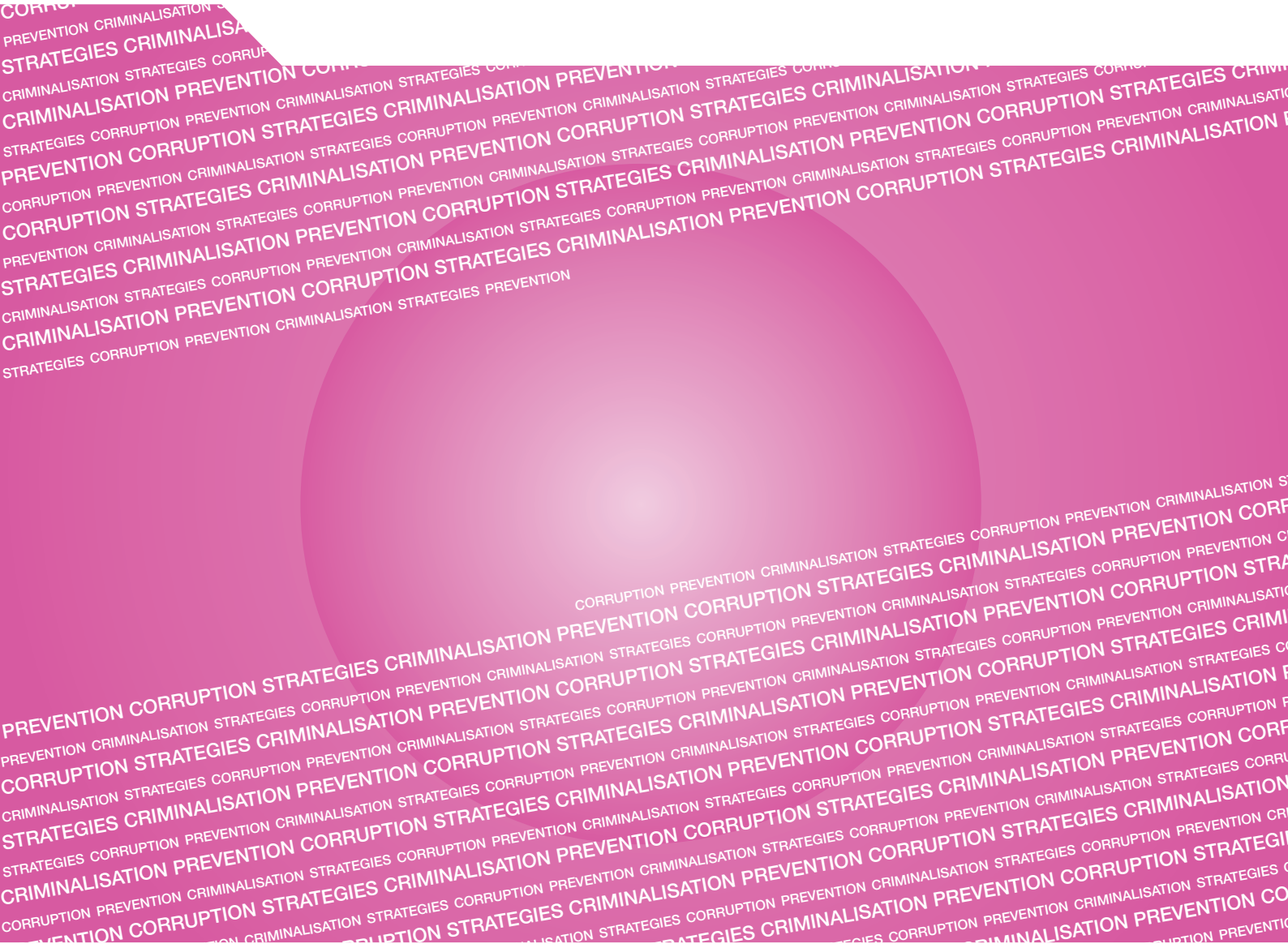
Fighting Corruption in Eastern Europe and Central Asia

Anti-corruption Reforms in Eastern Europe and Central Asia

PROGRESS AND CHALLENGES, 2009-2013



OECD

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OECD
BETTER POLICIES FOR BETTER LIVES

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Foreword

During several past years countries in Eastern Europe and Central Asia have introduced important anti-corruption reforms. However, corruption remains high in the region. This report identifies progress achieved in the region as well as remaining challenges which require further action by countries.

The report analyses three broad areas of anti-corruption work, including anti-corruption policies and institutions, criminalisation of corruption and law-enforcement, and measures to prevent corruption in public administration and in the business sector. The analysis is illustrated by examples of good practice from various countries and comparative cross-country data. The report also analyses the role that the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) played in supporting anti-corruption reforms in the region.

The report focuses on eight countries in the region which participate in the OECD/ACN initiative knows as the Istanbul Anti-Corruption Action Plan which including Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan. It also presents examples from other countries in the region to give a broader perspective for the analysis.

The report covers the period between 2008 and 2012, when the second round of monitoring of Istanbul Action Plan countries was implemented, and is based on the results of this monitoring. It brings new information to the 2008 publication "Fighting Corruption In Eastern Europe and Central Asia, the Istanbul Anti-Corruption Action Plan, Progress and Challenges" which summarised the results of the first round of monitoring.

The ACN countries provided information and comments, and reviewed the draft report. The final report was presented at the ACN High Level Meeting on 10 December 2012. The findings of the report provide the basis for the new ACN Work Programme for 2013-2015.

This report was prepared by the OECD/ACN Secretariat at Anti-Corruption Division (ACD) of the OECD Directorate for Financial and Enterprise Affairs. Mrs Olga Savran, ACN Manager, supervised the preparation of the report and drafted Chapters 4.1, 4.6 and 5. Mr Dmytro Kotliar, ACN Consultant, co-ordination the preparation of the report and drafted Chapters 1, 3.1, 4.2-4.5. Ms Inese Gaika, ACN Project Manager, drafted Chapter 2 and Ms Tanya Khavanska, ACN Project Manager, drafted Chapters 3.2 and 3.3. Ms Daisy Pelham, ACD Assistant, formatted the report for print.

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Acronyms

ABA	American Bar Association
ACD	Anti-Corruption Department within the Prosecutor General's Office of the Republic of Azerbaijan
ACN	Anti-Corruption Network for Eastern Europe and Central Asia
ETS	European Treaty Series
CC	Criminal Code
CCJE	Consultative Council of European Judges
CEC	Central Election Commission
CETS	Council of Europe Treaty Series
CIS	Commonwealth of Independent States
CoE	Council of Europe
CPI	Corruption Perception Index by Transparency International
EBRD	European Bank for Reconstruction and Development
EU	European Union
EUR	Euro currency
Eurojust	European Union's Judicial Co-operation Unit
Europol	European Police Office
FCPA	US Foreign Corrupt Practices Act
GRECO	Group of States against corruption
GUAM	Organisation for Democracy and Economic Development – GUAM (Georgia, Ukraine, Azerbaijan and Moldova)
IAP	Istanbul Anti-Corruption Action Plan
MLA	Mutual legal assistance
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MP	Member of Parliament
NGO	Non-governmental organisation
ODIHR	OSCE's Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OLAF	European Anti-Fraud Office
OSCE	Organisation for Security and Co-operation in Europe
PPL	Public Procurement Law
SECI	Southeast European Co-operative Initiative

SIGMA	Support for Improvement in Governance and Management, a joint initiative of the OECD and the EU
SITs	Special investigative techniques
SMEs	Small and medium enterprises
TI	Transparency International
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
USAID	United States Agency for International Development
USD	United States dollars currency
WEF	World Economic Forum
WGB	OECD Working Group on Bribery in International Business Transactions
WTO	World Trade Organisation

Executive summary

Anti-corruption policies and institutions

Political will is the key to anti-corruption policy success. Political leaders in Eastern Europe and Central Asia recognise the danger of corruption and publicly commit to tackling it, but political leadership and continuous efforts are often missing when it comes to taking practical actions.

Over the past few years, almost all countries have developed anti-corruption strategies. They provide important guidelines for reforms, but suffer from poor implementation and often lack budgetary support.

Anti-corruption research has increased. There are numerous studies and surveys demonstrating trends in corruption, but they are often ad-hoc and not integrated in the designing and monitoring of anti-corruption strategies. Monitoring of strategies and measuring their impact on the level of corruption are so far insufficient.

There are many civil society initiatives in the region, but non-governmental organisations are yet to become real partners of the governments. Governments should encourage meaningful public participation through the inclusion of NGOs in the decision-making, implementation and monitoring processes and financial support.

Institutions responsible for anti-corruption policies are set up in all Istanbul Action Plan countries. The common approach is to establish inter-institutional councils for the co-ordination of anti-corruption measures. Few of these institutions are effective. In several countries corruption prevention tasks are assigned to law enforcement bodies which is not effective.

Criminalisation of corruption and law enforcement

Reform of criminal legislation is an area where all countries have achieved progress. Significant reforms were directed at introducing corporate liability for corruption. But a conservative legal doctrine remains an obstacle for full compliance with the international standards. As a result, legal gaps remain in many countries with regard to bribery and trading in influence. Provisions on confiscation need to be aligned with international standards. Statutes of limitations and immunity of certain public officials remain as obstacles for effective prosecution of corruption in several countries.

Many countries have demonstrated progress in meeting international standards concerning anti-corruption law-enforcement bodies. Adequate specialisation, institutional and procedural autonomy, and resources remain an issue.

Concerning the practice of investigation and prosecution of corruption cases, countries should step up their efforts to prosecute high-profile and complex cases. They need to build up the capacity of investigators and prosecutors to use modern investigative methods and to conduct financial investigations. Legislation should be amended to allow effective access to bank, tax and customs data. International co-operation should be improved by encouraging direct co-operation between the law-enforcement bodies.

Prevention of corruption

During the past few years, many countries have introduced legislative measures to promote integrity in public service. The challenge is protect professional civil servants from undue political influence through merit-based appointment and promotion, and fair and transparent remuneration. While many countries have introduced conflict of interests' provisions, implementation remains weak. Countries have established or strengthened their asset declaration systems. However these systems usually lack a verification mechanism, do not ensure proactive publication of declarations and do not set up deterrent sanctions for false information. Several countries have introduced legislation to protect whistle-blowers, but these new provisions are often weak.

Public procurement is one area where many countries have launched meaningful reforms during recent years aimed at increasing transparency and integrity. Several countries are establishing electronic procurement systems. At the same time, low capacity, lack of resources, a poor record of prosecuting corruption in the public contracts and ineffective conflict of interests' instruments still make public procurement one of the most corrupt sectors.

All Istanbul Action Plan countries have legal framework for accessing information held by public authorities. However, most of these laws fall short of international standards. A number of countries retain provisions on criminal defamation, which have an adverse effect on investigative journalism.

Corruption in politics remains an acute problem for all countries. Provisions regulating financing of political parties and election campaigns are often not in line with international standards. They do not include necessary restrictions with regard to the sources and limits of contributions, they do not ensure transparency of party finances and adequate state monitoring and supervision, nor do they provide direct state financing of political parties.

Many countries have recently conducted comprehensive reforms of the judiciary, aiming to strengthen independence and integrity, but much remains to be done to align legal frameworks with international standards. There are cases when legal safeguards are ignored in practice, when judges are dismissed contrary to tenure rules. The financial independence of courts is often undermined in practice.

Business integrity is a new issue in the region. The governments have not yet taken systematic measures to promote business integrity, and the private sector has not yet become a strong player in the fight against corruption.

Chapter 1

Anti-corruption trends in Eastern Europe and Central Asia

Chapter 1 describes the spread of corruption in Eastern Europe and Central Asia, and discusses the dynamics in the levels of corruption during the past five years. This description is based on available surveys and reports, including those conducted by various international organisations: Corruption Perception Index and Global Corruption Barometer by Transparency International, Nations in Transit by Freedom House, "Life in Transition" by the EBRD, "Global Competitiveness Report" by the World Economic Forum, and "Enterprise Surveys" by the World Bank and others. This Chapter also describes participation of the countries in the region in international anti-corruption efforts, including their adherence to the UN Convention against Corruption and Council of Europe Criminal Law Convention on Corruption. The Chapter concludes that among all Eastern European and Central Asian countries, new EU members and the Balkans States, as well as Georgia have made the most progress in fighting corruption, but important challenges remain for all countries.

Spread of corruption in Eastern Europe and Central Asia

Eastern Europe and Central Asia have experienced both relatively high levels of corruption while simultaneously experiencing many success stories. Countries in this region are breaking with their past by cleaning up their public administrations and conducting effective anti-corruption reforms. The latter concerns mainly new EU members and the Balkans States, but also includes Georgia. At the same time, corruption scandals continue to rock even Baltic States from time to time, while some of the new EU entrants

Table 1.1. **Corruption Perception Index, Transparency International, Eastern and Central Europe and Central Asia**

Global country rank 2011	Country	CPI 2011 score	CPI 2010 score	CPI 2009 score	CPI 2008 score
29	Estonia	6.4	6.5	6.6	6.6
35	Slovenia	5.9	6.4	6.6	6.7
41	Poland	5.5	5.3	5	4.6
50	Lithuania	4.8	5.0	4.9	4.6
54	Hungary	4.6	4.7	5.1	5.1
57	Czech Republic	4.4	4.6	4.9	5.2
61	Latvia	4.2	4.3	4.5	5.0
61	Turkey	4.2	4.4	4.4	4.6
64	Georgia	4.1	3.8	4.1	3.9
66	Slovak Republic	4.0	4.3	4.5	5.0
66	Croatia	4.0	4.1	4.1	4.4
66	Montenegro	4.0	3.7	3.9	3.4
69	FYR Macedonia	3.9	4.1	3.8	3.6
75	Romania	3.6	3.7	3.8	3.8
86	Bulgaria	3.3	3.6	3.8	3.6
86	Serbia	3.3	3.5	3.5	3.4
91	Bosnia and Herzegovina	3.2	3.2	3.0	3.2
95	Albania	3.1	3.3	3.2	3.4
112	Kosovo	2.9	2.8	–	–
112	Moldova	2.9	2.9	3.3	2.9
120	Kazakhstan	2.7	2.9	2.7	2.2
129	Armenia	2.6	2.6	2.7	2.9
143	Azerbaijan	2.4	2.4	2.3	1.9
143	Belarus	2.4	2.5	2.4	2.0
143	Russia	2.4	2.1	2.2	2.1
152	Tajikistan	2.3	2.1	2.0	2.0
152	Ukraine	2.3	2.4	2.2	2.5
164	Kyrgyzstan	2.1	2.0	1.9	1.8
177	Turkmenistan	1.6	1.6	1.8	1.8
177	Uzbekistan	1.6	1.6	1.7	1.8

Source: Compiled based on the Corruption Perception Index data by Transparency International (*transparency.org/research*).

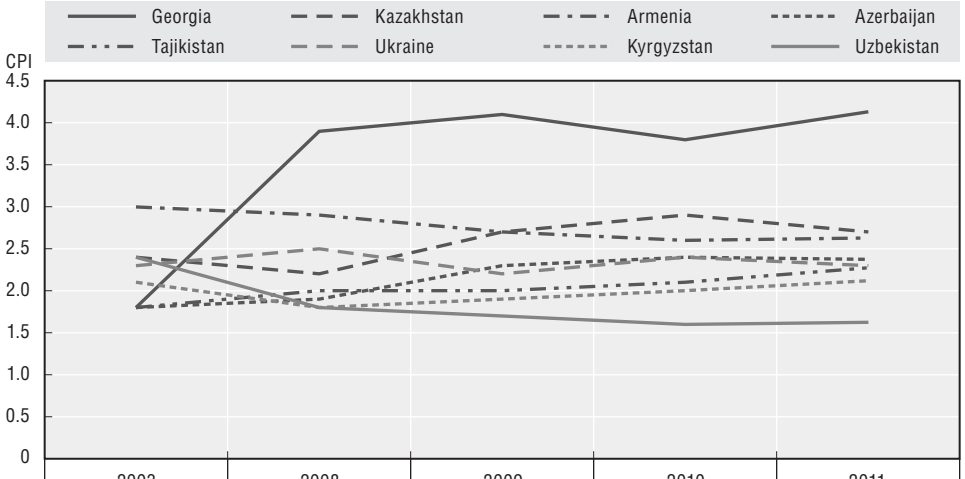
(namely Bulgaria and Romania) still struggle to satisfy EU requirements with regard to anti-corruption efforts and rule of law standards. While achieving a certain level of progress in combating corruption, IAP countries generally still fall short of their European neighbours.

There are a number of surveys trying to measure corruption through perception and expert assessments. Below is a brief of overview of results representing how corruption is perceived in the region of Eastern Europe and Central Asia and, more specifically, in the Istanbul Anti-Corruption Action Plan countries. While having their limitations, such surveys can be used to frame the evolving corruption situation, especially when the country's results are viewed historically.

Transparency International Corruption Perception Index (see Table above) shows the following trends over the last four years:

- A number of new EU member countries in the region have slipped in their corruption record (with exception of Poland which improved its standing).
- From among Istanbul Action Plan countries, only Georgia has passed the "four" mark of the CPI score, which surpasses even some of the newer EU member states.
- Four IAP countries (Azerbaijan, Kazakhstan, Kyrgyzstan, and Tajikistan) have gradually improved their score with Kazakhstan and Azerbaijan showing the biggest increase, while the scores of Armenia, Ukraine and Uzbekistan have slightly decreased.
- None of the IAP countries, except for Georgia, has reached the score of 3 on the CPI.

Figure 1.1. **Istanbul Anti-Corruption Action Plan Countries in the Transparency International I Corruption Perception Index**



	2003	2008	2009	2010	2011
Georgia	1.8	3.9	4.1	3.8	4.1
Kazakhstan	2.4	2.2	2.7	2.9	2.7
Armenia	3	2.9	2.7	2.6	2.6
Azerbaijan	1.8	1.9	2.3	2.4	2.4
Tajikistan	1.8	2	2	2.1	2.3
Ukraine	2.3	2.5	2.2	2.4	2.3
Kyrgyzstan	2.1	1.8	1.9	2.0	2.1
Uzbekistan	2.4	1.8	1.7	1.6	1.6

Source: Compiled based on the Corruption Perception Index data by Transparency International (*transparency.org/research*).

CPI score dynamics in the Istanbul Action Plan countries are depicted in the figure below. It shows how scores have changed during the last four years and also gives a comparison with the scores of 2003 – the year when the Istanbul Action Plan was launched.

CPI scores can be compared with Transparency International's "Global Corruption Barometer". Below are the results for the 2010/11 survey, which explores the general public's perception of corruption in their country and government's efforts to tackle it (data is not available for all ACN countries or all IAP countries). From these countries, only in Georgia do people consider that corruption has decreased in the last 3 years. At the same time, results in a number of countries show that governments' anti-corruption efforts are being assessed as effective, rather than ineffective (Azerbaijan, Belarus, Bulgaria, Georgia, Macedonia, and Turkey).

Table 1.2. **Global Corruption Barometer 2010/11, Transparency International**

%

	In the past 3 years, how has the level of corruption in your country changed?			How would you assess your current government's actions in the fight against corruption?		
	Decreased	Stayed the same	Increased	Effective or very effective	Neither effective nor ineffective	Ineffective or very ineffective
GLOBAL	**16**	**27**	**58**	**31**	**19**	**50**
Armenia	15	35	50	27	20	54
Azerbaijan	28	20	52	66	9	26
Belarus	25	49	27	39	35	26
Bosnia and Herzegovina	11	30	59	23	7	71
Bulgaria	28	42	30	48	26	26
Croatia	10	33	57	28	15	56
Czech Republic	14	42	44	12	29	60
FYR Macedonia	25	29	46	53	13	34
Georgia	78	13	9	77	11	12
Hungary	4	21	76	42	7	51
Kosovo	8	19	73	32	7	61
Latvia	9	36	55	12	15	73
Lithuania	8	29	63	6	16	78
Moldova	12	35	53	18	30	52
Poland	26	45	29	16	28	57
Romania	2	11	88	7	10	83
Russia	8	39	53	26	22	52
Serbia	14	37	49	14	25	61
Slovenia	5	23	73	22	0	78
Turkey	26	17	57	59	1	40
Ukraine	8	63	30	16	24	59

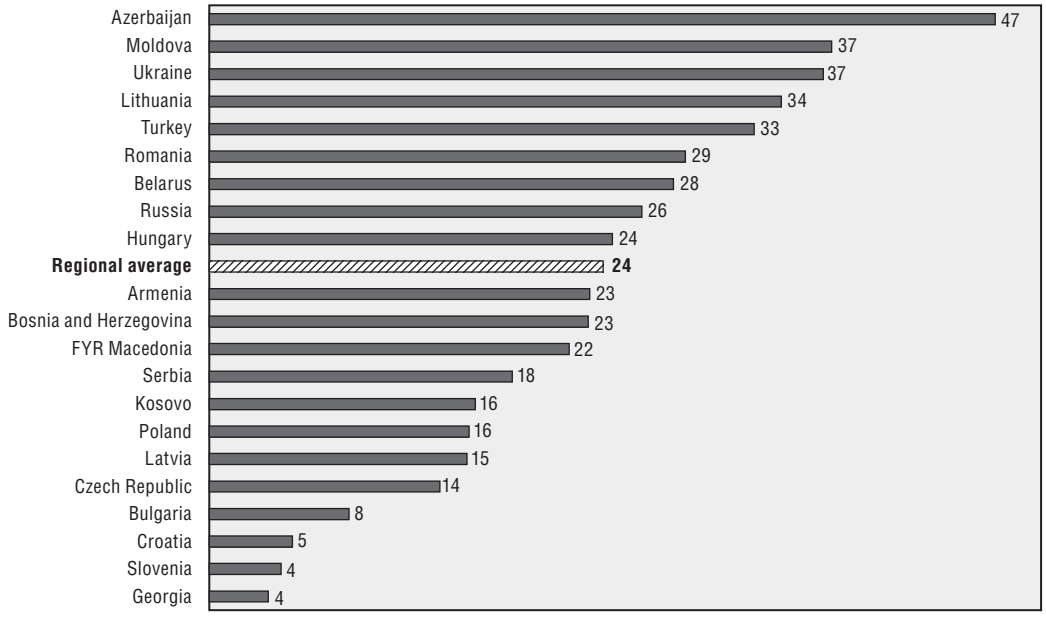
Source: Compiled based on the Global Corruption Barometer data by Transparency International (*gcb.transparency.org/gcb201011*).

Perception of corruption was also measured by the EBRD "Life in Transition" report.[1] According to the report, on average, the perceived level of need for unofficial payments[2] is highest in the Commonwealth of Independent States and Mongolia, while respondents in South-Eastern Europe reported the second highest perceived level of need for unofficial payments, followed by the countries of Central Europe and the Baltic region. The average level of the perceived need to make unofficial payments across eight public services[3]

increased in the transition region over the past four years, from 10.4% of respondents in 2006 to 13% in 2010.

The figure below shows per cent of people who have experienced corruption according to the TI's 2010/11 Global Corruption Barometer in the ACN and IAP countries where the survey was conducted.

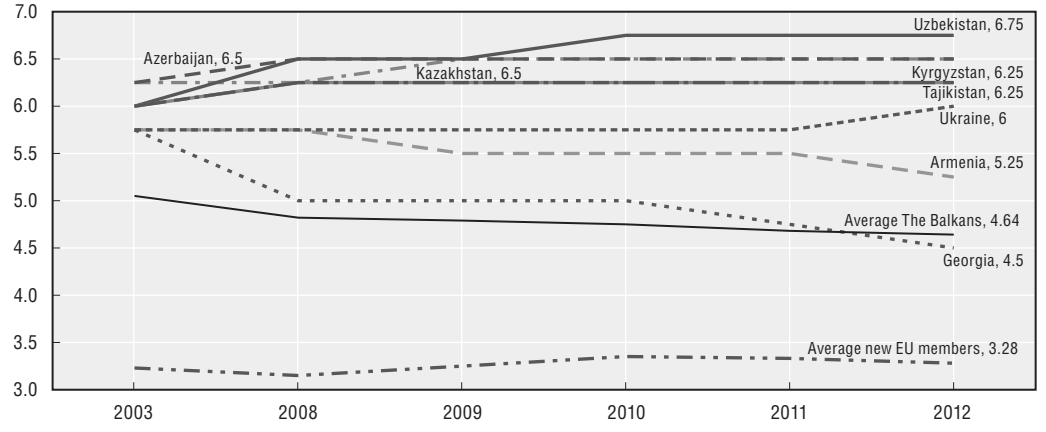
Figure 1.2. **% of people that have paid a bribe in the past 12 months**



Source: Compiled based on the Global Corruption Barometer data by Transparency International (*gcb.transparency.org/gcb201011*).

Another assessment was conducted within Freedom House's "Nations in Transit" report.[4] The average score for IAP countries in 2012 was 6 (where 7 represents the highest level of corruption), in 2003 – 5.97. It shows that, according to expert assessment, there was no progress in reducing the level of corruption (except for Georgia which progressed from

Figure 1.3. **Corruption, Nations in Transit, Freedom House (1 = lowest level, 7 = highest level)**



Source: Composed based on the Nations in Transit research by Freedom House (*www.freedomhouse.org/report-types/nations-transit*.).

Table 1.3. **Corruption, Nations in Transit, Freedom House (1 = lowest level, 7 = highest level)**

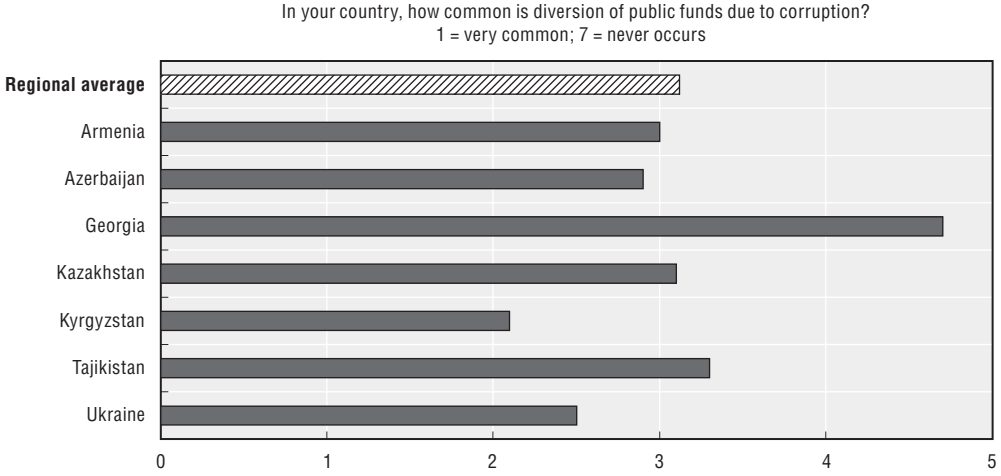
	2003	2008	2009	2010	2011	2012
Armenia	5.75	5.75	5.5	5.5	5.5	5.25
Azerbaijan	6.25	6.25	6.5	6.5	6.5	6.5
Georgia	5.75	5	5	5	4.75	4.5
Kazakhstan	6.25	6.5	6.5	6.5	6.5	6.5
Kyrgyzstan	6	6.25	6.25	6.25	6.25	6.25
Tajikistan	6	6.25	6.25	6.25	6.25	6.25
Ukraine	5.75	5.75	5.75	5.75	5.75	6
Uzbekistan	6	6.5	6.5	6.75	6.75	6.75
Average the Balkans	5.05	4.82	4.79	4.75	4.68	4.64
Average new EU members	3.23	3.15	3.25	3.35	3.33	3.28

Source: Compiled based on the Nations in Transit research by Freedom House (*www.freedomhouse.org/report-types/nations-transit*.).

5.75 to 4.5). IAP countries (again – with exception of Georgia) also fell behind other ACN countries – in the Balkans and the new EU member states from Eastern and Central Europe.

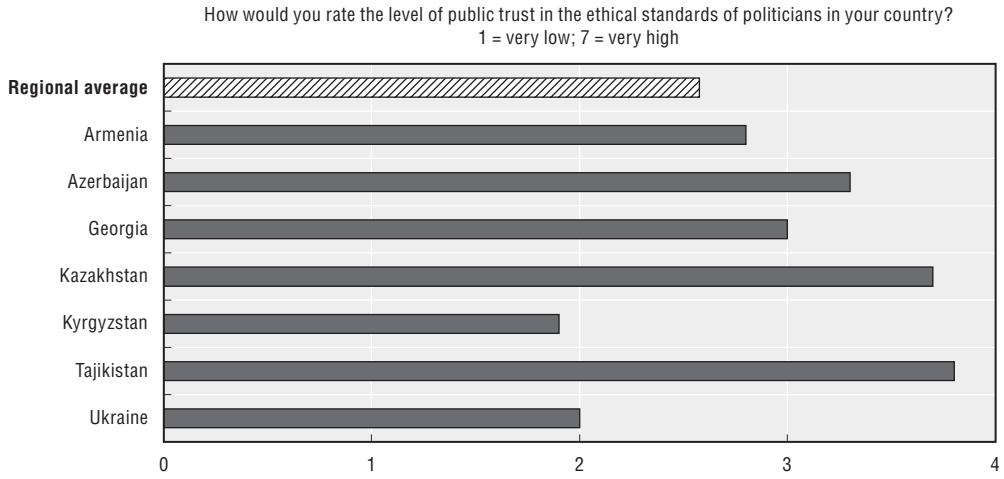
Corruption is also seen as widespread by private companies operating in most of the IAP countries. Executive Opinion Survey conducted by the World Economic Forum within its 2012/2013 Global Competitiveness Report[5] shows that corruption remains one of the most problematic factors for doing business in the region: in Armenia, Azerbaijan (highest % of responses), Kazakhstan, Kyrgyzstan, Ukraine (second place in % of responses). Only in Georgia is corruption reported as one of the least problematic issues for doing business. In Tajikistan, corruption follows access to financing, tax rates and tax regulation. WEF's "Global Competitiveness Report" also contains other indicators relevant for assessing the corruption and good governance situation within the IAP countries (see figures below).

Figure 1.4. **Diversion of public funds**



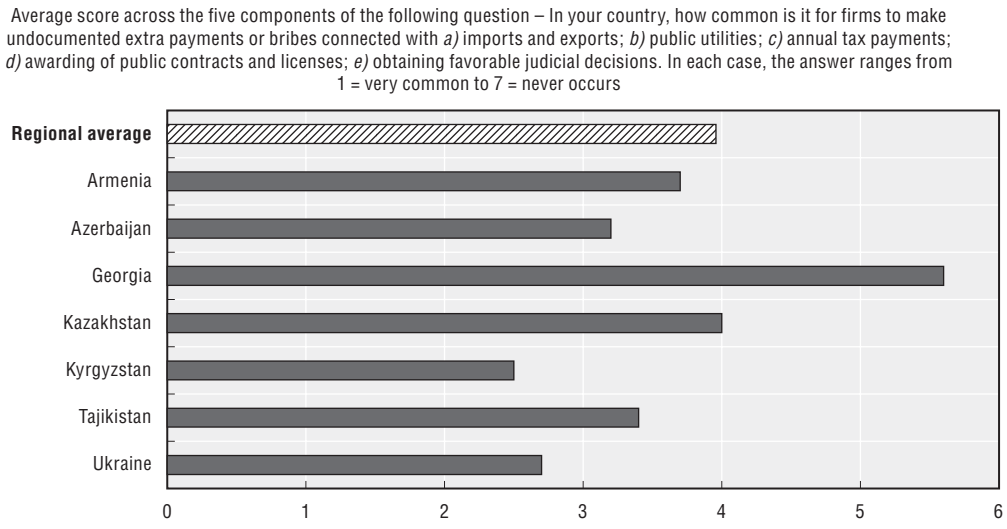
Source: Composed based on the 2012/2013 Global Competitiveness Report by the World Economic Forum (*http://reports.weforum.org/global-competitiveness-report-2012-2013*

Figure 1.5. **Public trust in politicians**



Source: Composed based on the 2012/2013 Global Competitiveness Report by the World Economic Forum (*http://reports.weforum.org/global-competitiveness-report-2012-2013*.

Figure 1.6. **Irregular payments and bribes**

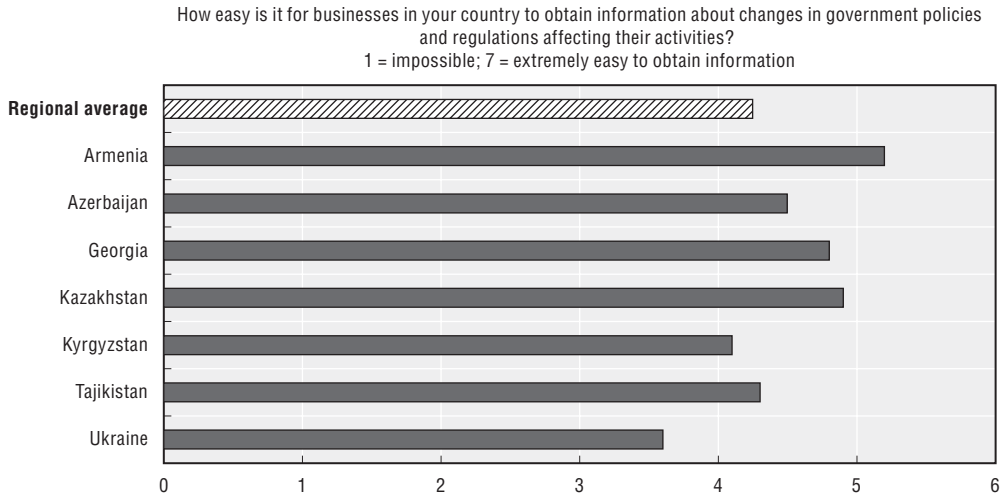


Source: Composed based on the 2012/2013 Global Competitiveness Report by the World Economic Forum (*http://reports.weforum.org/global-competitiveness-report-2012-2013*).

Participation of the region in global anti-corruption efforts

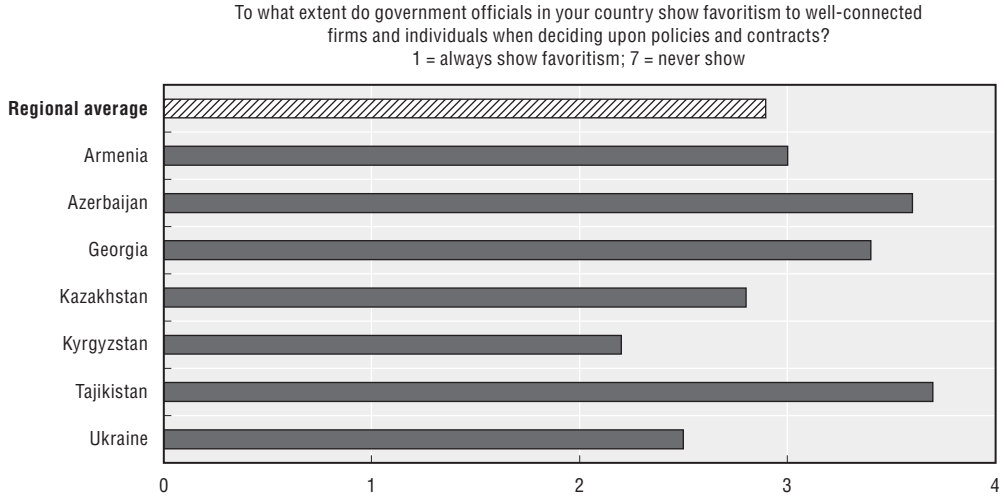
Countries of the region take active part in anti-corruption efforts, most notably by adhering to and implementing relevant international treaties. Since the end of the previous IAP evaluation cycle (2007), Georgia (in 2008), Kazakhstan (2008), Ukraine (2009) and Uzbekistan (2008) have acceded to the UN Convention against Corruption, along with Estonia (2010) and Slovenia (2008) from the ACN countries. All IAP and ACN are now parties to the UNCAC. Ukraine was under first cycle of the UNCAC Review Mechanism during the first year of its implementation, Azerbaijan, Kazakhstan and Georgia – during second year, Armenia – third and Kyrgyzstan, Tajikistan, Uzbekistan – fourth year; also all IAP countries will act as reviewing states during the first review cycle.

Figure 1.7. **Transparency of government policymaking**



Source: Composed based on the 2012/2013 Global Competitiveness Report by the World Economic Forum (*http://reports.weforum.org/global-competitiveness-report-2012-2013*).

Figure 1.8. **Favoritism in decisions of government officials**



Source: Composed based on the 2012/2013 Global Competitiveness Report by the World Economic Forum (*http://reports.weforum.org/global-competitiveness-report-2012-2013*).

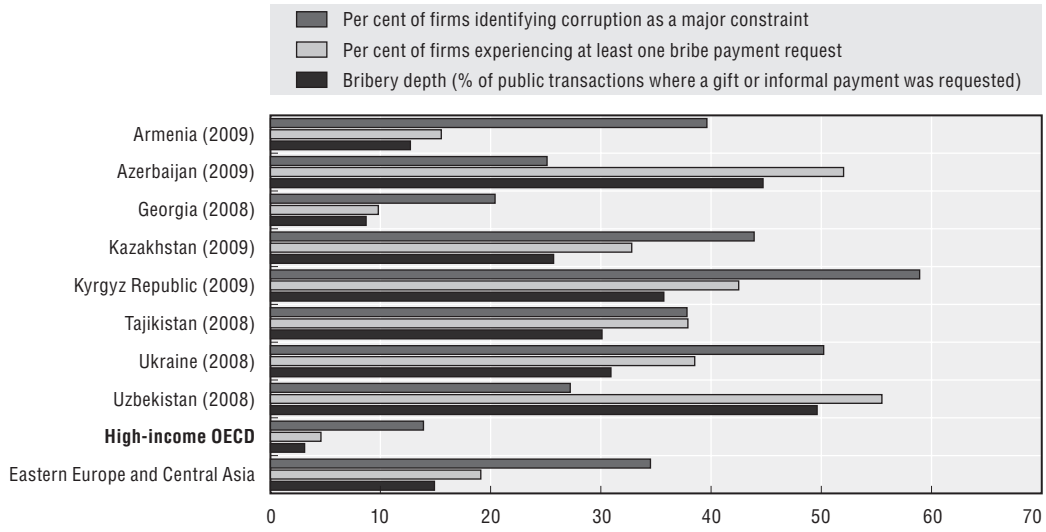
Also, in 2010, Ukraine became a party to the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol, while Georgia ratified Council of Europe Criminal Law Convention on Corruption in 2008.

See table below on the status of ACN and IAP countries with regard to international anti-corruption instruments. All ACN and IAP countries that are members of the Council of Europe are members of the Group of States against Corruption (GRECO).

Comparable results can be found in Enterprise Surveys by the World Bank among private companies.

Figure 1.9. **Enterprise Surveys, the World Bank**

(www.enterprisesurveys.org)



Source: Composed based on the World Bank's Enterprise Surveys data (*www.enterprisesurveys.org/Data*).

Table 1.4. **Status of adherence of the IAP and ACN countries to the UN, Council of Europe and OECD anti-corruption instruments (as of October 2012)**

	UNCAC	Council of Europe Criminal Law Convention on Corruption (CETS 173)	Council of Europe Civil Law Convention on Corruption (CETS 174)	Additional Protocol to Council of Europe Criminal Law Convention on Corruption (CETS 191)	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
			Istanbul Action Plan countries		
Armenia	2007	2006	2005	2006	–
Azerbaijan	2005	2004	2004	Signed Oct 2012	–
Georgia	2008	2008	2003	Not signed	–
Kazakhstan	2008	–	–	–	–
Kyrgyzstan	2005	–	–	–	–
Tajikistan	2006	–	–	–	–
Ukraine	2009	2010	2006	2010	–
Uzbekistan	2008	–	–	–	–
			Anti-Corruption Network countries		
Albania	2006	2002	2003	2005	–
Belarus	2005	2008	2006	–	–
Bosnia and Herzegovina	2006	2002	2003	2012	–
Bulgaria	2006	2002	2003	2005	1999
Croatia	2005	2002	2003	2005	–
Estonia	2010	2002	2003	Not signed	2005
Latvia	2006	2002	2005	2006	–
Lithuania	2006	2002	2003	2012	–
FYR Macedonia	2007	1999	2003	2006	–
Moldova	2007	2004	2004	2007	–
Montenegro	2006	2006	2008	2008	–
Poland	2006	2003	2003	Signed 2011	2000

Table 1.4. **Status of adherence of the IAP and ACN countries to the UN, Council of Europe and OECD anti-corruption instruments (as of October 2012)** (*cont.*)

	UNCAC	Council of Europe Criminal Law Convention on Corruption (CETS 173)	Council of Europe Civil Law Convention on Corruption (CETS 174)	Additional Protocol to Council of Europe Criminal Law Convention on Corruption (CETS 191)	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
Romania	2004	2002	2003	2005	–
Russia	2006	2007	Not signed	Signed 2009	April 2012
Serbia	2005	2003	2008	2008	–
Slovenia	2008	2002	2003	2005	2001
Turkmenistan	2005	–	–	–	–

Note: Year refers to year of entering into force in respect of the country, unless specified otherwise.

Source: Compiled based on data from the websites of the Treaty Office of the Council of Europe (*http://conventions.coe.int*), UNODC (*www.unodc.org/unodc/en/treaties/CAC/signatories.html*) and OECD (*www.oecd.org/daf/anti-bribery/oecdantibriberyconvention.htm*).

Notes

1. Its recent edition was published in 2011 based on survey conducted in 2010. Source: *www.ebrd.com/pages/research/publications/special/transitionII.shtml*.
2. "Unofficial payments" in the EBRD report refers to the proportion of respondents who say people like themselves usually or always have to make unofficial payments or gifts while interacting with a given public service.
3. The road police; requesting official documents; going to the courts for a civil matter; receiving primary or secondary public education; receiving public vocational education; receiving treatment in the public health system; requesting unemployment benefits; requesting other social security benefits.
4. *Source*: *www.freedomhouse.org/report-types/nations-transit*.
5. *Global Competitiveness Report 2012/2013*, WEF, *http://reports.weforum.org/global-competitiveness-report-2012-2013*. Uzbekistan is not covered by the report.

Chapter 2

Anti-corruption policy and institutions in Eastern Europe and Central Asia

Chapter 2 analyses progress achieved by Eastern Europe and Central Asia in developing and implementing anti-corruption policies. It stresses that declarations of the political leaders about their commitment to fight corruption still has to be supported by practical actions in many countries. Almost all countries by now have adopted anti-corruption strategies and action plans, but their implementation is often weak and their impact on the levels of corruption is not known. Surveys about corruption should be used for the development and monitoring of strategies. There are many public participation initiatives in the region, but real partnership between governments and NGOs in the development, implementation of the anti-corruption strategies is still to be achieved. Many countries have established councils or other bodies to co-ordinate the strategies, but further efforts are needed to ensure that these institutions are effective and can support the implementation of anti-corruption policies in practice.

Expressed political will to fight corruption

Political will is a key precondition and necessary starting point for efficient fight against corruption. As noted in the 2008 progress report, the anti-corruption agenda must be led by national political forces. Experience in the Istanbul Action Plan countries since then shows that political will helped to launch important anti-corruption reforms in some cases, but remained at the level of political rhetoric without any tangible action in others.

Corruption has become an important topic on the political agenda in the Istanbul Action Plan countries, in particular after ratification of the UNCAC (as of now all IAP countries are Parties to this Convention). It is common for political leaders in all Istanbul Action Plan countries to publicly express how important the fight against corruption is and what a serious threat is posed by corruption. Curbing corruption is often named among the main priorities by ruling politicians and various political factions. The awareness on the need to fight corruption is rising and numerous statements show the declared will to fight corruption.

