



Partnership for Excellence

**POST-SOCIALIST  
COUNTRIES  
PREVENTING AND  
FIGHTING CORRUPTION**

This study has been translated from English. In case of any inconsistencies between the Kazakh, English and Russian versions, it is recommended to refer to the original English version.

## **Foreword**

Corruption places a heavy burden on countries and nations, undermining moral principles and trust, reducing the quality of public administration, leading to illicit enrichment for some and poverty for others, and threatening sustainable development and security.

In their efforts to fight corruption, governments rely both on their own experience and peculiarities of the country defined by the unique socio-economic, cultural and historical context, and on global trends and best practices.

In this context, the experience of countries that have gone through similar socio-economic models and stages of development is of particular interest. Totalitarian systems have left a legacy of eroded moral values that created a favorable environment for corruption to flourish.

The countries that were part of the so-called «socialist camp» have a number of similar problems which are rooted in the past. This has been and is being confirmed by international rankings and indices, although some countries show a successful example in combating corruption.

Given that an effective anti-corruption system is an indispensable condition for high-quality public administration, the Astana Public Service Hub (ASCH) pays constant attention to this issue.

In this regard, commissioned by the ACSH, a recognized international expert in the field of combating corruption, the Head of the OECD working group on combating bribery, Mr. Drago Kosh has prepared a study on the prevention and fight against corruption in post-socialist countries to summarize experience and identify specific exemplary practices in ensuring transparency of transactions between the public sector and private companies, institutional and legislative measures, and other aspects of combating corruption.

We are deeply grateful to Mr. Drago Kosh for many years of cooperation and preparation of this case study. Undoubtedly, the publication will be useful both for public administration practitioners and scholars and experts examining this issue.

**Chairman of the Steering Committee of  
the Astana Civil Service Hub  
Alikhan Baimenov**

# POST-SOCIALIST COUNTRIES PREVENTING AND FIGHTING CORRUPTION – A CASE STUDY

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## EXECUTIVE SUMMARY

The aim of this paper is to take stock of the current challenges, obstacles, and problems that fifteen selected post-socialist countries – Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Latvia, Lithuania, Poland, Romania, Slovenia, Tajikistan, Ukraine, and Uzbekistan – face in the area of corruption and of their anti-corruption preventive measures, and to provide recommendations and best-fit solutions to resolve the existing problems. Anti-corruption activities of the selected countries are analysed in three different areas: legislative solutions, institutional set-up, and practical achievements, and are followed by some recommendations for possible future activities and engagement, especially in the area of corruption prevention.

Selected parts of reports of international monitoring and other anti-corruption organisations concerning the situation in the chosen areas of fifteen post-socialist countries are also presented in this paper, the aim of which is not to criticise or praise the situation in the selected countries but to enable identification of problems and best practices, so they can serve as a basis for general recommendations for all post-socialist countries.

In the paper, some important pieces of legislation of the fifteen selected countries are analysed: special laws on prevention/suppression of corruption, laws on conflict of interests for different categories of public officials, laws on the reporting of their assets, laws on the liability of legal persons and laws on access to public information. When analysing best practices and making recommendations, a special emphasis is given to laws which traditionally make a difference in the prevention of corruption:

- laws on conflict of interests for different categories of public officials, where 22 recommendations are offered for the improvement of the situation;
- laws on the reporting of assets of public officials, where seventeen recommendations are offered for the improvement of the situation; and
- laws on access to public information, where 25 recommendations are offered for the improvement of the situation.

Out of the fifteen countries analysed, there are two countries with no special anti-corruption prevention or suppression legislation, one country with no legislation in the area of conflict of interests, one country with no legislation on the duty of public officials to report their assets and three countries with no legislation on liability of legal persons. The absence of special legislation in these areas does not mean that countries do not have individual provisions concerning these topics in other legislative acts but the lack of legislation comprehensively dealing with a particular area usually points at either a lack of the necessary awareness/knowledge or a lack of political will. While the lack of legislation concerning the liability of legal persons can easily be attributed to a lack of awareness/knowledge, or rather to a confusion stemming from the historically used subjective responsibility of perpetrators of offences, the lack of other types of legislation might also be attributed to a lack of political will of the governments in the countries concerned.

It seems that there is only a limited positive correlation between the existence, quality, and quantity of the anti-corruption legislation in post-socialist countries and their effectiveness in fighting corruption. The analysis of legislation of all the fifteen countries proves that while

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<sup>1</sup> Drago Kos is an independent expert from Slovenia.

differences among countries in this area do exist, they are much smaller than the differences concerning the levels and nature of corruption and practical anti-corruption achievements of the same countries. Therefore, it is possible to conclude that while the existence, quality, and quantity of the anti-corruption legislation is unconditionally needed to start enhancing the effectiveness of the national anti-corruption efforts, it is far from enough to reach significant achievements on the ground. Obviously, some other elements are much more important than merely the existence of anti-corruption legislation.

There is a myriad of specialised anti-corruption institutions in the fifteen post-socialist countries under analysis. They are very different in their mandate, powers, size, the level of independence and autonomy, and their position in the structure of the national public bodies. The pace of establishment of specialised anti-corruption institutions, the powers granted to them and obstacles they often face in the area of resources and staffing show that only few of the selected countries' governments really want to fight corruption.

In many of the analysed countries it can be observed that occasional effective functioning of specialised anti-corruption institutions comes as a sort of "negative surprise" for the political elites of those countries, as something they would never expect. As a rule, in those countries, efforts – at the legislative, institutional, or practical level – are launched immediately to curb further effectiveness of those institutions. In some countries changes in the governments also directly affect their attitude towards specialised anti-corruption institutions.

Constant attempts to unduly influence or even control specialised anti-corruption institutions can be observed in many countries. If these attempts fail, smear campaigns are organised against those institutions or their management structures, either accusing them of "politically motivated" actions or making them the object of ridicule. Successful leaders and other representatives of specialised anti-corruption institutions often face retaliatory measures and difficulties in their professional and private lives due to their anti-corruption work. All these problems but also best practices identified have led to twenty recommendations in the paper on how to improve the functioning of specialised preventive anti-corruption institutions.

Based on the excerpts from reports of international monitoring bodies, tables with statistical data from this paper and publicly available data, it is difficult to characterise anti-corruption efforts of the fifteen post-socialist countries so far as having been very successful in practice. This "lack of success" in anti-corruption efforts directly undermines the trust of citizens of those countries not only in the anti-corruption activities of their governments but also in their functioning in general, which in many countries influences changes in the political set-up after every election held. Sometimes, the disappointment of citizens even leads to mass anti-government protests and other forms of civil unrests. Challenging conditions imposed by the Covid-19 pandemic, often accompanied by a decreased level of attention on corruption issues by the law enforcement agencies, have added another layer to the complexity of the situation everywhere, not only in post-socialist countries.

Many anti-corruption achievements in the countries result from international pressure, which very rarely leads to tangible and sustainable improvements of the situation, due to occasional deliberate obstruction by many governments at lower levels and in their operationalisation.

It is rather disappointing to observe that not even the membership of the European Union as the strongest political entity in Europe has changed much in the anti-corruption efforts and achievements of some of the countries that joined. The required pieces of legislation were adopted, and the necessary institutions were established but in practical terms significant systemic anti-corruption achievements are still missing.

It is very difficult to identify the lowest common denominator for practical anti-corruption achievements of the fifteen post-socialist countries, their pace and other peculiarities beyond

the national politics. Although this seems normal since it is always the government making all the crucial policy decisions in a country in all areas, including anti-corruption, it is still surprising that so many efforts and investments of the international community, the “strict” conditionality and application of a “carrot and stick” approach have had and continue to have such a limited impact on those governments. The obviously non-existent political will of many governments and their unfulfilled promises give the impression that the “fight against corruption” is often used only to reach the overarching political goal of those governments, which is to win the next election and not to really change anything for the better for their citizens.

However, objectively and in the long run, the selected and all other post-socialist countries are achieving some positive results in fighting corruption. But the slow pace of those achievements and so many twists in the national anti-corruption policies simply call for an additional and thorough deliberation on what else can be done – or done differently – to accelerate the anti-corruption reforms in post-socialist countries and to ensure their sustainability. Hence, 25 ideas on how to potentially achieve are added at the end of the paper.

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## **ABBREVIATIONS AND ACRONYMS**

ACA	Anti-Corruption Agency
ACN	Anti-Corruption Network
BiH	Bosnia and Herzegovina
CAB	Central Anti-Corruption Bureau
CEHRO	Commission of Ethics for High Ranking Officials
CPC	Commission for the Prevention of Corruption
CPI	Corruption Perception Index
CPL	Law on Prevention of Corruption, Ukraine
DNA	National Anti-Corruption Unit Prosecution Service
COEC	Chief Official Ethics Commission
ECHR	European Court of Human Rights
EU	European Union
FIU	Prevention of Money Laundering Authority
FOI	Freedom of Information
GCB	Global Corruption Barometer
GET	Greco Evaluation Team
GRECO	Council of Europe Group of States against Corruption
HACC	High Anti-Corruption Court
HIDAACI	High Inspectorate for Declaration and Audit of Assets and Conflicts of Interests
IAP	Istanbul Anti-Corruption Action Plan
KNAB	Prevention and Combatting of Corruption Bureau
KRS	The National Council of Judiciary, Poland
LAPPICS	Law on Adjustment of Public and Private Interests in Civil Service
LCI	Law on Conflict of Interests, Croatia
LLPCO	Law on Liability of Legal Persons for Corruption Offences
MP	Member of Parliament
NABU	National Anti-Corruption Bureau
NACP	National Anti-Corruption Preventive Agency
NAZK	National Anti-Corruption Prevention Agency
NGO	Non-Governmental Organisation
NIA	National Anti-Corruption Agency
NIK	Supreme Audit Office in Poland
OECD	Organisation for Economic Cooperation and Development
OLAF	European Anti-Fraud Office
PSG	Prosecutor General's Office, Georgia
PTEF	Persons entrusted with top executive functions (as used by GRECO)
SAPO	Special Anti-Corruption Prosecution Service
SPAK	Special Structure Against Corruption
SIS	Special Investigation Service
SRS	State Revenue Service
TI CPI	Transparency International Corruption Perception Index
TI GCB	Transparency International Global Corruption Barometer
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
USKOK	Office for the Prevention of Corruption and Organised Crime
WGB	Working Group on Bribery

## 1. INTRODUCTION

1. The task of the expert was to develop and prepare a case study on the current status of the anti-corruption efforts of post-socialist countries, as well as to identify challenges and develop recommendations for preventing and fighting corruption, highlighting good practices implemented by the selected sample of post-socialist countries and of other countries as a benchmark. Therefore, the aim of this paper is to take stock of the current challenges, obstacles, and problems that the post-socialist countries face in the area of corruption and their preventive measures, and to provide recommendations and best-fit solutions to resolve such issues.
2. An important decision for the assigned task was the proper selection of the post-socialist countries to serve as examples, where representative challenges, good practices, and ideas, which also emerged or were applicable in other countries, could be found. While it is more or less clear which countries are post-socialist, either in Central and Eastern Europe,<sup>2</sup> or in Asia,<sup>3</sup> it is difficult to select countries from those two regions with the same or at least comparative qualitative or quantitative data in the area of anti-corruption. But there is also a clear advantage in dealing with the group of post-socialist countries while analysing their anti-corruption efforts: namely, no other group of countries in the world engaged so heavily in this area and achieved such a remarkable development and success in preventing and fighting corruption.<sup>4</sup> A large number of activities and achievements are always accompanied by a large number of challenges and innovative solutions but also mistakes, which taken together enable a solid assessment of the current state of play and identification of the best way forward – always considering the fact that sustainability of the anti-corruption efforts and achievements is not guaranteed *per se* and it has to be fought for – day by day and year by year.
3. The “core” group of the countries analysed in this paper will be composed of Albania (ALB), Armenia (ARM), Bosnia and Herzegovina (BiH), Bulgaria (BUL), Croatia (CRO), Georgia (GEO), Kazakhstan (KAZ), Latvia (LAT), Poland (POL), Romania (ROM), Slovenia (SLO), Tajikistan (TAJ), Ukraine (UKR) and Uzbekistan (UZB). Occasionally, also some other countries will be added to the list, if their solutions deserve additional attention or may serve as really good practices.
4. Anti-corruption activities of the selected number of post-socialist countries in this paper will be analysed in three different areas: legislative solutions, institutional set-up, and practical achievements, which will be followed by a list of recommendations for possible future activities and engagement, where possible. It is difficult to analyse best practices in the fight against corruption in general due to a simple fact that it is simply not known with certainty why some countries have very low levels of corruption, e.g. New Zealand, Norway, and Sweden. And it is impossible to make recommendations on what countries should do in general to improve the effectiveness of their practical fight against corruption in addition to the recommendations offered in specific areas already covered

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<sup>2</sup> Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Moldova, Montenegro, North Macedonia, Poland, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Ukraine. [Social welfare dynamics in post-socialist countries: unveiling the secrets of success: Public Sector Economics \(pse-journal.hr\)](https://pse-journal.hr)

<sup>3</sup> Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan.

<sup>4</sup> Compared to their initial situation.

in the paper.<sup>5</sup> Therefore, in the Chapter on practical achievements of the fifteen post-socialist countries under analysis there is no section on best practices; instead, some ideas are put forward on how countries can improve practical effectiveness of their national anti-corruption efforts in general terms.

5. Parts of reports of international monitoring and other anti-corruption organisations concerning the situation in selected areas in fifteen post-socialist countries have been chosen not to criticise or praise the situation in those countries but to enable identification of problems and best practices, which exist not only in the selected countries but also in other post-socialist countries, so they can serve as a basis for general recommendations for all post-socialist countries. Since not all of those reports are absolutely up to date, it is possible that after their publication there have been additional developments in some countries, which are not taken into account in this document. Having in mind the final goal of the assignment, which is not to analyse the situation in specific countries in great depth but to identify common denominators for all post-socialist countries, those potentially missing parts will not crucially influence the findings and conclusions of this paper.

### 1.1 Some statistics

6. For the majority of post-socialist countries, the fall of the Iron Curtain at the end of the last century meant that they (re)gained factual independence as autonomous states. This also marked the moment in time when the measurement of several corruption and anti-corruption indicators took place in those countries for the first time and when they were in the position to start adhering to international anti-corruption instruments independently.
7. There are two types of measurements of corruption applied around the world: most of the research and surveys measure perception of corruption and only few of them real and hard facts about the levels of corruption in different countries.
8. Among the first group of research, it is the survey of Transparency International on Corruption Perception Index (TI CPI) that is by far the most popular but also the most consistent through the years. Therefore, it also offers a very useful insight into the development of perception of corruption in post-socialist countries.

*Table 1: TI CPI development between 2000 and 2020 for selected countries*

	ALB	ARM	BiH	BUL	CRO	GEO	KAZ	LAT	LIT	POL	ROM	SLO	TAJ	UKR	UZB	AVE.
<b>2000</b> <sup>6</sup>		2.5		3.5	3.7		3.0	3.4	4.1	4.1	2.9	5.5		1.5	2.4	3.3
<b>2005</b> <sup>7</sup>	2.4	2.9	2.9	4.0	3.4	2.3	2.6	4.2	4.8	3.4	3.0	6.1	2.1	2.6	2.2	3.3
<b>2010</b> <sup>8</sup>	3.3	2.6	3.2	3.6	4.1	3.8	2.9	4.3	5.0	5.3	3.7	6.4	2.1	2.4	1.6	3.6
<b>2015</b> <sup>9</sup>	36	35	38	41	51	52	28	56	59	63	46	60	26	27	19	42.5

<sup>5</sup> Conflict of interests, reporting of assets of public officials, access to public information, specialised preventive anti-corruption institutions.

<sup>6</sup> [2000 - CPI - Transparency.org.](#)

<sup>7</sup> [2005 - CPI - Transparency.org.](#)

<sup>8</sup> [2010 - CPI - Transparency.org.](#)

<sup>9</sup> [2015 - CPI - Transparency.org.](#)

<b>2020<sup>10</sup></b>	36	49	35	44	47	56	38	57	60	56	44	60	25	33	26	44.4
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9. The analysis of this data shows the following features:

- the average TI CPI of post-socialist countries, with the exception of the period 2000 – 2005, is constantly improving, recording the biggest improvement in the period 2010 – 2015;
- in the period from 2000 to 2020, many of the selected countries occasionally registered significant short-term improvements in a period of 5 to 10 years: Albania in the period from 2005 to 2010, Armenia between 2015 and 2020, Georgia between 2010 and 2015, Kazakhstan between 2015 and 2020, Latvia between 2000 and 2005 and between 2010 and 2015, Lithuania between 2010 and 2015, Poland between 2002 and 2015, Romania between 2010 and 2015, Ukraine between 2000 and 2005 and Uzbekistan between 2015 and 2020;
- countries which started very low on average register a much bigger improvement than countries which started with a higher TI CPI;
- it seems that the period between 2010 and 2015 was the most favourable for the improvement in the perception of corruption;
- some countries did not register any significant general improvement during a 20-year period (BiH, Slovenia, Tajikistan, Uzbekistan), which obviously shows a lack of genuine political will to seriously cope with corruption;
- there are countries which managed to improve the perception of corruption at the beginning of the TI CPI surveys (Latvia, Ukraine) but were not successful in repeating the effort later (Ukraine);
- there are countries which importantly stepped up their efforts in this area only in the last period 2015 – 2020 (Armenia, Kazakhstan, Uzbekistan);
- some of the countries were really effective in improving their TI CPI (Armenia, Georgia, Latvia, Lithuania);
- the country with the biggest improvement in its CPI is Georgia (+ 3.3) and the country with the smallest improvement is Tajikistan (+4).

10. Transparency International also developed an indicator of real corruption in countries around the world: the Global Corruption Barometer – TI GCB, which shows how many survey respondents and other members of their families paid bribes in the last year. However, there is a problem with this survey: it does not measure data for all countries all the time. It is not even conducted every year but – on average – every five years. Therefore, it is difficult to make general comparisons between different years and countries, especially when it comes to average values; however, some comparison is still possible.

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<sup>10</sup> [2020 - CPI - Transparency.org](https://www.transparency.org/en/cpi).

Table 2: TI GCB (per cent of people paying bribes in the last year)

	ALB	ARM	BiH	BUL	CRO	GEO	KAZ	LAT	LIT	POL	ROM	SLO	TAJ	UKR	UZB	AVE.
2006 <sup>11</sup>	66		5	8	7	7			28	8	20					18.6
2011 <sup>12</sup>		23	23	8	5	4		15	34	16	20	4		37		17.2
2016 <sup>13</sup>	34	24	27	17	10	7	29	15	24	7	29	3	50	38	18	22.1

11. The analysis of this data shows the following features:

- statistically, the average percentage of people paying bribes in the period between 2006 and 2016 increased but this may also be a consequence of the increasing number of countries being subject to the assessment;
- in some countries, situation has not improved but deteriorated (BiH, Bulgaria, Croatia, Romania);
- the EU membership does not seem to be a particular advantage in this area of research: of seven EU Member States only three (Lithuania, Poland, Slovenia) register a very small improvement, the other four register deterioration, sometimes a significant one (Bulgaria, Romania);
- in the countries that register an improvement, its span is much smaller than the span in the countries that register deterioration;
- the country with the worst deterioration of the situation is BiH (from 5 per cent to 27 per cent);
- the country with the largest improvement of the situation is Albania (from 66 per cent to 34 per cent);
- of the countries which improved their TI CPI by the largest extent (Armenia, Georgia, Latvia, Lithuania), only Lithuania registers a slight improvement (from 28 per cent to 24 per cent) in the TI GCB.

## 1.2 Adherence to international anti-corruption legal instruments

12. An important sign that a country is willing to fight corruption is its readiness to accept and implement anti-corruption standards as set by the international legal instruments. Having in mind the territorial origin of the post-socialist countries which are the subject of discussion in this document, there are three international conventions which are important: the UN Convention Against Corruption (UNCAC), the Council of Europe Criminal Law Convention on Corruption (ETS 173) and the Council of Europe Criminal Law Convention on Corruption (ETS 174). While looking at the date of accession, it should be borne in mind that the mere act of ratification or any other form of accession does not necessarily mean that the convention to which the country has just acceded will also be transposed into the national legislation and implemented. There are a number of cases where, many years after the accession to an international legal instrument, certain countries have not transposed its provisions into the national legislation.

<sup>11</sup> [Global Corruption Barometer report 2005 \(transparencycdn.org\)](http://www.transparency.org/pdfs/Global-Corruption-Barometer-report-2005.pdf).

<sup>12</sup> [GCB20102011 FINAL 2 5 12 DH-1.xls \(live.com\)](http://www.transparency.org/pdfs/GCB20102011_FINAL_2_5_12_DH-1.xls).

<sup>13</sup> [People and Corruption: Europe and Central Asia... - Transparency.org](http://www.transparency.org/pdfs/People-and-Corruption-Europe-and-Central-Asia.pdf).

Table 3: Year of accession of some of post-socialist countries to anti-corruption conventions

	ALB	ARM	BiH	BUL	CRO	GEO	KAZ	LAT	LIT	POL	ROM	SLO	TAJ	UKR	UZB
<b>UNCAC</b> <sup>14</sup>	2006	2007	2006	2006	2005	2008	2008	2006	2006	2006	2004	2008	2006	2009	2008
<b>ETS 173</b> <sup>15</sup>	2001	2006	2002	2001	2000	2008		2001	2002	2002	2002	2000		2009	
<b>ETS 174</b> <sup>16</sup>	2000	2005	2000	2000	2003	2003		2005	2003	2002	2002	2003		2005	

13. It is interesting to take a look when some countries which are considered to be only moderately burdened by corruption acceded to those legal instruments.

Table 4: Year of accession of some other countries to anti-corruption conventions

	Australia	Botswana	France	Germany	Ireland	UK	USA
<b>UNCAC</b> <sup>17</sup>	2005	2011	2005	2014	2011	2006	2006
<b>ETS 173</b> <sup>18</sup>			2008	2017	2003	2003	
<b>ETS 174</b> <sup>19</sup>			2008				

14. It is surprising to see that Germany acceded to the UNCAC as late as 2014 and to the Council of Europe Criminal Law Convention even later, in 2017.

15. A comparison between the year of accession to the three conventions and the degree of their implementation, which will be presented at the end of this document, might reveal some interesting facts about a possible correlation between the time of accession to international anti-corruption legal instruments and their implementation.

## 2. LEGISLATIVE SOLUTIONS FOR THE PREVENTION OF CORRUPTION

16. Although some may not agree, the enactment of the anti-corruption legislation is usually the easiest step in the fight against corruption – all that is needed is a majority in the parliament and a desire of the government to do it, whereby “a desire of the government to do it” does not necessarily entail the political will to also implement the legislation adopted. There are cases from the past when extremely important pieces of legislation were in force for literally 4 days only. For instance, Ukraine with the Law on Liability of Legal Persons for Corruption.

17. Adoption of only some of the national laws is considered to be a consequence of international legal instruments. Therefore, a careful selection of the laws is needed to enable meaningful comparisons among the countries. Beyond any doubt, the following pieces of legislation are extremely important for the national fight against corruption and can also be considered as being directly influenced by international standards: special law

<sup>14</sup> [Ratification status \(unodc.org\)](http://www.unodc.org).

<sup>15</sup> [Full list \(coe.int\)](http://www.coe.int).

<sup>16</sup> [Full list \(coe.int\)](http://www.coe.int).

<sup>17</sup> [Ratification status \(unodc.org\)](http://www.unodc.org).

<sup>18</sup> [Full list \(coe.int\)](http://www.coe.int).

<sup>19</sup> [Full list \(coe.int\)](http://www.coe.int).

on prevention/suppression of corruption, a law on conflict of interest for different categories of public officials, a law on reporting of assets of different categories of public officials, a law on liability of legal persons, a law on the access to public information.

18. Information about anti-corruption legislation in countries of interest was collected from reports of three international anti-corruption monitoring bodies: the Council of Europe Group of States against Corruption (GRECO),<sup>20</sup> the OECD Working Group on Bribery (WGB),<sup>21</sup> and the OECD Anti-Corruption network (ACN).<sup>22</sup>
19. In the chapters below, selected best practices of some of the countries are mentioned, as they deserve more attention due to their usefulness and suitability to serve as models for other countries. On the basis of these best practices, some recommendations have been put forward, which aim to improve the situation regarding the adoption of anti-corruption preventive legislation and its implementation. In the analysis of best practices and making of recommendations, a special emphasis is given to laws, which traditionally make a difference in the prevention of corruption: laws on conflict of interests for different categories of public officials, laws on the reporting of assets of those public officials and laws on access to public information. The other two categories of legislation dealt with below – special anti-corruption laws and laws on liability of legal persons – are important for the assessment of the general political will in countries to fight corruption, for the assessment of the general development of their legal systems,<sup>23</sup> and for the assessment of the countries' chances of joining international organisations,<sup>24</sup> but have less impact in the preventive anti-corruption area.

## **2.1 Special laws on prevention/suppression of corruption**

20. The term "special laws on the prevention/suppression of corruption" is to be understood as legislation which has been specially designed to either prevent or suppress corruption, whereby the content of such a legislation can vary a lot. For the purposes of this analysis, also laws regulating the establishment and functioning of specialised and autonomous anti-corruption agencies are taken into account. The main reason why it is important to see if countries have developed such legislation is the fact that in this way, they have proven they have an interest and desire to fight corruption. If a country has adopted several pieces of relevant legislation, only the first one is mentioned in Table 5 below. Sometimes, countries have combined the fight against corruption with fighting organised criminality and also such pieces of legislation have been taken into account.
21. "Special laws on the prevention/suppression of corruption" were adopted in the group of post-socialist countries subject to our analysis in the following years.
22. On the basis of Table 5, it is possible to identify the following facts:
  - two countries (Albania, Armenia) do not have special anti-corruption legislation in place;
  - ten countries adopted special anti-corruption legislation in the period between 1995 and 2006;

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<sup>20</sup> [Welcome to the GRECO website \(coe.int\)](http://www.coe.int).

<sup>21</sup> [OECD Working Group on Bribery in International Business Transactions - OECD](http://www.oecd.org).

<sup>22</sup> [Anti-Corruption Network for Eastern Europe and Central Asia - OECD](http://www.oecd.org).

<sup>23</sup> Good legislation on liability of legal persons is a sign of a fairly developed anti-corruption legal framework.

<sup>24</sup> For example, without the adoption and effective implementation of the laws on liability of legal persons countries cannot join the OECD.

- three countries (BiH, Uzbekistan, Bulgaria) adopted special anti-corruption legislation at the latest, which is particularly surprising for Bulgaria being an EU Member State.

*Table 5: Adoption of special anti-corruption legislation by some of the post-socialist countries*

<b>ALB</b>	<b>ARM</b>	<b>BiH</b>	<b>BUL</b>	<b>CRO</b>	<b>GEO</b>	<b>KAZ</b>	<b>LAT</b>
No	No	2010 <sup>25</sup>	2018 <sup>26</sup>	2001 <sup>27</sup>	1997 <sup>28</sup>	1998 <sup>29</sup>	2002 <sup>30</sup>
<b>LIT</b>	<b>POL</b>	<b>ROM</b>	<b>SLO</b>	<b>TAJ</b>	<b>UKR</b>	<b>UZB</b>	
2000 <sup>31</sup>	2006 <sup>32</sup>	2000 <sup>33</sup>	2004 <sup>34</sup>	1999 <sup>35</sup>	1995 <sup>36</sup>	2017 <sup>37</sup>	

23. Based on the findings of international anti-corruption monitoring bodies and on generally available information, the following facts also have to be mentioned:

- in 2010, BiH adopted a special law on the Agency for the Prevention and Coordination of the Fight against Corruption only because that was a pre-condition for securing an EU visa-free regime for its citizens – accordingly, in the absence of genuine political will to do something meaningful in this area, the Law was significantly watered down from the first draft;
- the adoption of a special anti-corruption law in 2017 was considered to be a major achievement for the anti-corruption efforts of Uzbekistan;
- the adoption of a special Law on the Prevention of Corruption in 2004 in Slovenia was a result of conditioning of the EU accession of that country;
- the adoption of a special anti-corruption law by Poland in 2006 and Bulgaria in 2018 was a consequence of a strong EU pressure;
- the adoption of the Law on the Office for the Prevention of Corruption and Organised Crime in 2001 in Croatia was not followed by the provision of material resources that would enable decent functioning of the newly established office for many years;
- a number of countries adopted only one special anti-corruption law in the last 25 years (BiH, Bulgaria, Georgia, Latvia, Poland, Slovenia, Tajikistan, Uzbekistan) and two countries (Romania, Ukraine) adopted many different variants of those laws;<sup>38</sup>
- there are also countries (Croatia, Lithuania) which have regulated corruption prevention and suppression in different pieces of legislation;
- the biggest number of special anti-corruption laws were adopted in the period also characterised by vigorous international anti-corruption “legislative” activities: the adoption of the OECD Convention against Bribery of Foreign Public officials in

<sup>25</sup> The Law on the Agency for the Prevention and Coordination of the Fight against Corruption.

