11.6.2. provided by Azerbaijan as substantiating material was to the webpage of the Office of Prosecutor on some criminal statistics. There is no English version of this webpage. Respective data in English were not provided. Google translation of the information published on this webpage proves that data on the compensation of the damage caused by crime are published. Statistic data required by the Benchmark are not published on this webpage.

At the country on-site visit, the representatives of Azerbaijan admitted that statistics on the application of seizure and confiscation measures in corruption cases is not collected on a central level. Investigative bodies collect some of such data at the institutional level. Azerbaijan indicated that “statistics of seized and specially confiscated property are collected by the Special Confiscation Coordination Department subordinated to the Prosecutor General” that was established in 2020.

No evidence was provided to prove that comprehensive statistics required by the benchmark is published online.

Benchmark 11.6.2.

Regular, at least annual, reports containing detailed statistics related to the work of officials dealing with identification and tracing of corruption proceeds, as well as with the management of assets subject to restraining measures and confiscated assets, including information on the outcomes of their work, are published online

The benchmark requires at least annually report to the general public at least the following data:

- Statistics on the number and estimated value of traced and identified illicit assets in corruption cases;
- Statistics on international cooperation in the area of asset recovery in corruption cases, including number, types and value of assets returned to and from foreign jurisdictions;
- Statistics on the number, types and value of assets seized, frozen or restrained in a different way, and confiscated in corruption cases;
- Information about how all confiscated and returned assets in corruption cases were disposed;
- Financial data about budget incomes and expenditures related to the recovery and management of illicit assets in corruption cases;
- Capacities (staff, budget, office, etc.) of the asset recovery and management bodies, units or groups of practitioners;
- Key achievements and obstacles in the areas of asset recovery and management.

The link provided by Azerbaijan as the substantiating material was to the publication of the activity report of the Office of Prosecutor[16] in national Azerbaijani language. There is no English version of this webpage. Respective data in English were not provided. Public reports containing detailed statistics related to the work of asset recovery practitioners and officials dealing the management of seized and confiscated assets were not available in Azerbaijan in 2020.

Box 11.1. Endeavour to enhance effectiveness of the requests to foreign jurisdictions for asset recovery in corruption cases

In 2020, the former ambassador of Azerbaijan to the Republic of Serbia, Montenegro, Bosnia and Herzegovina was indicted for abuse of power and misappropriation of state budget. Initial charges were changed during investigation into misappropriation and money laundering. The value of illegal benefits prosecuted was 18 MM AZN. For the purposes of investigation requests on legal assistance were sent to Serbia (4 requests), Montenegro (4 requests), Bosnia and Herzegovina (4 requests), Romania (2 requests), Turkey (3 requests), and Moldova (1 request) through the official channels. Alongside the requests on legal assistance, requests on identification of the property of the accused and his close associates were sent.

Extensive informal discussions prior to sending requests were held with colleagues from countries to which the requests were targeted. All the logistical details on participation of the investigation team and possibilities of MLA execution within the given legislative frameworks of each country have been discussed prior to MLA submission with the competent counterpart authorities. Thus, the informal consultations helped to save time and increase the efficiency of MLA execution.

MLA requests were sent electronically directly to investigative bodies of foreign countries in parallel. The agreements on digital transmission of data also helped to avoid possible delays caused by postal issues during the pandemic period.

The investigator in charge of the criminal case was sent on missions to the relevant countries in order to participate in the investigative actions conducted based on the requests of Azerbaijan.

[16] HESABET report (2020)

12 Investigation and Prosecution of High-Level Corruption

The authorities of Azerbaijan informed about strengthening efforts to counter high-level corruption during the recent years. The non-governmental stakeholders agreed that more high-level officials were charged. Yet they also noted that these efforts should be more consistent and still need to be confirmed by the respective convictions. Sadly, convictions in high-level corruption cases are not among criteria for assessing the anti-corruption policy's effectiveness. Statistics on high-level corruption cases is not collected. FIU referrals and asset declarations are not used to detect high-level corruption cases. Public allegations are not sufficient ground to start investigation in Azerbaijan. The progress of investigation and decisions on the conclusion of investigations in high-level corruption cases are routinely communicated to the public. There is no track record of convictions in 2020 in Azerbaijan in cases that qualify as high-level corruption according to the monitoring methodology.

Indicator 12.1. Fight against high-level corruption is given a high priority

Assessment of compliance

Benchmark 12.1.1.

Convictions in high-level corruption cases are among key criteria for the assessment of the effectiveness of anti-corruption policy

The Action Plan on Open Government Partnership for 2020-2022 reported by Azerbaijan as a national anti-corruption action plan does not contain any criteria for the assessment of the effectiveness of anti-corruption policy. No concept of high-level corruption is envisaged in the legislation of the country.

Indicator 12.2. Criminal statistics on high-level corruption is published analysed and used in updating policy

Assessment of compliance

Benchmark 12.2.1.