For example, President of Kazakhstan Nursultan Nazarbayev, in his annual address in January 2011, said that fight against corruption is taking place without any compromise and will continue.[1] In Tajikistan President Rakhmonov regularly raises topic of corruption in his public speeches. In an address to Parliament in April 2010, he named the prevention and combating of corruption as a priority in the legal policy of the country.[2] In Uzbekistan, President Islam Karimov and Uzbek political parties support the importance to prevent corruption, increase transparency and good governance in various speeches and official documents.[3]

In February 2010 the newly elected President of Ukraine Viktor Yanukovych in his inaugural address to the parliament of Ukraine said that Ukraine must fight corruption.[4] Similarly the President of Kyrgyzstan Almazbek Atambayev, in December 2011, announced in his inauguration speech that the fight against corruption is the second priority for the country only after the fight against organised crime.[5]

Fighting corruption has been frequently mentioned in addresses of the President of Georgia Mikheil Saakashvilli and constitutes one of Georgia's priorities.[6] President of Armenia Serzh Sargsyan has promised in his 2008 address, that more severe measures would be taken against corruption and that it is necessary to "inculcate a culture of absolute intolerance to corruption". More recently in Azerbaijan, President Ilham Aliyev repeated his anticorruption message at the semi-annual and annual meetings of the Cabinet of Ministers broadcasted live on national television. He instructed the ministers with specific actions. He also addressed the citizens with the request to be active in providing information about corruption practices and complain the matter before judicial and law enforcement authorities."[7]

Furthermore, anti-corruption reforms and measures to foster good governance and increase transparency are included in many government programmes in IAP countries. The Government of Armenia in its programme for 2008-2012 includes, as the second

priority, development of effective public and corporate governance, including the efficient and continued fight against corruption.[8] The Government of Georgia in its programme for 2008-2012 indicates: **"The flexible and uncorrupted system of public administration oriented on tasks and services** should ensure effective performance of public and economic tasks. Implementation of a new anti-corruption strategy and incentive-free preventive policy is the way towards **further consolidation of unprecedented progress in fighting corruption."**[9]

Some countries include measures to fight corruption in national development programmes, outlining the most important steps that the country plans to take. For example, the so-called *"Road Map"* or the "Strategic Plan for Development of the Republic of Kazakhstan until 2020", refers to the fight against corruption and calls for preventative measures to corruption.[10] Similarly, in Uzbekistan, the "Concept On Further Intensification of Democratic Reforms and Development of Civil Society", adopted by the President, includes measures intended to prevent corruption.[11]

Finally, almost all ruling and opposition parties pledge to combat corruption in their programmes during election campaigns. The fight against corruption has become a popular slogan/buzzword and topic in election campaigns, especially to criticise the governing political forces, alluding to a promise to break with the corrupt practices of incumbents.

In several IAP countries, coalition agreements with commitments of political reforms included measures in the fight against corruption. In Armenia following the 2007 parliamentary elections, the five elected political parties undertook in the coalition agreement that "the all-inclusive and effective fight against corruption with the full participation of civil society" will be their priority. In Ukraine in 2010, the Parliament coalition "Stability and Reforms" agreed that among its core objectives was reinforcing the fight against corruption and an uncompromised respect of legality, in particular by high-ranking officials, politicians, judges and heads of law enforcement bodies. Four political parties elected to the Parliament of Kyrgyzstan in December 2011, in their Coalition Agreement, promised to unite all forces for an uncompromised fight against corruption and crime.[12]

Despite these welcome declarations of political will and commitment of political forces to fight corruption, the experience in the Istanbul Action Plan countries shows that what lacks in most cases are not so much "words", but rather genuine political leadership and consistent, targeted action against corruption. Concrete decisions how to fight corruption and their proper implementation remains a key challenge. Hence, in order to fully assess anti-corruption policy, it is important to look not only at the mere expression of political will, but also at the evidence of concrete anti-corruption reforms, their proper enforcement and tangible improvements observed thereafter.[13] More attention should be paid to these aspects in the future.

> "A principal challenge in the examination of political will is the need to distinguish between reform efforts that are intentionally superficial and designed only to bolster the image of political leaders for transitory gain, and substantive reform efforts that are based on real commitment to implement substantive, sustainable change."
>
> (Derick W. Brinkerhoff (2000), "Assessing Political Will for Anti-Corruption Efforts. An Analytic Framework", Public Administration and Development)

In many IAP countries, political will has resulted in some reforms, in particular, the ratification of UNCAC, assigning institutions with functions to fight corruption, adoption of important legislation necessary to fight corruption.

In Georgia, strong political leadership combined with effective reforms and visible enforcement allowed reducing the level of corruption in entire sectors and significantly improving the perception of corruption. While there is still progress to be made to address high-level corruption and reform the public sector, there is overall agreement that the level of everyday corruption in Georgia has been significantly reduced.[14] "Strong and sustained political will were essential in the fight against corruption in Georgia. … Anticorruption was both a goal and an instrument for modernizing the economy. … strong political will, a clear vision, supported by a flexible strategy, pragmatism and rapid implementation led to quick results."[15] "A combination of law-enforcement measures, increase in funding of many public agencies and reduction of bureaucratic red tape led to a virtual eradication of corruption at lower levels of public administration."[16]

The IAP monitoring report on Kazakhstan notes that the awareness by the country's leadership of the seriousness of the issue allowed for the implementation of certain important reforms in recent years, which were aimed, in particular, at decreasing the corruption level in the country.

However, in most of the countries intentions to fight corruption remained on paper, in some cases due to the lack of genuine political will, in others, due to lack of political leadership, or due to on-going political changes. As noted in a report on Armenia, "the worst problem still hindering the proper implementation and monitoring of the 2009-2012 Action Plan is the deficit of ownership of it by the Government."[17]

Box 2.1. **Corruption on political agenda in OECD countries**

Fighting corruption is also subject to political campaigns in other regions. In the Czech Republic, the Social Democrats came to power in 1998 promising during the election campaign to start an anti-corruption campaign and break with corrupt practices of previous government. The government of Milos Zeman then came to power and led an anti-corruption campaign "Clean hands!", however, it had limited results and the government itself was criticised for corrupt practices. More recently in 2010, under the Czech Prime Minister Petr Nečas, a coalition agreement was signed explicitly targeting Budgetary Accountability, the Rule of Law and the Fight against Corruption. In 2011 the government adopted an anti-corruption strategy and established an Anti-Corruption Committee.* Nonetheless, recently civil society actors sent an open letter to the government criticizing it for not fulfilling its promises to fight against corruption in this agreement.

Following high-profile corruption scandals, increasing perception of widespread corruption in politics and GRECO evaluation on political parties financing in Austria the federal government agreed on the co-called "transparency package" to tackle corruption including various legal reforms to increase transparency in political life. The Federal Chancellor said it would show the population that Austria is fit for becoming "a model in Europe".

* Statute of the Government Anti-Corruption Committee, adopted by Government Resolution No. 618 of 17 August 2011, *www.vlada.cz*.

Anti-corruption strategies and action plans

About a decade ago, anti-corruption strategies and action plans have become common in Eastern Europe and Central Asia, as well as in other regions in the world where corruption is considered widespread and present at all levels of society and politics. Anti-corruption

programmes are less frequent in Western Europe or Northern American countries, where corruption is relatively less of a common problem and existing institutions cope with it in most cases. Today it has also become an international standard, as stipulated by the UNCAC (Art. 5), "to develop and implement or maintain effective, co-ordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability".

Indeed, after declaring political will to fight corruption it is important to put together a comprehensive set of measures to fight corruption and take consolidated action in practice within this common framework. Anti-corruption programmes have proven to be a useful tool in that sense in the Istanbul Action Plan countries. Georgia's anti-corruption strategy notes that it has "significantly increased effectiveness of combating corruption."[18] In Kazakhstan, "strategy confirms political commitments of the state authorities in the Republic of Kazakhstan to conduct a result-oriented anti-corruption policy."[19]

As noted in the IAP 2008 Summary report, "it will be crucial to ensure high-quality new strategies and especially to focus on the action plans in order to support effective and concrete implementation measures."[20]

At present, all Istanbul Anti-Corruption Action Plan countries have introduced second or mostly third generation anti-corruption strategies and action plans. Only Uzbekistan, which joined the IAP in 2010, has started to develop a national anti-corruption programme in 2008 which has not been finalized. It is true that not all countries have immediately developed these types of programmes. The first national anti-corruption policy document was probably the Anti-corruption Concept for 1998-2005 in Ukraine; then a State Programme to Fight Corruption was adopted in 2001 by the President of Kazakhstan. Meanwhile in Georgia, "the early anti-corruption efforts were implemented without a single policy framework or a dedicated anti-corruption body. The first anti-corruption strategy was developed in 2005-2006. In 2008, the president established the Interagency Coordinating Council for Combating Corruption and tasked it to produce a new anti-corruption strategy and action plan (both documents were adopted in 2010)."[21]

In Uzbekistan, anti-corruption measures are taken without being explicitly stated in a single policy document.[22] The most recent anti-corruption strategies were adopted in Ukraine in 2011 and Azerbaijan in September 2012.

Compared to first anti-corruption strategies about a decade ago, formal anti-corruption policies have improved. At present all national anti-corruption strategies and action plans in IAP countries are legally binding documents, adopted at highest level of the executive branch, by a government resolution or presidential decree. None were adopted by parliament, as done, for instance, in Lithuania or Croatia. Technically, earlier strategies were more general, focused mainly on legal changes, expected results were less clear and implementation mechanisms were poorly defined. Today, anti-corruption policy documents are relatively comprehensive and well structured. As was found in the IAP second round monitoring reports formally they contain many elements recommended to the countries, such as involvement of non-governmental and business organisations; analysing previous efforts to fight corruption; analysing corruption patterns in the country; setting clear objectives; developing an action plan/mechanism for implementation with clear and effective measures, timeframes, performance indicators, responsible institutions and sources of financing; monitoring and reporting mechanism; etc.

Table 2.1. **Anti-Corruption Strategies and Action Plans adopted in IAP countries in 2008-2012**[1]

	Anti-Corruption Strategies and Action Plans	Year of adoption	Source
Armenia	2009-2012 Anti-Corruption Strategy and its Implementation Action Plan (*www.gov.am*)	2009	Decision of the Government No. 1272 of 8 October 2009
Azerbaijan	– National Strategy on Increasing Transparency and Combating Corruption; Action Plan for Increasing Transparency and Combating Corruption for 2007-2011 – National Action Plan on Open Government and National Action Plan on Combating Corruption	2007 2012	Presidential Decree, 28 July 2007 Presidential Decree, 5 September 2012
Georgia	Georgian National Anticorruption Strategy; National Action Plan for the Implementation of Anti-Corruption Strategy 2010-2013 (*www.justice.gov.ge*)	2010	Presidential Decrees No. 376 of 3 June 2010 and No. 735 of 14 September 2010
Kazakhstan	Sector Programme for the Fight against Corruption in the Republic of Kazakhstan for 2011-2015; Plan of Actions for its Implementation (*www.finpol.kz*)	2011	Resolution of the Government No. 308 of 31 March 2011
Kyrgyz Republic	National Anti-Corruption Strategy	2012	Presidential Decree No. 26 of 2 February 2012
Tajikistan	Anti-corruption Strategy 2008 – 2012; Matrix of Measures for implementation of the strategy (*www.anticorruption.tj*) *In 2012 a Working Group was created to develop an anti-corruption strategy for 2013-2020*	2008	Government Resolution No. 34 of 26 January 2008
Ukraine	National Anticorruption Strategy for 2011-2015; State Programme for Prevention and Combating Corruption for the Period of 2011-2015	2011	Presidential Decree No. 1001 of 21 October 2011, Cabinet of Ministers' Resolution No. 1240 of 28 November 2011

1. For the list of anti-corruption strategies and action plans adopted in 2003 – 2007 see The Istanbul Action Plan: Progress and Challenges, OECD, 2008, p. 22, *www.oecd.org*.

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

Box 2.2. **Examples of anti-corruption policy documents in other ACN countries**

Albania

- Cross Cutting Strategy for Prevention and Fight against Corruption and for Transparent Governance, 2008-2013, adopted in 2008 by the Council of Ministers.
- Integrated action plans drafted by the line ministries in implementation of the Strategy adopted by the Inter-ministerial Working Group.

Croatia

- Anti-Corruption Strategy adopted by Croatian Parliament in 2008.
- The Action Plan of the Anti-Corruption Strategy by the Government in 2008.
- Decision by the Committee for the Monitoring of the Implementation of Anti-Corruption Measures to revise the Action Plan.
- The revised Action Plan of the Anti-Corruption Strategy by the Government in 2010.

Estonia

- *Estonian Anti-Corruption Strategy 2008 – 2012* approved by the Government. Available at *www.korruptsioon.ee*.
- Implementation Plan for the Anti-Corruption Strategy 2008-2012, Ministry of Justice co-ordinates the implementation of the Strategy. The strategy can be updated, if necessary, at least once a year.

Box 2.2. **Examples of anti-corruption policy documents in other ACN countries** *(cont.)*

Montenegro

- Strategy for Fighting Corruption and Organized Crime for the period of 2010-2014.
- Innovated Action Plan for Implementation of the Strategy for Fighting Corruption and Organized Crime for the period of 2010-2012.

Romania

- National Anticorruption Strategy for the Period 2012-2015.
- National Action Plan for the Implementation of the National Anticorruption Strategy for the Period 2012-2015.
- Inventory of Anticorruption Preventive Measures and Evaluation Indicators.

See all documents at *www.just.ro*.

Latvia

- Strategy for Preventing and Combating Corruption in 2009-2013, adopted by the Cabinet of Ministers.
- Preventing and Combating Corruption Programme for 2009-2013, adopted by the Cabinet of Ministers.

See all documents at *www.knab.gov.lv*.

Lithuania

- National Anti-Corruption Programme for 2011–2014 adopted by the Parliament.
- Implementation is organised by the Government in co-operation with the Special Investigation Service. The implementation of the Programme is co-coordinated and the implementation of the Action Plan of the Programme is controlled by the Inter-departmental Commission in co-operation with STT.

Russia

- National Strategy for Countering Corruption, adopted by Presidential decree of April 2010.
- National Plan for Countering Corruption for 2012-2013.

Serbia

- National Anti-Corruption Strategy, *adopted in 2005* (available in Serbian at *acas.rs*).
- *Action* Plan for Implementation of the Strategy, adopted in 2006.

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

Involving key players

It has been acknowledged that in order to effectively fight corruption, a broad coalition of all possible key players is important. It is therefore essential to elaborate and implement anti-corruption strategies in a participatory manner, involving from the onset, public institutions in charge of anti-corruption work and those at risk of corruption. Other key stakeholders – civil society actors, academics, member of the business community and donors also need to be involved.[23] In practice, Istanbul Action Plan countries this is done in a limited and often formalistic manner. Anti-corruption strategies are often adopted at a high level, but their implementation is in the hands of middle-level public officials, often with limited support from their managers and political leadership.

Participation of civil society

As was noted by the IAP second monitoring round reports, civil society involvement was relatively low in the preparation of anti-corruption programmes in Ukraine, Georgia and Tajikistan where some proposals from NGOs were taken into account, but the programmes were in fact prepared by the government. In Armenia, NGOs and international partners were involved in expanding the scope of the anti-corruption strategy, but it was ultimately not implemented. Consequently, several measures (e.g. to involve NGOs in councils of public institutions, award grants to NGOs for conducting anti-corruption monitoring and involve them in evaluation of strategy implementation, that the civil society could make recommendations on how to reduce corruption risks, etc.) remained on paper. More recently in Azerbaijan, in preparation of the new anti-corruption strategy, authorities held two round table discussions in collaboration with civil society actors in 2012. The preliminary draft of the new strategy was developed on the basis of the proposals of both the civil society stakeholders and relevant state bodies.[24] In Kyrgyzstan, the new State Strategy on Anti-Corruption Policy in 2011 was developed by the Defence Council without the involvement of civil society actors.[25]

Analysing corruption risks

Furthermore, to prepare a sound anti-corruption strategy, it is important to have sound analysis of corruption risks and problems that need to be solved, as well as an assessment of previous anti-corruption efforts. In addition to taking into account independent research, public institutions, "should analyse corruption risks in their institutions and propose anti-corruption measures to address these specific risks to be included in the national strategy."[26] However, independent research was rarely used by public authorities. The IAP report on Kazakhstan notes that the "Programme for the Fight against Corruption for 2011-2015" raises some concerns in this respect, and this "may point to a formal approach to the planning of anti-corruption measures aimed at formal implementation of certain measures without having in mind clear goals of anti-corruption policy."[27] Also in Tajikistan, the "Strategy for the Fight against Corruption in Tajikistan 2008-2012" does not contain an analysis of the degree of corruption in various public sectors, nor does it determine corruption risks depending on how widespread corruption is in each sector.

Setting objectives and measures

Regarding objectives and measures envisaged in anti-corruption strategies, IAP countries seem to cover all essential areas of fighting corruption. These areas include prevention, criminalisation and law enforcement, public participation, awareness raising and education campaigns. In many cases, measures are more precise than in previous programmes. For example, the IAP report on Tajikistan notes that the strategy seems to cover all essential dimensions of the fight against corruption and the matrix for its implementations covers many sectors of state regulation on both national and local levels. The IAP report on Azerbaijan concludes that the strategy takes a balanced approach between preventive and repressive measures. The "2009-2012 Anti-corruption Strategy and Action Plan" in Armenia is quite comprehensive in terms of formulating policy goals, clarifying problems and offering measures to be taken. In the meantime, it is crucial for successful anti-corruption strategies to have objectives and measures that are actually relevant to fighting corruption in that country. It is important to openly assess if the various objectives

and actions proposed in anti-corruption strategies address the crucial issues and the real causes of corruption and if these are the right actions to help achieve the greatest impact on corruption in this country.

Dissemination of anti-corruption strategies

Proper dissemination of anti-corruption strategies and action plans allows transparency of the government's intentions and shows progress made by anti-corruption reforms. Formally, anti-corruption policies in the IAP countries are made public at the moment of adoption in the official press; they can be often found on government websites and sometimes there are workshops organised to present them. At the same time, the general public is often practically unaware of reform programmes to fight corruption. In many instances during on-site visits within the second round of IAP monitoring, organisations or individuals met were unaware of anti-corruption programmes taking place in their countries or of the stage of their implementation. A report on Tajikistan notes that "efforts on dissemination of the information on the Strategy should be continued and enhanced with the use of more effective methods". Clearly, other countries could do more to make anti-corruption measures and their implementation more visible.

Monitoring anti-corruption efforts

There is little progress in IAP countries to establish efficient mechanisms to monitor the implementation of anti-corruption strategies measure their progress and see the impact of these strategies. As highlighted at the ACN Vilnius seminar on this topic in 2011, ACN countries have various mechanisms to formally report about anti-corruption strategies, while what is lacking is a mechanism to assess how well these measures have achieved their objectives and their impact on the levels of corruption.[28]

A good example is Georgia, where in 2012; the Anti-Corruption Council adopted a Monitoring Tool for implementation of the anti-corruption action plan. The tool was prepared in partnership with 14 public agencies responsible for the Anti-Corruption Action Plan implementation. It consists of: activities to be carried out under the Action Plan, indicators of implementation, responsible agencies, partner organisations, risks, timeframe for implementation and for monitoring.

The monitoring tool enables comprehensive analysis of how various anti-corruption commitments have been implemented, taking into account relevant factors. The tool also helps to track progress in implementation at any given moment and identify activities requiring more persistent efforts.[29]

Anti-corruption strategies in Estonia and Romania have quite well elaborated implementation and monitoring mechanisms, including particular sets of indicators in Romania that can serve as useful examples. A good practice in Azerbaijan is alternative monitoring of the implementation of the national strategy conducted by NGOs. This results in alternative monitoring and relevant NGO recommendations that were used in the Commission's annual evaluation.[30] In Romania, an independent impact assessment of previous anti-corruption strategies is regularly commissioned by the government; conclusions and assessments are made public.[31]

In Kazakhstan, several annual reports and consolidated analytical information on the implementation of the 2006-2010 programme were prepared with general information on implementation and measures marked as completed or being implemented. In addition,

a more detailed report was prepared for the President's Administration. The monitoring report on Kazakhstan concluded that in order to ensure that the reporting is meaningful, it should report on measures taken, analyse the dynamics of quantitative and qualitative indicators and describe the state of corruption in the country as a result of this programme and preceding reforms.

In Tajikistan, the Agency for State Financial Control and Fight against Corruption submits detailed annual reports to the government. Since 2011, the Agency audits progress made in implementing the national anti-corruption strategy across individual agencies. For example, the Ministry of Health and the Ministry of Education's performance in this regard was evaluated.[32] In Azerbaijan, the Commission on Combating Corruption collects and analyses information from various responsible institutions and reports to the President biannually, while the Cabinet of Ministers reports annually to Parliament. All these reports are published in the media.

Cost of anti-corruption strategies

It is a positive trend that in most IAP countries, the anti-corruption programmes refer to or foresee the need for financial resources, including their sources and the total amount. In Azerbaijan, Armenia, Ukraine and Kazakhstan there is a separate section in the programme on funding and a separate column in the action plan. A good example is the new anti-corruption programme of Kazakhstan, which contains a separate section on funding over 5 years. The annual breakdown and detailed information on funding sources is covered. However, information is often quite general, in terms like "state budget" or "donor funding". It seems that a specific allocation of budget for each measure still needs to be provided.

Implementation of anti-corruption measures

Proper implementation of anti-corruption strategies and action plans remains a challenge in most of the Istanbul Action Plan countries for various reasons. In some cases it is lack of leadership or ownership by the government, lack of secretariat support or co-ordination. For instance, in Armenia, "significant problem is the lack of a holistic approach on implementation, guided by strong leadership and assisted by a permanent Secretariat" and the 2009-2012 Anti-Corruption Strategy and Action Plan in Armenia has remained on paper.[33] IAP report on Ukraine notes that: "the actual value of the Action Plan 2011-2015 thus will depend on the eventual quality of implementation."[34]

In Kyrgyzstan, very few measures from the 2009 – 2012 Anti-Corruption Strategy and Action Plan were implemented, due to major political turmoil in 2010. In Ukraine the Concept of Overcoming Corruption in Ukraine "Towards Integrity" adopted in 2006 was not taken over by the new government. Instead in 2010, it developed "its own" anti-corruption strategy that is now being implemented. In other cases, it is lack of political support or sometimes skills and resources to implement certain measures. For example, the requirement for public officials to declare assets, have proper conflict of interest regulation or proper and independent law enforcement.

This results in an overall impression of limited effectiveness of these policies. Moreover, in some cases when countries have become somewhat successful in fighting corruption, it can hardly be clearly attributed to an effective anti-corruption strategy. In some countries

anti-corruption strategies are not in fact the main framework for fighting corruption and the anti-corruption reform is a more flexible concept.

Surveys and research on corruption

Surveys, opinion polls, sociological studies, statistics on corruption can be greatly valuable in obtaining a more precise insight on the scale of corruption in a country. Data can show how various public institutions are affected by this phenomenon and what measures are needed to prevent it. The Istanbul Anti-Corruption Action Plan supports corruption research and the use of its results to develop and evaluate anti-corruption strategies and action plans. The IAP 2008 Summary report called for more efforts to strengthen the analytical basis for anti-corruption work.

The second monitoring round reports show a significant amount of research material in the IAP countries addressing various aspects of corruption, including useful regular surveys showing trends over time, independent expert studies of specific aspects of corruption and how problems can be addressed. This information, however, has not sufficiently been used in designing and assessing anti-corruption measures taken by the government. Research is also very costly for some governments that often lack resources, especially in countries affected by the on-going economic crisis. The governments often refer to TI Corruption Perception Index or World Bank governance indicators. Governments pay less attention to regular national surveys showing trends in corruption and efficiency of the anti-corruption efforts. A recurring problem is that many surveys on corruption in the Istanbul Action Plan countries are not made public. It was often difficult to assess their actual relevance and how they are used by the governments in practice.

Experience with anti-corruption research varies in the Istanbul Anti-Corruption Action Plan countries. Compared to the first round of monitoring, governments are clearly more aware of the usefulness of anti-corruption surveys. National surveys and international reports are more often referred to in anti-corruption policy documents. In most cases anti-corruption surveys and studies were conducted by international partners and NGOs, but some are commissioned or conducted by the government. For example, in Azerbaijan, the government provided grants to NGOs to conduct anti-corruption research. In 2008-2010, Kazakhstan's state agencies conducted 11 sociological surveys on trends in corruption financed by the government.

An interesting example was found in Armenia, where the USAID-supported anti-corruption project (MAAC Activity) commissioned regular comprehensive corruption surveys of households and enterprises. Overall, three corruption surveys of households were carried out in 2008-2010. A corruption survey of private enterprises was conducted in 2009 (published in 2010). The surveys of households tracked the perceptions of the Armenian population on corruption, personal experiences with corruption, social and individual behaviour related to corruption, awareness and evaluation of anti-corruption initiatives, level of trust in public institutions. The survey of enterprises provided useful data on perception of corruption by 400 private Armenian enterprises.[35]

Ukraine reported that in co-operation with the OSCE, a methodology for measuring corruption level in the country was developed and tested; it is expected that that methodology will be applied on an annual basis to measure the levels of corruption within the country.[36] The Kazakhstan Agency for Combating Economic and Corruption Crimes together with the Presidential Commission for the Fight against Corruption, with

consultation from interested state authorities and with participation of the "Transparency Kazakhstan", jointly developed a system for assessing corruption levels in the state authorities.

In Ukraine, a number of surveys on corruption-related issues were conducted in 2007-2009. They were funded by the USAID, the Millennium Challenge Corporation or Council of Europe/EU projects. For example, the joint Council of Europe/EU project commissioned surveys on such issues as trends in corruption, corruption in higher education and judiciary, on customs procedures and permits for construction and land operations, on lobbying, conflict of interest, political party financing and immunities. Then in 2009, the Ministry of Justice commissioned several NGOs and academic institutions to prepare a series of surveys on public opinion on corruption, corruption risks in state administrative services and in control-oversight bodies and in civil, administrative and criminal procedures. This data was reportedly used in the development of the current anti-corruption strategy of Ukraine.[37] Indeed, the anti-corruption strategy 2011-2015 refers to research studies in determining main causes of corruption in Ukraine, which is a positive development.

In Azerbaijan, the Information and Cooperation Network of Anti-Corruption NGOs conducted a survey on corruption, which was taken into account in the development of the 2007-2011 anti-corruption strategy and action plan. In 2011, this network of NGOs, in co-operation with Constitutional Research Foundation and Council for the State Support to NGOs under the President of Azerbaijan, completed a research project "Corruption Condition in the Country". The results of which were published online.[38] NGOs in Azerbaijan also provided with government financial support to conduct surveys and studies on corruption.

In Georgia, a number of anti-corruption studies have been conducted by local NGOs, in particular TI Georgia.[39] In 2009, two surveys on corruption and quality of public services were conducted at the Government's request by the Georgian Opinion Research Business International that was selected through public tender organized by the Council of Europe (GEPAC project). The Government also commissioned a survey using questions asked in the European Commission's Eurobarometer survey conducted in EU member states. Within the framework of International Finance Corporation's "Georgia Tax Simplification Project" two surveys have been carried about the perception of corruption and about customs clearance procedures in Georgia.

On the contrary, no specific studies on corruption were mentioned by the authorities of Kyrgyzstan during the IAP second round monitoring of the country in spring 2012. Tajikistan conducted a comprehensive sociological survey of corruption trends in the public sector covering all state and local authorities/sectors only in 2011; it was carried out by the Centre of Strategic Research under the President of Tajikistan in co-operation with the OSCE.[40]

A number of corruption studies have also been conducted in Uzbekistan since 2008. The research centre "Public Opinion" established by the Government leads this work. Reportedly public opinion polls were conducted on level and trends in corruption, experience with corruption and attitude to government's anti-corruption efforts.

Table 2.2. **Examples of corruption surveys in IAP countries, 2008-2012**

	Survey
Armenia	Armenia Corruption Survey of Households 2008-2010 Armenia Corruption Survey of Enterprises USAID MAAC Activity, Caucasus Research Resource Centre Armenia, 2010 Available at *www.crrc.am*.
	Monitoring of public procurement system of Armenia in 2008-2009 Transparency International Anti-Corruption Center, 2010 Available at *http://transparency.am/publications.php* (only in Armenian)
Azerbaijan	Survey on causes, trends and levels of corruption Information and Cooperation Network of Anti-Corruption NGOs, 2010
	Research project "Corruption Condition in the Country" Anticorruption NGO Information Network, Constitutional Research Foundation and State Support to the NGOs Council under the President of the Republic of Azerbaijan, 2010, available at *anticornet.az*.
Georgia	Perception of Corruption in Georgia. Survey of Public Officials Perceptions of Corruption in Georgia General Public Survey Georgian Opinion Research Business International-Gallup International, within the framework of the Council of Europe project "Support to the anti-corruption strategy of Georgia", available at *www.coe.int*. Eurobarometer 2012, available at *www.justice.gov.ge*
Kazakhstan	Corruption Diagnostics in the Ministry of Justice of the Republic of Kazakhstan Ministry of Justice, 2010
	Corruption in the Ministry of Finance of the Republic of Kazakhstan Ministry of Finance, 2010
Tajikistan	Survey on perceptions and attitudes towards corruption and fight against corruption in Tajikistan Centre for Strategic Research under the President of Tajikistan, supported by the OSCE Office in Tajikistan, 2011
Uzbekistan	Studies "Public opinion on corruption", "Citizens about corruption", "Uzbekistan: public opinion on corruption, bribery and extortion" Research centre "Public Opinion", 2010-2011

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

Public participation in fighting corruption

> "When a predominantly corrupt system cannot self-correct, external actors will have key roles. In all Visegrad countries investigative journalists, websites and blogs exposed corrupt practices that could not be hidden anymore by corrupt cliques."*
>
> (Transparency International, Corruption Risks in Visegrad countries, 2012, *www.transparency.hu*)
>
> * TI (2012), Corruption Risks in Visegrad countries. Visegrad Integrity System Study, Hungary, *www.transparency.hu*.

Anti-corruption efforts are much more effective if they involve the participation of wider society. Measures encouraging active public participation in the anti-corruption work have therefore become a mandatory requirement of the UNCAC (Art. 13).

The Istanbul Anti-Corruption Action Plan also encourages governments to promote participation of NGOs, academia, business sector, trade unions, media and other civil society players in the development, implementation and evaluation of anti-corruption policy and measures. As noted in the 2008 progress report, it is key to the Istanbul Action Plan countries to move from a rather formalistic participation of civil society to a meaningful dialogue, involving NGOs in more practical and regular work and ensuring their transparent and competitive participation.[41]

Second round of the IAP monitoring showed that there have been an increasing number of active civil society organisations engaged in anti-corruption work in the IAP countries. Most active are the Transparency International National Chapters. They exist for

around a decade in Armenia, Azerbaijan, Georgia, Kazakhstan and Kyrgyzstan. A TI contact point was re-established in Ukraine 2010 in Ukraine. TI chapters and are not yet present in Uzbekistan and Tajikistan.

There are also other NGOs active in the anti-corruption field. For example, the Eurasia Partnership Foundation or Freedom of Information Centre in Armenia, Sange Research Centre in Kazakhstan, Georgian Young Lawyers Association in Georgia or Public Foundation "Legal Clinic – Adilet" in Kyrgyzstan, to mention just a few. In Azerbaijan there is an Information and Cooperation Network of NGOs, drawing together more than 20 NGOs such as Transparency Azerbaijan, Fund for Struggle against Corruption, Young Lawyers Association of Azerbaijan and others under one umbrella. Similar example can be found in Kyrgyzstan with the Anti-Corruption Business Council. Many NGOs and civil society anti-corruption programmes are donor-driven, but there is also evidence of government support.

In Istanbul Action Plan countries, NGOs are often involved in the work of anti-corruption policy co-ordination councils, subordinate working groups or public councils of state bodies. In Georgia, Transparency International Georgia, Georgian Young Lawyers' Association, American Bar Association, Open Society Georgian Foundation, "Coalition for European Georgia" and "Liberty Institute" are permanent members of the Anti-Corruption Interagency Coordination Council.

In Ukraine, TI National Chapter Creative Union TORO was until recently a member of the National Anti-Corruption Committee, while in Armenia, TI Armenia has a permanent seat in the in Anti-Corruption Strategy Monitoring Commission. It was planned that representatives of trade unions, media, youth and business associations will be included in the new Anti-Corruption Council in Tajikistan. In Azerbaijan, NGOs are not included in the Commission on Combating Corruption, but are involved in working groups created by this Commission. In Ukraine, the former anti-corruption institution, which was called the Government Agent, had a public council composed of 36 NGO representatives. In Kazakhstan, public councils are established by different state authorities, including the Public Council on Anti-Corruption Issues, established in 2009.

In some cases, NGOs consider this involvement as mere "box-ticking" by the government. In Ukraine, the NGO representatives withdrew from the National Anti-Corruption Committee in August 2012 as NGO recommendations had been systematically ignored. After that, in October 2012, following recommendations of international anti-corruption monitoring reports, the composition of the committee was changed to establish that at least 1/5 of the committee should be composed of civil society representatives; however, this new provision is yet to be implemented. To what extend civil society organisations are given an actual role in supporting government anti-corruption work will have to be assessed further in future monitoring reports.

IAP countries increasingly involve civil society organisations and academia in the development and evaluation of anti-corruption policies. For instance, the authorities of Azerbaijan organised "round-table" discussions with civil society actors in 2012 to develop new anti-corruption strategy and NGOs were involved in the evaluation of previous strategy. In Uzbekistan, various NGOs, but in particular the academic community, have been involved in development of the new anti-corruption programme. In Georgia, NGOs were involved in development of anti-corruption policy in 2010 in a limited way (according to Georgia's Government this was explained by the fact that the strategy was elaborated during summer). As noted in a Transparency Georgia report in November 2010, "civil society

involvement in planning of public policies continues to have limited impact. … With specific reference to CSO involvement in the fight against corruption…, several substantial recommendations were not included and CSO were not involved in the drafting of the strategy, only in commenting on the final version."[42]

In Kyrgyzstan, the new anti-corruption strategy was developed in 2012 without involving other state bodies or civil society, despite the strategy itself notes that civil society should be involved in assessing trends in corruption in the country. In Armenia, the Anti-Corruption Strategy for 2009-2012 and its Action Plan include a separate section "Civil Society Support in the Fight against Corruption". The section on evaluation and monitoring foresees an impact assessment by civil society, including public tenders to conduct participatory monitoring surveys of the strategy. It is unfortunate that this has not been implemented. However, only two donor-driven monitoring reports were prepared.

In Ukraine, the national anti-corruption programme for 2011-2015 foresees integration of civil society organisations, several academic institutions, as well as research and development institutions. Civil society should also be involved in the program monitoring.[43] According to comments of the Ukrainian Government, several measures were taken to implement these provisions. They are as follows: in 2012, the Ministry of Justice held two public consultations on the implementation of the national anti-corruption strategy and action plan; in 2011, the Government's Secretariat in co-operation with the donor-funded Parliamentary Development Project and the Ministry of Justice, held five regional seminars on unofficial anti-corruption screening of draft legal acts and in 2012, the Ministry of Justice, with the support of the regional UNDP office, held another seminar on this topic.

An interesting example was found in Azerbaijan, where in 2008, several NGOs, such as League for the Defence of Labour Rights, Union of Young Azerbaijani Lawyers, Association of Eurasian Lawyers, Azerbaijan Lawyers Confederation, along with donor support, conducted an alternative monitoring of the implementation of national anti-corruption strategy. The monitoring organizers co-operated with the Commission on Combating Corruption and the results, including relevant NGO recommendations were submitted and taken into account by to the Commission.

In many countries, domestic civil society is very active in raising awareness on corruption. In Armenia for example, civil society organisations are more active than the government in raising awareness about corruption and rights of the citizens, including access to information. Also in Azerbaijan, a grant programme for NGOs allowed civil society groups to conduct awareness campaigns (see next section for more information).

The significant contribution of NGOs to anti-corruption work should come through providing independent research on corruption, as previously addressed. A variety of studies and academic works are conducted by NGOs and academia in the Istanbul Action Plan countries on trends in corruption, corruption in specific sectors, aspects of legal framework to fight corruption, etc. There is relatively less evidence on the use of these surveys by governments, apart from Azerbaijan and Ukraine (see above). Periodic studies commissioned by the government on trends in corruption should be especially promoted.

Despite increased participation of civil society in the fight against corruption, the actual influence of civil society on anti-corruption reforms seems to be limited. Examples of countries where civil society and government would be strong partners in a nation-wide coalition against corruption are few to none. Many governments struggle with how to more efficiently involve civil society. Civil society also faces problems of sustainability and its

efforts are comparatively less visible. In some cases, it is questionable how independent some non-governmental anti-corruption organisations are, as they are often founded by former government officials. In some cases it remains unclear based on which criteria NGOs are selected to assist the government in its anti-corruption efforts and how transparent and inclusive this process is. Procedures for transparent selection of NGOs for participation in anti-corruption bodies and anti-corruption activities could be further explored.

Anti-corruption awareness raising and education

Some primary reasons why reducing corruption is so difficult is that it is often tolerated, people lack the tools to resist corruption in real-life situations, or they lack information about their rights and public services. Also, it has been acknowledged that the fight against corruption can be effective when preventive anticipatory and educational measures are combined.

Governments are therefore encouraged, according to the UNCAC (Art. 13), to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption, including through information sharing activities and public education on corruption, particularly in schools and universities. The 2008 progress report on Istanbul Action Plan countries noted that awareness-raising activities are fragmented and a comprehensive and concerted anti-corruption campaign is needed. It was also stressed that anti-corruption awareness and training campaigns should contain practical seminars for specific target groups rather than wide-ranging information on corruption or anti-corruption legal framework.[44]

As noted in the IAP second round monitoring reports, numerous activities to raise awareness on corruption have been undertaken by the IAP governments or by civil society, often are supported by donors and international partners. These government efforts are commendable, as they require a lot of resources. However, awareness raising campaigns remain to a large extent too general both in terms of audience and content. There is often insufficient actionable information on how to prevent corruption, protect one's rights, how to interact with public institutions, etc. Also, governments should provide more information to civil society actors and the general public about how it fights corruption. Too few activities are based on a long term planning or oriented towards specific target groups (apart to some extent secondary and university students).

Raising business sector awareness is another area that has hardly been explored thus far. Another challenge identified during the second round of monitoring was a lack of specialists with anti-corruption education and awareness raising skills and experience in anti-corruption area. Governments were recommended to further involve NGOs in raising corruption awareness campaigns. Examples mentioned in this report could prove helpful. There is little evidence that this work helps to influence public opinion and attitudes vis-à-vis corruption. IAP monitoring therefore recommended periodically monitoring and assessing efficiency and effectiveness of measures in anti-corruption awareness raising and public education efforts.

Since 2008, as shown by the second round of monitoring, results in Istanbul Action Plan countries are mixed. Generally, the number of anti-corruption awareness raising campaigns and public education activities conducted by governments has increased. Azerbaijan, Kazakhstan and Uzbekistan in particular have had more targeted anti-corruption awareness raising efforts reportedly organized by the government. In other

countries, most awareness work is done by civil society actors and is supported by international organisations and donors.

In 2010, the state authorities in Kazakhstan carried out a large-scale informational and educational campaign, "Your NO TO CORRUPTION! matters!" focusing on how to report corruption. Another campaign in Kazakhstan was "Start from yourself", which included the publication of personal income declarations by the management of all state authorities. Many awareness-raising campaigns are implemented through the national anti-corruption strategy and financed from the state budget. The Agency for Combating Economic and Corruption Crimes (Financial Police) is responsible for carrying out most of these activities.

In 2007, Azerbaijan organised a grant programme for NGOs to raise public awareness and educate society about the national anti-corruption strategy. In 2009, the Council of State Support to NGOs granted funds to several NGOS to carry out a variety of public awareness measures in different regions. Prosecutors and investigators in Azerbaijan regularly give interviews about their anti-corruption activities; anti-corruption booklets, flyers and booklets about results of its activities are distributed among public institutions, local executive powers, NGOs, media and universities.

A number of awareness raising and training events took place in Uzbekistan in 2011. The judiciary and other state bodies reported an impressive number of activities to raise legal awareness, by means of mass media, meetings and seminars. In particular, the Prosecutor General's Office conducted a series of anti-corruption seminars and has developed a special module for these lectures on international anti-corruption conventions (mostly the UNCAC), national measures and legal framework in this area. Similar seminars were held by the Ministry of Education, State Customs Service, State Committee of Property, Ministry of Interior, State Tax Committee and other institutions and many were organised in co-operation with the OSCE and the UN Regional Office in Central Asia.

In Tajikistan, the number of anti-corruption trainings and awareness campaigns arranged by the Agency for State Financial Control and Fight against Corruption, and to lesser extent, other state authorities has also increased. These activities include, but are not limited to, public speeches, media appearances and distribution of promotional materials. An impressive number of anti-corruption related articles in magazines and newspapers, TV broadcasts, Internet publications (websites, blogs, social networks) during the second round of monitoring were reported by Tajikistan.

In Georgia, no information was provided during the second IAP monitoring round about government-sponsored activities or trainings to raise awareness or educate the general public, NGOs, business associations or other groups about corruption. However, according to government comments on this report, activities aimed at raising anti-corruption awareness and public education have been included in the national anti-corruption strategy; information on anti-corruption policies and institutions in Georgia is available on the Ministry of Justice website , including information on the National Anti-Corruption Strategy and Action Plan, implementation reports and minutes of the Anti-Corruption Council meetings.[45] Furthermore, press conferences are organized by the Prosecutor's Office concerning major corruption-related criminal cases; representatives of the Secretariat of the Anti-Corruption Council regularly meet students and organise public events, in particular, to inform about anti-corruption research results.

In Armenia, civil society is very active in the area of anti-corruption awareness-raising, unlike the government. Many donor-funded anti-corruption initiatives have been

undertaken by civil society since 2008. In 2008-2010, seven anti-corruption forums to raise awareness about corruption, discuss corruption problems and countermeasures were organised by the USAID-funded project "MAAC Activity" together with Armenian NGOs. MAAC Activity funded a handbook on anti-corruption education for teachers and teachers' trainings; the Network of Advocacy and Assistance Centres was established, which encourages reporting corruption.

In Kyrgyzstan, little has been done by the government to raise overall awareness on corruption since 2008. Occasional trainings are donor or civil society-driven. Examples from Kyrgyzstan in this area are a methodological guidance on how to counter corruption in secondary schools and a guide for customs officials with more than 25 000 copies distributed in 2010-2011 as a part of the project, "Assisting Public Institutions in Countering Corruption", implemented by the Anti-Corruption Business Council. In Tajikistan, the corpus of anti-corruption legislation was published with the support from UNDP in 2009 and disseminated among law enforcement agencies and other stakeholders.

A common trend in Istanbul Action Plan countries is public information on corruption in schools and universities. For example, in Tajikistan, the anti-corruption programme for universities was approved by the Minister of Education in 2009 and a pilot project was undertaken in several universities in 2009-2010. The intention was to expand this programme to cover all universities in Tajikistan. In Azerbaijan, the Ministry of Education developed anti-corruption modules and provided training for all new public officials; the Anticorruption NGO Information Network conducted seminars in schools under the programme, "Youngsters say no to Corruption".

In Uzbekistan, corruption is addressed in all high legal education institutions and secondary schools as a part of lectures on legal issues. Prosecutors, together with UNDP and Ministry of Justice, provided training in seventy higher education institutions. In Armenia, lectures were conducted by prosecutors in eight schools in Yerevan and a textbook was published. An interesting example is from Kyrgyzstan, where the Ministry of Education and Science undertook a targeted and very practical campaign. It started with a sector-specific corruption risk assessment, identifying higher education as the most vulnerable area. Then awareness on how the budget of universities is formed was raised and information on the prohibition of illegal monetary and other collections in public organisations was disseminated. A hotline for public complaints, reporting of corruption and general public inquiries were organised at the Ministry.

Anti-corruption preventive and policy co-ordination institutions

According to UNCAC (Art. 6), each State shall ensure the existence of a body (or bodies) that prevent corruption, including by overseeing and co-ordinating anti-corruption policies; such bodies should carry out their duties effectively, free from any undue influence and have necessary resources.

The 2008 IAP monitoring[46] progress report noted that the Istanbul Anti-Corruption Action plan countries had bodies entrusted to develop and monitor anti-corruption policies. Since 2004, Armenia and Azerbaijan have had anti-corruption commissions; Georgia, Ukraine, Tajikistan and Kazakhstan had institutions entrusted with these tasks, including law enforcement or national security-type bodies. Kyrgyzstan was the only country that created (in 2007) a National Agency for Corruption Prevention, in charge of both anti-corruption policies and prevention of corruption. In conclusion, the 2008 report

stressed that, while there were many of these bodies, they did not focus enough on practical measures.

Since 2008, the institutional framework for anti-corruption policy co-ordination and prevention has evolved in most IAP countries. Only in Armenia, Azerbaijan and Kazakhstan does it remain the same (see Table 7 below). Following political changes in Kyrgyzstan, the government disbanded the National Agency for Corruption Prevention in 2010 without handing over its functions to another body; a new anti-corruption body. Instead, the Anti-Corruption Service of the State Committee on National Security was created in 2011, though it was not operational by the time of second round of monitoring, and its functions do not seem to cover prevention or anti-corruption policies.

