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Joint First and Second Evaluation Rounds

Evaluation Report on Kazakhstan

Adopted by GRECO at its 90th plenary meeting
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INTRODUCTION

1. The Republic of Kazakhstan joined GRECO on 16 January 2020. GRECO has decided that all new members shall be evaluated in respect of all its rounds, regardless of whether these have come to a closure. Consequently, Kazakhstan was submitted to a joint evaluation procedure covering the themes of the first and second rounds (see paragraph 3). The GRECO Evaluation Team (hereafter the GET) comprised Mr Alastair BROWN, Sheriff (judge), Dunfermline Sheriff Court (United Kingdom), Ms Elena KONCEVICIUTE, Senior Anti-Corruption Adviser of the European Union Anti-Corruption Initiative in Ukraine, former International Relations Officer of the Special Investigations Service (Lithuania), Mr Luis Miguel SOUSA SILVA, Chief Inspector of Finances, General Inspectorate of Finance (Portugal) and Laura STEFAN, Rule of Law and Anti-corruption Coordinator, Expert Forum (EFor) (Romania). The team, accompanied by Mr David DOLIDZE and Ms Laura SANZ-LEVIA, from GRECO's Secretariat, visited Nur-Sultan from 6-10 September 2021. Before the visit, the GET received replies to the evaluation questionnaires, copies of relevant legislation and other documentation.

2. The GET met leading figures and representatives from the following institutions: Presidential administration, Parliament (Senate and *Mazhilis*), Supreme Court, Judicial Council, Prosecutor General's Office, Ministry of the Interior, Ministry of Justice, Ministry of Finance, Ministry of Foreign Affairs, Ministry of National Economy, Ministry of Digital Development, Innovation and Aerospace Industry, Ministry of Information and Social Development, Security Council, Anti-Corruption Agency, National Security Committee, Financial Monitoring Agency, National Bank, Central Elections Commission, Agency for Civil Service Affairs, Supreme Audit Office, Akimat of the city of Nur-Sultan, Akimat of the Akmola region, tax and registration authorities, Ombudsman for Entrepreneurs, and the National Commissioner for Human Rights. Moreover, the GET met with representatives of the following non-governmental organisations: Republican Public Association "Path to Justice", TALAP Centre for Applied Research, the Association of Environmental Organisations of Kazakhstan, as well as representatives from the media and academics. The GET also met with auditors, notaries, representatives of legal professionals (Collegium of Advocates and Bar Association) and the Atameken National Chamber of Entrepreneurs.

3. In accordance with Article 10.3 of its Statute, GRECO had decided that:

   - the First Evaluation Round would deal with the following themes:

     - **Independence, specialisation and means available to national bodies engaged in the prevention of and fight against corruption**[1]: Guiding Principle 3: authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy); Guiding Principle 7: specialised persons or bodies dealing with corruption, means at their disposal);
     - **Extent and scope of immunities**[2]: Guiding Principle 6: immunities from investigation, prosecution or adjudication of corruption); and

   - the Second Evaluation Round would deal with the following themes:

[1] Themes I and II of the first evaluation round
[2] Theme III of the first evaluation round

- **Proceeds of corruption**[3]: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 19.3, 13 and 23 of the Convention;
- **Public administration and corruption**[4]**:** Guiding Principles 9 (public administration) and 10 (public officials);
- **Legal persons and corruption**[5]**:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), together, for members having ratified the Criminal Law Convention on Corruption (ETS 173), with articles 14, 18 and 19.2 of the Convention.

4. This report was prepared on the basis of the authorities' replies to the questionnaires (submitted on 1 March 2021) and the information provided during the on-site visit. The main objective of the report is to assess the effectiveness of measures adopted by the authorities of Kazakhstan to comply with the provisions referred to in paragraph 3. For each theme, the report presents a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Kazakhstan on how to improve compliance with the provisions under consideration.

I. OVERVIEW OF KAZAKHSTAN'S ANTI-CORRUPTION POLICY

a. Description of the situation

Background

5. Kazakhstan declared its independence from the Soviet Union on 16 December 1991 and became a member of the Commonwealth of Independent States (CIS) the same year. Kazakhstan is the world's largest landlocked country and the ninth-largest country in the world. It has a population of 18.8 million residents. Kazakhstan's vast hydrocarbon and mineral reserves form the backbone of its large economy, and foreign investment continues to flow into these extractive sectors. Kazakhstan has one of the strongest economies in Central Asia, and its GDP is estimated at some 60% of the region.

6. The Kazakh economy, in particular the financial sector, had to face the combined challenge of a continued reduction in oil prices and the outbreak of covid-19. After the on-site visit, in early January 2022, what started as a public protest over rising fuel prices turned intro countrywide demonstrations - motivated by socio-economic concerns - leading to the declaration of a state of emergency and the resignation of the government[6].

[3] Theme I of the second evaluation round
[4] Theme II of the second evaluation round
[5] Theme III of the second evaluation round
[6] The authorities indicate that the circumstances surrounding the January events, and the presumption of terrorist action behind them, are currently under investigation at the request of the President of Kazakhstan. Based on the results these events will be given a proper legal evaluation. On 8 February 2022, the Deputy Prime Minister - Minister of Foreign Affairs of Kazakhstan met with the Executive Director of Human Rights Watch (HRW) to discuss issues of compliance with international norms and standards in the field of human rights in the context of the so-called "Tragic January" events. A statement of HRW followed which "welcomed the openness of the Kazakh authorities to dialogue and cooperation and assurances of commitment to comply with international human rights standards." Both the Ministry of Foreign Affairs of Kazakhstan and Human Rights Watch share an interest in an objective investigation of the January events.
On 20 January 2022, the European Parliament issued a Resolution on the Situation in Kazakhstan demanding, *inter alia*, a proper international investigation. It also called for the need to implement urgent reforms to fight corruption and reduce rising inequality.

Perception and phenomenon of corruption

7. During the on-site visit, the authorities reiterated that combating corruption is set as one of the main priorities in Kazakhstan's public policy and plays a pivotal role in the country's strategy towards economic growth. Kazakhstan is a Party to the UNCAC since 2008 and participates in the OECD Anti-corruption Network for Eastern Europe and Central Asia (OECD/ACN) since 2004. Kazakhstan's score in Transparency International Corruption Perception Index (CPI) has been improving in recent years: in 2020, the country jumped up 19 positions (score 38/100); it has dropped by one point in 2021 (score 37/100) and currently ranks 102nd out of 180 countries.

8. Based on the World Economic Forum Shapes Survey, 80% of young Kazakh respondents pointed to corruption as the most urgent problem in the country. The authorities have referred to the research entitled "Monitoring of corruption in 2020" (conducted by Transparency International Kazakhstan) which suggests that the majority of corruption cases occurred in the police, state-run hospitals and clinics, land management authorities, state-run kindergartens and higher education institutions. This study further indicates that the proportion of persons who had at least one contact with a public official and who paid a bribe to a public official, or were asked for a bribe by those public officials, during the previous 12 months decreased from 13.4% to 11.3%.

9. Another Transparency International 2019 study showed that people and small businesses see things improving on the ground. However, serious concerns remain, such as the flawed anti-corruption framework, lack of responsiveness in policymaking and state control of the media. The authorities admitted that corruption, particularly high-level corruption, remains a concern, and see the country's GRECO membership as an opportunity to develop a common legal space with the Council of Europe member States which could improve the business climate and boost the economy further. The authorities also acknowledged the link between corruption and organised crime, as they consider that without corruption there would be less organised crime. The authorities therefore stated one of their priorities as being to detect facts of systemic corruption and identify entire criminal chains.

Main initiatives in the anticorruption area

10. "The Strategy on Kazakhstan 2050: New Political Course of the Established State" was introduced in December 2012. This programme of economic, social and political reforms contains a chapter on strengthening statehood and the development of democracy in Kazakhstan, including decentralisation, enhancing local self-government, modernisation of the State apparatus, fighting corruption and reforming law-enforcement agencies. In spring 2015, Kazakhstan embarked on a reform agenda to modernise and diversify its economy and improve its institutions. In November 2015, Kazakhstan became a member of the World Trade Organisation.

11. In 2014, the Agency for Civil Service Affairs and Anti-Corruption was established. In 2019, it was transformed into the current Anti-Corruption Agency. The authorities indicated that, in order to vest this body with independence in its functioning, it is directly subordinated to the President of Kazakhstan. The Agency is responsible for the development and implementation of the anti-corruption policy and coordination in the field of combating corruption, as well as the identification, suppression, disclosure and investigation of corruption offences. A separate subdivision of the Agency deals exclusively with the detection of crimes among the senior management of the central state bodies.

12. On 18 November 2015 Kazakhstan adopted the Anti-Corruption Law, which sets out the principles of action against corruption, outlines anti-corruption measures, defines agencies responsible for combating corruption and delimits their powers, and envisages measures to eliminate the consequences of corruption, in particular the recovery of illegal property and other benefits obtained as a result of corruption offences. A number of other laws and normative acts that include anti-corruption elements have been adopted in recent years, such as the Law on Civil Service. Provisions in other legislation also refer to the organisation of the fight against corruption. For example, Article 22 of the Anti-Corruption Law entails an obligation for all state bodies, organisations, quasi-public entities[7], and officials to combat corruption within their competence. Additionally, several by-laws also govern the fight against corruption, e.g. the 2016 Anti-Corruption Monitoring Guidelines, the 2016 Standard Guidelines for the Internal Analysis of Corruption Risks, the 2017 Guidelines for Performing an External Analysis of Corruption Risks, etc.

13. Further, in 2015, the authorities issued the Plan on 100 Concrete Steps to Implement Five Institutional Reforms. It operates on five principal fronts: (1) establishing a modern, professional, self-sustainable and autonomous State apparatus capable of effectively implementing economic programmes and public services; (2) consolidating the rule of law, including an increased transparency of law-enforcement bodies, a new system of selection of police officers and raising professional requirements for judges; (3) achieving industrialisation and economic growth based on diversification; (4) unifying as a single nation for the future; and (5) functioning as a transparent, liberal and accountable government.

14. Moreover, since 2017, Kazakhstan is undergoing a deep digitalisation and modernisation process: 80 to 90% of public services have been made accessible online and through mobile devices with minimal to no human contact, thereby minimising the opportunities for petty corruption, according to the authorities. The digitalisation was also said to increase transparency and access to these services (www.egov.kz). Examples include an interactive map of open budgets (https://publicbudget.kz/) for schools, kindergartens, health institutions and road construction, an e-Case Management System used by law enforcement and prosecutors as well as an online one-stop-shop for making complaints to the police, verification of validity of state inspections, payment, or appeals against administrative sanctions (www.qamqor.gov.kz).

15. In February 2018, the government published its Strategic Plan for the Development of Kazakhstan[8] until 2025. One of its priorities is to significantly improve preventive measures, by reducing both the demand for unlawful corruption-prone actions as well as the possibility to perform them. The GET was told that the authorities see themselves as being in a fight for the minds of the citizens and aim to change the culture from one in which corruption is regarded as a fact of life to one in which corruption is met with zero tolerance.

16. The authorities have also reported about the concept of the so-called *"Hearing State"*, announced by the President in 2019, which is to imply wider interaction with the public and taking actions against their complaints. Following this announcement, the Anti-Corruption Agency set up a hotline, engaged in active interaction with the public online and social media, and established service-

[7] According to Article 3, paragraph 31 of the Budget Code of Kazakhstan (No. 95—IV of 4 December 2008), quasi-public sector entities are state-owned enterprises, limited liability partnerships, joint stock companies, including national management holding companies, national holding companies, national companies where the state is a founder, participant or shareholder, as well as subsidiaries, affiliates and other legal entities that are affiliated with them in accordance with legislative acts of Kazakhstan.

[8] A revised version, entitled National Plan for Development of Kazakhstan until 2025, was approved in February 2022 to implement ten national priorities. It is said to contain Specific Measurable Attainable Relevant and Time-bound (SMART) objectives, subject to monitoring by an inter-disciplinary working group under the Prime Minister.

centres in all 17 regional centres of Kazakhstan. According to the authorities, this has resulted in a higher level of trust in the Anti-Corruption Agency, as the number of claims addressed to it increased by 30% in 2020 as compared to 2017.

17. Lastly, there is a dedicated Anti-Corruption Strategy for the period 2015-2025. It aims to improve the effectiveness of the state's anti-corruption policy, involve society in anti-corruption movements by creating an atmosphere of "zero tolerance" towards any manifestation of corruption and reduce corruption levels in Kazakhstan. It consists of chapters covering the underlying reasons for its adoption; analysis of the situation; positive trends in the sphere of combating corruption; the challenges ahead; major factors promoting corruption; goals and objectives of the Strategy, including target indicators; tasks of relevant agencies etc. Key areas of the Strategy include approaches and priority actions; combating corruption in the public service; introduction of the Institute of public control; combating corruption in the public and private sector; prevention of corruption in the judiciary and law enforcement; formation of the anti-corruption culture; and development of international cooperation on combating corruption. The Strategy also envisages monitoring and evaluation of its implementation. According to the authorities, the new Anti-corruption Strategy for 2022-2026 was adopted on 2 February 2022 by the Presidential Decree No.802.

18. To raise awareness of corruption risks among the general public, the Anti-Corruption Agency operated a project entitled "Republican Information and Educational staff", which has come to an end in February 2022. To ensure a broader coverage of the Agency's awareness-raising activities in all areas, Regional Information and Educational staff has been set up with a total number of 400 people. Thus, in the beginning of 2020, the Agency initiated online educational and awareness-raising projects entitled "Adal kómek", "Antikor News" and "Antikor Live". Some 18 000 online events were held with a total coverage of more than 9.7 million people. Antikor News video news digests were posted on social networks, and Adaldyq Alańy programs were broadcast on regional television channels. In addition, billboards, banners, video and audio clips were displayed, and different handouts (leaflets, brochures) were disseminated.

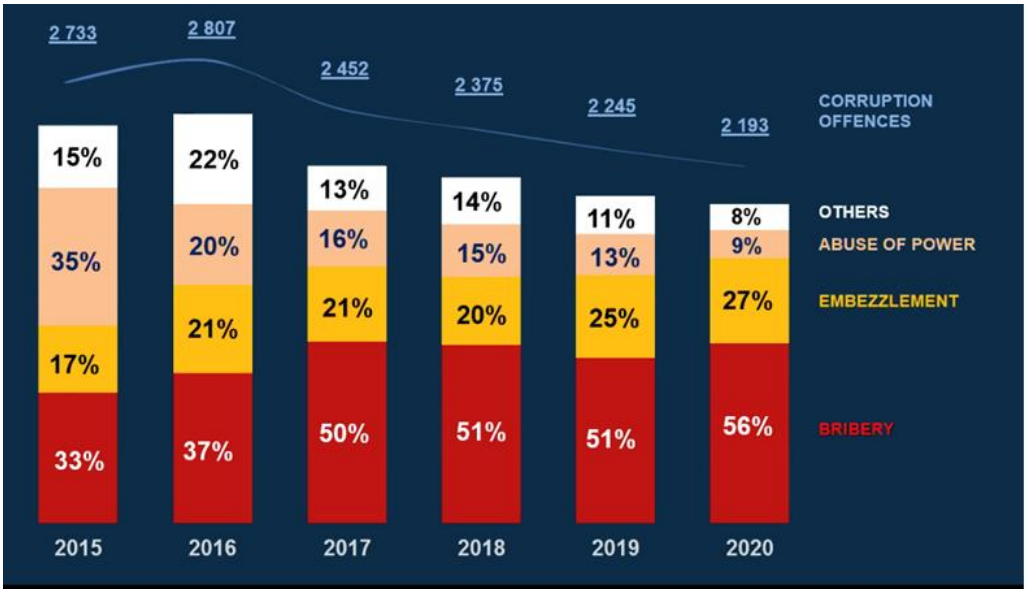
Criminal legislation

19. The Criminal Code (CC) includes the following criminal offences related to corruption:

- Embezzlement through abuse of official position (Article 189, paragraph 2 of part 3 CC)
- Fraud (190 CC)
- Commercial bribery (Article 353 CC)
- Abuse of authority (Article 361 CC)
- Excess of authority or official powers (Article 362 CC)
- Misappropriation of official powers (Article 363 CC)
- Illegal participation in business activities (Article 364 CC)
- Impeding legal business activities (Article 365 CC)
- Taking of bribes (Article 366 CC)
- Giving of bribes (Article 367 CC)
- Mediation in bribery (Article 368 CC)
- Falsification by officials (Article 369 CC)
- Inaction on service (Article 370 CC)
- Negligence (Article 371 CC)

20. The various provisions mentioned above carry different sanctions. For instance, bribery in the public sector is punishable by up to five years' imprisonment, commercial bribery is punishable by a fine or imprisonment up to five years, mediation in bribery is punishable by a fine or up to two years' imprisonment, etc. The penalties increase when aggravating circumstances concur, i.e., bribes of significant amount, extortion, concert, on a large scale, repeated offence (for example, the maximum penalty for bribery in the public sector can reach up to fifteen years' imprisonment). Confiscation and professional disqualification bans may also apply. The statute of limitations of most corruption-related offences is from ten to twenty years depending on the seriousness of the offence (Article 71 CC).

Statistics on corruption offences (2015-2020)



21. In respect of jurisdiction over corruption offences, Article 7 CC regulates offences committed in Kazakhstan and Article 8 CC refers to offences committed outside Kazakhstan. Citizens of the Republic of Kazakhstan who have committed a criminal offence outside Kazakhstan are subject to criminal liability under the Criminal Code if the act committed by them is recognised as criminally punishable in the state on the territory of which it was committed, and if these persons have not been convicted in another state. Foreign citizens and stateless persons who do not reside permanently in the territory of the Republic of Kazakhstan, who have committed a crime outside Kazakhstan, are subject to criminal liability under the Criminal Code in cases where this act is directed against the interests of the Republic of Kazakhstan and in cases provided for by an international treaty, if they are brought to criminal responsibility on the territory of the Republic of Kazakhstan and unless they have been convicted in another state.

22. Corruption-related conduct may also lead to administrative liability; Chapter 34 of the Code of Administrative Offences is relevant in this respect. In addition, to increase the engagement of all the public and quasi-state sector officials in the fight against corruption, Kazakhstan has introduced disciplinary responsibility of heads of state bodies, organisations and quasi-public entities for the non-fulfilment or improper performance of official duties to prevent corruption committed by their subordinates, which stipulates that all political appointees are obliged to tender their resignation (which may or may not be accepted) if their immediate subordinates commit a corruption offence

(Article 22, paragraph 1-1 of the Anti-Corruption Law). In similar cases, all other administrative civil servants of corps A or B would be subject to disciplinary liability[9].

23. As to relevant international agreements, on 18 June 2008 Kazakhstan acceded to the United Nations Convention against Corruption (UNCAC). Kazakhstan has not signed the Council of Europe's Criminal Law Convention on Corruption (ETS 173), nor its Additional Protocol (ETS 191), nor the Civil Law Convention on Corruption (ETS 174).

b. Analysis

24. The GET notes that the modernisation of Kazakhstan is moving fast, but that work lies ahead in terms of democratic reforms and the rule of law. It is recalled that pluralist democracy, the protection of human rights and the rule of law are the foundations of the Council of Europe and that GRECO - as a mechanism of the Council of Europe - carries out its evaluations and assessments within the framework of these fundamental European values.

25. Consequently, the Council of Europe has confirmed readiness to encourage and assist Kazakhstan on the path of transformation towards democratic governance based on the rule of law and respect for human rights[10]. The GET was repeatedly told that Kazakhstan aspires to further invest efforts and resources in rapid economic development, and anti-corruption is seen as a key policy towards that goal. While a sound anti-corruption policy is an influential tool for economic growth and development, it is, most importantly, a fundamental guarantee from the perspective of the European values of democracy, human rights and the rule of law. Fighting corruption and safeguarding the fundamental civil and political rights enshrined in the European Convention on Human Rights are two sides of the same coin[11]. Both objectives revolve around guarding against abuses of power and position and ensuring impartiality, fairness and respect for established rules by those entrusted with a public function.

26. Several legislative reforms have been adopted in Kazakhstan in recent years, and are underway, to strengthen democratic governance and better align to international standards (e.g. abolition of death penalty, changes to legislation on registering political parties and freedom of assembly, new legislation decriminalising defamation, administrative and criminal justice reforms, etc.). Whilst the ongoing reform process constitutes a step forward, it needs to be coupled with effective implementation, and appropriately sustained over time and in practice.

27. For the GET, the technical advancements undertaken on the anticorruption front, as described in this report, while encouraging, need to be framed in a broader context of institutional reform. In this connection, the public protest which took to the streets in January 2022, pointed at some fundamental problems in Kazakhstan, notably, the unequal distribution of power between the

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[9] For further details on the distinction between Corps "A" and Corps "B" administrative civil service position, see under public administration section of this report.

[10] See for example, Report on the relations of the Council of Europe with Kazakhstan. Parliamentary Assembly of the Council of Europe, Doc. 14436 of 10 November 2017.
Neighbourhood Co-operation Priorities for Kazakhstan for the period of 2019-2022. Committee of Ministers of the Council of Europe, GR-EXT(2019)2 of 5 March 2019.
Progress Review Report 2019-2022. Committee of Ministers of the Council of Europe, GR-EXT(2021)6 of 7 April 2021.
Kazakhstan is a member of the European Commission for Democracy through Law (Venice Commission). It holds observer status with the Consultative Council of European Judges (CCJE), the Consultative Council of European Prosecutors (CCPE) and the European Commission for the Efficiency of Justice (CEPEJ).

[11] For further illustration of threats posed by corruption to human rights and the rule of law, see "Corruption undermines human rights and the rule of law", published by the Council of Europe Commissioner for Human Rights on 19 January 2021.

branches of government (with the prevalence of the executive branch and the extensiveness of presidential powers), corruption, increased influence of limited elite groups, weak civil society and the need of greater government accountability vis-à-vis citizens. Many of these difficulties have been recognised in the speech of the President to the *Mazhilis* (lower chamber of Parliament) of 11 January 2022. The GET trusts that the recommendations included in this report will further contribute to the identification of areas that need additional development in the anti-corruption domain. However most importantly, measures taken in this respect need to be well coordinated with further large-scale reforms of the governing system of the State and the inclusion of the civil society in such a process.

28. The accurate scale of corruption is difficult to measure in most countries, and Kazakhstan is no exception; however, the GET found it particularly challenging to draw a clear picture of this problem in Kazakhstan, as the information it received from interlocutors met on-site was limited to specific types and areas of corruption and has not been based on a sufficiently comprehensive research and analysis. Further, the GET noted the lack of independent civil society organisations, actively working on raising awareness of corruption, disclosing its findings to the general public and, also absent, their contribution to the anti-corruption policy-making. What is more, the GET heard from representatives of the official (state) media that they would mostly report about detection of corruption cases, or events relating to raising awareness of corruption, when so prompted by the relevant public bodies.

29. The anti-corruption policy of Kazakhstan is guided by the long-term objectives set out in the National Strategy for Kazakhstan 2050, National Development Plan until 2025, and the new Anti-corruption Strategy for 2022-2026 approved in February 2022 (Concept of Anti-Corruption Policy for 2022-2026 and Action Plan). The implementation of the Anti-Corruption Strategy has been divided amongst different actors who are tasked to play a role and take personal responsibility for it. To date, a considerable number of anti-corruption initiatives have been taken in different areas. First, in 2019 the Anti-Corruption Agency was transformed into a separate state body, directly accountable to the President, with the task to spearhead anti-corruption reforms following a three-pronged approach: prevention, investigation and public education. The overall shift from a more repressive approach to prevention and education is seen by the authorities as a major factor for the decreasing of corruption crimes. As stated in the National Report for 2020, owing to systematic preventive work, the number of corruption cases registered by law enforcement and specialised state bodies in 2020 decreased by 2.4% as compared to 2019 and by 10.6% compared to 2017.

30. A wide range of corruption prevention measures include surveys and tackling of corruption risks, anti-corruption expert assessments of draft laws and regulations, introduction of internal control units in the law enforcement and state bodies to tackle corruption risks using their own resources. Additionally, more stringent sanctions have been introduced for corruption offences committed by law enforcement officials, prosecutors and judges, as well as a life-long prohibition of civil servants convicted for corruption on returning to the civil service, and an obligation on all civil servants to report corruption.

31. Regarding disciplinary responsibility of senior public servants and political appointees for corruption committed by their subordinates, interlocutors met on-site stated that this initiative generated proactive approach among state and quasi-public bodies in introducing internal anti-corruption compliance measures, putting in place regulations addressing corruption risks and resorting to the Anti-Corruption Agency for advice and assistance in organising anti-corruption training. While agreeing with the importance of broad involvement of different state and non-state actors in combating corruption, the GET is concerned that this measure may be hampering trust among the

different layers of hierarchy, generating micromanagement and instilling fear of retaliation for reporting misconduct, as it may cause problems for the superiors. The GET believes that this aspect is particularly important vis-à-vis the recent initiative to introduce broader whistle-blower protection measures and the mechanisms of their application, and therefore merits to be kept under thorough review.

32. The GET observed that civil society actors independent of the state, with rare exceptions, do not appear to be actively involved in anti-corruption policy-making, and the public trust towards non-governmental organisations in general was rather low (according to the 2020 survey by Transparency Kazakhstan[12], 35.3% of subjects "do not trust", while only 32.6% "trust" NGOs). In the course of the on-site visit, representatives of some NGOs expressed the view that civil society in Kazakhstan was facing challenges in securing funding from sources outside of government, coupled with a lack of awareness among the public of the role of independent civil society in preventing and combating corruption.

33. It is the GET's opinion that the anti-corruption action taken by the Kazakh authorities, while commendable, needs to translate itself into more impact-driven results. The broad range of functions endowed upon the Anti-Corruption Agency, including its leading role as regards the anti-corruption policy and coordination amongst the multiple bodies, would benefit from a clearer, more structured prioritisation. With regard to anti-corruption policy, priority could be given to independent and regular surveys and research, as well as the gathering of empirical evidence, concerning sectors most prone to corruption (and therefore potentially leading to the biggest losses to the state and the public at large), to taking concrete measures to reduce corruption risks in those sectors and measuring the impact of these actions.

34. The GET also believes that the lack of a developed civil society with truly independent interest groups, as well as the limited orientation of the media (especially "state" media) towards seeking and disseminating factual information on corruption in the country makes it more difficult to have sufficient knowledge of its actual scale - how systemic it is, and which parts and levels of the public and private sectors are affected etc. This situation warrants a more active involvement of actors independent from the state in the research of the scale of corruption, awareness-raising of its manifestations, and policy-making.