Detailed statistics on the detection, investigation, prosecution and adjudication of high-level corruption is regularly published online and used to change policy or practice if necessary

The links provided by Azerbaijan as substantiating material on this benchmark are to the publication of information on investigations, prosecution and adjudication of cases that are considered by Azerbaijan as high-level corruption cases. Statistics on the detection, investigation, prosecution and adjudication of high-level corruption is not collected, as the notion of high-level corruption is not established in Azerbaijan. Azerbaijan indicates that the ACD as the specialised body for investigation and prosecution of corruption offences submits activity reports to the Commission on Combating Corruption that develops and coordinates anti-corruption policy. Therefore, the results of the activity of the ACD may impact anti-corruption policy. No other material showing that high-level corruption offences enforcement statistic data analysis are used to change anti-corruption policy or practice was provided.

Indicator 12.3. High-level corruption is actively detected and investigated

Assessment of compliance

Benchmark 12.3.1.

Analytical sources of information, at least FIU reports and asset and interest declarations, are routinely used for the detection of high-level corruption

Azerbaijan indicates that there is regular exchange of information between the ACD as specialised corruption investigation and prosecution body and the Financial Monitoring Service, i. e. the FIU of Azerbaijan, based on Memorandum of cooperation and information exchange signed. Pursuant to the procedures on submission of financial information by public officials, if “authorities receiving the financial declarations detect suspicious facts (such as unjustified increase in assets) or other grounds indicating existence of an offence, they have to send the relevant materials to the competent bodies (such as the ACD) for subsequent investigation”. Notwithstanding the legal regulation, asset declaration is still not implemented in practice in Azerbaijan (see more under PA 3 “Asset and Interest Disclosure”). Therefore, the ACD has no access to asset and interest declarations.

There were no high-level corruption cases detected based on FIU reports and asset and interest declarations in 2020.

Benchmark 12.3.2.

All public allegations of high-level corruption were investigated or justified decisions not to open an investigation were made

Public allegations are not sufficient ground to start investigation in Azerbaijan. Pursuant the Criminal Procedure Code, mass media representatives shall send the available information on alleged crimes in

written to the investigative authorities. There were no investigations initiated based the available public allegations of high-level corruption or on the information received from the mass media in 2020[17].

Benchmark 12.3.3.

Requests of foreign jurisdictions for information or legal assistance in high-level corruption cases, if received, are executed without delay

Azerbaijan informs that there were no requests of foreign jurisdictions for information or legal assistance in high-level corruption cases received in 2020, i. e. in the previous calendar year which is under the monitoring. In 2021, incoming request from Romania about tracing assets of high level Romanian official was received. The position of the said Romanian official was not indicated. Therefore, it is not possible to establish if it meets the requirements of the draft Guide to the ACN Performance Indicators.

Benchmark 12.3.4.

Requests to foreign jurisdictions for information or legal assistance in high-level corruption cases of transnational nature are made promptly and without delay

Azerbaijan referred to one corruption case with the requests for legal assistance sent to other countries in 2020. The former ambassador of Azerbaijan to the Republic of Serbia, Montenegro, Bosnia and Herzegovina was indicted for abuse of power and misappropriation of state budget. Initial charges were changed during investigation into misappropriation and money laundering. The value of illegal benefits prosecuted was AZN 18 MM[18]. For the purposes of investigation requests on legal assistance were sent to Serbia (4 requests), Montenegro (4 requests), Bosnia and Herzegovina (4 requests), Romania (2 requests), Turkey (3 requests), and Moldova (1 request). Alongside the requests on legal assistance, requests on identification of the property of the accused and his close associates were sent. The requests to foreign jurisdictions for information or legal assistance were sent during timeframe starting from 31.08.2020 till 29.12.2020 when the last requests were sent. The authorities informed that the case was separated from the case investigated by the State Security Service and sent to the Prosecutor`s Office for continuation on 21.08.2020. All the requests except the one sent to Moldova were executed at the moment when this report was prepared. Investigation in this criminal case was still ongoing during the evaluation.

The representatives of the government of Azerbaijan indicated that the timeframe for preparing and sending the requests to foreign jurisdictions for legal assistance is not regulated by law. The authorities referred to the Criminal Procedure Code provisions obliging the investigator in charge of the investigation to conduct the investigation or other procedural actions in a lawful and timely manner (Article 85.3).

[17] Turan article "The authorities are trying to present the hunt for small officials as a fight against corruption" (2020); Eurasianet article "Several local officials arrested in Azerbaijan for COVID corruption" (2020)

[18] The notion "high-level corruption" encompasses two mandatory criteria, i. e. involvement or high-level officials and substantial benefits/ significant damage. A substantial benefit or significant damage, if they are of a pecuniary nature, shall mean any such benefit or damage that is equal or exceeds the amount of 3000 monthly statutory minimum wage fixed in the respective country. In case of Azerbaijan the amount equal to or exceeding the amount of 750K AZN shall be considered as substantial benefits/ significant damage since the monthly statutory minimum wage was 250 AZN/month in 2020 in Azerbaijan (source: https://tradingeconomics.com/azerbaijan/minimum-wages).

It seems that Azerbaijan made the best efforts to ascertain the legal requirements and formalities and make other preparatory steps to obtain assistance in this criminal case. The requests to foreign jurisdictions were prepared and sent shortly after the transfer of the criminal case to the Prosecutor's Office. However, the referred case cannot be considered for the assessment since ambassadors are not covered by the definition of "high-level officials" introduced under "Anti-Corruption Performance Indicators" endorsed for the pilot monitoring by the 25th Steering Group. No further evidence was provided to show that requests to foreign jurisdictions for information or legal assistance in high-level corruption cases of transnational nature were made promptly and without delay.