Ukraine has undergone quite a few changes. Two institutions with responsibilities in this area – the Government Agent and the Bureau on Anti-Corruption Policy – existed from 2008 to 2011. In 2010 the newly elected President established the National Anti-Corruption Committee. There are plans to create a special body in charge of anti-corruption policy.[47] A possibility to create a new multifunctional anti-corruption agency with prevention functions has been discussed for several years in Ukraine too. Finally, two new anti-corruption councils were created: in Georgia in 2008; and in Tajikistan in 2010.

At the moment in Armenia, the implementation of the state anti-corruption policy is ensured by the Anti-Corruption Council and the Anti-Corruption Strategy Implementation Monitoring Commission. These two policy level bodies work through meetings, while secretariat support on a daily basis is still needed. In Azerbaijan, the Cabinet of Ministers and the Commission on Combating Corruption represent the focal co-ordinating institutions for the implementation of anti-corruption strategy. The Commission is considered a well-established and operational body with permanent secretariat.

In Georgia, expansion of state anti-corruption policy and monitoring of its implementation is entrusted to the Anti-Corruption Interagency Coordination Council chaired by the Minister of Justice. The Council is supported on a daily basis by its secretariat at the Ministry of Justice (Analytical Department). However, the IAP monitoring report noted that it was necessary to increase its analytical and organisational capacities and ensure necessary resources.[48] To address this recommendation, the Analytical Department of the Ministry of Justice was enlarged, its Strategic Policy Development Unit was created in September 2010 and new staff was recruited. Currently, the Department has nine employees, including the Head of the Department who acts as the Secretary of the Anti-Corruption Council.

In Tajikistan, the Anti-Corruption Council was established in 2010, which should oversee the development and implementation of anti-corruption measures as of 2011. In Ukraine, the anti-corruption policy development and monitoring has been led by the National Anti-Corruption Committee since 2010. This is an advisory body headed by the President. Its secretariat is placed within the secretariat of the National Security and Defence Council of Ukraine. The Ministry of Justice is the main body in charge of implementing the national anti-corruption programme and is an interim body in charge of anti-corruption policy. In December 2011 a draft law on the body in charge of anti-corruption policy was prepared by the Ministry of Justice.[49]

In some countries, law enforcement or national security bodies are focal points in anti-corruption efforts. Their independence and accountability, as well as their ability to focus on prevention, may raise concerns. In Kazakhstan, the Agency for Combating

Economic and Corruption Crime (Financial Police) is the body in charge of co-ordinating the development and implementation of anti-corruption policy. In Tajikistan, the Agency for State Financial Control and Fight against Corruption was the key player in elaborating and co-ordinating anti-corruption policy over the past few years and seems it will remain in this co-ordinating role (the Agency is in charge of developing the new anti-corruption strategy for 2013-2020[50]). In Uzbekistan and Kyrgyzstan, the Prosecutor General's Offices are focal points for anti-corruption efforts. In Kyrgyzstan, the Defence Council (led by the President) developed the State Strategy of Anti-Corruption Policy and prepared draft Law on the Fight against Corruption and proposals for amendments in other legislation in 2012.[51] Finally, Ukraine's National Security and Defence Council's secretariat serves as secretariat to the National Anti-Corruption Committee and was previously in charge of anti-corruption policies.

In Kyrgyzstan, up until February 2012, there was no designated body in charge of anti-corruption policies, as required by the UN Convention against Corruption. While in practice the Defence Council and the General Prosecutor's Office play some role in co-ordinating anti-corruption efforts, it was not completely clear who is in charge of anti-corruption policies.[52] The new 2012 anti-corruption strategy does not state who co-ordinates its implementation. Also in Uzbekistan, while anti-corruption policy and co-ordination is entrusted to various authorities (the President, the Parliament, and Cabinet of Ministers and other public institutions at national and local levels) and the Department for Fighting Economic Crime and Corruption of the Prosecutor General's Office provides support to anti-corruption efforts on daily basis, a stronger mechanism to co-ordinate development and implementation of anti-corruption programme was recommended.[53]

As previously mentioned, the most common trend in the IAP countries is to create consultative anti-corruption councils, which are often not permanent high-level bodies. On one hand, it allows addressing anti-corruption issues at the highest level and can launch reforms.[54] In some cases, it was noted that these councils are well established and fulfil their functions, (in Georgia or Azerbaijan for example). On the other hand, in many countries, council meetings are not held regularly and it is difficult to assess their work in practice (in Ukraine or Armenia for example). It is also clear that in a long-term perspective these councils can only be successful if political leadership actually takes concrete anti-corruption measures. They can also not function properly without proper administrative support on a daily basis.

It is also important to ensure diversity and balance in these co-ordinating bodies. They should include not only the involvement of relevant authorities from all branches of power, but also civil society, including NGOs, academia, business associations and other key players. However, IAP monitoring noted a negative trend is in this regard, namely a limited or formal involvement of civil society actors. In some IAP countries, one or more civil society organisations are permanent members of anti-corruption councils (in Georgia and Tajikistan for example), while in others they participate in working groups. In some countries, civil society organisations withdraw from anti-corruption councils, criticizing them for being "window-dressing" by government or not useful (Ukraine and Armenia are cited examples[55]). In future civil society, the business community and academia could play a more meaningful role and could be more actively involved in anti-corruption reform. Monitoring implementation of anti-corruption efforts by the government in particular could be significant.

It is important to ensure that the anti-corruption policy and prevention institutions have the degree of independence necessary to effectively perform their functions and that they are free from undue influence, as highlighted in Article 6 the UNCAC. To this end, composition of the anti-corruption councils should be balanced by including representatives from different branches of power and other key stakeholders. Ensuring independence of law enforcement anti-corruption bodies is also important. A system of checks and balances in the most-known anti-corruption agency, the Independent Commission Against Corruption in Hong Kong is a good example in this regard.[56]

Box 2.3. **Preventive bodies and preventive functions in line with UNCAC**

UNCAC requires relevant body or bodies to be entrusted with specific functions to prevent corruption. It can be: a separate, dedicated corruption prevention body; an anti-corruption body with combination of preventive and law enforcement functions; or these functions can be split among existing state institutions, responsibilities of which often do not specifically refer to "corruption". It is also an obligation under the UNCAC to develop measures and policies to prevent corruption. Among measures to prevent corruption that are mandatory according to the UNCAC:

- developing, overseeing and co-ordinating the implementation of anti-corruption policies;
- measures to enhance integrity and transparency in public sector;
- establishing appropriate systems of public procurement;
- promoting transparency and accountability in the management of public finances;
- promoting integrity in judiciary;
- preventing corruption in the private sector;
- involving civil society in anti-corruption efforts;
- disseminate information concerning corruption.

Source: UN Convention against Corruption.

While developing, overseeing and co-ordinating the implementation of anti-corruption policies is assigned to a specific body in most of the Istanbul Action Plan countries, other preventive functions are not always clearly assigned to specific bodies. In Azerbaijan, the Commission on Combating Corruption is assigned to co-ordinate with civil society and international partners, conduct analytical work and collect asset declarations of public officials. The Agency for Combating Economic and Corruption Crimes (Financial Police) in Kazakhstan is entrusted with engaging civil society in anti-corruption work, awareness-raising campaigns and anti-corruption education. In Tajikistan, the Agency for State Financial Control and Fight against Corruption is specifically in charge of corruption prevention, including raising awareness and anti-corruption trainings, anti-corruption screening of legal acts, surveys of corruption by business sector and involvement of civil society. Institutions responsible for public service management in some IAP countries are entrusted with certain preventative functions. For example, the Public Service Bureau in Georgia, the Civil Service Agency in Kazakhstan or the National Agency of Civil Service (former Main Department of Civil Service) in Ukraine.

Table 2.3. **Dedicated anti-corruption policy and prevention institutions in the IAP countries (status in August 2012)**

	Institution	Description
Armenia	Anti-Corruption Council, since 2004	Functions: – co-ordinating implementation of anti-corruption strategy; – developing anti-corruption action plans in public agencies; – creating measures to implement the strategy, international obligations; – discussing recommendations submitted by the Anti-Corruption Strategy Implementation Monitoring Commission. Composition: The Prime Minister (chair); Vice President of the National Assembly, President of the Control Chamber, Chief of Government Staff, Minister of Justice, Adviser to the President, Head of the President's Oversight Service, the Prosecutor General, President of the Central Bank and the Chair of the State Committee for Protection of Economic Competition. Operating through meetings twice every 4 months. No permanent Secretariat.
	Anti-Corruption Strategy Implementation Monitoring Commission, since 2004	Functions: – monitoring of the implementation of the anti-corruption strategy and anti-corruption programs of public institutions; – studying good practice to fight against corruption and development of recommendations; – monitoring of fulfilment of obligations under international agreements and recommendations; – expert analysis of normative acts and recommendations. Composition: Presidential Assistant (chair); the Government's Staff, the Parliament, selected non-governmental organisations. Operating through meetings and working groups. No permanent Secretariat.
Azerbaijan	Commission on Combating Corruption, since 2004	Functions: – co-ordinating of implementation and assessment of anti-corruption policies; – co-ordinating civil society and international partners; – analytical support; – legislative and regulatory proposals related to the fight against corruption – collection of asset declarations of public officials (envisaged in the law "On Combating Corruption"). Composition: A collegial body of 15 members, including 5 members appointed by the President, 5 by the Parliament and 5 by the Constitutional Court; currently chaired by the Head of the Executive Office of the President Operating through meetings and working groups. Permanent secretariat based at the Executive Office of the President (3 employees).
Georgia	Anti-Corruption Interagency Council, since 2008	Functions: – co-ordination of anti-corruption activities in Georgia; – expansion of anti-corruption strategy and action plan; – implementation of the strategy and action plan; – implementation of recommendations by international organisations; – legislative activities and drafting recommendations. Composition: Minister of Justice (chair); Deputy Minister of Finance (deputy chair); Head of Chancellery of the Government; Chairman of the Chamber of Control of Georgia; First Deputy Minister and Minister of Justice; Deputy Minister of Finance, First Deputy Minister of Internal Affairs; Chairman and First Deputy Chairman of the Legal Issues Committee of the Parliament; Deputy Chairman of the Supreme Court; Head of Civil Service Bureau; Head of Financial Monitoring Service; Chairman of State Procurement Agency; President of National Bank; Deputy Minister of Economy and Sustainable Development; Deputy Chairman of Central Election Commission; Head of the Analytical Department of the Ministry of Justice (Secretary of the Council); Transparency International Georgia, Georgian Young Lawyers' Association, American Bar Association, Open Society Georgian Foundation; and NGO "Liberty Institute". Operating through meetings once every three months and expert groups. Secretariat is provided by the Analytical Department of the Ministry of Justice.
Kazakhstan	Agency for Combating Economic and Corruption Crimes (Financial Police)	Functions related to prevention and anti-corruption policies: – co-ordination of the national anti-corruption policy; – implementation of the national anti-corruption policy; – engagement of civil society in anti-corruption work; – awareness-raising campaigns and anti-corruption education. Above functions are assigned to the Department of Legal Support and International Co-operation and the Department for Investigation and Prevention of Corruption Cases.

Table 2.3. **Dedicated anti-corruption policy and prevention institutions in the IAP countries (status in August 2012)** *(cont.)*

	Institution	Description
	Presidential Commission for the Fight against Corruption	Functions: – development and adoption of co-ordinated measures for fighting corruption and increasing accountability of public servants; – co-ordination in the field of corruption prevention; – implementation of national anti-corruption policy. Composition: 14 public officials appointed by the President. Operating through meetings not less than once every 3 months. Secretariat is provided by the Administration of the President.
Kyrgyzstan	Corruption Service of the State Committee on National Security, since 2011	No information available.
	General Prosecutor's Office	No information available.
Tajikistan	Agency for State Financial Control and Fight against Corruption, since 2007	Functions: – monitoring of the implementation of anti-corruption strategy; – raising awareness and public education; – anti-corruption screening of legislation. Above functions are assigned to the Department of Prevention of Corruption.
	National Anti-Corruption Council of the Republic of Tajikistan, since 2010 (first meeting on 30 December 2011)	Functions: – evaluate and consider issues relating to combating corruption; – co-ordinate public agencies and civil society's activities on prevention and fight with corruption. Composition: Prime Minister, and its members are heads of public agencies, as well as leaders of political parties, whose representatives were elected to the Parliament, the Ombudsman, civil society (trade-union, media, youth, business associations). Operating through meetings.
Ukraine	National Anti-Corruption Committee, since 2010	Functions: – Monitoring implementation of anti-corruption policies; Composition: This is a consultative body under the President; involves highest public officials, including Chairman of the Parliament, Prime Minister, Chairman of the Supreme Court, Minister of Justice, Chairman of the High Council of Justice, Head of the Security Service, Prosecutor General, one NGO representative and a few representatives of academia. Amendments in the Committee's regulations in October 2012 introduced requirement that 1/5 of its composition should comprise civil society representatives proposed by the Public Council at the Committee. Operating through meetings (no fixed regularity). Creation of National Anti-Corruption Committee's Public Council is foreseen in Committee's regulations but as of time of this report it was not yet set up.
	Government Agent and the Bureau on Anti-Corruption Policy, existed from 2008 to 2011	– development and co-ordination of anti-corruption policies; – awareness raising and education activities for the public officials.
	Ministry of Justice	– since 2011 body temporarily in charge of co-ordinating anti-corruption policies.[1]
Uzbekistan	Department for Fighting Economic Crime and Corruption of the Prosecutor General's Office	Functions: – participation in development of work plans and draft programmes for the fight against corruption; – improvement of the normative and legislative basis; – development of measures for prevention of corruption; – gathering information on fight against corruption and its analysis; – supervision over the implementation of laws in this field.[2]

1. IAP Progress Updates of Ukraine: September 2011, p. 8, *www.oecd.org*, and February 2012, p. 2, *www.oecd.org*.
2. Order of the Prosecutor General No. 90 adopting a new Resolution on the Department for Fighting Economic Crime and Corruption, 18 February 2011, *see* IAP Joint First and Second Monitoring Rounds report on Uzbekistan, p. 21, *www.oecd.org*.

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

Conclusions and recommendations

Corruption has become a prominent issue on the political agenda in the Istanbul Action Plan countries. By 2009, all IAP countries had ratified the UNCAC. Commitment to fight corruption is regularly expressed by political leadership and various political forces. Nevertheless, Istanbul Action Plan countries still lack actual political leadership and consistent, targeted actions against corruption. Concrete, vigorous measures taken at the political level to fight corruption remains elusive. IAP countries actively develop anti-corruption strategies and action plans whose overall quality is improving. But the problem lies in proper implementation of policy, keeping a clear picture of what has been done, sound assessment of the effectiveness of measures taken and their practical impact on corruption.

The second round of monitoring showed that there was a wealth of research material in the IAP countries addressing various aspects of corruption, including regular surveys on corruption trends, government-sponsored or independent studies on corruption or measures taken to fight it. This information, however, is not used sufficiently in designing and assessing implementation of anti-corruption measures by governments. Furthermore, the second round of monitoring showed an increasing number of active civil society organisations engaged in anti-corruption work who were eager to contribute to the fight against corruption. However, the actual impact of civil society on anti-corruption reforms remains limited and many governments struggle with achieving efficient civil society involvement. Awareness-raising work is expanding in many countries, but it is still sporadic, rather than systemic; therefore it is difficult to properly assess the usefulness of these efforts. Finally, since 2008, the institutional framework for anti-corruption policy co-ordination and prevention has evolved. New institutions have been created in most of IAP countries, in particular anti-corruption councils.

Recommendations:

- Demonstrate political will and support in anti-corruption efforts, provide vision and a concrete plan of how to fight corruption by building a broad-based coalition of various actors against corruption and by taking concrete steps to implement political declarations.
- Ensure there is an agreed set of comprehensive measures aimed at preventing and fighting corruption, developed in co-operation with all key stakeholders, addressing root causes of corruption in the country based on an assessment of corruption trends and past anti-corruption efforts.
- Ensure that anti-corruption policy documents are properly implemented and supported with adequate resources and clear distribution of tasks among state authorities.
- Periodically assess the level of implementation of anti-corruption measures and their impact on corruption; involve civil society actors in such assessments; publish relevant reports and conduct their public discussion.
- Continue supporting corruption-related research conducted by the government, academia and non-governmental organisations. Use relevant data while designing and assessing anti-corruption measures by the government.

- Increase efforts to ensure meaningful involvement of civil society organisations, academia and the business community in the process of developing, implementing and assessing measures to prevent and fight corruption. Include civil society representatives in anti-corruption councils; provide effective instruments for civil society actors to influence the decision-making process.
- Develop a more strategic and targeted approach to awareness raising and public education, taking into account work done by civil society actors. Periodically assess and review relevant measures.
- Ensure that awareness raising campaigns are practical and useful, rather than just descriptive. Develop a practical toolkit for preventing and reporting corruption, protecting one's rights, etc. targeting specific audiences or specific corruption areas.
- Ensure there is a state body responsible for the development, implementation and monitoring of anti-corruption measures. Such an institution should have adequate autonomy, powers and necessary administrative support and resources.

Notes

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Chapter 3

Criminalising corruption and enforcement of legislation in Eastern Europe and Central Asia

Chapter 3 analyses criminalisation of corruption in Eastern Europe and Central Asia, including bribery and other corruption offences, corporate liability, definition of public official, sanctions and confiscation, statute of limitation and immunities, international co-operation and mutual legal assistance. It notes that almost all countries have achieved some progress in bringing their national legislation in compliance with international anti-corruption standards, e.g. *significant reforms were directed at introducing corporate liability for corruption. However, a conservative legal doctrine remains an obstacle for full compliance with the international standards. As a result, legal gaps remain with regard to bribery and trading in influence, confiscation and immunity provisions. The Chapter also examines the capacity of law-enforcement bodies to fight corruption. Many countries have demonstrated progress in meeting international standards concerning anti-corruption law-enforcement bodies, but adequate specialisation, institutional and procedural autonomy, and resources remain an issue. Concerning the practice of investigation and prosecution of corruption cases, countries need to build up the capacity to use modern investigative methods and to conduct financial investigations.*

The summary report after the first round of monitoring under the Istanbul Action Plan noted that substantive criminal law reform was progressing slowly in IAP countries, which share common history and legal traditions. Similar shortcomings could be found in these countries in the area of criminalisation of corruption. The second round of monitoring revealed that significant progress had been made in meeting relevant international standards, especially in Armenia, Azerbaijan, Georgia and Ukraine. However, a number of specific issues remain and provisions on corruption incriminations have to be further improved to be fully compliant with the standards which are quite unambiguous in their requirements.

Criminal law

Criminalisation of corruption and harmonisation of legislation

International standards require the criminalisation of corruption. Criminal sanctions provide the necessary level of deterrence and punishment of such serious wrongdoing as corruption. Through a range of investigative tools, criminal law and procedures allow for the most effective means available to detect and prosecute corruption.

Therefore, systems where administrative and criminal sanctions for bribery and other offences exist in parallel, have consistently been criticised by the Istanbul Action Plan monitoring. From IAP countries, only Kazakhstan, Tajikistan and Ukraine preserve administrative liability for core corruption offences like bribery, along with sometimes competing criminal law provisions.

Box 3.1. **Administrative liability for bribery offences**

Kazakhstan. Code of Administrative Offences (Art. 533 and 533-1) sanctions provision by a natural person to a person authorised to exercise state functions or receiving by the latter of illegal material benefits, gifts and so on if the committed does not contain elements of a criminal offence. Similar active and passive bribery offences are also contained in the Criminal Code. Administrative liability, and not criminal, is triggered if the relevant act was committed for the first time in exchange for a legal action by a public official without prior agreement when the amount of such gift does not exceed about 15 EUR.

Tajikistan. Code of Administrative Offences provides for administrative liability for receiving by an official for his/her activity of additional remuneration. No separation with the criminal offence of passive bribery is envisaged.

Ukraine. Code of Administrative Offences (Art. 172-3) punishes with a fine proposal or giving of an undue advantage to an official in the amount of not more than 250 EUR (about 5 000 EUR for aggravated offence). Only in case of an undue advantage in a higher amount will such act be qualified as a bribe under active bribery offence in the Criminal Code.

Source: Code of Administrative Offences of Kazakhstan; Code of Administrative Offences of Tajikistan; Code of Administrative Offences of Ukraine; IAP Monitoring Reports.

Legislation in most IAP countries also includes special laws on the fight against corruption, which define "corruption", and provide a list of corruption and/or corruption-related offences. Such laws usually establish a framework for anti-corruption measures and when it comes to liability for corruption offences, refer to specific codes – administrative or criminal. The latter approach allows, in most cases, to avoid contradictions, because administrative and criminal liability is based solely on the specific codes. However, general anti-corruption laws may bring about unnecessary confusion by providing, for instance, a different definition of public officials subject to liability, definition of undue advantages, etc. Such definitions may also contradict other laws regulating specific sectors of public administration (e.g. laws on civil service). It is therefore recommended to harmonise general anti-bribery laws with other legislation, most notably with administrative and criminal codes.

Box 3.2. **Criminalisation of corruption in Kyrgyzstan**

Kyrgyzstan is the only IAP country which has a specific offence called "Corruption"; it exists in addition to "traditional" bribery offences. Under Criminal Code (Art. 303), corruption is "an intentional act of creating a stable illegal nexus of one or several officials who have authority with separate persons or groups in order to illegally obtain material or any other benefits and advantages, as well as provision by them of such benefits and advantages to natural and legal persons, when it creates a threat to interests of society or state". It is punished with severe sanctions – imprisonment of 8-15 years with mandatory confiscation for basic offence and 15-20 years of imprisonment with confiscation for aggravated offence.

IAP monitoring report concluded that this offence overlaps with other corruption-related crimes (e.g. bribe-giving and receiving of a bribe, elements of organised crimes) and is contrary to the rule of law principle of legal certainty. "Despite the convenience, which such a broadly formulated offence may bear for the law enforcement bodies, it goes against fundamental principles of fair trial to keep it in the law and use in practice. If there are loopholes in other corruption offences, they should be filled but not compensated with such a 'catch-all' offence."

Source: IAP Second Monitoring Round Report, p. 20-21, *www.oecd.org*.

Bribery offences and their elements

Active and passive bribery is criminalised in all IAP countries. However, relevant offences often lack elements required by international standards and have other deficiencies which may hinder their effective enforcement. A number of IAP countries have been revising their criminal legislation to comply with these standards and recommendations offered by the monitoring mechanisms, including Istanbul Action Plan.

Offer, promise or giving/acceptance

According to the OECD Anti-Bribery Convention, CoE Criminal Law Convention and UN Convention against Corruption, an active bribery offence should comprise intentional offer, promise[1] or giving of an undue advantage to a public official. Each element should be criminalised as a complete and autonomous active bribery offence. This is mirrored by the requirement to criminalise as complete and autonomous offences the request[2] (solicitation) of an undue advantage and acceptance of an offer/promise of such advantage, as well as the receipt of the undue advantage as such. Such requirements are explained by the need to clearly denounce such acts and eliminate any possible legal loopholes. The

autonomous nature of such offences means that, for example, the request of an undue advantage, offering or promising of an undue advantage do not require the other side to respond positively to or even to have knowledge of such request, offer or promise.

"Promising" occurs where the briber commits himself to give an undue advantage later (for instance, after the official performed the act requested by the briber) – whether solicited by the bribe-taker or not. "Offering" may cover situations where the briber shows his readiness to provide the undue advantage. "Giving" occurs when the briber actually transfers the undue advantage. "Requesting" (or "soliciting") occurs when an official indicates to another person, explicitly or implicitly, that he will have to pay a bribe in order that the official act or refrain from acting. "Acceptance of an offer or promise of a bribe" occurs when the official, in response to such offer or promise, indicates his willingness to accept the future bribe. "Receiving" means the actual taking of the undue advantage by the official or someone else.[3]

All IAP countries have criminalised giving and receiving of a bribe in public sector; however, only few have other required offences (see Table 3.1).

Table 3.1. **Criminalisation of elements of bribery offences in IAP countries**

	Offer	Promise	Request	Acceptance of offer/promise
Armenia	✓	✓	–	–
Azerbaijan	✓	✓	✓	✓
Georgia	✓	✓	✓	✓
Kazakhstan	–	–	–	–
Kyrgyzstan	–	–	–	–
Tajikistan	–	–	–	–
Ukraine	✓	–	–	–
Uzbekistan	–	–	–	–

– : Not provided by national legislation.
✓ : Provided by national legislation.
Source: IAP **Monitoring Reports, OECD/ACN Secretariat research.**

Countries lacking relevant provisions often refer to inchoate (incomplete) offences – attempt and preparation – which in conjunction with active/passive bribery offence are supposed to cover offer/promise, their acceptance, request of a bribe. However, such approach has generally not been accepted by the IAP monitoring or any other monitoring mechanism dealing with corruption incriminations.

Inchoate offences in case of bribery are not functionally equivalent for the following reasons:

Firstly, preparation of a bribery offence is liable only with regard to bribery offences of certain gravity (e.g. in Kazakhstan and Tajikistan – only grave and especially grave; in Ukraine – to all offences, except for those of small gravity).

Secondly, attempted bribery takes place when the offence was not completed due to reasons beyond the person's control. In addition some criminal codes also provide for the exclusion of liability in case of voluntary abandonment of the crime, i.e. ceasing by perpetrator's own will of preparation or attempt at the bribery. This means that, for instance, if a person requests a bribe but then withdraws his request, he is exempted from liability. Equally, a person will avoid criminal liability if he withdraws his offer or promise of a bribe before receiving an unambiguous refusal from a potential bribe-taker.[4]

Thirdly, incomplete crimes often draw lower sanctions. In Tajikistan for example, the term or amount of sanction cannot exceed half (for preparation) or ¾ (for attempted crime) of the maximum term or amount of the most severe sanction envisaged by the respective article of the Special Part of the Criminal Code for the completed offence. In Uzbekistan, ¾ of the sanction for both preparation and attempt at crime. As noted in one of the IAP second monitoring round reports, such a "discount" is disproportionate to the gravity of the offence in the form of promise or offer of a bribe (since it concerns an intentional attempt to bribe an official, which was not completed due to circumstances beyond the control of the offender).[5] The OECD Working Group on Bribery, with regard to similar provisions in the Criminal Code of Russia, noted that such criminal penalties might not be effective, proportionate and dissuasive.[6]

Fourthly, liability for promise or offer of a bribe is much more effective than trying to cover the same acts through attempt. It is sufficient to prove the intentional promise or offer of a bribe, rather than trying to prove intention to give a bribe which was not realised due to circumstances beyond the person's control. The same concerns a request or acceptance of offer/promise of a bribe.

Finally, prosecution of a promise/offer of a bribe as an incomplete crime does not cover all practical situations. For example, an oral promise or offer, which will be considered as demonstration of intent to give a bribe and without performance of minimal actions, which will constitute preparation for bribery or attempted bribery, will go unpunished.[7]

Directly or indirectly

According to international instruments, active and passive bribery should be explicitly criminalised when committed either directly or indirectly, i.e. through intermediaries. Intermediaries are often used as a conduit to deliver a bribe or otherwise arrange a bribery act. Therefore the fact that an undue advantage was promised/offered/given or requested/accepted not directly, but via an intermediary should not preclude the liability of bribe-giver or bribe-taker.

When the words "directly or indirectly" or their equivalent are not included in the bribery incriminations, bribery through intermediaries may be covered through provisions on complicity. In such cases, it should not matter whether the intermediary acted in good or bad faith (i.e. whether the intermediary was aware that the benefit was intended to bribe or not). Use of complicity provisions should also not lead to the exclusion of liability of the main offenders – the briber and bribe-taker. Therefore, to eliminate any loopholes and inconsistent enforcement, it is recommended to include words "directly or indirectly" in the text of the relevant incriminations.

Criminal codes of all IAP countries, except for Ukraine, explicitly cover bribery committed directly or indirectly (through intermediaries).

Active and passive bribery through intermediaries can be supplemented (though not required by international standards) with a special offence of mediation in bribery (this exists in Armenia, Kazakhstan, Uzbekistan, as well as in other ACN countries – e.g. Belarus, Croatia, Estonia, Latvia, Russia). However, in this case an overlap with provisions on complicity in the bribery offences (in particular, the possibility to apply different sanctions) should be avoided.[8] While providing a useful tool to prosecute the acts of intermediaries, such an approach should not lead to focus being shifted away from the main bribery acts.

Third party beneficiaries

Another necessary element of bribery offences is that it should not matter to whom the undue advantage is intended for (namely for the official himself or another person or entity), as long as it is provided in exchange for the official to act or refrain from acting in the exercise of his official duties. The goal of this requirement is to cover situations when the official solicits an advantage for his relative, a political party, trade union, charity or company, when bribe goes to a third party with whom the official is in debt, etc. Third party beneficiary can be a natural person or an entity; it should also be immaterial whether the third party beneficiary had a criminal intent or participated in the corruption offence.

Criminal code provisions on bribery in Armenia, Azerbaijan and Georgia explicitly cover bribery for other persons; Criminal Code of Kazakhstan includes this element only in the passive bribery offence. As for other IAP countries, Kyrgyzstan and Ukraine's criminal codes do not specifically include third party beneficiaries. They are partly covered through explanatory resolutions of the respective Supreme Courts.[9] These resolutions establish that a bribe may be intended not for the official himself but for his close persons (relatives, friends, etc.). However, such a clarification is not fully compliant with international instruments, which state that third party beneficiaries can be any persons, natural or legal, close to the official or otherwise.[10] A similar resolution of Uzbekistan's Supreme Court provides a different clarification and states that bribery should cover situations where a bribe is received by "other persons" with official's knowledge or upon his instruction.

Criminal codes of some IAP countries (Kyrgyzstan, Tajikistan, and Ukraine) specify that a bribe may be received by an official in exchange for his actions or omission for the benefit of the bribe-giver or persons represented by him. However, this concept of the third party beneficiaries is different from what is required by international standards and relates rather to the bribery through intermediaries.

Undue advantage

One of the elements of bribery offences according to international standards, which IAP countries have difficulty transposing into law, is the concept of an undue advantage.[11] Namely, the broad scope of the notion "advantage" which includes a benefit that is intangible (i.e. a benefit not constituting or represented by a physical object and of a value which cannot be precisely measured) and/or non-pecuniary (not relating to or consisting of money). As noted in the Explanatory Report to the CoE Criminal Law Convention, what is important to be considered an undue advantage is that the offender (or any other person, for instance a relative) is placed in a better position than he was before the commission of the offence and that he is not entitled to the benefit.[12]

Examples of intangible advantages include: sexual relations; a case handled within a swifter timeframe or any other preferential treatment; better career prospects, including promotion and horizontal transfer to another post within the organisation; symbolic or honorific advantages like titles or distinctions; positive mass media coverage; scholarship; unremunerated internship; passing school or other selection procedures; etc. Practice in some ACN countries extends the notion of an advantage to include any benefit as long as it can be attributed to a market value, thus in principle, including some intangible benefits. However, such an approach hardly satisfies the full extent of international standard requirements, because there is no legal market for some benefits (e.g. prostitution) and some are difficult to assess in terms of market value (e.g. a distinction).[13]

From all the IAP countries, only Armenia ("money, property, property right, securities or any other advantage"), Azerbaijan ("any material or other values, privileges or advantages") and Georgia ("money, securities, property, material benefit or any other undue advantage") include tangible and intangible, pecuniary and non-pecuniary benefits as possible bribery offences. Other IAP countries, either directly in the criminal code or in the explanatory resolution of the Supreme Court (Ukraine[14]), exclude non-material and non-pecuniary advantages.

Advantage as an object of the bribery offences should also qualify as "undue". For the purposes of the CoE Criminal Law Convention "undue" means "something that the recipient is not lawfully entitled to accept or receive". Therefore, "undue" aims at excluding advantages permitted by the law or by administrative rules as well as gifts of very low value and socially acceptable gifts.[15] This allows countries to authorize acceptance of small value gifts not exceeding certain amount and not being given in exchange for an act or omission by an official. In other words, if an advantage is aimed at influencing a public official it should be qualified as an "undue" one and trigger liability. The limit for acceptable gifts is usually set in the civil service laws, laws on prevention of corruption and conflict of interests (see relevant section of this report on acceptable gifts).

Other elements

According to international instruments, bribery offences are committed in order for the official "to act or refrain from acting in the exercise of his or her official duties" (UNCAC).[16] The intention is to encompass situations when an official, in exchange for a bribe, acts outside his competence (duties, functions). Such acts or omissions are made possible in relation to the official's function (duties), but not necessarily included in his formal scope of authority. Therefore laws which limit bribery to situations when an official is induced to act (or refrain from acting) within the scope of his powers (competence) are considered to be incompliant with the standards.[17]

From IAP countries, criminal codes of Azerbaijan and Georgia use the wording similar to that of the conventions. Other countries use provisions which, if taken literally, narrow the scope of the bribery offences[18] (see Table 3.2).

Table 3.2. **"To act or refrain from acting in the exercise of his or her official duties"**

	Criminal Code provisions
Armenia	"... for the purpose of carrying out or not carrying out an action by an official, within the scope of powers thereof …"
Kazakhstan	"... for actions (inaction) ... , if such actions (inaction) are included in the official powers of the person authorised to exercise state functions ... or if such person due to his official status can facilitate such actions (inaction) ..."
Kyrgyzstan	"... for action (inaction) ... if such action (inaction) is included in the official powers of the official or if due to his official status he can facilitate such action (inaction) ..."
Tajikistan	"... for actions (inaction) ... , if such actions (inaction) are included in the official powers of the official... or if due to his official status he can facilitate such actions (inaction) ..."
Ukraine	"... for carrying out or not carrying out ... of any action with the use of authority or official status granted to him ..."
Uzbekistan	"… for carrying out or not carrying out ... of a certain action which an official should have or could have committed with the use of his official status ..."

Source: IAP Monitoring Reports, OECD/ACN Secretariat research.

The IAP countries of Armenia, Kazakhstan, Kyrgyzstan and Tajikistan provide for aggravated bribery offences when they involve illegal actions (inaction) committed by officials. This partly addresses possible problems with definition of bribery, which is narrower than provided in the international standards.

> Criminal Code of Kyrgyzstan (Articles 310 and 311) contains two separate passive bribery offences – "bribe-reward" and "bribe-subornation" – which are differentiated by the existence of prior agreement between the briber and the bribe-taker. "Bribe-reward" usually takes place when the benefit is given to the official after the act without prior agreement as a kind of "thank you". Report on the Second Round Monitoring of Kyrgyzstan (p. 21, *www.oecd.org*) under the IAP criticised "prior agreement" as an element triggering different sanctions and creating possibility for abuse through the use of various passive bribery offences.

Wording of the international instruments ("in order that", "for him or her to") refers to situations when an undue advantage is provided (offered or promised) before the act or omission by the official. Legislation of most of the IAP countries (in some cases through interpretative resolutions of the judicial bodies[19]) goes further and also covers bribery committed after the act (omission) has already taken place.

IAP countries also commonly include (directly in the incriminations or through interpretative judicial resolutions) in the bribery offences such element as "patronage or connivance" carried out by the official in exchange for a bribe. The intention is to cover situations when the official receives a bribe from a subordinate or another person under his control for providing support or protection of interests of the latter during an extended period of time or for non-reaction to wrongdoing, bad performance of the bribe-giver. While not strictly required by the international instruments, such concept allows for broadening of the scope of bribery offences and should therefore be welcomed.

Other corruption offences

Private sector bribery

UNCAC (Art. 21) includes as a non-mandatory offence bribery in the private sector. CoE Criminal Law Convention (Art. 7-8) contains similar provisions, but they are binding on the State-Parties to the Convention which did not use their right to make a reservation when signing or ratifying the Convention.[20] Since the IAP monitoring mechanism is not formally limited to any of the conventions and covers broad international anti-corruption standards, it considers bribery in the private sector as a standard which should be implemented in all IAP countries.

Criminalisation of bribery between two private entities is a reaction to the privatization of public services and whole sectors of economy and reflects harm caused by corruption to economic development, business relations and society in whole.

IAP countries, coming from the former Soviet Union, which did not recognize private property, have had private sector bribery criminalized already, as bribery offences did not differentiate between officials of public and private entities. However, enforcement of bribery provisions against officials of private entities was almost non-existent. Recently, most of the IAP countries have introduced separate private-sector bribery offence (sometimes called "commercial bribery") – only Azerbaijan and Uzbekistan cover private sector bribery through broad definition of an official in the general bribery incriminations.

Another feature of private-sector bribery criminalisation is that all IAP countries (except for Kyrgyzstan) extend these offences to any non-public entity, commercial or not (thus covering charities, citizen associations, other organisations). Even when the offence is called "commercial bribery" it often goes beyond the for-profit sector (as in Armenia, Georgia, Kazakhstan, Tajikistan, Ukraine). This is more than required by the UN and CoE conventions, which deal with private-sector bribery "in the course of economic, financial or commercial activities" (UNCAC) or "in the course of business activity" (CoE Criminal Law Convention[21]). Such an approach is not unique for the IAP countries, other ACN states employ it too, for instance: Albania, Croatia, Latvia, Lithuania, Moldova, Romania, and Slovakia.

IAP countries omit in their criminal codes another element contained in the relevant provisions of the international treaties – that the bribery in the private sector be committed in breach of duties of the perpetrator working for the private entity. Since in both situations stated above (incriminations cover the non-profit sector and when committed not necessarily in breach of duties) extend the scope of bribery offences, it is not considered as a non-compliance with international standards.

According to international standards, bribery offences in the private sector should also include other elements, similar to public sector offences: promise, offer or giving for active bribery; request and receipt, acceptance of offer/promise for passive bribery; intangible and non-pecuniary undue advantage; directly or indirectly; third party beneficiaries. One more element is that private sector offences concern active or passive bribery of "any person who directs or works, in any capacity, for a private sector entity", which includes low-level employees and such people as consultants and agents working for the private entity. Most IAP countries do not include the latter element, extending relevant provisions to bribery of/by persons exercising managerial, administrative or other similar functions. Below is a table reflecting IAP countries compliance with the necessary elements of private-sector bribery offences.

Table 3.3. **Elements of private-sector bribery offences**

Elements of private-sector bribery offences	ARM	AZE	GEO	KAZ	KGZ	TJK	UKR	UZB
Active bribery: Promise, offer, giving	✓	✓	✓	–**	–**	–**	–***	–**
Passive bribery: Request and receipt, acceptance of offer/promise	–*	✓	✓	–*	–*	–*	–*	–*
Undue advantage (intangible and non-pecuniary)	✓	✓	✓	–	–	–	✓	–
Directly or indirectly	✓	✓	✓	–	–	–	–	–
Third party beneficiaries	✓	✓	✓	–	–	–	–	–
"any person who directs or works, in any capacity, for a private sector entity"	–	–	✓	–	–	–	–	–

* Only receipt of a bribe is covered.
** Only giving of a bribe is covered.
*** Only offer and giving of a bribe are covered.
– : Not provided by national legislation.
✓ : Provided by national legislation.
Source: IAP Monitoring Reports, OECD/ACN Secretariat research.

Several IAP countries (Armenia, Kyrgyzstan, Tajikistan) established a separate offence of bribery in sport and commercial contests (bribery of participants and organisers of professional sport events and commercial competition shows). This is a good practice which allows to cover a broad range of persons who may not be included in the public- or

private-sector bribery offences, like sportspersons, referees, trainers, team managers, organisers and jury members of commercial competition shows (e.g. television contests, beauty pageants), etc.

Ukraine has also established a separate offence of active and passive bribery of persons who are not public officials but provide public services, namely auditors, notaries, appraisers, experts, bankruptcy administrators, labour arbitrators, etc.

A special approach to prosecution of private-sector bribery is found in Russia, where for "commercial bribery" that has caused harm exclusively to the interests of a commercial organisation, which is not a governmental or municipal enterprise, prosecution is instituted only upon the application of this organisation or with its consent. According to Russian authorities, this provision was introduced to serve as a safeguard against, in particular, groundless interference into the economic activity of small and medium-sized companies.

In its report on Russia, GRECO found this arrangement problematic, as this formal requirement may constitute an obstacle to prosecution which is against the spirit of the CoE Convention. Also according to GRECO report, there is no justification for subjecting the prosecution of corruption in the private sector to a regime different from the general regime applicable to other corruption offences.[22] None of the IAP countries employ such a limitation to private-sector bribery offences, although some countries (e.g. Kazakhstan, Ukraine) restrict prosecution of abuse of powers in the private sector to situations when an aggrieved entity lodges a relevant request.

Trading in influence

Trading in influence is another corruption offence which is binding under the CoE Criminal Law Convention (Art. 12) and optional according to the UNCAC (Art. 18). Trading in influence, according to the CoE Convention, is one of the provisions to which states are allowed to make a reservation when signing or ratifying the treaty and exclude or attach certain conditions to its application.[23] From IAP countries that are Parties to the Convention, Armenia and Azerbaijan reserved their right not to establish as a criminal offence trading in influence (although both countries did criminalise this office in 2008 and 2006 respectively). Since the IAP monitoring mechanism is not formally limited to any of the conventions and covers broad international anti-corruption standards, it considered trading in influence as a standard which should be implemented in all of the IAP countries.

Box 3.3. **Trading in influence offence in Armenia**

Armenia has criminalised passive trading in influence by establishing in 2008 a criminal offence "Use of real or supposed influence for mercenary purposes" (Art. 311-2 CC). Also trading in influence is supposed to be covered by active and passive bribery offences, since they include the element of "favouring the action or refraining from action by an official or a public servant in the exercise of his or her official functions".

IAP Second Monitoring Round report while welcoming criminalisation of trading in influence in Armenia (despite its reservation to the CoE Criminal Law Convention in this regard), noted a number of deficiencies: Article 311-2 CC refers only to acts committed for "mercenary purposes"; request and acceptance of offer/promise, third party beneficiaries are not covered in Art. 311-2. These deficiencies are not compensated by broad scope of bribery offences, because they cover only situations when influence peddler is a public official.

Source: IAP Second Monitoring Round Report on Armenia, p. 26-27, *www.oecd.org*.

Trading in influence also includes active and passive sides and covers situations when an undue advantage is given (promised, offered) to anyone who asserts or confirms that he is able to exert an improper influence over the decision-making of a public official, as well as when such advantage was received (its offer or promise accepted) in consideration of that influence – whether or not the influence is actually exerted and whether or not the supposed influence leads to the intended result.[24] In the active part – a person gives an undue advantage to the influence peddler who claims, by virtue of his professional position or social status, to be able to exert an improper influence over the decision-making.

In the passive – the influence peddler receives the undue advantage for influencing the decision-making. In both cases the undue advantage goes to the influence trader, not the public official, and not for the influence trader to act or refrain from acting as in the bribery offences. As described in a judgment of the French Court of Cassation, the offence of trading in influence is committed if the person concerned "is considered or describes himself or herself as an intermediary whose actual or supposed influence is such as to be able obtain an advantage or a favourable decision from a public authority".[25]

"Criminalising trading in influence seeks to reach the close circle of the official or the political party to which he belongs and to tackle the corrupt behaviour of those persons who are in the neighbourhood of power and try to obtain advantages from their situation, contributing to the atmosphere of corruption."[26] Examples of trading in influence include: leader or functionary of a political part trades his influence over the party regarding vote in the parliament; an official sells his influence to influence awarding of honorary decorations; an individual receives money for promising to exert influence over the award of a public procurement contract by the ministry where the individual's friend is working, etc.

Influence trading should be separated from legitimate lobbying activity. The CoE Convention achieves this by using the concept of "improper influence" meaning that lawful lobbying activity aims to exert "proper", i.e. not prohibited, influence.[27] UNCAC provides that in exchange for an undue advantage an official or any other person "abuse" influence with a view to obtaining from a public authority an undue advantage. However, the line between acknowledged lobbying activities and trading in influence is rather thin.[28] As noted in one of the GRECO reports, it is only when the lobbying or the attempt to exert influence results in holding out the prospect of specific advantages to public officials who are involved in the decision-making process, that the bounds of propriety are overstepped.[29]

Out of the IAP countries trading in influence has been criminalised by Armenia (passive side only), Azerbaijan, Georgia and Ukraine. Relevant provisions have certain deficiencies in covering all necessary elements of the trading in influence offence, for instance:

- in Armenia – see Box 3.3.
- in Ukraine promise, request and acceptance of promise/offer, direct or indirect commission and third party beneficiaries are not covered.

In most of the IAP countries interpretative resolutions by the supreme courts (or directly criminal code as in Armenia) extend bribery offences to situations when the official does not have the powers to carry out the act (omission) in exchange for a bribe, but through his official position can facilitate such an act (omission). It may be argued that such broad understanding of the bribery offences in fact covers trading in influence offence. However, such approach is deficient and cannot be considered as functionally equivalent to trading in influence offence, in particular because it covers only officials (in most cases – public officials), excluding other persons.