<sup>26</sup> The Law on Countering Corruption and Forfeiture of Unlawfully Acquired Assets.

<sup>27</sup> The Law on the Office for the Prevention of Corruption and Organised Crime.

<sup>28</sup> The Law on Conflict of Interests and Corruption in the Public Service.

<sup>29</sup> The Law No 267-1 On the Fight against Corruption.

<sup>30</sup> The Law on Corruption Prevention and Combatting Bureau.

<sup>31</sup> The Law on Special Investigations Service.

<sup>32</sup> The Act on the Central Anti-Corruption Bureau.

<sup>33</sup> The Law on preventing, discovering, and sanctioning corruption acts.

<sup>34</sup> The Law on the Prevention of Corruption.

<sup>35</sup> The Law on the Fight against Corruption.

<sup>36</sup> The Law on Combating Corruption.

<sup>37</sup> The Law On Combating Corruption.

<sup>38</sup> Though sometimes these laws were amended (e.g. in Slovenia in 2010 and 2011).

International Business Transactions in 1997, the Council of Europe Criminal Law Convention on Corruption in 1999, the Council of Europe Civil Law Convention on Corruption in 1999, and the UN Convention against Corruption in 2003;

- there are different reasons why post-socialist countries adopted special anti-corruption legislation, whereby their genuine will to really fight corruption in many countries was not always among the most important reasons;
- a low number of new legislative initiatives towards special anti-corruption legislation in some countries is a consequence of the good quality of the existing laws and in some countries a consequence of the lack of a genuine interest to fight corruption;
- a high number of legislative initiatives towards special anti-corruption legislation does not signal an increasing resolve of countries to fight corruption but rather the opposite,
- the existence of special anti-corruption legislation does not seem to be part of the EU anti-corruption standards;<sup>39</sup>
- a large number of special anti-corruption laws neither necessarily reflects their quality nor proves the effectiveness of anti-corruption efforts in the country.

## 2.2 Laws on conflict of interest for different categories of public officials

24. The term “laws on conflict of interest for different categories of public officials” is to be understood as legislation regulating incompatibilities between private interests of public officials and their duty to serve public interests. Managing conflicts of interest is a very effective preventive anti-corruption measure - if taken seriously. Despite the fact that it is considered a soft and non-aggressive method, it can significantly influence the whole character of the civil service in any country, where civil servants are forced to understand that the main goal of their work is not protecting the powerful state or satisfying their own or someone else’s private interests but satisfying the interests of citizens, their clients. In other words, through the adoption and implementation of the conflict of interest legislation, civil servants and other public officials in any country learn that they are not a tool in the hands of the state but a service in the hands of their citizens. If a country has adopted several pieces of relevant legislation, only the first one is mentioned in Table 6 below.

*Table 6: Adoption of legislation on conflict of interest of public officials by some post-socialist countries*

<b>ALB</b>	<b>ARM</b>	<b>BiH</b>	<b>BUL</b>	<b>CRO</b>	<b>GEO</b>	<b>KAZ</b>	<b>LAT</b>
2005 <sup>40</sup>	No	2002 <sup>41</sup>	2008 <sup>42</sup>	2003 <sup>43</sup>	1997 <sup>44</sup>	1998 <sup>45</sup>	2002 <sup>46</sup>
<b>LIT</b>	<b>POL</b>	<b>ROM</b>	<b>SLO</b>	<b>TAJ</b>	<b>UKR</b>	<b>UZB</b>	
1997 <sup>47</sup>	1992 <sup>48</sup>	1999 <sup>49</sup>	1992 <sup>50</sup>	2015 <sup>51</sup>	1995 <sup>52</sup>	2017 <sup>53</sup>	

<sup>39</sup> Otherwise Bulgaria would have adopted it before 2018.

<sup>40</sup> The Law on the prevention of conflicts of interest in the exercise of public functions.

<sup>41</sup> The Law on conflicts of interests in state level governmental institutions.

<sup>42</sup> The Law on prevention and disclosure of conflict of Interest.

<sup>43</sup> The Law on conflicts of interests in performance of public duties.

<sup>44</sup> The Law on conflict of interests and corruption in the public service.

<sup>45</sup> The law in the fight against corruption.

<sup>46</sup> The Law on prevention of the conflict of interests in the activities of state officials.

<sup>47</sup> The Law on the adjustment of public and private Interests in the public service.

<sup>48</sup> The Law on reducing opportunities to do business for persons performing public functions.

<sup>49</sup> The Law No 188/1999 as amended and expanded by the laws No 161/2003, 7/2004 and 171/2004.

25. On the basis of the data in Table 6 above, the following facts can be established:

- there is one country (Armenia) where it was not possible to identify any legislation on conflict of interest of public officials;
- seven countries introduced laws on conflict of interest before the end of the last millennium and another four between 2000 and 2005;
- three countries adopted legislation on conflict of interest at a later stage (Bulgaria in 2005, Tajikistan in 2015 and Uzbekistan in 2017).

26. International anti-corruption monitoring bodies also assess the management of conflict of interests in their member states. Some of the latest findings in fifteen post-socialist countries are as follows:

- "**Albania** has adopted very detailed anti-corruption and conflict of interests regulations. Nevertheless, the legislative framework, which consists *inter alia* of the constitutional provisions, the laws on the prevention of conflict of interests and asset declaration, is highly complex, and its stability and the legal certainty have been undermined by numerous and frequent amendments which are, moreover, often subject to contradictory interpretation".<sup>54</sup>
- "**Armenia** adopted the new provisions on conflict of interests addressing most of the deficiencies identified during the last monitoring round. The new regulations strengthened the oversight mechanism too, but practical implementation has not started yet. Armenia is recommended to step up the enforcement of conflict of interest rules in practice, including the operation of ethics commissions and integrity affairs organisers. Further, it should raise awareness and train public servants, as well as provide necessary guidance on the interpretation and application of these rules in practice".<sup>55</sup>
- In **Bosnia and Herzegovina**, "more importantly, the monitoring and enforcement regime for integrity and conflict of interest prevention in the legislature needs to be strengthened significantly".<sup>56</sup>
- In **Bulgaria**, in the area of conflict of interests, "most of the bodies are paper tigers, denied the power to conduct substantive checks. Scrutiny, if it is effected at all, is cursory and their role has been mainly confined to placing the declarations of private interests, incompatibilities and assets of MPs, judges, or prosecutors in the public domain. In the absence of any thorough checks and discernible results in detecting and punishing violations of the conflicts of interest and asset disclosure rules by MPs, judges, and prosecutors, transparency is perceived as being ostensible and has not

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<sup>50</sup> The Law on incompatibility of public function with profit-making activity.

<sup>51</sup> The Law on public service.

<sup>52</sup> The Law on combating corruption.

<sup>53</sup> The Law on combating Corruption.

<sup>54</sup> GRECO, Fourth Evaluation Round of Albania, Evaluation Report from March 2014, page 4, [Greco Eval IV Rep \(2013\) 9E Final Albania PUBLIC](#).

<sup>55</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Armenia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 10, 2018, [OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf](#).

<sup>56</sup> GRECO, Fourth Evaluation Round of Bosnia and Herzegovina, Evaluation Report from December 2015, page 4, [Greco Eval IV Rep \(2015\) 2E Final BiH PUBLIC](#).

therefore been conducive to boosting public confidence in the three institutions, judges being most vulnerable to public mistrust".<sup>57</sup>

- In **Croatia**, "the notion of conflict of interest is not always well understood as there is a tendency to associate it with incriminating behaviour. Moreover, there have been some conflict of interest instances which were not, in citizens' eyes, satisfactorily resolved. The Commission for the Prevention of Conflict of Interests has an important role to play in providing tailored guidance and advice on the applicable rules and the rationale behind them, as well as in promoting self-governance and compliance within distinct areas of public service."<sup>58</sup>
- In **Georgia**, "the Law on Conflict of Interests and Corruption in Public Service is in place, but practical enforcement is almost non-existent. The internal audit units have the duty to enforce, but no analysis of their effectiveness was done. The Civil Service Bureau provided training on conflict of interests but does not have a centralised role in guidance and/or prevention. The Conflict of Interests (Col) Law does not cover all positions with high corruption risk".<sup>59</sup>
- In **Kazakhstan**, "the new Law on Countering Corruption and the Law on Civil Service extended provisions on the prevention and management of conflict of interests (Col). With the help of donors, Kazakhstan also developed and disseminated guidelines on Col in the civil service. The Civil Service Agency conducted a wide awareness-raising campaign, which is commendable. There are first examples of cases of detected violations of Col regulations. At the same time, the Col definition is not fully in line with international standards. The report also found that the liability for violation of the respective provisions is not effective. As before, there is no mechanism to control enforcement of the post-employment restrictions. Restrictions with regard to gifts are scattered among several laws and require additional clarification and awareness raising to ensure their effective enforcement."<sup>60</sup>
- In **Latvia**, "the Law on Prevention of Conflict of Interests in Activities of Public Officials (Conflict of Interests Law) is the key piece of corruption prevention legislation in Latvia. It lays out a comprehensive financial disclosure system which is monitored by both the Corruption Prevention and Combatting Bureau (KNAB) and the State Revenue Service (SRS). It applies to all public officials".<sup>61</sup>
- In **Lithuania**, "the Law on the Adjustment of Public and Private Interests in Civil Service (LAPPICS) especially contains key provisions for the prevention of corruption. It defines conflict of interests, provides for restrictions and rules to avoid them, or manage them if they do occur. Furthermore, the Law establishes the duty for persons in the civil service, MPs, judges and prosecutors to declare their private interests

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<sup>57</sup> GRECO, Fourth Evaluation Round of Bulgaria, Evaluation Report from March 2015, page 3, [FOURTH EVALUATION ROUND \(coe.int\)](#).

<sup>58</sup> GRECO, Fourth Evaluation Round of Croatia, Evaluation Report from June 2014, page 4, [Greco Eval IV Rep \(2013\) 7E Final Croatia PUBLIC](#).

<sup>59</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 8, 2018, [OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>60</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Kazakhstan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 4, 2017, [OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>61</sup> GRECO, Fourth Evaluation Round of Latvia, Evaluation Report from December 2012, page 5, [FOURTH EVALUATION ROUND \(coe.int\)](#).

along with a mechanism for supervision and enforcement. The Law is comprehensive and contains positive features, but to ensure the credibility of the system, more determined implementation action must be taken”.<sup>62</sup>

- In **Poland**, “an overarching policy is needed, as well as comprehensive rules of conduct covering *inter alia* gifts and other benefits, conflict of interests and accessory activities, relations with lobbyists and other third parties. This needs to be accompanied by implementation support measures, including a robust enforcement mechanism”.<sup>63</sup>
- In **Romania**, “the existing rules on gifts and conflict of interests do not draw the desirable consequences of limitations in those areas (for instance, MPs may accept any gifts and other benefits which are not strictly related to protocol events). For similar reasons, the existing rules on incompatibilities are not effective in practice, and even where court decisions are rendered, it was reported that these are sometimes not complied with”.<sup>64</sup>
- In **Slovenia**, “the CPC’s action is severely hampered by clearly insufficient resources for the supervision of PTEFs’ asset declarations, conflict of interests, lobbying and integrity plans, as well as by procedural shortcomings which need to be remedied as a matter of priority”.<sup>65</sup>
- In **Tajikistan**, “the development of draft amendments to the conflict of interest law can be called a positive undertaking. However, it should be noted that this wording is still unsatisfactory in terms of international best practices, and does not include a real, potential, and apparent conflict of interests. There is no information on what measures for managing conflict of interests are included in the draft law”.<sup>66</sup>
- “The progress achieved by **Ukraine** in the area of conflict of interests management is apparent. The National Anti-Corruption Preventive Agency (NACP) has issued various methodological guidance, carried out information campaign and training of staff and started enforcement. This is commendable and must be continued. Nevertheless, the questions as to the independent functioning of the NACP free from political interference and bias must be addressed in order the implementation of the conflict of interests rules, as well as other parts of its mandate to be assessed as efficient and seen as politically neutral”.<sup>67</sup>
- “While provisions on the prevention of conflict of interests in **Uzbekistan** have been introduced in the legislation, their proper enforcement requires further regulation. It is

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<sup>62</sup> GRECO, Fourth Evaluation Round of Lithuania, Evaluation Report from December 2014, page 5, [FOURTH EVALUATION ROUND \(coe.int\)](#),

<sup>63</sup> GRECO, Fifth Evaluation Round of Poland, Evaluation Report from December 2018, page 4, [GRECO \(coe.int\)](#).

<sup>64</sup> GRECO, Fourth Evaluation Round of Romania, Evaluation Report from December 2015, page 5, [Greco Eval IV Rep \(2015\) 4E Final Romania PUBLIC \(2\)](#).

<sup>65</sup> GRECO, Fifth Evaluation Round of Slovenia, Evaluation Report from December 2017, page 5, [Fifth Round Evaluation \(coe.int\)](#).

<sup>66</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Tajikistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 45, 2017, [OECD-ACN-Tajikistan-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>67</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Ukraine, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 8, 2017, [OECD-ACN-4th-Round-Report-Ukraine-ENG.pdf](#).

important, *inter alia*, to broaden liability, which should not be limited to disciplinary sanctions".<sup>68</sup>

27. Based on the findings of international anti-corruption monitoring bodies and generally available information, the following facts also have to be mentioned:

- already Hammurabi (1760 BC) knew that "no one may judge his/her own case" but there are still countries which are reluctant to introduce comprehensive systems for the prevention and management of conflict of interests, even though they are soft but effective corruption prevention mechanisms;
- there are countries which regulate conflict of interests for all categories of public officials together and countries which do that separately for different categories of public officials;
- certain categories of public officials – judges, prosecutors, jurors, ... – are exempted from general regimes of conflict of interests and, understandably, subjected to separate and much stricter regimes;
- conflict of interests of members of parliament are very difficult to regulate, especially when it comes to consequences after the identification of conflicts;<sup>69</sup>
- transparency of apparent, potential, and actual conflict of interests is a *sine qua non* for an effective identification and management of these phenomena;
- in some countries conflict of interests situations are wrongly understood as corruption already;
- in some countries, top public officials are not covered by the conflict of interests rules;
- in countries with many legislative acts on conflict of interests, their harmonisation is usually at a low level, which leads to a number of problems in the area of equal treatment of all public officials;
- many of the countries have problems with the enforcement of the conflict of interests provisions, especially but not limited to post-employment restrictions;
- awareness raising of targeted categories of public officials is crucial in ensuring their respect for conflict of interests rules;
- agencies authorised to enforce provisions on conflict of interests sometimes lack the necessary resources to fulfil their mandate fully;
- agencies responsible for the enforcement of the conflict of interests provisions not only have to be effective and politically impartial but they also have to be seen as such;
- even though assessing the adoption and implementation of laws regulating the management of conflict of interests is part of the mandate of many international anti-corruption monitoring organisations (e.g. OECD ACN, GRECO), they usually do not insist on proper legal texts and corresponding enforcement as vigorously as they do for special anti-corruption or some other types of legislation;<sup>70</sup>
- despite similar legal provisions, enforcement practices of different countries significantly differ from each other: there are countries where breaches of conflict of interests provisions have almost no consequences, e.g. Slovenia, and countries where such breaches may lead to a whole range of significant sanctions, e.g. Portugal;

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<sup>68</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Uzbekistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 9, 2019, [Anti-Corruption Reforms in UZBEKISTAN \(oecd.org\)](https://www.oecd.org/).

<sup>69</sup> For example, it is very difficult to require that a member of parliament abstain from voting even if he or she is in a clear conflict of interest situation.

<sup>70</sup> On elements of corruption offences, money laundering, seizures and confiscations, liability of legal persons, etc.

- internalisation of conflict of interests legislation and its strict and effective observance by public officials usually require a significant period of time, especially in the post-socialist countries but once that stage is achieved, many other positive characteristics in the general framework of public ethics also start to develop.

### **2.2.1 Best legislative practices on conflict of interests**

28. The following pieces of legislation represent rather good examples of conflict of interests laws: the Law on Prevention of Conflict of interests in Activities of Public Officials of Latvia,<sup>71</sup> Law on the Adjustment of Public and Private Interests in Civil Service of Lithuania,<sup>72</sup> and Integrity and the Prevention of Corruption Act of Slovenia.<sup>73</sup> The most important substantive elements of these pieces of legislation are as follows.

29. Personal applicability: in all the three countries, the lists of public officials to whom the laws apply are very broad. They encompass all public officials at the central and local levels, including the presidents, prime ministers, and other ministers but also representatives of certain professions: intelligence, investigators, military servicemen, etc. In the Lithuanian law, the term "state politicians" is used.

30. Definition of conflict of interests: the definitions of conflict of interests in the three countries are very similar but not entirely the same:

- according to the Latvian Law, conflict of interests is "a situation where in performing the duties of office of the public official, the public official must take a decision or participate in taking of a decision or perform other activities related to the office of the public official which affect or may affect the personal or financial interests of this public official, his or her relatives or counterparties".<sup>74</sup>
- according to the Lithuanian Law, "conflict of interests shall mean a situation where a person concerned, when discharging his official duties or carrying out his official assignment, is obliged to make a decision or participate in decision-making or carry out the assignment relating to his private interests".<sup>75</sup>
- according to the Slovenian Law, "conflict of interests means circumstances in which the private interest of an official person influences or appears to influence the impartiality and objective performance of his public duties".<sup>76</sup>

31. Private interests: while in the Latvian law the definition of "private interests" is included in the definition of conflict of interests as "personal or financial interests of the public official, his or her relatives or counterparties", Lithuania and Slovenia have a separate definition of private interests:

- according to the Lithuanian Law, private interest "shall mean interest in private economic or non-economic benefit of a person concerned (or a person close to him), moral debt, moral obligation or another similar interest of a person concerned (or a person close to him) in discharge of the official duties of the person concerned".<sup>77</sup>
- according to the Slovenian Law, "private interest of an official person means a pecuniary or non-pecuniary benefit which is either to his advantage or to the

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<sup>71</sup> [Latvia Conflict of interests Law 2002 consolidated as of 2007 EN.pdf \(worldbank.org\)](#).

<sup>72</sup> [https://vtek.lt/wp-content/uploads/2020/10/The\\_Law\\_on\\_Adjusting\\_Public\\_and\\_Private\\_Interests\\_2020.docx](https://vtek.lt/wp-content/uploads/2020/10/The_Law_on_Adjusting_Public_and_Private_Interests_2020.docx).

<sup>73</sup> [Slovenia Integrity and the Prevention of Corruption Act 2010 en.pdf \(worldbank.org\)](#).

<sup>74</sup> Article 1, paragraph 1, point 5.

<sup>75</sup> Article 2, paragraph 2.

<sup>76</sup> Article 4, paragraph 1, point 9.

<sup>77</sup> Article 2, paragraph 3.

advantage of his family members or other natural or legal persons with whom he maintains or has maintained personal, business or political relations".<sup>78</sup>

32. The laws of the three countries recognise different forms of possible conflict of interests situations: combining a public office with other public offices,<sup>79</sup> profit-making activities,<sup>80</sup> prohibition of memberships and activities in the public and private legal persons,<sup>81</sup> establishing business relations between the public office of the public official and organisations where his/her private interests can be identified,<sup>82</sup> "revolving doors" or "*pantouflage*",<sup>83</sup> acceptance of gifts,<sup>84</sup> and "daily" (appearing any time) conflict of interests situations<sup>85</sup>.

33. In addition to an exhaustive set of rules on other forms of conflict of interests, the legislation of all the countries also provide rules for self-declaration of conflict of interests situations:

- according to the Latvian Law, public officials "shall without delay provide information in writing to a higher public official or collegial authority regarding: (1) their financial or other personal interest, as well as financial or other personal interest of their relatives or counter-parties regarding the performance of any action included in the duties of their office; (2) commercial companies the shareholder, stockholder, partner, member of a supervisory, control or executive body of which the public official is or his or her relatives are, or on the fact that the public official himself or herself or his or her relative is an individual merchant who receives orders from the relevant State or local government authority for the procurement for the State or local government needs, State or local government financial resources, credits guaranteed by the State or local governments or State or local government privatisation fund resources, except the cases where they are allocated as a result of an open competition".<sup>86</sup>
- according to the Lithuanian Law, private interests of the public official shall be declared by filing a declaration of private interests to the Chief Official Ethics Commission or other entities provided for in the Law.<sup>87</sup>
- according to the Slovenian Law, "the official person who, upon taking up a post or office or during the performance of the duties of the post or office, finds that a conflict of interests has arisen or might arise must immediately inform his superior in writing, and if he has no superior, the Commission [for the Prevention of Corruption]. In so doing, the official person shall immediately cease to perform any work with regard to the matter in which the conflict of interests has arisen, unless the delay would pose a risk".<sup>88</sup>

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<sup>78</sup> Article 4, paragraph 1, point 10.

<sup>79</sup> Sections 6-(8,1), 15 of the Latvian Law, Article 27 of the Slovenian Law.

<sup>80</sup> Sections 9, 10, 16, 17 of the Latvian Law, Article 26 of the Slovenian Law.

<sup>81</sup> Articles 27 - 29 of the Slovenian Law.

<sup>82</sup> Sections 11 and 12 of the Latvian Law, Article 12 of the Lithuanian Law, Article 35 of the Slovenian Law.

<sup>83</sup> Situation, in which public office of the official, whose mandate has been terminated, cannot enter into any business relations with the former public official or organisations in which or for which s/he is acting: articles 15-18 of the Lithuanian Law, Article 36 of the Slovenian Law.

<sup>84</sup> Sections 13-14 of the Latvian Law, Article 13 of the Lithuanian Law, Article 30 of the Slovenian Law.

<sup>85</sup> Sections 20 - 22 of the Latvian Law, Article 11 of the Lithuanian Law, articles 37-40 of the Slovenian Law.

<sup>86</sup> Section 21 of the Latvian Law.

<sup>87</sup> Article 4/1 of the Lithuanian Law.

<sup>88</sup> Article 38 of the Slovenian law.

34. In all the three countries, there are specialised agencies dealing with conflict of interest: in Latvia by the Prevention and Combating of Corruption Bureau (KNAB), in Lithuania by the Chief Official Ethics Commission (COEC) and in Slovenia by the Commission for the Prevention of Corruption (CPC).
35. The powers of the agencies specialised for dealing with conflict of interests differ from country to country:
- KNAB in Latvia has the right to request and receive information and documents from the relevant public official, State or local government authorities, merchants, public or political organisations and associations thereof, religious organisations or other institutions, as well as from the persons that are specified or in accordance with the provisions of the Law should have been specified in the relevant declaration and to request and receive explanations in writing and documents from any person, as well as to verify the legality of acquisition of the property of the official;<sup>89</sup>
  - COEC in Lithuania has the right to obtain all necessary information, explanations and documents from institutions and bodies, other legal persons including the Bank of Lithuania, banks, financial or credit institutions operating in the territory of the Republic of Lithuania,<sup>90</sup> and to control and manage publicly accessible Register of Private Interests, containing names of the public officials concerned, declarations of private interests of public officials and private interests themselves;<sup>91</sup>
  - CPC in Slovenia has the right to request and receive data and documents from state bodies, bodies of self-governing local communities and bearers of public authority, as well as any legal person governed by public or private law;<sup>92</sup> furthermore the right to request from the competent law enforcement and supervision authorities, including the authority responsible for the prevention of money laundering (FIU), that within their powers, they establish the facts regarding the assets and property of official persons in the Republic of Slovenia and abroad, and submit their findings to the Commission; to request from the FIU to collect and analyse data, information and documents pursuant to the anti-money laundering law, and to summon official persons and the heads of or responsible persons in organisations vested with public authority.<sup>93</sup>
36. Not reporting on the conflict of interests situations is considered to be a breach of the laws, equal to acting in those situations. For such breaches, different sets of sanctions are used:
- according to the Latvian Law, in addition to disciplinary sanctions, income and financial benefits obtained by violating the restrictions specified in the Law or a proportional augmentation thereof shall accrue to the State;<sup>94</sup>

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<sup>89</sup> Section 28.

<sup>90</sup> Article 18/1 of the Law on Chief Official Ethics Commission, [Relevant Laws - Chief Official Ethics Commission \(vtek.lt\)](#).

<sup>91</sup> Article 19 of the Lithuanian Law.

<sup>92</sup> With the exception of data obtained by attorneys, physicians, social workers, psychologists or clerics during the course of their work within a confidential relationship, or any other person obliged by the law to protect data resulting from a confidential relationship.

<sup>93</sup> Article 16.

<sup>94</sup> Section 30 of the Latvian Law.

- according to the Lithuanian law, the following sanctions apply: prohibition of promotion, employment, transfer, appointment or election to equivalent or higher position for a period from one to three years, removal from the office;<sup>95</sup>
  - according to the Slovenian Law, its breaches are sanctioned by fines in the range from EUR 400 to 1,200 and from EUR 1,000 to 2,000 respectively (for individuals), from EUR 400 to 4,000 for responsible persons of public sector bodies and organisations or for responsible persons of a state body, local community body, holder of public authority, and legal person governed by public or private law, and from EUR 400 to 100,000 for holders of public authority or other legal person governed by public or private law.<sup>96</sup>
37. In addition to the substantive requirements of the conflict of interests legislation, some other elements are also important: if possible, countries should not fragment their legislation on conflict of interests into too many laws,<sup>97</sup> and they also have to invest significant efforts and resources in the awareness-raising and education of their public officials concerning the conflict of interests duties.

### **2.2.2 Recommendations concerning legislation on conflict of interests**

38. Based on the experience and best practices of some of the post-socialist countries and on developments and knowledge acquired by other countries, it is possible to make the following recommendations on how the legislation on conflict of interests should be developed and implemented:
- a) the conflict of interests provisions should apply to the widest possible range of public officials in the country, including those at the highest level, with special sensitivity and solutions for directly elected public officials;
  - b) the definition of "conflict of interests" should cover real, apparent and potential conflict of interests, which influences, seems to influence, or might influence objective and impartial performance of a public official's duties;
  - c) the definition of "private interests" should cover economic and non-economic benefits to the advantage of a public official or a public official's family members and other natural and legal persons, with whom a public official has or has had business, personal, political, or similar relations;
  - d) the definition of "family members of a public official" should not only cover blood relatives but also persons living in the same household or in a common-law relationship with a public official;
  - e) the provisions on conflict of interests should cover all possible forms of conflict of interests situations: incompatibility of a public official's public office or position with other public offices or positions, incompatibility of his or her public office or position with memberships, offices and positions in other organisations of public or private law, prohibition of other profit-making activities – with the exception for certain categories of activities, i.e. science, education, sport, and real estate ownership,<sup>98</sup> prohibition of establishing business relations between the public office of the public official and organisations where his or her private interests exist, prohibition of "revolving doors" ("*pantouflage*"), prohibition or limitation on acceptance of gifts and rules on "daily" conflict of interests;

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<sup>95</sup> Article 23 of the Lithuanian Law.

<sup>96</sup> Articles 78 and 79 of the Slovenian Law.

<sup>97</sup> For example, for each category of public officials.

<sup>98</sup> Not related to his or her salary or other forms of compensation for his or her public office or position.