Benchmark 12.3.5.

Asset recovery practitioners are routinely involved in the investigation and prosecution of high-level corruption cases

Azerbaijan reports establishment of the Special Confiscation Coordination Department subordinated to the Prosecutor General in 2020. It aims to improve "efficiency of the asset recovery practice and compensation of material damage caused as a result of the crime within the investigations". Mandate of this department *inter alia* includes rendering assistance to investigative bodies in identification, tracing and return of corruption proceeds. Responsibility to identify, trace and organise return of corruption proceeds (asset recovery function) remains the function of investigators. Mandate of the Department is coordination and support for investigators. Investigators can send the respective asset recovery requests via the Department. Nevertheless, they still can do it directly.

Azerbaijan claims that the Special Confiscation Coordination Department "already demonstrated positive effect on investigation practice /…/" and regularly cooperated with the Investigation Department of the ACD. However, no evidence was provided to substantiate that asset recovery practitioners are routinely involved in the investigation and prosecution of high-level corruption cases.

Indicator 12.4. Liability for high-level corruption offences is effectively, independently and impartially enforced

Assessment of compliance

Benchmark 12.4.1.

There is a wide perception among the main stakeholders that the cases of high-level corruption are investigated, prosecuted and adjudicated independently and impartially without political or other undue interference

The Authorities during the country on-site visit stated that there were number of "large scale corruption operations and many high level corruption officials, including former ministers, were arrested for corruption in the last years in Azerbaijan".

The non-governmental stakeholders disagreed that the cases of high-level corruption are investigated, prosecuted and adjudicated independently and impartially without political or other undue interference. They confirmed that the number of cases of high-level corruption increased during the last years in the country. However, they also noted some kind of selectivity in prosecution of high-level corruption. E.g. such

cases when just one of the managers within the state agency is prosecuted for corruption. Non-governmental stakeholders said that in such cases it is difficult to believe that remaining managers were not aware of corrupt practices of close colleague, superior or subordinate. Non-governmental stakeholders noted also that just few of the well publicly known high-level or ingrained corruption cases are investigated and prosecuted. The Authorities observed that these statements of the non-governmental stakeholders were not substantiated by further details indicating the particular cases and therefore are questionable.

Similar findings that not all allegations on high-level corruption are investigated and prosecuted were also noted by the recent discussion in the media that followed prosecution of number of local officials for violation of COVID-19 confinement rules in 2020[19]. The need for more consistent overall efforts to address high-level corruption in Azerbaijan was also noted by the recent international study[20].

Benchmark 12.4.2.

The progress of investigation and trial in high-level corruption cases, as well as decisions on the conclusion of investigations or not to open an investigation in such cases are routinely communicated to the public

Azerbaijan provided the substantiating material on four criminal cases that were communicated to the public in 2020, i. e. of the officials of the Ministry of Foreign Affairs of Azerbaijan, of the officials of the Ministry of Culture of Azerbaijan, of the officials of the Kurdamir district Executive Authority, of the officials of the Mass Media Support Fund. Some of these cases fall into the category of "high-level corruption cases" within the meaning of the benchmark. The country provided internet links and has not provided translation of the published information. Based on internet translation of this information it is possible to conclude that information about opening the case, detention of the suspected/accused individual(s) and seizure of assets (although value of seized property was not normally indicated) was routinely communicated to the public in the relevant criminal proceedings. Information about the further steps of investigation required by the benchmark (i.e., indictment, non-trial resolution of the case, sending the case to the court or cancellation of any of these decisions) was not communicated to the public as, according to the Authorities, there were no such decisions yet or no such kind of decisions made/cancelled in the case. The investigations against high-level officials were ongoing at the moment of the pilot.

There were no high-level corruption cases under court proceedings in Azerbaijan in 2020. Therefore, no material could be provided to confirm that progress of trial in high-level corruption cases was routinely communicated to the public. There is no practice of routine communication of decisions not to open an investigation of high-level corruption cases. Yet the authorities of Azerbaijan indicated that the law-enforcement authorities could provide information about such decisions upon request but not pro-actively.

[19] Turan article "The authorities are trying to present the hunt for small officials as a fight against corruption" (2020); Eurasianet article "Several local officials arrested in Azerbaijan for COVID corruption" (2020)

[20] https://www.bti-project.org/en/reports/country-report-AZE-2020.html

Benchmark 12.4.3. – 12.4.5.

BENCHMARK	Country Data 2020	
	Total number of cases	Per 1 million of population
12.4.3. Track record of convictions for high-level corruption	0	0
12.4.4. Track record of convictions of high-level officials who were in office at the beginning of investigation	n/a	n/a
12.4.5. Track record of recovery of corruption proceeds from abroad in cases of high-level corruption	0	0

Population of Azerbaijan was 10 million in 2019 (source: https://data.worldbank.org/country/azerbaijan)

Benchmark 12.4.6.