Illicit enrichment

UN Convention against Corruption (Art. 20) provides the optional offence of illicit enrichment, that is a significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful income. An offence of illicit enrichment may be a powerful tool in prosecuting corrupt officials, as it does not require proving the corruption transaction actually happening but allows to draw inferences from the fact of possession of unexplained wealth by an official, which could not have been gained from lawful sources. As with money laundering, there is a predicate offence to illicit enrichment (most often corruption), but the prosecution is not obliged to prove it.

Box 3.4. Offence of illicit enrichment in Lithuania

In 2010, Lithuania established offence of illicit enrichment in its Criminal Code (Art. 189-1). According to it, a person who, by right of property, possesses property in the amount exceeding 500 minimum subsistence levels [about EUR 18 000] and was aware or ought to have been aware or could have been aware that the property could not have been acquired by means of legal proceeds, shall be punished by a fine or by arrest or by imprisonment for a term of up to four years. Such property is subject to mandatory confiscation. A legal entity shall also be held liable for the acts provided for in this Article.

If the property's value is less than established threshold for criminal liability, the person will be ordered to pay taxes from the assets and may be sanctioned in administrative proceedings to a fine from 10 to 50% of the property's value.

Source: Information of Government of Lithuania.

At the same time, introduction of illicit enrichment offence poses a number of legal problems, as it may be seen as not in line with human rights standards. IAP monitoring has, however, held that these obstacles can be overcome by a careful wording of the offence. The elements of this crime should be formulated in such a way that the fundamental human rights to presumption of innocence and not to self-incriminate are not violated.[30] For this purpose, it is necessary to put the burden of proof on the prosecutor to ascertain the existence of certain assets, absence of lawful sources of income, which could have explained them, criminal intent to acquire the assets, etc. (thus creating a rebuttable presumption of illicit enrichment). In case of sufficient evidence the court has the right to infer person's guilt, in particular, from the absence of explanation of such person with regard to legality of the mentioned assets.[31]

The aforementioned difficulties explain why only a few countries have established such an offence. From the IAP countries, only Ukraine has introduced an offence which is called "Illicit enrichment" (Article 368-2 of the Criminal Code) in 2011. However, the actual wording of the provision provides for a different offence – "receiving by an official of an undue advantage in a significant amount or transfer by him of such advantage to close relatives if no elements of bribery are present". This new offence in the Ukrainian Criminal Code may in fact overlap with bribery offences and can hardly be implemented in practice.[32]

Embezzlement, misappropriation or other diversion of property, abuse of powers

The UN Convention against Corruption provides for embezzlement, misappropriation or other diversion of property by a public official (Article 17) as a mandatory offence and embezzlement of property in the private sector (Article 22) as an optional offence,

which State Parties have to consider adopting. Both these offences are criminalised in IAP countries.

Another optional offence under the UNCAC is abuse of functions or position, that is the performance of or failure to perform an illegal act by a public official in the discharge of his functions, for the purpose of obtaining an undue advantage for himself or for another person or entity. All IAP countries have established an offence of abuse of functions (powers, office), including in the private sector.

Unlike the UN Convention, offences of abuse of powers in the IAP countries include such element as causing substantial harm to rights and legitimate interests of citizens or organisations or protected by law interests of a society or state. Such "substantial harm", which may be non-pecuniary, is determined in the codes only with regard to material, pecuniary damages. There is also no clear link to obtaining of an undue advantage – abuse of power is considered committed when it pursued private interests or interests of other persons. These additional elements may be seen as narrowing down incrimination contained in the UNCAC and also raise issue of legal certainty.

Some special features of IAP countries is that besides an abuse of functions offence, there is a separate offence of excess of authority, which includes: commission of actions that belong to the competence of superior official in the same public institution or an official of another institution; commission of actions which are allowed only in specific circumstances, or with special permission, or under special procedure – in the absence of such conditions; commission individually of actions which may have been committed only collectively; commission of actions which no one has the right to commit.[33]

In the IAP countries the latter offence contains the same condition as in the abuse of functions offence ("causing substantial harm to rights and legitimate interests of citizens or organisations or protected by law interests of a society or state"), but also another element – that the actions should be patently outside of official's scope of powers. These two elements may also raise issue with regard to compliance with legal certainty requirement as they can be interpreted broadly and inconsistently. As noted in the IAP report on Kyrgyzstan, such vague wording may itself instigate corruption, as it allows wide discretion in criminal prosecution.[34]

Money laundering

Both the CoE Criminal Law Convention (Art. 13) and the UN Convention against Corruption (Art. 23) cover the offence of money laundering. CoE Convention refers to the conduct determined in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime. It requires the criminalisation of such conduct when the predicate offence consists of any of the corruption crimes established in accordance with the CoE Criminal Law Convention against Corruption. UNCAC determines necessary elements of the money laundering offence and urges its application to "the widest range of predict offences" and makes it mandatory to apply it to corruption offences established in accordance with the UNCAC.

All IAP countries have criminalised laundering of proceeds from bribery or other corruption offences (on corporate liability for money laundering see the next section of this report). Armenia, Azerbaijan, Georgia and Ukraine are parties to the Council of Europe anti-money laundering convention and are subject to mutual evaluations by the MONEYVAL.[35] Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan are subject to mutual

evaluations as members of the Eurasian group on combating money laundering and financing of terrorism (EAG).[36]

One of the issues reviewed during IAP second round of monitoring was the autonomous nature of money laundering, which means that laundering of corruption proceeds should be a stand-alone crime and not dependent on the prior conviction for the predicate offence. All IAP countries have difficulty in achieving this standard. Although not legally required under relevant criminal law provisions, court practice in money laundering cases usually demands that there be a conviction for the predicate offence or that at least predicate and money laundering offences should be prosecuted and tried jointly. Otherwise only self-laundering will effectively be prosecuted and other forms of laundering of corruption proceeds will not be enforced.

An interesting approach is used in Georgia, where money laundering incrimination (Art. 194.1 CC) covers unjustified property or income, i.e. property or income received from the property that is considered illegal unless the person, his family, close relative or related person does not own documents proving legal means of gaining such property.

Corporate liability

Corruption offences are often committed for the benefit of legal persons. Complex governance structures and collective decision-making processes in corporate entities make it difficult to uncover and prosecute such offences. Perpetrators and instigators are able to hide behind the corporate veil and evade liability. Also, individual liability of company officers is not an effective deterrent of corporate wrongdoing.

The liability of legal persons for corruption offences is a well-established international standard included in the mandatory provisions of international anti-corruption instruments: from the 1997 Second Protocol to the EU Convention on the Protection of the Financial Interests of the European Communities (Art. 3) and OECD Anti-Bribery Convention (Art. 2), to 1999 CoE Criminal Law Convention (Art. 18) and the 2003 UNCAC (Art. 26).

Box 3.5. **Standard of corporate liability for corruption offences according to CoE Criminal Law Convention and OECD Anti-Bribery Convention:***

Offence committed by a natural person in leading position within the legal person for the benefit of that legal person; or

Where a natural person in leading position within the legal person fails to prevent commission of offence for the benefit of that legal person, including through a failure to supervise or to implement adequate internal control.

* According to Annex I to Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, November 2009.

None of the aforementioned instruments require a specific form of liability for legal entities. They allow states to choose from criminal, administrative and civil liability. However, the CoE Convention and UNCAC impose a specific obligation to establish liability for criminal corruption offences as described by the conventions (under CoE Convention for active bribery, trading in influence and money laundering; UNCAC – for all offences established in accordance with this Convention). This means that even if administrative corporate liability is established, it should refer to criminal offences complying with conventions' requirements or administrative offences should copy relevant criminal offences.[37]

The initial review and assessment within the Istanbul Action Plan recommended countries to consider how to introduce effective liability of legal persons for corruption-related criminal offences into their legal system effective liability of legal persons for corruption-related criminal offences. During second round of monitoring new recommendations were given to the IAP states, namely to introduce corporate liability in line with international standards.

The second monitoring round found that, from Istanbul Action Plan countries, only Georgia had introduced liability of legal persons in line with international standards. In 2006, Georgia amended its Criminal Code and established criminal liability of legal persons for money laundering, private sector bribery and active bribery in the public sector where the act was "committed by a responsible person[38] on behalf of or through a legal person and/or for the benefit of it". In 2008, the Criminal Code was further amended to add corporate liability for lack of supervision or control on behalf of the "responsible person", which led to the commission of the offence.

Several other IAP countries are contemplating the introduction of corporate liability for corruption: Kazakhstan – through amendments in the Criminal Code; Armenia – in the Code of Administrative Offences. Ukraine had introduced a sui generis liability of legal persons for criminal corruption offences in a separate law in 2009; however, the law was abolished in January 2011, having been effective only for 5 days. In January 2013, the Ukrainian government submitted a new draft law on corporate liability in parliament ("on criminal measures applicable to legal persons"). In March 2012, Azerbaijan passed amendments in the Criminal Code establishing criminal liability of legal persons (see Box below).

Box 3.6. **Liability of legal persons in Azerbaijan**

In March 2012, Azerbaijan introduced amendments in the Criminal Code that established liability of legal persons for a number of offences, including corruption. According to new Chapter 15-2 of the Criminal Code, "criminal law measures" may be applied to legal persons for commission in its favour and interests of a crime by the following natural persons: official authorized to represent the legal person; official authorized to make decision on behalf of the legal person; official authorized to oversee the activity of the legal person; and any employee of the legal person when the offence was committed as a result of failure to oversee such employee by the mentioned officials. Termination of criminal proceedings against natural person does not prevent application of criminal law measures to the legal person.

The following "criminal law measures" are applicable to legal persons: fine; special confiscation; deprivation of the legal person of the right to engage in certain activity; dissolution of a legal person. Concrete sanction depends on the following circumstances: nature and degree of public endangerment; size of the gain of the legal person as a result of crime commission as well as nature or degree of realization of its interests; number of perpetrated offences and gravity of their consequences; contribution by the legal person to the clearance of crime, dismantling the participants thereof, as well as tracing and discovering of the crime proceeds; voluntary compensation or settlement of the material and psychological damage, measures taken by the legal person to reduce the damage inflicted to the victim; characteristics of the legal person, including whether "criminal law measures" have been previously applied to it, benevolent or other publicly useful activities it was involved in.

Source: Information of the Government of Azerbaijan.

Armenia, Azerbaijan and Ukraine have introduced administrative liability of legal persons for money laundering. Legislation in Kazakhstan, Kyrgyzstan, Tajikistan and

Uzbekistan does not provide for administrative or criminal liability of legal persons for money laundering.[39]

There are three overall main forms of corporate liability in ACN and OECD countries:

- administrative liability as a part of the general administrative offences act or a special law on administrative corporate liability (e.g. Bulgaria, Germany, Greece, Italy, Russia);
- criminal liability – provisions included in the criminal code (e.g. Estonia, Georgia, Latvia, Lithuania, Moldova, Romania) or as a separate law (e.g. Albania,[40] Croatia,[41] Hungary,[42] Montenegro,[43] Serbia,[44] Slovenia);[45]
- quasi-criminal (sui generis) liability – not considered to be a criminal liability, but applied for the commission of criminal offences by courts dealing with criminal matters according to criminal procedure (e.g. Poland,[46] Slovakia,[47] Sweden).[48]

Administrative corporate liability often has a weak point in the narrow set of available investigative tools (which excludes coercive and covert measures), compared with those available under criminal procedures.[49]

Autonomous liability. One of the main issues in establishing an effective corporate liability is ensuring its autonomous nature. Corporate liability should not be dependent on prosecution and conviction of the natural person committing the criminal act. Good Practice Guidance on implementing the OECD Anti-Bribery Convention[50] states that the liability of legal persons should not restrict the liability to cases where natural persons who perpetrate offences are prosecuted or convicted. According to OECD Working Group on Bribery monitoring reports, "a regime that requires the conviction and punishment of a natural person fails to address increasingly complex corporate structures, which are often characterised by decentralised decision-making".[51] Conviction of a natural person as a prerequisite to the liability of a legal person also prevents the application of effective, proportionate and dissuasive sanctions to legal persons. Back in 1988, the Council of Europe's Committee of Ministers, in its Recommendation to member states provided that enterprises should be held liable, whether a natural person who committed the acts or omission constituting the offence can be identified or not.[52]

Similarly in its evaluations, GRECO was concerned about "the fact that a physical perpetrator has to be identified first, as in large corporations, the sheer potential for persons being responsible for only a fraction of the completed offence as well as collective decision-making processes could make it impossible to identify with certainty a particular natural person as a suspect and/or prosecute him/her".[53]

A good practice in this regard is the Criminal Code of Georgia (Art. 107-1), which provides that a legal person shall be subject to criminal responsibility if a crime is committed on behalf of or through it and/or for the benefit of it, whether the perpetrator is identified or not. According to Legislative Decree No. 231/2000 (Art. 8) of Italy, liability of companies also exists when: *a)* the offender has not been identified or is not chargeable; *b)* the offence extinguishes for a reason other than amnesty.

Defence. Corporate liability for lack of supervision or control on behalf of leading persons (persons with highest level managerial authority) promotes implementation in companies of adequate internal control, ethics and compliance programmes or measures.[54] Existence of such internal control system may be established as a defence exempting company from liability for actions of its employees. For example, in Italy a legal person is not liable for an offence committed by a person holding a managing position or persons who are

Box 3.7. **Culpability of legal persons**

The usual objection against the introduction of corporate liability is the reference to the individual nature of criminal liability. Guilt in traditional understanding (psychological attitude to the committed) cannot indeed be attributed to legal persons, which are fictional entities. However, legislation of some countries, which find it difficult to establish criminal liability of legal persons due to that reason, provides for "guilty" liability of legal persons for administrative offences. For example, relevant codes of Tajikistan and Kyrgyzstan establish that legal persons are liable for administrative offences (though not for corruption ones), which requires establishment of guilt; legal persons enjoy the guarantees of presumption of innocence. Standard of liability is that a legal person is subject to liability where it has been established that it was able to observe requirements whose violation triggers administrative liability, but did not take all possible measures to observe them. Similar model is used in the Code of Administrative Offences of Russia.

Other countries (like Georgia) provide for corporate liability when relevant acts were directly committed by company's responsible (leading) persons or through negligence (lack of supervision or control) of such persons. A crucial element that links personal wrongdoing to corporate is that such offences have to be committed for the benefit of the legal person.

Above models provide for objective imputation of guilt or strict liability not requiring guilt as such and show how traditional concepts of legal liability can be adjusted to accommodate new realities and establish corporate liability that can be effective.

under their direction or supervision if it proves that before the offence was committed *i)* the body's management had adopted and effectively implemented an appropriate organisational and management model to prevent offences of the kind that occurred; *ii)* the body had set up an autonomous organ to supervise, enforce and update the model; *iii)* the autonomous organ had sufficiently supervised the operation of the model; and *iv)* the natural perpetrator committed the offence by fraudulently evading the operation of the model.

Sanctions. Legal persons should be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions. Monetary sanctions should be sufficiently severe to have an impact on large corporations. According to the OECD WGB, to ensure a level playing field of commerce and prevent "regulatory arbitrage" monetary sanctions have to be compared on an international level. The OECD WGB considered maximum sanctions of EUR 1 million (Germany, Italy, Phase 2 reports), EUR 1 660 000 (Slovakia, Phase 3 report) and EUR 700 000 (Austria, Phase 2 report) to be insufficient. On the other hand, the maximum criminal sanctions of about EUR 16 million (Estonia, Phase 2 report) and EUR 10 million (Belgium, Phase 2 report) were found by the OECD WGB to be sufficient. It should be kept in mind that in the both above cases the confiscation of the bribe and its proceeds was available as well. When the monetary fine is calculated by multiplying several times the value of the benefit obtained by the legal person, such "benefit" should be understood broadly to include the value of the contract obtained as result of bribery, tax relief, subsidies, licenses, etc.[55]

Other standards. Corporate liability should extend to private, state-owned and state-controlled enterprises, as well as entities that have no formal legal personality at law but are granted with equivalent legal capacity. Corporate liability, be it administrative or criminal, should also allow for effective use of mutual legal assistance.

Liability of legal persons should not be limited to cases when the legal person has actually obtained a benefit from bribery. Such restriction may exclude liability when, for instance, a company won a contract due to bribery, but the contract did not generate any revenues because it was a poor business decision.[56]

Definition of a public official

Domestic public official

International standards require that bribery offences cover a broad range of public officials. The definition of a national public official should include any person who:

- Holds a legislative, executive or administrative office, including heads of state, ministers and their staff.
- Is a member of a domestic public assembly exercising legislative or administrative powers.
- Holds a judicial office, including a prosecutor.
- Holds an office in local self-government bodies.
- Performs a public function, including for a public agency. A public agency may include an entity constituted under public law to carry out specific tasks in the public interest.
- Performs a public function for a public enterprise. A public enterprise should include any enterprise in which the government holds a majority stake, as well as those over which a government may exercise a dominant influence directly or indirectly. It should also include an enterprise that performs a public function and which does not operate on a normal commercial basis in the relevant market, i.e., not on a basis which is substantially equivalent to that of a private enterprise, without preferential subsidies or other privileges. The definition should also include executives, managers and employees.
- Performs any activity in the public interest delegated by a public authority, such as the performance of a task in connection with public procurement.
- Provides a public service as defined in the domestic law and as applied in the pertinent area of law of that country, e.g. domestic arbitrators, jurors, notaries, forensic experts.
- Meets the definition of a "public official" in the domestic law of the country, including the definitions for "official", "public officer", "mayor", "minister" or "judge". It also includes law enforcement officers and the military.[57]

Box 3.8. **Definition of a public official in Azerbaijan**

In June 2011, in response to recommendations by the IAP and GRECO, Azerbaijan amended its Criminal Code and provided for an autonomous definition of an official subject to liability for bribery offences. Previous provision of the Criminal Code referred to the Law on Combating Corruption and did not cover such persons as auxiliary employees in public authorities, officials of the local self-government, foreign public officials.

Source: IAP Monitoring Report, information of the Government of Azerbaijan.

In determining whether or not a person is a national public official, it is irrelevant whether that person is: appointed or elected; permanent or temporary; or paid or unpaid, irrespective of that person's seniority, whether he or she hold an auxiliary position.

A common problem for IAP countries is the dispersed definition of the "officials" subject to bribery offences, as some elements of definition may refer to various laws, e.g. on civil service, on fight against corruption, on various public authorities. For the sake of legal certainty it is preferable to have an autonomous definition included in the Criminal Code.

Box 3.9. **Definition of a public official in Ukraine**

Reform of anti-corruption legislation in Ukraine in 2011 amended the definition of an official relevant for bribery incriminations. New framework law on the prevention and combating of corruption contains a list of persons liable for corruption offences and includes a broad range of domestic and foreign officials and public employees. Domestic officials and public employees are in general defined as "persons authorised to perform functions of the state or local self-government". At the same time, the Criminal Code preserved an autonomous definition of officials, in particular, referring to 1) "persons who perform functions of representatives of power or local self-government" and 2) persons who hold in state authorities, local self-government bodies, state and municipal enterprises, establishments and organisations offices connected with organisational, managerial, administrative or economic functions. According to Ukrainian Supreme Court's Resolution on judicial practice in bribery cases, first category means, in particular, "employees of public organs and their establishments who are entitled to set demands and make decisions binding on natural and legal persons regardless of their departmental affiliation or subordination". Such a definition therefore does not match that of the 2011 Law on prevention and combating corruption and may result in inconsistent enforcement in violation of legal certainty. See also IAP Second Monitoring Round Report, p. 30-31, *www.oecd.org*.

Source: IAP Second Monitoring Round Report on Ukraine; OECD/ACN Secretariat research.

In several IAP countries, "officials" (Armenia, Tajikistan, Ukraine – see below) are limited to public employees with managerial, administrative, organisational or financial functions, thus excluding auxiliary employees (e.g. clerks, secretaries, typists, couriers, drivers, archivists). This falls short of international standards.

Some IAP countries (e.g. Azerbaijan, Kazakhstan) extend the definition of an official even to candidates for political offices, like the President, members of the parliament and local representative bodies. This is a good practice which should be spread.

Foreign public official

According to international standards, corruption offences should also cover officials of foreign states and officials of public international organisations. The definition of a foreign public official is comparable with that of a domestic public official with reference to a foreign state. A "foreign public official" is defined in the UNCAC (Art. 2) as "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise."

The OECD Anti-Bribery Convention (Art. 1) defines a foreign public official as any person holding a legislative, administrative or judicial office of a foreign country (at all levels and subdivisions of government, from national to local), whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation. The CoE Criminal Law Convention refers to public officials of another

state, but also specifically mentions members of foreign public assemblies, officials of public international or supranational organisation or body, parliamentary assemblies of international or supranational organisation of the which the Party is a member, judges and officials of international courts. Additional Protocol to the CoE Criminal Law Convention[58] also includes foreign arbitrators and foreign jurors.

Table 3.4. **Definition of foreign public officials**

	Foreign public officials	Officials of international organisations
Armenia	✓	✓
Azerbaijan	✓	✓
Georgia	✓	✓
Kazakhstan	–	–
Kyrgyzstan	–	–
Tajikistan	–	–
Ukraine	✓	✓
Uzbekistan	–	–

– : Not provided by national legislation.
✓ : Provided by national legislation.
Source: IAP Monitoring Reports, OECD/ACN Secretariat research.

International standards allow that bribery of foreign public officials be covered either through separate offences or by extending the definition of persons subject to criminal liability for bribery offences to encompass foreign public officials. All IAP countries which have already criminalised bribery of foreign public officials (see Table above) have chosen the latter approach and extended definition of an official to cover foreign public officials.

Box 3.10. **Definition of a foreign public official in Kazakhstan**

One of the IAP recommendations initially given to Kazakhstan was to introduce liability for active and passive bribery of foreign public and international organisations officials. The Law of 21.07.2007 supplemented Article 311 of the Criminal Code of Kazakhstan ("Receiving a bribe") with Note 4, which provides that the term "officials" mentioned in that Article and Article 312 of the Criminal Code ("Giving a bribe") also includes the officials of foreign states or international organisations. However, in these Articles the "officials" are only subjects of aggravated offences; other offences in these articles refer to other subjects ("a person authorized to perform public functions or a person equated to them", "a person holding a responsible public office"). Therefore, Articles 311-312 of the Criminal Code apply to officials of foreign states or international organisations only partly, which does not comply with international standards. IAP report also recommended Kazakhstan to specify in detail the term "officials of foreign states or international organisations" in accordance with international standards (Article 2 of the UNCAC; Articles 5, 6, 9-11 of the CoE Criminal Law Convention; Article 1 of the OECD Anti-Bribery Convention).

Source: IAP Second Monitoring Round Report on Kazakhstan, p. 38, *www.oecd.org*.

Sanctions

International conventions consider corruption offences to be serious offences and require that sanctions for such offences, when committed by natural or legal persons, be effective, proportionate and dissuasive.[59] For natural persons, the CoE Criminal Law Convention (Art. 19) and the OECD Anti-Bribery Convention (Art. 3) specifically provide

for availability of a deprivation of liberty sanction, sufficient to enable effective mutual legal assistance and extradition. The UN Convention against Corruption (Art. 30) also provides for the possibility of disqualification of persons convicted of corruption offences from holding a public office or office in a state-owned enterprise. Sanctions against legal persons can be penal, administrative or civil in nature and should include monetary sanctions.

When evaluating compliance of established sanctions with international standards, attention is paid to the following: the level of sanctions for bribery offences compared with other economic crimes (fraud, embezzlement, etc.); difference between sanctions for private and public sector bribery offences; sanctions for various bribery offences like promise, offer, giving/request, receipt, acceptance of promise or offer of a bribe; whether minimum and maximum limits of sanctions for bribery offences are dissuasive enough or whether they are not excessive to breach proportionality principle; difference between sanctions for active and passive bribery offences; whether sanctions provide for imprisonment term sufficient to allow extradition; when severity of sanctions is linked to the statute of limitation – whether sanctions enable a statute of limitations which not render liability ineffective; etc.

Sanctions for bribery and other corruption offences in most IAP countries provide for a wide range of sanctions which are effective, proportionate and dissuasive (see Table 12 below). The level of penalties often depends on whether a legal or illegal act (omission) by the official is involved. A number of other aggravated offences are provided as well. At the same time provisions on sanctions of several IAP countries fall short of international standards.

In Georgia, the minimum sentence for basic passive bribery is 6 years of imprisonment. This was found to be disproportionate, not leaving room for an appropriate sanction for small value bribes. There is a risk that the case will not be brought to the attention of a court because the minimal sentence is inappropriate.[60]

In Kyrgyzstan, public works or a fine of about EUR 80-325 for receiving of an undue benefit by employees of state authorities, who are not officials (Art. 225 CC), was found to be disproportionate and not dissuasive as regards taking of bribes by employees of state authorities, which may cause significant harm.[61]

In Ukraine, sanctions for basic, non-aggravated offences of active and passive bribery, active trading in influence, active and passive bribery in the private sector do not provide for a possibility of imprisonment and in general are too lenient to be considered effective and dissuasive. Since extraditable offences under Ukrainian Criminal Procedure are those providing for imprisonment of at least 1 year, these corruption offences exclude possibility of extradition. Level of sanctions also conditions duration of the statute of limitations – it cannot exceed 3 years if the sanction is restriction of liberty or imprisonment less than 2 years (see also relevant section of the report). Also offer of a bribe draws a less severe sanction than giving of a bribe.

While most of IAP countries provide dissuasive sanctions (if sanctions for aggravated offences are taken into account), their enforcement is uneven. In practice, courts often apply conditional release from imprisonment and tend to apply sanctions closer to the lower margins.

Table 3.5. **Maximum sanctions for basic (non-aggravated) offences in IAP and selected ACN countries**

	Active bribery	Passive bribery	Active trading in influence	Passive trading in influence	Active private-sector bribery	Passive private-sector bribery	Money laundering	Embezzle-ment	Abuse of powers
Istanbul Action Plan countries									
Armenia	Up to 3 years	Up to 3 years	n.a.	Up to 3 years	Up to 2 years	Up to 3 years	2-5 years	Up to 2 years	Up to 4 years
Azerbaijan	2-5 years	4-8 years	2-5 years	3-7 years	2-5 years	4-8 years	6-9 years	n.i.	Up to 3 years
Georgia	Up to 3 years	6-9 years	Up to 2 years	3-5 years	Up to 3 years	2-4 years	3-6 years	3-5 years	Up to 3 years
Kazakhstan	Up to 3 years	Up to 5 years	n.a.	n.a.	Up to 3 years	Up to 5 years	Up to 3 years	Up to 3 y.	Up to 2 years
Kyrgyzstan	Up to 3 years	Up to 3 years (5-8 years in case of prior agreement)	n.a.	n.a.	Up to 2 years	Up to 4 years	3-6 years	Up to 1 year	Up to 3 years
Tajikistan	Up to 5 years	Up to 5 years	n.a.	n.a.	Up to 2 years	Up to 3 years	Up to 4 years	Up to 2 y.	Up to 2 years
Ukraine	Restriction of liberty for 2-5 y.[1]	Arrest for up to 6 months	Restriction of liberty for 2-5 y.	2-5 years	Fine from about EUR 850 to 1 700	Fine from about 8 500 to 13 600	3-6 years	Up to 4 years	Restriction of liberty up to 3 y.
Uzbekistan	Up to 3 years	Up to 5 years	n.a.	n.a.	Up to 3 years	Up to 5 years	5-10 years	Up to 6 m.	Up to 3 years
Anti-Corruption Network countries[2]									
Albania	6 months to 3 y.	2-8 years	6 months to 2 y.	6 months to 4 y.	3 months to 2 y.	6 months to 3 y.	3-10 years	n.i.	n.i.
Belarus	Up to 5 years	Up to 7 years	n.a.	n.a.	n.a.	Up to 3 years	2-4 years	Up to 4 y.	2-6 years
Bulgaria	Up to 6 years	Up to 6 years	Up to 3 years	Up to 6 years	Up to 3 years	Up to 5 years	1-6 years	n.i.	n.i.
Croatia (new CC)	6 months to 5 y.	1-8 years	6 months to 3 y.	6 months to 3 y.	Up to 3 years	6 months to 5 y.	6 months to 5 y.	n.i.	n.i.
Estonia	Up to 3 years	Up to 3 years	n.a.	Up to 3 years	Up to 3 years	Up to 3 years	Up to 5 years	n.i.	n.i.
Latvia (new CC)	Up to 6 years	Up to 8 years	Up to 1 year	Up to 2 years	Up to 3 years	Up to 3 years	Up to 3 years	Up to 5 y.	Up to 3 y.
Lithuania	Up to 2 years	Up to 4 years	Up to 4 years	Up to 5 years	Up to 2 years	Up to 4 years	Up to 7 years	Up to 2 y.	Up to 5 y.
Moldova	Up to 6 years	3-7 years	n.a.	Up to 5 years	Up to 3 years	Up to 3 years	Up to 5 years	n.i.	Up to 3 y.
Poland	6 months to 8 years	6 months to 8 y.	6 months to 8 y.	6 months to 8 y.	3 months to 5 y.	3 months to 5 years	6 months to 8 y.	n.i.	n.i.
Romania	2-7 years	2-7 years	2-7 years	2-7 years	8 -28 months	8 -28 months	3-12 years	1-15 years	6 months to 5 y.
Russia	Up to 2 years	Up to 3 years	n.a.	n.a.	Up to 3 years	Up to 7 years	Up to 3 years	Up to 2 y.	Up to 4 years
Slovenia	6 months to 3 years	1-5 years	Up to 3 years	Up to 3 years	Up to 3 years	3 months to 5 years	Up to 5 years	Up to 5 y.	Up to 5 y.

n.a. – not applicable (offence not established).

n.i. – no information available.

* Number of years refers to term of deprivation of liberty (imprisonment) unless specified otherwise. Sanctions for relevant offences may also include additional elements, like mandatory confiscation and disqualification from holding an office or performing certain activity.

1. Different maximum sanction for "offer of a bribe" – restriction of liberty up to 2 years. Restriction of liberty is a more lenient sanction than "deprivation of liberty".
2. Based on GRECO Third Evaluation Round reports and MONEYVAL reports (except for Belarus and Russia where texts of laws were used directly).

Source: Prepared by the OECD/ACN secretariat based on GRECO Third Evaluation Round reports and MONEYVAL reports (except for Belarus and Russia where texts of laws were used directly).

Confiscation

International anti-corruption instruments require taking measures to enable the confiscation of proceeds of corruption crimes (or of property of equivalent value) and of instrumentalities used in such offences.[62]

UNCAC and anti-money laundering instruments (like the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) contain the following definitions:

- "confiscation" means a penalty or a measure ordered by a court, following proceedings in relation to a criminal offence resulting in the permanent deprivation of property;
- "proceeds" means any economic advantage, derived from or obtained, directly or indirectly, through the commission of a criminal offence, including any savings by means of reduced expenditure derived from the crime;
- "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence;[63]
- "property" includes assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such property.

Legislation of several IAP countries provides for two types of criminal confiscation – as a punishment under specific articles of the Criminal Code (as an a mandatory or optional sanction) and procedural confiscation under Criminal Procedure Code, which is applied irrespective of the confiscation as a criminal sanction and can be imposed for any type of crime. These provisions usually cover instrumentalities and proceeds of bribery. However, they often do not explicitly cover proceeds that were transformed into other assets (e.g. residential property bought using proceeds from bribery) or were intermingled with property acquired from legal sources (converted or mixed proceeds). Several IAP countries also do not allow for a value-based confiscation, which enables to confiscate proceeds that were hidden, destroyed, spent or transferred into possession of a *bona fide* third party. It is also often impossible to confiscate benefits that were derived from crime proceeds (e.g. profit derived from a business permit obtained through bribery, profit from investment of the bribe).

Table 3.6. **Provisions on confiscation in IAP countries**

	ARM	AZE	GEO	KAZ	KGZ	TJK	UKR	UZB
Confiscation of instrumentalities and proceeds of bribery	✓	✓	✓	✓	✓	✓	✓	✓
Value-based confiscation	✓	✓	✓	–	–	–	–	–
Confiscation of converted or mixed proceeds	–	–	✓	–	–	–	–	–
Confiscation of benefits derived from proceeds	✓	–	✓	–	–	–	–	–

– : Not provided by national legislation.
✓ : Provided by national legislation.
Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

One of the effective instruments to deprive the perpetrator of corruption offences of ill-gotten proceeds is reversal of burden of proof in confiscation proceedings. The UN Convention against Corruption (Art. 31) recommends Parties to consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation. Similar provision is included in the EU Council

Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, which urges member states to take necessary measures to enable confiscation where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a national court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person.[64]

This mechanism is closely linked to the offence of illicit enrichment, as it leads to confiscation measures due to possession of unexplained wealth, albeit linked to a specific crime. It allows presumption of illicit origin of assets if a person, who has been convicted or even just charged with a certain crime, cannot explain their lawful origin. Such mechanism, when properly construed (through a rebuttable presumption), was found to be compatible with the European Convention of Human Rights.[65]

For instance, according to a recent reform in Lithuania, where a perpetrator of a crime of certain gravity, from which he have obtained or could have obtained a pecuniary advantage, possesses property which was gained during, after or 5 years before commission of the offence and which is disproportionate to his lawful income and difference exceeds about EUR 9 000, if the offender fails to justify the lawfulness of acquiring the property it is subject to the so called extended confiscation.[66]

In Georgia Civil Procedure Code (Chapter XLIV) provides for confiscation of illegal property and unexplained wealth of public officials, as well as their family members, close relatives and other "related persons". Such confiscation is possible after criminal conviction, when prosecutor may apply to the court for confiscation of property supposedly derived from the proceeds of crime. After prosecutor has established *prima facie* evidence of unexplained property the burden of proof shifts to the convicted (or related persons). If the latter fails to prove the lawful origin of the property and court concludes that there is a reasonable doubt as to its lawful origin it orders the confiscation of such property.[67]

Similarly in Poland, according to the Criminal Code (Art. 45), if the offender was convicted of the crime as a result of which he acquired, even indirectly, a property-related benefit of considerable value, it is assumed that the property he obtained during, or after the commission of the offence, but before the judgment, constitute property acquired through a crime, unless the offender or another interested party shows evidence to the contrary.[68]

In Portugal, in the case of a conviction for certain offences (including passive bribery, embezzlement, money laundering) the discrepancy between the value of defendant's actual property and one that is consistent with his lawful income is considered a benefit from a criminal activity and is subject to confiscation.[69]

In Turkey, the Law on Declaration of Assets in the Fight against Bribery and Malversation provides for the reversal of burden of proof in specific situation, including when a person possesses property which is disproportionate to his income. In such cases, possession may be considered unlawful and subject to confiscation (including value confiscation), unless the person proves its legitimacy.[70]

Romania has recently introduced extended confiscation in its criminal law.[71] It provides for the mandatory confiscation of assets when: *a)* the person is found guilty for having committed an act punishable with imprisonment of 5 years or more which falls under the 21 categories of offences designated in the new legislation (including corruption, money laundering); *b)* the accused has, over the last 5 years preceding the criminal

act, accumulated property which exceeds what he has earned in a legitimate manner (confiscation is applicable to those additional assets); c) the court is convinced that the property in question has been derived from one or more of the designated offences. This new mechanism includes third-party and value-based confiscation, and it allows for the confiscation of assets derived from the criminal proceeds.[72]

A similar mechanism, but carried out through civil procedures, was introduced in Bulgaria in May 2012.[73] It provides for the possibility of confiscation when it has been proven to a reasonable degree that assets were acquired through criminal activity and that a substantial "lack of correspondence relating to the assets of a natural person" exists. This means that the value of person's assets substantially exceeds the net income of the natural person and of their family members over the period of examination and no other legal source thereof has been established.[74]

Statute of limitations, immunities and effective regret

Statute of limitations

Statute of limitations is a statutory term during which a person is liable for commission of a crime. It may become an obstacle to effective prosecution of corruption offences when it is too short or cannot be interrupted/suspended in certain circumstances. Even when sanctions for corruption offences are dissuasive, the possibility of exemption from liability due to expired statute of limitations makes liability for such offences ineffective, taking into account long pre-trial and court proceedings in complicated cases, especially involving cases with an international dimension (e.g. MLA). Similarly, when, for instance, immunity of a person does not interrupt statute of limitations for committed crime such offender may avoid responsibility. Prosecution in these situations becomes futile and a waste of resources.

The UN Convention against Corruption (Art. 29) provides that each State Party shall establish a long statute of limitations period in which to commence proceedings for corruption offences and establish a longer period or provide for the suspension of the statute of limitations where the alleged offender has evaded administration of justice. According to the OECD Anti-Bribery Convention (Art. 6) any statute of limitations applicable to the offence of bribery of foreign public official shall allow an adequate period of time for the investigation and prosecution of this offence.

In IAP countries, the statute of limitations is linked to the category of crime based on its gravity, which in its turn is conditioned by the applicable sanction (its type and amount/duration). In most cases, the statute of limitations is sufficiently long to allow effective investigation and prosecution of corruption offences (see Table 14 below).

IAP monitoring found that a statute of limitations of 2 years and less is insufficient.[75] GRECO (reports on Hungary,[76] Latvia,[77] Russia)[78] and OECD WGB (France, Phase 1 report;[79] Japan,[80] Spain[81] Phase 2 report) have found that statute of limitations of 3 years is insufficient as well. It may therefore be concluded that limitation period, to provide adequate time for the investigation and prosecution of corruption offences, should at least be 5 years long (and provide for possibility of suspension/interruption in certain situations).

A special approach to corruption offences is applied in Georgia, where it is specifically provided that, regardless of sanctions, statute of limitations for bribery and some other corruption offences is 15 years (unless it is an especially grave crime, i.e. when maximum sanction is more than 10 years of imprisonment, then the limitations period is 25 years).

Table 3.7. **Statute of limitations for corruption offences in IAP countries***

	ARM	AZE	GEO	KAZ	KGZ	TJK	UKR	UZB
Active bribery (basic offence)	5	7	15	5	3	6	3	3
Active bribery (aggravated offence)	10	12	15	5-25	7	10	5-10	5-10
Passive bribery (basic)	5	12	15	5	3**	6	3	5
Passive bribery (aggravated)	10-15	12	25	15-25	7	6-10	5-15	5-15
Active trading in influence (basic)	n.a.	7	15	n.a.	n.a.	n.a.	3	n.a.
Passive trading in influence (basic)	5	7	15	n.a.	n.a.	n.a.	5	n.a.
Active private-sector bribery (basic)	2	7	6	5	1	2	3	3
Passive private-sector bribery (basic)	5	12	6	5	3	6	5	5
Money laundering (basic)	5	7	10	5	7	6	10	5-10
Money laundering (aggravated)	10-15	12	10-25	15	7	10	10-15	n.a.
Abuse of powers (basic)	5	7	15	2	3	2	3	3
Abuse of powers (aggravated)	10	12	15	15	7-10	6-10	5-10	5
Embezzlement (basic)	2	2	6	5	7	2	5	3

n.a. – not applicable (offence not established).

* Numbers indicate duration of statute of limitations in years. When a range of years is provided, it shows statute of limitations for various aggravated offences. Aggravated offences may include crimes committed by a high-level official, for illegal action (or inaction), by a group of persons, in large amount, repeatedly, through extortion, etc.

** 3 and 7 years statute of limitations is for the offence "bribe-award" (Art. 310 CC), that is bribery without prior agreement. "Bribe-subornation" (Art. 311) is bribery with prior agreement, has statute of limitations of 7 years for basic offence and 10 years for aggravated ones. Passive bribery by an employee of a public institution or private organisation (Art. 225 CC) has a statute of limitations of 1 year.

Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

In Armenia, Kyrgyzstan, Tajikistan, Ukraine, Uzbekistan, the statute of limitations is not suspended if the alleged perpetrator is a person with immunity. Azerbaijan Criminal Procedure Code (Art. 53) provides for the suspension of the statute of limitations in cases when procedures for lifting immunity was initiated. Similarly in Georgia, the statute of limitations is suspended during the time when a person enjoyed immunity (Art. 71 of the Criminal Code). In Kazakhstan, even though the Criminal Code does not envisage a possibility of interrupting the statute of limitations period in case of failure to lift immunity from the person, the IAP monitoring did not find this to be a problem since the agreement to lift immunity is not required for grave and especially grave crimes, to which most of the corruption crimes belong.[82]

An insufficient statute of limitations may also present an obstacle for effective mutual legal assistance in countries where based on dual criminality requirement MLA requests may not be satisfied if limitations period has expired for the crime under the legislation of the requested country.[83]

To ensure that the statute of limitations does not hinder effective investigation and criminal prosecution, countries employ various provisions. For example, in Croatia, Czech Republic, Finland, Latvia, Netherlands, Poland, Slovakia and other countries, the limitations time period is interrupted by procedural actions taken in order to institute criminal prosecution (e.g. decision to prosecute). In Germany, statute of limitations is interrupted by the following facts: the first interrogation of the accused, the notice of the initiation of an investigation against him/her, a judicial order of search and seizure, an arrest warrant, a public indictment, the institution of trial proceedings, a judicial request of an investigative act abroad, etc. The limitations time period is renewed after each interruption. However,

the prosecution is barred by the absolute lapse, which is ten years for bribery offences.[84] In France, for "concealed" crimes (to which corruption has so far not been referred) the statute of limitations begins to run not from the day of commission of offence, but from the time it was discovered.

Immunities

Immunity from investigation, prosecution or arrest is often granted to various public officials in order to exempt them from liability during their time in office and ensure in this way independence of certain institutions/officials who may otherwise fear of politically motivated prosecution. This, however, may prevent effective investigation or prosecution of corruption offences and foster impunity among high-level officials, especially in the states with high level of corruption.

International standards, therefore, call for limited scope of immunities and efficient procedures to lift them. The UN Convention against Corruption (Art. 30) mandates State Parties to establish "an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting or adjudicating" corruption offences. The Council of Europe's Committee of Ministers Resolution No. (97) 24, recommends limiting immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.[85]

A number of standards can be formulated with regard to immunity which should:

- be functional, that is concern actions (inaction) committed during or in relation to the exercise of the official's duty;
- not cover situation *in flagrante*, when perpetrator is apprehended during the commission of a crime or immediately after;
- not extend to the period after termination of office;
- allow investigative measures to be carried out against those with immunity;
- provide for swift and effective procedures for lifting immunity, clear criteria for lifting of immunity which are based on merits of the request to lift immunity. For persons with absolute immunity (like Presidents in many countries) there should be an effective impeachment procedure.

IAP countries preserve a wide scope of immunities for various officials (see Table below), which can be explained by the transitory stage of their development and risk of political abuse of power. While it remains a concern in terms of ensuring effective prosecution of corruption offences, the general trend in the region is towards limiting immunity.

In 2010, Armenia limited a number of categories of officials enjoying immunity by revoking the privilege for parliamentary candidates, members of the Central, Regional and Local Election Commissions, mayoral candidate, candidates to the local councils, members of the Special Investigative Service.[86] Also, the Armenian Constitution was amended in 2005 to allow apprehension of members of parliament when caught in the act (with immediate notification of the parliament). Azerbaijan has limited the range of individuals enjoying immunity (by excluding members of the government, while preserving immunity for the Prime Minister) and limited immunity duration of MPs to their term of office.[87] At the same time, no immunity reform of judges has been conducted, as recommended by the IAP monitoring. In particular, it is still impossible to investigative a judge unless

the immunity is lifted.[88] Georgia has reduced categories of persons enjoying immunity by excluding prosecutors and investigators; in 2004 Constitution of Georgia was amended to allow arrest of MPs caught committing crimes. In Kazakhstan, immunity does not apply in cases of apprehension at the scene of crime (*in flagrante delicto*) and for commission of grave or especially grave crimes (which covers most corruption offences).[89]

Table 3.8. **Persons with immunities in the IAP countries**

Persons enjoying immunity	ARM	AZE	GEO	KAZ	KGZ	TJK	UKR	UZB
President	✓*	✓	✓	✓	✓	✓	✓	✓
Members of Parliament	✓	✓	✓	✓	✓	✓	✓	✓
Ministers	–	Prime Minister only	–	–	✓**	–	–	–
Judges	✓	✓	✓	✓	✓	✓	✓	✓
Prosecutors	–	–	–	Prosecutor General only	✓**	–	–	✓
Ombudsman	✓	✓	✓	–	✓	–	–	✓
Other persons	Candidates for President	Election candidates	Auditor General; election candidates; Board members of the National Bank		Inves-tigators**	Election candidates	–	Deputies of local councils

* Including after termination of office for actions related to office.
** May not be apprehended or arrested, subjected to search, interrogation or personal examination, except for cases when caught *in flagrante* for commission of a grave or especially grave offence.
– : Not provided by national legislation.
✓ : Provided by national legislation.
Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

Effective regret and other defences

A number of countries provide for special defences exempting from liability perpetrators of active bribery and trading in influence offences – when a person was extorted (forced under duress) to give a bribe and when a person denounces the committed bribe-giving by coming forward to the law enforcement authorities. The latter defence of the so-called "effective regret" is sometimes a cause of concern.