- f) the rules on incompatibility of a public official's public office or position with other public offices or positions should be based on the need to avoid diverging interests of different public offices and on the requirement for a public official to fulfil duties at his or her basic office or position full-time and with the highest possible level of commitment and loyalty;
- g) the rules on incompatibility of public official's public office or position with memberships, offices, and positions in other organisations of public or private law should be based on the need to avoid contradictory interests between the requirements of his or her public office or position and interests of those organisations;
- h) the rules on the prohibition of other profit-making activities of a public official should be based on saving a public official's time and energy for performing his or her basic public office or position and not engaging in potentially conflicting activities;
- i) the rules on the prohibition of establishing business relations between the public office of the public official and organisations where his or her private interests exist should be based on the need to avoid contradictory interests between the requirements of his or her public office or position and the interests of those organisations;
- j) the rules on the prohibition of "revolving doors" should be based on the need to avoid possible conflict of interests and preferential treatment between the former public institution, office, or position of a public official and his or her new employment, representation, or organisation;
- k) the rules on the prohibition of, or limitation on acceptance of gifts by a public official should be based on the need to avoid situations where gifts offered, promised, or given would influence a public official's objective and impartial performance of duties;
- l) the rules on "daily" conflict of interests should introduce clear instructions for actions and behaviour of public officials when finding themselves in a situation of real, apparent or potential conflict of interests;
- m) it should be made mandatory for public officials to make regular declarations of all their additional jobs, memberships, offices, positions and interests and an immediate declaration of situations where during the performance of their public office or position they find themselves in a conflict of interests situation;<sup>99</sup>
- n) declarations of interest and declarations of the conflict of interests can be submitted to the public officials' superiors and/or to a relevant body or specialised agency;
- o) if public officials find themselves in a conflict of interests situation, they should immediately cease to perform any work with regard to the matter in which the conflict of interests has arisen, unless the delay would pose a risk, and wait for further instructions of the superior, other relevant body or specialised agency;
- p) the agencies dealing with conflict of interests should have all the powers needed to verify reports on interests and to make quality decisions in situations of conflict of interests;
- q) at a minimum, the powers of the agencies dealing with conflict of interests should include the right to request and receive the necessary information and documentation from all public institutions and organisations of public and private law in a reasonable period of time, to summon and interview individuals and to request the assistance from other public bodies in the framework of their powers;

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<sup>99</sup> Normally annually and after every change.

- r) sanctions applied for breaches of legal obligations in the area of conflict of interests should be effective, proportionate, and dissuasive;
- s) public officials subject to sanctions should have the right to explain their position before the application of sanctions and should have the right to challenge decisions on sanctions guaranteed;
- t) countries should consider regulating conflict of interests in the same laws as the duty of public officials to report their assets and consider authorising the same specialised agencies to deal with both topics.

### **2.3 Laws on reporting of assets of public officials**

39. Legislation on reporting of assets of public officials is to be understood as laws requiring public officials of a country to declare their wealth, incomes, and interests. While this is considered completely normal in many countries of the world, there are also countries which are only reluctantly introducing these provisions, and which usually quote one reason for the reluctance: protection of the privacy rights of public officials. As practice and numerous decisions of constitutional courts of different countries prove, it is not so difficult to find a proper balance between the privacy of public officials and the need for the transparency of their assets, especially due to the fact that public officials, particularly those in higher positions, enjoy a lower level of “expected privacy” than their fellow citizens who are not public officials. It is also interesting that many countries, when introducing a new obligation for their public officials to declare their assets, apply much more rigorous provisions and systems than the countries with an established tradition of these provisions and systems and that they tend to impose the obligation to report the assets on a much broader range of public officials than the countries with a long practice.
40. Contrary to what many might think, the reason for those provisions is not the expectation that public officials will start to declare their illicit incomes – although it might accidentally happen from time to time - but easier delineation between their licit and illicit incomes and general preventive effects of the obligation to report on own assets.
41. If a country has adopted several pieces of relevant legislation, only the first one is mentioned in Table 7 below.

Table 7: Adoption of legislation on declaration of assets of public officials by some post-socialist countries

ALB	ARM	BiH	BUL	CRO	GEO	KAZ	LAT
2003 <sup>100</sup>	2001 <sup>101</sup>	2010 <sup>102</sup>	2000 <sup>103</sup>	2003 <sup>104</sup>	1997 <sup>105</sup>	2015 <sup>106</sup>	2002 <sup>107</sup>
LIT	POL	ROM	SLO	TAJ	UKR	UZB	
1996 <sup>108</sup>	1992 <sup>109</sup>	1996 <sup>110</sup>	1992 <sup>111</sup>	1999 <sup>112</sup>	2014 <sup>113</sup>	No	

42. On the basis of the data in Table 7 above, the following facts can be established:

- there is one country (Uzbekistan) without any legislation requiring public officials to declare their assets;
- some of the countries introduced the obligation of public officials to declare their assets in special laws (Albania, Armenia, Bulgaria, Lithuania, Romania), some of the countries introduced such obligation in the legislation governing conflict of interests (Croatia, Georgia, Latvia, Poland, Slovenia) and some of them introduced that obligation in special anti-corruption laws of a general type (BiH, Tajikistan, Ukraine);
- there is a significant group of countries which introduced the legislation on reporting of assets by public officials at the end of the last century (Georgia, Lithuania, Poland, Romania, Slovenia, Tajikistan), and were soon followed by the next group of countries (Albania, Bulgaria, Croatia, Latvia);
- there are two countries (BiH, Ukraine) which adopted the legislation requiring their public officials to declare their assets very late – in 2010 and 2014 respectively.

43. International anti-corruption monitoring bodies also assess the obligation of public officials in their member states to declare their assets. Some of the latest findings in the fifteen post-socialist countries are as follows:

- In **Albania**, “the declaration of assets and private interests is regulated by Law No 9049/2003 “On the declaration and audit of assets, financial obligations of elected persons and certain public officials”. PTEFs, as well as police employees, must declare their assets to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) when entering the function (within 30 days), every year

<sup>100</sup> The Law on the declaration and audit of assets, financial obligations of elected officials and some public officials.

<sup>101</sup> The Law on declaration of property and income of senior officials of authorities in the Republic of Armenia.

<sup>102</sup> The Law on the Agency for the prevention and coordination of the fight against corruption.

<sup>103</sup> The Law on transparency of assets of officials holding high state and other positions.

<sup>104</sup> The Law on conflicts of interests in performance of public duties.

<sup>105</sup> The Law on conflict of interests and corruption in the public service.

<sup>106</sup> The Law on introducing amendments to some legislative acts on matters of declaration of income and assets of private individuals.

<sup>107</sup> The Law on prevention of the conflict of interests in the activities of state officials.

<sup>108</sup> The Law on declaration of property and income of residents.

<sup>109</sup> The Law on reducing opportunities to do business for persons performing public functions.

<sup>110</sup> The Law on the declaration and supervision of the assets of senior officials, judges, officials, and managers.

<sup>111</sup> The Law on incompatibility of public function with profit-making activity.

<sup>112</sup> The Law on the fight against corruption.

<sup>113</sup> the Law on prevention of corruption.

(by 31 March) while exercising the function, and when leaving the function (within 15 days)...".<sup>114</sup>

- In **Armenia**, "a number of progressive steps have been made to enhance the system of asset declarations. The Commission of Ethics for High Ranking Officials (CEHRO) was granted the powers and tools to verify declarations, including access to relevant databases and the mandate to impose administrative sanctions, or refer a case to the law enforcement in case elements of a criminal offence are identified. The electronic verification system developed with the support of the World Bank is connected to the relevant databases and is operational. In addition, a new criminal law provision on illicit enrichment enables law enforcement to pursue cases against public servants in connection with their unjustified wealth revealed through asset declarations. It is now crucial that the verification is carried out without political interference or bias, alleged 11 violations are followed up, proportionate and dissuasive sanctions are imposed, and the results of enforcement are made public. The transition from the CEHRO to the new CPC may hinder enforcement, which Armenia is strongly encouraged to prevent".<sup>115</sup>
- In **Bosnia and Herzegovina**, "the filing of assets and financial declarations is an important tool to prevent and detect conflicts of interests, but the usefulness of such a tool is close to none if the declarations remain hidden on unused pieces of paper. At the very least, a system of review of annual statements – through for instance random checks – needs to be introduced, along with specific, proportionate, and dissuasive sanctions in case of noncompliance. In order for this system to be credible, the human and material resources necessary must be foreseen, as well as channels of co-operation with other authorities responsible for keeping financial and property information (e.g. tax authorities and land registry)".<sup>116</sup>
- In **Bulgaria**, "above all, most of the bodies are paper tigers, denied the power to conduct substantive checks. Scrutiny, if it is effected at all, is cursory and their role has been mainly confined to placing the declarations of private interests, incompatibilities and assets of MPs, judges, or prosecutors in the public domain. In the absence of any thorough checks and discernible results in detecting and punishing violations of the conflict of interests and asset disclosure rules by MPs, judges and prosecutors, transparency is perceived as being ostensible and has not therefore been conducive to boosting public confidence in the three institutions, judges being most vulnerable to public mistrust".<sup>117</sup>
- In **Croatia**, "the checks by the Commission of Prevention of Conflict of Interests have been facilitated by a significant upgrade of the IT system in recent years. The GRECO Evaluation Team (GET) heard that there are, furthermore, plans to set up a new department for the abovementioned "regular checks", to increase the efficiency and efficacy of these checks. Currently only around 50 officials (out of approximately 3,500

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<sup>114</sup> GRECO, Fourth Evaluation Round of Albania, Evaluation Report from October 2020, page 25, [GRECO \(coe.int\)](#).

<sup>115</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Armenia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 10, 2018, [OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf](#).

<sup>116</sup> GRECO, Fourth Evaluation Round of Bosnia and Herzegovina, Evaluation Report from December 2015, page 36, [Greco Eval IV Rep \(2015\) 2E Final BiH PUBLIC](#).

<sup>117</sup> GRECO, Fourth Evaluation Round of Bulgaria, Evaluation Report from March 2015, page 3, [FOURTH EVALUATION ROUND \(coe.int\)](#).

officials subject to the provisions of the LCI) are subject to a “regular check”. In this connection, members of the government are perhaps not a priority, as the information in their financial declarations would already be scrutinised by the media. The GET encourages the Commission to develop a methodology to select the most pressing declarations to undergo a “regular check”, as based on an assessment of risks”.<sup>118</sup>

- “The system of asset declarations was introduced in **Georgia** in 2010. In 2016, 5,600 officials were required to submit declarations (of the total 40,000 civil servants). These include the President, Prime Minister, members of Government and their deputies, members of Parliament, members of Supreme Representative Bodies of Autonomous Republics, Governors, mayors, heads of local administrations, members of municipalities, heads of state-owned enterprises, heads of non-entrepreneurial legal entities founded by state or local self-government, heads of legal entities of public law and their deputies, judges, management posts in the prosecution service. However, the system does not cover all positions associated with a high risk of corruption, such as prosecutors and investigators”.<sup>119</sup>
- “As regards assets and income declarations of public officials, **Kazakhstan** yet again postponed the introduction of the new system (this time until 2020); the previously stated criticism in this regard also remains valid, namely that the new system would target only taxable assets and income which renders it ineffective, because declarations of public officials pursue other aims and require a broader scope of the disclosure. The declarations also remain closed to public access and are published only if agreed to by the declarant (even though such practice is widespread and is even taken into account during an official’s evaluation)”.<sup>120</sup>
- In **Latvia**, “from the perspective of accountability, legislative amendments need to ensure that the veracity of asset declarations of Cabinet members and of other political officials is subject to systematic (preferably, annual) in-depth and independent scrutiny. The updated asset declarations of PTEFs (and all public officials) in central government are to be made publicly accessible online as provided for in law”.<sup>121</sup>
- In **Lithuania**, “... the law establishes the duty for persons in the civil service, MPs, judges, and prosecutors to declare their private interests along with a mechanism for supervision and enforcement. The law is comprehensive and contains positive features, but to ensure the credibility of the system, more determined implementation action must be taken”.<sup>122</sup>

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<sup>118</sup> GRECO, Fifth Evaluation Round of Croatia, Evaluation Report from December 2019 page 27, [GRECO \(coe.int\)](#).

<sup>119</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 35, 2016, [OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>120</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Kazakhstan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 5, 2017, [OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>121</sup> GRECO, Fifth Evaluation Round of Latvia, Evaluation Report from June, 2018, page 4, [16808cdc91 \(coe.int\)](#).

<sup>122</sup> GRECO, Fourth Evaluation Round of Lithuania, Evaluation Report from December 2014, page 5, [FOURTH EVALUATION ROUND \(coe.int\)](#).

- "**Poland's** arrangements for the declaration of assets and interest by PTEFs also need to be strengthened and streamlined, with a central register which would make the information easily available to the public".<sup>123</sup>
- "On the positive side, **Romania** has a system in place for the declaration of income, assets and interests which can be seen as exemplary in various respects, and which is under the supervision of the National Integrity Agency. The latter can be strengthened further through a more proactive approach and better data-processing capabilities".<sup>124</sup>
- In **Slovenia**, "the CPC's action is severely hampered by clearly insufficient resources for the supervision of PTEFs' asset declarations, conflict of interests, lobbying and integrity plans, as well as by procedural shortcomings which need to be remedied as a matter of priority. The rules on lobbying contain some loopholes and are poorly complied with. PTEFs' asset declarations are neither published nor subject to substantial scrutiny".<sup>125</sup>
- In **Tajikistan**, "pursuant to the Constitutional Law of 18 July 2017, No 1455, amendments were made to the Constitutional Law On the Government of the Republic of Tajikistan, according to which, income and assets of members of the Government and their families are subject to declaration under the procedure established by the Law On Combating Corruption and the tax legislation. This is a positive development. However, there is no requirement for the contents of such statements to be made public. There is ongoing monitoring of timely submission of statements, and completeness and reliability of the information. The existing printed statement forms are not as efficient as modern electronic forms".<sup>126</sup>
- In **Ukraine**, the "electronic declaration system is one of the most important anti-corruption measures Ukraine has implemented in recent years. Over 1,271,000 declarations including top-level officials are now publicly accessible. The law enforcement authorities have started criminal proceedings based on its data. The turmoil around the system and various setbacks demonstrate the magnitude of opposition any initiative aimed at uncovering and fighting corruption faces in Ukraine. Civil society, the international community and the public at large have been mobilised to defend the system from multiple interferences. Now, as the system is showing its first results in practice, it is critical to ensure its full and uninterrupted functioning: adopt necessary bylaws, launch automated verification software, connect the system with the relevant databases to perform this function, allow the National Anti-Corruption Prevention Office (NACP) to exercise its verification mandate fully and independently and ensure full access by the National Anti-Corruption Bureau (NABU) to its database as envisaged by the law. It is recommended to focus the verification efforts on the high-level officials. The latest amendments to the Law on Prevention of Corruption (CPL) extending the scope of the declarants to anti-corruption activists

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<sup>123</sup> GRECO, Fifth Evaluation Round of Poland, Evaluation Report from December 2018, page 4, [GRECO \(coe.int\)](#).

<sup>124</sup> GRECO, Fourth Evaluation Round of Romania, Evaluation Report from December 2015, page 5, [Greco Eval IV Rep \(2015\) 4E Final Romania PUBLIC \(2\)](#).

<sup>125</sup> GRECO, Fifth Evaluation Round of Slovenia, Evaluation Report from December 2017, page 4, [Fifth Round Evaluation \(coe.int\)](#).

<sup>126</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Tajikistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 51, 2017, [OECD-ACN-Tajikistan-Round-4-Monitoring-Report-ENG.pdf](#).

depart from the purpose of the asset declaration system and can serve as a tool to discourage and intimidate anti-corruption activism in Ukraine. These amendments should be abolished".<sup>127</sup>

- In **Uzbekistan**, "there are no norms regulating assets and interest declarations by civil servants. In light of this, the report recommends introducing a uniform system of disclosure of assets and interests by all public servants (including political officials, judges, and prosecutors). Such a system should ensure filing and publication of electronic declarations online, together with mandatory risk-based verification of declarations and be complete with effective sanctions for the non-submission of declarations or submission of false declarations. It is equally important to assign or set up a body that will be responsible for the collection, verification and publication of declarations by public officials, providing it with an appropriate level of independence, resources and powers".<sup>128</sup>

44. Based on the findings of international anti-corruption monitoring bodies and generally available information, the following facts also have to be mentioned:

- there are still countries that have not introduced systems for asset declarations, e.g. Uzbekistan;
- usually public officials have to report on their assets at the beginning of their career as public officials, followed by reporting in regular intervals (in most cases annually), sometimes after any significant change in their wealth;
- the introduction of a criminal offence of illicit enrichment can boost the importance of the systems for reporting assets by public officials;<sup>129</sup>
- several post-socialist countries quickly understood the importance of systems for declarations of assets of public officials and introduced them swiftly;
- many of targeted public officials immediately raised the issue of protection of their privacy, arguing that the mere act of collecting, let alone making public the data on their assets excessively interferes with their right to privacy and exposes them to various security risks in the sense that they might get illegally deprived of their property, e.g. robbed;
- despite those claims, many of the countries introduced full transparency and publicity of collected data, which was followed by a series of challenges at the level of constitutional courts and the European Court of Human Rights (ECHR); however, they more or less all confirmed the constitutionality/legality of the collection and publication of asset reports provided that certain safeguards are introduced;<sup>130</sup>
- in one country (Slovenia), the Constitutional Court approved the publication of data on public officials' assets only for the period when they were acting as public officials;
- countries have very different solutions in place for the reporting obligations of public officials' family members: in some countries they have to follow the same regime as public officials, in some countries they do not have to report their assets or do not

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<sup>127</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Ukraine, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 8, 2017, [OECD-ACN-4th-Round-Report-Ukraine-ENG.pdf](#).

<sup>128</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Uzbekistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 9, 2019, [Anti-Corruption Reforms in UZBEKISTAN \(oecd.org\)](#).

<sup>129</sup> Not mandatory by the UNCAC.

<sup>130</sup> No publication of really sensitive data, such as addresses, car number plates.

have to do it on a regular basis, in some countries they are obliged to report but their reports are not publicly available;

- in almost all the countries there are still cases of public officials who do not want to report on their assets, a fact that is sometimes punishable as an administrative offence by a fine or a reduction of public officials' salaries or as a criminal offence;
- not all authorised institutions immediately understood that the collection of data on assets also has to be followed by their rigorous verification;
- there are countries where the system for the collection and verification of the reports exists on paper only, without any real engagement of the authorised/responsible agencies;
- under different kinds of pressure, several institutions authorised to collect, verify, and publish collected data simply abstained from implementing parts of their legal obligations, e.g. Slovenia; developed self-restricting procedures,<sup>131</sup> or failed to acknowledge any risk for public officials, e.g. NACP in Ukraine, which lead to an imminent loss of their credibility;
- there are many differences among different countries' systems on the declaration of assets and one of the most important ones is the question of how many officials should be obliged to do the reporting: if there are too many, the question of manageability arises, if there are too few, the question of equal treatment of officials and of the meaningfulness of the system occurs;
- there are countries, e.g. Georgia where the system does not cover all the positions associated with a high risk of corruption;
- there are also countries, e.g. Kazakhstan that only target taxable assets and income in public officials' reports, which renders them ineffective;
- bearing in mind the problem of an abundance of reports, some countries have developed systems in which one, usually specialised, agency, collects and verifies data from high-ranking public officials only, while the collection and verification of reports from other public officials are carried out by their respective institutions;
- if authorised agencies collect data from a large number of public officials, which does not allow them to verify their assets immediately or in regular periods, the managers of those agencies have to develop a plan for setting priorities for the verification, based on the assessment of risks;
- in the beginning, a lot of authorised agencies used the traditional method of collecting data through paper-based reports delivered by conventional postal delivery services;
- soon, it became clear that the use of modern e-tools, especially tailor-made software for the collection, storage, and verification can assist the relevant institutions in conducting their duties;<sup>132</sup>
- verification of the reported data is not possible without information from databases of other institutions; therefore, the agencies authorised for the collection and verification of reports have to have access to those databases – if possible, a direct, electronic access;
- a special challenge might be the accessibility of data collected through this mechanism by other agencies in the country, predominantly law enforcement

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<sup>131</sup> Imposing very short deadlines for verification, declaring non-admissibility of verification of assets held in other countries.

<sup>132</sup> On the basis of pre-registered red flags the system itself selects the officials whose reports should be verified as a priority.

agencies, which is not a problem for the most part and is arranged without significant difficulties; however, some countries require – as for any other power of their law enforcement agencies – a special authorisation in the law or an agreement between the institutions authorised to collect data on the public officials' assets and law enforcement agencies;

- an important consequence of the publication of the collected data is also the indirect engagement of the media and citizens of the country in the collection of additional data on the assets of public officials, which is why it is important that the agencies authorised for data collection have a mechanism in place that allows for data transmission from those external sources;
- sometimes, the forms for reporting assets are extremely complicated and it is useful if the agencies authorised for data collection engage in clarifying the procedures to the main external stakeholders;
- a central and publicly accessible register of all reports on assets of public officials can greatly contribute to the transparency of the system and increase citizens' trust in the system of assets' report collection;
- the assets of public officials reported during different periods should be compared in order to register any discrepancies;
- in practice, there are not many serious sanctions applied against those who breach the provisions on asset reporting, although there is a clear demand for specific, proportionate, and dissuasive sanctions in case of noncompliance;
- due to the lack of significant results in this area in the majority of post-socialist countries, the system of assets declaration is very often considered as an auxiliary tool to other anti-corruption prevention measures, which becomes relevant only when breaches in other areas are identified;
- in countries where the system of asset declaration does not function at all or does not function in a transparent manner, citizens lose confidence in their countries' anti-corruption efforts;
- citizens also lose confidence if the authorised institutions do not have enough resources to fulfil their tasks;
- effective systems of supervision of public officials can trigger negative reactions on the part of the governments, e.g. Croatia and Ukraine, which try to strip the authorised agencies of some of their powers or otherwise diminish the quality of the system.

### **2.3.1 Best legislative practices on reporting of assets of public officials**

45. The following pieces of legislation represent good-quality examples of laws concerning the reporting of public officials' assets: the Law on Prevention of Conflict of interests in Activities of Public Officials of Latvia,<sup>133</sup> the Law on Integrity in Exercising Public Offices and Dignities of Romania,<sup>134</sup> and – by far the most comprehensive one – the Law on Prevention of Corruption of Ukraine.<sup>135</sup> The most important substantive elements of these pieces of legislation are as follows:

46. Personal applicability: in all the three countries, the lists of public officials to whom the laws apply are very broad. While according to the Latvian and Romanian laws,<sup>136</sup> all public

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<sup>133</sup> [Latvia Conflict of interests Law 2002 consolidated as of 2007 EN.pdf \(worldbank.org\)](#).

<sup>134</sup> [Romania Law 176 2010 on integrity in exercising public offices and dignities.pdf \(europam.eu\)](#).

<sup>135</sup> [Law of Ukraine "About prevention of corruption" \(cis-legislation.com\)](#).

<sup>136</sup> Article 4 of the Latvian Law, and Article 1 of the Romanian Law.

officials are obliged to submit declarations of assets (and interests), according to the Ukrainian Law, some categories of public officials are exempted from that duty.<sup>137</sup>

47. The frequency of reporting is similar in all countries: one month (in Latvia and Romania) or fifteen days (in Ukraine) respectively after taking and leaving the office and annually for the previous year.<sup>138</sup>

48. Elements to be reported in addition to identification information are described in a very broad manner:

In **Latvia**, a public official has to report on:

- his or her office as a public official;
- information on other offices that the public official holds in addition to the office as a public official, as well as on the work-performance contracts or authorisations which he or she performs or in which he or she performs specified obligations;
- information on the immovable property in his or her ownership, possession, usage (also on the properties rented from other persons), also on such immovable property as in his or her possession in connection with guardianship or trusteeship;
- information on the fact that the public official is an individual merchant, on commercial companies the shareholder, stockholder, or partner of which he or she is, as well as on the capital shares, stock and securities owned by the public official;
- information on means of transport to be registered and owned by the public official, as well as on such means of transport which are under his or her possession, usage or which have been acquired by him or her on the bases of a leasing contract;
- information on cash or non-cash savings if their amount exceeds twenty minimum monthly wages;
- information on all kinds of income obtained during the reporting period;
- information on transactions performed by him or her if their amount exceeds twenty minimum monthly wages, by specifying the number of such transactions and the parties to the transactions;
- information on his or her debts the amount of which exceeds twenty minimum monthly wages, by specifying the amount of such debt and the debtor or creditor respectively;
- information on loans given (amount thereof) if the total amount of such loans exceeds twenty minimum monthly wages; and
- other information which he or she wishes to specify in the declaration.

In **Romania**, the elements of wealth to be reported are not part of the law itself but of two of its annexes,<sup>139</sup> enabling swift and flexible modifications.

In **Ukraine**, a public official has to report on:<sup>140</sup>

- real estate owned by the declarant and members of its family on the right of private ownership, including joint ownership, or rented by them or used by them based on other right of use, irrespective of the form of the transaction, by which such a right was acquired;
- constructions in progress, constructions not commissioned into operation or where the ownership is not registered in the manner prescribed by law;

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<sup>137</sup> Article 45.

<sup>138</sup> By 1 April in Latvia, by 15 June in Romania.

<sup>139</sup> Article 2.

<sup>140</sup> Article 48.

- valuable movable property the value of which exceeds 100 subsistence income for able-bodied persons, established as of January 1 of the reporting year and which belongs to the declarant or members of its family on the right of private ownership, including joint ownership, or is in its possession or use regardless of the form of the transaction by which such right was acquired;
- securities, including stocks, bonds, checks, certificates, promissory notes belonging to the declarant or members of its family, including the information about the type of the security, its issuer, the date of obtaining ownership of securities, quantity and par value of the securities;
- other equity rights that belong to the declarant or its family members, with an indication of the name of each business entity, its organisational and legal form, code of the Unified State Register of Enterprises and Organisations of Ukraine, the share in the authorised (share) capital of the company, enterprise, organisation, in monetary and percentage terms;
- legal entities where the public official or the members of his/her family is a final beneficiary owner (controller);
- intangible assets owned by the declarant or its family members, including intellectual property objects that can have value in monetary terms. Information on intangible assets include data on the type and characteristics of such assets, the value of assets at the time of obtaining them into ownership, and the date when the right to them appeared;
- received (accrued) income, including income in the form of salaries (monetary allowance) obtained at the main place of work, and concurrently for other work, honoraria, dividends, interest, royalties, insurance payments, charitable aid, pension, income from the sale of securities and equity rights, gifts, and other income;
- monetary assets, including cash, funds in bank accounts, contributions to credit unions and other non-bank financial institutions, funds lent to third parties, as well as assets in the form of precious (bank) metals;
- banking and other financial institutions, including abroad, in which the declaring entity or its family members have opened accounts (regardless of the type of account, as well as accounts opened by third parties in the name of the declaring entity or members of his family) or stored funds, other property;
- financial obligation of the declaring entity or its family members, including loans, borrowings, liabilities under leasing agreements, the amount of funds paid to the principal amount of the loan (credit) and interest on the loan (credit), the balance loans (credits) as of the end of the reporting period, liabilities under insurance contracts and private pension provision;
- expenditures and all transactions made within the reporting period, based on which the declarant obtains or terminates the right of ownership, possession, or use, including joint ownership, of real estate or movable property, intangible and other assets, as well and of other financial obligations;
- position or job, that is being or was performed concurrently: data on position or job (paid or not) that is performed under the agreement (contract), name of the legal entity or individual for whom the person is or was employed concurrently;
- participation of the declarant in management, revisionary or supervisory bodies of public associations, charities, self-regulatory or self-governing professional associations, membership in such associations (organisations).

49. Quite often, declarations of assets also have to contain data on assets of family members:

- in **Romania** of the husband or wife and children dependents;<sup>141</sup>
- in **Ukraine** of the husband or wife, of the public officials' minors, and of other persons living together with a public official, bounded by common life and having mutual rights and obligations, including persons who live together but are not married.<sup>142</sup>

50. Declarations of assets are publicly accessible – with some exceptions:<sup>143</sup>

- in **Latvia**, the part of a declaration that is not publicly accessible is the place of residence and personal identification number of the public official, his or her relatives and other persons specified in the declaration, as well as counterparties, including debtors and creditors specified in the declaration;<sup>144</sup>
- in **Romania**, the public cannot access the information regarding the addresses of the buildings declared, except the locality where they are located, regarding the addresses of the institutions that manage financial assets, information about personal identification code, and the signature;<sup>145</sup>
- in **Ukraine**, the registration number of the taxpayer registration card or series and number of Ukrainian passports, unique entry number in the Unified State Demographic Register, address of residence, date of birth of natural persons regarding whom information is contained in the declaration (except for the region, district, settlement where the object is located), and account numbers in a bank or other financial institution are considered to be information with limited access, not accessible for the general public.<sup>146</sup>

51. Declarations are collected and verified by specialised agencies in all the three countries: in Latvia by the Prevention and Combating of Corruption Bureau (KNAB), in Romania by the National Integrity Agency (NIA) and in Ukraine by the National Anti-Corruption Prevention Agency (NAZK).