At least 50% of final sanctions for high-level corruption entail imprisonment without conditional or another type of release

There were no final convictions in the high-level corruption cases in Azerbaijan in 2020. The Authorities noted that the trials in some cases were ongoing in 2020 without the final convictions.

Benchmark 12.4.7.

A prohibition from holding public office is applied to all persons convicted for high-level corruption

Deprivation of the right to occupy certain positions or to be engaged in certain activities is stipulated by Article 46 of the Criminal Code of Azerbaijan. It is obligatory foreseen with the imprisonment as the sanction for the passive bribery by the Criminal Code of Azerbaijan. It can also be “appointed as the auxiliary sanction in cases when it is not provided by the relevant article of the special part of the Code if taking into account nature and degree of public danger of the committed crime and the personality guilty individual the court recognizes as impossible preserving the right behind it to occupy certain positions or to be engaged in certain activities”.

There were no final convictions in the high-level corruption cases in Azerbaijan in 2020. Therefore, practice of applying the prohibition from holding public office to all persons convicted for high-level corruption in the previous year cannot be confirmed.

13 Specialised Anti-Corruption Investigation and Prosecution Bodies

Pursuant to the law of Azerbaijan, investigation of corruption and related offences and operational activities related to corruption are carried out by the Anti-Corruption Directorate by the Prosecutor General (the ACD). Yet investigation of corruption offences may be delegated to other investigative bodies. There is no prosecution body, unit or a group of prosecutors specialised in corruption cases in Azerbaijan. Appointment and dismissal of head of the specialised anti-corruption investigative unit is carried out based on the Constitution of Azerbaijan. The ACD that is the specialised anti-corruption investigative unit in Azerbaijan has powers to conduct covert operations, including wiretapping. Expert/technical capacity of the ACD to conduct analytical work and financial investigations is not sufficient. There is no clear evidence that reports on the work of the specialised anti-corruption investigators include detailed statistics. No external performance evaluation of the specialised investigative units has been conducted.

Indicator 13.1. The anti-corruption specialisation of investigators is ensured

Assessment of compliance

Benchmark 13.1.1.

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

Pursuant to Article 11-1 of the “Prosecutor`s Office Act of the Republic of Azerbaijan” investigation of corruption and related offences and operational activities related to corruption are carried out by Anti-Corruption Directorate with the Prosecutor General of the Republic of Azerbaijan (the ACD).

Investigation of these offences may be delegated to other investigative body by the decision of the Prosecutor General or his/her first deputy based on grounds envisaged by Articles 215.7.1-215.7.5 of the Criminal Procedure Code, i. e. cases of failure to execute the duties, violation of human rights, conflict of interest or when the nature of the crime, the nature of the case and the interests of the preliminary investigation require it, which is in the interests of the state and society. According to the Criminal Procedure Code (Article 215.9) if elements of a crime which is not under the competency of an investigative agency are revealed during an investigation, the Prosecutor General may in exceptional cases entrust by

justified decision the said investigative agency to continue investigation in order to ensure effectiveness of criminal prosecution and compliance with the investigation terms.

In addition, the Decree of the President of Republic on the application of the Criminal Procedure Code, dated 25.08.2000 grants to the State Security Service the competence to investigate a crime committed by an official executing his/her duties if a crime significantly threats national security, public and economic interest of state, etc.

Governmental stakeholders of Azerbaijan affirmed that there were no jurisdictional disputes in the practice.

Legal delineation of responsibilities among multiple agencies with the jurisdiction to investigate corruption is not clear (unambiguous) enough. There are no indicators indicating to which investigative agency investigation shall be delegated in case of the grounds envisaged by Articles 215.7.1-215.7.5 of the Criminal Procedure Code. Wording of the grounds Articles 215.7.5 of the Criminal Procedure Code and Presidential Decree indicated above are rather general and is open to interpretation. The respective decision is sole decisions of the Prosecutor General or his/her first deputy.

The ACD does not deal with corruption offences exclusively. The ACD has competence to investigate not only corruption offences, but also any other offences such as environmental crimes committed by public officials. According to the statistics provided by the country, the ACD investigates and sends to court many other cases (not related to corruption): e.g. illegal receipt of the credit or its use not under purpose (5 cases in 2020), environmental crimes (4 in 2020), even theft, negligence, racketing, etc. The authorities noted that crimes of other categories investigated by the ACD were mainly accompanied with commission of corruption offences, such as abuse or exceed of power. Besides, they argue that the number of the offences of other categories investigated by the ACD is substantially low being compared with the corruption offences investigated by the ACD.

Benchmark 13.1.2.

Corruption cases are not removed or only removed from the specialised anti-corruption body, unit, investigator on legally established grounds, following clear criteria for transferring of such proceedings

The Authorities affirmed that no cases were removed from the ACD in 2018-2020. Corruption cases indicated in the questionnaire of government as investigated by the State Security Service were initiated by this institution and investigations were subsequently delegated to it by the decision of the Prosecutor General.