35. With the above in mind, the GET wishes to focus on some concrete areas where the anti-corruption efforts should be further improved. Firstly, as stated above, further efforts are required to better map the scale of corruption and in which sectors corruption risks are particularly prevalent. The GET found it particularly challenging to draw a clear picture of this problem in Kazakhstan, as the information was limited and not based on comprehensive research and analysis. The lack of independent civil society organisations and media is obviously a part of the problem. Then, on the basis of such broad research, the anti-corruption policies and strategies need to be adapted and the implementation of the measures taken monitored, likewise with mechanisms representing also non-state actors. Consequently, **GRECO recommends (i) carrying out comprehensive studies, including research independent from the state, in order to gain broader insight into the existence of systemic risks of corruption at various levels of the public sector, in the private sector and in respect of ordinary citizens, and (ii) adapting and streamlining the anti-corruption policy and strategies accordingly, focusing and prioritising the anti-corruption measures in respect of risk areas identified and systematically monitoring and measuring**

[12] A summary of Transparency Kazakhstan's Research entitled "Monitoring the State of Corruption in Kazakhstan in 2020" is accessible via the following link: http://tikazakhstan.org/wp-content/uploads/2021/01/Summary.pdf

their impact. Such monitoring should preferably include state and non-state representatives (e.g. international organisations, NGOs, etc.).

36. Further, the institutional setting of the leading anti-corruption mechanism - the Anti-Corruption Agency, with its centralised structure, under direct responsibility of the highest public institution of the country, has a primary law enforcement profile. While this reflects the system as such, and the fact that the fight against corruption has high priority in Kazakhstan, it does not necessarily provide this mechanism, in its role as a policy-making and corruption prevention body, with an appropriate basis, particularly, with a sufficiently broad representation from various sectors, whether public or private, and the larger civil society. There needs to be a clearer demarcation in Kazakhstan between the long-term preventive policy-making against corruption on the one hand, and purely law enforcement functions on the other hand, which at the same time assures efficient interaction between these functions. While it is up to the authorities to see how that could be handled in practice, whether through the establishment of a new preventive mechanism, or in another way, these two functions are principally different from each other which ought to be reflected in the institutional setting. Therefore, **GRECO recommends to further streamline corruption prevention policies and actions as activities distinct from and beyond law enforcement, and to broaden the composition and representation of the leading anti-corruption prevention and policy mechanism(s) (existing or new), and/or its dependent bodies, to include pertinent public institutions of various sectors and levels, as well as to provide for systematic involvement of non-state actors (e.g. independent non-governmental organisations, the business sector, self-governing professional unions, non-state media, etc.).**

37. Finally, it is noted that Kazakhstan has not signed nor ratified any of the anti-corruption conventions of the Council of Europe. While the compliance of the criminal legislation of Kazakhstan with the Criminal Law Convention on Corruption is a particular matter for GRECO's Third Evaluation Round, Kazakhstan is expected to sign and ratify this instrument in due course. The GET was therefore encouraged to hear that Kazakhstan intends to become a party to the Criminal Law Convention on Corruption (ETS 173). Such a process should aim at bringing national legislation in line with the requirements of this Instrument.

II. INDEPENDENCE, SPECIALISATION AND MEANS AVAILABLE TO NATIONAL BODIES ENGAGED IN THE PREVENTION OF AND FIGHT AGAINST CORRUPTION

a. Description of the situation

Law enforcement bodies combating corruption

38. Several law enforcement bodies are involved in ensuring a criminal justice response to corruption offences in Kazakhstan. These include the Prosecution, the Ministry of the Interior, the National Security Committee, the Financial Monitoring Agency and the Military Police. Legislation regulating the organisation and activities of these bodies includes, *inter alia*, the Constitution, the Constitutional Law on Judicial System and Status of Judges, the Law on Prosecutor's Office, the Law on the Law Enforcement Service, the Law on Internal Affairs' Bodies, the Anti-Corruption Law etc.

Anti-Corruption Agency

39. The Anti-Corruption Agency, the leading state body as regards the development and implementation of the anti-corruption policy and coordination, also has considerable law

enforcement tasks in its mandate. According to the Regulation of the Agency, its functions include receiving, registering and reviewing statements, reports and other information on criminal offences; organising and carrying out investigative activities; using special and other technical means in the course of covert investigative actions, general and special investigative measures; and conducting pre-trial investigations. The Agency has 17 territorial departments, in cities (Nur-Sultan, Almaty, Shymkent) and all the regions.

Ministry of the Interior and other internal affairs' bodies

40. The Ministry of the Interior is the central executive body responsible for managing the internal affairs system. Bodies of internal affairs are responsible for the protection of life, health, rights and freedoms of a person and a citizen, the interests of society and the state from unlawful infringements. Its main tasks include prevention of criminal offences; protection of public order and safety; combating crime; enforcement of criminal sanctions and other measures of criminal law enforcement, as well as of administrative sanctions. The Ministry is led by the Minister, appointed by the President of Kazakhstan (Article 9, Law on Internal Affairs' Bodies). The internal affairs bodies are formed by the police, the criminal executive system, the military and investigative bodies, and the National Guard (Article 7, Law on Internal Affairs' Bodies).

41. The Police is comprised of criminal police, administrative police, investigative, inquiry and other units. The criminal police consists of units for combating organised crime, extremism, illicit trafficking in narcotic drugs, psychotropic substances and precursors, and other units engaged in operational and investigative activities. The administrative police is composed of the local police service, civil and service weapons control units, migration police, convoy service, special agencies and other units engaged in the protection of public order. The police is organised into territorial departments, divisions and units, replicating the territorial-administrative division of Kazakhstan[13].

42. On 18 April 1995, an independent internal security unit was created by a government decree within the structure of the Ministry. In 2004, a new Regulation on the Department of Internal Security was approved as an independent operational and investigative unit with territorial subdivisions (departments) with vertical subordination. The number of staff in the special units for combating corruption is confidential. The main goals of these units are as follows:
    - protection of constitutional rights and freedoms of individuals and legal entities;
    - protection of the rights of employees and their family members;
    - ensuring your own safety, combating crime and other violations of the law in the police department;
    - prevention, detection, suppression and disclosure of crimes and offences committed by police officers;
    - pre-trial investigation against the police officers;
    - prevention of violations of offences and discipline by police officers.

43. Recruitment of staff and functioning of all law enforcement bodies[14] is carried out in accordance with the Law on the Law Enforcement Service, while some provisions of the Labour Code and the Law on the Civil Service also apply. Pursuant to Article 6 of the Law on the Law Enforcement

[13] Article 7, paragraph 3 of the Law on Internal Affairs' Bodies provides that territorial police bodies are police departments of regions, cities of republican significance, the capital, transport, city, district, district in cities, territorial police bodies, military investigation bodies.

[14] Article 3 of the Law on the Law Enforcement Service stipulates that law enforcement bodies include the bodies of prosecution, internal affairs, state fire service, anti-corruption and economic investigation services, carrying out their activity in accordance with the legislative acts of Kazakhstan.

Service, citizens of Kazakhstan who have reached the age of eighteen and are able in terms of their personal, moral, business and professional qualities, health and physical development, and level of education, to perform their official duties, may be recruited for service in law enforcement bodies on a voluntary basis. Article 29, paragraph 3 stipulates that the qualification requirements for the categories of positions of law enforcement bodies are approved by the head of the respective law enforcement agency, in agreement with the authorised body for civil service affairs, on the basis of standard qualification requirements for the categories of positions of law enforcement agencies. The procedure for appointing deputy heads of law enforcement agencies is regulated by the Presidential Decree No. 828 "On certain issues of personnel policy in the system of public authorities" of 29 March 2002. Such appointments are carried out by the President, upon approval of the Commission under the President on Personnel Policy in Law Enforcement Agencies. The powers of the heads of law enforcement agencies are regulated by the Law "On Law Enforcement Service", and the respective regulations of these agencies.

44. As per Article 14 of the Law on Law Enforcement Service, law enforcement officers are to be subordinated only to heads of the respective law enforcement body and their immediate and authorised supervisors (paragraph 4). Officers may also appeal against decisions and actions, adopted in respect of them to superior civil servants and (or) to a court (paragraph 7). This Law also provides for initial vocational training for new recruits to junior and middle ranks of law enforcement (Article 11). Further, it also envisages incompatibilities and restrictions with the law enforcement service (Article 17).

45. Representatives of law enforcement authorities informed the GET that the correlation of law enforcement officers in Kazakhstan was 366 per 100 000 inhabitants and that the system was in the process of reform towards a more service-oriented system, based on a pilot model already being implemented in Nur-Sultan. At the time of drafting the report, the Ministry was undergoing optimisation through reduction of staff on the basis of the analysis of work of the Ministry[15].

46. As to the National Security Committee, its terms of reference are set out in the Regulations on the National Security Committee approved by the Presidential Decree of 1 April 1996. Its tasks include identification, suppression, disclosure and investigation of corruption crimes committed by employees of the anti-corruption service, or special state bodies. Article 193 of the Criminal Procedure Code allows conducting an investigation by the national security authorities upon instruction of the prosecutor. The Internal Security Department is responsible for the prevention and investigation of cases of internal corruption.

47. Specialised training for officers of operational and investigative units of the Anti-Corruption Agency is provided at the Academy of Law Enforcement Agencies (ALEA). The topics of the courses include the prevention, detection and investigation of various types of corruption offences. The outcome of training sessions is evaluated on the basis of knowledge and academic performance of the trainee, the quality of the organisation of training courses, their practical orientation, the relevance of the material used and the competence of the lecturers, expert assessment of the direct supervisor (two months after training) for improving the quality, timeliness and completeness of the subordinate's work after training.

[15] Further information (in Russian) on the optimisation is accessible via the following link: https://www.inform.kz/ru/analiz-deyatel-nosti-mvd-provodyat-v-kazahstane_a3859138

Prosecution

48. The Office of the Public Prosecutor of Kazakhstan is a single centralised system with the subordination of the lower level prosecutors to the higher, and ultimately to the Prosecutor General. It is regulated to exercise its authority independently of other state bodies and officials, and is accountable only to the President of Kazakhstan. The Prosecutor's Office supervises the observance of legality on the territory of Kazakhstan, represents the interests of the state in court, and carries out criminal prosecutions on behalf of the state (Article 83, Constitution). Further, the 2017 Law on the Prosecutor's Office (hereafter: "Law on Prosecution") establishes its status, competence, organisation, and activities. The Prosecutor's Office acts upon principles of legality, independence of other state bodies and officials, and accountability only to the President. The Law forbids any intervention in the activities of the Prosecutor's Office and its bodies. The Prosecutor's Office and its bodies are to act in a transparent manner, with due respect of the relevant legislation on the protection of human rights and freedoms, the protection of state secrets and other secret protected by law, as applicable.

49. Apart from the Prosecutor General's Office, the structure of the prosecutorial authorities also includes the Chief Military Prosecutor's Office, Main Transport Prosecutor's Office, City Prosecutor's Offices of Nur Sultan, Almaty and Shymkent, as well as Regional Prosecutors' Offices of Akmola, Aktyobe, Almaty, Atyrau, East-Kazakhstan, Zhambyl, West-Kazakhstan, Karaganda, Kostanay, Kyzylorda, Mangystau, Pavlodar, North-Kazakhstan and Turkistan regions, district and equivalent to them city, inter-district, as well as specialised prosecutor's offices (military, nature protection, transport, prosecutor's offices of special facilities), and the Academy of Law Enforcement Bodies.

50. Pursuant to Article 36 of the Law on Prosecution, the Prosecutor General is appointed by the President of Kazakhstan, with the consent of the Senate for a period of five years. S/he is dismissed by the President of Kazakhstan and is accountable to him/her. The First Deputy Prosecutor General and Deputy Prosecutors General are appointed/dismissed by the President of Kazakhstan. Article 41 of the Law on Prosecution establishes that lower-level prosecutors are subordinate to higher level prosecutors, must carry out their instructions, and are accountable to them in the exercise of their duties. More senior prosecutors may, if needed, carry out the duties of lower level prosecutors, cancel, revoke, suspend or amend acts issued by lower level prosecutors, and resolve complaints against action/inaction of lower level prosecutors.

51. Within the prosecution, internal security units are engaged in the prevention of corruption, within their competence. Any person who has information about an impending, ongoing or committed corruption offence must report to the superior and/or the leadership of the prosecutor's office, or the Anti-Corruption Agency. Information on a total number of such internal security units is confidential.

Recruitment and training of prosecutors/investigators

52. The recruitment to the Prosecutor's Office is carried out in accordance with the relevant provisions of the Law on Law Enforcement Service (see above). According to legislation, the requirements for candidates to enter prosecutorial service, the structure and total number of staff in the Prosecution is approved by the President of Kazakhstan, upon proposal of the Prosecutor General. The latter appoints, with the consent of the President, prosecutors of regions and prosecutors equated to them. The Prosecutor General also appoints and dismisses the heads of institutions, deputy heads of departments, institutions and educational organisations, deputy prosecutors of regions and

equated to them prosecutors, as well as district prosecutors and prosecutors equated to them (Law on the Prosecution, Article 37). These appointees may be subject to probationary period of up to three months, upon discretion of the Prosecutor General.

53. Training of prosecutors entering the service for the first time is to be provided by the educational organisation of the Prosecution, as per Article 22 of the Law on the Prosecution. The GET was told that beyond the initial training, prosecutors are tested every three years for aptitude for service, which may result in meeting qualification requirements, not meeting such requirements and being sent for retraining, or meeting requirements with distinction, which gives rise to presenting the prosecutor in question for promotion.

Judges and courts

Organisation

54. The organisation and functioning of the judiciary in Kazakhstan is regulated by the Constitution, the Constitutional Law on the Judicial System and Status of Judges (hereafter "Law on the Judiciary"), Law on the Supreme Judicial Council (hereafter "SJC Law"), and other legal acts. Article 1 of the Law on the Judiciary provides basic rules on the powers of courts in Kazakhstan and stipulates, *inter alia*, that only courts are entitled to administer justice and that court acts are binding on all state bodies, their officials, natural and legal persons. The main task of the judiciary is to resolve conflicts and disputes arising in public and state life, restore violated rights, punish those who have violated law and order. Judicial power in Kazakhstan belongs only to the courts represented by permanent judges, as well as jurors involved in criminal proceedings in cases and in the manner prescribed by law. No other bodies and persons have the right to arrogate to themselves the powers of a judge or the functions of the judiciary.

55. The independence of judges in the administration of justice is guaranteed under Article 77 of the Constitution and Article 1, paragraph 3 of the Law on the Judiciary. According to the same provisions, judges are subject only to the Constitution and the law. Any interference with the court's administration of justice is punishable by law.

56. As per Article 3 of the Law on the Judiciary, the court system[16] is composed of the three following instances: district courts[17], regional courts[18] and the Supreme Court. Specialised courts may also be established by the President of Kazakhstan for certain types of cases, such as a system for administrative courts to examine appeals of administrative acts. There is a total of 411 courts in Kazakhstan: 392 districts courts, 18 regional courts, and the Supreme Court. The three-tier jurisdiction of these courts is discharged as follows: district and equivalent courts (including specialised courts, such as military, economic, administrative, juvenile, investigative, specialised criminal courts) exercise first instance jurisdiction in criminal cases; regional courts have appellate jurisdiction (second instance), and the Supreme Court has final jurisdiction (cassation / third instance).

[16] A detailed description of the judicial system of Kazakhstan, including courts, judges, jurisdictions, budgets etc. can be found on the country page of the European Commission for the Efficiency of Justice (CEPEJ) Evaluation of the judicial systems (2018-2020), accessible via the following link: https://rm.coe.int/en-kazakhstan-2018/16809fe312

[17] District courts and courts equivalent to them also include city courts and inter-district courts.

[18] Regional courts and courts equivalent to them also include Nur-Sultan city court, and courts of cities of republican significance.

57. Organisation of the judiciary, recruitment, dismissal and disciplinary supervision of judges are entrusted with the Supreme Judicial Council[19] (hereinafter "SJC"). The SJC is an autonomous state institution established for ensuring constitutional powers of the President of Kazakhstan on formation of courts (Article 1 of the Law on the SJC). The Regulations of the Staff of the SJC and the staff limit of its apparatus are approved by the President of Kazakhstan, who also appoints the Chief of Staff of the SJC (*ex officio* Secretary). All members of the SJC are appointed by the President of Kazakhstan (Article 4, paragraph 1 of the Law on the SJC) and its composition includes the Chairperson of the Supreme Court, the Prosecutor General, the Minister of Justice, the head of the authorised body for civil service, chairpersons of the relevant standing committees of the Senate and the *Mazhilis* (all being *ex officio* members), as well as other persons, including legal scholars, advocates, foreign experts, and representatives of the legal community, appointed by the President[20]. Candidates from among judges to be appointed to the SJC are proposed to the President of Kazakhstan by the extended plenary session of the Supreme Court from among those recommended by the plenary sessions of relevant lower courts. Pursuant to Article 4, paragraph 2 of the Law on the SJC, at least half of the members of the Board shall be judges.

The Supreme Court

58. The Supreme Court of Kazakhstan is the highest judicial body for civil, criminal and other cases under the jurisdiction of local and other courts, exercises the function of cassation with respect to them and provides explanations on matters of judicial practice through normative rulings. The Supreme Court consists of a President and judges. The total number of judges of the Supreme Court is established by the President of Kazakhstan upon the proposal of the Chairperson of the Supreme Court. Judicial Boards are established in the Supreme Court and specialised compositions may be created. The organs of the Supreme Court are: 1) plenary and extended plenary sessions; 2) judicial collegium for civil cases; 3) judicial collegium for criminal cases; 4) judicial collegium for administrative cases.

59. In the Department for ensuring the activities of courts at the Supreme Court (the apparatus of the Supreme Court), there is an Internal Security Unit (ISU). The ISU is entrusted with the following tasks:
    1) ensuring the independence of judges and their safety, as well as the safety of the employees of the judicial system, court buildings and trials;
    2) identification and prevention of corruption in the judicial system of the Republic of Kazakhstan;
    3) ensuring information security of the judicial system.

[19] Powers of the SJC include selecting, on a competitive basis, candidates for vacant positions of chairman, judge of a district and equivalent court, chairman of a judicial board, judge of a regional and equivalent court (hereinafter referred to as a regional court) – for appointment by the President of Kazakhstan; judge, President and Vice-Presidents of the Supreme Court - to recommend to the President for presenting to the Senate for appointment. The SJC also examines, upon proposal of the Chairperson of the Supreme Court, candidates for the vacant positions of presidents of regional courts, presidents of judicial boards of the Supreme Court and recommends them for appointment to the President of Kazakhstan. The SJC also considers a candidate for the vacant position of the Chairperson of the Supreme Court and recommends him/her to the President for submission to the Senate. The SJC also examines issues relating to termination of powers the heads, chairmen of judicial boards, and judges of different courts in the form of resignation or termination of powers, or dismissal in cases of reorganisation, abolition of a court, reduction of number of judges of the relevant court. The SJC is also in charge of performance evaluation of newly appointed judges upon expiry of a one-year term from the initial appointment as a judge of a district court and is also responsible for disciplinary issues regarding judges.

[20] The authorities indicate that legal amendments adopted on 20 December 2021 provide for replacing two *ex officio* members of the SJC, the Minister of Justice and the Head of the authorised body for civil service affairs, with two representatives of legal community. These amendments are to enter into force on 1 June 2022. The current full composition of the SJC can be consulted via the following link (in Russian): https://www.gov.kz/memleket/entities/vss/about/structure/100096/1?lang=en

60. The ISU has territorial subdivisions, which are part of the structure of court administrators, with direct subordination to the ISU. In accordance with Article 10(13) of the Law on Civil Service, the employees of the courts are obliged to immediately notify the higher head and (or) the management of the state body in which they work and (or) authorised state bodies about corruption instances.

Recruitment and training of judges

61. The requirements for candidates to judicial positions (Article 29 of the Law on the Judiciary) include Kazakhstani citizenship, the age of at least thirty years; a higher legal education, high moral and ethical qualities, impeccable reputation and experience in the legal profession for at least five years; passing a qualification examination[21]; passing a medical examination and confirming the absence of diseases, impeding the performance of professional duties of a judge; completing a paid internship[22] in the court and receiving positive conclusion based on the results of internship etc. In some cases, candidates may be required to pass polygraph examination, the results of which are consultative. In addition to these requirements, candidates for appointment as judges of regional courts must have at least fifteen years' experience in the legal profession, or at least five years' experience as a judge, and a conclusion of a plenary session of the corresponding regional court. As to candidates for judges of the Supreme Court, they must additionally have at least twenty years' experience in the legal profession, of which at least ten years' work as a judge, including five years as a judge of a regional court, along with the favourable conclusion[23] of a plenary session of the Supreme Court.

62. A new system of competitive selection of judges has been introduced as of June 2018, replacing the previous four-stage selection procedure with an eight-stage selection process, which includes receipt of applications; verification of candidates' compliance with legal requirements[24]; digital evaluation of candidates' criteria[25]; iv) additional assessment of candidates for judicial positions in the Supreme Court[26]; interviews of candidates by the selection committee to determine their communicative and professional skills; preliminary consideration of candidates by the Competition Commission for recommending them to the Judicial Coordinating Council; consideration of a judge recommended for appointment at the meeting of the Coordinating Council. Should a competition for certain positions be invalidated, a second-stage competition may be published by the Coordinating Council, indicating the list of vacancies, determined by the Competition Commission, and the application deadline. Based on applications received, the Competition Commission submits selected candidates for consideration by the SJC. Since January 2022, a special competition procedure for the judicial positions in regional courts for candidates with expertise in specialised areas of law has been introduced. The list of such areas of law is approved at a meeting of the SJC upon the proposal of the Supreme Court. For these specialists, an optimised procedure is envisaged, consisting of two stages instead of five, namely, psychological testing and solving case problems.

[21] A person, who has completed training and passed the qualification examination at the Academy of Justice under the Supreme Court is exempted from passing this examination for the period of four years from the date of graduation.

[22] A person, who has completed training and passed the qualification examination at the Academy of Justice under the Supreme Court is exempted from internships for the period of four years from the date of graduation.

[23] Conclusions of the respective plenary sessions are of recommendatory nature.

[24] Amendments were made to the qualification requirements themselves and additional restrictions were set for holding a judicial position. Thus, in order to attract young, qualified personnel from the corporate sector to the positions of district judges, the requirement for mandatory special seniority (as a Prosecutor, lawyer, and court clerk) has been eliminated, and the general legal experience has been reduced from 10 to 5 years.

[25] Such as legal and judicial experience, the result of the qualifying exam, the average score of the diploma, academic degree or academic title, opinion of the Coordinating Council of courts and an assessment by the selection committee.

[26] Including the study of public opinion regarding the applicants, monitoring of social networks and the media on the subject of negative mentions in respect of candidates.

63. Judges of the Supreme Court, including the Chairperson, are elected by the Senate upon the proposal of the President of Kazakhstan, based on the recommendation of the SJC (Article 31 of the Law on the Judiciary). The Chairperson of the Supreme Court is elected for a five-year term. Chairpersons of judicial boards of the Supreme Court are appointed for a five-year term by the President of Kazakhstan upon recommendation of the SJC, on the basis of a proposal of the Chairperson of the Supreme Court, and an [advisory] decision of the plenary session of the Supreme Court. Judges of district and regional courts are appointed by the President of Kazakhstan, upon recommendation of the SJC. Chairpersons of local and other courts are appointed by the President of Kazakhstan, upon recommendation of the SJC for a five-year term. Chairpersons of district courts, chairpersons of judicial boards of regional courts, chairpersons of boards of the Supreme Court may not be appointed to their position or a similar position in equivalent courts more than twice.

64. The Academy of Justice under the Supreme Court implements educational programmes of postgraduate education, carries out retraining, professional development of judicial personnel and scientific activities. The Supreme Court is the authorised body carrying out the general management of the Academy. Formation, status and organisation of work of the Academy is determined by the President of Kazakhstan. According to the authorities, the Academy of Justice conducts annual advanced training courses for judges with up to three years' experience, taking into account their specialisation. In addition, in the second half of 2021, two advanced training courses were held for newly appointed judges of administrative courts. In accordance with the Rules for Organising and Conducting Re-training and Advanced Training for Judges and Employees of the Judiciary at the Academy of Justice, training of judges is carried out every three years.

65. The Code of Judicial Ethics was approved by the Seventh Congress of Judges on 21 November 2016. The Code contains nine articles, setting out principles to be observed in the discharge of judicial functions, provides rules of conduct of judges in office and in private, establishes commitment to develop knowledge of law, sets out positions incompatible with that of a judge and other applicable restrictions. The Code stipulates that it is binding for all judges, irrespective of their position, including retired judges, who have retained their title and remain part of the judicial community.

Other relevant bodies

National Bank

66. As part of the Risk Department of the National Bank, the Compliance Office was created on 15 March 2019. Pursuant to the Regulation on the Risk Department of the National Bank, the activities of the Compliance Office cover the following areas:

- combating corruption (including in terms of ensuring compliance by employees of the National Bank with anti-corruption legislation and internal documents, including the Corporate Culture Code of National Bank employees);
- internal analysis of corruption risks in the National Bank;
- activities aimed at counteracting legalisation (laundering) of proceeds from crime and financing of terrorism in the National Bank;

- consideration of complaints against the actions of employees of the National Bank's system (including branches and organisations), including those received through the services anticorruption@nationalbank.kz and the "helpline";
- preventing and resolving conflicts of interest, as well as taking measures on received reports of corruption offences in the National Bank's system.

Financial Monitoring Agency

67. The Financial Monitoring Agency (FMA) is a state body with the task of preventing, detecting, suppressing, disclosing and investigating economic and financial offences. Its functions and tasks are set out in the Regulations on the Financial Monitoring Agency, approved by the Presidential Decree of 20 February 2021 and include combating corruption offences committed by employees of the anti-corruption service or special state bodies (as envisaged under Article 193 of the CPC). The FMA has investigative powers and is covered by the scope of the Law on Law Enforcement and the Anti-Corruption Law. Its structure includes the Department of Internal Security, responsible for the prevention and investigation of cases of internal corruption within the FMA.

Criminal investigations

68. The principles of criminal procedure are set out in Articles 10-31 of the Criminal Procedure Code (hereafter "CPC") and include legality; administration of justice only by court; judicial protection of the rights and freedoms; respect for the honour and dignity; personal immunity; protection of rights and freedoms of citizens before court; privacy of correspondence, telephone conversations, postal, telegraph and other communications; inviolability of dwelling and property; presumption of innocence; inadmissibility of the repeated conviction and criminal prosecution; administration of justice based on equality before the law and the court; independence of judges; proceedings on the basis of competitiveness and equality of the parties; comprehensive, full and objective investigation of the circumstances of the case; evaluation of evidence by individual conviction (based on law and conscience); providing a witness, a suspect, an accused with the right to defence; the right to professional legal advice; exemption from obligation to give evidence as a witness; publicity; language of the criminal proceedings; freedom to appeal against procedural actions and decisions. According to Article 9(2) CPC, violation of the principles of the criminal procedure, may lead to recognition of the procedural action or decision as unlawful, rendering decisions made in the course of such proceedings null and void, declaring materials and evidence collected, or the proceedings held, as invalid.

69. As per Article 32(6) CPC, corruption-related criminal offences under Articles 361-371 CC are subject to public prosecution, i.e., criminal prosecution on these offences cases must be initiated *ex officio* irrespective of whether any complaints have been received. According to the authorities, some 2 807 investigations into corruption offences were registered in 2016, 2 452 in 2017, 2 375 in 2018, 2 245 in 2019, 2 193 in 2020 and 1557 in 2021. Most of the offences detected in 2021 were giving a bribe (568) or taking bribe (449), followed by fraud (160), abuse of power (123) and embezzlement (116). The authorities also indicate that 1 021 persons were convicted for corruption offences.