While the effective regret exemption stimulates reporting of bribery and allows for the prosecution of public officials who receive bribes (a crime considered in some countries more dangerous than active bribery), it creates potential for abuse. This is especially the case when the defence is automatic, that is, leaving no discretion for the prosecutor or judge to assess specific circumstances of the case. A briber may misuse this defence by blackmailing or exerting pressure on the bribe-taker to obtain further advantages or by reporting the crime long after it was committed when he found out that law enforcement authorities may uncover the offence on their own.[90] Defence of *extortion may also be seen as problematic if it is allowed even in cases when the extorted briber did not report it.*[91]

If decision to retain effective regret provisions is made, this defence should provide for certain guarantees against possible abuse:

- it should not be applied automatically – the court should have the possibility to take into account different circumstances, e.g. motives of the offender;

- it should be valid only during a short period of time after the commission of a crime and in any case, before the allegation was brought to the attention of the law enforcement authorities through other sources;
- briber who denounces the crime should be obliged to co-operate with the authorities and assist in prosecution of the bribe-taker;[92]
- it should not be applicable in cases when bribery was initiated by the briber;
- the bribe should not be returned to the perpetrator and should be subject to mandatory confiscation.[93]

The OECD WGB has objected to applying effective regret to foreign bribery offences as such. While in cases of domestics bribery, the effective regret defence may allow uncovering the bribery and prosecuting public officials, in case of bribery of a foreign public official there is no guarantee that such an official who took the bribe will be prosecuted. "If this occurs the defence serves no useful purpose: the crime may come to light, but the offenders remain unpunished and the ends of justice remain unserved."[94]

All IAP countries provide for effective regret as a ground for releasing from liability perpetrators of active bribery offences. And in most cases this defence falls short of the standards mentioned above, except for mandatory confiscation of the bribe which is applied in all IAP countries in such cases.

In Armenia, for commercial bribery offences, the effective regret defence is applied not only to active bribery, but to passive bribery as well (and it is an exemption from punishment, not liability, unlike similar defence for public sector active bribery). Under active bribery offences of public officials, the person giving a bribe is released from criminal liability if he has voluntarily informed the law enforcement authorities of giving a bribe. If a briber would only come forward when s/he had a realistic fear that law enforcement authorities would soon learn of the offence, this would not be considered as "voluntarily informing law enforcement bodies".[95]

In Azerbaijan, the effective regret defence is provided for private and public sector active bribery. This defence may be applied in situations where the briber reports the offence either before it is discovered or before he learns that the offence has already been discovered.[96]

In Georgia, under active side of bribery in private and public sectors, as well as of trading in influence, perpetrator is exempted from liability if he voluntarily informs law enforcement authorities. Such denunciation should happen before authorities become aware of the offence. Another requirement is that the facts reported by the briber must be sufficient to build a "*prima facie*" case of bribery.[97] Reportedly, Criminal Code provisions on effective regret were amended in November 2011 to accommodate concerns expressed in the GRECO report.[98] Namely, a provision was added that the decision to exempt a person from the criminal liability is made by the prosecuting body. According to Georgian authorities, this means that the prosecutor is given discretion whether or not to apply effective regret exemption making it no longer automatic.

In Kazakhstan, if the briber voluntarily informed the body, which has the right to initiate a criminal case, about the briber he is released from criminal liability. In this regard, the IAP report noted that provision of such a serious "indulgence" as release from criminal liability, especially when granted automatically without obligation of the person to provide further assistance to law enforcement bodies in the course of prosecution of the bribe-taker,

will not always be justified since quite often it is the briber who initiates the crime and evades the liability that way.[99]

In Kyrgyzstan, "a person who gave a bribe" is released from criminal liability if the person voluntarily informs the agency which is authorized to open a criminal case "about upcoming giving of a bribe". A Resolution of the Supreme Court of Kyrgyzstan contains an important commentary that information about bribe-giving cannot be considered as voluntary if it law enforcement authority had already become aware of the bribe-giving. As noted in the IAP report, it is not clear from the Criminal Code wording whether release from liability due to effective regret is applicable only when the reporting took place before the bribe-giving had taken place. If it were the case, then there is a contradiction in the wording of this provision (a person who "gave" a bribe – about "upcoming" bribe-giving).[100]

In Ukraine, the effective regret defence may be applied for active private and public sector bribery (but not for active trading in influence) when the briber reports the offence before he is formally apprised of a suspicion of crime by the relevant official (wording introduced in November 2012 along with the new Criminal Procedure Code).

A slightly different mechanism is established in Uzbekistan, where the briber is released from liability if he voluntarily reports the crime, shows "open-hearted remorse" and actively facilitates solving the crime.

International co-operation and mutual legal assistance

The *IAP Summary Report* of 2008 noted that although some countries have improved their extradition and mutual legal assistance (MLA) legislation, further analysis is necessary to identify problems and solutions in this area. In particular, it may be useful to examine whether Istanbul Action Plan countries have an adequate treaty and legislative framework for co-operation. Also of interest is whether international co-operation may be hindered by certain aspects of the legal framework, such as dual criminality.[101]

Legal framework for co-operation

Most of the IAP countries have made further progress since 2008 by joining a broader range of available international and regional instruments (see table below).

Currently, provisions of over a dozen of co-operation instruments can be applied in corruption cases by the IAP and ACN countries. This list is supplemented by numerous bi-lateral treaties and interagency agreements, as well as various international co-operation schemes designed in the framework of international organisations. These instruments cover a whole range of international co-operation, from mutual legal assistance, transfer of criminal proceedings, extradition to asset recovery and execution of judgements and, in theory, can be applied directly and overrule national legislation provisions once they are ratified and enter into force.

International co-operation provisions in the specialized international instruments, such as UN Convention Against Corruption and UN Convention Against Organized Crime, ratified by all IAP countries, could be used to render mutual legal assistance in corruption cases, especially in the absence of other treaties. However, stand-alone international co-operation conventions and bi-lateral treaties are used more often in practice, have more detailed procedures, and offer a wider range of co-operation tools.

Table 3.9. **International co-operation in ACN countries: Treaties in force**[1]

	European Convention on Mutual Assistance in criminal matters	Additional Protocol	Second Additional Protocol	European Convention on Extradition	Second Additional Protocol	European Convention on the Transfer of Proceedings in the Criminal Matters	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	CoE Convention on the Laundering, Search, Seizure and Confiscation Crime and on the Financing of Terrorism	Minsk Convention On Mutual Legal Assistance in Civil, family and Criminal Matters	Protocol	Chisinau Convention On Mutual Legal Assistance in Civil, Family and Criminal Matters	UN Convention Against Corruption	UN Convention Against Transnational Organized Crime	CoE Criminal Law Convention on Corruption	Additional Protocol
	Istanbul Anti-Corruption Action Plan Countries														
Armenia			11					08							
Azerbaijan															
Georgia												08		08	
Kazakhstan												08	08		
Kyrgyz Republic															
Tajikistan															
Ukraine			12					11				09		10	10
Uzbekistan												08			
	Other ACN countries														
Albania								08							
Belarus														08	
Bosnia and Herzegovina			08					08							12
Bulgaria								Only signed							
Croatia								09							
Estonia												10			
FYROM			09					09							
Latvia								10							
Lithuania															12
Moldova			Only signed					08							
Montenegro			09					09							08
Romania								08							
Russian Federation								Only signed							
Serbia								09							08
Slovenia								10				08			
Turkmenistan															

1. Instruments which entered into force for the country are shaded; the year of entrance into force is only indicated starting from 2008 to demonstrate progress made by countries since the first IAP round of monitoring and the last *Summary Report*. The information presented in the Table is as of August 2012.

Source: OECD/ACN Secretariat research.

IAP countries continue to rely heavily on CIS regional instruments. The Minsk Convention on Legal Assistance in Civil, Family and Criminal Matters, the Protocol to it and the Chisinau Convention on Legal Assistance in Civil, Family and Criminal Matters reportedly remain to be the most commonly used instruments in corruption cases.[102] There is however, a need to continue expanding their treaty base to cover countries outside of the region, which would help promote co-operation with their major trade and investment partners, as well as major economies worldwide. IAP countries reported during the second round of monitoring that their priorities include signing bi-lateral treaties with countries

Box 3.11. **International co-operation and mutual legal assistance instruments**

- European Convention on Mutual Assistance in Criminal Matters (1959)
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978)
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)
- European Convention on Extradition (1957)
- Second Additional Protocol to the European Convention on Extradition (1978)
- European Convention on the Transfer of Proceedings in Criminal Matters (1972)
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990);
- Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)
- Minsk Convention on Legal Assistance in Civil, Family and Criminal Matters (1993)
- Protocol to the Minsk Convention on Legal Assistance in Civil, Family and Criminal Matters (1997)
- Chisinau Convention on Legal Assistance in Civil, Family and Criminal Matters (2002)
- UN Convention Against Corruption (2003)
- UN Convention Against Transnational Organized Crime (2000)
- Council of Europe Criminal Law Convention on Corruption (1999)
- Addition Protocol to the Criminal Law Convention on Corruption (2003)

not well represented in mostly European international co-operation instruments, such as the US, Canada, China, South Korea, India, Iran, UAE, etc.[103] This is a commendable trend and should be one of the avenues to establish effective treaty-based co-operation for IAP counties.

The importance of newer multilateral co-operation instruments, however, should not be overlooked. More recent instruments improve countries' ability to react to cross-border crime. Technological developments throughout the world, in particular by broadening the range of situations in which mutual assistance may be requested and making the provision of assistance easier, quicker and more flexible. Moreover, they provide investigators and prosecutors with more up to date tools. For instance, the European Convention on Mutual Assistance in Criminal Matters provides for a similar range of mutual legal assistance tools as the Minsk Convention, but its Second Additional Protocol offers new types of international co-operation, such as use of video conferencing, work in joint investigative groups and direct co-operation, which could be of extreme importance when investigating complex corruption cases. Currently it has been ratified only by Armenia and Ukraine, leaving such tools out of reach for investigators and prosecutors in other IAP countries.

Another instrument, which could be effectively utilized in investigating corruption crimes and tracking down, seizing and confiscating its proceeds, is the 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. It provides for various forms of investigative assistance (i.e.: assistance in procuring evidence, transfer of information without a request, adoption of common investigative techniques, lifting of

bank secrecy, etc.), which are often important for a successful financial investigation. The Convention also allows freezing bank accounts, seizing property to prevent its removal, as well as confiscating the proceeds of crime. Again, so far only Armenia and Ukraine have signed and ratified it.

Similarly, many IAP countries have made progress in the area of strengthening their national legislation which regulates international co-operation in corruption cases. In most IAP countries, issues of mutual legal assistance and extradition are regulated by their Criminal Procedure Codes, which is the case in Armenia,[104] Kazakhstan,[105] Kyrgyzstan,[106] Tajikistan,[107] Ukraine[108] and Uzbekistan.[109] In Georgia, a separate law regulating provision of MLA was enacted in 2010,[110] while Azerbaijan has Criminal Procedure Code provisions regulating issues related to international co-operation, as well as the Legal Assistance in Criminal Matters Act of 2001 and the Surrender of Criminal Offenders Act of 2001, which regulate mutual legal assistance and extradition accordingly.

In respect to the national legislative framework, a number of important issues have been raised as a result of the first round of monitoring. One of them was whether dual criminality (when co-operation can be only requested/granted on the offence which exists in both states) hinders MLA. Differences should be made between requests for extradition and other forms of mutual legal assistance. Following the trend of the ACN region and beyond (for example, a European Arrest Warrant does not require the dual criminality for a series of crimes), granting of requests for mutual legal assistance in many IAP countries in practice is becoming less and less conditional on dual criminality. In regard to extradition, most IAP countries uphold the dual criminality principle, exercising more scrutiny when exceptions are made.

For instance, under Ukrainian law, dual criminality is a general requirement for mutual legal assistance and is generally applicable to extradition requests, while in cases of requests concerning the collection of evidence there is no such requirement.[111] Similar requirements and practices are in place in Uzbekistan[112] and Armenia,[113] whereas in Georgia, dual criminality is still an applicable condition for requests which contain coercive measures.[114]

Despite such trends, dual criminality can still pose challenges the corruption cases, and it can be best illustrated in cases involving legal persons. For example, until recently, if a request to Azerbaijan was made regarding a legal person in a corruption case, assistance would not have been granted based on the principle of dual criminality.[115] Other IAP countries either do not have practical examples of assistance in such cases, while confirming that it can be done in theory (Armenia, Tajikistan, Ukraine and Uzbekistan) or could not provide a definitive answer on how such cases would be handled under their current legislation (Kazakhstan, Kyrgyzstan). Georgia is the only IAP country where practice of assistance in such cases exists, which is explained by the fact that it has a functioning regime of liability of legal persons for corruption offences.

Another issue in IAP countries is how co-operation is ensured in the absence of a treaty. The second round of monitoring confirmed that all IAP countries provide for international co-operation in the absence of treaty. It is done on the basis of good will and reciprocity and is ensured through appropriate provisions in the national legislation. Such types of assistance can be of use in corruption cases for IAP countries in regard to requests which go beyond the scope of the mutual legal assistance provided for within the treaties, such as, for example, requests on asset recovery measures.

The IAP Summary report of 2008 states, "The absence of legislation to deal with MLA relating to proceeds of corruption is a clear and substantial concern"; it went on further to point out that, "None of the Istanbul Action Plan countries can execute foreign requests to trace, freeze, confiscate or repatriate proceeds of corruption".[116] Measures for asset recovery envisaged by Chapter V of the UN Convention against Corruption set the fundamental principle of that Convention, which entered into force for all IAP countries since the first round of monitoring and publication of the Summary report in 2008. Most of the IAP countries, however, include no specific provisions which would regulate the return of the confiscated assets to the foreign state, or specify the measures for direct return of assets as prescribed in Articles 57 and 53 of the UNCAC.

Some countries, Uzbekistan for example, argue that they can execute related requests, for instance to seize alleged proceeds or instrumentalities of the crime on reciprocity basis in the absence of international treaties. All IAP countries stated that such requests can be executed in accordance with procedures of their national legislation, or according to the laws of the requesting state if such actions do not contradict their national legislation. Now that, at least in theory, asset recovery can be done, it would be of importance to further look into the application of this instrument in corruption investigations. So far, only Georgia has provided statistics which illustrate that such practices exists; with the execution of requests in 19 cases from 2006 to 2008.[117]

Practical application and challenges

The IAP second round of monitoring has also allowed a closer examination of how international co-operation functions in practice in the region; although more information is needed to make in-depth conclusions and meaningful recommendations.

International co-operation in corruption cases is regularly conducted via specifically designated central authorities. In most IAP countries, they are designated according to the stages of criminal proceedings (i.e.: separate institutions provide assistance at the stage of investigation and execution of the court decisions), and most common include the General Prosecutor's Office and Ministry of Justice; in some jurisdictions, anti-corruption specialized bodies have also been assigned to such functions (see Table 17 below).

Table 3.10. **Central authorities for MLA in the IAP countries**

Institution	ARM	AZ	GEO	KAZ	KGZ	TAJ	UKR	UZB
General Prosecutor's Office	✓	✓		✓	✓	✓	✓	✓
Ministry of Justice		✓	✓				✓	
Judicial Administration					✓	✓		
Specialized Anti-Corruption Agencies						✓		
Ministry for Foreign Affairs	✓							

✓ : Provided by national legislation.
Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

Such institutions usually have a specialized unit/department that deals with international co-operation requests. Due to lack of relevant information, it is difficult to assess the adequacy of human resources, as well as the staff's level of qualifications and training. Closer consideration may be given to this issue in the framework of future monitoring.

Analysis of the second round of monitoring shows that the most common problem in application of MLA and extradition identified by IAP countries is the lengthy process of international co-operation. Delays in obtaining international co-operation often result in investigators and prosecutors breaching their procedural time limits and cases getting closed due to the lapse of the statute of limitations. This presents a challenge well beyond the IAP and ACN regions. For example, in Italy, where MLA requests do not suspend the running of the statue of limitations, "the prosecutors … indicated that they have, on occasion, been obliged to cut short an investigation, and bring defendants to trial without receiving answers to MLA requests".[118]

Delays are caused by various factors, which include highly bureaucratic procedures in handling of international co-operation; differences in legislative framework; quality of the requests; language translations; etc. Lack of direct links between those receiving and sending requests and those who actually investigate and prosecute corruption cases greatly contributes to this problem. This raises the issue of central authorities versus direct co-operation between investigators and prosecutors of corruption cases.

There are clear benefits to direct transfer of requests: it involves more informed counterparts, better co-ordination, faster amendment to the requests (when necessary) and easier follow up on individual cases. Direct co-operation also helps networking, which could further assist with spontaneous information sharing, and encourage the establishment of joint investigative teams.

Currently, some forms of direct co-operation are possible under a number of international instruments available to IAP countries. For instance, Article 15 of the European Convention on Mutual Assistance in Criminal Matters (1959), which is widely used in Armenia, Azerbaijan, Georgia and Ukraine, allows for requests to be sent directly by/to the judicial authorities in cases of urgency, but the responses would be routed via central authorities. The Second Additional Protocol to this Convention provides an opportunity for direct co-operation between competent authorities, regardless of urgency. It seems to be the most practical tool for such co-operation, but is currently only available to Armenia and Ukraine. Similarly, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), which also provides for such co-operation, is limited to the same IAP countries. The Council of Europe Criminal Law Convention on Corruption (Art. 30) allows for direct requests if the requested actions do not involve preventative measures, but can be used only by Armenia, Azerbaijan, Georgia and Ukraine.

The Minsk Convention on Legal Assistance in Civil, Family and Criminal Matters (Art. 5), as amended by its Protocol in 1997 also provides for the possibility of direct co-operation between competent judicial authorities. However, this provision has been lying dormant due to the fact that most of the signatories did not submit the list of competent authorities and the language of the Article is too vague and can be open to interpretation.

Another approach to ensure direct co-operation, which was actively pursued by IAP countries, is the signing of inter-agency co-operation agreements. Excellent results have been reported by Ukraine as a result of signing such treaties between their General Prosecutor's Office and the Ministry of Justice of Poland, which has allowed direct co-operation between local prosecution offices since 1998. Similar agreements have been signed and actively applied between Ukraine and Moldova and have yielded good results. All IAP countries have signed such agreements with one or more of their close neighbours, and seem to be actively using these avenues of co-operation. This practice can be further

expanded to include a broader range of countries and their respective investigative and prosecutorial bodies.

At the same time, there are reasons to keep these functions with the central authorities. There are cases when such approach, albeit more formal, secures better results. The specialists which work in such designated institutions are much more familiar with the treaty base of their country and can make a more educated decision of the best instrument to apply. They also know all formalities for the preparation and forwarding of the request to make sure that it is not returned and is executed in its full scope. They are also better equipped to deal with more complicated requests in which investigative actions need to be taken in more than one jurisdiction or when it is unclear where such actions should take place. Thus, it is important for all IAP countries to ensure that the staff of such units/departments/bodies are well trained, have adequate resources (including translators, necessary means of communication) and are easily accessible to the investigators and prosecutors in the field.

Another challenge in the area of international co-operation, as identified by the IAP second round of monitoring, is the language barrier. The Russian language has been a helpful tool in the IAP region, but with time it is becoming less helpful as local and regional level institutions which carry out requests are slowly phasing out its use. Lack of technical capacities for modern exchange of information via protected channels has also reportedly contributed to providing assistance. Practitioners in Georgia, Ukraine and Azerbaijan can have access to such channels, in particular, through the GUAM Virtual Centre, which allows for the real-time exchange of information on corruption cases via protected channels. However, use of its capabilities should be further promoted and more practitioners should be made aware of its availability.

Finally, one of the problems in the application of MLA identified by IAP countries was dealing with individual countries which did not respond to the requests at all. Again, this is a challenge faced by many countries outside of the region. Members of the OECD Working Group on Bribery often have cases when investigations are hampered by non-co-operative jurisdictions. In such cases, the Working Group on Bribery resorts to collective pressure by issuing letters on the behalf of the Working Group, while at the same time encouraging its members to explore other possible ways of obtaining necessary information. For instance, in a foreign bribery case where Bulgaria had difficulties obtaining a response to its MLA requests from Zambia, it was recommended that "additional steps, such as initiating direct contact with the Zambian prosecutors or police, and raising the matter at higher diplomatic levels" should be taken; Bulgaria was also encouraged "to inquire whether the information was publicly available in Zambia, e.g. in the court file or records"; and finally it was noted that "instead of a non-treaty based request, Bulgaria could also have sent an MLA request under UNCAC".[119]

The IAP countries stated in their responses to the second monitoring round questionnaire that they had denied very few requests in practice; yet sometimes it was difficult for some of them to decide in accordance with which legislation the requested measures should be conducted. The evident value of the obtained information is an important issue and it would be beneficial to look into the practice of the IAP countries and determine if such evidence is permissible in court, whether the court is willing to issue sanctions for carrying out intrusive measures requested by foreign states or challenge such sanctions issued in foreign jurisdictions, and what other difficulties arise.

Law enforcement co-operation

The need for more effective and expedient co-operation in corruption cases has given prominence to informal forms of co-operation, such as exchange of operational information, conduct of joint operational activities, use of special investigative techniques and other forms of direct co-operation between law enforcement bodies – law enforcement co-operation. This can be further explained by the fact that in a number of IAP countries as well as numerous other ACN countries the police have far-reaching powers when carrying out criminal investigations into corruption cases and often operate independently, with the case being brought to the prosecutor for the purpose of it being brought to court when an investigation has been concluded.

Such co-operation is often conducted on the basis of requests for operational co-operation without the elements of MLA. However, more recent international instruments incorporate various forms of law enforcement co-operation into their sections on international co-operation along with MLA, which shows that these two concepts are slowly integrating.

Each IAP country, as a party to the UN Convention against Corruption, is required by Article 50 "to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom".

The IAP second monitoring round demonstrated that such practice has not yet been established in the IAP countries. The obtained information is mostly used for development of the investigative plans, establishment of new leads and in preparation of the formal MLA requests. The value of evidence obtained through such forms of co-operation is still not clearly defined under the procedural law of most of the IAP countries.

Joint investigative teams is another innovative tool which has been introduced by recent international instruments[120] and which is yet to be effectively used by the IAP countries. None of the IAP countries have had experience in establishing such teams or working within them. Other countries in the ACN region, especially the EU member states, could be a good source of such experience. It took time for the concept to be accepted even within the EU and a number of steps had to be undertaken to support Joint Investigative Teams in the framework of Europol and Eurojust.[121]

Finally, active participation in various international structures and mechanisms, such as Interpol, Eurojust, Europol, OLAF, SECI Law Enforcement Centre, GUAM Virtual Law Enforcement Centre, various CIS Cooperation mechanisms, etc., can help improve co-operation and co-ordination, as well as identify regional/international corruption trends and formulate responses to them.

Fighting corruption through law-enforcement

Specialised law-enforcement bodies

Legally binding international standards for anti-corruption specialisation are established by the UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption. The requirement of specialisation does not mean that each prosecutor's office or each investigative body should have a special unit or expert for corruption offences. At the same time, it implies that wherever it is necessary for effectively

combating corruption there should be dedicated law-enforcement units or personnel. Exact arrangements for building the anti-corruption specialisation in law enforcement is to be decided by each state, taking into account its legal and administrative systems, as well as other relevant considerations.

UN Convention against Corruption – Article 36

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement.

CoE Criminal Law Convention on Corruption – Article 20

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption.

It is equally important that there are not only specialised units/persons, but that "*those in charge of the prevention, investigation, prosecution and adjudication of corruption offences, enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations*".[122]

Models of specialisation

Various approaches to specialisation have been used in IAP countries, and an even broader range can be found in the ACN region (see Table 18 below). They can be nominally divided into the following three groups.

The first group covers countries which have established specially designated anti-corruption bodies with repressive functions. They are either specialized anti-corruption agencies with investigative powers, which is the case in Kazakhstan (Agency of the Republic of Kazakhstan for Combating Economic and Corruption Crimes) and Kyrgyzstan (newly created Anti-Corruption Service); or have prosecutorial powers, as the case is in Azerbaijan (Anti-Corruption Department within the Prosecutor General's Office).

The second group is countries with anti-corruption specialisation within the existing law-enforcement and prosecution bodies. Some of its variations can be found in most IAP countries, in particular, in Armenia, Georgia, Ukraine and Uzbekistan.

And finally, the third group is the countries with multi-purpose anti-corruption specialized agencies, combining preventive and repressive powers. Among the IAP countries, such a model can be found only in Tajikistan, which established an Agency for Financial Control and Fight Against Corruption in 2007 with the view to comply with the IAP recommendation of the first round of monitoring. This agency is vested with both preventive and investigative powers.

The absence of genuine specialisation, however, remains to be a serious concern in some IAP countries. For example, in Ukraine, prosecutors do not specialise in specific types of crime, such as corruption, but rather in different stages of the investigation and prosecution procedure. Responsibility for corruption cases is based on the procedural specialisation, then divided among an investigator of the prosecution office who conducts pre-trial investigation, a prosecutor who oversees the legality of investigation, and another prosecutor who is responsible for supporting the accusation in court. Such fragmentation

Table 3.11. **Anti-corruption specialization in ACN countries: Bodies with anti-corruption law enforcement functions**[1]

	Specialized Anti-Corruption Investigative bodies	Specialized Anti-Corruption Prosecution bodies	Bodies responsible for detection and investigation	General prosecution bodies	Specialized Anti-Corruption Multi-purpose agencies
Istanbul Anti-Corruption Action Plan Countries					
Armenia			■	■	
Azerbaijan		■	■		
Georgia			■	■	
Kazakhstan	■			■	
Kyrgyz Republic	■		■	■	
Tajikistan			■	■	■
Ukraine			■	■	
Uzbekistan			■	■	
Other ACN countries					
Albania			■	■	
Belarus			■	■	
Bosnia and Herzegovina			■	■	
Bulgaria			■	■	
Croatia		■	■	■	
Estonia			■	■	
Former Republic of Macedonia			■	■	
Latvia			■	■	■
Lithuania			■	■	■
Moldova	■		■	■	■
Montenegro		■	■	■	
Romania		■	■		
Russian Federation	■		■	■	
Serbia			■	■	
Slovenia			■	■	

1. Shaded cells indicate that corruption cases fall within competence of such institution/s in the country. The information presented in the Table is as of August 2012.

Source: IAP Monitoring Reports; information by the governments; OECD/ACN Secretariat research.

Box 3.12. **Anti-Corruption Department (ACD) within the Prosecutor General's Office of the Republic of Azerbaijan**

The ACD, an autonomous department with the special status which is directly subordinate to the Prosecutor General, was created in 2004 and has the competence to detect, investigate and prosecute corruption. It consists of 3 divisions (Criminal Investigations, Internal Investigations and Analytical Information) and is staffed with 40 prosecutors and investigators, as well as designated detectives from the Ministry of Internal Affairs and the Ministry of National Security; financial, accountancy and other specialists are also seconded to ACD. It can also engage external experts on business, accounting, IT, forensics, etc., from other specialized institutions when necessary.

Source: IAP Second Round of Monitoring Report on Azerbaijan, 2010 (pp. 24-27), *www.oecd.org*.

fails to ensure consistency and continuity in the corruption cases, leads to lack of personal investment in the success of the case by each individual investigator and prosecutor, and makes it challenging to provide meaningful specialized training.[123]

Compliance with international standards

Upon completion of the first round of monitoring, the OECD/ACN Summary Report of 2008 noted some progress in strengthening anti-corruption law-enforcement bodies. It also emphasised the difficulty of assessing how IAP countries meet key international standards on specialisation (independence from undue interference, powers necessary for effective investigation and prosecution[124] and sufficient resources). The second round of monitoring allowed taking a closer look at compliance. While noting some examples of good practice emerging in the region IAP second monitoring round has also identified serious deficiencies in the IAP countries' capacity to successfully detect, investigate and prosecute corruption.

Positive developments can be identified in regard to autonomous status and institutional independence of the specialised anti-corruption institutions in selected IAP countries. For instance, during the second round of monitoring, it was noted that Azerbaijan's ACD *"has sufficient autonomy in the prosecutorial system"* and was *"directly subordinated to the Prosecutor General"*.[125] More still can be done to strengthen it further, e.g. by ensuring budgetary independence. Tajikistan's Agency for Financial Control and Fight Against Corruption also enjoys a high degree of institutional independence but is *"yet to develop its potential to enhance inter-agency co-operation between a number of law enforcement, security and financial control bodies"*.[126]

However, in general a lack of independence from undue interference remains to be one of the primary concerns in most IAP countries. In varying degrees, investigators and prosecutors in these countries are exposed to various forms of pressure from above, experience regular interferences with their investigations and prosecutions and are vulnerable to persecution themselves. Procedures on appointment, promotion and removal from the office are poorly regulated and do not provide for necessary safeguards all across IAP countries. There is no random assignment of cases, and even after the assignment, the case can be taken away from one investigator/prosecutor and handed over to another by their superiors; or the case can be taken away from the investigative institution altogether.

Overlapping jurisdiction is another problem identified in many IAP countries during the second round of monitoring. It is often reasonable to have a system of several law enforcement bodies involved in the fight against corruption, however, in most IAP countries, such models are hindered by duplicate roles and fragmentation of functions. They lack a clear, overarching designated agency which would ensure co-ordination. This is of special concern in the area of operational and investigative activities and leads to some cases falling through the cracks or being investigated simultaneously by more than one agency. Accountability also presents a real challenge in such models, as each agency is pointing fingers at the others and assigning blame for high level of corruption or failed investigations and prosecutions to someone else.

In most IAP countries, the notion of a joint inter-institutional investigation task force involving representatives of various law enforcement and control bodies is not employed in practice, although nothing prohibits this by law. Interagency co-operation is often formally put in place, but in practice, varies from case to case. Law enforcement agencies in many IAP countries are not obliged to provide feedback on reports made by other public institutions, in order to assist them in improving their capabilities to detect and report corruption. Nevertheless, during the second round of monitoring, some good examples of such feedback was provided. In Tajikistan for instance, although there was no obligation placed on its Agency for Financial Control and Fight Against Corruption, it provided

feedback on the results of the investigations to institutions which initially detected and transferred corruption allegations to it.

A field not explored in depth during the second round of monitoring is qualifications, skills and training of the specialised personnel who deal with corruption cases. This may be looked at more closely in the future. It would also be useful to look into the issue of evaluation of the personnel's performance: what factors should be taken into account; what indicators can be developed to properly reflect good performance and how to best depart from antiquated practices when only the number of opened/completed investigations or prosecutions with convictions have been accepted as criteria for success. Results of the interesting initiatives, launched by some IAP countries in this context can be monitored and analysed to establish potential good practices. For example, Kyrgyzstan during the second round of IAP monitoring, reported an initiative of measuring public satisfaction with the work of law enforcement agencies through surveys with the intent to use this information for their performance evaluation.

With the exceptions of Azerbaijan and Kazakhstan, the material and technical resources of the law-enforcement and prosecution authorities involved in anti-corruption were reported as very limited and sometimes non-existent. In Kyrgyzstan, forensic capabilities remain very rudimentary; some important types of forensic analysis cannot be carried out at all since there is no appropriate equipment and knowledge.[127]

In most IAP countries, training for prosecutors, including anti-corruption training, is provided by the specialized institutions. Prosecutor training institutes and academies function in Armenia, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan. Georgia and Azerbaijan also have special training departments within the prosecution's offices. Training for investigators is conducted by the training institutions of the Ministries of Interior and Security Services. Specialized Agency of Tajikistan also has its own training facilities and reported to conduct regular trainings for its staff. The IAP authorities provided a lengthy list of training activities for prosecutors and law enforcement officials that had been conducted since the first round of monitoring. Some trainings covered general areas, such as team investigations and investigative efficiency. Others focused on more specific topics, such as links between corruption and money laundering, international judicial co-operation, new types of corruption offences, etc. All second round reports noted that there is a need to further encourage joint trainings, as well as trainings on areas where capacity seems to be lacking, such as financial investigations, forensic accounting, new technologies in SITs, etc. It would also make sense to take a more systematic approach to training, developing a series of comprehensive anti-corruption courses, as opposed to ad hoc trainings and see what results such approach may yield.

Investigation and prosecution of corruption cases

The OECD/ACN Summary report of 2008 did not cover the issue of investigation and prosecution of corruption cases in depth. Only general statements regarding the difficulty of assessing law enforcement practice due to lack of information and comprehensive statistics were made. The *"need to strengthen analysis of practical implementation of anti-corruption legislation"* was also highlighted.

The second round of monitoring shed some light on the procedural issues of investigations and the prosecution of corruption. It allowed to look into what investigative tools were available, which were the most commonly used, what capacities law enforcement agencies in the region lacked, how well they co-operated, what statistical data was collected on corruption cases and what methods were used to collect that data.

Box 3.13. **Reform of the specialised anti-corruption agency in Moldova**

Moldova has recently launched a reform of its specialised anti-corruption agency – the Centre for Combating Economic Crimes and Corruption, set up in 2002. It was transformed into National Anti-Corruption Centre (NAC) according to the new law enacted on 1 October 2012. Its mandate includes preventive functions and combating corruption and corruption-related crimes, money laundering and terrorism financing crimes; other functions will be transferred to other specialised state agencies. According to the Moldovan authorities, independence of the new agency will be guaranteed by placing the NAC under parliamentary control; agency's director will be appointed for the term of office not corresponding to that of the government, Parliament and president, from among candidates who meet professional criteria and are not affiliated to political parties; job security for the NAC staff; raised salaries of the staff combined with increased accountability and strengthened disciplinary measures up to dismissal. Agency's staff will be subjected to integrity tests, polygraph testing and "monitoring of lifestyle" – failure to pass relevant tests will result in disciplinary sanctions. The appointment of the new NAC's Director was carried out based on professional and non-political affiliation criteria by the Parliament through a transparent and competitive procedure. 18 candidates applied for the post and the parliamentary committee held public hearings before deciding on the nomination, which was then confirmed by the plenary parliament.

The NAC is authorised to conduct operative and detective activity, carry out criminal prosecution of crimes under its jurisdiction. The agency will also deal with preventive tasks: anti-corruption screening of draft legal acts, corruption risk assessment, anti-corruption awareness raising and education, monitoring of anti-corruption policies, research and studies.

Source: Information by the Moldovan authorities; media reports; text of the revised law available at *http://lex.justice.md/index.php?action=view&view=doc&lang=2&id=344902* (in Russian).

Conduct of investigations and prosecutions

In all IAP countries, apart from Armenia, pre-trial proceedings must be initiated by either a body of inquiry, an investigator or a prosecutor if there is a statutory ground and sufficient information about an alleged crime. Whether there is sufficient information to start pre-trial proceedings depends on whether a reasonable assumption can be made that a crime has been committed. When there is no sufficient information, as a rule, the body of the inquiry/investigator/prosecutor is obliged to conduct preliminary checks, either personally or through the competent authorities. The quality of such checks differs greatly from one case to another in most IAP countries, and exercised diligence often depends on the willingness of the investigator or prosecutor to pursue the case.

For instance, while media reports, according to legislation of all IAP countries, constitute "statutory grounds", very few investigations are triggered by reports of alleged corruption in the media. This seems to be happening for a variety of reasons. They range from unwillingness to pursue historic (reactive) investigations of the crime that has already happened to high workload of law enforcement officers and prosecutors. This greatly undermines public trust in law-enforcement and prosecution bodies and seriously hampers the ability of law-enforcement to have success in investigating high-profile cases. Proactive means of investigation should be encouraged in IAP countries, drawing on the experience from other countries in ACN and OECD.

Box 3.14. **Special Investigative Techniques**

Special Investigative Techniques (SITs) are techniques applied by competent judicial, prosecuting and investigating authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons *(Council of Europe Committee of Ministers' Recommendation Rec(2005)10 on "special investigation techniques" in relation to serious crimes including acts of terrorism)*.

According to the UNCAC (Art. 50) in order to combat corruption effectively, SITs should be used, in particular, controlled delivery, electronic or other forms of surveillance and undercover operations, and evidence gathered by these means should be admissible in court.

Source: CoE documents; UNCAC.

Armenia is the only IAP country which leaves discretion to the prosecutor (or investigator upon prosecutor's consent) to decide whether or not to open a criminal case, discontinue or terminate it.[128] Given the extent of corruption and the constraints of human and financial resources, it might be useful for other IAP countries to consider prioritising corruption cases for investigation and prosecution. This is particularly effective in ensuring that serious corruption cases receive the necessary attention. Well-regulated discretion can be a solution, especially for countries with limited resources. With such an approach, criteria for the selection of cases should be clearly prescribed in the law, internal regulations, guidelines or policy papers and strictly followed.

Upon completing the investigation, the body of inquiry or the investigator in IAP countries forwards the file to the prosecutor who draws up an indictment if there is sufficient evidence and no grounds for terminating the proceedings. All of these procedures are written out in detail in the Criminal Procedural Codes of IAP countries. Current practice, however, shows that it is impossible to pursue each and every case. The second round of monitoring showed that this often leads to unauthorized, uncontrolled, non-transparent, and often disingenuous use of discretion to use administrative rather than criminal sanctions in those countries where such liability regimes exist in parallel (Ukraine, Kazakhstan and Tajikistan).

Special investigative techniques

While most of these techniques are highly intrusive and should be used with both great caution and consideration, it is widely recognised that SITs are very effective tools to detect and investigate corruption, which is a latent crime, rarely with witnesses or direct evidence that can be easily collected.

In all IAP countries, the production of evidence gained from the use of special investigative techniques is permitted before courts and strict procedural rules governing the production and admissibility of such evidence are established by their national legislations.

However, in some countries, inability to conduct SITs independently by specialised anti-corruption agencies undermines their success. In Azerbaijan, ACD had to request the appropriate law enforcement agency to perform operative activities, which limited the ability of the ACD to detect high-level corruption, e.g. involving senior management of law-enforcement bodies such as the Ministry of Interior, or the Ministry of National Security. It should therefore be welcomed that in March 2011 the Detective-Search Activity Law and

the Law on Prosecutor's Office were amended and the ACD was vested with the authority to carry out all types of special investigation measures in respect of corruption offences. The amendments went even further and excluded all other law enforcement agencies from carrying out such measures in respect of corruption offences, except when the ACD issues them mandatory written instructions to carry out such measures.[129]

Another problem was noted in Kyrgyzstan. While the Law on the Operative and Detective Activity allows use of special investigative methods even before a criminal case is opened, in practice, use of results of operative measures as evidence is problematic since courts rarely accept them. This is explained by the restriction set in the Criminal Procedures Code, according to which, only crime scene examination and forensics analysis are permitted before the criminal case is opened. When the corruption case is opened, the risk of information leaks becomes high. It can render any covert operative activities, like imitated bribery, ineffective. Therefore, as was noted in the IAP report, law enforcement personnel and judges need clear guidelines on how materials resulting from special operative measures can be used as evidence in court. It was also recommended to amend relevant legislation to allow use of operative results as evidence.[130]

Box 3.15. **Criteria for prosecutorial discretion**

- Seriousness of corruption offence, for example, cases which involve high level public official or large amounts of bribes; additional criteria for assessing the seriousness of the offence could be its criminal nature, where prosecutors should focus on criminal offences only and other law-enforcement agencies should investigate other types of offences, such as administrative and civil.
- Prevalence of the type of corruption, for example, cases that involve the most common and widespread offences such as corruption in public procurement, tax, customs, traffic police and other risk sectors.
- Cases that are needed to set precedents in order to 'test' the prosecution of certain matters or establish legislative shortcomings. For example, new criminal offences, or offences where prosecution may change public perceptions, such as corruption cases that involve legal persons or bribery of foreign public officials.
- Availability of material and human resources. An assessment of costs and benefits can be made before a decision to investigate and prosecute a specific case. Investigation and prosecution of relatively small cases can consume a lot of resources, but not generate an important impact. At the same time cases of serious corruption can involve substantial costs and require a lot of time, but can lead to recovery of large proceeds of corruption and improve trust in government.

Source: United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators, September 2004, *www.unodc.org*.

Provocation of bribery

Several IAP countries (Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine) have established a special criminal offence prohibiting the provocation of bribery in the private or public sectors. It aims to prevent entrapment committed by law enforcement officers to uncover corrupt officials. Criminalisation of bribe provocation is supposed to reinforce this prohibition in countries with high levels of corruption, which consider law enforcement

authorities highly susceptible to the temptation of provoking bribery. In other IAP countries, such a practice is forbidden as well, but through other mechanisms, like the court practice and internal regulations.

While the provocation of a bribe is prohibited, it does not mean that simulated bribery as an operative or investigative measure is off limits. The latter is a legitimate instrument to document bribery when it provides that law enforcement officers, after having learnt about an on-going or soon-to-happen bribery, "join" the offence either as undercover agents or through a collaborating person (often a person who was solicited a bribe by the official) in order to catch the perpetrator *in flagrante*.

Offence of bribery provocation is often cited by law enforcement practitioners as an obstacle to effective fight corruption. However, such a measure, were it allowed to the law enforcers – would clearly violate human rights standards. No matter how effective this measure may appear to practitioners interests of ensuring fair trial should prevail. As noted in one of the European Court of Human Rights judgments, the right to a fair administration of justice holds so prominent a place in a democratic society that it cannot be sacrificed for the sake of expedience.[131] While the use of undercover agents may be tolerated provided that it is subject to clear restrictions and safeguards, "*the public interest in the fight against crime cannot justify the use of evidence obtained as a result of police incitement, as to do so would expose the accused to the risk of being definitively deprived of a fair trial from the outset*".[132]

Police incitement occurs where the officers involved or persons acting on their instructions do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject as to incite the commission of an offence that would otherwise not have been committed. In the case of *Bannikova v. Russia*, the European Court of Human Rights summarized the criteria for distinguishing entrapment from permissible conduct: 1) substantive test (whether the offence would have been committed without the authorities' intervention; whether the undercover agent merely "joined" the criminal act or instigated it; whether person was subjected to pressure to commit the offence); 2) procedural test (the way the domestic courts dealt with the applicant's plea of incitement).[133]

Whether provocation of bribery is criminalized or not, countries should establish in the law (and not in the secondary legislation) clear procedures and guarantees against abuse during the use of imitated bribery as an investigative or operative tool. Law enforcement authorities should also adopt clear guidelines setting apart entrapment and legitimate bribery simulation.[134]

Bank secrecy and complex financial investigations

Powers necessary to effectively investigate and prosecute corruption have been expanded since the first round of monitoring. In most IAP countries, law enforcement agencies have since received easier access to bank information. However, in Kyrgyzstan and Armenia, inability of law enforcement officers involved in corruption cases to access bank data before initiating a criminal case remains to be a problem. In addition, law enforcement authorities in Kyrgyzstan face difficulties in even accessing data held by tax and customs authorities.

Of great concern is the conduct of complex financial investigations in IAP countries. Corruption investigations often involve the examination of numerous financial transactions

to determine the flow of funds, or to trace and quantify the bribes and the proceeds of bribery. These investigations also often require gathering of a copious amount of material, frequently in electronic form. All IAP countries struggle in conducting complex financial investigations.

Officials met during on-site visits to the IAP countries were often not aware of the importance of expertise in forensic accounting or information technology in corruption investigations. It was also difficult to identify prosecutors or investigators with such expertise for presentation of their experience in the relevant regional training conducted in June 2011 in Kyiv, Ukraine.

This could be hampering the ability of specialised anti-corruption bodies to investigate complex corruption cases and may also have contributed to the lack of confiscation of the proceeds of bribery. The building up of such a capacity is necessary and will require commitment of serious resources in all IAP countries.

Specialised experts can play a significant role in financial investigations. Best practices show that there are various models of drawing on specialised expertise. In some countries, anti-corruption investigation and prosecution offices try to build-up their own in-house expertise on various subject matters; such approach has been already tried in Kazakhstan.

Other countries, often those with more limited resources, opt for involvement of external expertise. In Ukraine, law-enforcement bodies have numerous avenues to financial expertise: they can employ financial experts in specific cases as required, request assistance or co-operation from other public agencies that may possess such expertise, e.g. financial inspections and audit units.[135]

Azerbaijan has combined both approaches: it has both in-house experts and involves outside expertise. Similarly, the Lithuania's Prosecutor's Department on combating organized crime and corruption and Poland's District and Appellate Prosecution Offices have a limited number of in-house financial and other specialized experts with the rest being commissioned on the ad-hoc basis.[136]

Corruption cases and statistics

It is difficult to make any meaningful conclusions in regard to types of the corruption cases investigated in the IAP countries and identify any real trends. Very limited information on actual cases has been provided by the countries in the framework of the second round of IAP monitoring. The monitoring teams has often had to rely on media reports, as was the case in Armenia and Kyrgyzstan, to identify positive steps undertaken by these countries.