Investigation of corruption offences may be removed from the ACD by decision of the Prosecutor General or his/her first deputy based on grounds envisaged by Articles 215.7.1-215.7.5 of the Criminal Procedure Code, i. e. cases of failure to execute the duties, violation of human rights, conflict of interest or when the nature of the crime, the nature of the case and the interests of the preliminary investigation require it, which is in the interests of the state and society. The wording of some grounds is ambiguous and open to interpretation (namely, “when the nature of the crime, the nature of the case and the interests of the preliminary investigation require it, which is in the interests of the state and society”). Besides these grounds for removal of cases from the specialized anti-corruption investigation unit, as indicated by Azerbaijan on the benchmark 13.1.3. “/…/ in exceptional cases, in order to prevent conflict of interest or when the nature of a crime attacking the interests of the state and society, the nature of a case and interests of the investigation require it, the investigation may be delegated to another competent authority by decision of the Prosecutor General”. No criteria for the case removal are set. The clearer (unambiguous) grounds and criteria for transferring proceedings would help to ensure impartiality and autonomy from both external (outside of the agency) and internal (within the agency) undue influence.

Benchmark 13.1.3.

A specialised task force, unit or body to investigate and/or prosecute high-level corruption is established within the criminal justice system and there are no cases of breach of its jurisdiction

The legislation of Azerbaijan does not define high-level corruption. Therefore, there is no specialised task force, unit or body to investigate and/or prosecute high-level corruption.

All types of corruption offences are investigated by the ACD. However, "/…/ in exceptional cases, in order to prevent conflict of interest or when the nature of a crime attacking the interests of the state and society, the nature of a case and interests of the investigation require it, the investigation may be delegated to another competent authority by decision of the Prosecutor General", namely to the State Security Service as it happened in several cases in practice recently. The Authorities inform that prosecution over the high-level corruption cases is carried out by the ordinary Public Prosecutions Department that is the unit of the Prosecutor`s Office presenting all the cases at the courts.

Indicator 13.2. The anti-corruption specialisation of prosecutors is ensured

Assessment of compliance

Benchmark 13.2.1.

Prosecution of corruption offences is assigned in the legislation to a dedicated body, unit or a group of prosecutors, which specialise in combatting corruption

There is no prosecution body, unit or a group of prosecutors specialised in corruption cases in Azerbaijan.

The Public Prosecution Department that represents state at the courts is organized based specialization of prosecutors working on cases heard by courts of first instance, courts of appeal, courts of cassation. Corruption cases are represented at the courts by the prosecutors of relevant divisions of the Public Prosecution Department.

Benchmark 13.2.2.

High-level corruption cases are presented in court by the specialised anti-corruption prosecutors

There are no prosecutors tasked with solely representing the state in high-level corruption cases. High-level corruption cases are presented in courts by the prosecutors of the Public Prosecution Department of the Prosecutor's Office.

Indicator 13.3. Appointment of heads of the specialised anti-corruption investigative and prosecutorial bodies is transparent and merit-based with their tenure in office protected by law

Assessment of compliance

Benchmark 13.3.1.

The current head of the specialised anti-corruption investigative body or unit was selected through a transparent and competitive selection procedure, using clear criteria based on merit

Appointment of the head of the ACD is carried out in accordance with the Constitution of Azerbaijan stipulating that deputies of the Prosecutor General and prosecutors heading specialized republican Prosecutor's Offices are appointed and dismissed by the President of Republic on the basis of the motion of the Prosecutor General. Criteria for the promotion of prosecutors established by the Law of the Republic of Azerbaijan on Service in Prosecution (Article 11) are applied for the appointment of the head of the ACD: "When nominating prosecutors for the position in accordance with the class rank efficiency, professionalism, results of labour, moral qualities are taken into account /…/". These criteria cannot be assessed as "clear criteria" since the wording used is of too broad and allowing excessive discretion of the decision-making body. The main steps in the process of selection and appointment of the head of the ACD are not regulated by legislation. Publication of information on the different steps of the process of selection and appointment to inform the public is not foreseen. Vacancy of the head of the ACD is not published online nor available to general public. Person from outside cannot apply to this position. Competition of the inside candidates of the Office of Prosecutor is not applicable for the selection of the head of the ACD. The head of the ACD is appointed without competition.

Benchmark 13.3.2.

An independent expert selection committee played a key role in the selection of the head of the specialised anti-corruption investigative body or unit

Director of the ACD is appointed by the President of Republic on the basis of the motion of the Prosecutor General. None independent expert selection committee plays any role in the selection of this official.

Benchmark 13.3.3.

There is a clear and transparent procedure for dismissal of the head of the specialised anti-corruption investigative body or unit based on grounds that exclude political or other undue interference and there were no cases of dismissals outside of such procedure

Director of the ACD is dismissed by the President of Republic based on the Prosecutor General's motion. Grounds for termination of service in the prosecutor's office established by the Law of the Republic of Azerbaijan on Service in Prosecution (Article 29) are applied for the dismissal of the head of the ACD. The grounds are based on objective facts except one point. "Non-compliance to the position by the decision of

attestation commission" as the ground for dismissal of the head of the ACD may be debatable considering that there is no clear criteria for the selection of this official established (see more on the benchmark 13.3.1.). The authorities informed that this ground is not applicable to director of the ACD as the deputy of the Prosecutor General in accordance with the Rules on the activity of the Prosecutor`s Office (Article 304.3). The rules are not public as required by the benchmark. The monitoring team also had some concerns about the grounds established by the item 29.2.9 since the English translation of the Law on the Service in Prosecution contained inter alia the term "actions that are not compatible with the office of the prosecutor" that was not further defined in the law. However, it was an issue of the inaccurate translation that was clarified by the Authorities providing the accurate translation of the text of the item 29.2.29.