70. There appears to be no separate law enforcement body responsible for combating organised crime. Pursuant to Article 187(6) CPC, on cases of criminal offences provided for by Articles 262, 263, 264, 265, 266 CC (setting up, participating, leading an organised criminal group, or organised crime community, including transnational), a preliminary investigation is carried out by the internal affairs bodies, national security, anti-corruption service or economic investigation service (now Financial

Monitoring Agency) that have started pre-trial investigation. At the same time, the Ministry of the Interior, on an ongoing basis, in cooperation with interested state bodies and in particular with the Anti-Corruption Agency, is taking organisational and practical measures to counter cross-border crime and neutralise external factors that pose a threat to security.

Specialised anticorruption bodies within law enforcement authorities

71. Each law enforcement body has internal security units responsible for preventing and combating corruption within these bodies. Within other state authorities, responsibility for prevention and control of anti-corruption measures is mostly given to the Heads of Human Resources and internal audit units, officials of which must possess, in addition to regular requirements, expertise in auditing and financial field. In case of undisputable corruption facts, materials are transferred to the Anti-Corruption Agency for the further investigation and trial.

Special investigative techniques

72. The procedure for conducting undercover investigative actions is determined by relevant law enforcement bodies in consultation with the Prosecutor General. Chapter 30 of the CPC contains provisions specifying types of special investigative techniques, rules for authorisation of their use and criminal offences, which warrant the use of such techniques. Thus, Article 231 of the CPC lists the types of undercover investigative actions, subject to authorisation by the investigating judge, including 1) undercover audio and (or) video surveillance of the person or place; 2) tacit control, interception and removal of information, transmitted over electrical network (telecommunication) communication; 3) secret obtaining of the information about the connections between subscribers and (or) subscriber units; 4) unofficial collection of information from computers, servers and other devices for collecting, processing, accumulation and storage of information; 5) undercover control of postal and other items; 6) unspoken penetration and (or) site survey; 7) secret surveillance of a person or place; 9) secret controlled purchase.

73. Article 232 of the CPC defines terms and grounds for undercover investigative actions, and states that such actions may be carried out on behalf of the body of pre-trial investigation by the authorised unit of the law enforcement agency, or special state body using the forms and methods of operational and search activities. These actions may be carried out upon the sanction of an investigating judge of a specialised investigative court, or a specialised inter-district investigative court, following the procedure established by Article 234 of the CPC. Namely, Article 234 of the CPC states that covert investigative actions may be carried out with the sanction of an investigating judge of a specialised investigative court, a specialised inter-district investigative court on the basis of a reasoned request of the official conducting the pre-trial investigation, or other authorised officials. The authorisation to conduct a covert investigative action is granted within twelve hours of the receipt of the relevant request by court. The authorisation may be considered beyond this time limit, but not more than twenty-four hours. An authorised prosecutor shall be notified of the results of the covert investigation within two days from the date of its completion. Article 235 CPC sets out the modalities of conducting covert investigations in urgent cases, allowing to carry out covert investigative actions with a notification to the investigating judge within twenty-four hours and a subsequent receipt of an authorisation as stipulated in Article 234 CPC. The duration of covert investigative actions should, in principle, be limited to 30 days.

74. In addition, the provisions of the Law on Operative-Search Activities (Law No 154-XIII of 15 September 1994) are applicable when determining the purposes and rules for using special investigative techniques. Article 12, paragraph 4 of this Law stipulates that in respect of certain

criminal offences, including the excess of authority or official powers (Article 362 of the CC), impeding legal business activities (Article 365 of the CC), taking of bribes (Article 366 of the CC) and giving of bribes (Article 367 of the CC), special operative-search measures may be carried out only with the authorisation of the prosecutor. The provisions of this paragraph stipulate that special operational investigative measures may be carried out even before the pre-trial investigation has been initiated, provided that such measures are authorised and recorded in accordance with the law. Further procedural rules on the application of special investigative techniques are provided in the Joint Order of the Minister of the Interior, the Minister of Finance, the Chairman of the Anti-Corruption Agency, the Head of the State Protection Service and the Chairman of the National Security Committee, registered with the Ministry of Justice on 27 December 2014.

Confidentiality

75. As per Article 241 of the CPC on measures for the protection of information in criminal proceedings, information obtained as a result of covert investigative actions shall remain confidential until these actions are completed. In addition, information about the methods used when implementing covert investigative actions, persons having conducted them, are equalled to state secrets and shall not be subject to disclosure.

Bank secrecy

76. Banks are generally required to keep information on their clients and operations confidential (banking secrecy). Banking secrecy includes information: on the availability, owners and numbers of bank accounts; on depositors, customers and correspondents of the bank; relating to the balance and flow of money in these accounts and the accounts of the bank itself; banking operations (except for general terms of the execution of banking operations); and on the availability, owners, character and value of customers' property kept in the bank's safe boxes, boards and premises (Article 50, Law on Banking). Banking secrecy does not include information on credits issued by banks that are undergoing liquidation. Banking secrecy can generally be disclosed only upon consent of relevant persons or in cases specifically permitted by the law (e.g., to law enforcement bodies upon their request).

77. Kazakh banks are subjects for financial supervision and, as such, must report client transactions that exceed the thresholds established by the Law on Anti-Money-Laundering, or those that are deemed suspicious to the Financial Intelligence Unit (see also below on measures against money laundering). If it is not possible to check transactions as provided for by the Anti-Money-Laundering Law, or if so directed by law enforcement, the Kazakhstani banks are entitled to block the suspicious transaction. Banks are also requested to perform identification and "know-your-customer" procedures in relation to their clients, in line with legal requirements.

Coordination and international cooperation

78. The Coordinating Council of the Prosecutor General is responsible for the coordination of activities of law enforcement authorities in combating different crimes, including corruption. It consists of heads of law enforcement bodies, the Minister of Justice and the Chairman of the Accounts Committee for Control over the Execution of the Republican Budget. The tasks of the Coordinating Council also include development of coordinated proposals and actions aimed at improving the effectiveness of law enforcement activities, improving its legal regulation; determining the main directions of the fight against crime based on the analysis and discussion of the state of crime, its

structure and dynamics, as well as forecasting trends in the development of crime and other offences.

79. In addition, the Commission on Anti-Corruption Issues under the President of Kazakhstan, an advisory body consisting mostly of *ex officio* members, is responsible for the development and adoption of coordinated measures aimed at strengthening the combating corruption and violations by civil servants of the rules of official ethics, increasing the level of responsibility of civil servants.

80. In countering transnational organised crime, including drug-related crime, illegal migration, human trafficking, mechanisms created in a multilateral format within the Commonwealth of Independent States (CIS), CSTO, SCO, CARICC and NCB "Interpol" of the Ministry of Internal Affairs are widely used, carrying out the exchange of information about the movements of leaders and members of organised crime groups, "authorities" of the criminal environment of the near abroad; the exchange of information on the subject of suppression of criminal groups engaged in theft of vehicles, illegal drug trafficking, illegal migration and human trafficking; the formation and use of the Joint Data Bank of the ATC of the CIS member states; the formation and use of the Specialised databank in the field of countering transnational crime and other dangerous types of crime, approved by the Decision of the CIS Ministry of Internal Affairs to improve the efficiency of control over the movements of criminals within the borders of the CIS.

Administrative justice

81. On 29 June 2020, the President of Kazakhstan promulgated the new Administrative Code of Process and Procedure of Kazakhstan (Administrative Procedure Code). Following its entry into force on 1 July 2021, the 2000 Law on Administrative Procedures and the 2007 Law on the Procedure for Consideration of Appeals by Individuals and Legal Entities have become null and void. The new Administrative Procedure Code regulates administrative appeal procedures to be conducted by administrative bodies, administrative judicial procedures to be conducted by courts, and establishes jurisdictions of various courts, including on the basis of territoriality, types of administrative disputes, complainants, etc. Article 1, paragraphs 3 and 4 of the Administrative Procedure Code stipulate that the provisions of the Civil Procedure Code shall apply in administrative proceedings, unless otherwise provided by this Code. Provisions of other laws of Kazakhstan regulating administrative legal proceedings are said to be incorporated in this Code. International treaty- and other obligations of Kazakhstan, as well as normative decisions of the Constitutional Council and the Supreme Court shall form an integral part of administrative and administrative-procedural law.

82. Article 102 of the Administrative Procedure Code states that (1) administrative proceedings should be conducted by specialised district and equivalent administrative courts. Upon the plaintiff's application, cases subject to the jurisdiction of a specialised district and equivalent administrative court may be heard by the court at the plaintiff's place of residence, except for cases subject to the jurisdiction of specialised district and equivalent administrative courts located within cities of national significance and the capital or oblast centres. In administrative legal proceedings courts have jurisdiction over disputes arising from public-legal relations envisaged by this Code.

83. Among novelties brought about by the new Code is an increased and active role of courts in assisting plaintiffs in clearly formulating or amending claims of their appeals (Article 116), assisting both parties in establishing circumstances of the case, as well as collecting evidence by courts themselves to establish and objectively assess these circumstances (Article 130), and establishing time-limits for the examination and resolution of administrative cases (three months, which may be

extended by a further three months for complex cases). According to the authorities, corruption-related administrative offences are adjudicated under the Code of Administrative Offences by relevant courts. Thus, since 1 July 2021, the Anti-Corruption Agency initiated investigations into 47 administrative offences related to corruption. Simplified procedure was applied in 37 cases (resulting in fines), 10 were sent to the court for consideration (fines imposed in nine cases, one still under consideration). In most of the cases fines amounted up to 300 € (50 MCI).

Special measures to encourage cooperation; protection of collaborators and witnesses

Protection of collaborators and witnesses

84. According to the authorities, the Law on State Protection of Persons Participating in Criminal Proceedings establishes a system of measures of state protection of life, health, property, legal rights and interests of persons[27] participating in the criminal procedure, their family members and close relatives, ensuring their security in order to prevent unlawful interference in the criminal process. The bodies in charge of providing state protection include national security, internal affairs, military administration, anti-corruption and economic investigation services. The types of the state protection include the use of security measures to protect the life and health of protected persons, as well as the preservation of their property; application of remedies, including establishing criminal liability for infringement of their lives, health and property; social protection measures, including financial compensation in the case of the infliction of bodily harm or other injury, death, destruction, or damage to their property. The identity and personal data of persons under the state protection is kept confidential.

85. According to statistical information provided by the authorities, personal protection, protection of housing and other property are most often used (2017 - 139, 2018 - 114, 2019 - 62, 2020 - 79 and 2021 - 63) followed by temporary placement in a safe place (2017 - 40, 2018 - 36, 2019 - 23, 2020 - 24 and 2021 - 25) and an official warning to the person considered as a threat of violence (2017 - 18, 2018 - 25, 2019 - 6, 2020 - 17 and 2021 - 10).

[27] In particular, persons who may be granted state protection include the following:
1) judges;
2) members of the jury;
3) prosecutors;
4) investigators;
5) interrogating officers;
6) persons carrying out operational-search and counter-intelligence activities;
6-1) citizens assisting the bodies carrying out operational-search and counter-intelligence activities;
6-2) private prosecutors;
7) defenders;
8) experts;
9) specialists;
10) secretaries of judicial sessions, bailiffs, enforcement agents;
11) injured persons;
12) witnesses;
13) alleged criminals;
14) accused, convicted, and the person against whom the criminal prosecution is dismissed or rendered a judgment of acquittal by the court;
15) translators;
16) attesting witnesses;
17) the legal representatives, representatives;
18) civil plaintiffs, civil defendants;
19) family members, close relatives of the persons, listed in subparagraphs 1) -18) of this Article.

86. No separate agency exists in Kazakhstan for the protection of victims and/or witnesses. Bodies of national security, internal affairs, military administration, anti-corruption and economic investigation are all responsible for implementing relevant security measures. Within the structure of the relevant state bodies, there are subdivisions responsible for the implementation of state protection of persons participating in the criminal process.

b. Analysis

87. Kazakhstan has in place a wide range of institutions responsible both for prevention and fight against corruption. According to Article 18 of the Anti-Corruption Law, the subjects responsible for fighting corruption include the Anti-Corruption Agency, other law enforcement bodies and all other state agencies, quasi-public entities, public associations, individuals and legal entities.

88. The GET recalls the Guiding Principle 3 of the twenty guiding principles for the fight against corruption, which requires states to ensure that those in charge of investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, and are free from improper influence.

89. In Kazakhstan, the President appoints, or plays a decisive role in the appointment of all leading positions in the judiciary, prosecution, and specialised anti-corruption bodies, as well as in law enforcement in general. The approval of organisational structure, number of staff and regulations relating to functioning of these bodies also pertain to President's exclusive competence. The GET is mindful that corruption prevention in the judiciary, prosecution and law enforcement is covered by GRECO, respectively, in the Fourth and Fifth Evaluation Rounds. However, it is firmly convinced of the need to draw the attention of the Kazakhstani authorities to the fact that there is a need for strengthening the independence of the authorities involved in the fight against corruption within a system of appropriate check and balances, which limits the over-arching control exercised by the highest political/executive powers of the State. This is especially the case in respect of the prosecution and law enforcement bodies, which have a strictly defined hierarchy, with direct subordination stipulated by law, while their top officials are accountable to the President. As to the independence of the judiciary in Kazakhstan, the GET refers to the recommendations made by the Venice Commission in its respective opinions[28], which remain relevant. Therefore, current arrangements merit a thorough institutional review. In view of the above, **GRECO recommends that necessary legislative and practical measures be taken to enhance the independence of the judiciary, and provide adequate functional autonomy to the prosecution and law enforcement bodies in charge of combating corruption, and to protect these bodies from any improper influence, including from the highest political/executive powers of the state.**

90. The specialised National Anti-Corruption Bureau, which was previously part of the Agency for Civil Service Affairs and Anti-Corruption, has been transformed by President's Decree No. 74 of 22 July 2019 into the Anti-Corruption Agency – a law enforcement body directly accountable to the President, with 17 territorial departments covering the entire country. According to the research conducted by Transparency International Kazakhstan[29] together with UNDP, the level of trust in the Anti-Corruption Agency during 2020 accounted for 63% and was the second highest after the

[28] In particular, the GET refers to the Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Constitutional Law on the Judicial System and Status of Judges (Opinion No. 629/2011 of 17-18 June 2011, accessible via the following link: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)012-e), and the Opinion on the Concept Paper on the Reform of the High Judicial Council (Opinion No. 938/2018 of 17 December 2018 accessible via the following link: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)032-e).

[29] Transparency International Kazakhstan and UNDP Global Coalition Against Corruption, Monitoring the State of Corruption in Kazakhstan in 2020, http://tikazakhstan.org/wp-content/uploads/2021/01/PREZENTATSIYA-REZULTATOV.pdf

President (70%), leaving behind the media (51%), Human Rights Ombudsman (44%), courts (41%) and NGOs (33 %). Similarly, the general public see the Anti-Corruption Agency and the President as the most successful in reducing corruption (45.3 % and 41.8% accordingly)[30]. As already described, along with detecting and investigating corruption offences (including high-level corruption), the Anti-Corruption Agency is engaged in corruption prevention and awareness-raising activities and has an overall responsibility for the development and monitoring of implementation of the national anti-corruption policy.

91. The staff of the Anti-Corruption Agency is 1 688 with a competitive salary level (as compared to, for instance, regular law enforcement officials[31]) and the powers to use a wide range of special investigative techniques[32] with a sanction received from an investigative judge of a specialised investigative court.

92. As per Chapter 3 (18) of the Regulation of the Anti-Corruption Agency, its Chairperson and three deputies (upon proposal of the Chairperson) are appointed and dismissed by the President[33]. No term of office, requirements for appointment or reasons for dismissal of the high-level management are indicated either in the regulation or in the Law on Law Enforcement. Article 33, paragraph 1 of the Law on Law Enforcement refers to the Presidential reserve of heads of law enforcement bodies and a procedure for constituting this list, as well as the positions – to be decided by the President. The GET notes the reference to the Presidential Decree No. 828[34] of 29 March 2002 regarding appointment of senior law enforcement officers but found no provisions setting out the procedure for constituting this list. In contrast to its leadership, the recruitment of all other staff of the Anti-Corruption Agency is carried out in accordance with the rules of appointment, career development and dismissal provided for in Law on Law Enforcement, Chapters 3-5. In view of the above, **GRECO recommends setting a clear and transparent procedure (distinct from political considerations) for appointment of heads and deputy heads of law enforcement bodies, specifying their term of office and reasons for dismissal.**

93. Law enforcement bodies in Kazakhstan include prosecution offices, internal affairs' bodies, fire prevention agency, Anti-Corruption Agency and Economic Investigation Service (now Financial Monitoring Agency)[35]. All the law enforcement bodies, as well as security agencies of Kazakhstan must have internal security units, responsible for detection of violations among their personnel[36]. Such an internal security unit is also part of the Anti-Corruption Agency. As reported by the authorities (see table 1 below), during the recent two years, the majority of corruption offences were investigated by the Agency. According to the authorities, in 2021, two criminal offences committed by the employees of the Agency were detected by its Internal Security Unit, and 257 were brought to disciplinary responsibility.

Table 1[37]. Corruption crimes by anti-corruption subjects

Subject	2019	2020	Dynamics
Anti-Corruption Service	1 717	1 632	-5%
Ministry of the Interior	269[38]	342	+27%

[30] Ibid.
[31] Law on Law Enforcement has a separate Article 22-1 regarding qualification classes for the Anti-Corruption Agency and the Economic Investigation Service (now the Financial Monitoring Agency). The classes of qualification are provided to individual employees taking into account their qualification, education, the position held and the years of service.
[32] Criminal Procedure Code, Article 231.
[38] Of which the Internal Security Unit detected 173 in 2019 and 155 in 2020.

National Security Committee	128	89	-30%
Prosecution bodies	65	78	+20%
Financial Monitoring Agency (former Economic Investigation Service)	21	21	0%

94. The GET was told that once a criminal offence is discovered, it is registered in the Unified Register of Pre-trial Investigations (URPI) pursuant to Article 179 of the CPC. The prosecutor verifies, within 24 hours from registering of the criminal offence, the legality of the initiation of a pre-trial investigation and of measures taken to eliminate violations. Should there be any law violations in registering the offence in the URPI, or in the initiating of a pre-trial investigation, or should there be no sufficient grounds of a criminal offence, the prosecutor terminates the criminal case. The prosecutor also supervises the legality of operational-search activities, inquests, investigations, and court decisions at all stages of the criminal process (as per Articles 58 and 193 of the CPC). The procedure and timeframe for operative activities are set out in regulatory acts of the law enforcement bodies, which are confidential (as per Article 14 of the Law on State Secrets). However, these activities are said to be subject to approval by the Prosecutor General, and subordinate prosecutors, who also supervise their compliance with the law, including their duration. In addition, the GET was informed that recently Kazakhstan started applying a new model of criminal proceedings, clearly distinguishing areas of responsibility between the investigative authorities, the prosecution and court. Under this model, pre-trial investigation bodies are responsible for detecting, suppressing a criminal offence, identifying persons involved, collecting and consolidating evidence; the prosecutor's office is responsible for legal assessment of the evidence collected, key procedural decisions, bringing and maintaining charges in court; and the court is responsible for sentencing, authorising investigative actions and considering complaints against the actions and decisions of the pre-trial investigation bodies and the prosecutor's office. In addition, the authorities referred to Paragraph 9 of the Instruction "On the organisation of pre-trial investigation in the Prosecutor's Office"[39], which defines the categories of criminal offences considered as a priority for special prosecutors. These include offences against employees of bodies, departments, institutions and educational organisations of the Prosecutor's Office. Thus, corruption offences committed by employees of the prosecutor's office would be investigated by special prosecutors. What is more, the Prosecutor General has the right, in exceptional cases, on his own initiative, to entrust the pre-trial investigation to the prosecutor, regardless of the established jurisdiction. Thus, the prosecutor's office may investigate criminal offences, including those related to corruption, committed by its employees.

95. As stated in the descriptive part of the report, Article 24 of the Anti-Corruption Law obliges every person to report corruption to the management of a state body or other employer or the authorised

[34] The text of the Decree No. 828 (in Russian) may be consulted via the following link: https://law.apa.kz/sozdanie-akademii/%D1%83%D0%BA%D0%B0%D0%B7%D1%8B-%D0%BF%D1%80%D0%B5%D0%B7%D0%B8%D0%B4%D0%B5%D0%BD%D1%82%D0%B0-%D1%81/%D1%83%D0%BA%D0%B0%D0%B7-%E2%84%96828-%D0%BE%D1%82-29-%D0%BC%D0%B0%D1%80%D1%82%D0%B0-2002%D0%B3%D0%BE%D0%B4%D0%B0

[35] Law on Law Enforcement, No. 380-IV, of 6 January 2011, last amended 11 July 2021, Article 3.

[36] Law on Operative-Search Activities, Article 6: *The bodies charged with investigative powers, including the use of special investigative techniques, include bodies of internal affairs, national security agencies, foreign intelligence services, military intelligence bodies of the Ministry of Defence, state protection service, Economic Investigation Agency and the Anti-Corruption Agency*.

[37] National Report on Combatting Corruption 2020.

[38] Of which the Internal Security Unit detected 173 in 2019 and 155 in 2020.

[39] Approved by the Prosecutor General on 18 June 2018.

body for anti-corruption, whereas the latter are tasked to take measures on the reported corruption case. With regard to civil servants[40], chief executives of a state body are obliged to take action within a month of such statements received. However, given the information provided it remains unclear if all the written statements to the superiors about the alleged corruption crimes committed are registered and how the statements are dealt with generally prior to the decision taken or denied to enter them into the UPRI. The period of one month within which the chief executives of a state body is to act might be a long period of time, depending on the offence or crime committed. With that in mind, **GRECO recommends ensuring that the procedure of registering statements from people reporting corruption to their employers is (i) clear and encouraging to those reporting corruption, including safeguards against retaliation provided to persons reporting in good faith, and (ii) that assistance and training is provided to employers tasked to take actions regarding the statements reported by their subordinates.**

Coordination and co-operation among law enforcement

96. As stated above, Kazakhstan has engaged a number of different actors in combating corruption. The main body responsible for coordinating anti-corruption policy is the Anti-Corruption Agency. In order to coordinate the efforts of all law enforcement authorities that are tasked to combat corruption within their respective sectors and which can use special investigative techniques, the Prosecutor General has set up a Coordinating Council consisting of the heads of law enforcement agencies and the Minister of Justice. However, its tasks are mainly strategic regarding improving effectiveness of law enforcement, determining main directions of the fight against crime and improving its regulation.

97. In the view of the GET, the operational coordination needs to be strengthened among the different actors in place. For example, it remains unclear at what stage the crimes detected by internal security units need to be transferred to the Anti-Corruption Agency, and on what basis this decision is to be taken by the prosecution. It is also unclear which body supervises the crimes that the prosecution office is investigating (see Table 1 above). Likewise, the co-operation between the Anti-Corruption Agency and Economic Investigation Service (renamed into the Financial Monitoring Agency), both reformed in 2019 to become accountable to the President, would benefit from streamlining, with the exchange of information between them intensified to prompt more complex financial investigations resulting in more effective prevention, detection and investigation of corruption and money laundering crimes. Furthermore, to be able to detect and trace criminal proceeds more effectively, the database of bank accounts owned by the Tax Authority, should be more easily accessible to law enforcement, in particular the Anti-Corruption Agency and the Financial Monitoring Agency. In view of the above, **GRECO recommends that (i) coordination among all law enforcement authorities combating corruption be streamlined and enhanced, in particular to ensure efficient financial investigations; (ii) the database of bank accounts owned by the Tax Authority be directly accessible to the law enforcement, in particular the Anti-Corruption Agency and the Financial Monitoring Agency, with a view to detecting and tracing criminal proceeds more effectively.**

98. The GET notes that pursuant to Article 187, paragraph 3 of the CPC, the investigative jurisdiction for corruption-related offences pertains to the Anti-Corruption Agency[41]. In addition, Article 187,

[40] Law on Public Service, Article 52(3)

[41] Article 189, paragraph 3 of the CPC reads as follows: "3. In cases of criminal offences provided in articles 189 (paragraph 2) of part three), 190 (paragraph 2) of part three), 216 (paragraph 4) of part two), 217 (paragraph 3) of part three), 218 (paragraph 1) of part three), 234 (paragraph 1) of part three), 249 (paragraph 2) of part three), 307 (paragraph 3) of part three),

paragraph 1 of the CPC allows the National Security Committee to conduct pre-trial investigation into corruption offences committed by the military personnel, employees of the anti-corruption service, or special state bodies. Article 187 paragraphs 3-4 of the CPC stipulates that investigation for certain offences under chapter 18 of the CC (entitled "Military criminal offences") should be carried out by the bodies that initiated the pre-trial investigation, i.e. internal affairs' or national security bodies. Finally, Article 193, paragraph 12 of the CPC provides that the prosecutor may, in exceptional cases and following a written petition of the body of preliminary investigation, or his/her own initiative, transfer a preliminary investigation from one investigating body to another, or decide to investigate it him/herself, irrespective of the jurisdiction established by the CPC. In the course of the visit, the GET received inconsistent information as regards the authority bound to investigate possible corruption offences, committed by different law enforcement officers. On the one hand, a representative of the Ministry of the Interior stated that offences perpetrated by its employees were likely to be investigated by the relevant section within the Ministry. However, the Anti-Corruption Agency representatives submitted that such cases would fall within their competence, and the question as to which body was to investigate corruption offences was decided by the supervising prosecutor. The GET firmly believes that there is a need to raise awareness among law enforcement authorities of the applicable norms when determining investigative powers regarding corruption offences, and ensure their consistent application in practice. Therefore, **GRECO recommends ensuring systematic application in practice of the existing legal provisions regarding the investigative jurisdiction of corruption cases between the various law enforcement bodies, which give priority to those with anti-corruption specialisation.**

Specialisation and training

99. As reported by the authorities, professional development courses for all employees of the Anti-Corruption Agency and other law enforcement bodies, as well as prosecutors, are conducted at the Academy of Law Enforcement Agencies. More general training include topics covering prevention, detection and investigation of various types of corruption offences, whereas more advanced courses provide hands-on training regarding disclosure of corruption offences.

100. While the officials of the Anti-Corruption Agency specialise in corruption crimes, no such specialisation exist either among prosecutors, investigative judges (whose task is to give sanctions regarding search and seizures, detention, house arrest, restraining orders permission to the usage of special investigative means and other functions as defined in Article 55 of the CPC) and judges (i.e. those who decide the case 'on the merits'). The GET takes the view that specialised training on different aspects of investigating corruption offences is necessary for all relevant actors playing a role in providing an efficient criminal justice response to these crimes. **GRECO recommends that training and specialisation of prosecutors and judges be enhanced as regards corruption offences, financial investigations and their links with other offences, such as money laundering and organised crime.**

III. EXTENT AND SCOPE OF IMMUNITIES FROM PROSECUTION

a. Description of the situation

101. According to the Constitution, the following categories of officials are subject to specific procedures regarding their arrest/investigation/prosecution:
    - the President of the Republic of Kazakhstan

361, 362 (paragraphs 3) and 4) of part four), 364-370 of the Criminal Code of the Republic of Kazakhstan, preliminary investigation shall be carried out by investigators of anti-corruption service."