52. Verification of the asset declarations is a process, in which:

- in **Latvia**, it is ascertained whether the declarations contain information that is indicative of violation of the restrictions specified in the Law;<sup>147</sup>
- in **Romania**, elements of possible violations of the legislation regarding the declaration of assets are identified;<sup>148</sup>
- in **Ukraine**, the accuracy of the declared data and the accuracy of evaluation of the declared assets are ascertained, and declarations are examined for the presence of a conflict of interests and signs of illicit enrichment;<sup>149</sup>

53. Due to a large amount of data, not all declarations can be fully verified. Therefore, the laws provide some criteria for deciding which declarations to verify:

- in **Romania**, there is random assignment of verifications;<sup>150</sup>

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<sup>141</sup> Article 3.

<sup>142</sup> Article 1, paragraph 1.

<sup>143</sup> Section 26 of the Latvian Law, Article 12/6 of the Romanian Law, Article 47 of the Ukrainian Law.

<sup>144</sup> Section 26/4.

<sup>145</sup> Article 12/6.

<sup>146</sup> Article 47/1.

<sup>147</sup> Section 28/2.

<sup>148</sup> Article 10.

<sup>149</sup> Article 51-3.

<sup>150</sup> Article 13/1.

- in **Ukraine**, declarations of officials that hold responsible and especially responsible positions,<sup>151</sup> or positions associated with a high level of corruption risks, declarations of officials where discrepancies were discovered as a result of logical and arithmetical control and declarations of the public officials' family members who have refused to submit the necessary information, are subject to mandatory and full verification.<sup>152</sup>

54. In verification of declarations, the specialised agencies have the following powers:

- **KNAB in Latvia** has the right to request and receive information and documents from the relevant public official, State or local government authorities, merchants, public or political organisations and associations thereof, religious organisations or other institutions, as well as from the persons that are specified or in accordance with the provisions of the Law should have been specified in the relevant declaration and to request and receive explanations in writing and documents from any person, as well as to verify the legality of the acquisition of the property of the official;<sup>153</sup>
- **NIA in Romania** has the right to require from all institutions and public authorities, other legal entities of public or private law as well as individuals, to submit documents and information necessary for the evaluation, regardless of its confidentiality, furthermore, the right to conduct "extrajudicial expertise" and the right to acquire additional information from a public official;<sup>154</sup>
- **NAZK in Ukraine** has the right to obtain information necessary to fulfil its objectives from state authorities, authorities of the Autonomous Republic of Crimea, local self-government, business entities regardless of ownership and their officials, citizens and their associations; have direct automated access to information and telecommunication and reference systems, registers, data banks, including those containing information with limited access, the holder (administrator) of which are

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<sup>151</sup> According to the Note after Article 51-3, official persons who hold responsible and especially responsible positions are the President of Ukraine, Prime Minister of Ukraine, member of the Cabinet of Ministers of Ukraine, First Deputy and Deputy Ministers, member of the National Council on TV and Radio Broadcasting, National Commission on Regulation of Financial Markets, Anti-monopoly Committee, Commissioner for Complaints of Violations of Public Procurement Legislation, Head of the State Committee on TV and Radio, Head of the State Property Fund, his first deputy and deputy, member of the Central Election Commission, member, inspector of High Council of Justice, member, inspector of High Qualifications Commission of Judges, member of parliament, Ombudsman, Commissioner for State Language Protection, members of the National Commission on State Language Standards, Director of the National Anti-Corruption Bureau of Ukraine, his first Deputy and Deputy, Head of the National Agency on Corruption Prevention and his deputies Prosecutor General, his first deputy and deputy, Head of the National Bank of Ukraine, his first deputy and deputy, member of the National Bank's Council, Secretary of the National Security and Defence Council, his first deputy and deputy, Head of the Office of the President of Ukraine, his first deputy and deputy, Permanent Representative of the President of Ukraine the Autonomous Republic of Crimea, his first deputy and deputy, adviser or assistant to the President of Ukraine, Prime Minister of Ukraine, persons whose positions belong to civil service positions of categories "A" and "B", and persons whose positions are assigned in accordance with Article 14 of the Law of Ukraine "On Service in the Local Self-Government Bodies" to 1-3 categories, as well as judges, Judge of the Constitutional Court of Ukraine, prosecutors and investigators, heads, deputy heads of state authorities which jurisdiction covers the whole territory of Ukraine, heads of their staff and heads of their independent structural subdivisions, heads and deputy heads of state authorities, authorities of the Autonomous Republic of Crimea which jurisdiction covers the territory of one or more regions, the Autonomous Republic of Crimea, Kyiv and Sevastopol, heads of state authorities, authorities of the Autonomous Republic of Crimea which jurisdiction covers the territory of one or more districts, of the city of republican significance in the Autonomous Republic of Crimea or regional significance, the district in the city, cities of district significance, military officials of senior officer ranks.

<sup>152</sup> Ibid.

<sup>153</sup> Section 28 of the Latvian Law.

<sup>154</sup> Article 17 of the Romanian Law.

state bodies or local governments, use state, including government, means of communication, special communication networks and other technical means; receive information from open databases, registers of foreign countries; engage employees of state authorities, authorities of the Autonomous Republic of Crimea, local self-government in certain activities; receive statements from individuals and legal entities regarding violation of the Law; to obtain from persons authorised to perform the functions of the state or local self-government, business entities regardless of ownership, their officials, citizens and their associations written explanations; initiate an official investigation, to take measures to hold liable persons guilty of corruption and corruption-related offenses, to send to specially authorised subjects in the area of countering corruption materials that show evidence of such offenses.<sup>155</sup>

55. For breaches in this area, the following sanctions are provided:

- according to the Latvian Law, in addition to disciplinary sanctions, income and financial benefits obtained by violating the restrictions specified in the Law or a proportional augmentation thereof shall accrue to the State;<sup>156</sup>
- according to the Romanian Law,<sup>157</sup> breaches are sanctioned with fines or with the sanction for a criminal offence;<sup>158</sup>
- according to the Ukrainian Law, submitting deliberately false information in a declaration or intentional failure to submit the said declaration, is punishable by imprisonment for a term up to two years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.<sup>159</sup>

56. If significant differences between the real assets of the public official and his or her declaration are discovered, specialised agencies submit their reports to other institutions: political bodies – e.g. the prime minister (in the case of Latvia), tax authorities, law enforcement agencies, etc.

57. Manageability of declarations is especially important in countries where specialised agencies receive a significant number of declarations every year. In Ukraine, the NAZK receives more than 1,000,000 declarations every year, which can only be managed because they are submitted electronically and because the first, logical and arithmetical control is conducted with the assistance of an E-tool raising red flags and because they are stored in a publicly accessible “Unified State Register of Declarations of Persons Authorised to Perform the Functions of the State or Local Self-government”, which is set up and maintained by the National Agency.

### **2.3.2 Recommendations concerning legislation on assets declarations**

58. Based on the experience and best practices of some of the post-socialist countries and on developments and knowledge acquired by other countries it is possible to make the following recommendations on how the legislation on the reporting of assets should be developed and implemented:

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<sup>155</sup> Article 12 of the Ukrainian Law.

<sup>156</sup> Section 30 of the Latvian Law.

<sup>157</sup> Articles 27 and 28 of the Romanian Law.

<sup>158</sup> If the public official intentionally files the forms or declarations of interest with untrue statements.

<sup>159</sup> Chapter 13-A of the Ukrainian Law.

- a) the provisions on the duty of public officials to report their assets should apply to the widest possible range of public officials in the country, especially those at the highest level;
- b) in addition to public officials, other persons, who might be used by public officials to hide their assets – family members, partners, etc. – should also be obliged to report their assets, whereby a gradual approach can also be considered, according to which other persons, but not family members, would have to report only in cases of existing suspicions of their participation in hiding the assets;
- c) public officials should report their assets immediately after taking a public position or office, during their tenure on a regular basis and after a certain period of time after ending their public position or office. In addition, the possibility for the duty of public officials to report any (significant) change in their assets instantly could also be considered;
- d) assets to be reported by public officials should be defined extensively and precisely,<sup>160</sup> with all elements influencing the wealth of public officials on the positive but also on the negative side;<sup>161</sup>
- e) reports on assets of public officials should be made publicly available with the exception of protected personal and other sensitive data, whereby the range of exceptions should be as narrow as possible;
- f) all reports have to be subject to thorough verification, whereby the criteria for prioritisation of the verification of reports should be clear and known in advance, especially taking into consideration the importance of the offices and positions of public officials and their exposure to potential integrity risks;
- g) an important part of the verification is also a comparison of assets of public officials through longer periods of time;
- h) reports on assets of public officials should, in principle, be collected, stored and verified by specialised agencies, with the exception of reports of the lowest levels of public officials, which can be collected, stored and verified by their immediate superiors, depending on the manageability of the reporting system;<sup>162</sup>
- i) the agencies collecting, storing, and verifying reports should be absolutely autonomous in performing their duties and have appropriate equipment, powers, and other resources at their disposal for effective and transparent fulfilment of duties;
- j) at a minimum, the powers of the agencies dealing with reports on public officials' assets should include the right to request and receive the necessary information and documentation from all public institutions and organisations of public and private law, including banks, in a reasonable period of time, to summon and interview individuals and to request the assistance from other public bodies in the framework of their powers;
- k) the agencies collecting and verifying reports of public officials should have direct online access to data of other public agencies, if appropriate;<sup>163</sup>
- l) sanctions applied for breaches of legal obligations in the area of asset reporting should be effective, proportionate, and dissuasive;
- m) cases where assets of public officials exceeding their legal incomes are confirmed and the surplus cannot be justified by public officials, should be transferred to other

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<sup>160</sup> Regardless of its taxation status, the country of presence, etc.

<sup>161</sup> E.g. debts.

<sup>162</sup> Which equals to the number of reports submitted annually.

<sup>163</sup> Normally, intelligence, law enforcement and similar data will be exempt from such accessibility.

- relevant authorities in order to enable the conduct of necessary investigations and application of other measures, including taxation, seizure, and confiscation;
- n) public officials subject to sanctions should have the right to explain their position before the application of sanctions and should have the right to challenge decisions on sanctions guaranteed;
  - o) countries should consider regulating asset reporting in the same laws as a conflict of interests and consider authorising the same specialised agencies to deal with both topics;
  - p) if possible, countries should introduce electronic reporting, storage, and verification (using software for automatic detection of red flags) of reports, enhancing the speed, traceability and manageability of collection, storage, and verification of reports on public officials' assets;
  - q) in compliance with their basic legal principles, countries should consider introducing the criminal offence of illicit enrichment, as defined by the UN Convention against Corruption.

## **2.4 Laws on liability of legal persons**

59. Laws on the liability of legal persons are to be understood as pieces of legislation that introduce the liability of companies and other legal persons for different types of corruption offences. Many international anti-corruption conventions require the introduction of such liability, but they all give countries the option of choosing among three possible types of liability of legal persons: civil, administrative, and criminal. Notwithstanding this fact, the need for sanctions for legal persons' corruption to be effective, proportionate, and dissuasive is underlined in all international anti-corruption legal instruments.
60. Contrary to many other countries of the world, post-socialist countries always face significant problems while introducing liability of legal persons: for centuries, in all these countries, the responsibility for committed offences has been based on the subjective element of guilt, composed of mental sanity of the perpetrator and his/her will to commit an offence.<sup>164</sup> Since guilt cannot be attributed to legal persons as virtual creations, in many of these countries the academia, theoreticians and even practitioners were (and some still are) fighting the idea of the responsibility of those creations, especially due to the fact that legal persons cannot commit any criminal offence themselves: it is always a natural person who commits an offence and not a legal one. However, the idea that legal persons benefiting from crime or enabling it should be held responsible eventually prevailed through years of consistent pressure of international organisations and became a standard in all modern criminal legislations round the world. It has not yet been fully embraced in practice yet, but more and more countries are getting there.
61. General elements of corruption offences for which legal persons have to be held responsible are not discussed in this document. Despite the loopholes that still exist in this area, such as the lack of coverage of all possible corrupt actions,<sup>165</sup> effective regret,<sup>166</sup> the lack of coverage of intermediaries' corrupt activities, less than effective, proportionate, and dissuasive sanctions and the statute of limitations being too short, the level of post-socialist countries' compliance with the requirements of the international

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<sup>164</sup> Expressed through his/her intent or negligence.

<sup>165</sup> Contrary to requirements of anti-corruption conventions, some countries still do not incriminate all forms of active bribery: promising, offering and giving.

<sup>166</sup> Not sanctioning perpetrators of corruption offences who report themselves.

anti-corruption legal instruments in this area is already very high. In addition to that, having legislation on liability of legal persons in force is an unambiguous sign of a very advanced legal system in the area of general liability for corruption offences.

62. Countries do not tend to amend their legislation on the liability of corruption offences very often. If the analysed countries adopted more than one legislative act dealing with this topic, it is always the first piece of legislation which is mentioned in Table 8 below.

63. On the basis of the Table 8 data, the following facts can be established:

- there are three countries (Armenia, Kazakhstan, Tajikistan) that do not have any legislation on the liability of legal persons for corruption, which confirms the observation above that some post-socialist countries have particular problems when it comes to introducing the liability of legal persons;
- a large majority of countries introduced the liability of legal persons for corruption in the period between 1999 and 2011;
- Uzbekistan introduced liability of legal persons for corruption as late as in 2017;
- a majority of countries introduced criminal liability of legal persons for corruption either in general criminal codes (BiH, Georgia, Latvia, Lithuania, Romania) or in a separate law (Albania, Croatia, Poland, Slovenia, Ukraine), whereby for one country (Uzbekistan) the nature of liability of legal persons cannot be identified.

*Table 8: Adoption of legislation on liability of legal persons by some post-socialist countries*

<b>ALB</b>	<b>ARM</b>	<b>BiH</b>	<b>BUL</b>	<b>CRO</b>	<b>GEO</b>	<b>KAZ</b>	<b>LAT</b>
2007 <sup>167</sup>	No	2003 <sup>168</sup>	2005 <sup>169</sup>	2003 <sup>170</sup>	2006 <sup>171</sup>	No	2005 <sup>172</sup>
<b>LIT</b>	<b>POL</b>	<b>ROM</b>	<b>SLO</b>	<b>TAJ</b>	<b>UKR</b>	<b>UZB</b>	
2005 <sup>173</sup>	2002 <sup>174</sup>	2006 <sup>175</sup>	1999 <sup>176</sup>	No	2001 <sup>177</sup>	2017 <sup>178</sup>	

64. International anti-corruption monitoring bodies also assess the liability of legal persons in their member states. Some of the latest findings in the fifteen post-socialist countries are as follows:

- In **Albania**, the "Law on the responsibility of legal persons" contains provisions for the implementation of Article 45 of the Criminal Code, defining, *inter alia*, the organs and

<sup>167</sup> The Law on the responsibility of legal persons.

<sup>168</sup> The Criminal Code.

<sup>169</sup> The Law on administrative offences and sanctions.

<sup>170</sup> The Law on responsibility of legal persons for criminal offences.

<sup>171</sup> The Criminal Code.

<sup>172</sup> The Criminal Code.

<sup>173</sup> The Criminal Code.

<sup>174</sup> The Law on liability of collective entities for acts prohibited under penalty.

<sup>175</sup> The Criminal Code.

<sup>176</sup> The Law on liability of legal persons for criminal offences.

<sup>177</sup> The Law on responsibility of legal person for committing corruption offences.

<sup>178</sup> The Law on combating corruption.

natural persons, for whose acts the legal person is criminally liable as well as the applicable sanctions".<sup>179</sup>

- "The monitoring team welcomes **Armenia's** intention to introduce criminal liability of legal persons and expects the respective legislative amendments to be adopted soon".<sup>180</sup>
- "With entry into force of new criminal legislation in 2003 the legal concept of liability of legal persons for criminal offences was introduced into the criminal law of **Bosnia and Herzegovina** (BiH). However, the general scientific indifference to this issue reflected in limited literary fund and the scarcity, disorganisation and inaccessibility of relevant case law in different circuits of BiH's criminal justice system well as the absence or unavailability of relevant statistical data have created a difficult environment for scientific observation of the results of the implementation of new legal solutions regarding the liability of legal persons for criminal offenses".<sup>181</sup>
- "**Bulgaria** still needs to make major improvements in its legal framework for holding legal persons liable for foreign bribery or related offences in order to render it effective, including by providing for an effective jurisdictional base to commence proceedings against legal persons, removing undue restrictions on proceedings to cases where the natural person perpetrator is prosecuted or convicted, and avoiding any impediments to the effective sanctioning of legal persons".<sup>182</sup>
- "**Croatia** has introduced in its legal system the criminal responsibility of legal persons. The Act on the Responsibility of Legal Persons for Criminal Offences foresees two types of sanctions where the legal person is found criminally liable: penalties consisting of fines and termination of the legal person; and security measures, including professional bans, confiscation and publication of the verdict".<sup>183</sup>
- "**Georgia** was a leader in the region in establishing the criminal liability of legal entities under its laws. However, the enforcement is still almost non-existent. An additional issue that was disclosed in this round of monitoring involves the autonomous nature of the corporate liability, as the report finds it problematic that a company will be released from liability under certain circumstances excluding guilt or wrongfulness of the action of an individual perpetrator. As with the corporate liability, the lack of investigation of foreign bribery indicates the need for further training and greater awareness of the foreign bribery offence".<sup>184</sup>
- In **Kazakhstan**, "when developing a new draft of the RK Criminal Code, the members of the interdepartmental working group unanimously decided that the introduction of

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<sup>179</sup> GRECO, Second Evaluation Round of Albania, Compliance Report from October 2007, page 7, [Greco RC-II 2007\\_12E Final Albania PUBLIC \(coe.int\)](#).

<sup>180</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Armenia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 131, 2018, [OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf](#).

<sup>181</sup> Dina Bajraktarević Pajević, Muamer Kavazović, Marija Lučić-Ćatić, Financial crime of legal persons in case law of the court of Bosnia and Herzegovina, 2019, [CEEOL - Article Detail](#).

<sup>182</sup> OECD WGB, Implementing the OECD Anti-Bribery Convention, Bulgaria Phase 4 Report, 2021, page 7, [Bulgaria-phase-4-report-en.pdf \(oecd.org\)](#).

<sup>183</sup> UNODC, Country Review Report of Croatia, 2012, page 7, [country-review-report-croatia.pdf \(uncaccoalition.org\)](#).

<sup>184</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 9, 2016, [OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf](#).

criminal liability of legal entities is inexpedient in view of the absence of a legal entity's personal liability, which is an obligatory sign of the crime and may lead to serious negative consequences for the country's economy. According to the members of the working group, administrative pressure on business will increase from the control and supervisory bodies, additional conditions for corruption and raider<sup>185</sup> schemes will be created, which in turn will lead to the withdrawal of assets abroad, the investment expectations of Kazakhstan's economy may not be justified, as the income received by domestic and foreign entrepreneurs will not be invested in the development of their own production".<sup>186</sup>

- For **Latvia**, "the lead examiners are of the view that the limited court practice together with the lack of any foreign bribery corporate convictions to date does not allow to draw definitive conclusions on the application of the corporate liability regime in practice".<sup>187</sup>
- "The lead examiners acknowledge recent efforts to bring to **Lithuania's** corporate liability regime in line with the Convention but consider that law enforcement authorities are not sufficiently trained to enforce corporate liability in foreign bribery cases. Therefore, the lead examiners recommend that Lithuania provides guidance and training to practitioners on the practical application of Lithuania's corporate criminal liability regime".<sup>188</sup>
- In **Poland**, "in addition to the requirement that a natural person is convicted, the lack of awareness of the liability of legal persons among the private and public sector may be a reason why enforcement of the Act is disappointingly low. The lead examiners recommend that Poland take steps to ensure that police and prosecutors are adequately trained and made aware of the importance of effectively enforcing the liability of legal persons, so that they will be better equipped and more proactive in investigating and prosecuting legal persons for foreign bribery offences. Such training should address the difficulties in investigating and prosecuting legal persons".<sup>189</sup>
- In **Romania**, "with the adoption of Law No 278/2006 amending the Criminal Code, the criminal liability of legal persons was introduced for the first time in Romania. It is applicable to all legal persons, except the State and public authorities carrying out an activity that is not of private interest".<sup>190</sup>
- "**Slovenia's** corporate liability regime has not been amended since Phase 3 to implement the Working Group's recommendations. This, in addition to the ongoing lack of case law involving the liability of legal persons for bribery offences makes it impossible to assess any progress by Slovenia. While the Corporate Liability Review

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<sup>185</sup> »Raiders« is a term used in some Eastern European countries for persons illegally depriving shareholders of their property rights in the companies.

<sup>186</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Kazakhstan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 138, 2017, [OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>187</sup> OECD WGB, Implementing the OECD Anti-Bribery Convention, Latvia Phase 3 Report, 2019, page 22, [OECD-Latvia-Phase-3-Report-ENG.pdf](#),

<sup>188</sup> OECD WGB, Implementing the OECD Anti-Bribery Convention, Lithuania Phase 2 Report, 2017, page 64, [Lithuania Phase 2 Draft Report \(oecd.org\)](#).

<sup>189</sup> OECD WGB, Implementing the OECD Anti-Bribery Convention, Poland Phase 3 Report, 2013, page 20, [Polandphase3reportEN.pdf \(oecd.org\)](#).

<sup>190</sup> GRECO, Second Evaluation Round of Romania, Compliance Report from December 2007, page 15, [Microsoft Word - Greco RC-II\\_2007\\_9E Final Romania PUBLIC.doc \(coe.int\)](#).

generated interesting insights, and there appears to be a broader interpretation of Article 4. On the Law on Liability of Legal Persons for Corruption Offences (LLPCO) and its requirements for the link between the liability of natural and legal persons, the lead examiners are concerned that a lack of training and awareness remains".<sup>191</sup>

- "**Tajikistan** has not even taken any steps to analyse this issue, to identify the most acceptable model of the liability for legal entities for corruption offences".<sup>192</sup>
- "Quasi-criminal corporate liability for corruption offences was introduced in **Ukraine** at the time of the 3rd round of IAP monitoring and regrettably, since then, no changes have been made to ensure its autonomous nature, as was recommended. Corporate liability also remains to be almost entirely unenforced in Ukraine. The novelty of this legal concept is understandable, however, in order for the practice to form the report calls for a concerted push for pursuing such liability and proposes that it be done both in terms of policy messages and in practical terms of providing training specifically focused on the liability of legal persons for corruption offences".<sup>193</sup>
- "**Uzbekistan** has not made any tangible progress in implementing this recommendation. Nevertheless, the experts recognise as a positive step the inclusion in the new Law on Combating Corruption of the provision that legal entities are liable to criminal sanctions if they commit corruption offenses (Article 27)".<sup>194</sup>

65. Based on the findings of international anti-corruption monitoring bodies and generally available information, the following facts also have to be mentioned:

- in some countries that have adopted the legislation on liability of legal persons there is still no real enforcement of that legislation;
- the introduction of the liability of legal persons is seen as damaging for the national economy in some countries;<sup>195</sup>
- in Ukraine, the Law on responsibility of legal person for committing corruption offences was in force for 4 days only, from 1<sup>st</sup> January 2011 to 5<sup>th</sup> January 2011, which clearly proves that the Law was adopted only to comply with a specific recommendation of GRECO and then immediately abrogated;
- in Uzbekistan, the Law on combating corruption from 2017 contains only one article defining the liability of legal persons for corruption, which does not make a possible credible assessment of the liability of legal persons regime in the country;
- during the time of socialism, some of the countries under research already sanctioned legal persons for administrative offences; however, this fact does not seem to significantly influence their choice while deciding on the future nature of liability of legal persons;

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<sup>191</sup> OECD WGB, Implementing the OECD Anti-Bribery Convention, Slovenia Phase 4 Report, 2021, page 69, [Phase 4 Report: Slovenia \(oecd.org\)](#).

<sup>192</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Tajikistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 92, 2017, [OECD-ACN-Tajikistan-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>193</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Ukraine, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 11, 2017, [OECD-ACN-4th-Round-Report-Ukraine-ENG.pdf](#).

<sup>194</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Uzbekistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 213, 2019, [Anti-Corruption Reforms in UZBEKISTAN \(oecd.org\)](#).

<sup>195</sup> E.g. in Kazakhstan.

- there are countries that apply the general liability of legal persons to a whole range of criminal offences, and countries which hold legal persons liable only for certain types of offences, for example, corruption;<sup>196</sup>
- practice from other parts of the world proves that the nature – criminal, administrative, or civil – of liability of legal persons is less important than strict implementation of the provisions in force;
- an important issue is also the question of the procedure in which the liability of legal persons will be enforced: some countries use a special procedure for legal persons only, while others apply a slightly adjusted general administrative, criminal, or civil procedure;<sup>197</sup>
- substantially, the liability of legal persons should not be limited to cases where the natural person or persons who committed the offence is/are prosecuted or convicted;
- the liability of legal persons could be triggered by actions/omissions of any natural person in the legal person if that natural person: (a) offers, promises, or gives a bribe; (b) directs or authorises a lower-level person to offer, promise or give a bribe; or (c) fails to prevent a lower-level person from bribing, including through a failure to supervise him or her or through a failure to implement adequate internal controls, ethics and compliance programmes or measures;
- elements that influence the level of sanctioning of legal persons and serve as mitigating factors in a growing number of countries around the world are the following: (a) fulsome, timely, and voluntary disclosures to law enforcement authorities of misconduct; (b) full cooperation with law enforcement authorities including the disclosure of all facts relevant to the wrongdoing at issue; (c) acceptance of responsibility; or (d) timely and appropriate remediation including the implementation or enhancement of an effective ethics and compliance programme;
- in recent years, so-called “ethics and compliance mechanisms” are being developed by legal persons as sets of measures which should assist legal persons to prevent and detect their own corruption;
- until recently, effective “ethics and compliance mechanisms” only ensured a better position of a legal person in a procedure for the enforcement of its liability,<sup>198</sup> however, today the existence of an effective “ethics and compliance mechanisms” in a legal person can also provide for a privileged position of such a legal person when governments are deciding whom to grant public advantages, including public subsidies, licences, public procurement contracts, contracts funded by official development assistance, and officially supported export credits;
- awareness raising and training of all institutions involved in the enforcement of liability of legal persons is very important in ensuring effective implementation of the legal provisions dealing with it.<sup>199</sup>

## 2.5 Laws on access to public information

66. Laws on access to public information are to be understood as pieces of legislation that enable citizens to get acquainted with the information dealt with by public authorities of their countries in cases where that information is not protected by any kind of secrecy.<sup>200</sup>

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<sup>196</sup> E.g. Ukraine in 2011.

<sup>197</sup> Adjusted due to the fact that the representative of the legal person on trial cannot be the representative whose individual responsibility for the same act is also being enforced.

<sup>198</sup> Either serving as a mitigating circumstance or even as a full defence against its responsibility.

<sup>199</sup> Police, prosecution service and judiciary.

<sup>200</sup> Such as state secret, military secret, official secret, business secret, etc.

A general rule which applies more and more in this area is the general accessibility of such information, while its protection with secrecy is increasingly seen as an exemption, which has to fulfil two criteria to be considered valid: substantial,<sup>201</sup> and procedural.<sup>202</sup>

67. As in many other cases, post-socialist countries also face specific challenges in this area: for many years, public administrations of these countries, together with the information in their possession, were considered to be a tool of strong state institutions to lead and rule the country and not as a service for citizens, which is the modern approach in more and more countries around the world. Such perception of public institutions also directly influenced the perception of information in their domain as something which – as a rule – has to be kept out of reach of citizens even if it is not protected by any kind of secrecy. This culture of inaccessibility developed through decades, sometimes centuries, cannot be easily changed into a culture of accessibility in a matter of one or two decades. Even in cases where there is legislation in place, that does not necessarily mean that there will be no obstacles for citizens trying to access the information they need. The absence of an international legal instrument which would set standards in this area is abundantly exploited by some countries, which invoke peculiar circumstances of the national situation while limiting transparency. In addition, situations appear from time to time in the analysed countries,<sup>203</sup> which objectively prevent their governments to ensure full and unlimited access to all public information in practice.
68. Countries do not make changes in the legislation on access to public information very often. If the analysed countries adopted more than one legislative act dealing with this topic, it is always the first piece of legislation which is mentioned in Table 9 below.

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<sup>201</sup> According to which the nature of the information should be important enough to “deserve” to be protected as secret information.

<sup>202</sup> According to which the decision to protect a certain type of information as secret has to be made through a procedure set in advance.

<sup>203</sup> At the time of writing this paper, the situations in Armenia (being engaged in armed conflict with Azerbaijan) and Ukraine (being forcefully deprived of some of its territories) objectively impose some limitations on the access to public information.