The main steps of the process of dismissal of the head of the ACD are not regulated by legislation. Publication of information on the different steps of this process to inform the public is not required.

Benchmark 13.3.4.

The current head of the specialised anti-corruption prosecutorial body or unit was selected through the transparent and competitive selection procedure, using clear criteria based on merit

There is no specialised anti-corruption prosecutorial body or unit in Azerbaijan (see benchmark 13.2.1.).

Indicator 13.4. The staff of the specialised anti-corruption investigative body is impartial and autonomous from external and internal pressure

Assessment of compliance

Benchmark 13.4.1.

The assignment and re-assignment of cases among specialised anti-corruption investigators is based on clear and published rules that are set in the legislation and ensure impartiality and autonomy from external and internal pressure

Assignment or re-assignment of cases to specialized anti-corruption investigators is carried out by the head of the Investigation Department. Azerbaijan indicated that the same criteria as for assignment and re-assignment of cases among prosecutors set by the "Rules on the activity of the Prosecutor`s Office" apply to allocation of cases among specialized anti-corruption investigators. There is no clear legally set criteria that would ensure impartiality and autonomy from external and internal pressure. Cases are allocated "taking into account individual and professional abilities, experience in specific areas, caseload of prosecutors as well as other necessary circumstances". The monitoring team found the wording of criteria "other necessary circumstances" as too broad. The representatives of the Prosecutor's Office explained that nature and complexity of the case may be also considered while assigning and re-assigning cases among prosecutors as "other necessary circumstances". There is no general requirement to justify decision to re-assign the case to the anti-corruption investigators in writing. Just some of the grounds of re-assignment set by the Criminal Procedure Code demand justification. The "Rules on the activity of the Prosecutor`s Office" is not public legislation.

Benchmark 13.4.2.

Specialised anti-corruption investigators routinely use the right to challenge orders from superiors through a judicial or another procedure

There are no judicial or another independent procedure in Azerbaijan allowing specialised anti-corruption investigators to challenge orders from superiors. Pursuant the Criminal Procedure Code specialised anti-corruption investigators has right to challenge orders from superiors by sending the reasoned objection to the senior prosecutor in case of disagreement with the instructions on procedure of investigation. At the country on-site visit, representatives of the Prosecutor's Office informed that there were no recent cases when specialised anti-corruption investigators challenged orders from superiors.

Benchmark 13.4.3.

There is a wide perception among the main stakeholders that the specialised anti-corruption investigative body or unit operates independently and impartially without political or other undue interference in its work

Azerbaijan reported increased number of complaints by citizens received by "161-Hotline" of the ACD as the sign of citizens' trust to the Prosecutor's Office: in 2020, 4'661 complaints were received, i. e. 812 more than in 2019 (3'849 respectively). Non-governmental stakeholders had no clear unambiguous perception regarding independence and impartiality of the ACD. Some of them indicated that internal organisation and quality of work of prosecutors improved significantly during the last decades. However, most of them noted that some selectivity seems to be present especially in prosecution of high-level corruption. E.g. when just one of managers of state agency is prosecuted for corruption. Non-governmental stakeholders said that in such cases it is difficult to believe that remaining managers were not aware of corrupt practices of close colleague, superior or subordinate. Non-governmental stakeholders noted also that just some of the well publicly known high-level or ingrained corruption cases are prosecuted. The Authorities of Azerbaijan observed that these statements of the non-governmental stakeholders were not substantiated by further details indicating the particular cases and therefore are questionable. The need for more consistent overall efforts to address high-level corruption in Azerbaijan was also noted by the recent international study[21].

Benchmark 13.4.4.

There is a wide perception among the main stakeholders that the specialised anti-corruption prosecutors operate independently and impartially without political or other undue interference in their work

There are no specialised anti-corruption prosecutors in Azerbaijan (see benchmark 13.2.1.).

[21] https://www.bti-project.org/en/reports/country-report-AZE-2020.html

Indicator 13.5. The specialised anti-corruption investigative and prosecutorial bodies have adequate human and financial resources

Assessment of compliance

Benchmark 13.5.1.

Specialised anti-corruption investigative body or unit has the number of staff and resources sufficient to carry out functions within its mandate

Azerbaijan affirms that the number of investigators in the Investigation Department of the ACD corresponds to the caseload of the department. There were 17 positions for senior investigators and 34 positions for investigators at this department at the time of filling in the questionnaire (December 2020). Six positions of senior investigators and five positions of investigators were vacant. That makes rather significant share, especially in the case of senior investigators, i. e. 35 percent of total number of respective positions. Decreased number of vacancies was reported after the country on-site visit when the requested additional information was submitted. There were four vacancies including 1 of prosecutor-criminologist, 1 of senior investigator, 2 of investigators on 12.06.2021. Requested data on total number of positions and number of vacant positions at the end year of the anti-corruption investigative unit in 2018-2020 were not provided. It shall be noted that the mandate of the ACD is broader than just corruption offences.