- Members of the two Chambers of Parliament: the Mazhilis and the Senate
- Members of the Constitutional Council
- the Prosecutor General
- Judges

102. The President's honour and dignity shall be inviolable (Article 46 (1), Constitution); this extends to ex-presidents of the Republic (Article 46(3), Constitution). The President of the Republic shall bear responsibility for the actions performed while carrying out his/her duties only in the case of high treason[42] may be discharged from office by Parliament. The decision to bring an accusation and conduct its investigation may be adopted by the majority of the deputies of the *Mazhilis* at the initiative of no less, than one-third of the total number of its deputies. Investigation of the accusation shall be organised by the Senate and its results shall be transferred for consideration by the majority of votes of the total number of the deputies of the Senate at a joint session of the Parliament's Chambers. The final decision on this issue shall be adopted at a joint sitting of the Chambers of Parliament by a majority of not less than three-quarters of the total number of the deputies of each Chamber provided that the Supreme Court concludes that on the validity of the accusation and conclusion of the Constitutional Council on compliance with the established constitutional procedures. The failure to make a final decision within two months from the moment of the accusation shall result in recognition of the rejection of the allegation against the President of the Republic. The rejection of the accusation against the President of the Republic in the commission of high treason at any stage shall result in early termination of the powers of the deputies of the *Mazhilis*, who initiated the consideration of this issue.

103. Members of Parliament, during their term of office, may not be arrested, subject to detention, subject to measures of administrative punishment imposed judicially, or charged with criminal liability, except for cases of *flagrante delicto* or the commission of serious crimes (Article 52, Constitution). The consent of the respective Chamber is needed to lift this immunity and is to be obtained by the Prosecutor General of the Republic of Kazakhstan, who should submit an application to Parliament (Article 547(4), CPC). The lifting of parliamentary immunity is also regulated by the Rules of Procedure of the *Mazhilis* (paragraphs 95-96) and the Rules of Procedure of the Senate (paragraphs 86-89).

104. Pre-trial investigations against MPs can be continued only with the consent of the Prosecutor General. In cases where an MP is detained at the scene of a crime, or if a fact of preparation or attempt to commit a serious or particularly serious offence has been established, or if the MP has committed a serious or especially serious offence, the pre-trial investigation against him/her can be continued before getting the consent of the Prosecutor General, subject to mandatory notification of the latter within 24 hours. It is obligatory to carry out a preliminary investigation on cases against an MP (Article 547(1), CPC).

105. In order to obtain consent to the imposition of criminal responsibility, arrest or detention of an MP, the Prosecutor General is to make a presentation to the Senate or *Mazhilis*. The presentation is made before presenting accusations to the deputy, issuing sanctions for arrest, or deciding the issue of the need of compulsory escort of the deputy to a criminal prosecution authority. The

[42] In accordance with Article 26 (2) of the Constitutional Law on the President of the Republic of Kazakhstan, the President is responsible for actions committed in the performance of his/her duties only in the case of high treason, that is, an intentional act committed with the aim of undermining or weakening the external security and sovereignty of the Republic of Kazakhstan, expressed in defecting to the enemy during war or armed conflict, rendering assistance to a foreign state in carrying out hostile activities against the Republic of Kazakhstan, and may be dismissed from office by the Parliament for this in accordance with the procedure established by the Constitution.

authorisation of a measure of restraint in the form of detention or house arrest of an MP suspected of committing a crime shall be resolved by the investigating judge of the city of Nur-Sultan on the basis of a resolution of the person who is in charge of the pre-trial investigation, supported by the Prosecutor General (Article 547(5), CPC).

106. The Constitution does not include any specific provision on freedom of speech of MPs. Instead, in relation to this principle, the authorities refer to the Constitutional Law on the Parliament of the Republic of Kazakhstan and the Status of its Deputies (1995), which enshrines, *inter alia*, the right of decisive vote of MPs on all issues considered in plenary and committee meetings, expressing opinions, submitting proposals and conveying diverging points of view (Articles 25 and 26, Constitutional Law on the Parliament of the Republic of Kazakhstan and the Status of its Deputies).

107. Members of the Constitutional Council, during the term of their office, may not be arrested, subject to detention, administrative measures imposed in court, or brought to criminal responsibility, without the consent of Parliament, except in cases of *flagrante delicto* or in relation to serious crimes (Article 71, Constitution). To lift this immunity, the Prosecutor General needs to submit an application to the Parliament to obtain its consent (Article 549(4), CPC).

108. The Prosecutor General, during his/her term of office, may not be arrested, brought to trial, be subject to administrative measures imposed in court, or brought to criminal responsibility, without the consent of the Senate, except in cases of *flagrante delicto* or in relation to serious crimes (Article 83, Constitution). To lift this immunity, the First Deputy Prosecutor General needs to submit a submission to the Senate (Article 551(1), CPC). Pre-trial investigations against the Prosecutor General can be continued only with the consent of the First Deputy Prosecutor General (Article 551(4), CPC).

109. Judges may not be arrested, brought to trial, have administrative measures imposed against them in court, or be brought to criminal responsibility, without the consent of the President of the Republic of Kazakhstan, based on the opinion of the Supreme Judicial Council, except in cases of *flagrante delicto* or when committing serious crimes (Article 79, Constitution). To lift this immunity, the Prosecutor General needs to submit an application to the President of the Republic of Kazakhstan. In the particular case provided for in Article 55 of the Constitution, i.e. the lifting of immunity of the Prosecutor General, the Chairperson of the Supreme Court and judges from the Supreme Court, the submission needs to be made to the Senate of the Parliament (Article 550(4), CPC). Pre-trial investigations against judges can be continued only with the consent of the Prosecutor General. (Article 550(1), CPC). The lifting of immunity of the General Prosecutor, the Chairperson of the Supreme Court and judges of the Supreme Court is regulated by paragraphs 74-76 of the Senate's Rules of Procedure.

110. Presidential candidates and candidates for election to Parliament may be subject to a pre-trial investigation only with the consent of the Prosecutor General. The pre-trial investigation against this category of persons must be carried out according to the same rules as for MPs (Article 548(1), CPC). The consent to lifting this immunity is requested to the Central Election Commission (Article 548(2), CPC).

b. Analysis

111. The GET notes that there is currently a rather long list of persons who are subject to specific procedures regarding their arrest/investigation/prosecution, including the President, members of Parliament, members of the Constitutional Council, the Prosecutor General, judges and election candidates for President and Parliament. The authorities emphasised that the system thus

described is more accurately characterised as a special procedure rather than as one of immunities. The GET however notes that this system is very similar to arrangements which GRECO has encountered in many other jurisdictions and, in relation to those other jurisdictions, it has been treated as a system of immunities such as is contemplated by Guiding Principle 6 of the Twenty Guiding Principles for the Fight Against Corruption (GPC). It amounts to a *prima facie* immunity (inviolability)[43], which is not absolute (because it can be lifted by a particular procedure), but which lacks transparency because neither the reasons for the immunities, nor the criteria applicable to lifting them are articulated in either the Constitution or the Criminal Code.

112. In terms of statistics, it appears that judges are the only category of protected persons in respect of whom the procedure has been operated in practice. The GET does not consider that it can be assumed that persons in other categories have not been involved in corruption. It seems unlikely that judges are uniquely venal. The system has thus not been tested in relation to other categories of persons. The GET's analysis is, therefore, made on the basis of principle, informed to some extent by what has happened in other jurisdictions where similar rules have been in place. Whilst what has happened in other jurisdictions must be treated with caution because of its different national context, experience seems to teach that, however well-intentioned such systems might be, they can cause problems in practice, especially where decisions are made by political bodies.

113. When discussing the issue on-site, the GET was told that the system would not apply to corruption offences insofar as they are considered serious offences, nor would it apply in case of *flagrante delicto.* The GET is not convinced about this reasoning. In connection with the *flagrante delicto* exception, the GET notes that corruption offences are likely to be much more complex than the handing over of an envelope containing banknotes. They can well involve intermediaries outside the country and fabricated transactions through one or more shell companies. The question becomes even more difficult if what is offered is an undue advantage rather than money or money's worth. Nor does the exception for serious crimes seem to stand proper scrutiny, since not all corruption offences would fall under such category, unless in aggravated cases (extortion, concert, large scale or repeated offending)[44].

114. The GET considers that a thorough review of the current system is required to vest it with more robust guarantees against misuse. Immunities can be justified through the necessity to protect independence and enable the persons to carry out their work without fear of politically motivated prosecutions. However, it is also essential to ensure that, in accordance with GPC 6, immunity from investigation, prosecution or adjudication of corruption offences does not amount to a privilege, which could extend beyond what is proportional and necessary in a democratic society. Understanding the reason for the immunity is the starting point for determining whether it meets that standard. Legislation should make it unequivocal that immunity is an exception and must not apply if suspects have abused their position or benefited from impunity for actions that are unrelated to their duties. The GET considers that, as things stand at present, the legislation does not provide or make it sufficiently clear that this is the case.

115. The GET also has concerns regarding the current provisions on inviolability of the President, a

[43] See GRECO's Fifth General Activity Report (2004), thematic article "Immunities of public officials as possible obstacles in the fight against corruption" (GRECO (2005) 1E Final).

[44] Article 11 CC on categories of offences defines serious offences (grievous crimes and especially grave crimes) as those punished with between five and twelve years' imprisonment, or over twelve years' imprisonment. Not all bribery offences would fall under this category, but rather only those which are committed with aggravating circumstances. For active bribery in the public sector the basic penalty includes imprisonment of up to five years (Article 366 CC) and for passive bribery it is imprisonment of up to three years (Article 367, CC). Longer sentences are available where aggravating circumstances are present (bribes of significant amount, extortion, concert, on a large scale, repeated offence).

principle that is not unusual in comparative law, but which needs closer examination. As it stands in the Constitution, it could amount to a waiver of liability, with the exception of high treason, which also extends beyond the presidential office. As underscored above, GPC 6 seeks to limit immunity to the extent necessary in a democratic society. In a democratic society, no-one should be above the law. To be sure, there may be reasons why a serving Head of State should have a certain (functional) immunity, but the GET considers that a proper procedure for lifting that immunity is needed against the possibility that the Head of State is accused, on the basis of apparently credible and sufficient evidence, of corruption. Further, immunity (other than functional immunity for activities carried out in the exercise of the official function during the term of office, which does not apply to ordinary crimes in the first place) cannot extend beyond tenure.

116. In the light of the foregoing, **GRECO recommends thoroughly revising the legal provisions on specific procedures limiting arrest/investigation/prosecution of certain officials, who *de facto* benefit from immunities from criminal proceedings, including by (i) clarifying their *rationae*, functional scope and duration, to ensure that they are limited to acts committed in the performance of official duties, during the term of office, and that they do not hamper or prevent the effective prosecution of corruption; and (ii) considering reducing the categories of persons currently subject to such procedures to the minimum required in a democratic society.**

117. The GET is aware that the issue of immunity acquires particular significance in democratising societies since it provides persons with the necessary independence and the possibility to carry out their work without fear of politically motivated prosecutions. Freedom of speech is also of great importance in any democratic society, notably in Parliament. Concerns of those sorts can, however, usually be addressed by the involvement of an independent and impartial decision-maker, such as a judge, who can review the evidence and either authorise further steps or direct that they are not to take place. However, the legislation (Chapter 57, CPC) provides, virtually in all cases, for political involvement in the decision to lift inviolability, and this, without developing in parallel more detailed guidance on how the case is to be assessed on the basis of relevant and established criteria (which is also lacking in current provisions) and not on any other considerations. In line with its well-established pronouncements in this respect, **GRECO recommends adopting guidelines with specific, objective and transparent criteria to be applied when deciding on requests for lifting of immunities in order to ensure that decisions are free from political considerations and based only on the merits of the request submitted.**

IV. PROCEEDS OF CORRUPTION

a. Description of the situation

Confiscation and other forms of deprivation of the instruments and proceeds of crime

118. Confiscation of property is a supplementary sanction; as such, it is applied together with another sanction (Article 40, CC). It is possible to confiscate bribery instrumentalities, primary/secondary proceeds - i.e. transformed or converted to other proceeds, and benefits derived from the bribery proceeds (Article 48, CC). Only those items essential for the offender and his/her dependent persons cannot be confiscated (a detailed list of such items is provided in the Annex to the Code of Penal Execution)[45].

[45] The following types of property and subjects necessary for convicted persons and persons being on his (her) dependence belonging to him (her) on the basis of right of private ownership or being its share in joint property shall not be subject to

119. Furthermore, as far as value-based confiscation is concerned, money can be confiscated instead of property, if the confiscation of the defined subject is impossible at the date of the confiscation due to its use, sale or by other reason. The amount of money to be confiscated corresponds to the value of the defined subject. In case it is impossible to determine the value of the confiscation, an expert examination is appointed (Article 48, CC).

120. The court, when imposing a penalty of confiscation of property, shall indicate in the judgment which property is to be confiscated and/or list the items to be confiscated. In the case of value-based confiscation, the court shall indicate the amount of money to be confiscated (Article 398, CPC).

121. There is no reversal, nor apportionment, of the burden of proof. For confiscation to take place, it must be proven that the property has been acquired illegally (Article 113, CPC). It is possible to confiscate property which has been transferred to third parties (Article 48, CC; Article 60, CPC).

122. The Criminal Procedure Code enables non-conviction based confiscation (Chapter 71, CPC). More particularly, it allows for confiscation of the proceeds of suspect/accused (or a third party) if such person is wanted internationally or the case was terminated for certain reasons (if criminal proceedings are terminated as a result of an amnesty, the expiration of a statute of limitations or in the event of death).

123. Confiscation of property is explicitly provided for by the Criminal Code as a sanction for a number of corruption-related offences, including passive and active bribery in the public sector (Articles 366 and 367, CC), mediation in bribery (Article 368, CC), official forgery (Article 369, CC), illegal participation in entrepreneurial activity (Article 364, CC), money laundering (Article 218, CC). However, the application of confiscation for these offences does not have a mandatory nature but is at discretion of the court.

Provisional measures: seizure of material evidence and preventive attachment of assets

124. Seizure of property (instrumentalities and proceeds of crime) is a mandatory measure to ensure the enforceability of confiscation or satisfaction of a civil claim (Article 161, CPC). Seizure decisions are taken by the court at the request of the person conducting the pre-trial investigation (Article 162, CPC).

confiscation: 1) single dwelling place of convicted person and his (her) family, the floor space of which doesn't exceed the standards established by housing legislation for each family member; 2) land fields on which there are house and household outbuildings not subject to confiscation, as well as land fields required for management of personal subsidiary economy; 3) from persons the main occupation of whom is farm economy, household outbuildings and livestock in a quantity required for satisfying the needs of his (her) family, as well as stock feed; 4) seeds required for regular sowing of agricultural plants; 5) subjects of household furnishing, stuff, clothes; clothes, footwear, underwear, bedding items, kitchenware and eating utensils being in use. Other fur valuable clothes, dinner service, subjects made from precious metals, as well as having artistic value may be confiscated; furniture minimally required for convicted person and his (her) family members; all the children accessories; 6) food products in a quantity required for convicted person and his (her) family until new harvest, if the main occupation of convicted person is farm economy, and in other cases – food products and money for an overall sum in amount established by the Government of the Republic of Kazakhstan; 7) fuel intended for food preparation and heating of housing unit of a family; 8) inventory (including manuals and books) required for continuation of professional knowledge of convicted persons with the exception of cases when convicted person is deprived of the right to engage in the relevant activity by the court verdict or when inventory was used by him (her) for commission of a crime; 9) vehicles specially designed for disabled persons movement, technical auxiliary (compensatory) means and special means for disabled persons movement; 10) international, state and other prizes awarded to convicted person.

125. Seizure cannot be imposed on the property being the objects of the first necessity, and on other items, as established by legislation. Seizure may only be imposed on property held by third parties if there are sufficient grounds to believe that it has been obtained as a result of the criminal actions of a suspect, accused, or has been used or intended to be used as an instrument or means of a criminal offence or to finance extremism, terrorism, an organised group, an illegal military formation, or any other criminal organisation.

126. In cases where there is reason to believe that the property subject to seizure may be hidden or lost, the person conducting the pre-trial investigation, pending the receipt of the court's sanction, shall have the right to suspend transactions and other operations with the property, or to withdraw it with the notification of the prosecutor and the court in for twenty-four hours.

127. The Criminal Procedure Code provides for specific rules regarding the inspection and storage of seized property (Article 221, CPC). More particularly, seized items must be subject to inspection. After inspection, the person conducting the pre-trial investigation issues a decision of recognition of the seized items as material evidence.

128. Large-sized objects (or other property which for other reasons cannot be kept in the criminal case) must be sealed by means of a photo or video, if possible, sealed and stored in a location specified by the person conducting the pre-trial investigation. The sample material evidence may be attached to the case. The appropriate certificate about the location of the material evidence shall be in the case.

129. Material evidence that is subject to quick damage, if it cannot be returned to the owner, shall be handed over to the appropriate organisations, determined by the local executive body, for use as intended or for sale with the payment of the received amounts to the deposit of the body conducting the pre-trial investigation. Material evidence, the storage of which requires significant material costs, if it cannot be returned to the owner, or if the owner is not identified, shall be sold. Material evidence shall be sold in accordance with the procedure established by law with the payment of the received amounts to the deposit of the body conducting the pre-trial investigation. If there are grounds, the used or realised material evidence shall be reimbursed to the owner with items of the same kind and quality, or if this is not possible, the owner is to be reimbursed with State budget resources as per court decision.

130. If the case is transferred, material evidence is passed on to the responsible authority in a packed and sealed form, together with the required inventory. Rules are also in place regarding the fate of material evidence if the case is terminated, e.g. return to bona fide third parties, accrual to the state, destruction (things of no value and which cannot be used), etc. (Article 118(3), CPC).

131. Seizure is cancelled when this measure is no longer necessary; this requires a decision of the investigating judge during pre-trial investigation on the basis of a reasoned decision of the prosecutor with the consent of the procurator (Article 163, CPC).

Statistics

132. According to the authorities, there have been 597 cases in which confiscation was adjudicated during the last three years, 53 of which were corruption cases.

Mutual assistance: provisional measures and confiscation

133. Kazakhstan is a party to several multilateral and bilateral agreements concerning mutual legal assistance in criminal matters. It is a contracting Party to, *inter alia*, the Agreement on cooperation of the member states of the Commonwealth of Independent States on the Exchange of Information in Combating Crime, the United Nations Convention against Corruption, the United Nations Convention against Transnational Organised Crime, the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS 141). International treaties ratified by Kazakhstan always prevail over a national law and apply directly.

134. Section 12 of the CPC of the Republic of Kazakhstan contains the principal provisions on the procedure in respect of mutual legal assistance in criminal matters. In the absence of an international treaty, legal or other assistance can be provided based on reciprocity (Article 558, CPC). In executing the requests, the authorities shall apply the Criminal Procedure Code or the relevant international treaties of the Republic of Kazakhstan (Article 560, CPC).

135. The responsible authorities of Kazakhstan provide mutual legal assistance to other States in order to seize and search the assets (property, money and valuables) obtained by criminal means, as well as the property of suspects, accused or convicted persons (Article 577(1), CPC). The seized property can be confiscated if so provided by an enforceable decision/sentence of the court of the requesting State (Article 577(3), CPC). Seized assets can be transferred to a requesting State either as evidence or as a means of recovery for victims (Article 577(1), CPC).

136. When Kazakhstan is the requesting state, the request by organs in charge of criminal prosecution is submitted via the Office of the Prosecutor General (Article 559(1), CPC) and the request by a court via the Supreme Court (Article 559(2), CPC). When Kazakhstan is the requested state, the aforementioned authorities are the recipients of the request.

137. In the absence of an international treaty, Kazakhstan has the right to refuse to provide assistance, if the execution of the request contradicts domestic law, or may harm the sovereignty, security, public order or other interests of the country, if the requesting party does not provide reciprocity in this area, if the request concerns an act which is not a criminal offence in the Kazakhstan and if there are reasonable grounds for believing that the request is sent for the purpose of prosecution, conviction or punishment of a person on grounds of his/her origin, social, official or property status, sex, race, nationality, language, religion, convictions, place of residence or any other circumstances (Article 569, CPC).

Money laundering

138. Money laundering has been criminalised as a separate offence in Article 218 CC. It follows an all crime approach; therefore, any corruption offence can be a predicate offence to money laundering, whether committed in Kazakhstan or abroad. The crime of money laundering may be applied to persons who commit the predicate offence (i.e. self-laundering). There is a wide range of sanctions for money laundering, which include imprisonment (for up to seven years), fines or corrective work in the same amount, community services, professional disqualification, and confiscation.

139. Kazakhstan is a member of the Egmont Group since 2011. The Agency for Financial Monitoring is the central authority (FIU) for combating money laundering in Kazakhstan. In January 2021, by Decree of the President of the Republic of Kazakhstan, the Financial Monitoring Agency of the

Republic of Kazakhstan was established, implementing measures to counter the legalisation of criminal proceeds, the financing of terrorism and the proliferation of weapons of mass destruction, endowed with the functions of detecting, suppressing and investigating economic crimes. Moreover, the Agency is endowed with the functions of a regulator exercising control and supervisory functions over subjects of financial monitoring (accountants, lawyers, realtors, persons working with precious metals engaged in non-financial leasing), with the right to bring to administrative responsibility under Article 214 of the Administrative Code (non-compliance with AML/CFT requirements).

140. The Law on Countering the Legalisation of Proceeds from Crime and the Financing of Terrorism (2009, as amended) provides, *inter alia*, for a list of entities subject to financial monitoring, including financial institutions (e.g. banks, stock exchange, insurance companies), non-financial companies (e.g. gold and valuable dealers and importers, auction houses, art galleries, antique dealers) and other professionals (accountants, auditors, notaries and legal advisors). The GET was informed that most STRs come from commercial banks. More particularly, the following figures were provided by the FIU:

Reporting entity	**2018**	**2019**	**2020**
Banks	908 719	688 944	661 084
Organisations engaged in certain types of banking operations	107	198	497
Stock markets	36	100	64
Insurance (reinsurance) organisations	502	824	935
Accumulative pension fund	305	192	178
Professional participants in the securities market	6 986	1 484	3 254
Central depository	11 306	11 052	6 259
Notaries performing notarial activities with money and (or) other property	21 146	9 323	6 319
Auditing organisations	122	176	180
Gambling and lottery organisers	0	0	7
Post operators providing money transfer services	631	650	1580
Microfinance organisations	85	169	105
Electronic money system operators other than banks	31	26	0
Individual entrepreneurs and legal entities carrying out leasing activities as a lessor without a license	124	20	5
Pawnshops	4	8	7
Individual entrepreneurs and legal entities carrying out operations with precious metals and precious stones, jewellery made from them	6	11	2
Operators for receiving payments	672	166	0
Payment agencies	86	4 800	7 625
Accounting organisations and professional accountants carrying out business activities in the field of accounting	0	1	0

141. Proper verification shall be made by financial monitoring subjects (including auditors, accountants and other legal and advisory professionals) of their clients, such as identification of the client, identification of beneficial account holders, establishment of the intended purpose and nature of business relations, conducting an ongoing review of business relationships and transactions, verifying the accuracy of the information necessary to identify the client (his representative), the beneficial owner, and updating the information about the client (his representative) and the beneficial owner (Article 5, Law on Countering the Legalisation of Proceeds from Crime and the

Financing of Terrorism). The FIU has issued guidelines to streamline STRs (so that they are more detailed and precise) and has an online platform to provide advisory services to any subject of financial monitoring (e.g., FAQs and memos, guidelines, recommendations, risk criteria and indicators, typologies of suspicious transactions, taxonomies, etc.[46]). There is also a testing centre for public administration where qualification to compliance officers is awarded.

142. The law also establishes mechanisms for reporting suspicious transactions to the FIU (Article 10, Law on Countering the Legalisation of Proceeds from Crime and the Financing of Terrorism) and establishes a requirement for the FIU to notify substantiated suspicions (of money laundering, predicate offences of money laundering, organised crime or terrorist financing) to law enforcement authorities, as well as to provide feedback to reporting entities (Article 16(5), Law on Countering the Legalisation of Proceeds from Crime and the Financing of Terrorism). A cooperative agreement was made between the FIU and law enforcement authorities to refine their systems (reconciliation of reports and provision of feedback on a monthly basis) with the aim of improving STRs analysis; around 30-40% of the STRs received by the FIU are sent to law enforcement. Memoranda of understanding have also been concluded with supervising agencies. The authorities also underscored that cooperation has been intensified in recent years with tax authorities; the publication "Rules on Shadow Economy" were issued in 2021 as a result of the joint work of the FIU and tax authorities in this domain. The FIU has access to the databases of tax authorities, prosecution service and other law enforcement authorities, special bodies[47], and the National Security Committee.

143. For the period 2017-2020, there were 168 money laundering cases, of which 128 (76.2%) were completed. A total of 121 cases were sent to court. In the cases for 2019-2020, 17 criminal cases were sentenced, 9 of them were found guilty and convicted in full, 7- in accordance with Article 218 of the Penal Code were excluded from the qualification of the act due to the lack of proof of the fact of (money) laundering. The amount of damage in the completed criminal cases amounted to more than 1 billion KZT (around €2 million), of which 348 million KZT (approximately €700 000) was reimbursed. Property was seized for a total of 1.7 billion KZT (around €3.4 million). The main predicate offence to money laundering is generally, fraud, tax evasion, false invoicing, and counterfeiting of money and securities. From the total number of STRs received in the period 2018-2021, around 1.7% related to corruption as a predicate offence.

144. The annual report of the 2020 Basel AML Index ranked Kazakhstan 73rd among 141 countries in terms of the level of risk in the area of illegal money laundering and terrorist financing (ML/TF). This is a significant improvement for Kazakhstan as it jumped up by 45 points compared to its 2019 ranking[48].

[46] Some of the particular tools displayed by the authorities include a Handout on FAQs (2016) and (2017), a methodological manual prepared with OSCE support and entitled Requirements of International Standards, Typologies and Suspicious Transactions related to the Laundering of Criminal Proceeds (2018), the textbook Features of National AML/CFT Systems of the States of the Eurasian region (2020), Methodological Recommendations for Subjects of Financial Monitoring on Criteria and Indicators on the Risk of Laundering Criminal Proceeds (2021), Memos on Identifying Suspicious Transactions for Financial Monitoring Services (2021).

[47] In particular, the Agency has access to the Information Exchange System of Law Enforcement, special and other bodies (SIOPSO), which contains information from about 40 information services belonging to more than 10 state bodies and organisations. SIOPSO is used in the processing and analysis of financial information in order to develop preventive measures to counter the laundering of criminal proceeds, the financing of terrorism and the proliferation of weapons of mass destruction.