Nevertheless, a general assertion based on the information provided and collected can be made that petty corruption is by far more often investigated by IAP law enforcement authorities as compared to high-profile cases. Also, simple cases of bribery as opposed to complex ones (cases with new elements of the corruption offences or new offences) comprise the majority of corruption investigations and prosecutions in IAP countries.

The recent establishment of specialised institutions with jurisdiction limited to the highest categories of officials (particularly in Armenia and Kyrgyzstan) gives hope for better results. A number of high-profile cases have been recently reported in the press in Kyrgyzstan and Armenia. Also, as the existing specialised bodies and specialized persons within the law enforcement agencies of IAP countries gain more experience, their achievements should be closely monitored and analysed.

It is worth mentioning that many of the IAP countries are working on improving their statistical databases and methodologies. For instance, Tajikistan reported that its Agency and the Prosecutor's office were in the process of developing efficient mechanisms for statistical monitoring of corruption and corruption-related offences in all spheres of the civil service, police, the public prosecutor's offices, and the courts built on the basis of a harmonised methodology.[137]

Some countries have already updated their statistical databases since the first round of monitoring. In Azerbaijan, a National Corruption Database was created in 2008 and became operational on 1 January 2009. It provides a proper mechanism for the monitoring of corruption and corruption related offences.

The focus of future monitoring can be shifted to case-law and aimed at determining what issues arise and how well they are tackled by the investigators and prosecutors on a case-by-case basis. It may be beneficial to identify what types of cases are being investigated most successfully and which prove to be more difficult; what challenges enforcement of various corruption offences presents and how new types of corruption are being investigated and prosecuted.

Conclusions and recommendations

Criminalisation of corruption is an area where all IAP countries have achieved some progress in aligning their laws with international standards. However, conservatism in legal doctrine and law enforcement practice remains an obstacle for full compliance with these standards and for the ensuring of effective investigation and prosecution of corruption. At the same time, examples of corporate liability for corruption shows that the traditional approach can and should be overturned when it is required to ensure effective fight against corruption – Georgia and Azerbaijan have introduced in criminal law liability of legal persons for corruption offences. This and other examples of best practices should encourage other IAP countries to continue the implementation of reforms in the area of criminalisation and enforcement of corruption offences.

Recommendations:

- Criminalisation of corruption:
  - ❖ Eliminate provisions on administrative liability for corruption offences ensuring that corruption is pursued with criminal law measures.
  - ❖ Complete reform of the substantive criminal law to make it fully compliant with respective international standards on criminalisation of corruption, in particular by:
    - criminalising all elements of the offences of bribery (in public and private sectors) and trafficking in influence, including offer and promise, request and acceptance of offer or promise of a bribe, use of intermediary, third party beneficiaries, undue advantage in intangible and non-pecuniary form;
    - broadening the definition of national public officials liable for corruption offences, in particular, to include all employees of public institutions and candidates for elected office;
    - properly covering foreign public officials through autonomous definition or by extending the definition of national officials.

- ❖ Review offences of abuse (exceeding) of office to ensure that they are not formulated too broadly, violating the requirement of legal certainty.
- ❖ Through legislative amendments and/or changes in practice, explicitly state that conviction for predicate offence is not required for prosecution and conviction for money laundering; raise awareness of prosecutors and judges on this issue.
- ❖ Consider establishing an offence of illicit enrichment through a rebuttable presumption of illegal origin of assets that cannot be explained by the official with reference to legitimate sources.
- ❖ Establish effective liability of legal persons for corruption offences with proportionate and dissuasive sanctions, including liability for lack of proper supervision by management which made the commission of the offence possible; corporate liability should be autonomous and not depend on detection, prosecution or conviction of the actual perpetrator.
- ❖ Review sanctions for corruption offences to ensure that they are effective, proportionate and dissuasive and qualify for extradition; compile and analyse statistics on the application of sanctions for corruption offences to see how effective they are in practice (e.g. how often conditional release is applied, whether imprisonment is the main sanction for serious offences).
- ❖ Strengthen provisions on confiscation of instrumentalities and proceeds, which should be mandatory for all corruption offences and cover converted or mixed proceeds, benefits derived from proceeds and allow value-based confiscation; consider reversing burden of proof in confiscation proceedings (criminal or civil) and introduce extended confiscation.
- ❖ Ensure that statute of limitations for corruption offences is long enough to allow effective investigation and prosecution of corruption; consider establishing fixed, sufficiently long statute of limitations for all corruption crimes regardless of their gravity; stipulate that statute of limitations be interrupted by bringing of charges or other procedural action, as well as by the period when person has enjoyed immunity.
- ❖ Continue limiting immunity of public officials by narrowing down its scope and the list of relevant officials to the extent necessary in a democratic state; remaining immunities should be functional, cover only period in office, exclude situations in flagrante, allow effective investigative measures into persons with immunity; establish swift and effective procedures for lifting immunity based on clear criteria.
- ❖ Review provisions on effective regret by providing that it should not be applied automatically; that it should be valid only during the short period of time after the commission of the crime and, in any case, before law enforcement bodies became aware of the crime; requiring the bribe-giver who reports the offence to actively co-operate with the authorities; exclude application in cases when bribery was initiated by the bribe-giver; ensure that bribe is not returned to the person who made use of the effective regret to be exempted from liability.

- International co-operation and mutual legal assistance:
  - ❖ Continue expanding the treaty base for international co-operation, in particular, by adhering to more recent multilateral instruments, like the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and

on the Financing of Terrorism, which offer a broad range of new co-operation tools; encourage various forms of direct co-operation, in particular, through interagency co-operation agreements.

- ❖ Ensure that the staff of units responsible for international co-operation within the central authorities are well trained, have adequate resources, including translators, necessary means of communication, and are easily accessible to the investigators and prosecutors in the field.
- ❖ Collect and analyse data about the practical application of available international co-operation instruments during investigation and prosecution of corruption cases and relevant challenges (e.g. dual criminality in cases involving legal persons, asset recovery in countries with no national provisions on the recovery of confiscated assets, evidentiary value of information obtained from another state, authorisations for intrusive investigative measures).

- Specialised law-enforcement bodies:
  - ❖ Strengthen capacity for fighting corruption by establishing specialised anti-corruption bodies/units/persons and guaranteeing their institutional, functional and financial independence; put in place effective mechanisms to prevent various forms of hierarchical pressure and undue interferences with corruption investigations and prosecutions; introduce competitive and transparent merit-based selection of heads of specialised anti-corruption agencies.
  - ❖ Clearly delineate the responsibilities of various law-enforcement bodies and ensure that mechanisms for inter-agency co-operation and co-ordination are in place and functioning properly; equip specialised anti-corruption institutions with adequate resources and provide their staff with consistent, needs-tailored training.
- Investigation and prosecution of corruption cases:
  - ❖ Further improve procedural legislation and step up efforts to detect, investigate and prosecute high-profile and complex corruption cases; establish clear procedures and guarantees in the law against abuse during the use of imitated bribery as an investigative or operative tool, in particular, adopt clear guidelines setting apart entrapment and legitimate bribery simulation; ensure effective access to bank information and information held by tax and customs authorities; build the capacity of investigators and prosecutors to conduct financial investigations and use circumstantial evidence; encourage use of in-house or outsourced specialised expertise.
  - ❖ Collect and analyse data on corruption cases to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled, including how new types of corruption offences are being investigated and prosecuted; improve statistical databases and methodologies for collecting, organising and analysing case-related information.

Notes

1. GRECO in some of its Third Evaluation Round Reports (e.g. on Croatia, §48, *www.coe.int*; and Estonia, §69, *www.coe.int*) accepted that "promise" may cover "offer" of an undue advantage, but only when unambiguous court practice was provided to prove it. At the same time in its Third Evaluation Round Report on Slovakia (§104; *www.coe.int*) GRECO noted that "the "offering" is a particularly important element in that it covers bribes which are proposed (but not accepted) and often leads

to the actual "giving" or "promising" of an undue advantage (e.g. thus referring to situations where potential offenders "test" their interlocutor)".

2. Different from extortion, i.e. situations where the bribe-taker coerces another person to give a bribe under threat of adverse consequences.
3. See Explanatory Report to the CoE Criminal Law Convention, §§ 36, 41-42, *http://conventions.coe.int*, and OECD Publication "Corruption. Glossary of International Standards in Criminal Law", pp. 26-27, *www.oecd.org*.
4. See e.g. IAP Second Round Report on Kazakhstan, p. 28; *www.oecd.org*.
5. Idem, p. 29.
6. OECD WGB Phase 1 Report on Russia, §12; *www.oecd.org*. See also GRECO Third Evaluation Round Report on Russia of March 2012 (§55, *www.coe.int*), which criticizes reliance on inchoate offences to cover offer, promise, request of bribe and their acceptance.
7. For example, in Belgium in a judgment of 18 May 2001 the Oudenaarde criminal court considered that the question put by a person to the policeman accompanying him in the police car for a breathalyser test after a serious road accident ("Couldn't something be arranged? It's just the two of us") could be deemed to be an offer. The individual was convicted of active bribery. (GRECO Third Evaluation Round Report on Belgium, p. 25; *www.coe.int*.)
8. See, for example, GRECO Third Evaluation Round Report on Armenia (§82, *www.coe.int*) and Estonia (§71, *www.coe.int*).
9. Such resolutions, usually issued by the Plenary of the Supreme Court, constitute an established practice in most of the IAP countries. They summarise judicial practice in certain area and, while not being formally binding, are authoritative and usually are strictly followed by lower courts.
10. See also GRECO Third Evaluation Round Report, among others, on Russia (§57, *www.coe.int*).
11. According to the OECD Anti-Bribery Convention (Art. 1), "any undue pecuniary or other advantage".
12. Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), §37; *http://conventions.coe.int*.
13. See, for example, GRECO Third Evaluation Round Report on Lithuania, §70; *www.coe.int*.
14. At the same time several new offences introduced in the Criminal Code of Ukraine in 2011 (commercial bribery, trafficking in influence), instead of "bribe", use the term of "undue advantage", which is defined in the Law on Principles for Preventing and Combating Corruption and includes "advantages", "services", "non-material assets". Government of Ukraine submitted in the parliament draft amendments to introduce uniform notion of 'undue advantage' in all criminal corruption offences.
15. Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), §38; *http://conventions.coe.int*.
16. UNCAC, Articles 15 and 16. CoE Criminal Law Convention – "to act or refrain from acting in the exercise of his or her *functions*"; OECD Anti-Bribery Convention – "act or refrain from acting in relation to the *performance of official duties*".
17. See, among others, GRECO Third Evaluation Round Reports on Croatia (§51, *www.coe.int*), Romania (§101, *www.coe.int*), Slovenia (§80, *www.coe.int*), the FYR of Macedonia (§69, *www.coe.int*). See also Commentaries to the OECD Anti-Bribery Convention, §19, *www.oecd.org*.
18. GRECO in its Third Round Evaluation Reports on Armenia (§83, *www.coe.int*) and Ukraine (§68, *www.coe.int*) accepted assurances of the authorities that despite wording of relevant provisions, bribery offences are, in practice, interpreted broadly to include situations when an official performs acts lying outside his/her scope of competence.
19. Kazakhstan, Kyrgyzstan, Ukraine, Uzbekistan.
20. From 43 State-Parties to the CoE Criminal Law Convention, only Andorra, Belgium and Hungary made a reservation with regard to relevant provisions. See *http://conventions.coe.int*.
21. According to the Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (§53), this "choice was made to focus on the most vulnerable sector, i.e. the business sector. Of course, this may leave some gaps, which Governments may wish to fill: nothing would prevent a signatory State from implementing this provision without the restriction to "in the course of business activities".

22. GRECO Third Evaluation Round Report on Russia (§61, *www.coe.int*).

23. Of 43 State Parties to the CoE Criminal Law Convention, 10 countries made reservations, either to fully exclude the application of Article 12 on trading of influence or attaching certain conditions and clarification to its application. See *http://conventions.coe.int*.

24. A slightly different definition of influence trading is contained in the UNCAC (Art. 18): *a)* The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; *b)* The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

25. Judgment of 01.10.1984, case No. 277. Cited from: *Experience with criminal offence of trading in influence in France*, by M. Segonds and A. Riberolles, published in GRECO's Tenth General Activity Report (2009), *www.coe.int*.

26. Explanatory Report to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), §64; *http://conventions.coe.int*.

27. In its Third Evaluation Round Report on Latvia (§94, *www.coe.int*) GRECO noted that offence of trading in influence which did not include the element of "improper", and thus covering professional lobbying activities, results in a broad and far-reaching transposition of Article 12 of the Convention and may frustrate the actual purpose of the criminalization of trading in influence.

28. Some states even contend that criminalization of trading in influence might come into conflict with the fundamental right in a democracy to influence people in power or others through exercising the right to freedom of expression. See GRECO Third Evaluation Round Report on Sweden, §54, *www.coe.int*.

29. GRECO Third Evaluation Round Report on the Netherlands, §61, *www.coe.int*.

30. Case-law of the European Court of Human Rights should be taken into account in this regard, e.g. *Salabiaku v. France*, *Pham Hoang v. France* and others.

31. IAP Joint First and Second Monitoring Rounds Report on Uzbekistan, p. 26, *www.oecd.org*.

32. See IAP Second Monitoring Rounds Report on Ukraine, p. 23, *www.oecd.org*.

33. Resolution No. 15 of the Plenary of the Supreme Court of Ukraine on court practice in cases on excess of authority or official powers, 26.12.2003, *http://zakon1.rada.gov.ua*.

34. IAP Second Monitoring Round Report on Kyrgyzstan, p. 21, *www.oecd.org*.

35. Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), *www.coe.int*.

36. *www.eurasiangroup.org/mers.php*.

37. GRECO Compliance Report on the Russian Federation, Joint First and Second Round of Evaluation, December 2010, §122; *www.coe.int*.

38. Person authorized to manage, represent a legal person, take a decision on behalf of a legal person and/or member of supervisory, control and revision body of the legal person.

39. Kazakhstan and Kyrgyzstan introduced administrative liability of legal persons for violation of requirements of the Anti-Money Laundering Law, but not for the money laundering itself.

40. Reference to special law in the Criminal Code and Law on the Responsibility of Legal Persons of 2007.

41. Law on Responsibility of Legal Entities for Criminal Offences of 2003.

42. Act on Measures Applicable to Legal Entities, 2001.

43. Reference to special provisions in the Criminal Code and Law on Criminal Liability of Legal Persons of 2006.

44. Law on Liability of Legal Persons for Criminal Offences of 2008.

45. Reference to a special law and Act on Liability of Legal Persons for Criminal Offences of 1999. Slovenian model is sometimes referred to quasi-criminal liability, as theoretically it is a "liability

for criminal acts", because legal persons are not considered to meet the principle of subjective guilt. Nevertheless, the general part of the Penal Code and the Code of Criminal Procedure apply to legal persons. See, e.g., Phase 1 Report on Slovenia by the OECD Working Group on Bribery, March 2005, §49; *www.oecd.org*.

46. Act on Liability of Collective Subjects for the Acts Forbidden under a Penalty, 2003.

47. Sanctions ("protective measures") against legal persons are included in the Criminal Code, although legally criminal liability of legal persons is not recognized. They are considered as result (or "collateral effect") of criminal liability of a natural person. See in this regard concern of the OECD Working Group on Bribery that such arrangement may fall afoul of the legality principle pursuant to which there is no crime and therefore no criminal sanction without law (Phase 3 report on Slovakia, OECD WGB, June 2012, §42; *www.oecd.org*).

48 Although included in the Swedish Criminal Code, provisions on liability of legal persons are viewed as quasi-criminal, because only natural persons can commit crimes in Sweden. Liability is applied to legal persons for a "crime committed in the exercise of business activities" by a natural person belonging to the legal person. There is no requirement that a natural person has to be convicted or even prosecuted for a corporate fine to be applied. A "corporate fine" is described as a "special legal effect of crime". A similar model was adopted in Azerbaijan, which introduced "criminal law measures applicable to legal persons".

49. See, e.g., Phase 3 Report on Bulgaria by the OECD Working Group on Bribery, March 2011, §31; *www.oecd.org*.

50. Annex I to the OECD Council Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, November 2009; *www.oecd.org*.

51. Phase 3 Report on Hungary, OECD Working Group on Bribery, March 2012, §21; *www.oecd.org*. See also WGB Phase 2 Report on Poland, January 2007, §161-163; *www.oecd.org*.

52. Recommendation No. R (88) 18 concerning liability of enterprises having legal personality for offences committed in the exercise of their activities, October 1988; *www.coe.int*.

53. GRECO, Addendum to the Compliance Report on Latvia, Second Evaluation Round, February 2009, §39; *www.coe.int*. At the same time GRECO's position has been that such situation, while unsatisfactory, is not in contravention of the letter of Article 18 of the CoE Criminal Law Convention.

54. See Good practice guidance on internal controls, ethics, and compliance, contained in OECD Council Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions; *www.oecd.org*.

55. OECD WGB Phase 3 Report on Greece, June 2012, §49; *www.oecd.org*.

56. OECD WGB Phase 3 Report on Greece, June 2012, §34; *www.oecd.org*.

57. OECD Publication "Corruption. Glossary of International Standards in Criminal Law", pp. 31-32, *www.oecd.org*.

58. From IAP countries Armenia and Ukraine are Parties to the Additional Protocol.

59. UN Convention against Corruption (Art. 30) provides for sanctions that take into account the gravity of offence.

60. IAP Second Monitoring Round Report on Georgia, p. 22, *www.oecd.org*.

61. IAP Second Monitoring Round Report on Kyrgyzstan, p. 29, *www.oecd.org*.

62. UN Convention against Corruption (Art. 31), CoE Criminal Law Convention (Art. 19), OECD Anti-Bribery Convention (Art. 3; as an alternative to confiscation of the bribe and the proceeds of the bribery provides for "monetary sanctions of comparable effect").

63. This may include not only the bribe itself, but any property used in any way during preparation or commission of a crime. For example, if a briber calls an official on his/her mobile phone and offers a bribe, then phone could be subject to confiscation. At the other extreme, if a briber takes his/her private jet to meet an official and delivers the bribe, then the jet might also be subject to confiscation. (OECD Publication "Corruption. Glossary of International Standards in Criminal Law", p. 45, *www.oecd.org*.)

64. Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, *http://eur-lex.europa.eu*.

65. See, among others, judgments of the European Court of Human Rights in cases of *Salabiaku v. France* (10519/83), *Phillips v. UK* (41078/98), *Welch v. UK* (17440/90), *Raimondo v. Italy* (12954/87), *Minhas v. UK* (7618/07).

66. Article 72-3 of the Criminal Code of Lithuania.

67. See also information on previous provisions of administrative confiscation of unexplained wealth, allowed even before the conviction: GRECO Second Evaluation Round Report on Georgia, December 2006, p. 4-5, *www.coe.int*.

68. See MONEYVAL Third Round Detailed Assessment Report on Poland, November 2007, p. 36-38, *www.coe.int*.

69. *The Extended Power of Confiscation of Crime-Related Proceeds*, by Rafal Kierzynka, Proceedings of the Expert Seminar for Eastern Europe and Central Asia on Criminalisation of Corruption, OECD, March 2007, p. 72, *www.oecd.org*.

70. GRECO Joint First and Second Evaluation Round Report on Turkey, March 2006, p. 21, *www.coe.int*.

71. Law No. 63/2012 on amending the Criminal Code, adopted in March 2012.

72. 2nd Assessment Report of the Conference of the Parties to CETS No. 198 on Romania, June 2012, §43, *www.coe.int*.

73. Report from the European Commission to the European Parliament and the Council on the Progress in Bulgaria under the Co-operation and Verification mechanism, Technical Report, COM(2012) 411 final, 18 July 2012, p. 34-35, *http://ec.europa.eu*.

74. See also Venice Commission Opinion No. 563 on the Sixth Revised Draft Act on Forfeiture of Assets Acquired through Criminal Activity or Administrative Violations of Bulgaria, June 2011, *www.venice.coe.int*.

75. See, for instance, IAP Second Monitoring Round Report on Armenia, p. 33; *www.oecd.org*.

76. Third Evaluation Round Report on Hungary, §96, *www.coe.int*.

77. Third Evaluation Round Report on Latvia, §95, *www.coe.int*. However, in reports on Slovenia (§88, *www.coe.int*) and the former Yugoslav Republic of Macedonia (§72, *www.coe.int*) GRECO found limitations period of 3 years to be sufficient for some offences taking into account lack of practical problems in prosecution of corruption crimes due to statute of limitations.

78. Third Evaluation Round Report on Russia, §64, *www.coe.int*.

79. OECD WGB Phase 1 Report on France, p. 31, *www.oecd.org*. See also Phase 1 Report on Russia, §81, *www.oecd.org*.

80. OECD WGB Phase 2 Report on Japan, p. 55, *www.oecd.org*.

81. OECD WGB Phase 2 Report on Spain, p. 32, *www.oecd.org*.

82. IAP Second Monitoring Round Report on Kazakhstan, p. 42; *www.oecd.org*.

83. See, for instance, OECD WGB Phase 1 Report on Denmark, p. 27, *www.oecd.org*.

84. See OECD WGB Phase 2 Report on Germany, §151, *www.oecd.org*.

85. Council of Europe's Committee of Ministers Resolution No. (97) 24 on the twenty guiding principles for the fight against corruption, 6 November 1997, *https://wcd.coe.int*.

86. IAP Second Monitoring Round Report on Armenia, p. 34, *www.oecd.org*.

87. GRECO Joint First and Second Evaluation Round Report on Azerbaijan, §62, *www.coe.int*.

88. IAP Second Monitoring Round Report on Azerbaijan, p. 47, *www.oecd.org*.

89. IAP Second Monitoring Round Report on Kazakhstan, p. 42, *www.oecd.org*.

90. See, among others, GRECO Third Evaluation Round Reports on Croatia (§57, *www.coe.int*), Latvia (§96, *www.coe.int*), the former Yugoslav Republic of Macedonia (§74, *www.coe.int*), Moldova (§64, *www.coe.int*), Poland (§70, *www.coe.int*), Romania (§112, *www.coe.int*)

91. See, for instance, GRECO Third Round Evaluation Report on Armenia, §90, *www.coe.int*.

92. In its Third Round Evaluation Report on Russia (§66, *www.coe.int*), GRECO noted that May 2011 amendments in the Russian law requiring the briber to actively facilitate the detection and/or investigation of the crime (to be eligible for the effective regret defence) might limit the risks of

abuse of this defence. At the same time, GRECO had misgivings about other aspects of this defence present in the Russian law.

93. See, among others, IAP Second Monitoring Round Reports on Kazakhstan (p. 30-31, *www.oecd.org*) and Kyrgyzstan (p. 22, *www.oecd.org*).

94. OECD WGB Phase 2 Report on Slovakia, §160, *www.oecd.org*.

95. GRECO Third Round Evaluation Report on Armenia, p. 24, *www.coe.int*.

96. GRECO Third Round Evaluation Report on Azerbaijan, §61, *www.coe.int*.

97. GRECO Third Round Evaluation Report on Georgia, §80, *www.coe.int*.

98. IAP Second Monitoring Round Report on Georgia, p. 18, *www.oecd.org*.

99. IAP Second Monitoring Round Report on Kazakhstan, p. 31, *www.oecd.org*.

100. IAP Second Monitoring Round Report on Kyrgyzstan, p. 22, *www.oecd.org*.

101. Istanbul Anti-Corruption Action Plan, Summary Report, An assessment of progress in the period 2003-2007, OECD, 2008, *www.oecd.org*.

102. See, in particular, IAP Second Monitoring Round Report on Tajikistan, pp. 29-30, *www.oecd.org*; Joint First and Second Monitoring Rounds report on Uzbekistan, p. 32, *www.oecd.org*; Review of international legal assistance and other forms of law-enforcement co-operation in the framework of GUAM, forthcoming publication of the OECD/ACN.

103. Answers to the Questionnaire provided by Georgia, Azerbaijan, Kazakhstan, Armenia, Kyrgyz Republic, Tajikistan, Ukraine and Uzbekistan in the framework of the IAP Second Monitoring Round.

104. Chapter 54, 54-1, 54-2, and 54-3 of the Armenian Criminal Procedure Code.

105. Chapter 55 and 56 of the Criminal Procedure Code of Kazakhstan.

106. Section XIV of the Criminal Procedure Code of Kyrgyzstan.

107. Chapter XIII of the Criminal Procedure Code of Tajikistan.

108. Chapter IX of the Criminal Procedure Code of Ukraine, which will come into force on 19.11.2012.

109. Section 14 of the Criminal Procedure Code of Uzbekistan.

110. Law of Georgia on International Co-operation in Criminal Matters, came into force on 1 October 2010..

111. See IAP Second Monitoring Round Report on Ukraine, p. 38, *www.oecd.org*.

112. See IAP Joint First and Second Monitoring Rounds Report on Uzbekistan, p. 32, *www.oecd.org*.

113. Answers to the Questionnaire provided by Armenia in the framework of the IAP Second Monitoring Round.

114. Answers to the Questionnaire on national legislation and practice of Georgia, Azerbaijan and Moldova gathered for "Review of the international legal assistance and other forms of law-enforcement cooperation in the framework of GUAM", forthcoming publication by the OECD/ACN.

115. Answers to the IAP Second Monitoring Round Questionnaire provided by Azerbaijan.

116. Istanbul Anti-Corruption Action Plan, Summary Report, An assessment of progress in the period 2003-2007, *www.oecd.org*.

117. See IAP Second Monitoring Round Report on Georgia, p. 25, *www.oecd.org*.

118. OECD WGB Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Italy, December 2011, p. 42, *www.oecd.org*.

119. OECD WGB Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Bulgaria, March 2011, p. 29, *www.oecd.org*.

120. See UN Convention against Corruption (Art. 49, Joint investigations), Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Art. 20, Joint investigative teams).

121. For more information see Europol's Web-page on Joint Investigative Teams at *www.europol.europa.eu*.

122. Principle No. 3, Twenty Guiding Principles for the fight against corruption, Council of Europe Committee of Ministers' Resolution (97)24, *www.coe.int*. For more information on anti-corruption specialization, see "Specialised Anti-Corruption institutions: review of models", Study by OECD/

ACN, 2007, *www.oecd.org*, and "Anti-Corruption Specialization of Prosecutors in Selected European Countries", Working paper by OECD/ACN, 2011, *www.oecd.org*.

123. Training Manual on Investigation and Prosecution of Corruption Offences in Ukraine, OECD/ACN, forthcoming publication.

124. See also Section 4.2.2. of this report on Investigation and Prosecution of Corruption Cases.

125. IAP Second Round of Monitoring Report on Azerbaijan, p. 25, *www.oecd.org*.

126. IAP Second Round of Monitoring Report on Tajikistan, p. 33, *www.oecd.org*.

127. IAP Second Round of Monitoring Report on Kyrgyzstan, p. 38, *www.oecd.org*.

128. Article 37 of the Criminal Procedure Code of Armenia.

129. IAP Progress Update by Azerbaijan, February 2012, p. 6, *www.oecd.org*.

130. IAP Second Monitoring Round report on Kyrgyzstan, p. 39, *www.oecd.org*.

131. *Teixeira de Castro v. Portugal*, application No. 25829/94, judgment of 9 June 1998, §36, *hudoc.echr.coe.int*.

132. *Ramanauskas v. Lithuania,* application No. 74420/01, judgment of 5 February 2008, §54, *hudoc.echr.coe.int*; *Khudobin v. Russia*, application No. 59696/00, judgment of 26 October 2006, §128, *hudoc.echr.coe.int*.

133. *Bannikova v. Russia*, application No. 18757/06, judgment of 4 November 2010, §37-65, *hudoc.echr.coe.int*.

134. IAP Second Monitoring Round Report on Kyrgyzstan, p. 23, *www.oecd.org*.

135. IAP Second Monitoring Round Report on Ukraine, p. 44, *www.oecd.org*.

136. For more information, please see publication: Anti-Corruption Specialisation of Prosecutors in Selected European Countries, OECD/ACN 2011, *www.oecd.org*.

137. IAP Second Monitoring Round Report on Tajikistan, p. 33, *www.oecd.org*.

Anti-corruption Reforms in Eastern Europe and Central Asia
Progress and Challenges, 2009-2013

Chapter 4

Prevention of corruption in Eastern Europe and Central Asia

Chapter 4 examines a broad range of measures taken by countries in Eastern Europe and Central Asia to prevent corruption in public administration and in the private sector. The Chapter examines progress in strengthening integrity in public service, preventing political influence on professional civil service and sanctioning conflict of interest, reporting obligations and whistle-blower protection. The Chapter analyses progress achieved by the countries in preventing corruption in public procurement, including through the introduction of review systems, e-procurement and debarment. The Chapter further examines how legislation on access to information can be further improved to promote transparency of public administration. It examines mechanisms to prevent political corruption, including rules for financing of political parties and elections. The Chapter analyses integrity in judiciary, including independence, integrity and accountability of judges. It concludes by exploring measures that governments and the private sector in the region took to prevent corruption in the business sector and proposes recommendations for further strengthening these measures.

Integrity in public service

Prevention of political influence on professional civil service

Prevention of undue political influence on professional civil service is an important pre-condition for enabling civil servants to protect the rule of law and prevent corruption. It is important to establish a clear delineation of political and professional servants in national legislation and to develop mechanisms for the protection of professional civil servants from undue pressure from political officials. It is also important to legally establish and enforce the principle of a merit-based and competitive recruitment and promotion to prevent cronyism, nepotism and politicisation of the professional civil service. A transparent and objective remuneration system is another tool against undue political influence on civil servants.

Delineation of professional and political civil servants

The delineation of professional and political civil servants was not examined during the first round of IAP monitoring, and therefore the 2008 Summary Report[1] did not establish a regional benchmark in this area. This issue was addressed for the first time during the second round of monitoring.

Many IAP countries, including Armenia, Georgia, Kazakhstan, Kyrgyzstan and Tajikistan, have established legal definitions and separation between professional and political civil servants in their Laws on Civil Service. There are three IAP countries still without such a separation. In Ukraine, the Law on Civil Service establishes the definition of civil servants, while the only references to political servants are provided in the Law on the Cabinet of Ministers, which states that the members of the Cabinet are political officials, and the Law on Central Bodies of the Executive, which refers positions of deputy ministers (except for deputy minister – head of apparatus) to political offices. The Law on Civil Service of Azerbaijan establishes the definition of professional civil servant, but does not provide a definition of a political servant. In Uzbekistan, the Law on Civil Service does not yet exist and there are no relevant definitions; employment relations in state bodies are regulated by the Labour Code.

Sometimes, the delineation is unclear or the scope of political officials is too broad. In Kazakhstan, the chair and members of the Constitutional Court, Commissioner for Human Rights, chair and members of the Supreme Audit Institution are classified as political officials, which is against international standards. In some countries, definitions for political officials are not clear (e.g. Kyrgyzstan), or there are no registers of various categories of officials to provide additional clarifications (e.g. Tajikistan). Furthermore, even where such legal delineations are established, they alone are not sufficient for protecting professional civil servants from undue political influence.

Box 4.1. **Definition of public officials in Kazakhstan**

Law on Civil Service (1999, amended in 2010) provides definitions of civil service, as well as of a state servant and political state servant:

State servant – a person holding a position in a state body and exercising official powers with the view of implementing the state's tasks and functions;

Political state servant – a state servant, whose appointment (election), dismissal and activity have a political character and who bears responsibility for the realisation of political goals and objectives. The following positions, which are held by political state servants shall be considered political: 1) those appointed by the President of Kazakhstan, and their deputies; 2) those appointed and elected by chambers of the parliament of Kazakhstan and the chairmen of parliament's chambers, and their deputies; 2-1) the head of department for provision of court activities at the Supreme Court of Kazakhstan and his deputies; 3) representatives of the President and Government in accordance with the constitution; 4) heads of central executive bodies and their deputies.

The register of Positions of Political State Servants approved by the Presidential Decree in 1999, contains the following positions: Head and deputies heads of the Prime Minister's Office; responsible secretaries of the ministries and agencies; chairperson and members of the Constitutional Council; human rights commissioner; chairperson of the Supreme Judicial Council; chairperson and members of the Accounting Committee; Chairpersons of disciplinary councils of the Civil Service Agency; heads of secretariats of the Supreme Court, Constitutional Court, Accounting Committee, Senate and Majilis, various officials in the Presidential Administration.

Source: IAP Monitoring Reports on Kazakhstan; information of the Government of Kazakhstan.

There are no developed regulations and mechanisms to protect professional servants in IAP countries from dismissal or demotion in the event of a conflict with a political official. In Kyrgyzstan, there are provisions in the Law on Civil Service which state that political influence and undue interference in the activities of civil servants should be excluded, and that the change of the head of the public body cannot be grounds for firing, downgrading, rotation and attestation of civil servants. The law also established the position of "State Secretaries" as senior non-political official, who should not be replaced following political changes to provide for stability of civil service. While such provisions are welcome, there is no practical mechanism for their implementation, and in reality, civil service in Kyrgyzstan faced serious challenges during the many political changes of the past several years; 12 out of 22 State Secretaries were replaced for various reasons between 2010 and 2012.

There are broader framework conditions in many IAP countries which may undermine the professionalism of civil service. For instance, Georgia had already launched major reforms of its civil service at the time of the first round of monitoring, after the "Rose Revolution". However, the ideological debate about the main directions of these reforms continued during the second round of monitoring, and only incremental changes were introduced in civil service legislation, while general reform of the civil service is still to be completed in order to establish a clear legislative basis for the development of the professional civil service.

The debate around the civil service reform in Ukraine lasted for many years, and even after the passing of the new Law on Civil Service in 2011, many legal gaps remain and

attract criticism of national and international experts. A significant reduction in number of civil servants in Kyrgyzstan,[2] and low remuneration rates of civil servants in Armenia[3] undermine the attractiveness and capacity for ensuring professionalism of the public administration. Uzbekistan is the only country in the ACN region which does not have civil service legislation. It therefore has no legal basis for protecting the professionalism of civil servants.[4]

Merit-based recruitment and promotion

Upon the completion of the first round of monitoring, the 2008 OECD/ACN summary report noted that "basic elements of merit-based and competitive recruitment of public officials are in place in most countries in the region. However, more needs to be done to strengthen these new systems and to extend merit-based and competitive principles to jobs in all categories, as well as to the promotion systems".[5]

By the time of the second round of monitoring, many IAP countries had taken actions to address the recommendation and to improve merit-based and competitive recruitment in civil service. In all IAP countries (except for Uzbekistan), the laws on civil service now establish competitive employment procedures for some categories of civil servants. It is important to note that while the principle of competitive employment procedures may imply that its purpose is to select the best candidates among all applications, merit-based principle is not explicitly established in the laws of the IAP countries.

In many countries, new unified rules for competitions were introduced in the run up to the second round of monitoring. These rules include requirements for the publication of vacancies. For instance, according to the Law on Civil Service in Georgia, the Civil Service Bureau publishes all vacancies in the civil service on its web site and requires that all applications be submitted electronically.[6] New competition rules also require establishing selection commissions and conducting tests and interviews for applicants.

In Azerbaijan, according to the Decree of the President on "Rules of recruitment to the civil service in the state bodies through competition", the competition is comprised of tests and interviews. Tests are conducted by the State Student Entrance Commission; applicants who passed the tests are invited to be interviewed by a panel which includes representatives of the relevant state body and of the Civil Service Commission. Applicants who pass the interview are then presented to the head of the state body for his decision about the appointment.[7]

However, in the majority of the IAP countries, the scope of competitive procedures remains narrow and competitions continue to be applied only to junior positions, while vacancies to high-level positions can be non-competitive. In addition, there are various exceptions from competitive procedures. In Kazakhstan, legislation allows political officials to move to professional civil service positions without competition.[8] There may be other loopholes. Temporary positions could often be filled out without competitive procedures, and if used often enough, can undermine the merit-based principle. To address this shortcoming in Georgia, recent amendments to the Law on Civil Service limits the use of temporary positions.

While the principle of competition has been introduced in most countries, there are no objective and transparent criteria for the selection of the best candidates based on their merits. While the selection committees may select best applicants, the final choice ultimately remains at the discretion of the head of the employing state body. In Georgia, the

head of the employing body in practice could even overrule the proposal of the selection committee.[9] However, according to information provided by Georgian authorities, after the second round of monitoring, this possibility was abolished by amendments in the Law on Civil Service. To address this shortcoming, in Azerbaijan, the Commission on Combating Corruption initiated an amendment to the legislation which would force the head of the state body to appoint the best candidate selected by the selection commission.[10]

In several countries, there are provisions for appealing appointment decisions; but there is little information about their practical use. In Azerbaijan, a special appellate commission was established to review the appeals of unsatisfied candidates. However, this body is very new and no information is available yet about its operation.

Finally, there are efforts in several IAP countries to introduce merit-based promotion rules. These reforms are in their early stages and the rules are often underdeveloped. In many countries, the old attestation procedures are still in use, and sometimes they are linked to the promotions. In many cases, emerging merit-based promotion, as well as attestation rules, lack clear and transparent criteria for assessing the performance of civil servants, and provide very broad discretion to the managers and heads of the state bodes (see below, for example, the relevant provision from the Law on Civil Service of Ukraine). This problem is not unique to IAP countries. Many other ACN and OECD countries struggle with the challenge of creating effective incentives for civil servants on the one hand, and ensuring objectivity and avoiding politicisation on the other hand.

Box 4.2. **Performance evaluation in Ukraine (Civil Service Law 2011)**

Article 29. Performance evaluation of civil servant

1. To determine quality of performance of official duties, effectiveness and efficiency of service, as well as to plan the career, detect the necessity of raising professional competence there shall be carried out performance evaluation of civil servant. Performance evaluation of civil servants holding positions of II, III, IV, V groups (hereinafter – evaluation) shall be conducted annually by the direct superior of the civil servant.

Evaluation results shall be signed by the direct superior of the civil servant and handed over to him in no later than 5 days, which will be acknowledged by the servant's signature. Endorsement of the evaluations results shall be carried out by the head of the respective separate structural unit.

2. Evaluations results may contain negative, positive or excellent mark and its substantiation.

3. In the case of a negative mark given to the civil servant, head of civil service in the state body, authority of the Autonomous Republic of Crimea or their apparatus, upon proposal of the head of the respective separate structural unit, shall define measures to enhance servant's performance. The next evaluation shall be carried out in 6 months, and in case of a repeat negative mark, the civil servant is subject to dismissal based on Article 41.3 of this Law. Evaluation results containing negative mark within 10 days from the moment the civil servant has been familiarised with them, may be appealed according to the procedure provided for in Article 14 of this Law.

4. Receiving of an excellent mark of the civil servant's performance shall be taken into consideration for his annual bonus.

5. The standard procedure for the performance evaluation of civil servants shall be approved by the specially authorised central executive body on civil service issues.

Source: Translation by the OECD/ACN Secretariat.

As many new rules related to competitive- and merit-based appointments and promotions were introduced recently in IAP countries, all countries need to collect reliable statistical data about the practical implementation of these procedures in order to analyse their effectiveness. In most countries, there is no data about the share of civil servants employed through competitive procedures, outside such procedures or about the use of appeals procedures.

Transparent and objective remuneration for civil servants

Remuneration systems for civil servants were not examined in the first round of monitoring. As a result, the 2008 Summary Report did not establish a regional benchmark in this field. Remuneration systems as a mechanism to ensure professionalism of civil service and to prevent undue political interference was examined for the first time during the second round of IAP monitoring, the main findings are presented below.

The analysis of public officials' remuneration conducted during the second round of monitoring demonstrates that IAP countries share similar practices. In all countries, the pay of public officials consists of the basic fixed part of the salary that is regulated by the legislation or other official documents, and a variable part that includes various bonuses for good performance and other achievements, as well as other regular or ad hoc additional payments.

In many countries, the share of the variable part of the pay can be very high. For instance, in Ukraine it was as high as 80% in 2006,[11] but was reduced to 15% by 2010. During the second round of monitoring it was noted that the variable part could equal 100% of the fixed part in some cases in Georgia.[12] The Georgian government reported that after the second round of monitoring, a new mechanism for calculating bonuses was introduced, which includes 1) identifying individual goals and activities for each employee; 2) employee's quarterly report; 3) personal evaluation based on employee's report and notes of the manager; and 4) bonus calculation. Based on such a performance evaluation, an employee may receive a bonus of up to 100% of their salary at the end of each quarter. This mechanism is very new and it is too early to gauge its effectiveness.

As previously discussed, creating effective incentives for good civil servant performance is an important challenge for IAP and many other countries, and performance-based pay may be one possible solutions. However, performance-based pay requires clear rules and transparency to avoid abuses. In IAP countries, there are no clear and transparent criteria for the allocation of the variable part. This approach provides a very broad, sometimes full, discretion to head of public institutions in allocating bonuses and other additional payment and benefits to his or her subordinates. This may undermine the professionalism of civil servants, and promote their personal loyalty to their bosses rather that to the higher interests of the state and of the rule of law.

It would be useful to further examine both existing regulations and the actual practice of remuneration of public officials to understand the advantages and challenges better. To this end, it would be important for the countries to collect statistical data to support future analysis.

Integrity and conflict of interests

Ensuring that the integrity of government decision-making is not compromised by public officials' private interests is a growing public concern around the global. According to

the OECD, effective management of conflict of interest requires a balance. An overly-strict approach to controlling private interests may conflict with other rights or be unworkable or deter experienced and competent potential candidates from entering public office or public service. A modern approach should include identifying risks; prohibiting unacceptable forms of private interest; raising awareness of the circumstances in which conflicts can arise; and ensuring effective procedures to resolve conflict-of-interest situations.

Definition of conflict of interest

The 2008 IAP Summary reported that "regulations to prevent and to manage conflict of interest situations are underdeveloped across the region. Conflict of interest in most countries is not defined by laws, or the definitions are not clear enough. … Less attention is paid to special procedures which may be necessary to resolve conflict-of-interest situations, which may emerge during officials' terms in office, or to the post-office restrictions. Little is known about rules or procedures for the enforcement of the existing conflict-of-interest provisions. No practical guidelines or training materials for implementation of conflict of interest provisions were found during the reviews or monitoring of the Istanbul Action Plan countries."[13]

In several countries, significant efforts were made to establish a better definition of conflict of interest in legislation. Since the first round of monitoring, Armenia, Georgia, Kazakhstan and Ukraine have introduced new legislation or updated existing laws that establish definitions of conflict of interest as well as general procedures for preventing and managing conflicts of interest. Shortcomings remain in these definitions: they may be too narrow or not clear enough.

In Kazakhstan, the definition is limited to "infliction of harm to lawful interests"; in Kyrgyzstan, the definition does not cover potential or apparent conflict of interest; the definition in Armenia focuses mostly on pecuniary interests which should be disclosed by public officials in their asset declarations. The definition recently adopted in Ukraine fails to address potential or apparent conflicts of interest. However, the overall trend to establish legal definitions of conflict of interest has been a positive development in IAP countries. Further efforts are needed to bring the definitions in line with international best practices, such as the OECD definition provided in the Table below.

In several IAP countries, including Azerbaijan, Tajikistan and Uzbekistan, there is no legally established definition of conflict of interest.

As conflict of interest often involves not only civil servants, but also other persons, some IAP countries have also established definitions of related persons. In most IAP countries, this definition includes close relatives of officials such as spouses, children and persons living in the same household as the official. Sometimes, countries aim to further clarify this definition. Armenia's Law on Public Service states that "persons related to high-ranking public officials: persons having blood relationship of up to 2nd degree of kinship. Persons having blood relationship with a high-ranking public official of up to the 2nd kinship are the persons within the 1st degree of kinship, as well as persons with the 1st degree of kinship with the latter. Persons within the 1st degree of kinship are the children, parents, sisters and brothers".