Azerbaijan reports average caseload of each investigator being 9-10 cases per year depending on the complexity and the nature of the cases. This is the total caseload under the mandate of the ACD, i. e. the ACD has competence to investigate not only corruption offences, but also any other offences such as environmental crimes committed by public officials if it is *corpus delicti* (see also benchmark 13.1.1). Azerbaijan informs that there have been no violations of the time limits for investigation in the recent years and the investigations of criminal cases have been completed within the time limits established by law.

Benchmark 13.5.2.

There is a sufficient number of specialised anti-corruption prosecutors to ensure prosecution of corruption cases

There are no specialised anti-corruption prosecutors in Azerbaijan. The Public Prosecution Department that represents state at the courts is organized based specialization of prosecutors working on cases heard by courts of first instance, courts of appeal, and courts of cassation. Corruption cases are represented at the courts by the prosecutors of relevant divisions of the Public Prosecution Department (see also benchmark 13.2.1.).

Benchmark 13.5.3.

The funding received by the specialised anti-corruption investigative body or unit is sufficient to ensure its autonomy

Funding of the ACD as a structural unit subordinated to the Prosecutor General`s Office is ensured by the budget of the Prosecutor General`s Office. The ACD does not have a separate budget. Azerbaijan affirms that the sufficient budget is allocated to the Prosecutor`s Office, hence also to the ACD, to ensure its financial autonomy. However, the requested data on funding received by the ACD were not provided. This makes to assume that the needs based (bottom-up) funding planning is not applied in budget formation practice. Therefore, even if the funding provided to the ACD is sufficient for its activity, the approach to budget planning is not conducive to the financial autonomy of the specialised anti-corruption investigative unit. Since the factual data on funding received by the specialised anti-corruption investigative body was not available, it is not possible to assess if the funding is sufficient to ensure its autonomy.

Benchmark 13.5.4.

The level of remuneration of the specialised anti-corruption investigators is fixed in the law and is sufficient to ensure their independence and reduce the risk of corruption

The legislation on the activity of the Prosecutor`s Office applies to the ACD as the structural part of the office. Therefore, the same arguments as for the benchmark 6.3.2 under PA 6 ‘Independence of Public Prosecution Service apply to this benchmark: the primary laws do not regulate the exact amount/level of remuneration of prosecutors/investigators; the Prosecutor General has power to appoint bonuses for prosecutors/investigators; the powers of line superiors to make nominations for bonuses do not depend on unambiguous performance evaluation criteria.

Azerbaijan asserts that “taking into account the nature of the cases investigated by them, investigators of the ACD receive higher salary than other investigators of the Prosecutor`s Office. Employees of the ACD receive a monthly payment in the amount of the half of monthly salary on the basis of the Decision of Cabinet of Ministers, dated June 3, 2011 owing to special working conditions”. The monitoring team expressed concerns that such additional payments which are not based on the primary laws coming from the executive power without no further clear legislative rules on distribution may cast doubts on the independence/autonomy of prosecutors. The Authorities of Azerbaijan ensured that it was common raise of public sector salaries and provisions setting these additional payments were incorporated in the law in 2021.

The Authorities reported that “monthly payment received by the senior investigators of the ACD is 4’327 AZN (approximately 2’215 EUR). Monthly payment received by the investigators of the ACD: 4’298 AZN (approximately 2’100 EUR)”. Internal comparative data confirms that remuneration of the investigators of the ACD is significantly higher than the remaining investigators of the Prosecutor`s Service. E. g. remuneration of investigators of the ACD was higher by 33 percent as compared to investigators of the Prosecutor`s Office or twice if compared to investigators of the ordinal district Prosecutor’s Office. The requested external comparative and other data were not provided. Therefore, it is difficult to decide if remuneration of specialised anti-corruption investigators as employees of the Prosecutor`s Office is sufficient to ensure autonomy and reduce risk of corruption. Representatives of prosecutors ensured that remuneration is sufficient. Non-governmental stakeholders during the country on-site visit confirmed that professional staff of the Prosecutor`s Office is rather well paid as compared to remaining public sector employees.

Indicator 13.6. The specialised anti-corruption investigative body has necessary powers, investigative tools and expertise

Assessment of compliance

Benchmark 13.6.1.

Specialised anti-corruption investigative body or unit has powers, expert and technical capacity to conduct analytical work, financial investigations and covert operations, including wiretapping

The benchmark requires that as a minimum the following powers should be clearly spelled out in the legislation and it should be possible to apply them in practice: carrying out covert surveillance, intercepting communications, conducting undercover investigations, accessing financial data and information systems, monitoring financial transactions, freezing bank accounts, and protecting witnesses.

The ACD that is the specialised anti-corruption investigative unit in Azerbaijan has powers to conduct covert operations, including wiretapping, on the basis of the Criminal Procedure Code, the Law on Operational Search Activities and "Prosecutor`s Office Act of the Republic of Azerbaijan". Application of wiretapping and intercepting communications are subject to prior authorization of court. In the exceptional cases set by the law these measures can be imposed without prior authorization of court but mandatory followed by reasoned decision to competent court and prosecutor within 48 hours.