[48] Kazakhstan was not included in the 2021 Basel AML Index due to a lack of 4th-round FATF evaluation, which is to be carried out by the Eurasian group on combating money laundering and financing of terrorism (EAG) in 2022.

b. Analysis

145. There is widespread international agreement that the confiscation of the proceeds of crime is an important tool to deprive organised crime of the resources which it needs to function and to deter individuals from committing crimes – specifically, corruption – by depriving them of the benefit which they have obtained and thus removing the incentive[49]. For that to work, it is necessary to be able to trace the proceeds of crime as they are moved through the financial system and to prove the link with the offence. In Kazakhstan, two weaknesses in particular appear to make that more difficult than it needs to be.

146. First, it appears to be difficult to identify the beneficial owners of legal persons. Information on direct owners has to be provided when such an entity is set up, but the initial registration control is weak and the authorities themselves recognised associated challenges in identifying the ultimate beneficial owners of legal persons upon registration and thereafter (see also section on registration of legal persons). That constitutes an obvious impediment to the tracing and confiscation of the proceeds of corruption. The development of a register of beneficial ownership, as recommended later in this report, would constitute a fundamental asset to this end.

147. Second, Kazakhstan does not appear to have particular rules about proof of the link between property and a corruption offence. The GET understands that the burden of proof is, at all times, on the prosecution and makes no criticism of that rule. The GET also understands that the criminal standard of proof in Kazakhstan is high. It was said that "any shade of a doubt" must be given to the accused. Against this background, the GET notes that Article 31(8) of the United Nations Convention against Corruption, to which Kazakhstan is party, provides that States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime, to the extent that that is consistent with the fundamental principles of their domestic law. GRECO has also recommended to several of its member States that consideration of a certain apportionment of the burden of proof be made to facilitate the investigation, and potential successful adjudication, of corruption offences.

148. The GET notes that it is not uncommon for States to have legislation that provides that, in criminal confiscation proceedings, once a person has been convicted of a proceeds-generating offence and has been proved to have had property for which there is no identifiable legitimate explanation, the burden of proving that the property is not the proceeds of crime shifts to that person. The GET observes that the conviction and the absence of an identifiable legitimate explanation for property which the offender is proved to have had are circumstances from which, when they are taken together, it may reasonably be inferred that the property represents the proceeds of crime. In such a situation, a requirement that the offender should demonstrate the lawful origin of the property is not unreasonable. After all, the provenance of his/her property is a fact peculiarly within the knowledge of the offender. Nor does the apportionment of the burden of proof in that way necessarily involve the application to the offender of any particular standard of proof.

149. The GET considers that, overall, the legislation on seizure and confiscation is largely in line with international standards. However, the two deficiencies identified and described above need to be properly addressed as they are key to a more efficient system. Accordingly, **GRECO recommends (i) strengthening the systems and controls for tracing criminal proceeds and identifying ultimate beneficial owners; (ii) considering reviewing the burden of evidence necessary, in**

[49] See, for example, recent Resolution 2365(2021) of the Parliamentary Assembly of the Council of Europe on "Urgent need to strengthen financial intelligence units – Sharper tools needed to improve confiscation of illegal assets".

connection with a conviction, to provide for better possibilities to use confiscation effectively in cases of corruption.

150. The GET has taken note of the significant progress which has been recorded in relation to money laundering. It seems clear that all of the basic anti-money laundering protections are in place, though the GET had the impression that, despite the guidance documents and the training developed to date, the degree of understanding of money laundering typologies varied amongst its interlocutors, as confirmed by the statistics provided by Kazakhstan. This calls for additional training, guidance and, more generally, outreach and awareness-raising measures in this area.

151. Moreover, there is one significant weakness requiring urgent attention. It relates to legal services and their obligation to report suspicious transactions, which, as statistics evidence, is not being met. When exploring on-site the current of state of affairs, it was clear to the GET that there were shortcomings both in law and in practice. The Law on Countering the Legalisation of Proceeds from Crime and the Financing of Terrorism establishes that attorneys and other legal advisors are, among other categories of professionals, subjects of financial monitoring whenever where they participate in transactions with money and (or) other property in the name or by order of a client in respect of the following activities: buy and sell of immovable property; management of money, securities or other property of a client; management of banking accounts or securities accounts; accumulation of funds for creation, ensuring, functioning or management of a company; creation, buy and sell, functioning of a legal entity and their management (Article 3(1)(7), Law on Countering the Legalisation of Proceeds from Crime and the Financing of Terrorism). This is a sensible provision which addresses clearly a well-recognised money laundering risk. The reference to "management" of the money etc. of the client might be a little too narrow. The GET observes that it might be desirable to widen the scope of this to include involvement in arrangements relating to money etc. of a client.

152. The problem arises as a result of Article 10 of Law on Countering the Legalisation of Proceeds from Crime and the Financing of Terrorism. More particularly, Article 10(2) provides for a suspicious transaction reporting regime and requires the subjects of financial monitoring to make reports in specified circumstances. However, Article 10(3)(1) exempts from that obligation lawyers and notaries in specified circumstances. The exemption for lawyers relates to lawyers, legal consultants and other independent specialists in legal matters if this information and information are obtained in connection with the provision of legal assistance on the representation and protection of individuals and (or) legal entities in the bodies of inquiry, preliminary investigation, courts as well as when they provide legal assistance in the form of consultations, explanations, advice and written opinions on issues whose resolution requires professional knowledge, drafting statements of claim, complaints and other legal documents. This exemption from the reporting obligation is extraordinarily wide.

153. For this reason, the GET is concerned that the effect of Article 10(3)(1) is that of completely negating Article 3(1)(7) and taking lawyers out of the scope of financial monitoring and suspicious transaction reporting altogether. The attorneys with whom the GET met confirmed that it does exactly that. Article 3(1)(7) is, they said, "a dead provision". This would explain the lack of STRs from this category of professionals. Moreover, the GET was told that in Kazakhstan, lawyers often ignore their statutory obligations, citing "lawyer/client privilege". The FIU stressed, however, that, in its view, while the law recognises lawyer client privilege in relation to court proceedings, providing STRs to FIU does not breach privilege. In such a context, it seems clear that the understandings which lawyers and the FIU have about the obligations of the former in relation to suspicious transaction reporting are fundamentally and irreconcilably different.

154. The GET was told that, in Kazakhstan, a lawyer's duty of confidentiality is referred to as "attorney secrecy". The GET was told that a Supreme Court judgement has tried to clarify and limit this notion[50], although it emerged from the discussions held on-site that attorney secrecy in Kazakhstan is, or is understood to be, absolute and comprehensive. In this context, the GET notes that other jurisdictions take a more nuanced approach. Typically, there is confidentiality in relation to any communication between a lawyer and a client for the purpose of obtaining legal advice and that confidentiality is especially strong where the communication forms part of the process of preparing or conducting litigation. However, where the client is using, or is suspected on reasonable grounds of using, the lawyer as a means of committing a crime, there is no confidentiality. The GET understands that the anti-money laundering framework is currently being reformed, but the draft provided to the GET does not include any new provision which will help clarify the situation. Against this backdrop, **GRECO recommends (i) taking targeted measures, including through the issuing of tailored guidance and training to accountants, auditors, notaries, and particularly, lawyers, in order to improve the situation in relation to reports of suspicions of corruption and money laundering to the competent authorities; and (ii) streamlining anti-money laundering legislation, particularly, by reviewing and amending the provisions which appear to create confusion about the relationship between a lawyer's duty of confidentiality and the requirement to report suspicious transactions.**

V. PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

155. The Constitution of Kazakhstan was adopted on 30 August 1995 and has been amended several times since. Article 2 of the Constitution stipulates that Kazakhstan is a unitary state with a presidential form of government. In particular, the President submits the candidacy of the Prime Minister to the Mazhilis (lower chamber of Parliament) for approval; with the consent of the Mazhilis, appoints and dismisses the Prime Minister, determines the structure of the Government upon the Prime Minister's proposal, appoints (upon recommendation of the Prime Minister) and dismisses members of the Government; takes the oath of Government members; may preside at Governmental meetings on particularly important issues; repeals or suspends, in whole or in part, the acts of akims of regions, cities of republican significance and the capital.

156. Public administration in Kazakhstan consists of special state bodies in the executive and administrative fields, managing various areas of public life. The State power is unified, exercised on the basis of the Constitution and laws in accordance with the principle of its division into legislative, executive and judicial branches and interaction on the basis of a system of checks and balances. The independence of the executive bodies follows from the principle of separation of powers enshrined in the Constitution. The state commits to ensuring availability of material resources for the executive bodies, enterprises subordinate to state, institutions and organisations.

157. The administrative-territorial system of Kazakhstan consists of 14 oblasts, 2 cities of republican significance, 175 administrative districts, 84 cities, 35 settlements and 7031 rural settlements. At the local level, state power is exercised by local elected and executive bodies: akimats of oblasts, districts, cities, auls, villages, settlements. Akims of oblasts, cities and the capital are appointed and dismissed from office by the President of Kazakhstan upon the proposal of the Prime Minister. Akims of other administrative-territorial units are appointed and dismissed by akims superior to them. Akims are representatives of the President and the government. The President may dismiss

[50] Normative decision No. 14/2016 of the Supreme Court on some issues of the application by courts of legislation on liability for implication and complicity in a criminal offence (22 December 2016).

akims at his discretion. Powers of akims of oblasts, major cities and the capital shall be terminated upon assumption of office by the newly elected President.

158. Maslikats are representative bodies which operate at the regional level - the oblast level, the capital and cities of national importance (Almaty and Shymkent), as well as at the local level - cities of oblast significance and districts. The regional maslikhats approve and oversee the local budget, approve the oblast akim upon nomination by the President, review and approve regional development programmes, reports of audit commissions overseeing the spending of budgets, general development and construction plans, etc.

Anti-Corruption Policy

159. Among the objectives of the Anti-Corruption Strategy of Kazakhstan for 2015-2025 is the prevention of corruption in the civil service, which is one of the tasks assigned to the Anti-Corruption Agency. The Strategy also aims at improving the social well-being of public servants and creating conditions for the performance of their duties on a fair and equitable basis through gradual and regular increase of their salaries. Another objective set forth by the Strategy is subjecting all public servants to declaring not only their incomes, but also expenses.

Transparency

Access to information

160. The Law on Access to Information of 16 November 2015 sets out the modalities to access information in the public domain. Information on budgets, draft legal acts, tools to evaluate effectiveness of government agencies etc. is made available on web-based portals of "Open Government". The Law on Access to Information also stipulates the use of information stands and other technical means of similar purpose; providing information through the media; public access to meetings of collegial bodies of state bodies and online broadcasting of open meetings of the chambers of Parliament, local representative bodies and boards of state bodies held at the end of the year on Internet resources; following discussions of reports of the heads of central executive bodies (except for the Ministry of Defence and the Ministry of Foreign Affairs), akims and heads of national higher educational institutions. Article 16, paragraph 13 of the Law requires all information owners to update their online news feed daily, and other online information sources not later than three working days from receipt of new information.

161. Pursuant to Article 11 of the Law, information may be requested orally, or in writing. Paragraph 4 of this Article provides specific issues, on which a request of information must be answered, which include work schedule of the body concerned, postal, e-mail and website address, telephone information services of the body and its structural divisions, the procedure for admission of persons to this body, the procedure for the provision of public services etc. Article 7 establishes that the requesting person is not required to justify his/her request. As per Article 11, paragraph 1, provision of information upon request is free of charge (only the cost of printing or copying should be covered by the requesting person, while socially vulnerable segments of the population are exempted from such payments). Article 11, paragraph 12 provides that oral request for information shall be answered orally, in the language of the request. As per paragraph 15 of this Article, if the requested information is publicly available, the applicant should be informed of this by the information owner not later than three business days, including details about the place and methods of access to such information. Further, Article 11, paragraph 10 sets deadlines for responding to written information requests – 15 calendar days from the date of receipt of a written request (which can

be extended once for the same period, to be duly notified at the latest three days before the passing of the initial deadline, in cases where the reply requires gathering information from other information owners). Any refusal to give information should be reasoned and be provided to the applicant within five working days from the registration of the written request. Should the applicant not be satisfied with the response, s/he can file an appeal. The appeal procedure is set out in the Administrative Procedure Code that entered into effect on 1 July 2021 and includes an initial complaint to the entity in question, or to its hierarchically superior body (if such body exists), followed by a complaint to a court.

162. As to the restrictions, Article 5 of the Law on Access to Information provides that access to information may only be restricted by laws and to the extent necessary for the protection of the constitutional order, public order, human rights and freedoms, and public health and morals. According to the authorities, information with limited access includes state secrets, personal, family, medical, banking, commercial and other secrets protected by law, as well as official information marked "for official use" (information related to the activities of a state body, the open publication of which may violate the procedure for compliance with administrative procedures related to the need to ensure the independence of the state body in making decisions). At the same time, Article 6 lists the types of information, access to which cannot be restricted, such as emergency situations and disasters, including natural disasters, threatening health and safety of citizens and their consequences; health situation, sanitation, demography, migration, education, culture, social security, economy, agriculture, as well as the crime situation; commission of terrorist acts; the state of ecology, fire safety, as well as the sanitary-epidemiological and radiation situation; privileges, compensations and benefits provided to individuals and legal entities by the state; violations of human and civil rights and freedoms etc..

163. On 29 September 2016[51], the Ministry of Information established the Commission on Issues of Access to Information (hereafter “Information Commission”) and approved its composition which reportedly consists of 70% civil society and 30% public institution representatives and is chaired by the Minister of Information and Public Development. According to the Regulations[52] on the Commission, the main tasks of the Commission are to develop proposals on: 1) issues of access to information; 2) improvement of legislation in the field of access to information; 3) the issue of reducing excessive document flow by placing information in the public domain; 4) ensuring information openness by information holders. The composition of the Commission is approved by the order of the Minister of Information and Public Development. The authorities report that the composition of the Commission has been expanded over the past three years by including representatives of the civil society (as per the OECD recommendation). The Commission currently consists of 26 members[53], with unlimited term of office[54]. The authorities indicate that public meetings of the Commission are broadcast live on the official Internet resource and (or) social media accounts of the Ministry. The Minister decides on the meetings and the agenda of the Commission. In principle the Commission meets every three months, and its decisions are published online.

164. On 23 February 2018, the Minister of Information and Communications approved Standard Regulations on the Authorised Person (Subdivision) for Interaction with the mass media, setting

[51] By Order No. 180 of the Minister of Information and Communications “On Certain Issues of the Commission on Access to Information”.
[52] Approved by the Governmental Decree No. 1175 of 31 December 2015.
[53] The full composition of the Information Commission may be consulted (in Russian) via the following link: https://www.gov.kz/memleket/entities/qogam/documents/details/251570?directionId=451&lang=ru
[54] A member of the Commission may be excluded according to one of the reasons for paragraph 10 of the Regulations on the Commission.

out their functions (e.g. providing users with reliable and necessary information on issues related to the competence and activities of the state body, preparation of interviews, comments, publications in the media accreditation of journalists and other representatives of the media, organising press conferences, technical support of the Internet resource, preparing responses to requests from information users, etc.)

Transparency in decision-making

165. Regarding public consultations in the decision-making, pursuant to the concept of “Hearing State”, envisaging to involve the public in the decision-making process through discussions on draft regulatory acts and draft budget programmes, drafts of these documents are posted on the internet portals of the "Open Government" ("Open Draft Legal Acts" and "Open Budgets") for comments and suggestions. It is envisaged to pursue this approach within the framework of the Concept of Development of Public Administration in Kazakhstan until 2030.

166. Further, some 251 public councils are set up within central bodies, akimats of regions, cities and districts etc. in Kazakhstan, consisting of a total of around 4 000 professionals in various fields. These public councils discuss, *inter alia*, draft budget programmes, draft strategic plans or programmes for the development of territories, draft state and government programmes, reports on the achievement of target indicators, etc. The main purpose of public councils is to allow expressing the opinion of civil society on socially significant issues and to involve it in the decision-making process. Public councils also constitute forms of public control and aim at contributing to transparency in the activities of state bodies. In this regard, the approval of draft regulatory legal acts has recently become mandatory, thus increasing public's influence on the decision-making process (according to the authorities, over 20 000 draft regulatory acts have been considered in four years). In addition, since the year 2000, the regions have been implementing a project entitled “People's Participation budget”, which allows direct participation of citizens in the distribution of local budget funds. Finally, a regulatory basis is currently being developed to formalise online petitions in Kazakhstan, within the framework of the draft Law on Amendments and Additions to Certain Legislative Acts of Kazakhstan on Public Control. The Ministry of Information and Social Development has developed a standard algorithm for actions of local executive bodies to allow reflecting opinions of the general public in decision-making

167. Along with this, draft regulatory acts are subject to anti-corruption expertise. For this purpose, a roster has been established with a total of 125 experts, which will be periodically updated. To date, expertise of about 4 000 draft laws and regulations has been carried out, resulting in 3 116 conclusions which revealed some 9 164 corruption risk factors. The results of expertise are displayed on a special portal for the anti-corruption expertise entitled “Saraptama” (www.expertize.kz) which includes an indication of the cost and opinions on each draft regulatory act. According to expertise already carried out, sectors most susceptible to corruption are social, financial, medical, agricultural and social legislation.

Challenging administrative decisions

168. An administrative act, an action of an administrative body, or refusal to adopt an administrative act may be appealed to a higher administrative body. Should there be no higher administrative body, an administrative may be appealed before a court. The Civil Procedure Code regulates the procedure for considering complaints, in particular, hearing all parties, examining the circumstances of the case and giving reasons for decisions. The administrative body is empowered to collect evidence, request the necessary materials from the competent authorities, invite

witnesses, etc. The model of administrative proceedings envisaged by the Civil Procedure Code assumes the creation of new specialised administrative courts in large cities and regional centres (a total of 21 courts) to consider public law disputes, transferred from civil courts of general jurisdiction. At the same time, the existing administrative courts considering cases under the Code of Administrative Offences will be renamed as specialised district and equivalent courts for administrative offences. The authorities indicate that with the adoption of the new Administrative Process and Procedure Code, 21 administrative courts were established, 17 judicial collegiums on administrative cases have been created in regional and equivalent courts, and a new administrative law collegium has been created in the Supreme Court. Over the past six months, more than 14 000 lawsuits have been submitted to the administrative courts, of which 4 000 cases have already been decided in favour of the plaintiffs. One of the innovations of the APPC is the right of reconciliation in a public legal dispute, which was achieved, in 2021, in respect of 1 414 cases. The authorities inform that over 2 000 plaintiffs withdrew administrative claim in connection with the resolution of their issue before the consideration of the case on the merits. In addition, the new APPC allows monetary penalties as a tool for increasing the discipline of the parties in the administrative process, which can be applied in respect of an individual, an official, a legal entity or its representative, that is, on all participants of the administrative process.

Recruitment, career and preventive measures

169. As per Article 1(12) of the Law on Civil Service, a civil servant is a citizen of Kazakhstan, occupying a state position in a state body and exercising official powers for the purpose of implementation of tasks and functions of the state, paid from the republican or local budgets or from funds of the National Bank.

170. The selection and recruitment procedures for government positions are regulated by the Law on the Civil Service of 23 November 2015, which defines two main categories of civil servants as corps “A” and corps “B”. As per Article 1 paragraph 1), corps “A” are administrative civil service positions at the management level, for which a special procedure for selection to the personnel reserve, competitive selection, performance and termination of the civil service, as well as special qualification requirements are provided”. Paragraph 2) of the same Article states that all other administrative civil service positions appertain to corps “B”. In addition, state bodies may employ persons on the basis of employment contracts.

171. According to the 2017 Rules for Conducting a Competition for an Administrative Civil Position of Corps “B”, candidates submit documents to the Human Resources Service to participate in the competition for a vacant civil service position. The personnel management service examines the applications in light of the admission conditions provided for in Article 16 of the above Law, and against the “special records” database of the General Prosecutor's Office (verification of personal, criminal record documents). In addition, pursuant to Article 19 of the Civil Service Law, candidates entering the civil service for the first time, or those who have previously quit civil service, are subject to special checks conducted by the national security authorities (verification of personal, criminal record documents).

172. Corps “A” are not recruited on the basis of competition and employment contracts for this category are concluded for a period of four years, unless another period is established by the laws and acts of the President of Kazakhstan, with the possibility of its extension for a specified period not more than once.

Code of Ethics, ethics commissioners, training

Code of Ethics

173. There is a Code of Ethics of Civil Servants in place. It was approved by the Presidential Decree No. 153/2015 of 29 December 2015. It is aimed at strengthening public confidence in state bodies, creating a culture of relationships in the civil service and preventing cases of unethical behaviour. The Code defines general standards of conduct for civil servants, standards of behaviour outside of office hours, conduct in official relations, as well as public speaking, including in the media. According to the authorities, the concept of a culture of communication, interconnected with a culture of behaviour, serves as a barometer of communication between government officials. It is recognised that public opinion regarding civil servants is to a certain extent related to their behaviour during off-duty time, including in public places. Newly recruited employees are expected to consult the text of the Code of Ethics within three days from entering the service to ensure they are familiar with the applicable ethical standards.

174. According to the Code of Ethics, civil servants are expected to ensure legality and fairness of their decisions, transparency of the decision-making process, improve their professional qualifications, abstain from using official position to solve personal issues or from disseminating false information, obey the official discipline and refrain from manifesting their religious beliefs. Managers are expected to lead by example and ensure compliance with meritocratic principles and avoid preferential treatment of subordinates, be fair and objective in assessing the performance and in applying incentives and penalties. Subordinates are expected to provide reliable information to managers, inform the management and their respective ethics commissioners about violations of the Code of Ethics, or disciplinary offences. The Code also stipulates that interaction with the media on behalf of public institutions is to be conducted by heads of these institutions, or other authorised officials. Further, civil servants are expected to refrain from publicly disclosing information not subject to being made public, express opinions that go against state policies or make unethical statements. They are also expected to refute, within a one-month period, any groundless accusations of corruption made with regard to them.

175. Some further provisions on the moral and ethical conduct expected of civil servants can be found in Chapter 8 of the Law on Civil Service.

Ethics commissioners

176. Regulations of ethics commissioners were approved by the above-mentioned Presidential Decree of 29 December 2015. Pursuant to this document, persons designated as ethics commissioners provide the civil servants of their respective public bodies with advisory assistance on compliance with the requirements of the legislation of Kazakhstan in the areas of civil service, combating corruption and the Code of Ethics, promote compliance with restrictions and prohibitions established by law, consider applications from individuals and legal entities regarding violation of the norms of official ethics by civil servants and perform other functions set out in the Regulations.

177. According to the authorities, the ethics commissioner functions are to be assigned to dedicated officials in all public bodies at the state level (except for the law enforcement authorities, special state bodies and the Ministry of Defence) which have territorial subdivisions, foreign missions and offices of regional akims, cities of Nur-Sultan, Almaty and Shymkent. As to the state bodies which do not have territorial subdivisions, this function is to be assigned to civil servants holding managerial positions. The Regulations stipulate that the ethics commissioner function is to be

entrusted to officials enjoying recognition and respect in their relevant teams. The authorities report that the function of ethics commissioner has been assigned to a total of 765 officials, of which 30 perform this task specifically, while a further 735 officials carry out this function along with their other duties.

Training

178. The Academy of Public Administration under the President is a higher educational institution with a special status providing training, retraining and advanced training for civil servants. The Academy and its branches provide information and explanatory work on compliance with the legislation on the civil service and the norms of official ethics. Thus, the Academy provides annual training seminars, mandatory for civil servants, on issues of ethics and anti-corruption culture. By way of example, reference is made to seminars held in the course of 2020 on topics such as "Integrity, Anti-corruption culture", "Anti-corruption management and compliance", "Anti-corruption expertise of legal acts", "Ethics and integrity, etc. Similar topics were covered by training sessions in 2021. In addition, training courses for appointees to managerial positions (former corps "B") includes the topic "Integrity. Anti-corruption culture", lasting six academic hours. At the training courses for those who first entered the civil service the topic of "Ethics and integrity" is provided during four academic hours. In addition, the Anti-Corruption Agency and its territorial departments also carry out explanatory work for civil servants.

Regulations on gifts

179. Civil servants are not allowed to receive gifts (Article 509 of the Civil Code, as amended in 2020), irrespective of their value or nature. Prior to these amendments, simple gifts of "minor" value were acceptable if they were not provided in exchange for the fulfilment by the civil servant of their public functions, or other corrupt behaviour. The amendments also prohibit family members of public officials from receiving gifts (or other benefits or services) if such gifts are provided in exchange for the fulfilment by the civil servant of his/her functions. For these purposes, family members include the official's spouse, parents, children (including children over 18 years old) and dependents permanently residing with the official.

180. Pursuant to the Anti-Corruption Law (Article 12(6)) and the Law on the Civil Service (Article 5(1)(17)), gifts received without the knowledge of public officials and (or) members of their families, as well as those received in violation of regulations, should be transferred to authorised body for state property management within seven calendar days from the date of their receipt or from the day the civil servant became aware of the receipt of the gift. As per Article 216 of the Law on State Property, such gifts, with the exception of gifts awarded for achievements in work and other merits, are considered as gifts to the state. The procedure for transferring gifts by civil servants to the state is set out in the 2002 Rules for Accounting, Storage, Assessment and Further Use of Property Converted (received) into the Ownership of the State.

181. The unlawful receipt of gifts or other benefits/advantages by civil servants and persons performing public functions in the performance of their duties carries criminal, administrative or disciplinary liability. Notably, liability of persons performing public functions for illicit receipt of gifts is established under Article 366 of the CC (bribery), Article 677 of the Code of Administrative Offences (receipt of an unlawful material reward by a person authorised to perform a public function or by a person with a similar status) and Article 44 of the Law on Civil Service (disciplinary misconduct and sanctions). According to Article 366 of the CC, if the value of a gift received by a public official for the first time, without a preliminary agreement for actions (inaction) previously taken to the benefit of the donor,

does not exceed two monthly calculation indicators[55] (1 MCI = 2 917 KZT – €6), this would not be considered a criminal offence, and would instead be punishable by disciplinary or administrative sanctions. Should a gift be worth more than 2 MCI (€12), it would become punishable under penal law. Pursuant to Article 44(7) of the Law on Civil Service, acceptance by a civil servant of gifts or services may result in dismissal from office.

Conflicts of interest, incompatibilities, declarations of assets and interests

Conflicts of interest

182. A conflict of interests is defined as *"a contradiction between personal interests of a civil servant and his/her official powers, which may lead to the failure or improper performance of official powers by a civil servant because of personal interests"(Article 1.17, Law on Civil Service).* Another definition of a conflict of interests is provided in the Anti-Corruption Law (Article 1.5), as: *"a contradiction between the personal interests of persons holding a responsible public position, persons authorised to perform public functions, persons equated to them, officials and their official powers, in which the personal interests of these persons may lead to non-performance and (or) improper performance of their official duties."*

183. Article 15 of the Anti-Corruption Law expressly prohibits persons holding a responsible civil service position, persons authorised to perform public functions and those equated to them, from exercising official duties, if there is a conflict of interest. This article also places an obligation on such persons to take measures to prevent and resolve situations of conflicts of interest. They must notify in writing their direct supervisors, or the management of the body they work for, of a conflict of interest, or its possible emergence, as soon as they become aware of it. A similar prohibition, and an obligation to prevent and resolve conflicts of interests is set out in Article 51 of the Law on Civil Service. Paragraph 3 of this Article stipulates that the immediate supervisor, or the head of the state body concerned must take timely measures to prevent and resolve a conflict of interest, once informed of it by the civil servant, or once becoming aware of it from other sources, including also by: giving the task at hand to another civil servant; altering the official duties of the civil servant in a potential conflict of interest situation; taking other measures to eliminate the conflict of interest. This article also establishes disciplinary liability for the civil servant, his/her immediate manager, or chief executive of a state body concerned for failure to take measures to prevent and resolve conflicts of interest they were aware of.