Table 4.1. **Definition of conflict of interests**

	Definition of conflict of interests
Armenia	New Law on Public Service, 2011, provides the following definition of a conflict of interests: "a situation, in which when exercising his/her powers, a high-ranking public official must perform an action or adopt a decision which may reasonably be interpreted as being guided by his/her personal interests or those of a related person." Article 30 of the Law on Conflict of Interests of High-Ranking Public Officials further specifies this definition as follows: "1. For a high-ranking public official, being guided by his/her interests or those of persons related to him/her means taking such action or adopting such a decision (including taking part in decision-making within a collegial body) within the scope of powers of a high-ranking public official, which, although lawful, results or contributes or may reasonably result or contribute, inter alia, to: 1) the increase of his/her financial resources or income or improvement of the property or other legal status of or those of the persons related to him/her or the non-commercial organisation of which s/he is a member or the commercial organisation of which s/he is a participant; 2) discharge or reduction of his/her obligations, or those of persons related to him/her or the non-commercial organisation of which s/he is a member or the commercial organisation of which s/he is a participant; 3) appointment of a person related to him/her to a position or assuming of the membership in an organisation; 4) winning of a competition by a person related to him/her, or the non-commercial organisation of which s/he is a member or the commercial organisation of which s/he is a participant. 2. The provisions of this Article do not apply to members of parliament and of the Constitutional Court's judges and prosecutors. The norms on conflict of interests of these persons may be defined by the laws regulating the particularities of these spheres. 3. According to the provisions of Paragraph 1 of this Article, the high-ranking public official is not guided by his/her personal interests or those of persons related to him/her, provided the given action or decision has general application and impacts a wide circle of people in a way that may not reasonably be interpreted as being guided by his/her personal interests or those of persons related to him/her."
Azerbaijan	Currently, there is no legal definition of conflict of interest; however, there are legally established prohibitions (they are described in the next section). The definition of the conflict of interests is provided by the draft law on Prevention of Conflict of Interests, which was not adopted at the time of the second round of monitoring.
Georgia	Law on Conflict of Interest, amended in 2009, provides the following definition: "Conflicts of interests in public services is the conflict between private or property interests of a public official with interests of a public service."
Kazakhstan	The Law on the Civil Service amended in 2010 provides the following definition: "a situation when there is a contradiction between private interest of a civil servant and his due execution of official duties or lawful interests of individuals, legal entities, the state, which may result in the infliction of harm to these lawful interests". The Law provides that a civil servant is prohibited to execute official duties if there is a conflict of interests. A civil servant shall take measures to prevent and resolve the conflict of interests, in particular, he shall notify his direct superior or management of the state body. Superiors or management of the state body shall take timely measures to prevent and resolve conflict of interests, in particular: 1) to assign to another person the execution of official duties of the civil servant on the issue, in connection with which the conflict of interest has arisen or may arise; 2) to change official duties of the civil servant; 3) to transfer the civil servant, subject to his consent, to another position in accordance with the procedure established by legislation of the Republic of Kazakhstan.
Kyrgyzstan	The Law on Civil Service establishes the following definition: "Conflict of interest emerges when decisions of public officials may be influenced by their personal interest by using the advantages of the position in promoting personal interests. The conflict of interests leads to a situation when public officials take decisions which do not necessarily coincide with the interests of the state".
Tajikistan	Law on Civil Service does not provide a definition of conflict of interest, and only notes that the civil servant is obliged to "inform the official who is authorised to appoint and dismiss him in cases when private interests of the civil servant exceed the limits of his powers or contradict them".
Ukraine	The 1993 Law on Civil Service and the new law of 2011 (coming into force in 2013) do not provide a definition of conflict of interest, but refer to the definition contained in the Law on the Principles for Preventing and Countering Corruption, adopted in 2011. The latter provides the following definition: "Conflict of interests – contradiction between private interests of the person and his/her service duties, the presence of which may affect the objectivity or impartiality of the decision making, and may influence actions or lack of actions during the conduct of service duties by the person." The previous version of the Law on Principles for Preventing and Countering Corruption, which was adopted in 2009 but repealed in 2010, included a slightly different definition: "Conflict of interest means an actual or apparent contradiction between the private interest and official duties of a person, the occurrence of which may compromise or affect the impartiality or objectivity of decisions, and also, performance or non-performance of actions in the discharge of official duties."
Uzbekistan	Definition of conflict of interest is not established in Uzbek legislation. Regulation of the Cabinet of Ministers of 1992 prohibits employees of government institutions, law-enforcement agencies, and high level personnel and specialises in public sector whose functions are to make decisions related to entrepreneurial activities to take part in these entrepreneurial decisions.

Table 4.1. **Definition of conflict of interests** *(cont.)*

	Definition of conflict of interests
OECD	Recommendation of the OECD Council on Guidelines for Managing Conflict of Interest in the Public Service, 2003: Historically, defining the term "conflict of interest" has been the subject of many and varying approaches. As all public officials have legitimate interests which arise out of their capacity as private citizens, conflicts of interest cannot simply be avoided or prohibited, and must be defined, identified, and managed. These Guidelines adopt a definitional approach which is deliberately simple and practical to assist effective identification and management of conflict situations, as follows: A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities. Defined in this way, "conflict of interest" has the same meaning as "actual conflict of interest". A conflict of interest situation can thus be current, or it may be found to have existed at some time in the past. By contrast, an apparent conflict of interest can be said to exist where it appears that a public official's private interests could improperly influence the performance of their duties but this is not in fact the case. A potential conflict arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future. Where a private interest has in fact compromised the proper performance of a public official's duties, that specific situation is better regarded as an instance of misconduct or "abuse of office", or even an instance of corruption, rather than as a "conflict of interest". In this definition, "private interests" are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to influence improperly the official's performance of their duties. A special case is constituted by the matter of post-public office employment for a public official: the negotiation of future employment by a public official prior to leaving public office is widely regarded as a conflict of interest situation.

Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

It appears that attempts to establish precise definitions of persons related to public officials maybe too technocratic. In real life, conflict of interests relationships may be much more diverse. To address this challenge, the Law on Civil Service of Georgia defines that "a related person" means "a family member" or "a close relative" as defined by the Law of Georgia on Incompatibility of Interests and Corruption in Civil Service, as well as any other person the civil servant is having a joint household with, or such a special relation, which may affect conditions of their service or economic results.

Restrictions for civil servants

The 2008 IAP Summary report noted that basic restrictions for public service were established in the IAP countries including "hiring individuals with criminal records, working under direct supervision of close relatives, participating in commercial remunerable activities, disclosing official secrets, or using public property and services for private needs…".[14]

Since the first round of monitoring, several IAP countries took steps to further develop restrictions and prohibitions for civil servants. Armenia, Georgia and Ukraine have developed detailed regulations on gifts. Some countries struggle to develop further restrictions and regulations to address their national and cultural customs. Tajikistan's law on bringing order into national traditions establishes a restriction on the number of guests that can be invited to weddings and other festivities, as well as on giving gifts on such occasions, which are also applicable to public officials or family members.

Box 4.3. **Regulation of gifts in Georgia**

Article 5 of the Law on the Conflict of Interest and Corruption in Public Service of Georgia (adopted in 2009) establishes the limits of acceptable gifts:

"1. For the purposes of this article, a git is a free or privileged property or service given, a partial or full release from the property obligation to a public official or his/her family members, which appears as an exception from the general rule.

2. Throughout the entire year, the sum of received gifts shall not exceed 15% of the whole year's wages. A gift received once shall not exceed 5%, if the presents are not received from the same source.

3. Throughout the entire year, the sum of the received gifts shall not exceed 1 000 GEL by each member of the public official's family. One-time gifts shall not exceed 500 GEL, if these gifts are not from the same source".

In addition, Article 73^5 of the Law on Civil Service, General rules of behaviour to avoid corruption, also adopted in 2009, stipulate procedures in relation to prohibited gifts:

"1. A civil servant shall not receive any gift or service, which may affect performance of his/her duties;

2. If it is not clear, whether the civil servant can receive a gift or any gain or take the offer, he/she shall declare about such a situation.

3. If a civil servant is offered illegitimate gain, he/she must:

a) refuse to take the illegitimate gain;

b) try to identify the person making such an offer;

c) limit contact with such a person and try to determine a basis for making such an offer;

d) hand over the gift within three days to a relevant state service – Legal Entity of Public Law – Service Agency of the Ministry of Finance, if it is not possible to refuse to take or return the present.

e) rely on witness testimonies (if available);

f) notify his/her direct supervisor about the attempt of the offer within 3 business days."

Source: Information of the Government of Georgia.

Many IAP countries have legally established prohibitions of external employment or business activity for civil servants. According to multiple media and non-governmental reports, these restrictions are often violated in practice. It appears that such violations are particularly relevant to political and high level officials with decision-making powers, as well as MPs and officials in municipalities and local communities. However, there is no solid data in this area that would demonstrate the number of violations that were detected, or the number and type of corrective measures or sanctions that were applied in practice.

Armenia, Kazakhstan and Tajikistan have developed legislative provisions for the transfer of assets of commercial companies owned by the civil servants into management by trust for the time of service. The issue of transfer of assets merits further discussion, as it is not certain if such a temporary transfer of management of commercial assets, which are still owned by the public official and which generate income for the public official during his service, is sufficient to prevent situations where the official will pursue the interests related to his property against broader public interests.

Box 4.4. **Restrictions for public officials in Ukraine**

The Law on Principles for Preventing and Countering Corruption of Ukraine, adopted in 2011, provides the following:

"Article 7. Restrictions for additional employment and additional forms of activity

1. Persons, mention in subparagraph 1.1 of Article 4 of this Law [Note: these include the President, Prime Minister, ministers, speaker and members of parliament, heads of state agencies and services, judges, prosecutors, all civil servants and local public officials] are prohibited to:

1) undertake other remunerated or entrepreneurial activity (apart for teaching, scientific or creative activity, medical practice, as well as activities of coaching and judging in sports), unless otherwise provided by the Constitution or other laws of Ukraine;

2) be a member of the management body or supervisory board of a for-profit enterprise or organisation (except for cases when these persons are engaged in managing shares, which belong to the state or the local community, and represent the interests of the state of the local community), … unless otherwise provided by the Constitution or other laws of Ukraine.

2. If the Constitution and other laws of Ukraine establish special restrictions concerning additional employment and forms of activity for certain positions, the implementation of these restrictions is ensured by special procedures."

[By decision of the Constitutional Court of Ukraine of March 2012, the provision forbidding public officials to be members of "management bodies" of commercial organisations was found unconstitutional, as such bodies include general assemblies of companies and such restriction would entail prohibition to take part in ownership of the companies, not just their management].

The Law on Civil Service, adopted in 2011, in Article 15, includes a similar provision: "A person who is entering into the civil service, before taking up duties, must discontinue his/her membership in the executive body or supervisory board of a for profit enterprise or organisation (except for cases when these persons are engaged in managing shares, which belong to the state or the local community, and represent the interests of the state of the local community), and stop other remunerated or entrepreneurial activity (apart for teaching, scientific or creative activity, medical practice, as well as activities of coaching and judging in sports."

Source: translation by the OECD/ACN secretariat.

Box 4.5. **Transfer of assets by officials in Kazakhstan**

According to the Laws on the Fight against Corruption and on the Civil Service of Kazakhstan, public officials are obliged to transfer assets, including shares (stocks of shares) in charter capital of commercial organisations, into trusts for the duration of public service, if the use of such assets results in gaining income. A trust management agreement should be notarized and its copy should be submitted to the HR department of the state body where the civil servant works. Compared with other persons authorized to perform state functions, deputies of the Parliament, members of the Government, chairperson and members of the Constitutional Court, judges are in addition obliged to transfer into trust management even bonds and shares of investment funds. The procedures for transferring assets into trusts are regulated by the Government Resolution of 2000 with the following amendments. Civil servants, except for members of the Government, members of the Constitutional Court, have the right to grant residential property on lease.

Source: IAP Monitoring Reports on Kazakhstan.

Several IAP countries – Armenia, Azerbaijan, Georgia and Ukraine – have also introduced new types of restriction on the post-office employment for civil servants. Armenia's Law on Public Service prohibits the public servant and high-ranking public official "within one year following the release from the post, be admitted to work with the employer or become the employee of the organisation over which s/he has exercised immediate supervision in the last year of his/her tenure". While this new type of restriction is in line with the best international practice, it appears that there are no effective mechanisms to enforce this restriction in practice and to sanction its violation in IAP countries.[15]

Codes of ethics

Concerning codes of ethics, the 2008 IAP Summary reported that all IAP countries have developed general or sector specific codes of ethics, and stated that in the future "[t]he main focus should be disseminating these codes of ethics, and ensuring high-quality ethics training programmes as a part of both academic curricula and in-service training for public officials."[16]

During the second round of monitoring, it was noted that many countries recently introduced amendments in their existing rules of conduct for public officials or adopted new codes of ethics. For instance, general rules of behaviour for civil servants were introduced by the 2011 Law on Public Service in Armenia and new amendments were introduced in the Georgia's Law on Civil Service in 2009. In Ukraine, a stand-alone Law on Rules of Ethical Behaviour was adopted in 2012. A new Code of Ethics was adopted by the President of Tajikistan in 2010, and the Presidential Decree on Code of Honour of Civil Servants of Kazakhstan was updated in 2011. The rules of behaviour established by the 2007 Law on Civil Service of Azerbaijan have remained unchanged. During the second round of monitoring, Kyrgyzstan reported that a revised Code of Ethics was in development, and was expected to be adopted in 2012. There is no general code of ethics in Uzbekistan, but like in all IAP countries, various ministries and agencies have their own sector specific codes.

The quality of these codes vary from country to country: some of them provide very general guidance on good behaviour and do not sufficiently address ethical dilemmas (e.g. Tajikistan); some are rather legalistic and duplicate provisions of civil service or anti-corruption laws (e.g. Ukraine), and some do not always meet good international practice. In Kazakhstan, the Decree on the Code of Ethics for Public Officials, adopted by the President in 2005 and amended in 2011, states that the first duty of civil servants is "to adhere to the policy of the President of the Republic of Kazakhstan and to consistently put it into practice".

The same provision is duplicated in the ethics codes of separate state authorities, in particular, for internal affairs officers as well as employees of the prosecutor's offices. This does not correspond to the principles of a democratic state (Article 1 of the Constitution of the Republic of Kazakhstan), namely to the principle of the rule of law. This regulation requires public officials, as their main duty, to implement the policies of the political leader, as opposed to the laws and other publicly established regulations. This damages the professionalism of civil service and promotes politicisation.[17]

While it is important to continue working on the substance of the codes of ethics, it is equally important to train public officials about established rules and to promote their implementation. Many countries have reported various training activities that raise awareness of ethical rules in public officials. However, across all IAP countries, it appears that this training is not effective and has little impact on the real life behaviour of public officials.

Box 4.6. **Code of ethics in Tajikistan**

The new code of ethics was introduced in Tajikistan in 2010. According to a survey mentioned in the IAP second round of monitoring report on Tajikistan, civil servants were poorly informed about the provisions of the code. Many of them explained that they heard of the code of ethics, but never read its provisions and did not know how to obtain a copy of the code. Those who have read the code stated that its provisions were abstract and vague, and had nothing to do with their everyday practical work. Some civil servants emphasized that heads of public agencies did not themselves comply with the stated ethical standards. All those surveyed were unanimous in recognising the code of ethics as an idle document, for they believed there is no proper mechanism for its dissemination and enforcement, nor is there corresponding training. Public officials did not know to whom one should turn to for advice, should there arise an ethical dilemma or in the event a public servant has become aware of his colleagues' unethical behaviour.

Source: IAP Second Monitoring Round Report on Tajikistan, p. 38, *www.oecd.org*.

Already during the first round of monitoring, the effectiveness of codes of ethics was in question across all IAP countries. It was suggested that in order to increase the effectiveness of the codes, it is important to introduce sanctions for those in non-compliance with the codes. This recommendation reflects a legalistic and compliance-based culture in the region, which is contrary to international and European best practices, that rely upon moral values, and often regard ethics codes as soft-law tools that can be implemented only through awareness raising and education, but not through sanctions. It appears that in only some sectors and professions, e.g. in the judiciary, violations of codes of ethics can bring about disciplinary sanctions.

Training on ethics and anti-corruption for public officials

Many IAP countries reported about various trainings on ethics, conflict of interest and anti-corruption issues that were provided to their respective public officials. While the number of training and awareness raising activities is growing and sometimes appears impressive (e.g. see the box below on ethics training in Ukraine), little is known about the actual quality of the training or about its impact on the actual behaviour of public officials. Information that was made available during the second round of monitoring indicated that training programmes usually focus on various legal norms and is provided in a form of lectures. The monitoring report on Tajikistan notes that the amount of training on ethics has increased significantly, but that the training "has failed to focus on practical issues" and remain formalist and academic.[18]

In March 2011, the ACN (along with the OSCE and Lithuania) organized a seminar "Anti-Corruption Policy and Integrity Training", which provided an opportunity for practitioners from all ACN and several OECD countries to share their experiences about the ways in which ethical training is currently provided to public officials. Practitioners agreed that "new and more advanced approaches, which included tailor-made practical ethics training about rules and values, delivered systematically by dedicated ethics officials, using an interactive approach" were needed.[19]

As a follow-up to this seminar, the ACN launched a study of "Ethics training for public officials", which studied trends in ethics training, developed policy recommendations for making this training more effective, and provided a standard training programme that could be used by ACN countries as a model for their future ethics trainings.[20]

Box 4.7. **Ethics and anti-corruption training for public officials in Ukraine**

[…] a number of awareness raising campaigns and training activities have been provided to state officials according to the Public Service Development Program for 2005-2010, which was approved by a Decree of the Cabinet of Ministers of Ukraine on 8 June 2004 and was in line with Decree of the Cabinet of Ministers of Ukraine of 2 June 2003 on Measures for Upgrading the Qualifications of Public Officials and Local Self-Government Officials in Anti-Corruption Issues. The Main Department of Civil Service (MDCS) carries out a variety of activities, including conferences and seminars for public officials. In 2009, approximately 500 public officials responsible for corruption prevention participated in trainings; in 2010 – approximately 1 500 high officials and specialists were trained.

[…] The National Academy of Public Administration organizes courses and workshops on ethics. 11 276 graduates were trained in the Academy over the past 5 years. All received training on ethics, including 300 academic hours, about mission of service, legal requirements, staff relations and codes.

[…] It was reported that since the creation of the Government Agent and the Bureau on Anti-Corruption Policy, members of the Bureau and its head have participated in training and awareness raising events. According to the Ukrainian authorities, during July-October 2010, more than 4 000 seminars, roundtable discussions, lectures on anti-corruption issues were organized, in which about 26 000 officials participated. More than 550 meetings of collegiums (collective advisory bodies at the executive bodies) and theme-specific internal meetings were held during this time period. While the volume of activity is impressive, no information is yet available about the substance, quality and the results of these activities. […]

Source: IAP Second Monitoring Round Report on Ukraine, p. 46, *www.oecd.org*.

The study recommends that, in order for ethics training to be effective, it must be a part of a comprehensive anti-corruption and integrity policy. There must be legal requirements of ethics training. It is important to ensure that political leaders and senior managers 'set the tone from the top' and support ethical training efforts by leading by example in terms of ethical behaviour and by providing sufficient resources for such training. It is also important that there is at least one public agency responsible for the overall framework for ethics training, for central planning, co-ordination and evaluation of results. Concerning the training methodology, the study recommends that training should not be generalized, but should target specific groups of public officials in order to be practical and relevant to their specific needs. Training should also be made less theoretical and more practical on values and "grey" areas.

Many IAP countries received recommendations to develop and disseminate practical guides on ethics, conflict of interest and corruption during their reviews. Already, during the first round of monitoring, it was noted that none of the countries had succeeded in implementing these recommendations. During the second round of monitoring, similar results were identified. It appears very difficult for IAP countries to develop practical guidelines, which would further explain actionable legal norms for by civil servants. This may be due to the compliance-based legal culture where officials are supposed to directly implement the laws and regulations without further guidance.

Mechanisms for implementation of conflict of interest and ethics rules

Present responsibility for the implementation of conflict of interest and ethics regulations for civil servants is decentralized in all IAP countries. Individual state bodies are responsible for the implementation of these rules among their own staff. Apart from the

human resources departments, there seem to be no specialized bodies to manage conflict of interest and ethics issues for various ministries or branches of power. It appears that the heads of state bodies, such as ministers and heads of various state agencies and services, do not have an explicitly established mandate to ensure the implementation of conflict of interest and ethics regulations in their institutions. Little information is available about the mechanisms and practice of enforcing these rules in individual institutions. In contrast to IAP practice, many other ACN and OECD countries have established specialised bodies responsible for conflict of interest and ethics.

During the second round of monitoring, several IAP countries launched new initiatives to create centralised mechanisms for the implementation of conflict of interest regulations. In Armenia, the Law on Public Service calls for the establishment of a new body – the Ethics Commission for High-Ranking Officials – which will be responsible for detecting conflict of interest violations and preparing recommendations for their prevention.

The draft law of Azerbaijan on the Prevention of Conflict of Interest, which was not adopted at the time of the second round of monitoring, also provides for a specific agency to control conflict of interest regulations.

In 2010, the President of Tajikistan endorsed the joint proposal by the government, parliament and NGOs to establish a national anti-corruption council under the president, that would include a commission on the resolution of conflict of interests. However, these initiatives are at very early stages of implementation, and it is not yet possible to assess their role in the effective prevention and management of conflict of interests in IAP countries.

In Ukraine, the new Law on Civil Service stipulates that personnel services will be established in all state agencies and they will be responsible for the implementation of the Law. However, this Law does not deal with conflict of interest issues. The Law on Principles for Preventing and Countering Corruption that does addresses the conflict of interest issues provides no mechanism for implementation or for central supervision and control of implementation.

To assess the effectiveness of conflict of interest regulations, it would be important in the future to collect and analyse statistical data about their enforcement, including data about specific cases and resources dedicated to the enforcement.

Asset declarations

In 2008, the IAP summary reported that, "[t]he majority of the Istanbul Action Plan countries have established systems for declaration of assets for public officials. If these systems are to play a role in preventing corruption, they must have a mechanism to verify and control the data declared by the public officials by a specially assigned institution and/or through public disclosure and scrutiny. It is also important to ensure that law-enforcement bodies have access to the declarations when they investigate alleged crimes committed by public officials".[21]

In 2011, the ACN in association with the OECD-EU SIGMA programme, carried out a study of asset declarations systems in all ACN countries. This study allowed for the collection of detailed information about various aspects of asset declarations systems in the region and for the formulation of policy recommendations which suggested ways to increase effectiveness of these corruption preventing systems.[22] The ACN, together with the OSCE, also organized several seminars to discuss the study with the

practitioners from the region and to promote the application of policy recommendations in practice.[23]

Both the aforementioned study and the second round of monitoring confirmed that asset declarations remain a very popular topic among the IAP and other ACN countries. Several countries introduced measures to strengthen their asset declarations systems since the first round of monitoring. Armenia, under the new Public Service Law of 2011, now requires all high ranking officials to declare their incomes and assets, as well as incomes and assets of their close relatives; these declarations should be submitted to the Ethics Commission for High Ranking Officials (the Commission was not yet established at the time of the second round of monitoring). The Commission will have the power to analyse and publish declarations. However, the new provisions have not yet been implemented in practice , and it is not clear how the verification and publication will be carried out.

Georgia has also amended its Law on Conflict of Interest and Corruption in 2009 and in 2012 According to its new provisions, the list of senior public servants who must submit their declarations has been broadened, and since 2009, their declarations are published on the Civil Service Bureau website (*www.csb.gov.ge/en/*). While Georgia still does not have a mechanism to verify information gathered, authorities believe that the proactive publication of declarations provides an important opportunity for public scrutiny. At the same time, according to the information provided by Georgia, it plans to introduce monitoring of asset declarations of senior public officials, as provided in the Anti-Corruption Action Plan and Georgia's Open Government Partnership commitments.

In Ukraine, the Law on Principles for Preventing and Countering Corruption, adopted in 2011, introduced several changes in the asset declaration system. Changes included a mandatory publication of the declarations of the senior public officials, including the President, prime-minister and ministers, speakers and members of parliament, senior judges, the prosecutor general and his deputies, heads of the local self-government bodies, and several other senior public officials. The declarations should be published in the official gazettes of each corresponding public body. This decentralized off-line disclosure may not be convenient for public scrutiny and should be supplemented with disclosure on the internet.[24] Amendments introduced in June 2012 in the Law on Access to Public Information stated that access to declarations of all public officials and candidates for public offices should not be restricted and should be provided on request (only data about place of residence, location of immovable property, tax and passport information remain confidential). The new 2011 Law on Elections to the Parliament provided that declarations of all candidates should be published on the Central Election Commission website. Concerning verification, the anti-corruption law provides that declarations of candidates for public service positions should be verified as a part of screening and that a submission of false information should lead to refusal in appointment. No verification is foreseen for incumbents.

Other IAP countries did not introduce new measure to improve the effectiveness of asset declaration systems by the time of the second round of monitoring. In Azerbaijan, the Law on Combating Corruption, adopted in 2004, compels public officials to submit asset declarations. This provision of the law was never implemented in practice, because the Cabinet of Ministers has never developed rules and forms for declarations. In Kazakhstan,

public officials must declare their assets to the tax administration for tax purposes. Declarations are not disclosed to public. This system does not provide a tool for prevention of conflict of interests and corruption. Asset declaration system in Tajikistan did not undergo major changes since the first round of monitoring. However, according to the progress update by Tajikistan, the government is currently preparing measures that will ensure public disclosure of declarations.[25] An asset declaration system does not yet exist in Uzbekistan.

The study "Asset Declarations for Public Officials: a tool to fight corruption" mentioned above has identified several typical shortcomings of asset declarations systems in all ACN countries. The study suggested several recommendations how to improve asset declarations systems in the region. The study pointed out that "asset declarations are one among many tools that can help prevent corruption, but they cannot deliver alone, especially in countries where democracies are not yet mature, corruption is widespread, tax systems are dysfunctional and law-enforcement is weak. However, a well-designed and operational system of asset declarations can be an important element in the overall anti-corruption and integrity system of a country".

In many ACN countries, asset declaration systems cover all branches of power in one system, i.e. they require members of parliament, other elected officials, senior executive officials and often all other public officials to submit their declarations to their employers or to a single depository body, and provide for similar sanctions for all these categories of officials. This approach does not allow focusing the systems on risks specific to each group, and makes verification and sanctions ineffective. The same sanctions cannot be applied to an MP, a judge and a middle level civil servant for example. In contrast with the ACN countries, in many OECD countries, there are asset declarations systems for specific groups of public officials. Specialised bodies are responsible for the collection and verification of declarations for specific groups.

Asset declaration systems in many ACN countries tend to require public officials to disclose information about pecuniary assets, which may be insufficient to detect all forms of conflict of interest. As was in the past, in most countries, there is no verification of data provided in the declarations; bodies which collect and can check the declarations often do not have access to other databases on taxes, property and bank data. Some countries reported that asset declarations can be used as evidence in court for other corruption related cases; however, there is no information about the practical implementation of this possibility.

While sanctions often exist for failure to submit declarations, there are often no sanctions for false information. There is a growing number of ACN countries which provide public disclosure of declarations. However, additional measures are required to ensure that public disclosure is done in an easily accessible manner that would allow proper public and media scrutiny. In this respect, the study recommends introducing an easily accessible electronic database of declarations.

The summary of the main findings of the study "Asset Declarations for Public Officials: a tool to fight corruption" and information collected during the second round of monitoring and various follow-up seminars is presented in the table below.

Table 4.2. **Summary of asset declarations systems in the ACN countries**

	Categories of officials who submit declarations	Number of officials	Body responsible for collection and verification of asset declarations	Number of staff dealing with declarations	Form of public disclosure
Albania	High level legislative and executive officials, civil servants of high and middle management level, judges and prosecutors.	4 200	– The High Inspectorate of Declaration and Audit of Assets (for all branches of power)	20	Access to individual files upon request
Armenia	High level officials.	No data	– Ethics Commission for High Ranking Officials	No data	no data
Azerbaijan	All public officials.	No data	– Commission on Combating Corruption – For MPs – authority identified by the parliament – Accounting authority determined by heads of state authorities	No data	No public disclosure
Belarus	Civil servants and candidates to civil service positions	No data	– The Ministry of Taxes and Revenue – Personnel departments of state bodies – Heads of superior bodies	No data	No public disclosure
Bosnia and Herzegovina	High level legislative and executive officials and their advisors	6 000	– The Central Election Commission	3	Access to individual files upon request
Bulgaria	High level officials	7 073	– Public Registry Department unit in the National Audit Office	9	Electronic publication
Croatia	High level legislative and executive officials, judges and prosecutors	1 850	– Commission for the Prevention of Conflict of Interest (for public officials) – State Attorney' Office and Ministry of Justice (for attorneys) – Ministry of Justice (for judges)	5 (Commission for the Prevention of Conflict of Interest)	no data
Estonia	High level officials	33 000	– Parliamentary Committee – Depositary of declarations is appointed by the head of an agency or authorized body (e.g. local government body)	2	Electronic publication
Georgia	High level officials	2 870	– Department in the Civil Service Bureau	5	Electronic publication
Kazakhstan	High level legislative officials, judges, civil servants, candidates to civil service positions, persons released from prison and persons dismissed from civil service	470 000	– The Tax Committee of the Ministry of Finance	450	No public disclosure
Kosovo		800	– Anti-corruption Agency	4	No public disclosure
Kyrgyzstan	All public officials	1 350	– Agency for State Service Affairs	4	Electronic publication of summary information only
Latvia	All public officials, except for public employee such as teachers or doctors	70 800	– Department in the State Revenue Service – Corruption Prevention and Combating Bureau	66	Electronic publication
Lithuania	Political officials; civil servants; judges; heads of state owned enterprises, heads of political parties and their deputies; candidates for elected offices.	150 000	– The State Tax Inspection (for all branches of power) – Chief Official Ethics Commission (for members of parliament) – Specialized public officials or units in each state body		Paper or electronic publication (for certain senior officials and politicians)

Table 4.2. **Summary of asset declarations systems in the ACN countries** *(cont.)*

	Categories of officials who submit declarations	Number of officials	Body responsible for collection and verification of asset declarations	Number of staff dealing with declarations	Form of public disclosure
Macedonia	Elected and appointed officials (they submit declarations to the SCPC and PRO) and civil servants (they submits declarations to the institutions where they are employed).	3 000	– State Commission for Prevention of Corruption – Public Revenue Office	2 (exclusive of the Public Revenue Office)	Electronic publication (except civil servants)
Montenegro	Elected, nominated and appointed officials in a state body, state administration body, judicial body, local governance body, local administration body, an independent body, a regulatory body, public institution, public company and other legal entities performing public authorities, i.e. activities of public interest or which is in state ownership, as well as a officials for whose election, nomination or appointment consent is given by an authority.	3 343	– Commission for the Prevention of Conflict of Interest	10	Electronic publication
Romania	High level legislative and executive officials, judges and prosecutors; persons with leading and control positions; members of the boards of state owned companies; candidates to elected positions.	300 000	– The National Integrity Agency (NIA)	57 (NIA integrity inspectors)	Electronic publication and access to individual files upon request
Slovenia	High level elected and executive officials, , judges and prosecutors, managers of state owned/controlled enterprises.	5 264	– The Commission for the Prevention of Corruption	2	No public disclosure
Tajikistan	All public officials.	No data	– Department in the State Service Board – Department in the Tax Committee – Personnel departments of state institutions	No data	No public disclosure
Ukraine	All public officials.	391 347	– Personnel departments of state institutions	No data	Paper publication for senior officials
Uzbekistan	no asset declaration system.				

Source: Information of the governments; OECD/ACN Secretariat research.

Reporting of corruption and whistle-blower protection

The 2008 IAP summary report notes that, "[i]mproved reporting of corruption-related crimes and other misconduct by public officials and ordinary citizens will increase the chances of detecting these offences. Stronger legal obligations to report is one approach; however, this should be supported by other measures, such as the protection of whistle-blowers, and removal of overly strict provisions against defamation."[26]

Reporting of corruption

During the second round of monitoring, some IAP countries have taken steps to strengthen the legal obligation of public officials to report corruption and other related crimes. The new Law on Public Service of Armenia introduces an obligation for public

officials to report on breaches of law, including corruption, in relation to public service. The Law also provides that public servants, who have reported such breaches of law and did not receive a satisfactory response, may inform the chief of the relevant body or competent bodies in writing. Furthermore, the Law provides that the competent authorities should provide protection to those who report corruption or other breach of law in good faith.

The Law on Civil Service of Kazakhstan, adopted in 2010, introduced an obligation of civil servants to notify management or law enforcement bodies of corruption. Since this is one of the duties of civil servants, failure to observe this requirement may result in imposition of a disciplinary sanction on the civil servant. Under the Law on Civil Service of Kyrgyzstan, civil servants are also required to report violations of laws to their management or to other public bodies. According to the 2011 Law of Ukraine on Principles for Preventing and Countering Corruption, officials at the state and local levels of government, in the event of detecting corruption or receiving information about such an offence, are obliged to take measures to stop it and immediate notify in writing law enforcement in writing. Failure to do so is punished with administrative fine in the amount approximately from 85 to 210 EUR.

Despite these efforts, it appears that reports exposing corruption and other related crimes by public officials are not common in IAP countries. During the second round of monitoring, countries either did not have any statistical data on reporting, or the data was not clear. It is important to collect and analyse such data in the future in order to assess the effectiveness of the reporting obligations.

Protection of whistle-blowers

During the first round of monitoring, none of the IAP countries had legislation for the protection of whistle-blowers. By the time of the second round, several countries have introduced new legal provisions to protect whistle-blowers. As mentioned above, the new Law on Public Service of Armenia provides that competent authorities should provide protection to those who report corruption or other breaches of law in good faith.

In 2009, the Kazakhstan Law on the Fight against Corruption was supplemented with a clause that a person, who exposed corruption offence or otherwise facilitated fighting corruption, shall be rewarded. The Sectoral Programme of the Fight against Corruption, approved in 2011, instructed the Agency for Combating Economic and Corruption Crimes (Financial Police) and other bodies to develop mechanism of rewarding in 2011. Article 7 of the Law on the Fight against Corruption also provides that a person, who informs about the fact of corruption or facilitates the fight against corruption, is protected by the state; information on the person facilitating the fight against corruption constitutes a state secret. Protection of whistle-blowers is also called for in the Code of Ethics of Civil Servants; the body's management is obliged to protect whistle-blowers from illegal persecution, negatively influencing further service activities of the civil servant, his rights and lawful interests.

The Law on the Fight against Corruption of Kyrgyzstan, which was last amended in 2009, provides guarantees of state protection to the persons who provide assistance to the fight against corruption and makes information about such persons a state secret. However, the Kyrgyz authorities were sceptical as to how this provision would be implemented in practice and whether it would cover whistle-blowers.

In Ukraine, the 2011 Law on Principles for Preventing and Countering Corruption stipulated that persons who provide assistance in preventing and countering corruption are under state's protection. The Law then refers to the special Law on Security of Participants of Criminal Proceedings, which is limited to just witnesses and other participants of criminal proceedings. In addition, the 2010 Law on Access to Public Information provided that officials who disclosed information about violations (which includes corruption) should not be subject to legal liability, despite possibly breaching their duties, if they acted bona fide and had a grounded belief that the information was authentic.

In Georgia, a new chapter on Protection of Whistle-blowers was introduced in the Law on Conflict of Interest and Corruption in Public Service in 2009. It provides a more detailed set of regulations (see box below). According to information provided by Georgia after the second round of monitoring, the Civil Service Bureau of Georgia is working on the draft law on whistle-blowing and closely co-operates with SIGMA in this regard.

Box 4.8. **Protection of whistle-blowers in Georgia**

Law on Conflict of Interest and Corruption in Public Service of Georgia (excerpts)

"Chapter V1: Protection of Whistle-blowers

Article 201

The terms used in this chapter shall have the following meanings:

a) Whistle blowing. To inform the public institution which examines complaints against public officials (exposed) about the infractions of the law or the rules of due conduct of public employees, which has caused harm to public interests or reputation of public institution.

b) Institution which examines the complaints- Structural subdivision of the corresponding public institution, which performs the control, audit and work inspection.

Article 202

1. This law shall afford the protection of whistle blowing, which:

a) in essence, conforms with reality and is confirmed by the shown evidence;

b) is done honestly and with the belief that the whistle blowing will contribute to the suppression of the infractions of law and uphold the rules of due conduct by public officials, protect public and private interests and the protected value outweighs the harm caused by the whistle blowing.

2. Whistle blowing is not protected under this law, if:

a) The information received from a whistle-blower is wrong in essence, which was known or should have been known by the whistle-blower;

b) A whistle blower acts for his personal profit, unless there exists a case where granting a special reward is established by the law.

Article 203

1. It is prohibited to intimidate, oppress or threaten a whistle blower.

2. The whistle-blower may not be subject to disciplinary or administrative procedures, civil action or prosecution or be otherwise held responsible for the circumstances related to the acts of whistle blowing, until the end of the investigation. It is also forbidden to worsen the conditions of the agreements, license and grant and to relieve or to temporarily relieve the whistle-blower from his/her job or, alter legal relationships until the untruthfulness of the information provided by whistle blowing is proven.

Box 4.8. **Protection of whistle-blowers in Georgia** *(cont.)*

3. The disciplinary, civil, administrative and criminal procedures shall be suspended if any of the following circumstances take place:

a) Disciplinary, civil, administrative and criminal procedures are not related to the whistle blowing conditions of the exposed person.

b) It is necessary in the democratic society for the interests of justice, protection of the state, commercial and personal information.

c) The purpose of enjoying the protection guaranteed by this article is aimed to infringe the state sovereignty and public order, coup d'etat, to kindle ethnical and religious discord.

4. During disciplinary, civil, administrative and criminal procedures against a whistle-blower, public institution must prove, that:

a) whistle-blowing is not a reason for disciplinary, civil, administrative and criminal procedures.

b) there are grounds in the legislation to impose disciplinary responsibility and the initiation of the procedures under the same conditions would be fair for a third individual.

…

Article 208

1. If the complaint concerns the exposure of the official of structural sub-division responsible for the internal control, an audit or inspection in the state institution, the whistle-blower may take the complaint directly to the head of this public institution.

2. If the complaint is levied against the head of the state institution, the whistle-blower may present the complaint before the superiors of the head of this state institution. …".

Source: Information of the Government of Georgia.

This recent trend to introduce whistle-blower protection in IAP countries is a very positive development. Although, these provisions are still very new and often insufficient, and further legislative work is required across all IAP countries. In this context, a recent OECD study on whistle-blower protection might provide a useful insight.[27] It will also be necessary to conduct important awareness raising campaigns about new provisions among civil servants, as their implementation will depend upon a major shift in mentality and perceptions in society. Besides, it will be important to collect data and information about the implementation of these new provisions in practice in order to identify gaps and propose improvements.

Conclusions and recommendations

Overall, in the run up to the second round of monitoring over the past several years, IAP countries have introduced many legislative measures in order to promote integrity in public service. There were also several institutional reforms. Unfortunately, they were few and often incomplete. The main difficulty in assessing real progress in this area is the lack of information about practical implementation of measures. While it is important to continue legislative and institutional reforms, it is equally important to examine the practice of implementation of existing legislation in order to identify achievements and challenges and to build future reforms on the basis of sound analysis and evidence.

Recommendations:

- Professionalism in civil service:
  - Develop measures for the protection of professional civil servants from undue political influence: continue efforts to establish clear legislative delineation of definitions of political and professional public officials; further promote merit- based appointments and promotions for all categories of public officials based on transparent and objective criteria; ensure that remuneration system for public officials is fair, transparent and objective;
  - Collect and analyse data about the effectiveness of measures to protect professional civil servants from undue political influence: e.g. fluctuation in professional civil service following the change of the ruling political parties; share of civil servants appointed and promoted through competitive procedures and the use of appeal procedures in employment and promotion disputes; share of fixed and variable parts of the civil servants' pay in different public institutions and for different categories of officials.
- Conflict of interest and ethics:
  - Continue efforts to ensure that the definition of conflict of interests is clearly established in legislation and that it complies with international standards and best practices; continue efforts to establish legislative restrictions for civil servants that address corruption-related risks, such as commercial interests of civil servants.
  - Further develop Codes of Ethics for public officials, including general codes for all public officials and special ones for specific sectors, in order to ensure that they address real ethics issues that civil servants face on a daily basis; provide ethics training for civil servants about conflict of interests and other relevant rules as well as about ethical values using practical and interactive methodology.
  - Ensure that effective mechanisms are established for the management of conflict of interest situations, promoting codes of ethics and delivering ethics training; these mechanisms should include effective sanctions for non-compliance when applicable, specialised bodies with relevant responsibility, and budget allocations.
  - Ensure that the asset declarations system cover all categories of public officials, including those in political offices, and that it takes into account specific risks inherent in the work in relevant institutions. Establish verification mechanism for asset declarations. Ensure proactive publication, first of all on Internet, of asset declarations. Provide for effective and dissuasive sanctions for the failure to submit declarations and for submitting false information.
  - Collect and analyse data about the effectiveness of existing measures to manage conflicts of interest and promote ethics in civil service; e.g. specific cases of conflict of interest and applied measures and sanctions; resources allocated to the implementation measures.
- Reporting and whistle-blower protection:
  - Continue efforts to strengthen reporting requirements and measures to protect whistle-blowers.
  - Collect data on the practical implementation of relevant provisions.
- Participate in mutual learning and regional exchange of experience, monitoring and benchmarking to learn about best practice and to identify effective ways for domestic reforms.

Public procurement

Public procurement is one of the areas of public administration that is highly prone to corruption. Fierce competition for government contracts makes public procurement "a hotbed for bribery".[28] This is especially the case in the context of economic downturn and related scarcity of available resources. Bribery and other forms of corruption can occur at all stages of the public procurement cycle: from assessment and formulation of procurement needs, definition of tender requirements, choice of award procedure and procurement contract management to review of complaints. The UN Convention against Corruption (Art. 9) provides that each State Party shall take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective in preventing corruption.

After the first round of IAP monitoring, the 2008 Summary Report noted that corruption in public procurement in IAP countries was widespread and continued to grow following the upward trend in the total value of public contracts. Although basic legal framework was in place in IAP countries, they required further improvement, some of which might help prevent corruption (e.g. ensuring transparency at all stages of the public procurement process, clarifying criteria and procedures for selection of awardees).[29]

The second round of monitoring of IAP countries showed that, while a number of significant reform efforts have been undertaken to improve public procurement legal framework and practices, they remain a cause of serious concern and require further action. The general trend has been to simplify procurement procedures, increase their transparency, introduce an e-procurement system or elements thereof, reinforce complaint and strengthen supervision mechanisms. Several countries at this time, while trying to introduce relevant reforms, faced significant challenges in building capacity and providing necessary resources to implement in practice new legal rules.

Organisation of national public procurement systems should be checked against a number of international benchmarks, in particular: the 2004-2007 European Union procurement directives, the 1994 UNCITRAL Model Law on Procurement of Goods (revised in 2011), Construction and Services (revised in 2007), the WTO Government Procurement Agreement, EBRD Core Principles on an Efficient Public Procurement Framework, and – especially relevant in the anti-corruption context – the OECD Principles for Enhancing Integrity in Public Procurement.[30]

Procurement system and functions

All IAP countries currently use a decentralized procurement system. Since the first round of monitoring, Armenia (see Box below) and Kyrgyzstan have conducted reforms to move away from a centralised system. In Kyrgyzstan, the Government Agency for Public Procurement and Material Reserves was abolished in 2010, with most of its functions transferred to the Public Procurement Methodology Division within the Ministry of Finance (Procurement Division), while some functions were handed over to the Internal Audit Division of this Ministry. In addition, procurement units have been set up in all state institutions which carry out public procurement; a tender commission of no less than three persons is to be formed for each individual tender.[31] While decentralizing purchasing powers is supposed to result in higher efficiency of public procurement, it also brings additional corruption risks, as it requires more effective accountability mechanisms, including better supervision and control.