The analytical work of the ACD stipulated as defined by "Prosecutor`s Office Act of the Republic of Azerbaijan" is intended for corruption prevention including improving the legal system rather than analytical investigation. This conclusion was confirmed by the examples provided by country based on the request of additional information, i. e. summaries done by the ACD based on regular analyses in the field of combating corruption; motions to state bodies to eradicate circumstances conducive to corruption; regular analysis of criminal cases investigated and complaints received by the ACD; methodological guidelines on "Liability of legal persons", "Normative activity", "Anti-corruption standards in private sector", "Protection of Whistleblowers".

Specialised anti-corruption investigative unit does not have the direct access to state databases nor to financial information, neither as powers set by law nor in practice. (See also the benchmarks 11.2.1. and 11.2.2. of PA 11). Monitoring of financial transactions and freezing bank accounts are not among the powers of the ACD.

At the country on-site visit, representatives of country explained that the ACD has powers to protect witnesses pursuant the Criminal Procedure Code. In 2020, there has not been any witness protection executed directly by the Operational Department of the ACD.

The Authorities affirm that the Operations Department and the Operational Support Division of the ACD have sufficient expert and technical capacity to conduct covert operations. However, discussion during the country onsite visit raised doubts if of the ACD employees have direct technical possibility to conduct covert investigative activities.

The ACD has the Division of Expert Analysis comprised of 13 senior consultant positions filled by the persons with financial, economic, accounting, technical and other specialized knowledge. However, work specialisation areas of most these consultant is not relevant to detection and investigation of corruption crimes, e. g. such as inspections in the field of taxes and other obligatory state payments, inspections in the field of illegal currency exchange or inspections in the field of labour relations. Discussion during the country onsite visit showed that in-house non-legal experts are involved to support the investigations but

are not actively used to detect or provide essential evidence in corruption cases. Besides, the ACD in most criminal cases engage outside non-legal experts (e.g. accounting experts from the forensic expert institution of the Ministry of Justice). The Authorities noted that "there are a number of cases initiated on the basis of the findings of the experts of the Division. In 2020, joint operational-investigative groups were established with the participation of 14 experts and their involvement contributed to a number of essential evidences to be revealed". Further factual data on this should be evaluated in future monitoring.

Indicator 13.7. Work of the specialised anti-corruption prosecutors and anti-corruption investigative body or unit is transparent and audited

Assessment of compliance

Benchmark 13.7.1.

Periodic, at least annual, reports containing detailed statistics related to the work of the specialised anti-corruption investigators and prosecutors, including information on the outcomes of cases are published online

Azerbaijan claims that "annual report of the ACD contains detailed information on the activity of the ACD /…/ [including] The number of launched, terminated cases, as well as the number of cases referred to courts is reflected in the section dedicated to the activity of the Investigation Department. Information on the number of the anti-corruption operations and other data on the operations is indicated in the section for Operation Department". No evidence was provided to confirm publication of detailed statistics related to the work of the specialised anti-corruption investigators as required by the benchmark, including:

- I. Number of registered criminal proceedings/opened cases of corruption offences:

  a. by sources of detection

  b. Among them, high level corruption
- II. Number of cases in which charges were brought and sent to court

  a. Among them, high level corruption
- III. Number of terminated investigations

  a. By ground for termination

  b. Among them, high level corruption
- IV. Number of requests to apply covert investigative techniques

  a. By type of measure

  b. Among them how many were granted and how many denied Information on outcome of cases, as a minimum should include information on high-profile cases.

There are no specialised anti-corruption prosecutors in Azerbaijan (see benchmark 13.2.1.).

Benchmark 13.7.2.

External performance evaluation of the specialised investigative body or unit by an independent expert committee (formed by professionals, who are selected through a transparent procedure based on merit) is conducted regularly against a defined set of criteria and its results are published

External performance evaluation of the ACD as the specialised investigative unit of Azerbaijan is not conducted by an independent expert committee.

Indicator 13.8. Specialised anti-corruption investigators and prosecutors are held accountable

Assessment of compliance

Benchmark 13.8.1.

All public allegations of corruption perpetrated by the specialised anti-corruption investigators have been thoroughly investigated, with justified decisions taken in the end and made public

Azerbaijan asserts that “there has not been any public allegation of corruption of /…/ investigators /…/ of the ACD which was not thoroughly investigated with justified decisions taken and explained to the public”. It was specified during the country on-site visit that there were no public allegation of corruption of the ACD investigators recently. Non-governmental stakeholders and desk research did not provide any information about any recent public allegations of corruption of the specialised anti-corruption investigators.

Benchmark 13.8.2.

All public allegations of corruption perpetrated by the specialised anti-corruption prosecutors have been thoroughly investigated, with justified decisions taken in the end and made public

There are no specialised anti-corruption prosecutors in Azerbaijan.

Benchmark 13.8.3.

Specialised anti-corruption investigative body or unit has functioning mechanisms for public oversight, such as public councils, which include key stakeholders selected on clear criteria and through a transparent procedure

The mechanisms for public oversight of the ACD as the specialised anti-corruption investigative unit is not established.

Funded by the
European Union