184. As per Article 14(1-1) of the Anti-Corruption Law, candidates for a public position or a position related to the performance of state or equivalent functions must notify in writing the management of the organisation to which they are applying about their close relatives, spouse and (or) relatives working in that organisation.

Incompatibilities

185. Safeguards are in place in the legislation to prevent the abuse of power in personal, group and other non-official interests. Thus, Article 12 of the Anti-Corruption Law sets out restrictions applicable to persons holding a responsible civil service position, persons authorised to perform public functions and those equated to them (except for candidates for Presidency, members of Parliament, or deputies of maslikhats, akims of towns of district significance, rural settlements, villages, rural districts, as well as members of local self-government elected bodies). The

[55] MCI: Monthly calculation index (MCI) for calculation of benefits and other social payments, as well as for the penalties, taxes, and other charges in accordance with the Republic of Kazakhstan legislation.

restrictions include involvement in activities incompatible with the performance of public functions; inadmissibility of performing the service (work) together with close relatives, spouses and in-law relatives; the use of official and other information not subject to official dissemination, with a view to obtain or derive material and non-material benefits and advantages; acceptance of gifts in connection with the performance of official duties in accordance with the legislation of Kazakhstan.

186. In addition, the authorities refer to Articles 14 and 16 of the Anti-Corruption Law, which bans civil servants and persons equated to them to independently participate in the management of an economic entity, if this task is not included in their official duties in accordance with the law; to promote the material interests of organisations or individuals through the misuse of their official powers in order to obtain property or other benefits; to engage in entrepreneurial activity, except for the acquisition and (or) sale of shares of open and interval mutual investment funds, bonds on the organised securities market, shares of commercial organisations (common shares in the amount not exceeding five percent of the total number of voting shares of organisations) on the organised securities market; to engage in other paid activities, except for teaching, scientific and other creative activities.

187. Officials concerned with these restrictions are expected to confirm their acceptance of this restriction in writing. The non-adherence to restrictions may lead to refusal of appointment, or removal from office. Non-compliance with the restrictions can be grounds for termination of the civil service, or other relevant measures.

Declaration of assets and interests

188. In 2021, Kazakhstan introduced new regulations on declaration of income and property, planned to be implemented progressively. As of 1 January 2021, submitting such declarations is mandatory for civil servants holding a responsible public office (such as a position established under the Constitution, and other laws) who are executing functions and powers of state bodies This incudes MPs, judges, and civil service position, "corps "A". Submitting declarations also becomes mandatory for the officials authorised to perform state functions and persons equated to them; civil servants; deputies of maslikhat; candidates for the elections of President of Kazakhstan; akims of cities of regional significance, members of an elected body of local government; an employees in local governments, etc.

189. From 1 January 2023, the obligation to submit declarations of income and property will be broadened to include employees of public institutions and their spouses, as well as employees of the quasi-public sector and their spouses. As of 1 January 2024, these declarations will have to be submitted by the heads and founders of private legal entities and their spouses, individual entrepreneurs and their spouses. Finally, from the beginning of 2025, all remaining categories of citizens will be required to submit declarations.

190. As of 1 January 2021, declarations are to be submitted using a standard form (No. 250), entitled "Declaration of assets and liabilities of natural persons", which aims at declaring the following items located in Kazakhstan or abroad:

    1. property on which rights and (or) transactions are subject to state or other registration with the competent authority of a foreign state in accordance with the legislation of a foreign state: immovable property, land plots and (or) land shares, air and sea vessels, inland navigation vessels, river-sea navigation vessels; vehicles, special equipment and (or) trailers; money on bank accounts in foreign banks outside of Kazakhstan in an amount that, in total, exceeds

1 000 times the MCI established as of 31 December of the reporting tax period for all bank deposits;

2. property in Kazakhstan and (or) beyond its borders: a share in a residential building under an agreement on equity participation in housing construction; the share of participation in the authorised capital of a legal entity established outside of Kazakhstan; securities, derivative financial instruments (with the exception of derivative financial instruments, the execution of which occurs through the acquisition or sale of the underlying asset); investment gold; objects of intellectual property, copyright; cash in an amount not exceeding 10 000 times the MCI established as of 31 December of the year preceding the year of submission of the declaration; indebtedness of other persons (accounts receivable) and (or) indebtedness to other persons (accounts payable), with the exception of indebtedness to banks and similar organisations.

191. As of 2022, another, additional declaration template will be introduced, form No. 270, entitled "Income and assets of natural persons" to be submitted annually as of 31 December of the tax reporting period, which begins from the year, following the year of submission of the declaration of assets and liabilities. Thus, starting from 2022, those who have submitted declarations according to the form No. 250 will also submit declarations under the form No. 270. The content of this declaration covers:

1) income received during the calendar year, including outside of Kazakhstan;

2) tax deductions;

3) acquisition and (or) alienation, and (or) receipt free of charge of property subject to state or other registration, as well as property for which rights and (or) transactions are subject to state or other registration, including outside of Kazakhstan;

4) the requirement to offset and refund the amount of excess for individual income tax, including in the case of the application of the tax deduction defined by Article 351 of the Tax Code, indicating the consent of an individual to submit information by banking institutions on the expenses of an individual to repay interest on mortgage housing loans received for the purchase of housing in Kazakhstan;

5) money on bank accounts in foreign banks outside of Kazakhstan, in an amount exceeding, in total, 1000 times the MCI, effective as of 31 December of the reporting period;

6) property owned by an individual as of 31 December of the reporting period: immovable property subject to state or other registration (accounting), or rights and (or) transactions, subject to state or other registration (accounting) in the competent authority of a foreign state; securities, whose issuers are registered outside of Kazakhstan; the share of participation in the authorised capital of a legal entity registered outside of Kazakhstan;

7) debts of other persons (accounts receivable) and (or) debts to other persons (accounts payable), with the exception of debts to banks and other organisations engaged in banking operations.

192. In addition, as required under Article 634, paragraph 4 of the Tax Code, individuals should indicate in the declaration of income and property, the sources of covering costs of acquiring the following property during the reporting tax period, including outside of Kazakhstan:

1) immovable property subject to state or other registration, as well as property for which rights and (or) transactions are subject to state or other registration;

2) motor vehicles and trailers subject to state registration;

3) participation shares in the authorised capital of a legal entity;

4) securities;

5) investment gold;

6) derivative financial instruments (with the exception of derivative financial instruments, the execution of which occurs through the acquisition or sale of the underlying asset);

7) shares of participation in housing construction.

Rotation

193. Rotation of civil servants is regulated mainly under the 2015 Rules and Timeframe of Rotation of Administrative Public Servants and Positions of Administrative Public Servants Subject to Rotation. The purposes of rotation include 1) increasing efficiency of activity of state bodies, development of the cities of regional significance, districts of regions and districts in the cities; 2) prevention of corruption offences; 3) effective use of professional and managerial experience of public servants; 4) professional development and improvement of managerial competencies of public servants. The Rules, in particular, provide that rotation connected with moving to another locality may be carried out only with the consent of public servants concerned, if this person has personal reasons for not moving (e.g. parental obligations etc.)

194. Both categories of civil servants "corps A and B" may be subject to rotation. Rotation of corps "A" appointed by the President of Kazakhstan shall be carried out upon proposal of the Head of the Presidential Administration. Planned rotation of servants of the corps "A" shall be carried out by the authorised person upon recommendation of the National commission on personnel policy under the President of Kazakhstan. Rotation of employees of the corps "B" shall be conducted every three years. In the case of written rotation refusal by the public servant concerned, the tenure in this position may be extended for another three years, upon expiration of which, the public servant shall be subject to mandatory rotation. Rotation of public servants of the corps "B" is carried out according to a plan prepared by the personnel management service.

Reporting of corruption

195. Article 24 of the Anti-Corruption Law stipulates that any person who has information about a corruption offence is to inform the unit or the authorised body for combating corruption. Similarly, the Law on Civil Service establishes an obligation on public servants to report possible corruption situations (Article 52, paragraph 3). Moreover, these provisions state that should a civil servant have information about a corruption situation, s/he must take necessary measures to prevent and terminate such a situation, and immediately inform a superior in writing. A civil servant is also obliged to immediately inform the indicated persons and bodies in writing if s/he has been subjected to attempts of corruption etc. The management of the state body is obliged, within a month from the date of receipt of such information, to take relevant measures, including by organising inspections and sending appeals to authorised bodies (Article 52, paragraph 3, sub-paragraph 2 of the Law on Civil Service). Each state body is also to conduct internal analysis of corruption risks autonomously, along with the procedure of external corruption risks analysis conducted by the Anti-Corruption Agency.

196. On the other hand, Article 439 CAO establishes administrative liability for knowingly providing false information about a corruption offence, carrying a fine in the amount of 20 MCI for individuals (around €120), while repeated violations are punishable with a fine in the amount of 40 MCI (around €240). According to Articles 439 and 805 of the Code of Administrative Offences, the decision on the initiation of cases of administrative offences is taken by the prosecutor. The burden of proof lies with the prosecutor's office (Article 766), while the person against whom the proceedings on an administrative offence are being conducted also has the right to present exculpating evidence (Article 744). Pursuant to Article 684, Part 1 of the Code of Administrative Offences, the consideration of cases provided for by Article 439 of the Code is referred to the jurisdiction of the courts of first instance (district and city courts, specialised administrative courts

for cases of administrative offences). A ruling by a court of first instance on holding a person liable under Article 439 of the Code of Administrative Offences can be appealed in the regional court and the Supreme Court.

Whistle-blower protection

197. Civil servants reporting on possible corruption are entitled to protection under Article 52(4) of the Law on Civil Service, which states that the leadership of a state body must take measures to protect a civil servant reporting corruption cases, as well as when they have been subjected to attempts of corruption. Following the instruction from the President, since 2020 the Anti-Corruption Agency is preparing legislation for introducing a system of protection of persons reporting instances of corruption. A draft law to improve the protection of persons reporting corruption is currently undergoing scientific expertise and coordination with government agencies.

198. Whistle-blowers may also be provided with the protection measures envisaged under Article 97 of the CPC on security measures for complainants, witnesses, suspected and other persons, involved in criminal proceedings. This article contains measures available to ensure safety of witnesses, suspected and other persons, involved in criminal proceedings, their family members and close relatives. Further provisions applicable to whistle-blowers can be found in Article 5 of the 2000 Law on State Protection of Persons Participating in Criminal Proceedings. Under this Law, State protection measures may apply to persons contributing to prevention or detection of crimes, if there is a real threat of violence or other prohibited acts against them. As stipulated in Article 24(4) of the Anti-Corruption Law, information about a person assisting in combating corruption is considered a state secret and disclosing such information entails liability established by law.

199. The GET was informed that a new law on the protection of whistle blowers was in preparation.

Disciplinary procedures, sanctions

200. The observance of official ethics by civil servants is supervised by the Agency for Civil Service Affairs (Law on Civil Service). The Presidential Decree No. 152/2015 approved the Rules for disciplining public employees (hereinafter – the Rules).

201. Disciplinary responsibility of civil servants of the corps "A" is examined by the National Commission on Personnel Policy under the President of Kazakhstan, or on its behalf by the personnel commission of the region, city of republican significance, capital. Disciplinary liability of civil servants on managerial positions of corps "B" in the central state authorities, for breach of ethics, including disciplinary offences and defamatory public service, falls under the competences of the Commission on the Ethics of the authorised body for Civil Service Affairs. Disciplinary liability of civil servants in managerial positions of corps "B" at the local level is considered by the Board of Ethics of the authorised body for Civil Service Affairs in regions, cities of Republican significance, and the capital. Disciplinary responsibility regarding other categories of civil servants is considered by the disciplinary commissions of the relevant state body.

202. The following disciplinary sanctions are available: reprimand, severe reprimand, warning of incomplete official compliance, demotion, and dismissal from office. The authorities report that in the course of 2020, the ethics councils held a total of 174 meetings, having examined 523 disciplinary cases. In 200 cases, public servants were sanctioned for "misconduct tarnishing the

civil service"[56], and in a further 171 cases sanctions were imposed for violation of code of ethics. In addition, since 2019, senior managers may be requested to resign for insufficient preventive work within their organisations. Thus, six political appointees were dismissed for the corruption of their immediate subordinates, four political and 34 administrative senior public service managers were brought to disciplinary liability.

203. According to information provided to the GET by different interlocutors, disciplinary investigations are performed by human resources units of the public body concerned, with the involvement of the immediate supervisor of the civil servant in question. The service investigation is initiated by the head of the public body, who also decides upon the composition of the investigation team. The disciplinary investigation should be completed within 10 days and its results are presented to the disciplinary board, composed of the head of institution and representatives of its various departments. The board assesses the facts, the guilt, the impact of the deed, as well as compliance with the timeline of the investigation. The person charged with a violation may present his/her opinions, is allowed to have a representative, to read the materials, to be present, to give explanations, and to challenge the sanction. The disciplinary board might close the disciplinary case if the accusation is found unsubstantiated. Should the disciplinary board find that the accusation is substantiated, it will make a recommendation to the head of the institution regarding a possible sanction. The head of the institution may impose the suggested sanction, or ask the board to reconsider its recommendation. The civil servant in question may appeal against the imposed sanction to the administrative body, or a court, as provided by Article 46 of the Law on the Civil Service. According to the authorities, in the course of 2020 some 700 disciplinary sanctions were applied, out of which 182 were imposed for breaches of ethics. The authorities specify that violation of ethical standards would also be subject to disciplinary liability. Such cases could be considered by the National Commission on Personnel Policy under the President of Kazakhstan, disciplinary commissions of state bodies, as well as the Ethics Commission of the Agency for Civil Service Affairs and Ethics Councils – depending on the classifications and categories of positions of civil servants concerned. Should a violation be established, the following sanctions can be applied: noting, reprimand, severe reprimand, warning of incomplete official compliance, dismissal from office.

Relationship between disciplinary and criminal procedures

204. Article 35 of the CPC stipulates that criminal prosecution bodies and courts, when terminating a criminal case shall transmit to the authorised bodies within ten days, any materials suggesting that an administrative or disciplinary liability may be invoked in respect of the person concerned. Another tool for corruption prevention is the possibility envisaged under Article 200 of the CPC to make submissions by the body in charge of the pre-trial investigation to central and local state bodies. In particular, the person carrying out the pre-trial investigation may decide to submit to the relevant state bodies, organisations or persons performing managerial functions in these organisations, circumstances established during criminal proceedings, which contributed to the commission of the offence, and a proposal for measures to eliminate these circumstances. Such submissions, when made, must be examined by the relevant addressee (state body, manager etc.), and replied to, within one month.

205. According to the Regulations on Ethics Councils, in cases of detecting signs of a criminal or administrative offences in the actions of an employee, the ethics council sends the appropriate

[56] The GET notes that there is no definition for "tarnishing civil service" in the current legislation. According to the authorities, the Code of Ethics states that civil servants in official relations with colleagues should refrain from discussing personal and professional qualities of colleagues that discredit their honour and dignity in the team.

documents and materials to law enforcement or other authorised bodies within three working days, of which the Anti-Corruption Agency is also informed within the same period. A disciplinary sanction in respect of a civil servant does not exempt him/her from other types of responsibility provided by law. The authorities specify that a disciplinary misconduct discrediting the civil service (Article 50 of the Law on the Civil Service) entails disciplinary liability only if it does not contain signs of a criminal or administrative offence. Should a criminal case be terminated, law enforcement agencies send materials directly to the state body concerned to resolve the issue of disciplinary liability.

Public procurement, permits and other administrative procedures and authorisations

Public procurement

206. In Kazakhstan, public procurement accounts for 6.6% of GDP and represents 43% of government expenditures (source: OECD). In order to ensure transparency of budgetary spending of state bodies, the Anti-Corruption Agency is implementing a web-based project entitled "Interactive map of open budgets" (publicbudget.kz), which displays information on the allocated budget funds and allows visibility of government spending of about 18 000 state institutions. As of October 2020, it is also possible to download information about the organisation from the public procurement portal public procurement portal (www.goszakup.gov.kz) and display it on the organisation's budget page.

207. As of 1 September 2019, state purchases of goods of the light and furniture industry are carried out from suppliers who have an industrial certificate. State purchases in construction and installation works are carried out only among suppliers that meet financial stability indicators. In addition, an electronic database of the experience of potential suppliers entitled "Electronic Depository" has been set up, where potential suppliers will enter information regarding their completed work in the construction sector over the past 10 years. Also, a new type of procurement entitled "Electronic Store" has been introduced with the aim of allowing purchases on a competitive basis in one day, with its pilot project launched on 1 June 2020. Further, the Anti-Corruption Agency, in cooperation with the National Chamber of Entrepreneurs, is implementing a project entitled "Single Procurement Window", which allows identifying overstatement of procurement costs at the planning stage of public procurement, thereby preventing inefficient spending of budget funds. Further, the Anti-Corruption Agency, together with the National Centre for Road Assets, launched the Sapaly Zhol project, which aims to prevent corruption at all stages of construction, reconstruction and repair of highways.

208. On 23 December 2020 the *Mazhilis* (lower chamber of Parliament) approved in a first reading amendments to legislation on public procurement (draft Law on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Public Procurement Issues), which aims at strengthening reporting on procurement from a single source in order to minimise corruption risks. The draft introduces and obligation to indicate information about the official responsible for a purchase from one source, justify reasons not conducting procurement through tender, and introduce personal responsibility of the head of the customer for such purchases.

209. The appeal procedure is regulated the Law on Government Procurement (Article 47), which states that a potential supplier may appeal against the action (inaction), decisions of the customer, organiser of public procurement, commissions, experts, a single operator in the public procurement, if their action (inaction) or decisions violate the rights and legitimate interests of the potential supplier. In case of submitting an appeal (not later than five working days from publication of the results of procurement) the conclusion of the procurement contract shall be suspended until

consideration of the complaint has been completed. Appeals regarding public procurement shall be considered within ten working days from the expiry of the five-day term mentioned above. Should the potential supplier disagree with the decision following the complaint, a further appeal may be submitted to a superior body. Ultimately, decisions may be appealed before court.

Permits, audit and controls

210. Kazakhstan is undergoing significant reforms in the area of e-governance, including e-licensing for all public bodies. According to the Law on Licensing, permits licenses are issued following a request made through an e-licensing system. All permits registered in the system are accessible to all public institutions. The Ministry of Digital Development has the responsibility to ensure that each public body meets the standards and the deadlines for issuing licenses and acts as a regulator in the area of public services. The Ministry aims to further streamline and reduce deadlines and the number of documents required to obtain a license. By way of example, reference is made to the "confirmation of address" certificate, previously issued by the Ministry of the Interior, which is now processed through e-licensing system, with a total of about 20 million of certificates issued since this novelty has been put in place.

211. As to the audits and controls, a central register of controls is operating in Kazakhstan, and no controls are permitted outside this register. All controls are approved by prosecutors, and each ministry has a "control chamber". As of December 2019, as a measure to boost small and medium enterprises, a moratorium has been put in place on controls in respect of such businesses, which is to last until December 2022, with no compliance measures being taken in their regard during this period, unless there are suspicions of a criminal offence. Kazakhstan also sees a decline in tax payments. Before the end of the moratorium, only companies classified as a "high risk" can be inspected.

212. Public audit in Kazakhstan is performed in the form of internal and external audits[57]. There are 380 certified auditors out of which 320 are field auditors (belonging to corps "B"). The Internal Audit Committee of the Ministry of Finance performs internal audits for all public institutions and entities receiving budget funds. The three stages of internal audits include a preparatory stage – scope and deadlines, programme; audit on site, including a request for materials that can be requested prior to the on-site visit; and the summarising of the audit with a decision on whether to make recommendations or not.

213. Recommendations stemming from the audit are sent to the body concerned and are not binding by law. However, the "improvement notice", issued as a result of the audit is binding, and non-compliance may entail administrative liability for officials and legal or natural persons, carrying a fine. It is possible to appeal against the audit results in a two-stage proceeding, the first at the Internal Audit Committee, and a second at the Ministry of Finance.

[57] According to Article 18 (10) of the Law "On State Audit and Financial Control", state audit and financial control bodies, with the exception of internal audit services of a state agency, register inspections in the control registry. Governmental audit is divided into the following types: 1) audit of financial statements – an assessment of reliability, validity of financial statements, accounting and financial condition of the object of governmental audit; 2) efficiency audit – an evaluation and analysis of the activity of the object of governmental audit for efficiency, efficiency, productivity and effectiveness; 3) compliance audit – an assessment, verification of compliance by the object of governmental audit with the norms of the legislation of Kazakhstan, as well as acts of subjects of the quasi-public sector adopted for their implementation. The competence of the Committee includes only the annual audit of financial statements and compliance audit. The efficiency audit is carried out by the Accounts Committee for Control over the Use of the republican Budget, Regional Audit Commissions and Internal Audit Services.

214. As to the financial audits, this task is entrusted to the Committee of Accounts, which performs external audits overseeing the execution of the state budget. The Committee of Accounts is a collegial body composed of a Chair (proposed by the Senate and appointed by the President) and seven members, all political appointees, of which two are appointed by the President, three by the *Mazhilis* (lower house of Parliament) and three by the Senate (upper house). The Committee of Accounts has three units of state audit and 70 certified state auditors (corps "B"). Its mandate covers all institutions financed from the state budget, including state-owned companies. At the local level, external audits are performed by the Revision Commission.

215. According to the information provided by the authorities, following audit activities, some 728 files were transferred to law enforcement agencies in 2018 (amounting to 83,642.4 million KZT), 465 files in 2019 (amounting to 64,192.8 million KZT) and 251 in 2020 (amounting to 153,274.2 million KZT). For the first 9 months of 2021, 210 files were sent to law enforcement (amounting to 206 010.1 million KZT) for further investigation.

b. Analysis

216. The concept of the "Hearing State" is now the cornerstone of the measures taken by Kazakhstan in the area of transparency. As the public messages promoting governmental openness intensify, the expectation of the general public to be truly involved and consulted on matters of public policies will also increase. Economic development also increases the capacities of the private and civic sector to actively participate in genuine open discussions with the public sector. Communication should be understood to be both ways – from the administration to the citizens and from the citizens to the administration. If the practice is at odds with the newly announced transparency policy, if consultation mechanisms remain accessible to only a limited circle of individuals selected in an opaque manner, the rise of social discontent is inevitable.

217. The Law on Access to Information covers public institutions at national and local level as well as any other entities acting on their behalf, subjects of state monopolies, subjects of the quasi-public sector, as well as legal entities receiving public funds – in relation to the use of these funds. The scope of the Law on Access to Information also extends to legal entities in general, if they hold information relevant to emergency situations, natural disasters, fire safety, sanitary-epidemiological and radiation conditions, food safety and other factors ensuring the health and safety of citizens, settlements and production facilities.

218. The Commission on Issues of Access to Information was established in 2016 by the Minister of Information. The authorities indicate that at least two-thirds of the composition of the Commission has been filled by representatives of civil society, but according to the information on the website of the Ministry of Information and Public Development, currently half of the members of the Commission are representatives of ministries, parliament and other public bodies.

219. The liability for non-compliance with the provisions of the access to information legislation is mostly disciplinary and can be triggered by undue restriction of access to information (ungrounded refusal, offering misleading information, or unjustly qualifying public information as secret information). The sanction would be applied to the information officer, or other employees that have restricted access to information, by the chief of staff of the public body concerned. No mechanism appears to be envisaged to sanction heads of institutions, if they unlawfully restrict access to information. In an attempt to offer a solution to the situation where access to information is limited by unjustified decisions of managers of the respective public bodies, acknowledged as a gap by the authorities during the on-site visit, annual evaluation of the transparency of public bodies has been introduced

in 2017. Findings of the transparency evaluation are published on the e-government platform. Should the evaluation results be unsatisfactory for two or more consecutive years, the head of the public body concerned can be sanctioned, upon the discretion of the President of Kazakhstan. The interlocutors met by the GET noted that overall access to information has been gradually improving, with challenges remaining mostly at local level.

220. The authorities submitted to the GET that more than 12 000 information officers were tasked with facilitating access to information. Some local entities have assigned this responsibility to staff members who are also in charge of relations with the media. Training is said to be provided to information officers (including within a UNDP program and via webinars), along with practical and methodological help and guidelines provided by the Ministry of Information. In spite of these steps, interlocutors met by the GET confirmed that the practice at local level is widely varied, and so is the information officers' understanding of rules governing access to information. The GET also notes that difficulties in access to information are reflected in the OECD ACN Progress Update Report[58].

221. While the GET acknowledges that legislation on access to information is rather detailed and that a negative response to a request for information can be appealed in the administrative procedure, the GET is critically concerned about the uneven application of the law by the public officials concerned, as referred to above. In view of this situation, **GRECO recommends that necessary legislative and practical measures be taken to improve public access to information at all levels of public administration by (i) providing training to public officials and employees concerned, including information officers, in particular those operating at local level, and (ii) ensuring that the legislation includes pertinent sanctions for unlawfully restricting access to information.**

222. The transparency in the decision-making process in Kazakhstan appears to be based on the recently announced concept of the "Hearing State". The 234 public councils with over 4 000 professionals in various fields are said to be consulted in various areas of legislative drafting, including budgets. Regarding the expert roster to provide anti-corruption expertise of draft regulatory acts, it remains unclear on the basis of which criteria and by whom these experts are selected, what is the duration of their mandate and how they are replaced. Apart from the 125-expert roster tasked with conducting anti-corruption expertise on draft legislation, no provisions appear to have been put in place on participation of ordinary citizens in the decision-making process. Moreover, following the on-site visit, the GET notes that without the inclusion of non-state actors, in particular civil society and non-state media, this process of consultation is not meaningful as it does not provide an open consultation process. While the existing mechanisms open to some extent the way to civic participation in the consultations, before the decision making process, much more needs to be done to ensure that the general public can be truly included in the process. Also, draft legislation and policies should be published in such a way as to allow for a reasonable time for such consultations to take place. The GET's impression is that the current system is not sufficiently transparent outside of the state structures. Consequently, **GRECO recommends developing and adopting comprehensive legislative and practical measures, ensuring public transparency and meaningful participation of the general public, including relevant non-state actors, in respect of consultations relating to the decision-making process of public bodies.**

[58] Progress Update of March 2019 on the Fourth Round Monitoring Report under the OECD Anti-corruption Network for Eastern Europe and Central Asia (OECD/ACN), accessible via the following link https://www.oecd.org/corruption/anti-corruption-reforms-in-kazakhstan.htm

223. Public officials and employees in the public sector consist of political appointees, administrative servants, civil servants with a special status and employees working under labour contracts. Political appointees are usually leading public institutions and are less numerous. Administrative servants amount to approximately 90 000 persons split into two categories – corps "A" and corps "B". Corps A includes 91 positions out of which 79 were occupied at the time of the on-site visit. These are senior managers (executive) of public bodies in charge with the oversight of the implementation of tasks by their subordinate staff. Corps "A" staff are appointed without a competition usually as chiefs of committees or chiefs of staff. The head of the relevant public body submits the candidature for a corps "A" position to the Governmental Commission. The national board (composed of the chief of the presidential administration and ministers) can reject the appointment if the candidates do not comply with the requirements for the job and Law on the Civil Service. The additional qualifications to be met by candidates for corps "A" positions are at least six years of civil service, including two years on management positions. Corps "A" are employed for four years, which may be extended. By contrast, a competitive selection to vacant posts is organised for civil servants of corps "B", which includes a test of legislation, a test of personal knowledge and an interview. Employees with a special status are also present in law enforcement, intelligence and army institutions.