Table 9: Adoption of legislation on access to public information by some post-socialist countries

ALB	ARM	BiH	BUL	CRO	GEO	KAZ	LAT
1999 <sup>204</sup>	2003 <sup>205</sup>	2003 <sup>206</sup>	2000 <sup>207</sup>	2013 <sup>208</sup>	1999 <sup>209</sup>	2015 <sup>210</sup>	1998 <sup>211</sup>
LIT	POL	ROM	SLO	TAJ	UKR	UZB	
2000 <sup>212</sup>	2002 <sup>213</sup>	2001 <sup>214</sup>	2003 <sup>215</sup>	2000 <sup>216</sup>	1992 <sup>217</sup>	1997 <sup>218</sup>	

69. On the basis of Table 9 data above, the following facts can be established:

- the first country to adopt legislation on the access to public information was Ukraine back in 1992;
- twelve countries adopted freedom of information legislation in the period between 1997 and 2002;
- two countries (Croatia and Kazakhstan) adopted their freedom of information legislation in 2013 and 2015, respectively;
- Albania, Uzbekistan, and Tajikistan, which in other categories under analysis were late in adopting relevant legislation, were among the first countries to adopt the freedom of information legislation.

70. International anti-corruption monitoring bodies also assess access to public information in their member states. Some of the latest findings in the fifteen post-socialist countries are as follows:

- In **Albania**, "access to public information is guaranteed by the Constitution. Information on the conduct expected from PTEFs is made available to the general public, based on the law. Public sector bodies must implement institutional transparency programmes, using websites in particular. Every ministry must publish the basic information on its organisation and functioning on its own website. Such information must include the organisational structure of the bodies, the relevant norms, the procedures to file an application for information, the appeal procedures against the respective decisions, data on officials (including their salary when subject to the obligation of declaring their assets), description of the selection procedures, powers, and tasks of the senior officials, monitoring and controlling mechanisms, budgetary data. There is also a procedure for providing public information upon

<sup>204</sup> The Law on the right of access to official documents.

<sup>205</sup> The Law on freedom of information.

<sup>206</sup> The Law on free access to information.

<sup>207</sup> The Law on access to public information.

<sup>208</sup> The Law on the right to access to information.

<sup>209</sup> The General Administrative Code.

<sup>210</sup> The Law on access to information.

<sup>211</sup> The freedom of information Law.

<sup>212</sup> The Law on the right to obtain information from state and local government.

<sup>213</sup> The Act of on access to public information (adopted in 2001, entered into force in 2002).

<sup>214</sup> The Law on freedom of access to information of public interest.

<sup>215</sup> The Law on the access to information of public character.

<sup>216</sup> The Law on information.

<sup>217</sup> The Law on Information.

<sup>218</sup> The Law on the guarantees and freedom of access to information.

request, without this request needing to be motivated. Public sector bodies are obliged to inform the applicant whether they hold the requested information or not, and refusals are to be reasoned in writing and are to include instruction on the right to appeal. Public sector bodies must also create and archive a digital copy of their official internet site”.<sup>219</sup>

- “**Armenia** has considerably improved freedom of information (FOI) legal framework by adopting the long-awaited secondary legislation. FOI officers have been appointed and underwent training. The e-requests portal has been launched with the analytical module generating statistics but based on e-requests only. Oversight body has not been designated to ensure uniform application of the law, collection of data and guidance to the agencies. The FOI law has been analysed as recommended, however, according to the NGOs, the draft that was produced in the end significantly worsens the existing regulations. The draft is currently being reviewed by the Venice Commission. Armenia has not taken measures to ensure transparency of entities using public funds in practice. Armenia is urged to abstain from the measures limiting investigative journalism, a significant tool to uncover and fight corruption”.<sup>220</sup>
- in **Bosnia and Herzegovina**, “government operations remain largely inaccessible to the public. Procurement awards are often made in secret and public institutions often do not comply with freedom of information laws. Candidates for major offices are obliged to make financial disclosures, but the relevant laws do not meet international standards, and the resulting disclosures are considered unreliable. Debate and decisions on matters of public interest, including legislation and subjects pertaining to European Union (EU) accession, routinely occur during interparty negotiations that take place behind closed doors, outside of government institutions”.<sup>221</sup>
- “Although **Bulgaria** has laws meant to ensure that the government operates with transparency, they are only partially enforced. While the transparency in the work of Parliament, the cabinet, and municipal bodies has increased considerably in recent years, public access to information about budgets and spending of various government agencies is sometimes inadequate or presented in an inaccessible way”.<sup>222</sup>
- In **Croatia**, “notwithstanding the overall positive impression of the law in place and the work of the Information Commissioner, and a relatively high number of information requests granted within the legal deadlines, some issues nevertheless remain with the enforcement of the law. In ...case of failure to act as instructed by the Commissioner, the Commissioner is authorised to “file an indictment”. Prior to filing an indictment with the competent misdemeanour court, the “responsible person” in a public authority is to be notified that an indictment will be filed against them. The offender must sign this notification in person, in order to confirm its receipt (i.e. it is not enough that the notice of a fine is served), which significantly affects the

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<sup>219</sup> GRECO, Fifth Evaluation Round of Albania, Evaluation Report from October 2020, page 18, [GRECO \(coe.int\)](https://www.greco.int/).

<sup>220</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Armenia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 12, 2018, [OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf](#).

<sup>221</sup> Freedom House, Freedom in the World 2021, Bosnia and Herzegovina, [Bosnia and Herzegovina: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>222</sup> Freedom House, Freedom in the World 2021, Bulgaria, [Bulgaria: Freedom in the World 2021 Country Report | Freedom House](#).

efficiency of the procedure. In addition, proceedings before the Misdemeanour Court can last three to four years, at which point the usefulness of the sought information may be obsolete. It would therefore be useful if, for example, the possibility was explored to provide the Information Commissioner him/herself with the authority to enforce his/her decisions, rather than making him reliant on other authorities for the enforcement of his/her decisions. In short, in view of the GRECO Evaluation Team, more can be done to provide for a simpler and quicker procedure to make access to information for citizens more effective".<sup>223</sup>

- "**Georgia** has basic legal provisions on access to information but lacks a modern stand-alone right to information law. There is also no dedicated oversight authority that would ensure enforcement of the relevant provisions. This, together with the lack of sufficient training and awareness raising, affects the implementation of the right to information in Georgia and it remains low. Government efforts to draft a new FOI law and the substance of the draft law are very welcome, but it is unfortunate that after two years of work the draft has yet to reach the parliament. The introduction of the system of proactive publication of information was an important reform; however, its implementation is uneven, and many public authorities do not comply with the set standards".<sup>224</sup>
- "**Kazakhstan** made an important step by approving in 2015 and starting the implementation of the long-awaited Law on Access to Information. This is the first law on access to information in Kazakhstan. While the law has a number of positive provisions, it fails to comply with the key international standards and best practices and should be amended as a matter of urgency. The law has yet to be fully enforced, and there is no effective control over its compliance. In this regard, the Commission on Access to Information should be strengthened by changing its status, broadening its powers, and ensuring its autonomy from the executive authorities. Kazakhstan did not implement the recommendation concerning liability for defamation; the latter was widely used in practice, which restricted freedom of speech and reporting of corruption".<sup>225</sup>
- in **Latvia**, "all Government documents are generally freely accessible by the public ([www.mk.gov.lv](http://www.mk.gov.lv)) as well on the relevant websites of the ministries and other public institutions. The author or the institution's head may decide to restrict access on legal grounds. Restricted access also applies to documents drawn up in connection with the resolution of certain matters, including by advisors or invited experts and by one institution for the use of another. Access to restricted information can still be requested in writing, indicating the purpose and grounds for the request. Refusal to provide access can be appealed to an administrative district court and the Senate of the Supreme Court".<sup>226</sup>

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<sup>223</sup> GRECO, Fifth Evaluation Round of Croatia, Evaluation Report from December 2019, page 19, [GRECO \(coe.int\)](https://www.coe.int/t/e/treaties/ECtHR/CECR/CECR_2020_001.pdf).

<sup>224</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 9, 2016, [OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf](https://www.oecd.org/anti-corruption/georgia/4th-round-monitoring-report-eng.pdf).

<sup>225</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Kazakhstan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 6, 2017, [OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf](https://www.oecd.org/anti-corruption/kazakhstan/4th-round-monitoring-report-eng.pdf).

<sup>226</sup> GRECO, Fifth Evaluation Round of Latvia, Evaluation Report from June 2018, page 16, [16808cdc91 \(coe.int\)](https://www.coe.int/t/e/treaties/ECtHR/CECR/CECR_2018_001.pdf).

- "**Lithuanian** law grants the public the right to access official information, and the government generally complies with such requests. However, the operations of state companies remain somewhat opaque and prone to financial misconduct. Reforms intended to improve the transparency and fairness of public procurement have been limited. In recent years, politicians' attempts to reduce the scope of accessible public information concerning themselves have increased".<sup>227</sup>
- In **Poland**, "the right to public information is guaranteed by the Constitution and by the 2001 Act on Access to Public Information but obtaining records and data from public institutions can be slow and difficult. The Chancellery of the Sejm has refused to release lists of judges who supported controversial new appointees to the KRS, citing personal data protection concerns, despite a ruling from the Supreme Administrative Court ordering it to do so. The current government avoids consulting outside experts or civil society organisations on policy ideas and tends to introduce and pass legislation rapidly, with little opportunity for debate or amendment".<sup>228</sup>
- In **Romania**, "citizens have the legal right to obtain public information and can petition government agencies for it. However, processes for soliciting participation and input from various stakeholders and civil society experts are not well defined, and the government still widely utilises emergency ordinances for legislating. During the COVID-19-related state of emergency between March and May 2020, authorities had 60 days to respond to information requests, double the pre-emergency limit. Pandemic-related information was sometimes withheld by authorities. In March 2020, the Ministry of Internal Affairs ordered local prefects not to publish the number of COVID-19 tests performed or the number of positive results. In a September report, the Centre for Independent Journalism (CJI) noted that health-care staff were often prohibited from discussing the pandemic to media outlets".<sup>229</sup>
- In **Slovenia**, "the government generally operates with openness and transparency. However, a September 2020 report by the European Commission revealed concerns over the lack of resources for key regulators. Additionally, the government proposed a merger of all eight independent regulators into just two superagencies, citing benefits of reduced management costs and increased efficiency".<sup>230</sup>
- "**Tajikistan** has not taken action to improve the legislation on access to information. The scope of classified information remains unreasonably broad. Besides, there are no strict requirements regarding what kind of information must be made public. The Human Rights Commissioner is responsible for the monitoring, but the mandate and resources are insufficient. Also, public insults or defamation of the President are

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<sup>227</sup> Freedom House, Freedom in the World 2021, Lithuania, [Lithuania: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>228</sup> Freedom House, Freedom in the World 2021, Poland, [Poland: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>229</sup> Freedom House, Freedom in the World 2021, Romania, [Romania: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>230</sup> Freedom House, Freedom in the World 2021, Slovenia, [Slovenia: Freedom in the World 2021 Country Report | Freedom House](#).

criminally punishable in Tajikistan; in other words, defamation has not been fully decriminalised, and it is recommended that this be rectified”.<sup>231</sup>

- “In previous years, **Ukraine** made some progress in advancing transparency, for example by requiring that banks publish the identity of their owners, and by passing a 2016 law obliging politicians and bureaucrats to file electronic declarations of their assets. However, in October 2020, the Constitutional Court annulled the asset-declaration law, as well as a law that dictates criminal punishments for falsified asset reporting. Law enforcement agencies were forced to close some high-level corruption cases and remove the full database of official declarations from public access. Parliament reinstated a weakened version of the law in December”.<sup>232</sup>
- In **Uzbekistan**, “in terms of improving the legislation on access to information, previous recommendations remain pertinent. It is necessary to have this legislation harmonised with international standards by updating laws on state and official secrets to harmonise them with the main law on access to information, ensuring that they may not be used for any unreasoned exclusion of information from the public domain. Uzbekistan is still to set up a mechanism of state oversight over compliance with the law on access to information, giving it adequate powers, including that of sanctioning and issuing mandatory orders concerning access to information. The criminal liability for defamation and insult has not been repealed and, regrettably, is actively applied in practice. It is therefore necessary, as recommended before, to decriminalise all offences of defamation and insult, limiting their restraining effect on the freedom of mass media and in particular investigative journalism and exposure of corruption”.<sup>233</sup>

71. Based on the findings of international anti-corruption monitoring bodies and generally available information, the following facts also have to be mentioned:

- transparency of public information and of public administration in general is not a silver bullet in the fight against corruption but it significantly influences the conditions for its development and enhances the effects of anti-corruption activities;<sup>234</sup>
- countries with traditionally high levels of transparency are normally very high on the lists of countries with low levels of corruption;<sup>235</sup>
- there is no international legal instrument specifically dealing with access to public information;
- there are some international industry-related initiatives introducing transparency into those industries;<sup>236</sup>
- in some countries, the right to public information is guaranteed by the constitution, e.g. in Poland;

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<sup>231</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Tajikistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 6, 2017, [OECD-ACN-Tajikistan-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>232</sup> Freedom House, Freedom in the World 2021, Ukraine, [Ukraine: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>233</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Uzbekistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 12, 2019, [Anti-Corruption Reforms in UZBEKISTAN \(oecd.org\)](#).

<sup>234</sup>In a positive way.

<sup>235</sup> Such as Scandinavian countries.

<sup>236</sup> Extractive Industries Transparency Initiative, Construction Sector Transparency Initiative.

- in many countries, public institutions must publish some basic information on their organisation and functioning on their websites, including the information on how to access public information of these institutions;
- in some countries, a request for information does not need to be motivated;
- it is of particular importance to ensure transparency of entities using public funds not only in theory but also in practice;<sup>237</sup>
- despite the legislation in place, procurement awards in some countries are often made in secret, e.g. in Bosnia and Herzegovina, and public institutions often do not comply with freedom of information laws, e.g. in Poland;
- during the COVID-19 pandemic, several countries have limited access to public information, e.g. in Romania;
- the lack of sufficient training and awareness raising on access to public information of officials in countries affects the implementation of the right to information;
- although there is no international requirement, some countries – but not all - around the world have started to establish specialised institutions to ensure the right to access to public information; however, some of them do not have the appropriate powers, e.g. in Croatia, Kazakhstan, and Tajikistan;
- some of those institutions combine two different but closely related tasks: ensuring the right to access to public information and protecting personal and/or any other sensitive data;
- usually, citizens can complain in the court as the last instance, e.g. in Latvia or Slovenia, when asking for access to public information;
- some countries use the system of excessive secrecy to prevent citizens and other interested parties from accessing public information, e.g. in Tajikistan;<sup>238</sup>
- liability for defamation is used in some countries in a way that restricts freedom of speech and reporting of corruption, e.g. in Tajikistan and Uzbekistan;
- some countries have introduced open data government portals, thus increasing accessibility to public information;
- in the last years, an important initiative – on transparency of beneficial ownerships of legal persons – has been developing around the world, offering the law enforcement practitioners but also citizens and media an important tool in the fight against corruption;
- in recent years, an important emphasis has been put on the protection of personal data globally, an initiative which in many cases directly affects the implementation of access to public information rights.

### **2.5.1 Best legislative practices on access to public information**

72. Unlike with previous topics on conflict of interests and asset reporting, it is difficult to find three very good solutions in the area of access to public information in the fifteen countries under analysis. Therefore, best practices in this area from two additional countries, Estonia, and Norway, are taken into consideration. Due to their exemplary solutions in specific areas of transparency, descriptions of those solutions in Greece and Slovenia are added: Greece because of its unique system of comprehensive rules and institutions ensuring general access to public information and Slovenia because of its

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<sup>237</sup> Which is not provided in Armenia or Bulgaria, for example.

<sup>238</sup> Investigative media, for example.

state-of-the-art mechanism,<sup>239</sup> enabling daily online access to information on expenditure of all public institutions.

73. The following pieces of legislation represent good-quality examples of general laws concerning access to public information: the Public Information Act of Estonia,<sup>240</sup> the Freedom of Information Law of Latvia,<sup>241</sup> and the Act relating to the right of access to documents held by public authorities and public undertakings (Freedom of Information Act) of Norway.<sup>242</sup> The most important substantive elements of those pieces of legislation are as follows:
74. The purpose of access to public information in the three laws is defined quite similarly. According to the Estonian Law, the public and every person has the opportunity to access information intended for public use, based on the principles of a democratic and social rule of law and an open society, and to create opportunities for the public to monitor the performance of public duties.<sup>243</sup> According to the Latvian Law, the purpose of the Law is to ensure that the public has access to information, which is at the disposal of institutions or which an institution in conformity with its competence has a duty to create.<sup>244</sup> According to the Norwegian Law, its purpose is to facilitate an open and transparent public administration, and thereby strengthen freedom of information and expression, democratic participation, legal safeguards for the individual, confidence in the public authorities and control by the public.<sup>245</sup>
75. Definitions of "public information" in the three laws under consideration do not differ a lot. According to the Estonian Law, public information is "information which is recorded and documented in any manner and on any medium and which is obtained or created upon performance of public duties provided by law or legislation issued on the basis thereof".<sup>246</sup> According to the Latvian Law, public information is "information, which is at the disposal of institutions or which an institution in conformity with its competence has a duty to create".<sup>247</sup> The Norwegian Law defines public information as "documents,<sup>248</sup> which have been received by or submitted to an administrative agency, or which the administrative agency itself has drawn up, and which relate to that agency's area of responsibility or activities",<sup>249</sup> whereby "a document" is defined as "logically limited amount of information stored in a medium for subsequent reading, listening, presentation, or transfer or the like".<sup>250</sup>

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<sup>239</sup> First, it was known under the name of »Supervisor«, today it is named »Erar«.

<sup>240</sup> [Public Information Act–Riigi Teataja](#).

<sup>241</sup> [Freedom of Information Law.docx \(live.com\)](#).

<sup>242</sup> [Act relating to the right of access to documents held by public authorities and public undertakings \(Freedom of Information Act\) - Lovdata](#).

<sup>243</sup> Article 1 of the Estonian Law,

<sup>244</sup> Section 2 of the Latvian Law.

<sup>245</sup> Section 1 of the Norwegian Law.

<sup>246</sup> Article 3/1.

<sup>247</sup> Section 2/1.

<sup>248</sup> But not documents forming part of a library or museum collection, documents, which a private legal person has handed over to public archives for safekeeping, document handed over to an administrative agency for disclosure in a periodical journal that is published, newspapers, journals, advertising matter and the like which an administrative agency receives without being connected to a specific case at that agency and documents which an employee of an administrative agency has received in a capacity other than that of employee of that administrative agency.

<sup>249</sup> Section 4/2.

<sup>250</sup> Section 4/1.

76. Institutions under obligation to provide access to public information are determined in a very broad manner: the Estonian Law refers to every “holder of public information”,<sup>251</sup> the Latvian Law to “institutions” (every institution, and also persons who implement administration functions and tasks if such person in the circulation of information is associated with the implementation of the relevant functions and tasks),<sup>252</sup> and the Norwegian Law to the state, the county authorities and the municipal authorities, any other legal person in cases where it makes individual decisions or issues regulations, any independent legal person,<sup>253</sup> in which the state, county authority or municipal authority directly or indirectly has an equity share that gives it more than half of the votes in the highest body of that legal person and any independent legal person,<sup>254</sup> in which the state, county authority or municipal authority directly or indirectly has the right to elect more than half of the voting members in the highest body of that legal person.<sup>255</sup>
77. All the three laws also define re-use of information, which happens when information originally produced, acquired, or used by its holders is released to those requesting the access to it and used by them. The Estonian Law defines it as the “use of such public information, the public use of which is not restricted by law or pursuant to the procedure established by law (hereinafter open data), by natural persons or legal persons for commercial or non-commercial purposes other than the initial purpose within the public duties for which the information was obtained or produced”.<sup>256</sup> In Latvia, re-use is “the use of generally accessible information at the disposal of an institution and created by an institution for commercial or non-commercial purpose, which is not the initial purpose for the creation of such information, if it is performed by a private individual who uses information at the disposal of an institution for purposes other than performing State administration tasks”.<sup>257</sup> The Norwegian Law only mentions “use” in the title of the relevant Section, while defining “re-use” as “information to which access is given pursuant to this Act or to other legislation that gives the public right of access to documents in the public administration may be used for any purpose unless this is prevented by other legislation or the rights of a third party”.<sup>258</sup> Access to public information normally also includes the right for its re-use,<sup>259</sup> however, in Latvia a special request for re-use has to be submitted to the information holder.<sup>260</sup>
78. Access to public information is the basic principle of all the three laws under consideration. The Norwegian Law even requires availability of public documents to the public on the internet.<sup>261</sup> In all the three countries, exemptions from the access are defined in quite a narrow manner. The Estonian Law does not apply to access to information which is classified as a state secret or classified foreign information, to restricted information in archives and to information which is restricted by specific acts or

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<sup>251</sup> Article 5.

<sup>252</sup> Section 1/1/4.

<sup>253</sup> However, not to legal persons, which mainly carry on business in direct competition with and on the same conditions as private legal persons.

<sup>254</sup> Ibid.

<sup>255</sup> Section 2/1.

<sup>256</sup> Article 3-1/1.

<sup>257</sup> Section 1/1/5.

<sup>258</sup> Section 7/1.

<sup>259</sup> Article 8/3 of the Estonian Law, Section 7 of the Norwegian Law.

<sup>260</sup> Section 11.

<sup>261</sup> Section 10/3.

international agreements.<sup>262</sup> In addition, the public holder of information should – upon giving information for public use - ensure the inviolability of the private life of persons, protection of copyrights, protection of national security, and protection of business secrets and other restricted information.<sup>263</sup>

According to the Latvian Law, “restricted access information” is information:

- which has been granted such status by law;
- which is intended and specified for internal use by an institution;
- which is a commercial secret, except in the case where a purchase contract has been entered into in accordance with the Public Procurement Law or other type of contract regarding actions with State or local government financial resources and property;
- which concerns the private life of natural persons, which is related to certifications, examinations, submitted projects (except projects the financing of which is expected to be a guarantee provided by the State), invitations to tender (except invitations to tender, which are associated with procurement for State or local government needs or other type of contract regarding actions with State or local government funds and property) and other assessment processes of a similar nature;
- which is for official use only;
- which is the information of the North Atlantic Treaty Organisation or of the European Union, that is designated as "NATO UNCLASSIFIED" or "LIMITE," respectively.<sup>264</sup>

According to the Norwegian Law, access to the following information can be restricted: internal documents,<sup>265</sup> information classified by a law as confidential,<sup>266</sup> documents obtained externally for internal preparation of a case,<sup>267</sup> court documents,<sup>268</sup> documents important for Norway’s foreign policy interests,<sup>269</sup> national defence and security interests,<sup>270</sup> budget matters,<sup>271</sup> government’s negotiating positions,<sup>272</sup> regulatory or control measures,<sup>273</sup> appointments and payroll records,<sup>274</sup> examination papers, etc.<sup>275</sup>

79. A beneficiary with the right to request access to public information is “the public and every person” according to the Estonian Law,<sup>276</sup> “a private person” according to the Latvian Law<sup>277</sup> and “any person” according to the Norwegian Law<sup>278</sup>.

80. In addition to the content of public information, it is also important in which form the information is accessible to public. According to the Estonian Law, the holder of

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<sup>262</sup> Article 2.

<sup>263</sup> Article 3-1/3.

<sup>264</sup> Section 5/2.

<sup>265</sup> Sections 14, 16.

<sup>266</sup> Section 13.

<sup>267</sup> Section 15.

<sup>268</sup> Sections 17 and 18.

<sup>269</sup> Section 20.

<sup>270</sup> Section 21.

<sup>271</sup> Section 22.

<sup>272</sup> Section 23.

<sup>273</sup> Section 24.

<sup>274</sup> Section 25.

<sup>275</sup> Section 26.

<sup>276</sup> Article 1.

<sup>277</sup> Section 10/1.

<sup>278</sup> Section 9.

information is obliged to grant access to data in a file format which is structured so that software applications can easily identify, recognise, and extract specific data, including individual statements of fact, and their internal structure (machine-readable format), and in a format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents (open format). If conversion of open data into digital format, machine-readable format or open format is impossible or would involve disproportionately great effort, the holder of information shall grant access to open data in their original format or in any other format.<sup>279</sup> In Latvia, requested information shall be issued orally, in writing, or, if it is possible, by using electronic means of communication.<sup>280</sup> In Norway, the administrative agency shall, with due regard for the proper procedure, decide how a document is to be made public, whereby a paper copy or electronic copy of the document may be requested.<sup>281</sup>

81. There are no fees for access to public information itself, however, its holders can charge direct expenses related to its release<sup>282</sup>.
82. Normally, persons requesting access to public information do not have to demonstrate legal interest for access,<sup>283</sup> or this is required only in special cases.<sup>284</sup> In the case of Norway, the Law does not mention legal interest at all.
83. There are many provisions in place, requiring holders of public information to make the procedure for granting access and the access itself as quick and as easy as possible.<sup>285</sup>
84. In order to ensure easy access to public information, the countries require its holders to develop a digital register of all documents maintained by the information holder.<sup>286</sup>
85. The forms of request for public information are described in different manners.

In Estonia, the request for access has to contain:

- "the given name and surname of the person making the request for information;
- the name of the legal person or agency in the case of a request for information made on behalf of an agency or legal person;
- the contact details of the person making the request for information (postal or electronic mail address, or fax or telephone number), through which the holder of information could release the information or contact the person making the request for information;
- the content of the information or the type, name and content of the document requested, or the requisite information on the document known to the person making the request for information;
- the manner of complying with the request for information".<sup>287</sup>

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<sup>279</sup> Article 3-1/4.

<sup>280</sup> Section 11/1.

<sup>281</sup> Section 30.

<sup>282</sup> Article 25 of the Estonian Law, Section 13 of the Latvian Law and Section 8 of the Norwegian Law.

<sup>283</sup> Section 10/3 of the Latvian Law.

<sup>284</sup> Article 3-1/5 of the Estonian Law.

<sup>285</sup> Article 4/2 of the Estonian Law, Section 29/1 of the Norwegian Law.

<sup>286</sup> Article 11 of the Estonian Law, Section 9 of the Latvian Law (mentioning the "records of information"), Section 10 of the Norwegian Law (mentioning the "journal").

<sup>287</sup> Article 14 of the Estonian Law.

In Latvia, the request should indicate the applicant's given name, surname or designation (firm) name, address where the information is to be sent, and the applicant's signature.<sup>288</sup>

In Norway, a request for access must only relate to a specific case or within reasonable limits to cases of a specific type.<sup>289</sup>

86. The deadlines for complying with the request for public information are normally quite short: maximum five working days in Estonia,<sup>290</sup> between 7 and 30 days (depending on whether the information required needs additional processing) in Latvia,<sup>291</sup> and "without undue delay" in Norway.<sup>292</sup>
87. The reasons for a denial of access to public information are normally the same as the exceptions to the general accessibility of public information. In Estonia, they are additionally given in the form of a closed list, according to which a holder of information must refuse to comply with a request for information if:
- restrictions on access apply to the requested information and the person making the request for information does not have the right to access the requested information;
  - the holder of information does not possess the requested information, does not know who possesses it, and is unable to identify the holder of the requested information;
  - compliance with the request for information is impossible because it is not evident from specification of the request for information which information the person making the request for information is requesting;
  - the person making the request for information has not paid the state fee or has not paid the expenses relating to compliance with the request for information if the state fee or other fee is prescribed by law and the holder of information has not withdrawn the claim for expenses incurred to be covered<sup>293</sup>.

In addition, the Estonian holder of information may refuse to comply with a request for information if:

- the requested information has already been released to the person making the request for information and the person does not justify the need to obtain the information for a second time;
- information requested from a natural person or a legal person in private law does not concern the performance of public duties;
- compliance with the request for information would require a change in the organisation of work of the holder of information, hinder the performance of public duties imposed thereon or require unnecessarily disproportionate expenses due to the large volume of requested information;
- the request for information cannot be complied with by a single release of information;
- in order to comply with the request for information, information would have to be additionally systematised and analysed and new information would have to be documented on the basis thereof;

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<sup>288</sup> Section 11/3.

<sup>289</sup> Section 28/2.

<sup>290</sup> Article 18/1.

<sup>291</sup> Section 14.

<sup>292</sup> Section 28/2.

<sup>293</sup> Article 23/1.