224. The most significant number of employees in public bodies at central and local levels are hired on the basis of labour contracts and they are not covered by the Law on Civil Service. In the course of the on-site visit, the GET received inconsistent answers from representatives of public bodies as to the tasks given to these kind of employees but it would appear that they are technical support personnel (drivers, cleaners, cooks etc.). Some information suggested also that many of those were performing tasks of civil servants. There appear to be no uniform rules about the selection process for this category of personnel – each public body may decide regarding the hiring procedure. Neither could the authorities provide a clear number of the employees hired through labour contracts, although during the visit the figure of 1,5 million was mentioned.

225. In the GET's view, the recruitment and status of various officials and employees in the public administration need to be improved. Among others, the situation creates uncertainty regarding the recruitment procedures and the awareness among persons employed in public administration of their obligations in the context of preventing and combating corruption. Overall, the current lack of clarity regarding the recruitment procedures and obligations for civil servants and persons recruited on the basis of employment contracts does not contribute to the homogeneous integrity policy, transparency and accountability necessary for a public administration if it is to be effectively shielded from corruption. Non-transparent mechanisms for human resource management are prone to misuse, nepotism and cronyism. Especially in systems where managers are directly responsible for misconduct of their subordinates, these discretionary mechanisms may lead to favouritism towards individuals within inner circles, instead of promoting a merit-based human resource system. Therefore, **GRECO recommends (i) establishing merit-based rules and transparent procedures for the recruitment and promotions for all positions in the public administration and (ii) ensuring that pertinent rules on integrity in the public service apply to all public sector officials/employees, including political appointees and employees recruited on labour contracts.**

226. The Code of Ethics for Civil Servants adopted in 2015 covers a broad area relating to the behaviour of civil servants on- and off-duty. That said, its provisions offer limited guidance when it comes to integrity or anti-corruption standards, such as gifts, incompatibilities, conflict of interests, as they only contain general references to anti-corruption and civil service legislation. In this regard, the Code of Ethics would benefit from further nuancing and the spelling out of relevant integrity

standards, as well as risks of corruption, and their expected conduct as being service providers. **GRECO recommends that the existing Code of Ethics be complemented with more detailed guidance for employees and officials of public administration on situations they may come across in their daily practices in relation to integrity standards and their conduct in respect of the public (e.g. regarding reactions to gifts and other advantages, reporting of corruption and the handling of requests for access to public information).**

227. Newly recruited staff to the civil service are expected to familiarise themselves with the content of the Code of Ethics. While some training courses in the Academy of Public Administration include integrity-related topics, no consistent inception training is performed on ethics and anticorruption – some trainings include ethics commissioners and certificates are issued at the end. In 2018 guidelines were developed that include case-studies based on concrete situations. In practice, ethical dilemmas arise in the performance of civil service and unless an institutional effort is made towards encouraging employees to seek guidance and discuss emerging challenges, most civil servants would be reluctant to even disclose their integrity questions. It is therefore of crucial importance to provide induction training for all newcomers to the civil service, including on integrity, ethics and anti-corruption, and make the guidance and risks mitigation tools available. Such training and guidance are currently insufficient. Given their lack of experience in the public sector, newly recruited civil servants are particularly vulnerable and may find themselves in breach of ethical norms, unless adequately trained and guided.

228. Ethics commissioners are appointed by heads of public bodies, to whom they are also accountable. In a smaller number of central-level public bodies (29) the ethics commissioner is a senior public official, serving as the commissioner on a full-time basis. In the vast majority of other state bodies (735), the function of ethics commissioner is allocated to an employee who also performs other tasks within the same public authority. It is noteworthy that in the performance of their duties ethics commissioners are allowed to access information relevant for the investigation (including personal files of staff members of the respective public body and other information related to the public service) and may address to other public bodies requests for clarification of various pieces of legislation. If the head of the institution is not collaborating with the ethics commissioner, the later may notify the authorised body for public service affairs, or its territorial subdivision, which may take subsequent measures. If there are doubts as to the impartiality of the head of the state body, the Ethics Commissioner may act independently. In such cases the Ethics Commissioner submits the reports to the authorised body.

229. The GET is of the view that the existence of ethics commissioners is to be welcomed but they could possibly play a greater role in preventing and combating corruption, if it was not for a few significant shortcomings. In spite of discussions in the course of the on-site visit, the GET did not receive sufficient information as to whether any support staff is provided to the ethics commissioners for the performance of their duties. In the absence of such support, the likelihood of them being reactive, rather than pro-active, in their work is rather high. Further, the necessary degree of independence of the ethics commissioners is put into question by their hierarchical position and their subordination to the heads of the respective public bodies. Hypothetically, an ethics commissioner who submits a complaint to the authorised territorial body on the lack of cooperation from the head of the respective institution, may very well be relieved from this duty by the latter, with immediate effect. The need for ethics commissioners' greater functional independence becomes particularly illustrative, if the ethics commissioner was to investigate an alleged violation of ethical rules by the head of the public body, to whom he/she is subordinated. The GET sees merit in addressing these two aspects in a comprehensive manner.

230. The activities of ethics commissioners are coordinated by the control department of the Civil Service Agency (CSA). Ethics commissioners submit reports to the CSA control department twice a year and outline challenges encountered in their respective public bodies. According to these reports, the most frequently identified vulnerabilities refer to the level of morale in public institutions, the high turn-over of staff, as many new agencies are created, while some others are dismantled, and the lack of sufficient powers of ethics commissioners to implement their tasks effectively, in particular as regards limited channels to report violations (only the chief of staff of the respective public body, or the CSA).

231. In view of the foregoing, **GRECO recommends (i) introducing induction training on integrity, ethics and anti-corruption measures to all employees and officials of public administration, based on the Code of Ethics as amended, in order to provide necessary guidance and risk mitigation; (ii) strengthening the independence, competence and capacity of the ethics commissioners to ensure that they are able to autonomously implement their tasks, without undue pressure.**

232. The GET takes note of the legal provisions regarding conflicts of interest, applicable to public administration. The authorities reported that in the course of 2020, during preventive controls of public bodies at the state- and local level, 11 instances of conflicts of interests were identified, and a further 11 were detected in the first half of 2021. The areas concerned by the detected conflict of interest situations included job applications; allocation of agricultural land for rent; consideration of citizens' appeals; conduct of disciplinary and other commissions; holding positions, subordinate to spouses.

233. The GET is of the view that the management of conflicts of interests deserves improvement. Article 44, paragraph 2 of the Law on Civil Service includes "the deliberate failure to take measures to prevent and resolve conflicts of interest" as a disciplinary misconduct. While the law requires that conflicts of interests be identified at an early stage and mitigation measures be taken by the civil servants in question, and/or their superiors, there is no legislation and no mechanism to invalidate the decisions taken in situations of conflict of interests. For example, contracts may only be endangered if the behaviour of the civil servant involved amounts to a criminal offence, thus excluding conflicts of interests in most cases. The present situation may suggest that concealing conflicts of interests as if they were not present and proceeding with the official duties may even be lucrative, as the only potential risk would be disciplinary proceedings, while the large-scale contracts awarded on the basis of decisions taken in a situation of conflicts of interest could well remain valid. This considerably elevates corruption risks and needs to be addressed. **GRECO recommends that a more efficient system of preventing, detecting and managing conflicts of interests in public administration be established by refining legislation on conflicts of interests and incompatibilities, and systematically applying effective deterring measures for such practices, including sufficiently dissuasive sanctions and invalidation of legal and other acts concluded in situations of conflict of interests.**

234. The GET observes that the newly introduced system of declarations of assets, properties and liabilities is not yet fully operational, and its impact on corruption prevention is therefore not possible to assess. It is also difficult to foresee how these declaration forms will interconnect in practice. The authorities expect that introducing a universal tax declaration will remedy their concerns about the significant proportion of the shadow economy in the country.

235. Article 11 of the Anti-Corruption Law refers to a declaration[59] of assets and income, which should be submitted to the state revenue body by applicants to public functions and by persons holding civil service positions, as well as their spouses and, in case of applicants, their other family members. This declaration is to be made annually for the duration of their office – those who are dismissed from office continue submitting it for a further three years. The on-site discussions did not allow the GET to clarify whether declarations required under Article 11 of the Anti-Corruption Law were to be submitted in accordance with the forms No. 250 and No. 270, referred to above, or through a different template. The authorities later indicated that upon entering the declaration system, individuals submit initial declaration of assets and liabilities to the state revenue authorities by means of the form No. 250. Thus, as of 1 January 2021, civil servants and other persons authorised to perform state functions, persons equated to them, and their spouses are to submit declarations of assets and liabilities no later than 15 July 2022 on paper, and no later than 15 September – in electronic form. Starting from 1 January 2022, the above-mentioned persons must annually submit a declaration of income and property for the reporting calendar year by means of the form No. 270, within the same deadlines as set forth for declarations of assets and liabilities, i.e. by 15 July on paper and 15 September – in electronic form.

236. Further, the GET notes that, as per Article 11, paragraph 11 of the Anti-Corruption Law, information on the amounts and sources of income of officials holding responsible civil service positions "may be published". However, different interlocutors confirmed that declarations made by public officials under this article are not publicly available at present. The Anti-Corruption Law refers to administrative and disciplinary liability for violation of declaratory obligations by public servants (Article 11, paragraph 8), but no regulations appear to be in place describing the mechanisms for the application of these measures. According to legislation, the State Revenue Authority would be competent for verifying the timeliness and accuracy of declarations. However, no information was provided on the procedure of verifications, its extent as regards details, as well as the proportion of declarations verified each year, in comparison to the overall number of declarations submitted. **GRECO recommends that clear rules on declarations of assets and interests by public officials be established, which should include provisions on disclosure of assets and interests, systematic verification of declarations, and deterrent sanctions in case of irregularities.**

237. As regards the protection of whistle-blowers, current legislation contains some provisions on when such protection could be applied, but provides no details on the protection mechanism itself. What is more, the legislation in place protects whistle-blowers only when they report criminal offences of corruption, but not, for instance, administrative offences, or other violations enhancing corruption risks. Protection is also not triggered if whistle-blowers report wrongdoings or mismanagement in the public sector. As to the protections provided under the CPC, the GET notes that these are only applicable when any person participates in criminal proceedings as a participant, established by the CPC (complainants, witnesses etc.).

[59] This declaration should include the following items (in Kazakhstan or abroad):
- deposits with banking institutions and securities, including those outside of Kazakhstan, indicating the banking institution, as well as financial assets, which these persons are entitled to dispose of personally, or jointly with other persons;
- participation as a shareholder or founder (participant) of legal entities, with indication of the share of participation in the authorised capital, and complete banking or other details of the said organisations;
- trusts and states where they are registered, indicating relevant bank account numbers, if the person or his/her spouse is the beneficiary of these trusts;
- names and details of other organisations having contractual relations with persons concerned, agreements and obligations (including oral ones) for the maintenance, or temporary storage of material and financial assets, belonging to the person or his/her spouse, and exceeding the 1000 times the amount of the MCI.

238. In the course of the on-site discussions, representatives of different public bodies acknowledged the generally weak protection of whistle-blowers in public administration and informed the GET that more comprehensive legislation on the protection of whistle-blowers was in the process of drafting. In view of the above, **GRECO recommends that the general protection of whistle-blowers be improved in legislation and practice to include additional safeguards for those reporting corrupt practices in good faith. The new legislation should also establish liability for persons undermining the whistle-blowers' protection process, and provide effective mechanisms, ensured by the State, to trigger this liability in practice.**

239. It is reported that public procurement procedures, in Kazakhstan amount to approximately 8 billion KZT (about €16 million) yearly. The GET was told that lowest price is not the only element taken into account when awarding a public procurement contract; the legislation also includes a provision on eliminating offers containing dumping-oriented prices. One of the phases of the procurement includes a pre-qualification stage to assess the financial sustainability and the experience of the bidders. When assessing the financial sustainability, contributions made by the company to the state budget through corporate tax and revenue tax are taken into account. Thus, a company not paying such taxes would not qualify for public procurement procedures. Companies not meeting their contractual obligations may also be black-listed by courts.

240. Commissions are set up to evaluate bids, and unsatisfied parties can lodge complaints, including through electronic means. The public procurement department has 10 days to examine such complaints and decide whether the procurement decision is to be upheld, or reversed. As of July 2021, the law mandates that hearings must be held before a decision is reached. The second step in the complaint procedure takes place before the Appellate Commission, and its decision can then be appealed before a court. The public procurement contract can only be signed once the complaint procedure is terminated.

241. While progress regarding the public procurement legislation was noted, interlocutors met by the GET during the on-site identified this sector as being highly vulnerable to corruption. According to representatives of public bodies and non-state actors, the implementation of the rules is challenging. Reportedly, businesses that are declared inactive in state registries have won contracts for building schools – even though they should have been excluded from the procurement process altogether, as they did not meet pre-qualification requirements. Given the simplification of business registration and the current moratorium on controls of small and medium businesses, it is possible for recently set-up business, or those that lack proper financial capacities, to be attributed procurement contracts with considerable budgets.

242. Conflict of interests constitutes grounds for recusal from the public procurement process. However, the GET was told that little is done to pro-actively identify conflicts of interests early in the process. If the recusal does not take place, and the fact of a conflict of interest becomes known, the Anti-Corruption Agency is to be informed, and the head of the relevant institution may take disciplinary action. That said, in cases where a conflict of interest has been identified, and sanctions have been applied *after* the conclusion of a public procurement contract, such a contract may still remain valid. The GET was informed of difficulties encountered by the Anti-Corruption Agency when it had to involve in suspicious public procurement procedures which included well-connected businesses. Such cases were also reported by civil society actors to the Ministry of Finance, but, allegedly, receiving very limited response.

243. Further incidents and corruption risks may appear at the stage of execution of a contract awarded through public procurement procedure. For instance, it was reported that manifold increases of a

total cost of works agreed under the contract were a frequent occurrence. This was especially conspicuous, when a contract was awarded predominantly on the basis of the lowest initial price. Payments to contractors are only made upon receipt of acceptance certificates from the contracting authority. In this regard, the GET was informed of instances when the issuing of acceptance certificates was affected by corruption.

244. Public-private partnership (PPP) contracts are also used for public works and it has been reported that, following the strengthening of the legal framework on public procurement, PPPs have been resorted to more frequently. Civil society representatives reported that roads built through PPPs could be up to five times more expensive than those built through public procurement contracts (by way of example, the GET heard that in Almaty the cost of road construction could be up to 21 million KZT per kilometre, while in Nursultan – 3.5 million KZT per kilometre; cost of railway construction could be even more inflated, which some saw as a symbol of corruption in Kazakhstan). Allegedly, schools built through PPPs were sometimes 10 times more expensive than those built through public procurement contracts. Though PPP is a different contracting mechanism, in the eyes of the public, the vulnerabilities identified in this sector have a spill-over effect on the perception of procurement procedures in general. Finally, one of the most glaring problems was the disproportionately low salaries of civil servants processing procurement procedures and awarding contracts, in comparison with the responsibilities and the budgets of contracts that were awarded. Interlocutors told the GET that the disparity was so manifest, it would put almost any civil servant on this post at risk of corruption. **GRECO recommends that additional legislative and practical steps be taken to prevent corruption in relation to public procurement and public investment procedures including by providing adequate remuneration of responsible officials, a more rigorous supervision mechanism for the eligibility criteria, detection and prevention of conflicts of interest and rigorous implementation of contracts and the possibility to nullify contracts in situations of conflicts of interest.**

245. In the course of internal audits (Ministry of Finance), should the auditors come across indications of possible corruption in the course of their work, they are expected to refer such cases to the Anti-Corruption Agency via the central office. However, upon request by law enforcement or court, such information can be transferred directly by the auditor in the regional office. The GET was told that once in three years auditors must take retraining courses in the Civil Service Academy, which include topics on corruption prevention and promoting zero tolerance to corruption.

246. The external audit reports (Committee of Accounts) may target one or more institutions and aim for a sectoral approach to identify structural problems. According to representatives of the authorities, the most problematic areas identified during audits were construction, infrastructure development and public procurement. Overall, the contribution of different audit bodies to the prevention and detection of corruption in Kazakhstan has been rather limited. While there may be several reasons for it being so, in the GET's view, there is room for enhancing the role of audit authorities in combating corruption. Recommendations made in other parts of this report addressed to auditors, accountants, lawyers and tax officers would also be relevant in this context.

VI. LEGAL PERSONS AND CORRUPTION

a. Description of the situation

General definition and constitution

247. The Civil Code, which provides the basic rules in respect of legal entities, defines in Article 33 a legal entity as an organisation which pursues the recovery of income as the primary purpose of the activity (commercial organisation) or does not have gaining income as a goal and does not distribute any net income between the parties (non-profit organisation). Commercial and non-profit organisations can establish branches and representations, which are subject to the same applicable obligations.

Profit sector

248. According to Article 34 of the Civil Code, commercial organisations can be established in the form of a state-owned enterprise, business partnership, joint-stock company or production cooperative. Definitions of the most important types of business partnerships and companies are as follows:

- General partnership: A partnership, which participants, in the case of the insufficiency of the property of the full partnership, bear a joint liability upon its obligations with all the property that they have shall be recognized as a full partnership (Article 63, Civil Code).

- Limited partnership: A partnership which include besides one or more participants who bear additional liability for the obligation of the partnership with all their property, also one or more participants whose liability is limited by the amount of contribution made by them to the assets of the full partnership and which do not participate in the partnerships' entrepreneurial activities (Article 72, Civil Code).

- Limited liability partnerships: A partnership established by one or several persons, which charter capital is divided into shares stipulated in the foundation documents. It has a low minimal share capital requirement of 100 MCI (€590)**.** The participants of a limited liability partnership shall not be liable for its obligations and they shall bear the risk of losses associated with the activities of the partnership within the limits of the value of the contributions made by them (Article 77, Civil Code). This is the most common form of company to conduct business in the country, particularly, for foreign investors – see also table below.

- Additional liability partnerships: a partnership, which participants are liable for its obligations with their contributions to the charter capital, and in the case those are insufficient, additionally with the assets that belong to them in the amount which is a multiple of the contributions made by themselves (Article 84, Civil Code).

- Joint-stock company: legal entity which issues shares for the purposes of raising funds for the performance of its activities shall be recognized as a joint-stock company. The shareholders of a joint-stock company shall not be liable for its obligations, and they shall bear the risk of losses associated with the company's business, within the limits of value of the shares they hold, except for the cases provided for by legislative acts (Article 85, Civil Code). The minimum share capital to start a joint-stock company is set at 50 000 MCI (€294 000).

- Producer cooperative: A voluntary association of citizens on the basis of the membership for joint entrepreneurial activities, which is based on personal labour participation and the co-operation by the members of their property contributions (Article 96, Civil Code).

249. The establishment of commercial organisations is governed by the Civil Code, the Law on Business Partnerships, the Law on Limited and Additional Liability Partnerships, the Law on Joint Stock Companies, the Law on Producer Cooperatives, as well other legislative acts.

Non-profit sector

250. The non-profit sector comprises institutions, foundations, public associations, consumer cooperatives, unions, religious associations and political parties. Moreover, the law provides for the possibility for non-profit entities to establish in a different organisational or legal form different from the above-mentioned broader categories; this is the case, for example, of autonomous educational organisations, bar associations, professional chambers, cooperatives of apartment owners, etc.

251. The non-profit sector is regulated by the Civil Code, the Law on Non-Commercial Organisations, the Law on Public Associations, the Law on Religious Activities and Religious Associations, the Law on Political Parties, as well as other legislative acts.

252. The following table provides an overview of the number of commercial and non-profit organisations in Kazakhstan for the years 2017-2019:

	Number of new legal entities registered per calendar year				
	2017	**2018**	**2019**	**2020**	**2021**
Commercial organisations	**16 525**	**18 047**	**21 064**	**20 385**	**12 206**
Limited partnership	15	16	27	23	15
General partnership	10	12	33	31	15
Additional liability partnership	5	8	18	17	14
Limited liability partnership	16 411	17 920	20 827	20 185	12 069
Joint-stock companies	10	12	9	5	7
Joint-stock companies with state participation	5	7	5	0	3
State enterprises (госпредприятия)	25	26	77	56	34
State-owned enterprises (из них казенные предприятия)	15	16	26	25	15
Producer cooperatives	29	30	42	43	34
Other commercial organisations	0	0	0	0	0
Non-profit organisations	**1 333**	**1 734**	**1 987**	**2 021**	**1 721**
Total:	**17 858**	**19 781**	**23 051**	**22 406**	**13 927**

Registration and transparency

253. Legal entities carry out their activities on the basis of (i) the charter and the foundation agreement, (ii) only the charter, or (iii) the charter and a written decision on establishment of a legal entity, if the legal entity is established by only one person. The foundation documents of legal entities must provide the objectives and purposes of their activity. The charter shall provide the name of a legal

entity, its location, establishment procedure and the competence of its bodies, as well as provisions regarding the organisation and termination of its activities (Article 41, Civil Code).

254. Legal capacity is acquired upon registration (Article 42, Civil Code). All legal entities established in the national territory are subject to state registration, regardless of their purpose, type and nature of their activities, or membership. Likewise, branches and representative offices are subject to registration. Impediments to the registration of legal persons are established by Article 11 of the Law on State Registration of Legal Persons (e.g. inconsistency of foundation documents, incapacity of founder, inactivity, indebtedness, etc.).

255. Regarding commercial organisations, in recent years, Kazakhstan has adopted system-wide reforms aimed at improving the business climate and reducing the complexity/bureaucracy for entrepreneurs. Kazakhstan ranked as one of the top 25 countries in doing business among 190 countries in the 2020 Doing Business ranking (World Bank).

256. Registration fees for small and medium-size firms have been eliminated and so have the requirements of submitting founding charters/acts for this type of companies, registration times shortened, and neither the use of a company seal nor proof of minimum share capital are any longer required (although the authorities explain that capital share would be checked after registration by the National Bank and other regulators). In order to facilitate business development, Kazakhstan has also abolished the obligation to notarise company documents and founders' signatures for small and medium companies. Having said that, some certification requirements are still applicable to larger companies, e.g. joint-stock companies, as well as when registering a legal entity with foreign participation. In case of registration of a legal entity with foreign participation, the following documents must be additionally submitted: a legalised extract from the trade register or other legalised document certifying that the founder - a foreign legal entity is a legal entity under the legislation of a foreign country, with a notarised translation into Kazakh and Russian languages; and a copy of the passport or other document proving the identity of the foreign founder, with a notarised translation into Kazakh and Russian.

257. Registration of commercial organisations is performed based on a "one-stop-shop" principle: all the registration documents should be submitted to one state authority, the State Corporation "Government for Citizens". Before 2019 the system was based on a paper-based process of certification; nowadays, registration requests can be filed directly online by physical/legal persons, or if in person assistance is needed, there are multiservice centres.

258. In order to register online, entrepreneurs need an electronic signature. Besides individual electronic signature of company founders, the company should also obtain an electronic signature. An electronic certificate of state registration of a company is issued between one hour (for small and medium enterprises) and one day (for large enterprises). In point of fact, registration of a company could take as little as 15 minutes and the electronic registration certificate can be printed out, sealed and signed by the registrar at the same time.

259. Starting from 1 January 2018 during the incorporation through the electronic platform, it is possible to apply for VAT registration, opening a bank account and registration for the obligatory insurance of life and health for employees. Furthermore, application for VAT registration can be submitted together with the incorporation application when the documents are provided in person. If company applies for VAT registration during incorporation, it will obtain the VAT registration certificate on the next business day from the day of submitting the application. A company must register as a VAT taxpayer if the turnover within a calendar year exceeds 30 000 MCI (around €180 000).

260. Re-registration is required in the following cases: (1) reduction of the size of the charter capital; (2) change of name; (3) alteration of the membership of participants in business partnerships. Amendments introduced to foundation documents on specified grounds shall be invalid without the re-registration of the legal entity.

261. Non-profit organisations are subject to registration with the Ministry of Justice. There is also a one-stop-shop being developed for these organisations, but the GET was told that this process is still under transition, mainly, because of delayed action resulting from the covid-19 pandemic crisis. The timeframe for registering non-profit organisations is also longer than that of commercial organisations.

262. There is a unified National Register of Business Identification Numbers (which, accordingly, covers both commercial and non-profit organisations); data contained in the Register are public.

Restrictions on the performance of duties by individuals in legal persons

263. The Criminal Code (Article 50) allows for disqualification from holding specific positions or engaging in specified activities as a criminal sanction, but this only applies in the public sector. Disqualification can be imposed as a main or additional sanction for a period of one to ten years. Where this type of sanction is not explicitly provided for in the Criminal Code, a disqualification can be imposed by court if, depending on the nature of the offence and its relation to the position occupied or activities carried out, the court finds it wholly unreasonable for the perpetrator to preserve the right to hold a specified office or to engage in specified activities.

264. Mandatory disqualification is explicitly provided for by the Criminal Code in respect of corruption offences; it is a lifetime ban to hold civil service positions, to be a judge, to hold positions in local government bodies, the National Bank of the Republic of Kazakhstan and its departments, the authorised body for the regulation, control and supervision of the financial market and financial organisations, government organisations and quasi-public entities.

265. Amendments were introduced in labour law to ensure that the disqualification ban in the quasi-public sector applies to holding any position and is therefore no longer only restricted to executive roles, as was the case before. In the event that an employee of the quasi-public sector commits a corruption offence, the employment contract is terminated.

Legislation on the liability of legal persons, penalties and other measures

266. Only physical persons can be subject to criminal liability, according to the principle of fault-based individual responsibility. The issue of establishing criminal liability of legal entities for corruption offences was the subject of a multidisciplinary working group, which concluded that it would be premature to introduce such a possibility at present. However, discussions on this particular matter were again on the table at the time of the evaluation visit. After the on-site visit, the authorities indicated that the new Concept of Anti-Corruption Policy for 2022-2026, and its Implementation Plan, include as a concrete measure the establishment of corporate liability.

267. There is corporate administrative liability for the giving by legal persons to persons authorised to carry out public functions, or persons equivalent thereto, of illicit material remuneration, gifts, benefits, or services, provided such actions do not contain any features of a criminally punishable action (Article 678, CAO). The applicable sanction is a fine which amounts to 750 MCI

(about €4 450). This sanction can be aggravated for repeated offences committed within a year to 1 500 MCI (around €8 900).