- a court has established that the active legal capacity of the person making the request for information is restricted;
  - there are no contact details concerning the person making the request for information.<sup>294</sup>
88. In case of denial of the access to public information, the person making the request should receive information on the reasons for denial.<sup>295</sup>
89. A person who made a request that was denied always has the right to file a complaint against the denial.<sup>296</sup>

### **2.5.2 The case of Greece**

90. A transparency regulatory framework in Greece can be divided into two complementary areas: access of citizens and interested parties to information and openness of government activities and decisions.<sup>297</sup> Access of citizens and interested parties is regulated by the Constitution,<sup>298</sup> and additional 8 legislative acts,<sup>299</sup> while openness of government activities and decisions is regulated by Standing Orders of the Hellenic Parliament and additional 6 legislative acts.<sup>300</sup>
91. Important elements of the Greek public sector transparency can also be found in the National Anti-Corruption Action Plan for the period 2018 – 2021,<sup>301</sup> and in the National Action Plan on Open Government.<sup>302</sup>
92. There is a whole set of public institutions in Greece, responsible for the implementation of the above-mentioned legislative provisions: the Ministry of Digital Governance,<sup>303</sup> the National Transparency Authority,<sup>304</sup> the Greek Ombudsman,<sup>305</sup> the Hellenic Single Public Procurement Authority,<sup>306</sup> the Supreme Council for Civil Personnel Selection,<sup>307</sup> internal audit units and the parliamentary Special Standing Committee on Institutions and Transparency.<sup>308</sup>

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<sup>294</sup> Article 23/2.

<sup>295</sup> Article 23/3 of the Estonian Law, Section 12 of the Latvian Law, Section 31 of the Norwegian Law.

<sup>296</sup> In Estonia either to Supervisory Authority or to the Administrative Court (Article 46), in Latvia to the Administrative Court (Section 15), in Norway to the agency immediately superior to the agency that denied the request (Section 32).

<sup>297</sup> Calliope Spanou and Manto Lampropoulou, Transparent Policy in Greece: From Citizen Empowerment to anti-corruption and open data, Hellenic Foundation for European & Foreign Policy, 2022, [Transparency policy in Greece: From citizen empowerment to anticorruption and open data – Calliope Spanou and Manto Lampropoulou : ΕΛΙΑΜΕΠ \(eliamep.gr\)](#)

<sup>298</sup> Paragraph 1 of Article 5A: "All persons have the right to information, as specified by law", Paragraph 3 of Article 10: "The competent (public) service or authority is obliged to reply to requests for the provision of information and for the supply of documents, especially certificates, supporting documents and attestations, within a set deadline (...)"

<sup>299</sup> Presidential Decree No. 28/2015, Law No. 4622/2019, Law No. 2690/1999, Law No. 3463/2006, Law No. 3852/2010, the Code of Good Administrative Behaviour (2012), Law No. 4727/2020.

<sup>300</sup> Presidential Decree No. 105/2018, Law No. 4622/2019, Law No. 4727/2020, Law No. 3861/2010, Law No. 4412/2016.

<sup>301</sup> [NACAP 2018-2021 \(aead.gr\)](#).

<sup>302</sup> Commitments for incorporation [[Δεσμεύσεις προς ενσωμάτωση](#)] at ([opengovpartnership.org](#)).

<sup>303</sup> [Ministry of Digital Governance of Greece | Digital Skills and Jobs Platform \(europa.eu\)](#).

<sup>304</sup> [National Transparency Authority - HOME \(aead.gr\)](#).

<sup>305</sup> [The Greek Ombudsman \(synigoros.gr\)](#).

<sup>306</sup> [HSPPA - HOME \(eaadhsy.gr\)](#).

<sup>307</sup> [SUPREME COUNCIL FOR CIVIL PERSONNEL SELECTION \(ASEP\)](#).

<sup>308</sup> Committees – Details [[Επιτροπές – Λεπτομέρειες](#)] ([hellenicparliament.gr](#))

93. By far, the most important elements of the Greek public sector transparency are numerous open data portals and platforms:
94. The Greek Open Government Initiative (<http://www.opengov.gr/>) launched in 2009, includes three key areas: open calls for the recruitment of top executive positions and other posts in public administration, electronic deliberations,<sup>309</sup> and Labs OpenGov.<sup>310</sup>
95. The Transparency Portal (Diavgeia, <https://diavgeia.gov.gr/>) was established in 2010 and all public authorities are required to publish their acts and decisions on the Portal, as a prerequisite of their validity. In addition, all ministries and other public institutions, including local entities and SOEs are obliged to publish data on the execution of their budget on their websites and on the Diavgeia platform.
96. "Ultra-clarity" (<https://yperdiavgeia.gr/> ("Ultra-Clarity"): the portal contains all Greek open Government documents: all documents published through the Diavgeia platform, Greek legislation, all tenders and procurements and all Greek Parliament proceedings.
97. Data.gov.gr (<https://www.data.gov.gr/>) is the central directory of public data that provides access to databases of Greek government agencies, bodies, and entities.
98. Geodata.gov.gr (<https://geodata.gov.gr/>) operates since 2010 and provides open geospatial data and services for Greece.
99. At the municipal level, some entities have introduced similar platforms: the Municipality of Athens runs <https://www.cityofathens.gr/khe>, the Municipality of Thessaloniki operates the open date platform [opendata.thessaloniki.gr](http://opendata.thessaloniki.gr) (<https://opendata.thessaloniki.gr/>) and the Municipality of Gortinia runs <http://opendatagortynia.gr/>.
100. A legal, institutional and practical framework in Greece is ensuring a level of transparency, which might serve as a model for many other countries despite its apparent high level of fragmentation.

### **2.5.3. The case of Slovenia**

101. In Slovenia, a special application by the name of "Erar" is accessible to everyone online.<sup>311</sup> It is based on provisions of two laws: a Law on the Access to Public Information,<sup>312</sup> and a Law on Integrity and Prevention of Corruption.<sup>313</sup> The application provides the public with a user-friendly access to information on business transactions of public sector bodies,<sup>314</sup> and matches financial transactions of those bodies to related companies and their records from the Business Register, thus providing a further insight into links between the public and private sphere. Recently, the application was updated with information on gifts received by public sector bodies, tax debtors, lobbying contacts and information on the restriction of business activities. This information is available to anyone, freely on the internet, no registration is required. A predecessor of this application called "Supervizor" received the United Nations Award for Excellence of Public Service in 2011.

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<sup>309</sup> Draft legislation is posted on a platform prior to their submission to the parliament, where citizens and organisations can post comments, suggestions and / or criticisms.

<sup>310</sup> Bringing together ideas and proposals from citizens, the public sector, and the private sector.

<sup>311</sup> <https://erar.si>

<sup>312</sup> Official Gazette of the Republic of Slovenia, No. 50/14.

<sup>313</sup> Official Gazette of the Republic of Slovenia, No. 158/20.

<sup>314</sup> Institutions and SOEs.

102. Until today,<sup>315</sup> 287,671,040 transactions were registered among 6,472 public institutions and SOEs and 640,002 private companies. Daily insights into transactions are enabled by the use of E-invoicing system of the Slovenian public administration and there is a possibility to initiate the basic search for data through two search parameters:<sup>316</sup> the name of the payer – public institution and the name of the company or other private recipient of the payment.<sup>317</sup> With that information received, different statistical operations are possible, enabling a deeper analysis of financial relations between selected public bodies and private recipients of public funds.

#### **2.5.4. Recommendations concerning legislation on access to public information**

103. Based on the experience and best practices of some of the post-socialist countries and on developments and knowledge acquired by other countries it is possible to make the following recommendations on how the legislation on access to public information should be developed and implemented:

- a) the right to access to public information should be enshrined in a law or even in the Constitution, if appropriate;
- b) the right to access to public information should not be affected by different crisis situations in the society, unless otherwise provided by a law;
- c) public information is information produced, maintained, and shared by public organisations;
- d) a special emphasis should be given to access to public information concerning public expenditure;
- e) public organisations are public institutions in *stricto sensu* in all three branches of power, independent public institutions, and state-owned enterprises;
- f) the right to access to public information includes the right to its re-use, unless prohibited or restricted by a law or the rights of the third parties;
- g) the right to access to public information can only be limited exceptionally and by a law on the basis of narrow and carefully selected reasons, not endangering the basic idea of general accessibility of public information;
- h) a beneficiary of the right to request access to public information is every person, natural or legal, without having to demonstrate a legal interest;
- i) a request for access to public information does not have to be motivated;
- j) there should be no fees for exercising the right to access to public information with the exception of direct costs for its provision;
- k) the form to request access to public information should be simple and publicly available;
- l) the procedure of access to public information should be publicly available, simple, quick and preferably digital;
- m) holders of public information should post the basic information concerning their organisation and functioning on their websites and develop and maintain publicly accessible register of all documents, preferably in a digital form;
- n) the form in which the requested information is submitted to the person requesting access to it should be aligned to his or her expressed requests, if possible;
- o) the deadlines for complying with the request for access to public information should be as short as possible;

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<sup>315</sup> 17 January, 2022.

<sup>316</sup> Which can be extended after receiving the basic information about parties of the transaction.

<sup>317</sup> Sole entrepreneurs and individuals.

- p) the reasons for the denial of access to public information should be limited and carefully selected, so that they do not endanger the basic idea of general accessibility of public information;
- q) in case of denial of access to public information, the person making the request should receive information on the reasons for the denial in a written form;
- r) a person whose request for access to public information was denied should have the right to appeal that decision and ultimately challenge it in court;
- s) excessive systems of secrecy and liabilities for defamation unduly restrict the right to access to public information;
- t) training and awareness-raising on access to public information of public officials should be ensured;
- u) some public officials in public organisations should be specialised for dealing with requests for access to public information;
- v) countries should consider establishing specialised and independent oversight authorities ensuring the right to access to public information;
- w) countries should consider the utilisation of open government data portals;
- x) a proper balance should be found between protection of privacy and other rights of persons and the right to access to public information;
- y) effective, proportionate, and dissuasive sanctions should be introduced for deliberate breaches of the access to public information legislation.

## **2.6 Some conclusions on the anti-corruption legislation in fifteen post-socialist countries**

104. The analysis of the legislation situation in the fifteen selected post-socialist countries in some of the areas important for the fight against corruption (special laws on prevention/suppression of corruption, laws on conflict of interest for different categories of public officials, laws on reporting of assets of different categories of public officials, laws on liability of legal persons, laws on the access to public information) shows that there are only a few countries that have not yet adopted the necessary legislation.

105. There are two countries (Albania, Armenia) with no special anti-corruption prevention or suppression legislation, one country (Armenia) with no legislation in the area of conflict of interests, one country (Uzbekistan) with no legislation on the duty of public officials to report their assets and three countries (Armenia, Kazakhstan, Tajikistan) with no legislation on liability of legal persons. The absence of special legislation in these areas does not mean that countries do not have individual provisions concerning these topics in other legislative acts but the lack of legislation comprehensively dealing with a particular area usually points at either to lack of necessary awareness/knowledge or lack of political will. While lack of legislation concerning the liability of legal persons can easily be attributed to lack of awareness/knowledge or, rather, to a confusion stemming from the historically used subjective responsibility of perpetrators of offences;<sup>318</sup> lack of other types of legislation may also be attributed to the absence of political will of the governments in the countries concerned.

106. Of the fifteen countries mentioned above, not all are members of all the available international anti-corruption monitoring bodies. Lack of participation in such bodies, especially if those bodies are known for thorough processes of monitoring anti-corruption legislation, institutions, and practices, seems to pose a problem for non-

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<sup>318</sup> Described above, in Paragraph 31.

participating countries in the sense that they have greater difficulties in achieving a qualitative leap in their anti-corruption efforts. However, as examples from the selected fifteen countries prove, merely formal participation in those bodies without a genuine will to really engage extensively in the national and international anti-corruption efforts does not add anything to the pace of anti-corruption reforms in those countries.

107. It is rather disappointing to observe that not even the membership of the European Union as the strongest political entity in Europe has changed much in the anti-corruption efforts and achievements of some of the countries that joined. The required pieces of legislation were adopted, and the necessary institutions were established but in practical terms significant systemic anti-corruption achievements are still missing.

108. It seems that there is only a limited positive correlation between the existence, quality, and quantity of the anti-corruption legislation in post-socialist countries and their effectiveness in fighting corruption. The analysis of the legislation of all fifteen countries proves that differences among countries in this area do exist but those differences are much smaller than the ones concerning the levels and nature of corruption and practical anti-corruption achievements of the same countries. Therefore, it is possible to conclude that while the existence, quality and quantity of the anti-corruption legislation is unconditionally needed to start enhancing the effectiveness of the national anti-corruption efforts, it is far from enough to reach significant achievements on the ground. Obviously, some other elements are much more important than merely the existence of anti-corruption legislation.

### **3. THE EXISTENCE OF SPECIALISED ANTI-CORRUPTION INSTITUTIONS**

109. Until the entry into force of the UNCAC, international legal instruments did not require countries to establish and maintain specialised anti-corruption institutions. In contrast, the UNCAC requires the establishment of specialised anti-corruption institutions in the area of prevention (Article 6), law enforcement (Article 36) and financial intelligence (Article 58). Countries are allowed to decide on one or more specialised preventive or law enforcement agencies. As a general rule, newly founded countries found it much easier to establish new institutions, while developed Western democracies did not enter into it so easily.

110. Apart from financial intelligence units aside, countries mainly established three types of specialised anti-corruption institutions: preventive institutions,<sup>319</sup> law enforcement institutions and combined institutions – authorised to deal with both, prevention, and law enforcement.

111. The main criteria for countries to decide on the establishment of institutions with law enforcement powers was the level of trust in the existing law enforcement bodies and their effectiveness in the fight against corruption: if the existing agencies acted professionally, with a decent level of autonomy,<sup>320</sup> and they achieved expected results in the suppression of corruption, they were not replaced with new agencies. If the governments and the citizens could not trust them, they were used for political purposes

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<sup>319</sup> This term includes also educational institutions.

<sup>320</sup> Which was mainly understood as lack of susceptibility to political pressure and guidance.

or they were ineffective, countries set up new institutions, despite numerous anticipated problems.<sup>321</sup>

112. After 2003, when the UNCAC entered into force, there was a really enthusiastic wave of new anti-corruption bodies being established in Europe and around the world. But even after many years a lot of them failed to deliver the expected results. As a consequence, a new strong wave started in the world, this time a wave of criticism. However, even though many detailed analyses were carried out, the reasons for the effectiveness of some new anti-corruption bodies and ineffectiveness of others were not reliably identified. The wave of unconstructive criticism has passed by now, which enables a new analytical identification of the reasons for the [in]effectiveness of specialised anti-corruption bodies.

*Table 10: Establishment of specialised anti-corruption institution and their types in some post-socialist countries*

<b>ALB</b>	<b>ARM</b>	<b>BiH</b>	<b>BUL</b>
2003 - P <sup>322</sup> , 2019 - LE <sup>323</sup>	2011 - P <sup>324</sup>	2010 - P <sup>325</sup>	2018 - P <sup>326</sup>
<b>CRO</b>	<b>GEO</b>	<b>KAZ</b>	<b>LAT</b>
2001 - LE <sup>327</sup> , 2004 - P <sup>328</sup>	2003 - LE <sup>329</sup> , 2021 - P <sup>330</sup>	2016 - C <sup>331</sup>	2002 - C <sup>332</sup>
<b>LIT</b>	<b>POL</b>	<b>ROM</b>	<b>SLO</b>
2001 - C <sup>333</sup>	2006 - C <sup>334</sup>	2003 - LE <sup>335</sup> , 2007 - P <sup>336</sup>	2004 - P <sup>337</sup> , 2011 - LE <sup>338</sup>
<b>TAJ</b>	<b>UKR</b>	<b>UZB</b>	
2007 - LE <sup>339</sup> , 2010 - P <sup>340</sup>	2014 - P <sup>341</sup> , 2016 - LE <sup>342</sup> , 2018 <sup>343</sup>	2001 - LE <sup>344</sup> , 2017 - P <sup>345</sup>	

<sup>321</sup> Increased budgetary burden for the country, division between the new and old agencies, insufficient number of experts, jealousy on the part of the old institutions, problems with the constitutional position of the new agencies.

<sup>322</sup> High Inspectorate for Declaration and Audit of Assets and Conflicts of Interest (HIDAACI).

<sup>323</sup> Special Anti-Corruption Structure

<sup>324</sup> Commission on Ethics for High-Ranking Officials.

<sup>325</sup> Agency for the Prevention and Coordination of the Fight against Corruption.

<sup>326</sup> Commission on Countering Corruption and Forfeiture of Unlawfully Acquired Assets.

<sup>327</sup> Office for the Prevention of Corruption and Organised Crime (USKOK).

<sup>328</sup> Commission for the Prevention of Conflicts of Interests.

<sup>329</sup> Special Service of Criminal Prosecution of Legalisation of Illegal Incomes.

<sup>330</sup> Council of Ethics.

<sup>331</sup> Agency for Civil Service Issues and Countering Corruption (preventive powers) with National Bureau on Countering Corruption included (law enforcement powers)

<sup>332</sup> Corruption Prevention and Combating Bureau (KNAB).

<sup>333</sup> Special Investigation Service (SIS).

<sup>334</sup> Central Anti-Corruption Bureau (CAB).

<sup>335</sup> Prosecution Service National Anti-Corruption Unit (DNA).

<sup>336</sup> National Integrity Agency (NIA).

<sup>337</sup> Commission for the Prevention of Corruption.

<sup>338</sup> Specialised State Prosecution Service.

<sup>339</sup> Agency for State Financial Control and Fight against Corruption.

<sup>340</sup> National Anti-Corruption Coordinating Council.

<sup>341</sup> National Anti-Corruption Prevention Agency (NAZK).

113. Specialised anti-corruption institutions are part of a regular anti-corruption framework of many countries today and they have found their place in the institutional setup of those countries. Based on some years of experience it is possible to conclude that the effectiveness of the law enforcement anti-corruption bodies is also the key for the acceptance,<sup>346</sup> and effectiveness of the specialised preventive anti-corruption bodies. There are two reasons for that: first, citizens in post-socialist countries are used to the manifestation of the state power mainly through hard law enforcement measures of the state institutions and hence do not consider soft preventive measures to be equally effective; and second, if citizens of those countries think that impunity for corruption, especially with regard to high-level public officials, continues to prevail, their respect for preventive measures and willingness to participate in them is extremely low. In theory it is clear that preventive and suppressive measures are equally important but in practice citizens of post-socialist countries still put much of their hopes in the effective law enforcement first.

114. In Table 10, the year of establishment of specialised anti-corruption institutions in each analysed country is given as well as the type of the institution: P (for preventive), LE (for law enforcement) or C (combined). If countries have adopted more legislative acts concerning the establishment of the specialised anti-corruption bodies, the year when the last one or the most important one was established in a specific category, is given.<sup>347</sup> If there are specialised bodies dealing only with some aspects of fighting corruption, they are also mentioned below.

115. On the basis of Table 10 above, the following facts can be established:

- three countries (Armenia, BiH, Bulgaria) established specialised preventive anti-corruption agencies, four countries (Kazakhstan, Latvia, Lithuania, Poland) opted for combined specialised anti-corruption agencies and eight countries (Albania, Croatia, Georgia, Romania, Slovenia, Tajikistan, Ukraine, Uzbekistan) established preventive and law enforcement agencies in parallel;
- two countries (Albania, Ukraine) established specialised courts for corruption cases,<sup>348</sup> as well, in one country (Ukraine) they have two different specialised law enforcement anti-corruption agencies, one for the investigation of corruption, NABU and the other for the prosecution of corruption, SAPO;
- in four countries (Albania, Latvia, Lithuania, Ukraine) specialised law enforcement anti-corruption institutions responsible for investigations of corruption offenses were established in the form of independent agencies, while in 6 countries (Croatia, Georgia, Romania, Slovenia, Ukraine, Uzbekistan) specialised law enforcement anti-corruption institutions are part of their prosecution services with varying levels of autonomy;

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<sup>342</sup> National Anti-Corruption Bureau (NABU) and Special Anti-Corruption Prosecution Service (SAPO).

<sup>343</sup> High Anti-Corruption Court of Ukraine (HACC).

<sup>344</sup> Department for Fighting Economic Crime and Corruption of the Prosecutor General's Office.

<sup>345</sup> Republican Anti-Corruption Interagency Commission.

<sup>346</sup> By the population.

<sup>347</sup> According to the author's assessment of the paper.

<sup>348</sup> In the case of Albania also for organised crime.

- the level of autonomy of specialised anti-corruption prosecution services in 3 countries (Croatia, Romania, Ukraine) is very high, almost making them independent prosecutorial institutions;
- eight of the specialised preventive anti-corruption agencies (in Armenia, BiH, Bulgaria, Romania, Slovenia, Tajikistan, Ukraine, Uzbekistan) have general preventive anti-corruption tasks, while others (in Albania, Croatia, Georgia, Tajikistan) are only responsible for certain elements of the prevention, for example collection of assets reports, dealing with conflict of interests or implementation of the national anti-corruption policies.

116. International monitoring bodies also assess the establishment and functioning of specialised anti-corruption institutions in their member states. Some of the latest findings in the fifteen post-socialist countries are the following:

- In **Albania**, "the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (HIDAACI) is responsible for receiving and reviewing asset and interests' declarations by PTEFs and police staff. For efficiency's sake, the e-platform for declaring and publishing these declarations must become operational as soon as possible and HIDAACI must improve its monitoring capacity and procedures. In turn, the cases forwarded by HIDAACI to the prosecution service need to be given proper follow-up".<sup>349</sup>
- "There is no single specialised anti-corruption law enforcement agency in **Armenia**. Structures of the investigative and prosecution bodies ensure some type of specialisation of investigators and prosecutors on corruption-related cases. Very often the respective investigators and prosecutors deal with other cases along with corruption. The report highlights the need to ensure real independence of law enforcement bodies dealing with corruption cases and to avoid any pressure and undue interference with corruption investigations and prosecutions".<sup>350</sup>
- "The European Commission has stated, in its latest report on **Bosnia and Herzegovina**, that, although the country has some level of preparation in the fight against corruption and some progress was achieved in 2014, its legal and institutional framework remains weak and inadequate".<sup>351</sup>
- "In **Bulgaria**, the Law on Countering Corruption and Forfeiture of Unlawfully Acquired Assets (hereafter "Anti-corruption Law") was adopted by the National Assembly on 12 January 2018 and entered into force on 23 January 2018. As provided by this law, a single anti-corruption body – the Commission on Countering Corruption and Forfeiture of Unlawfully Acquired Assets was established, combining functions of verification of asset declarations and ascertainment of conflicts of interest, and of illegally acquired property of high-level public officials, including MPs".<sup>352</sup>

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<sup>349</sup> GRECO, Fifth Evaluation Round of Albania, Evaluation Report from October 2020, page 4, [GRECO \(coe.int\)](#).

<sup>350</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Armenia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 14, 2018, [OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf](#).

<sup>351</sup> GRECO, Fourth Evaluation Round of Bosnia and Herzegovina, Evaluation Report from December 2015, page 8, [Greco Eval IV Rep \(2015\) 2E Final BiH PUBLIC](#).

<sup>352</sup> GRECO, Fourth Evaluation Round of Bulgaria, Second Compliance Report from December 2019, page 3, [GRECO \(coe.int\)](#).

- "Over the years, the specialised prosecution service, the Office for the Suppression of Corruption and Organised Crime (USKOK) in **Croatia**, and its more recently established counterpart in the police (PN-USKOK), have built up a solid track record in investigating and prosecuting high level corruption-related offences, with several indictments filed against persons who formerly held top executive functions (including in long-running cases against a former prime minister). Similarly, on the preventive side, the Commission on the Prevention of Conflicts of Interest has played a pro-active role in upholding the Law on the Prevention of Conflict of Interests, in particular when it comes to persons who hold or have held top executive functions".<sup>353</sup>
- "**Georgia** has set up several specialised units to investigate and prosecute corruption which is a welcome step. However, in the report's opinion, placement of an anti-corruption agency within the Security Service is dubious. An issue of concern is also raised with regard to concentrating both investigation and prosecution within the prosecution service. Co-locating investigators and prosecutors can undermine the checks and balances on the exercise of power which should exist as a safeguard against improperly motivated investigations and failures to take action where merited. The autonomy of the Anti-Corruption Unit of the PSG could be strengthened as well".<sup>354</sup>
- "Since the previous monitoring round, **Kazakhstan** has carried out several institutional reorganisations of the anti-corruption agency. During the latest one, in 2016, it established the Agency for Civil Service Issues and Countering Corruption, which also has within its structure the National Bureau on Countering Corruption. The Agency's competence, as it was recommended, now includes elaboration and coordination of the anti-corruption policy implementation. There was no progress in ensuring independence of the specialised anti-corruption body".<sup>355</sup>
- In **Latvia**, "the establishment in 2002 of the Corruption Prevention and Combatting Bureau (KNAB) is still regarded as a milestone in the fight against corruption. Since then, the KNAB has undergone a series of reforms and has occasionally suffered from insufficient human and financial resources. The KNAB's independence has remained a recurrent source of concern".<sup>356</sup>
- In **Lithuania**, "many institutions hold responsibilities in this field: the Commission for Ethics and Procedure of the Seimas (parliament), the Judicial Ethics and Discipline Commission, the Judicial Court of Honour and the Commission on Ethics of Prosecutors have a specific mandate with regard to the conduct of MPs, judges and prosecutors respectively. Other institutions, namely the Special Investigation Service and the Chief Official Ethics Commission, have a more general competence. They all

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<sup>353</sup> GRECO, Fifth Evaluation Round of Croatia, Evaluation Report from December 2019, page 6, [GRECO \(coe.int\)](#).

<sup>354</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Georgia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 10, 2016, [OECD-ACN-Georgia-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>355</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Kazakhstan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 4, 2017, [OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf](#).

<sup>356</sup> GRECO, Fifth Evaluation Round of Latvia, Evaluation Report from June 2018, page 7, [16808cdc91 \(coe.int\)](#).

need to establish closer cooperation in raising awareness and enforcing anti-corruption rules, particularly with regard to conflicts of interest”.<sup>357</sup>

- “The “Central Anti-Corruption Bureau” (CAB), established by law in 2006, is the central anti-corruption body of **Poland**. It is composed of 880 officers and employees. It is regulated by the Act on the CAB, which states that the CAB is an office of the Government Administration whose head is himself a central authority of that administration”.<sup>358</sup>
- In **Romania**, “the mechanisms in place to prevent corruption of public officials generally and to preserve the integrity of parliamentarians have often been piled up over the years in a way which has resulted in an inconsistent legal framework and a fragile equilibrium. In recent years, there have been several attempts by the parliament to amend the criminal law mechanisms, also to undermine the authority and powers of such agencies as the National Integrity Agency and the National Anti-Corruption Directorate”.<sup>359</sup>
- In **Slovenia**, “... lack of sufficient means and political backing led to the resignation in protest of the CPC’s leadership in 2013.<sup>360</sup> Since then, unfortunately, additional problems have been affecting the Commission, among which tensions within its leadership and with other institutions, the departure of many experienced staff members and cases being dismissed by the courts for procedural issues. This has led to a decrease in public trust in the Commission and a decline in the number of complaints it receives.<sup>361</sup>
- “Several law-enforcement agencies are responsible for fighting corruption in **Tajikistan**, including the Agency for State Financial Control and Fight against Corruption responsible for detection and investigation of corruption offenses as well as the Public Prosecutor, the Interior, National Security, Drug Control, Tax, and Customs Agencies. The Agency For State Financial Control and Fight against Corruption is responsible for coordination between anti-corruption agencies and analytical work while public prosecution agencies are responsible for statistical monitoring. The Agency For State Financial Control and Fight against Corruption is a specialised anti-corruption agency responsible for police operations, inquiry, and pre-trial investigation in the majority of corruption cases”.<sup>362</sup>
- “Fundamental changes took place in the institutional landscape of criminal justice bodies in the area of anti-corruption in **Ukraine**. Establishment of the National Anti-Corruption Bureau (NABU) was finalised, and it became fully operational and managed to meet the expectations of delivering real high-profile investigations. The Specialised Anti-Corruption Prosecution Office (SAPO) has been established since

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<sup>357</sup> GRECO, Fourth Evaluation Round of Lithuania, Evaluation Report from December 2014, page 5, [FOURTH EVALUATION ROUND \(coe.int\)](#).

<sup>358</sup> GRECO, Fifth Evaluation Round of Poland, Evaluation Report from December 2018, page 13, [GRECO \(coe.int\)](#).

<sup>359</sup> GRECO, Fourth Evaluation Round of Romania, Evaluation Report from December 2015, page 8, [Greco Eval IV Rep \(2015\) 4E Final Romania PUBLIC \(2\)](#).

<sup>360</sup> Commission for the Prevention of Corruption.

<sup>361</sup> GRECO, Fifth Evaluation Round of Slovenia, Evaluation Report from December 2017, page 8, [Fifth Round Evaluation \(coe.int\)](#).

<sup>362</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Tajikistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 7, 2017, [OECD-ACN-Tajikistan-Round-4-Monitoring-Report-ENG.pdf](#).

then and it has also become fully operational. Again, just like the NABU is has delivered procedural guidance on NABU cases and submitted high-profile cases to courts. Unfortunately, further progress on these cases stopped there. Nevertheless, these two new institutions (the NABU and the SAPO) demonstrated that high level officials and grand corruption are no longer beyond the remit of the law enforcement in the country. They also sent some unsettling messages to the powerful oligarchs and the well-rooted corrupt high-officials in the public administration of Ukraine. To some extent their rigor in curbing high-profile corruption and their attempts at keeping independence caused a backlash. They are being attacked in various forms: through media and legislative initiatives, investigations and prosecutions launched against their leadership and staff, as well as through various other methods applied to prevent them from doing their job. Measures need to be taken to ensure that their independence is preserved and that the cases that they have accumulated are finally resolved".<sup>363</sup>

- In **Uzbekistan**, "the report also criticises entrusting functions of combatting economic and corruption crimes to state security bodies, and it recommends considering divesting them of such functions because of their high corruption risk. It is also advisable to set up or designate a body (unit) which will be responsible for detecting, tracing, seizing, and managing assets subject to confiscation, including assets abroad".<sup>364</sup>

117. Based on the findings of international anti-corruption monitoring bodies and generally available information, the following facts also have to be mentioned:

- there are significant differences among the countries concerning the number of specialised anti-corruption agencies established, abolished, and restructured. Taking into account only the most important anti-corruption institutions of the fifteen countries, it can be seen that in the last 30 years these countries have established the following number of specialised anti-corruption institutions: Albania - 7, Armenia – 4, BiH – 2, Bulgaria – 6, Croatia – 2, Georgia – 6, Kazakhstan – 4, Latvia – 2, Lithuania – 5, Poland – 3, Romania – 2, Slovenia – 3, Tajikistan – 4, Ukraine – 9, Uzbekistan – 4;
- the country with the largest number of specialised anti-corruption institutions, all established and some of them abolished during the period between 1998 and 2018, is Ukraine;
- the newest anti-corruption agency in Albania, the Special Structure against Corruption (SPAK) is composed of the National Bureau of Investigation, the Special Prosecution Office and the Special Court against Corruption and Organised Crime;
- four countries (BiH, Croatia, Latvia, Romania) have only established two specialised anti-corruption agencies but there are significant differences in their powers and practical achievements;
- there are different reasons for the establishment of a large number of anti-corruption agencies, ranging from the adjustments of functioning of agencies to new national

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<sup>363</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Ukraine, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 12, 2017, [OECD-ACN-4th-Round-Report-Ukraine-ENG.pdf](#)

<sup>364</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Uzbekistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 13, 2019, [Anti-Corruption Reforms in UZBEKISTAN \(oecd.org\)](#).

conditions to decreasing the effectiveness of the already established agencies by abolishing them and forming new ones;

- as a general rule, countries with a large number of anti-corruption agencies are usually less effective in their anti-corruption efforts (Albania, Bulgaria, Ukraine) or their successes in the fight against corruption are not a consequence of those agencies' activities (Georgia);
- as a general rule, countries with a simple structure of anti-corruption agencies (Croatia, Latvia, Romania, Slovenia) are more effective in fighting corruption than others;
- very different structures of anti-corruption agencies in the post-socialist countries that are members of the EU indicate that the EU does not have any uniform standard concerning the nature and structure of the anti-corruption institutional setup of its member states;
- there is an absolute need to ensure real independence of specialised anti-corruption agencies and to avoid any pressure and undue interference with their work;
- authorising intelligence agencies to deal with corruption prevention or suppression is questionable;
- authorising the same agency to deal with both, corruption investigation and prosecution, can lead to some serious legal challenges;
- in countries with several specialised anti-corruption institutions, the question of their coordination and cooperation appears quite often;
- anti-corruption agencies in different countries vary a lot also in the number of their employees, which does not always reflect the size of the country or the mandate of the agencies;
- the effectiveness of anti-corruption agencies changes over time: normally, their effectiveness immediately after the establishment is low and only increases gradually (Croatia) but there are also cases where the effectiveness of newly established agencies significantly decreases after some years (Slovenia);
- many anti-corruption agencies were established as a consequence of direct pressure of international organisations;<sup>365</sup>
- support for the establishment and functioning of anti-corruption agencies is the favourite form of support of international and foreign donors in post-socialist countries, often coupled with the lack of performance evaluation of the new agencies;
- there are cases where it is obvious that governments established anti-corruption agencies because their establishment was a condition for reaching other goals: accession to the EU (Slovenia), obtaining a visa-free regime (BiH), responding to pressure from international organisations (Bulgaria);
- there are also cases of anti-corruption agencies whose effectiveness is heavily dependent on the nature and engagement of the government in their country (Romania), not because the agencies would change anything in their functioning but because the governments objectively hinder their work;<sup>366</sup>
- a very common mistake in establishing new anti-corruption agencies, especially in the law enforcement area, is the opinion that in addition to the new agency there is no need for any other institution in the country to continue dealing with corruption problems, which automatically causes a decrease in the motivation and efforts of

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<sup>365</sup> EU, Council of Europe – GRECO, OECD ACN.

<sup>366</sup> By introducing legal obstacles, decreasing the budget, applying direct political pressure, using smear campaigns in their media.

those institutions and, consequently, a general decrease of anti-corruption efforts in the country;<sup>367</sup>

- the most effective mechanisms used by governments to slow down the functioning of anti-corruption agencies in their countries are changes in the relevant legislation, problems with the budget and political staffing in the most senior positions in those agencies;<sup>368</sup>
- specialised anti-corruption agencies are not immune from internal disputes;<sup>369</sup>
- when anti-corruption agencies in post socialist countries start to function effectively, their top managers usually face severe political pressure;
- if the politicians cannot influence the existing management structures, they make sure that they will be able influence the next ones; therefore, the autonomy, impartiality and merit-based nature of the selection procedures are extremely important in ensuring sustainability of efforts of the anti-corruption agencies;
- as soon as anti-corruption agencies become effective, they also become endangered;
- citizens in post-socialist countries assess the effectiveness of individual anti-corruption agencies through the assessment of the effectiveness of the whole anti-corruption system in their countries.

### **3.1 Some conclusions on the specialised anti-corruption institutions in fifteen post-socialist countries**

118. There is a myriad of specialised anti-corruption institutions in the fifteen post-socialist countries under analysis. They are very different in their mandate, powers, size, the level of independence and autonomy, and position in the structure of the national public bodies.

119. The pace of establishment of specialised anti-corruption institutions, the powers granted to them and obstacles they often face in the area of resources and staffing show that only a few of the selected countries' governments really want to fight corruption. In the majority of countries, the establishment of specialised anti-corruption institutions was either forced by international organisations or targeted other goals.

120. In many of the analysed countries it can be observed that occasional effective functioning of specialised anti-corruption institutions came as a sort of "negative surprise" for the political elites of those countries, as something they would never have expected. As a rule, efforts started immediately at the legislative level - by amending the legislation - at the institutional level - by restructuring the existing structures or establishing new ones - or at the practical level - by reducing resources for their work - aimed at curbing further effectiveness of those institutions. In some countries, changes in the governments directly affect their attitude towards specialised anti-corruption institutions.

121. Constant attempts to unduly influence or even control specialised anti-corruption institutions can be observed in many countries. If these attempts fail, smear campaigns are organised against those institutions or their management structures, either invoking their "politically motivated" actions or making them the objects of ridicule.

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<sup>367</sup> Due to their specialisation, the newly established anti-corruption agencies normally only deal with a limited number of the most dangerous corruption phenomena in their countries.

<sup>368</sup> Deliberately appointing weak or incapable candidates, without any experience in fighting corruption.

<sup>369</sup> For example, fights among management members.

122. When specialised anti-corruption institutions reach the level of general recognition and respect in their countries, the general public becomes their strongest ally, helping them to survive and to function with a desired level of independence or autonomy.
123. Successful managers and other representatives of specialised anti-corruption institutions quite often face retaliatory measures and difficulties in their future careers due to their anti-corruption work.
124. In a very small group of countries with a genuine political will to fight corruption, specialised anti-corruption institutions are a guarantee of the effective anti-corruption efforts.

### **3.2 Best practices on specialised anti-corruption institutions**

125. As one of the tasks of this paper is to recommend solutions for better prevention of corruption, the following specialised preventive anti-corruption institutions represent good practices in functioning of preventive anti-corruption bodies: the Anti-Corruption Agency (ACA) of the Republic of Serbia, the Commission for the Prevention of Corruption (CPC) in the Republic of Slovenia and the National Agency on Corruption Prevention (NACP) of Ukraine. The most important features of these institutions are as follows:
126. All anti-corruption agencies analysed in this Chapter were established by a law and they all have legal personality.<sup>370</sup>
127. It is interesting that all three laws establishing preventive anti-corruption institutions contain a definition of corruption. According to the Serbian Law, corruption is “a relationship which occurs when a public office or social status or influence are used for acquiring personal benefits for oneself or another”.<sup>371</sup> According to the Slovenian Law, corruption “means any violation of due conduct by officials and responsible persons in the public or private sector, as well as the conduct of persons initiating such violations or of persons benefiting from it, for the purpose of undue benefit promised, offered or given directly or indirectly, or for the purpose of undue benefit demanded, accepted or expected for one's own advantage or to the advantage of any other person”.<sup>372</sup> According to the Ukrainian Law, corruption is “the use by a person referred to in part one of Article 3 of this Law granted official authorities or associated with them opportunities to obtain unlawful benefit or receipt of such benefit or receipt of a promise / offer of such benefit for himself/herself or others, or respectively promise / offer or giving of an unlawful benefit to the person referred to in part one of Article 3 of this Law or upon his/her request to other persons or entities with a view to persuade the person to unlawfully use granted him/her official authorities or associated with them opportunities”.<sup>373</sup>
128. The structure of anti-corruption institutions analysed differs a lot: in Serbia, bodies of the ACA are a Board and a Director.<sup>374</sup> In Slovenia, the CPC is managed by a collegial body,

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<sup>370</sup> Law on Prevention of Corruption ([Law on prevention of corruption – Агенција за спречавање корупције \(acas.rs\)](#) of Serbia, Law on Integrity and Prevention of Corruption ([ZIntPK 2011 - ENG za tisk \(kpk-rs.si\)](#)) of Slovenia and Law on the Prevention of Corruption ([default.aspx \(coe.int\)](#)) of Ukraine.

<sup>371</sup> Article 2/1/1.

<sup>372</sup> Article 4/1/1.

<sup>373</sup> Article 1/1/6.

<sup>374</sup> Article 8.

composed of a Chair and two Deputy Chairs.<sup>375</sup> In Ukraine, the NACP is managed by the Head,<sup>376</sup> and supervised by a Public Council.<sup>377</sup>

129. Independence of anti-corruption institutions is emphasised in all the three laws. In Serbia, the ACA is an “independent state authority”, accountable to the National Assembly of the Republic of Serbia.<sup>378</sup> In Slovenia, the CPC is an “autonomous and independent state body”,<sup>379</sup> and in Ukraine there is a whole Article in the Law, describing guarantees for the NACP’s independence.<sup>380</sup>
130. The funding of the three anti-corruption bodies in all three countries is explained thoroughly in the respective laws. In Serbia, funds for the work of the Agency are provided from the special budget section of the Budget of the Republic of Serbia, as well as from other sources, in accordance with the law.<sup>381</sup> In Slovenia, funds for the work of the Commission are provided from the budget of the Republic of Slovenia upon a proposal made by the Commission and the Commission also decides autonomously on the use of the budget funds.<sup>382</sup> In Ukraine, financial support of the NACP is provided from the State Budget of Ukraine. Funding of the NACP from any other sources is prohibited, except as provided by international agreements, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, or international technical assistance projects.<sup>383</sup>

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<sup>375</sup> Article 7.

<sup>376</sup> Article 5/1.

<sup>377</sup> Article 14/2.

<sup>378</sup> Article 3.

<sup>379</sup> Article 5.

<sup>380</sup> Article 9: (1) National Agency’s independence from influence or interference in its activities is guaranteed by: (i) the special status of the National Agency; (ii) special procedure of selection, appointment and termination of office of Head of the National Agency’s; (iii) special procedure established by law on funding and logistical support of the National Agency; (iv) proper conditions of remuneration for Head, Deputy Heads and officials of the National Agency staff stipulated by this Law and other laws; (v) transparency of its activities; 6) by other means stipulated by this Law. (2) In the course of duties performance Head, Deputy Heads, and officials of the staff of the National Agency are deemed government officials, acting on behalf of the state and fall under its protection. (3) Use of the National Agency for party, group or private interests is not allowed. Activities of political parties at the National Agency are prohibited. (4) It is prohibited for state authorities, authorities of the Autonomous Republic of Crimea, local self-government and their officers and employees, political parties, associations, and other entities to interfere in activities of the National Agency in the course of the performance of its duties. Any written or oral instructions, requests, instructions, etc. addressed to the National Agency or its employees concerning the powers of the National Agency, but not provided by the legislation of Ukraine, are illegal and should not be followed. In case of receiving such an instruction, request, power of attorney, etc., the employee of the National Agency shall immediately inform the Head of the National Agency in writing. (5) Notification about suspicion of a criminal offense in regard to a Head, Deputy Head of the National Agency may be performed only by the Prosecutor General of Ukraine (acting Prosecutor General) or Deputy Prosecutor General - Head of the Specialised Anti-Corruption Prosecutor’s Office. The Prosecutor General, his deputy or the head of the Specialised Anti-Corruption Prosecutor’s Office has the right to apply for removal from office of the Head or Deputy Head of the National Agency who is suspected or accused of committing a criminal offense. (6) Head, Deputy Head and officials of the National Agency staff, their close persons and property are protected by the state. In the case of a relevant notification by a Head of the National Agency the National Police authorities shall take the necessary measures to ensure the security of the National Agency’s Head, Deputy Heads, his close persons, to save their property. (7) Attempt on the life and health of the Head, Deputy Head or official of the National Agency staff, his close persons, destruction of or damage to their property, threatening them of murder, violence or destruction of property entail legal liability stipulated by the law. (8) The Head, Deputy Head of the National Agency have the right to provide the means of protection provided to them by the National Police.

<sup>381</sup> Article 4.

<sup>382</sup> Article 6,

<sup>383</sup> Article 17/1.

131. There are significant differences in the area of appointment of managerial bodies of anti-corruption institutions analysed. In Serbia, the Director is elected by the National Assembly, by a majority vote of all deputies, following a public competition announced by the Ministry of Justice and a special competition procedure, implemented by the Judicial Academy's Commission for the Election of Director of the Agency.<sup>384</sup> In Slovenia, the Chair and Deputy-Chairs are appointed by the President of the Republic, following a selection procedure conducted by the selection committee, comprised of five members, representing the Government of the Republic of Slovenia, the National Assembly of the Republic of Slovenia, NGOs engaged in the prevention of corruption, the Judicial Council and the Officials' Council.<sup>385</sup> In Ukraine, the Head of the NACP is appointed following an open competitive selection, carried out by the Competition Commission for selection for the position of the Head of the National Agency, composed of three persons appointed by the Cabinet of Ministers of Ukraine and three persons appointed by the Cabinet of Ministers of Ukraine on the basis of proposals of international donors, who provided international technical assistance in the field of preventing and combating corruption to Ukraine.<sup>386</sup>

132. The reasons for the dismissal of managers of anti-corruption institutions are similar in all the countries. In Serbia, the Director can be dismissed if s/he becomes a member of a political party and/or political entity, if s/he is convicted for a criminal offence to a prison term of minimum of six months or for a punishable offence that renders him/her unworthy of public office, or if it is determined that s/he has violated the law governing prevention of corruption.<sup>387</sup> In Slovenia, the Chair and Co-Chairs can be dismissed if they request to be relieved of their duties; if they are convicted by way of a final judgment and sentenced to imprisonment; if they have permanently lost the capacity to perform the duties of their office; and if they have not ceased to perform any additional work or function.<sup>388</sup> In Ukraine, the Head of the NACP will be dismissed following: the appointment or election to another office upon his consent; reaching the age of 65 years; inability to perform his/her duties due to health reasons in accordance with the opinion of the medical commission, to be created by a specially authorised central executive authority which implements the state policy in the health care area; entry into force of a court decision declaring him/her incapacitated or limiting his/her civil capacity, declaring him/her missing or dead; entry into force of conviction against him/her; the termination of the citizenship of Ukraine or his/her departure for permanent residence outside Ukraine; submission of dismissal at will, resignation and death.<sup>389</sup>

133. While the anti-corruption institutions under analysis share a number of similarities, their competencies differ a lot:

In Serbia, the Anti-Corruption Agency:

- supervises the implementation of strategic documents, submits to the National Assembly a report on their implementation along with recommendations to be acted upon, provides responsible entities with recommendations on how to eliminate

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<sup>384</sup> Articles 11, 12 and 13.

<sup>385</sup> Article 9.

<sup>386</sup> Article 6.

<sup>387</sup> Article 16.

<sup>388</sup> Article 22/1.

<sup>389</sup> Article 5/5.

- shortcomings in the implementation of strategic documents and initiates amendments and supplements to strategic documents;
- adopts general enactments;
  - institutes and conducts proceedings to determine the existence of violations of the Law and pronounces measures in accordance therewith;
  - decides on the existence of conflict of interests;
  - performs tasks in accordance with the law governing the financing of political activities and/or the law governing lobbying;
  - files criminal charges, requests for initiating misdemeanour proceedings and initiatives for initiating disciplinary proceedings;
  - maintains and publishes the Register of the Public Officials and the Register of Assets and Income of Public Officials in accordance with the Law;
  - verifies assets and income reports submitted by public officials;
  - maintains and verifies data from records specified in the Law;
  - acts upon complaints submitted by natural and legal persons;
  - provides opinions about the application of the Law, on its own initiative or at the request of natural or legal persons, and takes positions of importance for the application of the Law;
  - initiates adoption or amendment of regulations, provides opinions on the assessment of the risk of corruption in draft laws in the fields that are particularly susceptible to the risk of corruption and opinions on draft laws governing issues covered by ratified international agreements in the field of preventing and combating corruption;
  - investigates the state of corruption, analyses risks of corruption and prepares reports with recommendations to eliminate risks;
  - supervises the adoption and implementation of integrity plans;
  - adopts the Training Programme and instructions in the field of prevention of corruption and monitors the implementation of training in public authorities;
  - performs tasks related to international cooperation in the field of prevention of corruption;
  - performs other tasks set forth by law.<sup>390</sup>

In Slovenia, the Commission for the Prevention of Corruption is tasked to:

- prepare expert groundwork for strengthening integrity and training programmes;
- provide training for the persons responsible for integrity plans;
- prepare, together with the representatives of equivalent public law entities or their associations, models of their integrity plans;
- provide advice on strengthening integrity and preventing and eliminating the risks of corruption in the public and private sectors;
- monitor and analyse data on the development and accomplishment of tasks aimed at preventing corruption in the Republic of Slovenia;
- monitor the state of affairs in the field of international corruption, and monitor and analyse data on the number and manifestations of all forms of criminal offences involving elements of corruption in the Republic of Slovenia;
- perform lobbying-related tasks;
- adopt principled opinions, positions, recommendations, and explanations in respect of issues connected with the contents of the Act;

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<sup>390</sup> Article 6.

- ensure the implementation of the resolution regulating the prevention of corruption in the Republic of Slovenia;
- draft amendments to the resolution regulating the prevention of corruption in the Republic of Slovenia and propose that they be discussed by the Government, who then in turn submits them to the National Assembly for adoption;
- give consent to the action plans of the individual authorities defined in the resolution, relating to the implementation of the resolution regulating the prevention of corruption in the Republic of Slovenia;
- call on the competent authorities in the Republic of Slovenia to meet the obligations arising from international instruments relating to the prevention of corruption, and to provide them with proposals regarding the method of implementation of these obligations;
- cooperate with the competent State bodies in drafting regulations on the prevention of corruption;
- monitor the implementation of the regulations referred to in the preceding indent and to propose initiatives for amendments to them;
- provide its opinion on proposals for laws and other regulations before they are discussed by the Government, particularly in respect of the conformity of the provisions contained within these proposals for laws and other regulations with the laws and regulations regulating the prevention of corruption, and the prevention and elimination of conflicts of interest;
- have the option available to submit initiatives to the National Assembly and the Government to regulate a particular area by adopting a law or any other regulation in accordance with its tasks and powers;
- cooperate with the corresponding authorities of other countries and international structures, and with international non-profit private sector organisations engaged in the prevention of corruption;
- cooperate with scientific, professional, media and non-profit organisations from the private sector in the prevention of corruption;
- prepare starting points for codes of conduct;
- publish professional literature;
- perform, upon the receipt of payment, expert tasks related to the preparation and development of integrity plans and the preparation of measures for the prevention of corruption for private sector users;
- keep records pursuant to the Act; and
- perform other tasks set out by the Act and other relevant laws.<sup>391</sup>

In Ukraine, the National Agency on Corruption Prevention has the following competencies:

- analysis of the state of prevention and countering corruption in Ukraine, of the activities of state authorities, authorities of the Autonomous Republic of Crimea and local self-government on preventing and countering corruption;
- analysis of statistics, results of studies and other information on the situation with corruption;
- drafting Anti-Corruption Strategy and State Programme of its implementation, and monitoring the coordination and evaluation of implementation effectiveness of Anti-Corruption Strategy;

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<sup>391</sup> Article 12.

- preparing and filing as prescribed by law to the government draft of a national report on the implementation of the grounds of anti-corruption policy;
- the development and implementation of anti-corruption policy, drafting of legal acts on these issues;
- organisation of research on the issues of exploring the situation with corruption;
- monitoring and control over implementation of legislation on ethical behaviour, the prevention and settlement of conflicts of interest in the activities of persons authorised to perform the functions of the state or local self-government and persons equated to them;
- coordination and rendering methodological help in detection by state authorities, authorities of the Autonomous Republic of Crimea, local self-government corruption risks in their activities and implementation of measures to address them, including the preparation and implementation of anticorruption programmes;
- implementation in the manner stipulated by the Law of control and verification of declarations of persons authorised to perform the functions of the state or local self-government, storage, and disclosure of such declarations, monitoring lifestyle of persons authorised to perform the functions of the state or local self-government;
- implementation in the manner stipulated by the Law of state monitoring over the observance of legal restrictions on financing of political parties, lawful and purposeful use by the political parties of funds allocated from the state budget to finance their statutory activities, the timeliness of Parties reports on property, income, expenses and financial liabilities, reports on the receipt and use of election funds to state and local elections, reports on the receipt and use of the campaign fund on the initiative of the all-Ukrainian referendum, reports on the receipt and use of the all-Ukrainian referendum fund, reports on the receipt and the use of the funds of the initiative group, the completeness of such reports, the report of the independent external audit of the financial activities of the parties, the conformity of their registration with the established requirements, the reliability of the information included in these reports (changes according to the Law);
- approval of the distribution of funds allocated from the state budget to finance the statutory activities of political parties, in accordance with the law;
- ensuring that the Unified Portal of Whistle-blower Messages, the Unified State Register of declarations of persons authorised to perform the functions of the state or local self-government and the Unified State Register of persons who committed corruption or corruption-related offenses are duly kept;
- coordination, within the competence, of methodological support and performing analysis of the efficiency of the authorised units (authorised persons) on the prevention and detection of corruption;
- approval of anti-corruption programmes of state authorities, authorities of the Autonomous Republic of Crimea, local self-government, elaboration of a typical form of the anti-corruption programme of a legal entity;
- receiving and reviewing notifications, cooperating with whistle-blowers, participation in ensuring their legal and other protection, checking compliance with legislation on whistle-blower protection, making instructions to eliminate labour violations (dismissal, transfer, certification, change of working conditions, refusal to appoint to a higher position, reduction of wages, etc) and other rights of whistle-blowers and prosecution of persons guilty of violating their rights in connection with such reports;

- organisation of training, retraining and advanced training of civil servants of state authorities and authorities of the Autonomous Republic of Crimea, local self-government officials on issues related to the prevention of corruption;
- providing clarification, guidance, and consulting on issues of application of legislation on ethical conduct, prevention, and settlement of conflicts of interest in the activities of persons authorised to perform the functions of the state or local self-government and persons equated to them, application of other provisions of this Law and normative legal acts adopted for its implementation, protection of whistle-blowers;
- informing the public about measures taken by National Agency to prevent corruption, the implementation of measures aimed at forming public awareness of the negative attitude to corruption, public involvement to the shaping, implementation and monitoring of anti-corruption policy;
- coordination of implementation of international commitments in the field of development and implementation of anti-corruption policy, cooperation with state authorities, non-governmental organisations of foreign states and international organisations within its competence;
- exchange of information with the competent authorities of foreign states and international organisations;
- other powers stipulated by law.<sup>392</sup>

134. In order to ensure effective implementation of their competencies, the anti-corruption institutions have different powers:

In Serbia, the ACA has the following powers:<sup>393</sup>

- it has direct access to electronic databases of public authorities, other persons exercising public powers and other legal persons, with the exception of banks and other financial organisations;
- it can obtain data about the accounts of public officials from banks and other financial organisations;
- it can summon natural persons (public officials, employees and persons engaged to perform tasks in a public authority, as well as other persons).

In Slovenia, the CPC is authorised to:

- initiate proceedings relating to the allegations of corruption, violation of the rules on conflict of interest, violation of restrictions on business activities, violation of the regulation of lobbying, proceedings related to the assessment and elimination of individual or systemic corruption risks, or to the violation of the ethics and integrity of the public sector;
- adopt a principled opinion or findings on a specific case, whereby the principled opinions and findings of the Commission shall not mean any decision-making on the criminal, minor offence, compensation, disciplinary or any other accountability of a legal or natural person and shall not take the form of an administrative decision. Where the Commission's findings relate to a particular or identifiable natural or legal person, the Commission shall prior to their publication send the draft findings to the relevant person, who shall submit his observations on the statements referred to in the findings;

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<sup>392</sup> Article 11.

<sup>393</sup> Articles 36 and 37.

- send to the authority responsible for the appointment and dismissal of the public officials, a proposal for their dismissal and inform the public accordingly;
- request supervision from public bodies (State Prosecutor General, Judicial Council, Minister of Justice, inspection authorities, etc);
- control introduction and implementation of anti-corruption clauses in public contracts;
- request and receive information and documents from state bodies, bodies of self-governing local communities and bearers of public authority, as well as any legal person governed by public or private law;<sup>394</sup>
- request from the competent law enforcement and supervision authorities, including the authority responsible for the prevention of money laundering, that within their powers, they establish the facts regarding the assets and property in the Republic of Slovenia and abroad, and submit their findings to the Commission;
- request from public officials and the heads of or responsible persons in organisations vested with public authority to attend the session of the Commission and on this occasion respond to the Commission's questions;
- obtain an external expert opinion.<sup>395</sup>

In Ukraine, the NACP is authorised to:

- obtain in accordance with a procedure stipulated by law upon written requests in accordance with the established procedure information necessary to fulfil its objectives from state authorities, authorities of the Autonomous Republic of Crimea, local self-government, business entities regardless of ownership and their officials, citizens, and their associations information necessary to fulfil its objectives;
- have direct automated access to information and telecommunication and reference systems, registers, data banks, including those containing information with limited access, the holder (administrator) of which are state bodies or local governments;
- use state, including government, means of communication, special communication networks and other technical means;
- receive information from open databases, registers of foreign countries, including after payment for the relevant information, if such a fee is required to access the information;
- engage according to established procedure scientists, on a contract basis as well, employees of state authorities, authorities of the Autonomous Republic of Crimea, local self-government in certain activities, participation in studying certain issues;
- create commissions and working groups, to organise conferences, seminars, and meetings on preventing and countering corruption;
- adopt binding legal acts on issues within its competence;
- receive statements from individuals and legal entities regarding violation of the Law, conduct upon its own initiative checks of possible facts of violations of the Law;
- conduct inspections of work organisation on preventing and identifying corruption in state authorities, the authorities of the Autonomous Republic of Crimea, local self-government, legal entities under public law and legal entities specified in part two of Article 62 of the Law, in particular regarding the preparation and implementation of

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<sup>394</sup> This does not apply to data obtained by an attorney, a physician, a social worker, a psychologist, or a cleric during the course of their work within a confidential relationship, or by any other person obliged by the law to protect data resulting from a confidential relationship.