268. According to the Action Plan on Improving the Indicators of the Global Competitiveness Index of the World Economic Forum for 2018-2019, it is planned to take measures to introduce the principles of corporate governance in the private sector, *inter alia*, through the following tools:
- Corporate Governance Council at the National Chamber of Entrepreneurs (*Atakemen*);
- Model Code of Corporate Ethics;
- Concept of Guidelines on Good Faith Business in Kazakhstan;
- Model Corporate Policy on Insider Information[60].

269. The National Chamber of Entrepreneurs adopted, in 2016, a Charter of Kazakhstan Entrepreneurs on Fighting Corruption. It includes a list of principles for business to prevent corruption. It has a voluntary nature and is open for signature by companies, business organisations and professional associations. The Office of the Business Ombudsman was established in 2014 and is vested with extensive powers to defend businesses and entrepreneurs' rights, including in relation to legitimate claims against state or sub-state entities that infringe on their rights.

Tax relief

270. Tax legislation does not explicitly provide for any tax deductibility in connection with bribes and facilitation payments.

Tax authorities

271. Tax officers, are, as any other public official, under the obligation to report corruption suspicions to their line manager or law enforcement.

272. As has been described before, the cooperation between the FIU and tax authorities has been strengthened in recent years, including through the development of joint activities and the articulation of feedback processes. Accordingly, tax authorities submit confidential information (under tax secrecy provisions) about a taxpayer, without obtaining his/her permission, to law enforcement bodies, following a reasoned request authorised by an investigating judge or prosecutor. A recommendation has been made earlier in this report regarding making the database of bank accounts (notably, information that constitutes tax secrecy) owned by the Tax Authority more easily accessible to law enforcement.

273. In 2020, Kazakhstan started exchanging tax information with other countries under the OECD's Common Reporting Standard on Automatic Exchange of Financial Account Information.

Accounting rules

274. The Law on Accounting and Financial Reporting of 28 February 2007 provides the basic rules in this area. All legal entities must keep an ordered system of collection, registration and generalisation of information on transactions and events (Article 6, Law on Accounting and Financial Reporting). Accounting documentation shall include primary documents, registers of accounting, financial reporting, and accounting policy (Article 7, Law on Accounting and Financial Reporting). Financial reporting covers 1) accounting balance, 2) profit and loss report, 3) statements of cash receipts and disbursements, 4) statement on changes in capital, 5)

[60] See also 20019 OECD ACN Report Kazakhstan.

explanatory note (Article 15, Law on Accounting and Financial Reporting). The reporting period for the annual financial statements is the calendar year, starting from 1 January to 31 December (Article 18, Law on Accounting and Financial Reporting).

275. Administrative and criminal responsibility can be incurred for negligent accounting. According to Article 241 CC, the violation of book records and financial accountability, such as the use of accounting documents or records containing false or incomplete information, as well as the destruction of accounting records before the expire of the terms of their storage, inflicting a heavy damage, constitutes a criminal offence punished by a fine in the amount of up to 80 MCI (around €470) or corrective labors in the same amount, or community services for a term of up to 80 hours, or arrest for a term of up to 20 days, with eventual deprivation of the right to hold certain positions or engage in certain activity for a term of up to five years.

276. Pursuant to Article 239 CAO, regarding the violation of the rules on accounting and financial reporting, namely the avoidance from maintenance of business accounting, if this action does not contain signs of criminally punishable act, representation of knowingly false financial statement, refusal from representing financial statement, preparation of distorted financial reporting, concealing of data subjected to reflection in business accounting and equally destruction of accounting documents, entails the imposition of administrative fines from 100 MCI to 500 MCI (about €590 to €2 950), depending the nature of person, or from 200 MCI to 1 000 MCI (about €1 180 to €5 900), in case of repeated offences.

277. Article 276 CAO also establishes sanctions for the absence of accounting records and violation of maintaining tax accounts: notification for the first offence and in case of repeated offences within a year fines range between 25 MCI and 75 MCI (around €147 to €442) or up to 3% to 10% of the cost of the unaccounted goods, depending on the nature of the offence and of the taxpayer.

278. Tax evasion and the use of invoices containing incomplete, false, or incorrect data are criminal offences punished with fines, imprisonment, or other sanctions (Articles 216, 244 and 245 CC); the applicable penalty for administrative infractions of this nature consists of fines (Article 280 CAO).

Role of auditors, accountants and other professionals

279. There is no specific obligation for accountants, auditors and legal professionals to report suspicions of corruption offences. However, the Anti-Corruption Law stipulates a general obligation to any person who has information about a corruption offence to inform the unit or the authorised body for combating corruption (Articles 23 and 24). Failure to report especially serious crimes, such as giving or acceptance of bribes of an amount over 10 000 MCI (around €59 000) is also a criminal offence (Articles 3 (3), 11 (5), 366 (4), 367 (4) and 434 CC). Moreover, these professionals have specific reporting obligations under money-laundering legislation. Professional secrecy rules may apply, as explained earlier in this report.

b. Analysis

280. Kazakhstan aims at becoming one of the world's top 50 most competitive countries in doing business by 2050 (Kazakhstan 2050 Strategy). Systematic business law reforms have occurred since 2014 to enhance economic growth, improve the functioning of the public and private sectors, and thereby attract foreign investment. Over the last years, seven packages of legislative initiatives have been adopted to create favourable conditions for business development. Likewise, efforts have been made in the areas of business integrity and the protection of the rights of entrepreneurs:

the Office of the Business Ombudsman was established in 2014 and various initiatives have been developed to promote anti-corruption compliance in the business sector (e.g. Entrepreneurial Code, Anti-Corruption Charter of Entrepreneurs).

281. In Kazakhstan, there is a broad range of different legal persons, profit making entities (limited liability partnerships being the most dominant form) as well as non-profit organisations. The requirements for their establishment and termination are laid down in specific legislation for each of the different types of legal persons, in addition to the general applicable provisions included in the Civil Code. Registration is a requirement for the acquisition of legal capacity. There is a centralised electronic registry for all legal persons, whether profit or non-profit: the National Register of Business Identification Numbers. It contains information on the date of registration, founders and executive bodies, amount of the share capital, type of activity, name, location, and other registration actions. This Registry is available to the public through the website Open Government, in the Open Data section.

282. Recent measures have been adopted regarding registration procedures of legal persons, particularly through the introduction of a "one-stop-shop" system and the use of modern electronic technologies, allowing applications to be filled on-site or on-line via the electronic government portal. There are evident merits in simplifying and streamlining registration procedures. This development cuts the complexity/bureaucracy and reduces risks of corruption along the registration process. On the other hand, simplification on registration procedures can entail some risks, so it is also important to ensure that a reasonable level of verification is maintained and performed.

283. According to the system in place, regarding small and medium companies, the procedure has to be completed in one hour (and no documents have to be filed). The registration procedure for large companies is to be completed in one day[61]. The checks performed upon registration are mainly automatic; they rely on the information available in different integrated databases that the registers have access to (e.g immovable property register, tax information). In this connection, the GET was told that up to 30 government agencies had their databases interlinked. The checks are mainly related to the identity of the founders and the CEO, and the address of the legal person. There are no checks about the ultimate beneficial owners of the legal persons that apply to registration (and the potential impediments or restrictions that would apply to such persons pursuant to Article 11 of the Law on State Registration of Legal Persons). There is no register of ultimate beneficial owners of legal persons. Also, no verifications are made concerning the real purposes of the companies or the origin and deposit of the founding capital. In fact, regarding the most common type of legal person: limited liability partnership (LLP), the registration body does not have the right to require the submission of any additional document, other than those specified in the law (Article 19, Law on LLP). Accordingly, the State bodies, during the registration process, do not have the right to assess the purpose of the establishment, the type, and the nature of activity, nor the composition of participants of this type of entities. Finally, according to legislation, changes to the information subject to registration must be reported by the representatives of the legal persons; however, no checks are performed by the registration authorities in order to ensure that the information is up to date.

284. The GET recognises that the relevance of assuring completeness and correctness of the information provided at the time of registration must be balanced against the need for a swift and efficient registration system, which has to deal with a large number of procedures. However, it

[61] Small business entities have an average number of employees no greater than 100 and/or 300 MCI of average annual income (€1 800). Large-sized business entities are those up to up to 250 employees and/or to 3 000 000 MCI of average annual income (around €18 million). Medium enterprises lie between one and the other type.

would appear necessary that additional controls be performed, concerning in particular the ultimate beneficial owners of the legal persons and the possible impediments that they could be subject to, as well on the changes of the registered data. In this regard, besides the establishment of a register of the ultimate beneficial owners of companies – which should also be kept up to date, the strengthening of the powers of the registration authorities, the consideration of the information available in other sources and closer cooperation with tax authorities could further enhance control in this domain. When discussing this particular point with the authorities, they themselves agreed on their limitations to track all the way the chain of ownership of companies in order to avoid the use of shell companies. Consequently, **GRECO recommends (i) taking appropriate measures to strengthen the controls in the registration system of legal persons, in particular, with regard to the identity of the persons behind a legal person, its real purpose, as well as any other pertinent information necessary for registration, including in relation to subsequent updates and changes; and (ii) establishing a register of beneficial ownership.**

285. Regarding restrictions on exercising functions in legal persons, according to the system in force, disqualification from holding specific positions or engaging in specified activities as a criminal sanction only applies in the public (and quasi-public) sector, not in the private sector. Concerning corruption offences, mandatory disqualification is explicitly provided by the Criminal Code as a lifetime ban to hold civil service positions, to be a judge, to hold positions in local government bodies, the National Bank of the Republic of Kazakhstan and its departments, the authorised body for the regulation, control and supervision of the financial market and financial organisations, government organisations and quasi-public entities (Article 50, CC). No restrictions are foreseen regarding natural persons that have been found guilty of a corruption offence from holding a leading position or performing business activities in the private sector. In order to ensure high standards of general trust in business activities, it would be critically important that professional disqualification is also a possibility in the private sector, including restrictions on leading positions in legal persons, particularly following conviction for serious corruption offences. This does not apply to individual entrepreneurs (self-employed persons). This kind of measures would play an important role regarding the prevention and the sanctioning of corruption offences. Therefore, **GRECO recommends introducing legal provisions allowing for the possibility to establish bans on holding executive positions in legal persons in cases of convictions for serious corruption offences.**

286. Currently, liability of legal persons for criminal offences is not provided for in Kazakhstan. The authorities pointed at administrative liability, as established by the Code of Administrative Offences, which only refers to active bribery in the public sector (Article 678, CAO). Cases related to lack of supervision or control by a natural person who has a leading position within the legal person that has made possible the commission of the offence are not covered by this provision. Moreover, the GET notes that under the Code of Administrative Offences, legal persons are subject to administrative responsibility for administrative offences, but not for criminal offences. Further, the GET notes that the applicable sanction is a fine ranging from 750 MCI (around €4 450) to a maximum of 1 500 MCI (around €8 900) for repeated offences committed within a year. According to the information provided, during the period 2018-2021, fines were applied only in three cases. No other type of sanction can be imposed on a legal person convicted for this offence. Consequently, the system in place does not ensure comprehensive and adequate corporate liability for corruption offences and the fines that can be imposed cannot be assessed as effective, proportionate or dissuasive. The GET notes that the need to introduce administrative liability of legal persons for corruption offences is recognised in the new Anti-corruption Strategy for 2022-2026 and the authorities indicated during the on-site visit that discussion on corporate liability was indeed on the table and a decision had not yet been made in this regard, including on the type of

liability (criminal/administrative/civil) that would apply to legal entities and the range of available sanctions. **GRECO recommends adopting the necessary legislative measures in order to establish adequate liability of legal persons for corruption offences and to provide for effective, proportionate and dissuasive sanctions in this respect.**

287. Tax legislation provides a list of non-deductible expenses insofar corporate income taxation is concerned (Article 264, Tax Code). According to the provisions in place, tax deductibility is only allowed with respect to documented transactions. There is no specific provision expressly prohibiting tax deductibility of illegal payments or expenses or costs incurred as a result of a criminal offence. During the on-site visit, the tax authorities stated that expenses related with false invoices without actual performance of works, rendering of services, or shipping of goods are not accepted. However, in the GET's view, in order to unequivocally ensure that fiscal legislation contributes to combating corruption in an effective manner, the current regime would benefit from being more assertive and precise. Thus, **GRECO recommends explicitly prohibiting in legislation tax deductibility for "facilitation payments", bribes or other expenses linked to corruption offences**.

288. Tax officials are subject to the general obligation for all public officials to report corruption suspicions detected within their scope of competence to law enforcement bodies. The GET notes that tax authorities did not seem sufficiently aware of the important role they could perform in preventing, detecting and reporting corruption offences. No specific training or guidelines have been provided to tax officials in this domain. The GET considers that the involvement of tax authorities in respect of operational anti-corruption activities could be strengthened. Moreover, tax authorities explained that tax controls have a special focus on invoices, namely in order to detect false invoices. However, the minimum turnover within a calendar year to be considered mandatory to register as a VAT taxpayer is 30 000 MCI (around €178 000), which appears to be too high for this purpose (Article 82, Tax Code). Additionally, as described before, on-site controls regarding micro and small companies are under a moratorium, unless there are suspicions of the practice of criminal offences. Once again, in the GET's view, tax authorities can play a crucial role in the detection and prevention of the irregular use of companies to shield illegal activities, notably through corruption and other related offences. In view of the above, **GRECO recommends that the tax authorities pay greater attention to the problem of corruption, in particular, through the development of appropriate directives or guidelines, as well as specific and regular training on the detection of suspicions of corruption offences and their reporting to the competent law enforcement authorities.**

289. Account offences such as the creation or use of an invoice or any other accounting document or record containing false or incomplete information and the unlawful omission to make a record of a payment are established as criminal and/or administrative offences. In the GET's view, the sanctions, namely the fine limits, provided for breaches of accounting obligations (in particular under Article 241 CC, and Articles 239 and 276 CAO) are too low to be considered effective, proportionate and dissuasive. Moreover, the available fines under Article 241 CC for accounting violations entailing a heavy damage to citizens, organisations, or the State are lower than the ones established by Article 239 CAO for administrative breaches of presumably a less serious nature. Further, Article 241 CC criminalises the destruction of accounting records before the expire of the terms of their storage, but according to the information provided to the GET, the accounting rules in force do not specify the period of time during which these documents must be kept. **GRECO recommends (i) that a minimum period of time for keeping accounts in private business be established by law, and (ii) reviewing and strengthening the applicable sanctions for account offences in order to ensure that they are effective, proportionate and dissuasive.**

290. Regarding the steps taken to involve accountants, auditors and other advising professions in corruption and money-laundering prevention, the FIU has developed important work through the issuance of instructions on the application of the AML-CFT framework. However, during the on-site visit, the GET got the impression that professionals were not sufficiently aware about the specificities of corruption offences and that more needs to be done to increase their role in the detection and reporting of suspicions of these particular crimes. The number of reports from some of these professionals to FIU during the period of 2018-2020 is quite low, particularly from accounting organisations and professional accountants (only one) and lawyers (none). The obligation to report under anticorruption and anti-money laundering legislation is in contrast with that of professional secrecy and the scope of client's privilege, particularly in respect of lawyers, as already explained. The GET reiterates its firm stand on the need to further support, encourage and strengthen the involvement of accountants, auditors and legal professionals in the uncovering of corruption. A recommendation has already been issued in this respect and the GET is hopeful that the relevant professional bodies of accountants, auditors and advisory/legal professionals take part in and reinforce, as necessary, the implementation of this recommendation.

CONCLUSIONS

291. Corruption in Kazakhstan is recognised as a serious problem, entrenched in different sectors, institutions, public bodies and other public and private spheres. However, there are hardly any reliable sources of information available to establish the actual scale of corruption. Flawed anti-corruption framework, lack of responsiveness in policymaking, and state control of the media are among a few serious concerns revealed in the course of the evaluation. Further, the far-reaching presidential powers, including on appointments in the judiciary, prosecution and law enforcement, as well as in approving the structural organisation of key institutions in the anti-corruption area, undermine their independence and risk rendering the anti-corruption system as a whole vulnerable to undue influence. Being a Council of Europe body, GRECO sees the principles of pluralist democracy, rule of law and protection of human rights as fundamental safeguards for the effective prevention and combating of corruption. Of equally fundamental importance is a state structure based on the principle of separation of powers and the necessary checks and balances. In this respect, fundamental reforms appear necessary to bring the Kazakhstani institutions closer to the anti-corruption standards that are the basis of GRECO's evaluations.

292. There is no lack of anti-corruption initiatives and strategies in Kazakhstan: the most recent Anti-Corruption Strategy covers the period 2022-2026 and there is a specialised Anti-Corruption Agency. While the fight against corruption has a strong law enforcement perspective, it has also developed towards long-term prevention measures against corruption. Additional action must follow to streamline corruption prevention actions and policies beyond law enforcement. Moreover, it is critical that in doing so, there is proactive engagement and a sufficiently broad representation from various sectors, whether public or private, and the larger civil society.

293. Regarding public officials' immunities, the current system of special procedures concerning the arrest/investigation/prosecution of several categories of persons is due for review, notably, by ensuring that it does not extend beyond what is proportional and necessary in a democratic society, and that any decision on the matter is based on transparent and objective criteria and, therefore, free from political considerations.

294. Overall, the legislation on seizure and confiscation is largely in line with international standards. Progress has also been recorded in relation to money laundering. More should be done to ensure

that professionals such as accountants, auditors and other advising professions, particularly lawyers, become more actively involved in detecting and revealing corruption and money laundering offences.

295. The transparency of public administration is generally weak, the decision-making process lacks adequate public consultations and non-state actors, in particular the civil society and non-state media, need to be included to provide their contributions in this area. Draft legislation and policies must be subject to much broader and more meaningful public consultations, within a reasonable time. While public access to information on legislation is in place to some extent, the practical implementation is not working properly, as no adequate mechanism is currently in place to effectively deal with and sanction unlawful restriction of access to information.

296. Much needs to be done to improve the capacity to prevent, detect and combat corruption in public administration. Importantly, merit-based rules and transparent procedures on recruitment and promotions are needed, which should apply to all positions, as the current lack of such rules allow for appointments and promotions being decided on the basis of improper motives, such as political motives, the belonging to certain influence- or interest-groups, or other improper arrangements lacking transparency. Further, rules on integrity and services in the public service need to be spelled out in greater detail and apply to all public sector functions, including political appointees and contracted employees. Further, only very limited protection is provided to persons reporting wrong-doings related to corruption, which is also acknowledged by the authorities. This calls for robust legislation and practice as whistle-blower protection is key to enabling the revealing of corrupt conduct, conflicts of interest etc. Finally, corruption connected to the use of public funds, in particular in public procurement, has been seen as one of the most pressing issues in Kazakhstan, requiring immediate and determined action, including through adequate supervision of eligibility criteria, detection and prevention of conflict of interests, and proper implementation of contracts.

297. Developing the private financial sector has been one of the most prioritised areas in Kazakhstan in recent years. Concerning the private sector, business law reforms have occurred since 2014 to enhance economic growth and attract foreign investment, including by cutting red tape in the registration of companies through the introduction of a “one-stop-shop” system and the use of modern electronic technologies. It is easy and fast to establish a private business in Kazakhstan. However, it remains critical to ensure a robust level of verification, particularly regarding companies business and ultimate beneficial ownership. Further, corporate liability for corruption offences is yet to be established. More attention to the problem of corruption is also required from tax authorities and further legislative adjustments are necessary to provide for adequate sanctions in respect of account offences and other forms of crime in the private business sector, to prevent organised crime from flourishing in the country.

298. In the light of the foregoing, GRECO addresses the following recommendations to Kazakhstan:

i) **(i) carrying out comprehensive studies, including research independent from the state, in order to gain broader insight into the existence of systemic risks of corruption at various levels of the public sector, in the private sector and in respect of ordinary citizens, and (ii) adapting and streamlining the anti-corruption policy and strategies accordingly, focusing and prioritising the anti-corruption measures in respect of risk areas identified and systematically monitoring and measuring their impact. Such monitoring should preferably include state and non-state representatives (e.g. international organisations, NGOs, etc.)** (paragraph 35);

ii) **to further streamline corruption prevention policies and actions as activities distinct from and beyond law enforcement, and to broaden the composition and representation of the leading anti-corruption prevention and policy mechanism(s) (existing or new), and/or its dependent bodies, to include pertinent public institutions of various sectors and levels, as well as to provide for systematic involvement of non-state actors (e.g. independent non-governmental organisations, the business sector, self-governing professional unions, non-state media, etc.)** (paragraph 36);

iii) **that necessary legislative and practical measures be taken to enhance the independence of the judiciary, and provide adequate functional autonomy to the prosecution and law enforcement bodies in charge of combating corruption, and to protect these bodies from any improper influence, including from the highest political/executive powers of the state** (paragraph 89);

iv) **setting a clear and transparent procedure (distinct from political considerations) for appointment of heads and deputy heads of law enforcement bodies, specifying their term of office and reasons for dismissal** (paragraph 92);

v) **ensuring that the procedure of registering statements from people reporting corruption to their employers is (i) clear and encouraging to those reporting corruption, including safeguards against retaliation provided to persons reporting in good faith, and (ii) that assistance and training is provided to employers tasked to take actions regarding the statements reported by their subordinates** (paragraph 95);

vi) **that (i) coordination among all law enforcement authorities combating corruption be streamlined and enhanced, in particular to ensure efficient financial investigations; (ii) the database of bank accounts owned by the Tax Authority be directly accessible to the law enforcement, in particular the Anti-Corruption Agency and the Financial Monitoring Agency, with a view to detecting and tracing criminal proceeds more effectively** (paragraph 97);

vii) **ensuring systematic application in practice of the existing legal provisions regarding the investigative jurisdiction of corruption cases between the various law enforcement bodies, which give priority to those with anti-corruption specialisation** (paragraph 98);

viii) **that training and specialisation of prosecutors and judges be enhanced as regards corruption offences, financial investigations and their links with other offences, such as money laundering and organised crime** (paragraph 100);

ix) **thoroughly revising the legal provisions on specific procedures limiting arrest/investigation/prosecution of certain officials, who *de facto* benefit from immunities from criminal proceedings, including by (i) clarifying their *rationae*, functional scope and duration, to ensure that they are limited to acts committed in the performance of official duties, during the term of office, and that they do not hamper or prevent the effective prosecution of corruption; and (ii) considering reducing the categories of persons currently subject to such procedures to the minimum required in a democratic society** (paragraph 116);

x) **adopting guidelines with specific, objective and transparent criteria to be applied when deciding on requests for lifting of immunities in order to ensure that decisions are free from political considerations and based only on the merits of the request submitted** (paragraph 117);

xi) **(i) strengthening the systems and controls for tracing criminal proceeds and identifying ultimate beneficial owners; (ii) considering reviewing the burden of evidence necessary, in connection with a conviction, to provide for better possibilities to use confiscation effectively in cases of corruption** (paragraph 149);

xii) **(i) taking targeted measures, including through the issuing of tailored guidance and training to accountants, auditors, notaries, and particularly, lawyers, in order to improve the situation in relation to reports of suspicions of corruption and money laundering to the competent authorities; and (ii) streamlining anti-money laundering legislation, particularly, by reviewing and amending the provisions which appear to create confusion about the relationship between a lawyer's duty of confidentiality and the requirement to report suspicious transactions** (paragraph 154);

xiii) **that necessary legislative and practical measures be taken to improve public access to information at all levels of public administration by (i) providing training to public officials and employees concerned, including information officers, in particular those operating at local level, and (ii) ensuring that the legislation includes pertinent sanctions for unlawfully restricting access to information** (paragraph 221);

xiv) **developing and adopting comprehensive legislative and practical measures, ensuring public transparency and meaningful participation of the general public, including relevant non-state actors, in respect of consultations relating to the decision-making process of public bodies** (paragraph 222);

xv) **(i) establishing merit-based rules and transparent procedures for the recruitment and promotions for all positions in the public administration and (ii) ensuring that pertinent rules on integrity in the public service apply to all public sector officials/employees, including political appointees and employees recruited on labour contracts** (paragraph 225);

xvi) **that the existing Code of Ethics be complemented with more detailed guidance for employees and officials of public administration on situations they may come across in their daily practices in relation to integrity standards and their conduct in respect of the public (e.g. regarding reactions to gifts and other advantages, reporting of corruption and the handling of requests for access to public information)** (paragraph 226);

xvii) **(i) introducing induction training on integrity, ethics and anti-corruption measures to all employees and officials of public administration, based on the Code of Ethics as amended, in order to provide necessary guidance and risk mitigation; (ii) strengthening the independence, competence and capacity of the ethics**

commissioners to ensure that they are able to autonomously implement their tasks, without undue pressure (paragraph 231);

xviii) **that a more efficient system of preventing, detecting and managing conflicts of interests in public administration be established by refining legislation on conflicts of interests and incompatibilities, and systematically applying effective deterring measures for such practices, including sufficiently dissuasive sanctions and invalidation of legal and other acts concluded in situations of conflict of interests** (paragraph 233);

xix) **that clear rules on declarations of assets and interests by public officials be established, which should include provisions on disclosure of assets and interests, systematic verification of declarations, and deterrent sanctions in case of irregularities** (paragraph 236);

xx) **that the general protection of whistle-blowers be improved in legislation and practice to include additional safeguards for those reporting corrupt practices in good faith. The new legislation should also establish liability for persons undermining the whistle-blowers' protection process, and provide effective mechanisms, ensured by the State, to trigger this liability in practice** (paragraph 238);

xxi) **that additional legislative and practical steps be taken to prevent corruption in relation to public procurement and public investment procedures including by providing adequate remuneration of responsible officials, a more rigorous supervision mechanism for the eligibility criteria, detection and prevention of conflicts of interest and rigorous implementation of contracts and the possibility to nullify contracts in situations of conflicts of interest** (paragraph 244);

xxii) **(i) taking appropriate measures to strengthen the controls in the registration system of legal persons, in particular, with regard to the identity of the persons behind a legal person, its real purpose, as well as any other pertinent information necessary for registration, including in relation to subsequent updates and changes; and (ii) establishing a register of beneficial ownership** (paragraph 284);

xxiii) **introducing legal provisions allowing for the possibility to establish bans on holding executive positions in legal persons in cases of convictions for serious corruption offences** (paragraph 285);

xxiv) **adopting the necessary legislative measures in order to establish adequate liability of legal persons for corruption offences and to provide for effective, proportionate and dissuasive sanctions in this respect** (paragraph 286);

xxv) **explicitly prohibiting in legislation tax deductibility for "facilitation payments", bribes or other expenses linked to corruption offences** (paragraph 287);

xxvi) **that the tax authorities pay greater attention to the problem of corruption, in particular, through the development of appropriate directives or guidelines, as well as specific and regular training on the detection of suspicions of corruption offences and their reporting to the competent law enforcement authorities** (paragraph 288);

xxvii) **(i) that a minimum period of time for keeping accounts in private business be established by law, and (ii) reviewing and strengthening the applicable sanctions for account offences in order to ensure that they are effective, proportionate and dissuasive** (paragraph 289).

299. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Kazakhstan to present a report on the implementation of the above-mentioned recommendations by 30 September 2023 at the latest. The measures will be assessed by GRECO through its specific compliance procedure.

300. Finally, GRECO invites the authorities of Kazakhstan to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.