<sup>395</sup> Articles from 13 to 16a.

anti-corruption programmes, operation of internal and regular channels of notification of possible corruption or corruption-related offences, other violations of the Law, protection of whistle-blowers;

- issue precepts concerning violations of statutory requirements on ethical conduct, prevention, and resolution of Conflict of interests, other requirements and restrictions set forth in the Law, protection of whistle-blowers;
- obtain from persons authorised to perform the functions of the state or local self-government, business entities regardless of ownership, their officials, citizens and their associations written explanations about circumstances that may indicate a breach of ethical conduct, prevention and settlement of conflict of interests, other requirements and restrictions stipulated by the Law regarding the correctness of the information specified in the declarations of persons authorised to perform state functions or local self-government;
- receive written explanations from persons authorised to perform the functions of the state or local self-government, persons equated to them, employees of legal entities under public law and legal entities specified in part two of Article 62 of this Law regarding circumstances that may indicate violation of the Law on the protection of whistle-blowers;
- file claims (applications) to the court to deem unlawful legal acts and personal decisions issued (taken) with breach of requirements and restrictions stipulated by the Law, to invalidate contracts signed as a result of the commission of a corruption or corruption-related offence;
- apply to the court with a claim for unfounded assets and their recovery into state revenue;
- approve the methodology of corruption risks assessment in the government authorities' activities, to conduct analysis of the anti-corruption programmes of government authorities and to make mandatory for review suggestions to such programmes;
- initiate an official investigation, to take measures to hold liable persons guilty of corruption and corruption-related offenses, to send to specially authorised subjects in the area of countering corruption materials that show evidence of such offences;
- draw up protocols on administrative offences within the competence of the National Agency, to apply measures, prescribed by law, to ensure the proceedings in cases involving administrative offences;
- other rights stipulated by law.<sup>396</sup>

135. Breaches of the laws regulating the functioning of the anti-corruption institutions have different consequences and sanctions:

- In Serbia, a failure to report assets or provision of false information about assets is a criminal offence, punishable by imprisonment for a term between six months and five years.<sup>397</sup> All other breaches of the Law are punishable as misdemeanours, whereby there are different sanctions in place for public officials,<sup>398</sup> responsible persons in public authorities,<sup>399</sup> legal persons,<sup>400</sup> and natural persons,<sup>401</sup>

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<sup>396</sup> Article 12.

<sup>397</sup> Articles 101 and 102.

<sup>398</sup> Article 103.

<sup>399</sup> Article 104.

<sup>400</sup> Article 105.

<sup>401</sup> Article 106.

- In Slovenia,<sup>402</sup> similar provisions as in Serbia are applied, with two exceptions: there are no criminal offences foreseen and an additional group of possible perpetrators of misdemeanours is added: interest groups.<sup>403</sup>
- In the Ukrainian Law, there are two chapters dealing with liabilities for its breaches. The first one, "Liability for corruption or corruption-related offences",<sup>404</sup> introduces criminal, administrative, civil, and disciplinary liability, compensation of losses and damage to the State as a result of a corruption offense, annulment of unlawful acts and transactions, restoration of rights and lawful interests and compensation of losses and damage caused to individuals and legal entities, and confiscation of illegally obtained property. In the second one, administrative offences related to corruption are regulated.<sup>405</sup>

136. Despite being independent, the anti-corruption institutions are still accountable for their functioning. Therefore, in Serbia and Slovenia they have to submit annual reports to the National Assembly.<sup>406</sup> In Ukraine,<sup>407</sup> the Accounting Chamber audits the Agency's expenditure every two years, while civil control over the activities of the National Agency is ensured through the Public Council of the Commission, which is established and formed by the government by selecting fifteen people on the basis of competition. In addition, an external independent evaluation of the effectiveness of the NACP is conducted every two years, carried out by the Commission for Independent Evaluation of the Effectiveness of the National Agency, consisting of three persons appointed by the government on the basis of proposals of donors who provided international technical assistance in preventing and combating corruption.

### **3.3 Recommendations on specialised anti-corruption preventive institutions**

137. Based on the experience and best practices of some of the post-socialist countries and on developments and knowledge acquired by other countries it is possible to make the following recommendations on how to best regulate the functioning of specialised preventive anti-corruption institutions:

- a) the most important partners of specialised preventive anti-corruption institutions are the general public, civil society organisations and international organisations;
- b) specialised preventive anti-corruption institutions should only be established following thorough research, including a SWOT analysis;
- c) sustainability of the functioning of specialised preventive anti-corruption institutions is the most important key for their success;<sup>408</sup>
- d) specialised preventive anti-corruption institutions should be established and regulated by a law,<sup>409</sup> and not by acts of lesser legal force, e.g. a government decree;
- e) specialised preventive anti-corruption institutions should have legal personality;
- f) the structure of specialised preventive anti-corruption institutions should be envisaged in a way which will guarantee the highest possible level of effectiveness and clear lines of responsibility;

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<sup>402</sup> Articles 77 – 79.

<sup>403</sup> Groups represented by lobbyists.

<sup>404</sup> Articles 65-1 to 69.

<sup>405</sup> Chapter 13-A.

<sup>406</sup> Like in Serbia (according to Article 39) and Slovenia (according to articles 19 - 21).

<sup>407</sup> Article 14.

<sup>408</sup> Frequent changes in the anti-corruption framework of the country are to be avoided.

<sup>409</sup> In some countries they are enshrined in the Constitution.

- g) independence or absolute operational autonomy, at a minimum, of specialised preventive anti-corruption institutions should be ensured;
- h) specialised preventive anti-corruption institutions should draft their financial plans autonomously,<sup>410</sup> and implement them independently;
- i) the selection and appointment of managers of specialised preventive anti-corruption institutions can be organised in different ways but always following the principle that the decisive role in the recruitment belongs to experts and not to representatives of the country's political system;<sup>411</sup>
- j) reasons for the dismissal of managers of specialised preventive anti-corruption institutions should be limited, following the same concept as used for the dismissal of professional judges in the country;
- k) managers of specialised preventive anti-corruption institutions and those institutions themselves should be protected from any undue interference and smear campaigns;
- l) competencies of specialised preventive anti-corruption institutions should be drafted in a comprehensive and precise manner, not allowing for any misunderstandings or mistakes, and not allowing for duplication of competencies with other institutions;
- m) in any circumstances, specialised preventive anti-corruption institutions should be authorised, capable and willing to make their voice heard publicly about corrupt behaviour of citizens of their countries;
- n) specialised preventive anti-corruption institutions can have different powers, depending on their role and goals, however, at a minimum, they have to have the powers to request and receive any documentation needed for their work and to summon and interview natural persons;
- o) sanctions under the jurisdiction of specialised preventive anti-corruption institutions should be effective, proportionate, and dissuasive;
- p) in conformity with their national laws, specialised preventive anti-corruption institutions should have the power to apply sanctions for breaches under their jurisdiction directly;
- q) accountability and reporting duties of specialised preventive anti-corruption institutions shall not include the possibility for other public bodies to interfere with their independence and functioning;
- r) supervisory powers over the functioning of specialised preventive anti-corruption institutions or their managerial structures should not allow for misuses and undue influence;
- s) retaliatory measures against managerial structures of specialised preventive anti-corruption institutions should be effectively prohibited and rigorously sanctioned;
- t) when specialised anti-corruption institutions have both preventive and repressive powers, the recommendations above also apply for those institutions.

### **3.4 Practical anti-corruption achievements of selected post-socialist countries**

138. It is very difficult to measure the effectiveness of anti-corruption measures in any country in the world and even more difficult to compare the effectiveness of different countries in this area. Many studies do not measure the extent of the actual problem but

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<sup>410</sup> Normally, financial budgets are adopted by parliaments, so specialised preventive anti-corruption institutions can only draft their plans but cannot adopt them.

<sup>411</sup> In the recruitment panels anti-corruption or integrity experts from the public and private sector, including civil society, should have more votes than representatives of the political system. The final appointment can be subject to the governments', parliaments' or presidents' powers but only on the basis of candidates selected by those recruitment panels.

its perception in the eyes of the public, which adds an additional layer to the difficulties. Notwithstanding these facts, there are some studies and assessments, which enable at least a very basic understanding of the corruption situation in the countries, although not always through the application of exactly the same criteria.

139. International anti-corruption monitoring bodies also assess the situation in the area of corruption in their member states. Some of the latest findings in the fifteen post-socialist countries are as follows:

- "The level of corruption remains high in **Albania**... Overall, corruption is prevalent in many areas of public and business life and remains an issue of concern. It challenges public trust in public institutions and political life. Some high-level state officials have been convicted for corruption offences (including judges, prosecutors, and a former secretary general of the Ministry of Justice). However, concrete enforcement of this overall framework still needs to be increased. "Success stories" in combatting corruption which would increase public trust in the system are lacking".<sup>412</sup>
- In **Armenia**, "international rankings and corruption trends show marginal change since the last monitoring round.... Decline in the ratings is a "result of "solidification of systemic corruption as a consequence of the ruling political party's consolidation of executive, legislative, and judicial power, and due to accumulated evidence of government unwillingness to root out high-level abuse of office".<sup>413</sup>
- "Corruption remains a crucial issue in **Bosnia and Herzegovina**. The policy framework for the fight against corruption was prioritised by the international community as a key element for the effective implementation of the Dayton Peace Agreement. Since the international community has begun to withdraw, the pace and scope of reform has slowed down and there is strong criticism, arising from both abroad and at domestic level, that the proposed reforms generally remain a dead letter. Findings from the latest available Transparency International Global Corruption Report Barometer (2013), which is also a perception-based survey carried out by Transparency International, offer a rather gloomy picture".<sup>414</sup>
- "**Bulgaria**, which joined the European Union (EU) in 2007, has struggled to meet the bloc's anti-corruption requirements amid resistance from much of the political class. Anti-corruption laws are not adequately enforced, including in high-profile cases, contributing to a culture of impunity. The country remains subject to long-term monitoring by the EU's cooperation and verification mechanism, whose annual reports have called for new legislative efforts to combat corruption.

In January 2018, the parliament overrode a presidential veto and adopted legislation that created a centralised anti-corruption commission to replace multiple existing bodies. The record of the Commission's achievements is mixed to date; despite having extensive prerogatives that were further boosted at the end of 2018, some of its flagship cases were overturned in court, while analysts have raised serious concerns that some of the organisation's actions are politically motivated. Corruption scandals

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<sup>412</sup> GRECO, Fifth Evaluation Round of Albania, Evaluation Report from October 2020, page 6, [GRECO \(coe.int\)](https://www.greco.int/).

<sup>413</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Armenia, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, pages 20-21, 2018, [OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf](#).

<sup>414</sup> GRECO, Fourth Evaluation Round of Bosnia and Herzegovina, Evaluation Report from December 2015, pages 8-9, [Greco Eval IV Rep \(2015\) 2E Final BiH PUBLIC](#).

involving oligarchs who until recently had enjoyed government favours helped bring about mass anti-government protests at which participants demanded the resignation of the public prosecutor for allegedly serving illegitimate interests".<sup>415</sup>

- in **Croatia**, "a criminal code in effect since 2013 enforces stiffer penalties for various forms of corruption. While some progress has been made, official corruption—including nepotism, bribery, fraud, and patronage—remains a serious problem. Numerous high-level corruption cases, like the one involving the government's mismanagement and collapse of Croatia's largest employer, AGROKOR, have been filed in recent years, but many are yet to see a verdict. The European Commission singled out corruption as a major issue facing the country and local NGOs have observed that the problem has actually worsened since the country joined the bloc in 2013".<sup>416</sup>
- "While petty corruption has become less common in **Georgia**, corruption within government persists. In some cases, it has allegedly taken the form of nepotism or cronyism in government hiring and procurement. Effective application of anti-corruption laws and regulations is impaired by a lack of independence among law enforcement bodies and the judiciary, and successful cases against high-ranking officials who are on good terms with the Georgian Dream political party leadership remain rare".<sup>417</sup>
- In **Kazakhstan**, "corruption is widespread at all levels of government. Corruption cases are often prosecuted at the local and regional levels, but charges against high-ranking political and business elites are rare, typically emerging only after an individual has fallen out of favour with the leadership. Journalists, activists, and opposition figures are often prosecuted for supposed financial crimes. President Tokayev, like his predecessor, has highlighted the importance of tackling corruption. In September 2020, the government prohibited officials and their family members from having bank accounts abroad.<sup>418</sup> Furthermore, a new law, passed in October 2020, seeks to fight corruption by banning civil servants and their families from receiving gifts, material rewards, or services for their work".<sup>419</sup>
- "Although the perceived level of corruption in **Latvia** appears to be decreasing, the media, civil society and commentators continue to unveil some high-profile corruption scandals. ... Opinion polls conducted for the government suggest that the public perceives corruption as being less of a problem now than in the past. However, Latvia still encounters high levels of grand corruption and evidence of "state capture" that some parliamentarians have recently echoed. The Phase 2 report stated (para. 9) that the level of public trust in Latvian government, parliament and political parties was low. Public trust in these institutions continued to decrease in 2018. The 2019 OECD Economic Survey of Latvia also highlights the low level of trust in the independence of the judiciary and in its capacity to deal with economic and other

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<sup>415</sup> Freedom House, Freedom in the World 2021, Bulgaria, [Bulgaria: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>416</sup> Freedom House, Freedom in the World 2021, Croatia, [Croatia: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>417</sup> Freedom House, Freedom in the World 2021, Georgia, [Georgia: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>418</sup> The relevant law was passed in December 2020, but family members were excluded from this regulation.

<sup>419</sup> Freedom House, Freedom in the World 2021, Kazakhstan, [Kazakhstan: Freedom in the World 2021 Country Report | Freedom House](#).

crimes. Finally, according to certain sources, including the OECD 2019 Survey, corruption is a problem for businesses operating in Latvia: demands for bribes are pervasive while close ties between public officials and businesses and the unethical behaviour of companies are also considered competitive disadvantages for the country".<sup>420</sup>

- "Corruption remains an issue in **Lithuania**, and certain sectors, including health care and construction, are perceived as prone to malfeasance. While anti-corruption bodies are active, there are usually considerable delays in the investigation and prosecution of political corruption cases. The protection of whistle-blowers and journalists who report on corruption cases is legally guaranteed, though such safeguards are upheld inconsistently at the local level".<sup>421</sup>
- in **Poland**, the "PiS" political party came to power promising to clean up corruption, cronyism, and nepotism. While Poles have perceived a steady decline in corruption since 2016, cronyism, a problem under all previous Polish governments, appears widespread under PiS. Since coming to power, the PiS government has altered, lowered, or removed many criteria for staffing of public institutions, allowing for appointments based on party loyalty and personal connections. Following a number of earlier controversies, PiS came under fire in September 2020 for appointments to state-owned firms, including the president's uncle and a minister's wife, though the latter appointment was reversed.

In past years, the Supreme Audit Office (NIK), a state watchdog, has raised concerns about the misuse of public funds by PiS, occasionally prompting the party to take action, such as donating scrutinised funds to charity. In 2019, the PiS parliamentary majority appointed the finance minister as the new chair of the NIK. He immediately came under scrutiny for alleged irregularities in his property declarations and links to a criminal group, and subsequently took unpaid leave, rejecting the prime minister's call for his resignation".<sup>422</sup>

- In **Romania**, "high levels of corruption, bribery, and abuse of power persist. Romania maintains a comprehensive anti-corruption action plan, though the European Anti-Fraud Office (OLAF) noted that anti-corruption bodies face pressure when pursuing high-level cases in a report released in September 2020. The National Anti-Corruption Directorate (DNA) previously won international praise for fairly investigating corruption cases and securing convictions of powerful figures. However, the 2018 dismissal of DNA chief Laura Codruța Kövesi was seen as a blow to its independence. Kövesi was confirmed as head of the European Public Prosecutor's Office by the European Parliament in 2019, though the Romanian Government opposed her candidacy. In May 2020, Kövesi won a European Court of Human Rights judgment over her dismissal from the DNA".<sup>423</sup>

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<sup>420</sup> OECD Working Group on Bribery: Implementing the OECD Anti-Bribery Convention, Phase 3 Report – Latvia, 2019, pages 8-9, [OECD-Latvia-Phase-3-Report-ENG.pdf](#).

<sup>421</sup> Freedom House, Freedom in the World 2021, Lithuania, [Lithuania: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>422</sup> Freedom House, Freedom in the World 2021, Poland, [Poland: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>423</sup> Freedom House, Freedom in the World 2021, Romania, [Romania: Freedom in the World 2021 Country Report | Freedom House](#).

- “corruption in **Slovenia** primarily takes the form of conflicts of interests between government officials and private businesses. In June 2020, the National Assembly, after years of failed attempts, passed its ethics code. In October, Parliament approved a wide-ranging overhaul of the Integrity and Prevention of Corruption Act that expanded the KPK’s supervisory role, aimed to improve procedure transparency, and mandated that more officials report assets.

While whistle-blower protection is regulated in anti-corruption and other laws, NGOs have repeatedly called for comprehensive stand-alone legislation to better protect them.

Corruption and irregularities in the health sector remained in the public focus in 2020 —especially in the light of the procurement scandal involving personal protective equipment (PPE) and ventilators, which led to a number of investigations against several high-ranking officials. The whistle-blower in this affair was fired from his job in October 2020 in what was widely seen as government retaliation but is appealing his termination. A wide-ranging investigation by the Court of Audit is proceeding, with suspected criminal acts in at least 13 contracts detected in 2020”.<sup>424</sup>

- “According to TI’s Corruption Perceptions Index, **Tajikistan** remains one of the most corrupt countries in the region. This index also indicates a slight but stable improvement of the situation before 2016, and some deterioration in 2016. According to the regularly held national opinion polls, the individuals consider corruption to be the next most important problem in the country after poverty, unemployment, prices’ increase, and food shortages. There remain many unresolved problems in the state authorities and in the local self-government bodies that lead to a high level of corruption – from politicisation, weakness of the public service and lack of openness of the authorities to outdated methods of fighting corruption crimes by the law enforcement agencies.

If the country’s leadership really wants to fight corruption, they need to get away from the formal approach of developing plans, conducting inspections, and drawing up inquiries, and to implement in practice specific projects on systemic prevention of corruption, especially in the high-risk sectors such as law enforcement, courts, healthcare, education, land use, public procurement, and taxes. Such projects can be successful only if the leaders of the relevant authorities demonstrate political will and personal leadership in their implementation”.<sup>425</sup>

- In **Ukraine**, “corruption remains a serious problem, and even the little remaining political will to fight it is eroding, despite strong pressure from civil society. Anti-corruption agencies have repeatedly been ensnared in politically fraught conflicts with other state entities and elected officials. In September 2020, the Constitutional Court ruled that a prominent anti-corruption agency created by the ruling party was unconstitutional and shut down multiple investigations that had been opened by the agency. The agency had been investigating multiple sitting judges. The High Anti-

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<sup>424</sup> Freedom House, Freedom in the World 2021, Slovenia, [Slovenia: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>425</sup> Fighting Corruption in Eastern Europe and Central Asia, Anti-corruption Reforms in Tajikistan, 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan, page 13, 2017, [OECD-ACN-Tajikistan-Round-4-Monitoring-Report-ENG.pdf](#).

Corruption Court, created in September 2019, convicted 16 high-ranking officials in 2020”.

- in **Uzbekistan**, “corruption is pervasive. Graft and bribery among low- and mid-level officials remain common and are at times conducted overtly and without subterfuge. However, petty corruption among traffic police and officials granting identification documents and registrations has been notably reduced in recent years by pilot programmes that introduced video surveillance and traffic cameras.

President Mirziyoyev has overseen an ongoing purge of the notoriously corrupt security and law enforcement services.

Media discussion of corrupt practices has cautiously expanded since Karimov’s death, the former president, but in some cases the journalists and commentators involved have come under pressure. In August 2020, the Senate admitted that public health officials in five different regions may have embezzled COVID-19 emergency funds”.<sup>426</sup>

140. The situation in the area of corruption is also characterised by attacks by governments on law enforcement agencies and the judiciary. In its attempt to prevent further deterioration in this area and attack against the independence of the judiciary and prosecution service, GRECO has conducted four so-called “ad hoc procedures”, which are normally introduced if GRECO receives reliable information indicating that an institutional reform, legislative initiative or procedural change in a member State may result in serious violation of a Council of Europe anti-corruption standard which has been the subject of any GRECO evaluation round.<sup>427</sup> Of those four procedures, three were conducted in respect of the post-socialist countries analysed in this document: Poland in 2018 because of the risks for the independence of the judiciary,<sup>428</sup> Romania in 2018 because of the risks for the independence of judges and prosecutors,<sup>429</sup> and Slovenia in 2020 because of the risks for the independence of judges and prosecutors.<sup>430</sup>

### **3.5 Some conclusions on the practical anti-corruption achievements in fifteen post-socialist countries**

141. Based on the excerpts from reports of international monitoring bodies mentioned above, tables with statistical data from paragraphs 8 and 10 above and publicly available data, it is difficult to characterise the anti-corruption efforts of the fifteen post-socialist countries as having been very successful.

142. This “lack of success” in anti-corruption efforts directly undermines the trust of citizens of those countries not only in the anti-corruption activities of their governments but also in their functioning in general, which in many countries influences changes in the political setup after every election held. Sometimes, the disappointment of citizens even leads to mass anti-government protests and other forms of civil unrest.<sup>431</sup>

143. In many countries, ruling political parties try to avoid defeat at the next election not by strengthening the balance of powers and fighting corruption in the country but by

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<sup>426</sup> Freedom House, Freedom in the World 2021, Uzbekistan, [Uzbekistan: Freedom in the World 2021 Country Report | Freedom House](#).

<sup>427</sup> [Ad hoc procedures \(Rule 34\) \(coe.int\)](#).

<sup>428</sup> [168079c83c \(coe.int\)](#).

<sup>429</sup> [Rule 34 Report \(coe.int\)](#).

<sup>430</sup> [GRECO \(coe.int\)](#).

<sup>431</sup> In Bulgaria, Romania, Slovenia, etc.

consolidation of executive, legislative, and judicial power in their favour, by their unwillingness to root out high-level abuse of office and by mass appointments based on party loyalty and personal connections, which directly boosts the so-called high-level corruption and leads to a deterioration of the general situation in the area of corruption.<sup>432</sup>

144. Many anti-corruption achievements in the countries are the result of international pressure, which due to deliberate obstruction by many governments at the lower levels,<sup>433</sup> and in their operationalisation very rarely lead to a tangible and sustainable improvement of the situation.<sup>434</sup>
145. Even countries which objectively register success at the general level of their anti-corruption activities face problems in specific corruption areas or sometimes even dismantle the effective legislative, institutional, and practical achievements, which usually leads to sharp declines in the level of trust of their citizens.<sup>435</sup> Unfulfilled promises of politicians who come into power on the strength of their anti-corruption pledges are another important element worsening the anti-corruption situation in many countries.<sup>436</sup>
146. The lack of independence among law enforcement bodies and the judiciary, the lack of successful cases against high-ranking officials, ineffective whistle-blower protection and attacks against independent media are additional elements making the fight against corruption in many countries a very challenging, if not impossible, endeavour.<sup>437</sup>
147. Retaliatory measures against successful anti-corruption officials and activists are used in some of the countries,<sup>438</sup> leading to a weakening of the countries' response to existing and new anti-corruption challenges.
148. Challenging conditions imposed by the Covid-19 pandemic,<sup>439</sup> often accompanied by a decreased level of attention of the law enforcement agencies,<sup>440</sup> have been exploited in quite a number of countries by their top-level officials for gaining additional wealth.<sup>441</sup>
149. It is very difficult to identify the lowest common denominator for practical anti-corruption achievements of the fifteen post-socialist countries, their pace, and other peculiarities beyond the national governments, or more precisely, beyond the national politics. Although this seems normal since it is always the government making all the crucial policy decisions in a country in all areas, including anti-corruption; it is still surprising that so many efforts and investments of the international community, the "strict" conditionality and application of a "carrot and stick" approach, have had and continue to have such a limited impact on those governments. Even their "genuine" political will and promises seem to be used only to reach the overarching political goal

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<sup>432</sup> E.g. in Armenia, Poland. and Slovenia.

<sup>433</sup> The required legislation is adopted only to be undermined at the level of by-laws.

<sup>434</sup> E.g. Bosnia and Herzegovina and Ukraine.

<sup>435</sup> Croatia, Latvia, Lithuania, Romania, Slovenia, Ukraine.

<sup>436</sup> E.g. Ukraine.

<sup>437</sup> Georgia, Kazakhstan, Latvia, Ukraine.

<sup>438</sup> Romania, Slovenia.

<sup>439</sup> Urgent requirements to purchase medical and personal protective equipment and to enable economic recovery of countries.

<sup>440</sup> Engaged in the protection of health and life of their citizens.

<sup>441</sup> Slovenia, Uzbekistan.

of winning the next election and not to really change anything for the better, for their citizens.

150. Notwithstanding everything listed above, objectively and in the long run countries are achieving some positive results in fighting corruption. However, the pace of those achievements and the many twists in the national anti-corruption policies simply call for an additional and thorough deliberation on what else can be done – or done differently – to accelerate the anti-corruption reforms in post-socialist countries and to ensure their sustainability.

### **3.6 Enhancing the effectiveness of national anti-corruption efforts**

151. Based on the experience, developments and knowledge acquired by some countries it is possible to formulate the following basic ideas on how to best enhance the effectiveness of national anti-corruption efforts in any country, including post-socialist countries, in addition to more specific recommendations presented in the chapters above:

- a) an atmosphere needs to be created in a country in which living and working with integrity is a virtue and not a shortcoming;
- b) effective prevention and suppression of corruption should be a real and genuine will of governments;
- c) governments are responsible for developing, maintaining, supporting, and defending legal, institutional, and practical frameworks needed to fight corruption;
- d) there should be a proper balance between prevention and suppression of corruption;
- e) political leaders should not only develop, maintain, support, and defend national legal, institutional, and practical frameworks needed to fight corruption but also serve as models of integrity in their professional and personal life;
- f) privacy rights of public officials should be limited to the extent needed for an effective prevention of their potential corrupt activities;
- g) national legal frameworks of all countries have to be adapted to the ratified international anti-corruption legal instruments;
- h) recommendations issued by international monitoring anti-corruption organisations should be implemented by the specified deadlines;
- i) changes in the legal framework required by international anti-corruption legal instruments and recommendations issued by international monitoring anti-corruption organisations should not be undermined by “compensatory” measures;<sup>442</sup>
- j) the financing of political parties and election campaigns should be legally regulated, transparent, and impartially supervised;
- k) specialised anti-corruption and other similar organisations,<sup>443</sup> in a country should be free from any undue influence and have appropriate powers and resources at their disposal, while their decisions and conclusions should be followed diligently and timely;
- l) integrity should be included in the curricula of educational organisations at all levels, starting with kindergartens;
- m) recruitment and promotions at all levels of governments, with the exception of political positions, should rest exclusively on merit-based criteria;

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<sup>442</sup> Measures aimed at neutralising international requirements.

<sup>443</sup> Such as law enforcement agencies, courts of justice, courts of audits, ombudsmen, etc.

- n) functioning of public institutions should be transparent and open to the public to the maximum extent possible;
  - o) media freedom should be guaranteed in practice;
  - p) any deviation from the required functioning with integrity in the public sector should be followed by appropriate political, labour, and disciplinary consequences;
  - q) any form and level of corrupt behaviour has to be punishable by effective, proportionate, and dissuasive sanctions;
  - r) there should be absolutely no impunity;
  - s) whistleblowing should be recognised as a positive social function, supported, and protected;
  - t) victims of corruption should be supported and compensated for the damage suffered;
  - u) governments, the private sector, and civil society organisations should be equal partners in the fight against corruption;
  - v) companies should be stimulated to introduce and maintain effective compliance mechanisms;
  - w) civil society organisations should be enabled and supported to perform their function of society watchdogs;
  - x) active engagement of citizens in the fight against corruption needs to be promoted in order to ensure quality and sustainability of anti-corruption achievements;
  - y) fighting corruption in a country should not cause more harm to the country than corruption itself.
152. The ideas outlined above should positively influence anti-corruption efforts of any country; however, they can be further expanded with more details, depending on the specific challenges encountered by a particular country.

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