The decision on distribution of various procurement functions among public authorities has an important effect on the integrity of the procurement system. In the report on Georgia, IAP monitoring criticised the fact that the then-existing State Procurement Agency of Georgia combined the functions of policy regulation, supervision and review of complaints. It was considered to create a conflict of interests, which may undermine integrity of the system.[32] Similar issue can be raised with regard to Azerbaijan.[33]

Non-competitive procurement and exemptions

One of the main sources of corruption in public procurement systems is lack of competition. It may be efficient to allow non-competitive (single-source) procurement for low cost purchases, but it opens up broad possibilities for abuse and should therefore be limited to the bare minimum and properly supervised. Single-source procurement should be an exception, allowed only in a limited number of narrowly defined situations. In 2007, the OECD identified non-competitive procurement as a source of concern for reasons of transparency, democratic oversight, value for money and corruption risks.[34]

In 2008, the OECD Council recommended governments to consider setting up procedures to mitigate possible risks to integrity through enhanced transparency, guidance and control, in particular, for exceptions to competitive tendering, such as extreme urgency or national security.[35] Extensive use of non-bid procedures remains a cause of concerns in many IAP countries. For example, the report on Azerbaijan noted that about 30% of public procurement contracts value was allocated through single-source procedures, which was explained by budgetary practice whereby procuring agency received funding closer to the end of the year and had to apply "emergency" procedures.[36]

Another major concern in terms of corruption prevention in public procurement is exemptions from the Public Procurement Law (PPL). No matter what transparency and accountability provisions the PPL contains, they are ineffective if a significant portion of public contracts are excluded altogether from procurement regulations or are governed by a special set of rules that are deficient. The monitoring report on Kazakhstan found that the PPL contained 58 various exemptions from the scope of its regulation. Some of which were unjustified and did not comply with international standards and best practices. Also, the PPL in Kazakhstan excludes from the definition of procuring organisations national management holdings, national companies and other similar establishments. These organisations determine their own procurement rules.[37]

In Ukraine, a new PPL (adopted in 2010) was recognized to be generally in line with international standards. However, since then the law has been gradually eroded by numerous amendments, which purposely excluded whole sectors or types of entities from its regulation: state-owned companies, defence sector, procurement under green investment programme, utilities sector, etc. In 2010, changes in the laws allowed for the use of single-source procurement for all purchases related to preparation of the 2012 European Football Championship. The changes left purchasing up to the discretion of the special agency tasked with preparing this event co-hosted by Ukraine. In Tajikistan, some large infrastructure projects, like construction of an important hydroelectric power station, are in practice excluded from the PPL regulation and therefore fall short of meeting relevant standards.[38]

Box 4.9. **Public procurement reform in Armenia**

Before 2011, Armenia used a semi-centralised system with the State Procurement Agency operating, in some cases, as a central purchasing agency. Procurement reform was launched in April 2009, with the adoption of the Government's Strategy for Procurement System Improvement and specific action plan for its implementation (October 2009). New Public Procurement Law (PPL) entered into force on 1 January 2011. In September 2011, Armenia become the first and so far the only IAP country to adhere to the WTO Agreement on Government Procurement.

The reform introduced a fully decentralised system, with about 3 000 contracting units. The Ministry of Finance was put in charge of procurement regulations, policy and co-ordination. A newly established Procurement Support Centre (state non-commercial organisation) provides services to contracting units and to businesses (training, consultations), implements e-procurement system, conducts random assessment of technical specifications, acts as a secretariat of the Procurement Complaint Review Board, etc.; Procurement Complaint Review Board (PCRB) is an appeal body outside the Ministry, which reviews appeals related to bidding process.

The PCRB operates in commissions of three persons randomly selected from representatives of public authorities, Central bank, urban communities, NGOs; commission is to be chaired by a lawyer. Commission members should sign a statement on the absence of conflicts of interest in the case.

Public procurement is now managed autonomously by each public body. The head of the public agency, the responsible unit and a commission are involved. Besides, a "procurement co-ordinator" is to be designated by each public body in charge of the organisation of procurement. A unit, an individual official or even an "invited consultant" could be appointed for the task.

E-procurement reform consists of two components to be implemented consecutively. Component 1: introduction of electronic tender (e-Tendering) system in order to automate procurement carried out through competitive methods, including issue of announcements and provision of invitations to participate (e-Notification); acceptance of bids, evaluation and contract award (e-Submission, e-Evaluation, e-Awarding); contract signing. Component 2: introduction of e-purchase system (e-Purchasing), in order to create a unified and complete procurement database and automate the following: e-Contracting, e-Catalogues, e-Payments.

By 2012, Armenia planned to phase out paper-based procurement in about 60 state authorities (by introducing an e-Tendering component, website *www.armeps.am* was launched in November 2011). The e-procurement system is operated by the Procurement Support Centre. The Government approved "The procedures for electronic procurement". Ministry of Finance approved e-procurement manuals for economic operators, contracting authorities, system administrators.

Source: IAP Second Monitoring Round Report on Armenia, p. 59-62, *www.oecd.org*; "Armenia: Case Study on e-Government Procurement Development", Karen Baghdasaryan, Asia Development Bank, May 2011, *www.mdbegp.org*; "A case of Armenia: Legal framework for E-procurement in Public Procurement Sector", presentation by Karen Brutyan, December 2011, *ukraine.ppl.ebrd.com*; media reports.

Review system

Effective and transparent review mechanisms for public procurement are important instruments to prevent and fight corruption in this area. UNCAC (Art. 9) calls for an effective system of domestic review, including an effective system of appeals, to ensure legal recourse and remedies in the event that the rules or procedures established are not followed.

The complaint mechanism can be used to report and uncover corruption in public procurement and also act as a deterrent. Conversely, it can also be misused to delay the process or harm successful bidders. The review mechanism should therefore be balanced to address these issues. It is particularly important to ensure an impartial review by a body with enforcement capacity that is independent of the respective procuring entities and provides adequate remedies.[39] Georgia and Armenia have chosen comparatively unusual models of a review body, comprising of civil society representatives in addition to public officials. This is a commendable development; direct involvement of civil society in procurement procedures should be encouraged. See overview of review bodies in IAP countries in the table below.

The possibility of appeal should cover all main decisions with regard to procurement, including on the procurement method selected.[40] That is why the monitoring report on Georgia criticized restriction preventing appeals against decisions on the type of procurement chosen by the procuring agency.[41] Similar restrictions exist in Azerbaijan, Kazakhstan, Kyrgyzstan. The PPL should also guarantee procedural rights, similar to those of fair trial requirements for court proceedings, including the right to be heard, the right to have access to the review procedures and documents and to the right provide evidence. Costs of review procedures (e.g. complaint filing fee) should not be so prohibitive as to discourage legitimate complaints.

Table 4.3. **Public procurement review systems in the IAP countries**

	Review mechanism for public procurement
Armenia	Procurement Complaint Review Board consisting of representatives of state authorities, local communities, Central Bank of Armenia and NGOs who apply for membership. Members should have knowledge of procurement legislation. Ministry of Finance decides on the composition of the board. Term of office of the board's members is five years. For each individual complaint, an ad hoc 3-person commission from the board members is formed. Decision of the complaint commission is binding (and may nullify procurement contracts) but may be appealed in court.
Azerbaijan	State Procurement Agency (SPA), which combines functions of review with policy regulation and supervision. SPA was established by the President's decree in 1997. SPA is part of the executive, its head is accountable to the Cabinet of Ministers. PPL does not allow access of the complainant to the procurement documents or to an oral hearing.[1]
Georgia	Board for the resolution of procurement related disputes at the State Procurement Agency (SPA; now called – Competition and Procurement Agency) was set up in December 2010. The board is composed of six members: three members represent the SPA (Chairman of the SPA is ex officio head of the board, he also appoints two other members of the board from among SPA's staff members) and three other are the representatives of civil society, selected by the civil sector itself. For instance, in 2011 representatives of Georgian Young Lawyers' Association, Business Association of Georgia and Association of Oil Product Importers and Distributors of Georgia were members of the board. Decisions of the board are binding and can include revision or revocation of the decision made by procuring entity. An appeal can be filed electronically. Regulations on the Activity of the Procurement Related Disputes Resolution Board provide fair proceedings guarantees. Decisions of the board can be appealed in court.
Kazakhstan	There is no designated body to review complaints.
Kyrgyzstan	No information available.
Tajikistan	Current Agency for Public Procurement of Goods and Service was set up in 2010 and reports directly to the Government (its predecessor was part of the Ministry of Finance). Director of the Agency is appointed by the Government. Complaint should be lodged primarily with the procuring entity and only in case of unsatisfactory decision can be further filed with the Agency or, alternatively, a commercial court. Agency's decisions are binding but can be appealed in court.
Ukraine	Under the 2010 PPL, Antimonopoly Committee is the review body for complaints related to procurement procedures. Antimonopoly Committee is a body primarily responsible for competition issues, it is mentioned in the Constitution and has a special status, not being subordinated to the Government. The Head of the Committee is appointed and dismissed by the President upon agreement of the Parliament. To review procurement complaints, the Antimonopoly Committee had to set up an administrative panel comprising of three state antimonopoly agents (staff members of the Committee). No prior appeal to the procuring entity is required. Decisions of the administrative panel are binding and can be appealed in court.
Uzbekistan	A unit for control over procurement procedures was established in 2011 in the Ministry of Finance's Main Control and Inspection Division.

1. EBRD Legal Diagnostic Report on Azerbaijan, cited above, July 2012.

Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

Transparency of public procurement

Transparency is a crucial matter for integrity and corruption prevention in the public procurement system. According to the OECD Principles for Enhancing Integrity in Public Procurement, governments should promote transparency in potential suppliers and other relevant stakeholders, such as oversight institutions, not only regarding the formation of contracts, but in the entire public procurement cycle. They should also ensure that public procurement rules require a degree of transparency that enhances corruption control while not creating 'red tape' to ensure the effectiveness of the system. UNCAC (Art. 9) calls, inter alia, for public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and pertinent information on the award of contracts.

Procurement information should be published proactively and provided upon request. It should cover all stages of the procurement cycle and include publication of procurement plans, tender notices, qualification requirement, information on tender results. Maximum disclosure is necessary for effective civil society oversight and to ensure a level playing field for suppliers competing for government contracts.

The second round of monitoring noted general trend in IAP countries to open up procurement-related information with several examples of best practices. By introducing an electronic procurement system, Georgia ensured public access to all principal information concerning procurement (see box below). Kyrgyzstan removed from its law a threshold of the tender price for its public announcement. Procuring organisation has to publish information on the results of the conducted procurement within 5 days of concluding the procurement contract. Although there is no obligation to publish such information on internet, a new 2010 PPL of Ukraine foresaw on-line publication of important information about procurement, including tender announcements and detailed information on the procurement results.

National legislation and even some international standards mention confidentiality of some procurement-related information. It is sometimes a legitimate interest which may justify the restriction of access to such information, e.g. in order to ensure a level playing field for potential suppliers and avoid collusion.[42] However, such interests should be clearly balanced with the public's right to know how public resources are being allocated and used, which includes access to procurement information. It should not be up to the commercial entity to decide what information should be restricted in access, but for the public authority using the "harm test" (establishing whether possible harm to private interests outweighs public interest in disclosure).

In any case, legislation should specifically determine what categories of procurement information should be made accessible in any circumstances. In the second round report on Kyrgyzstan, IAP monitoring recommended that confidentiality principle be well balanced with the needs of public access to information on procurement, in particular to ensure that tender documentation, procurement procedure protocol, main information on single-source procurement can be obtained upon request by any person.

Table 4.4. **Public availability of procurement information in the OECD countries (number of countries out of 34 OECD member states)**

	Laws and policies	General information for potential bidders	Selection and evaluation criteria	Contract award	Specific guidance on application procedures	Tender documents	Procurement plan of anticipated tenders	Justification for awarding contract to selected contractor	Contract modifications	Tracking procurement spending
Always	34	26	21	21	19	18	17	13	11	6
On request	0	1	1	0	1	5	0	10	7	6
Sometimes	0	7	11	13	13	10	14	7	10	5
Not available	0	0	1	0	1	1	3	4	6	17

Source: OECD, "Government at a Glance 2011", OECD Publishing, Paris, 2011, *http://dx.doi.org/10.1787/gov_glance-2011-54-en*.

Electronic procurement

E-procurement is another instrument which significantly enhances transparency of public procurement and allows for better competition and places more effective control over procurement procedures. Almost all IAP countries have started or plan to launch e-procurement systems of varying scope. Georgia has completely replaced paper procurement with electronic procurement, achieving significant savings and drastically

Box 4.10. **Introduction of e-procurement in Georgia**

In December 2010, Georgia introduced an electronic procurement system for all types of contracts, irrespective of their size and nature. It meant that 100% of all procurement operations were moved into an electronic format and paper tenders were abolished. An EU report has acknowledged that there was no other public procurement system in Europe that would allow such an extensive use of e-auctions.

All information related to procurement is open and available online through a single internet portal, including: annual procurement plans, tender notices, tender documentation, bids and bidding documents, decisions of tender commissions, contracts. The new system provides for web-payment of tender participation fees, online submission of guarantees, online submission of appeals to Dispute Review Board, etc. All procurement-related interaction was moved online, only one physical visit to a procuring entity is required – for the tender winner to sign contract. In September 2011, e-procurement system was made bilingual (Georgian/English).

According to State Procurement Agency, the new system resulted in significant savings (about 15-20% or about $142 million as of March 2012). In March 2012, there were about 12 500 users registered in the e-procurement system. The number of tenders rose dramatically as well – from 2 000 in 2008 to more than 33 000 in 2011.

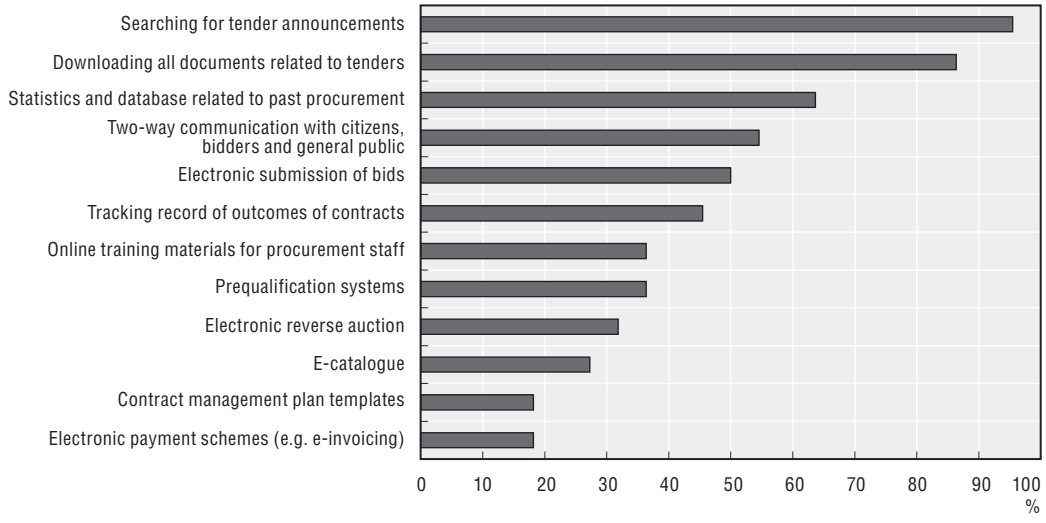
In 2012 Georgian e-procurement system received UN Public Service Award.

Source: State Procurement Agency presentations, *http://procurement.gov.ge*; European Commission reports on implementation of the European Neighbourhood Policy, *http://ec.europa.eu/world/enp/documents_en.htm*; UN Public Administration Network unpan1.un.org.

improving transparency of the system (see Box below). Armenia launched e-procurement in 2011 and planned to move its main procurement procedures into electronic form in 2012 (see Box above). In 2011, Uzbekistan established mandatory electronic procurement for all purchases in the amount equivalent to USD 300 – 100 000 according to the list of goods and service determined by the Government. Electronic procurement (in the form of reverse auction) is organized by the Republican Commodities Exchange. In June 2012, Ukraine adopted amendments in the PPL introducing electronic reverse auctions.

Internet-portals are being increasingly used to provide information on public procurement, but they also serve as platforms for electronic procurement procedures (e.g. *http://procurement.gov.ge* in Georgia, *www.armeps.am* in Armenia).[43] Consolidated web-portals for e-procurement (compared to placing relevant information and tools at individual websites of purchasing entities) are useful tools to allow easy public access to procurement information and organize effective electronic procurement. Such web-portals are also widely used in the OECD (22 members use single-entry portals) and ACN countries for providing various services (see the Figure below).

Figure 4.1. **Most common services offered by the single-entry procurement websites in the OECD countries (percentage of the 22 OECD countries that have a single-entry procurement website)**



Source: OECD, *Government at a Glance 2011*, OECD Publishing, Paris, 2011, *http://dx.doi.org/10.1787/gov_glance-2011-54-en*.

Prevention of conflicts of interests

As public procurement is an area highly susceptible to corruption, it requires robust mechanisms to maintain integrity, including conflict of interests management. It is a good practice to complement general conflict of interests rules contained in the anti-corruption legislation with specific requirements in the procurement law. For instance, the PPL of Ukraine introduced the notion of "related persons" and established some restrictions to avoid possible conflicts of interests of said persons. Members of the Antimonopoly Committee administrative panel (a review body) in particular are not allowed to take part in the consideration of complaints if he/she is "related" to the complainant or the procuring entity.

Ukrainian Law (Art. 17) uses concept of "related persons" also to prevent bid rigging by prohibiting participation in the procurement of an entity which is "related" to another bidder. However, the IAP monitoring report was critical of the new arrangement, as the Law did not establish an effective mechanism for the prevention and detection of the conflict of interests. Tender documentation does not require conflict of interests declarations, and potential conflicts can only be made known by looking at the names of beneficiary owners. Members of tender committees are not obliged to declare their conflicts of interests either.[44]

The new 2011 PPL of Armenia (Art. 30) provides that after the bid opening meeting, a member of the commission, who has a conflict of interests related to the given procurement procedure, must halt participation in that procedure. Otherwise, the chairperson of the tender commission must dismiss said member. In cases of conflict of interests of the commission's chairperson, he/she is to be replaced by another commission member. Members of the commission must sign a statement about the absence of conflict of interests. Similar regulations are provided for members of the complaint review board.

According to legislation in Uzbekistan, a member of the commission has to withdraw from the commission if the procurement bidder is his/her close relative (if the participant is a natural person or owner, executives of the legal entity) or if the member of the commission has been employed by participant within certain timeframe. Members of the commission, before starting the evaluation and decision process, sign a declaration that they are not in a situation of conflict of interests. Also, experts invited by the commission to assist in elaboration of technical specifications and evaluation of tenders/offers should sign such declaration.[45]

Debarment

A strong deterrent against corruption is temporary or permanent debarment from participation in the public procurement of persons or entities found liable for corruption-related offences. In 2009, the OECD Council recommended that member countries' laws and regulations should permit authorities to suspend from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials.[46] It is a good practice to provide such disqualification from public procurement as a possible sanction for legal persons for corruption offences.

The second round monitoring found that none of the IAP countries have provided an effective administrative or other type of sanction in the form of disbarment. Georgia has established a register of "unreliable persons, contenders and providers participating in the procurement", but it includes companies which failed to perform properly under a procurement contract.[47] Similar "black lists" exist in Uzbekistan, but it does not provide for debarment as a sanction.[48]

Box 4.11. **Debarment in the EU**

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts

"Article 45

Personal situation of the candidate or tenderer

1. Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA;

b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;

c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;

d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. [...]"

Conclusions and recommendations

Public procurement is one of the areas where IAP countries have launched a number of meaningful reforms aimed, in particular, at increasing transparency and integrity of relevant procedures. Armenia and Georgia have achieved significant progress in establishing electronic procurement systems, which make public procurement much more accountable and less prone to corruption. Other IAP countries have also started relevant efforts. At the same time, low capacity and lack of resources in institutions involved in public procurement, a poor record of prosecuting corruption in the public contracts sector and lack of or ineffective integrity instruments (notably, conflict of interests) still make public procurement one of the most corrupt activities in public administration.

Recommendations:

- Limit the number of exemptions from public procurement law (in terms of sectors and entities subject the law's regulation), restrict to the minimum use of single-source procurement and eliminate other rules inhibiting competition (e.g. unjustified privileges for local suppliers).
- Prevent conflict of interests in procurement procedures, in particular, by: *a)* separating functions of policy making, complaint review and supervision in the public procurement; *b)* providing specific rules for managing conflict of interests of public officials and other persons taking part in the procurement procedures, including their declarations of interests.
- Strengthen the review mechanisms by ensuring an adequate level of independence of relevant bodies, transparency of their procedures and guarantees of fair proceedings.
- Provide sufficient resources to properly implement procurement legislation by procuring entities, supervision and complaint bodies; provide integrity training for procurement officers.

- Further enhance transparency of public procurement by proactive publication of all main procurement-related information, including on the results of the procurement. Create a single-entry government web-portal for disclosure of procurement information and e-procurement.
- Encourage and provide for possibility of a direct civil society participation in the procurement procedures as an important oversight and accountability instrument.
- Establish the effective sanction of debarment from public procurement of natural and legal persons who have been involved in the corruption-related offences (regardless of their connection to the procurement area); compile and make publicly available lists of such persons.

Access to information

Laws on access to information

Access to information is an important instrument to ensure government accountability and to control corruption by making it more difficult to conceal it. Ensuring effective public access to government-held information should be a part of any corruption prevention mechanism. UN Convention against Corruption (Art. 13) mentions it as one of the measures necessary to strengthen civil society participation in the prevention and the fight against corruption. It also calls for measures to enhance transparency in public administration, including with regard to organisation, functioning and decision-making process (Art. 10).

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

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

Summary report after the first round of IAP monitoring noted that, while all countries in the region had legal provisions for public access to information, citizens and NGOs faced multiple difficulties in their implementation. The second round of monitoring provided more in-depth evaluation of the available legal framework in IAP countries and highlighted its deficiencies, while also pointing out problems in enforcement of the laws.

IAP countries employ various mechanisms to guarantee access to public information. While most of the IAP states have specific laws on freedom of information (some even have two special laws), which may formally be assessed as being of good quality (see Table below), their practical implementation is generally weak.[49] Effective implementation of specific access to information laws is often undermined by legislation on state and official

secrets, which establishes a separate regime for classifying information that is not subject to general access to information provisions.

In Kyrgyzstan, which has a progressive provision in its Constitution about the right of access to information, the Law does not extend to information "access to which is restricted in compliance with legislation of the Kyrgyz Republic". This significantly undermines the efficacy of the whole Law, which is supposed to establish basic provisions with respect to access. It should also set up grounds for exceptions and should prevail over other laws that regulate certain kinds of classified information (e.g. state secrets). The reference to the "legislation" is also problematic, because it includes secondary legislation. The Law therefore allows exceptions from the general regime by adopting secondary legal acts and, consequently, making provisions of the Law hollow.[50]

Table 4.5. **Access to information laws in IAP countries**

	Name of the Law(s)	Year	Rank in the Global Right to Information rating[1]
Ukraine	On Access to Public Information	2011	8
Azerbaijan	On the Right to Obtain Information	2005	11
Kyrgyzstan	On Guarantees and Freedom of Access to Information	1997	21
	On Access to Information Within the Competence of State Bodies and Local Self-government Bodies	2006	
Georgia	Administrative Code, Chapter 3 "Freedom of Information"	1999	30
Armenia	On Freedom of Information	2003	34
Uzbekistan	Law on Guarantees and Freedom of Access to Information	1997	80
	On Principles and Guarantees of Freedom of Information	2002	
Tajikistan	Law on the Right for Access to Information	2008	90
Kazakhstan[2]	On the Procedure for Consideration of Petitions of Individuals and Legal Entities	2007	*Not included*

1. Global rating compiled in March 2012 (and updated in September 2012), laws in 93 countries assessed. Assessment of legal framework for guaranteeing the right to information; the rating does not measure quality of implementation. See *www.rti-rating.org/country_data.php*.
2. There is an on-going work in Kazakhstan on drafting a specific Law on Access to Public Information, versions of which have in general been positively assessed by international experts. See detailed analysis in the IAP Second Monitoring Round Report on Kazakhstan, p. 92-93, *www.oecd.org*.

Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

Scope of the law

According to international standards, the requirement to provide access to information should extend to all branches and levels of state power (including legislative and judicial authorities) and local self-government, as well as public corporations and private organisations, insofar as they carry out public functions (e.g. bar association or medical board vested with public regulation of the profession; private utility company providing water or electricity) or receive public funding (e.g. political party receiving state funding; company implementing government contract; museum or archive receiving public subsidies).

Relevant laws in IAP countries cover state and local self-government authorities. However, other public institutions and private-sector entities are covered to varying extent. In Armenia, "administrators of information" subject to the access of information requirements include organisations funded from the budget, as well as "organisations of public significance". These include private organisations that have a monopoly or

dominating position on the market, organisations in the area of health protection, sport, education, culture, social security, transport and communications, private organisations providing service in the utilities area.

In Azerbaijan, the law extends to legal entities implementing public functions, as well as private legal entities and individuals engaged in education, healthcare, cultural and social fields based on legal acts or contracts (concerning information produced or acquired as a result of public duties carried out, or services provided in the aforementioned fields); legal entities with the dominant position, as well as holding a special or exclusive right in the market, or a natural monopoly – in relation to the information on provided services (goods) and their price; fully or partially state-owned or subordinate non-commercial organisations, off-budget funds, as well as the trade associations where the state has a presence – in relation to the information on the use of the state budget funds or state property.

In Georgia, entities of private and public law are covered if they receive funding from the state budget. Private entities in Kazakhstan, which obtained public procurement contracts, are subject to access to information provisions with regard to information on services (works, goods) procured by the state.

Ukraine's law has the most extensive list of entities that are obliged to provide information upon request. In addition to all state and local self-government bodies, these are entities which receive funding from state or local budgets, entities to whom public functions have been delegated, natural monopolies, companies with dominant market share or companies with exclusive or special rights. It also covers any economic entity if relevant information is of public interest. The latter includes a broad range of issues, in particular, state of environment, quality of food and household products, catastrophes, emergencies, violation of human rights, etc.

"*Harm test*"

Denial of access to information should be based on a narrow list of interests protected by law and should balance the potential harm to such interests from the disclosure and the public interest in obtaining access. Limitations to access to information shall be necessary in a democratic state and be proportionate to the protected interest. Therefore, in each case when the public body seeks to deny access, it should justify such restriction on a case-by-case basis by applying the following "harm test": 1) restriction of the access falls under a legitimate interest listed in the law; 2) disclosure would cause real substantial harm to that interest; and 3) the harm to the interest is greater than the public interest in obtaining access to the information.

Such an approach to access restrictions stems from the fundamental principle of maximum disclosure, meaning that all information held by public and other entities is presumed to be open and should be provided upon request, unless it is proven than disclosure would cause substantial harm to the protected interest (e.g. national security or privacy) and there is no overriding public interest. It is considered to be the best practice and is supported by various international instruments, e.g. the Council of Europe Convention on Access to Official Documents.[51]

From IAP countries, only Ukraine provides a specific requirement to apply the three-part harm test in each case of restriction of access to information in its Access to Public Information Law (Art. 6). Restriction of access is allowed in accordance with the law if

complies with the following conditions: 1) the restriction corresponds to interests of national security, territorial integrity, public order, protection of health of the population, protection of reputation and rights of other persons, prevention of disclosure of information obtained confidentially or sustaining authority and impartiality of the judiciary; 2) disclosure of information may inflict substantial harm to these interests; 3) this harm outweighs the public interest in accessing the information.

Similar provisions exist in some other ACN countries. In Bulgaria, certain types of restrictions on accessing information (but not state or official secrets) should be provided on request if there is an overriding public interest. The latter exists when the information: *a)* gives opportunity to the citizens to form their own opinion and to take part in on-going discussions; *b)* improves/facilitates the transparency and accountability of public bodies with regard to the decisions they make; *c)* guarantees the lawful fulfilment of the legal obligations of public bodies; *d)* reveals corruption and abuse of power, poor management of state or municipal property, or other unlawful actions (or inaction) of administrative bodies or officials by which state or public interests, rights or legal interests of other people are affected; *e)* disproves dissemination of false information which concerns vital public interests; *f)* is related to the parties, subcontractors, the subject, the price, the rights and obligations, conditions, terms, and sanctions specified in public procurement contracts.[52] In Serbia, the right of access may, in exceptional circumstances, be subject to limitations, to the extent necessary in a democratic society to prevent a serious violation of an overriding interest based on the Constitution or law.[53]

Processing of information requests

The main avenue of access to information is through filing of a request to provide necessary information with an information holder. The requestor should not be obliged to provide reasons or any explanation as to why he/she needs certain information. The right of access should not be conditional on the existence of a legitimate interest in obtaining information.[54]

Table 4.6. **Time for processing information requests in the IAP countries**

	Basic time for processing a request	Possibility of extension
Armenia	5 working days	Up to 30 days overall ("If additional work is needed to provide the information required")
Azerbaijan	7 working days	Additional 7 working days ("if information owner … needs the additional time for preparation of the information, or if there is a need to define the essence of the request or to investigate a lot of documents to clear up the information")
Georgia	Immediately	Up to 10 working days if the information *a)* is located in another territorial unit or public agency; or *b)* requires consultations in any of the cases mentioned in *a)*; or *c)* there is a need to collect and work on the information retrieved from various unrelated documents and the volume of information is big.
Kazakhstan	15 calendar days and 30 calendar days (when it is required to obtain information from other entities)	Additionally up to 30 calendar days
Kyrgyzstan	14 calendar days	Up to 14 calendar days
Tajikistan	30 calendar days	Additionally up to 15 calendar days
Ukraine	5 working days	20 working days ("if request concerns provision of a large volume of information or requires search within a significant mass of data")
Uzbekistan	30 calendar days	Up to 2 months overall

Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

As the right of access concerns information which already exists, the response time should be generally quite short. Requests to create new information (e.g. provide analysis or explanation of the law) or take certain actions (e.g. recognise a legal right, react to a complaint) should be dealt with under separate administrative procedure and may require more time to process.

The range of time allowed by law to reply to an information request in IAP countries is provided in the table below. When possibility for an extension exists (e.g. due to the request of a significant amount of documentation or the need to search within a large quantity of documents), the applicant should be notified within the initial time period for replying to a request that the time for processing has been extended.

Review mechanism

There may be several complaint (appeal) mechanisms when it comes to alleged violations of the right to information: appeal before the agency which have denied access, appeal before higher administrative agencies, court appeal, address to ombudsman and complaint to a designated information commissioner (commission).

In addition to judicial and general administrative remedies there should exist an independent complaint mechanism in the form of an information commissioner (commission) or another equivalent body. Its responsibilities should also include monitoring and supervision of compliance with the provisions on access to information. Such institutions also play an important role in raising awareness and educating public officials. In reaction to a complaint, such bodies should be able to issue mandatory requirements and impose fines or other sanctions for non-compliance.

There are several models of such institutions. In some countries, this mandate has been designated to the general ombudsman (all IAP countries, Bosnia and Herzegovina, Croatia, Denmark, Norway, Poland, Spain, Sweden). Special commission (or commissioner) exists in Belgium, France, Italy (Commission on Access to Administrative Documents), Ireland (Office of the Information Commissioner), Macedonia (Commission for Protection of the Right to Free Access to Public Information). Several countries have merged this institution with the personal data protection authorities (e.g. Estonia, Germany, Hungary, Latvia, Malta, Serbia, Slovenia, Switzerland, and the United Kingdom).

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

The IAP report on Armenia noted that there is no special mechanism for administrative appeals to a Commissioner on Freedom of Information or a similar institution. Such a body, according to international standards, should have a certain level of independence from the executive branch, have powers to consider complaints and make instructions to authorities in case of violations, as well as prepare annual reports on freedom of information. It is an important institution to monitor situations with access to information and proactively respond to violations.[55]

On Georgia, IAP monitoring found that no public authority has the mandate to systematically control implementation of the law on access to information (e.g. random

checks on the submission of information on due time-limits, review of complaints). The Public Defender's Office has no proper resources so far to perform this role. It was recommended that powers of the Public Defender's Office be strengthened in this regard, or an independent Information Commission (Commissioner) be set up. It should have the authority to receive explanations and additional information from public bodies to review and rule upon on complaints, issue mandatory instructions to such bodies concerning disclosure of information, apply to the courts on behalf of the plaintiff and apply sanctions to officials.[56]

In Azerbaijan, the Access to Information Law had initially provided for a specialised Authorised Agent on Information Matters (Information Ombudsman). However, later this role was assigned to the general Human Rights Defender.[57]

Proactive publication

To ensure transparency of their activities, public authorities have to publish a wide range of information on their own initiative, not waiting for an information request to be lodged. It can decrease the number of information requests by pre-empting calls for disclosure. Proactive publication is often required by legislation and includes key information concerning activities of public bodies, organisations, structure and contacts, annual reports and accounts, information on how the public can influence decision-making or provide input, what public services are available, procedures to access information and contacts of information officers, decisions of the body and their drafts, public procurement information and disclosure of asset and conflict of interest declarations of public officials. Many recent national access-to-information laws provide for mandatory publication and regular updates on public bodies' websites.

In several IAP countries, access to information laws provide for proactive publication in a number of information categories: Armenia (13 categories, including the list of information available at the public entity), Azerbaijan (34 categories, including information on salary rates, salary payment guidance, bonus payment policies and special benefits effective at the state authorities and municipalities), Kyrgyzstan (36 categories), Ukraine (18 categories, including a system of document registration in the public agency).[58]

Defamation

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

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

As noted in one of the IAP reports, the mere fact of the existence of the criminal liability for libel, insult and other similar acts has a chilling effect on freedom of speech and activity

of the mass media, leads to self-censorship and hinders investigative journalism to expose corruption. Moreover, enforcing sanctions connected with the restraint of liberty or threat of imprisonment further exacerbates this problem and is unacceptable in a democratic state. More severe sanctions for libel and insult of public officials also do not comply with international standards, according to which on the contrary such persons may be subject to a much higher level of criticism. Such provisions are very important for the fight against corruption since they significantly suppress social activity aimed at detection and disclosure of information on illegal acts.[59] Journalists and whistle-blowers (both important actors in exposing corruption) should not be intimidated by possible penalties for defamation.[60]

Existence of criminal defamation laws and their application in practice was found by IAP monitoring to be a serious obstacle to free activity of the media which cannot exercise their role as a watchdog properly under such conditions. IAP monitoring strongly recommended to repeal the general criminal liability for defamation and insult, as well as special crimes related to insult or infringement of honour of the president, members of the Parliament and other public officers, and to regulate these relations through civil law only.

In Kyrgyzstan, according to the Law on Guarantees of Activities of the President of the Kyrgyz Republic, in cases of the dissemination of information that tarnishes the honour and dignity of the President, the Prosecutor General is obligated, where other measures taken by the prosecutor have failed to deliver the desired outcome, to apply to the court on the President's behalf to protect his/her honour and dignity. IAP monitoring report concluded that a Prosecutor General's acting as the President's personal attorney does not fit into democratic standards. The honour and dignity of the President should be protected in a civil court following a general legal procedure and without any privileges. The existence of such a provision, even if it is not vigorously enforced, has a chilling effect on freedom of expression and investigative journalism.[61]

Several IAP countries have conducted important reforms in this area. Ukraine decriminalised defamation in 2001 and then in 2003 introduced changes in the legislation aimed at limiting excessive monetary demands to the media in civil proceedings, differentiating between fact and opinion and exempting value judgments from liability, establishing defence of reasonable publication (exempting from liability dissemination of false information if the court rules that a journalist acted in good faith and verified the information), etc. Georgia decriminalised defamation in 2004.

Kyrgyzstan became the first country in the Central Asia to decriminalise defamation in June 2011 (criminal liability for insult remains). Also, the new Constitution of Kyrgyzstan (Art. 33) provides that no one may be prosecuted for disseminating information tarnishing or humiliating one's honour and dignity. In May 2010, Armenia decriminalized general insult offence and insult of public officials (special offence for slandering a judge, prosecutor, investigator or officer of the court remains in the Criminal Code).

Other ACN countries have also decided recently to repeal criminal defamation laws, e.g. FYR Macedonia (November 2012), Montenegro (2011), Romania (2009), Serbia (2011).

Even *civil lawsuits demanding compensation of moral damages* filed against journalists and mass media and relevant court decisions awarding compensation in substantial monetary amounts constitute a problem. They have an adverse effect on the freedom of mass media and their ability to inform society about corruption, thereby facilitating its exposure and prevention. Exorbitant monetary sanctions result in insolvency and the closure of independent publications. IAP monitoring therefore recommended to revise respective

legislation, in particular, to consider a possibility of setting court fees in proportion to the sought amount of the claim in such cases, to introduce a short statute of limitation period for such lawsuits, to exempt expression of value judgments from liability, and to also conduct awareness-raising in courts.[62]

Conclusions and recommendations

All IAP countries have legal framework providing instruments for accessing information held by public authorities. Its scope and effectiveness varies. Most of the laws, however, fall short of international standards in several important aspects (scope, restrictions, procedures for access, handling of complaints, etc.) and have to be reformed to make access to information an enforceable right. Public administration transparency is a powerful tool to prevent corruption and access to information laws should be designed to achieve this through proactive disclosure of a wide range of information and speedy processing of information requests. As with other areas, enforcement of the legal framework remains a major problem in the region.

A number of IAP countries still retain provisions on criminal defamation and insult, which has an adverse effect on the freedom of information. At the same time, several countries have totally (Georgia, Ukraine) or partly (Armenia, Kyrgyzstan) decriminalised these offences.

Recommendations:

- Revise legal regulations on access to information to bring them in line with international standards and best practices. In particular, review laws on state and official secrets to align them with the main access to information law and to ensure that they are not used for unjustified exclusion of information from public's reach.
- Establish explicitly in the law as a fundamental principle, that all publicly held information is presumed open and may be limited in access only as an exception to protect legitimate interests and when possible substantial harm to such interests outweighs public's right to know this information. Certain types of information, e.g. related to budget revenues and expenses, administration of public property and resources on national and local levels, should be determined to be of high public interest and should therefore be even harder to restrict.
- Laws should provide clear guidelines on how the access to information right can be balanced with the right to privacy and exclude certain types of information from protection under the latter, e.g. access to information on assets and income of public officials should be guaranteed. Also public data registers, especially those with property-related information, should be open for scrutiny, as it makes much harder to hide ill-gotten gains.
- Strengthen requirements with regard to proactive disclosure of information about the decision-making, functioning and organisation of public authorities. There should be an especially strict set of rules on the publication of draft decisions (e.g. deadlines), notably those concerning human rights and freedoms, administration of public property, budgets, and so on.
- The provision of information to the public should be viewed as an important function of the state and local authorities and should therefore be supported with the necessary financial, material and human resources, including creation of information officers (offices) in such authorities.

- Establish an independent review mechanism with adequate powers, which should include the power to impose sanctions and issue binding decisions regarding access to information.
- Decriminalise all defamation and insult offences, as they have a strong chilling effect on media freedom and particularly investigative journalism. Civil court should be the only right legal forum for remedying harm caused to one's honour and dignity. Nonetheless civil law should also provide relevant constraints not to stifle freedom of information with unjustified lawsuits. This can be done by setting court fees in proportion to the sought amount of claims, introducing a short statute of limitation period for such lawsuits, exempting from liability expression of value judgments and requiring malice on behalf of the alleged defamer for ruling in favour of the aggrieved party.

Political corruption

Corruption in political life is a serious problem not only for countries in transition, but also for stable democracies. It is different from administrative (petty) corruption by the political actors involved, the higher level of undue advantages, the wider possibilities for corrupt influence, the stronger detrimental effect on legal and political system, etc. Political corruption also requires different instruments to address it. It concerns mainly political parties, political public officials and relevant institutions.

Financing of political parties and election campaigns

One of the main avenues for corrupting politics is through undue influence on political parties and their representatives, which are the principal actors in any democratic system of governance. That is why the main focus of international standards and relevant monitoring mechanisms has been on the financing of parties and election campaigns. They aim to promote fair political competition, limit the influence of business and the wealthy on politicians and their decision-making, and to raise accountability of political parties before voters.

UN Convention against Corruption (Art. 7.3) calls on State Parties to consider taking appropriate legislative and administrative measures to enhance transparency in the funding of candidatures for elected public office and the funding of political parties. A body of standards in this area has been developed by the Council of Europe, notably Recommendation of the Committee of Ministers Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.[63]

As this topic has not been previously covered by IAP monitoring in a comprehensive way,[64] during second round, the monitors had to assess existing systems and provide recommendations. In this regard, monitoring faced the challenge of varying legal and political environments explained by different political systems in the IAP countries. The report on Kazakhstan noted that domination of one political force leads to the curbing of political competition and may, as such, facilitate corruption, since it excludes any mutual control and may result in the mixing of state and party functions.

It also paid attention to legislative provisions which do not facilitate establishment and functioning of different parties and competition among them (excessive requirements to create a party, vague provisions on registration and grounds for refusal, broad grounds for liquidation of a party, etc.).[65] Therefore, recommendations on the financing of political parties are preconditioned with the liberalisation of the political system and reform of the legislation on political parties. Otherwise, measures aimed at transparency of party

finances and restrictions on donations may be used by the state to establish a stranglehold over parties and persecute their supporters.

State funding

The state financing of political parties is an important tool for building a pluralistic democracy and restricting influence of private capital on parties, which, *inter alia*, reduces the risk of corruption influencing the country's political system. Therefore, direct/indirect state funding of political parties has become an established international standard. At the same time, legislation should attempt to create a balance between public and private contributions as the source for political party funding. In no case should the allocation of public funding limit or interfere with the independence of a political party.[66] In this regard, it should be noted that in Uzbekistan, funding of the parties' election campaigns is allowed only from the state budget.[67]

Several IAP countries have introduced or attempted to introduce state party financing (see table on direct funding below). While indirect financing during election period (free TV and radio air time, free rent of public premises, posters, transport expenses, etc.) is quite common, direct funding of statutory activity of parties appears to be more problematic to establish. For instance, Ukraine first introduced direct state financing of parties back in 2003. It provided for annual financial support and a one-time reimbursement of election costs to parties which gained at least 4% of vote at the parliamentary elections. However, the relevant provisions had never been implemented, their application was suspended several times for budgetary reasons and then it was revoked altogether in 2007.[68] Ukraine now plans to prepare relevant amendments in 2013.

One of the aspects reviewed by IAP monitoring was the criteria for allocating direct state financial support. To ensure equal opportunity for different political forces, public financing cannot only be limited to those parties represented in Parliament, but should be extended also to political forces representing a significant section of the electorate and presenting candidates for election.[69] In the report on Kazakhstan, IAP monitoring noted that restricting state financing only to parliamentary parties (especially taking into account a high election threshold of 7% in Kazakhstan) reduces the positive effect from such progressive measure. Kazakhstan was therefore recommended to extend the state financing also to those political parties, which received a substantial number of votes (for example, 1-3% and above; in any event this figure should be smaller than the established electoral threshold by several percentage points).[70]

Restrictions and limits

Legal framework should encourage contributions to parties coming from diverse private sources, but at the same time, ensure that no single or group of contributors establish *de facto* control over the party this way. Therefore, states are generally recommended to set *restrictions on certain sources of private donations and limits on their amount* (see Table for data on IAP countries). It is common to prohibit foreign donations, as well as donations from state bodies and legal entities controlled by the state. The Council of Europe also recommends to limit, prohibit or otherwise strictly regulate donations from legal entities, which provide goods or services for public administration.[71] Definition of what constitutes a donation should be broad enough to include in-kind donations and services.

Table 4.7. **Direct state financing of political parties**

	Funding of general party activities	Funding of election campaign	Year of introduction
Armenia	Parties and coalitions whose electoral lists have received at least 3% of the total number of votes at the parliamentary elections receive direct annual state funding in the proportion of the votes they have received. The budget fund which is distributed this way among eligible parties equals 3% of the minimum salary multiplied by the number of voters included in the voter list.	*Not foreseen.*	2002
Azerbaijan	*Not foreseen.*	Direct funding of election campaigns was provided by the Election Code, but abolished in July 2010.	–
Georgia	Parties which received at least 4% of the vote in the last parliamentary elections or received at least 3% of the vote in the last local elections are eligible for direct state funding. Such funding consists of: 1) annual fixed lump sum (about EUR 62 000 for parties with 4% of votes in the national elections or 3% – in the local elections; about EUR 125 000 for parties with 8% of votes in the national elections or 6% – in the local elections); 2) an annual amount per seat (about 3 000 EUR per member of parliament elected through the proportional system for up to 30 members and 500 EUR for each seat above 30 seats if the party received more than 30 seats); 3) eligible parties also receive about EUR 0.6 per vote received through proportional system up to 200,00 votes and about EUR 0.4 for every vote above 200 000. There also exist a fund for supporting development of parties and NGOs affiliated to them.[1]	*Not foreseen.*	2000 (revised in 2006)
Kazakhstan	Annual funding of statutory activity of parties represented in the lower chamber of the parliament in the amount of 1% of the minimum salary for each vote received. This funding is not allowed to be used for election campaigning.	*Not foreseen.*	2009
Kyrgyzstan	*Not foreseen.*	*Not foreseen.*	–
Tajikistan	*Not foreseen.*	*Not foreseen.*	–
Ukraine	*Not foreseen.*	*Not foreseen.*	–
Uzbekistan	Parties which received enough votes in the parliamentary elections to form a faction in the parliament receive direct annual state financing for their statutory activity in proportion to the number of seats they occupy in parliament. The budget fund which is distributed this way among eligible parties equals 2% of the minimal salary rate multiplied by the number of voters included in the voter list.	State funding is the only allowed financial source for election campaigns. Amount of funding per candidate is established by the Central Election Commission.	2004

1. For more details see GRECO Third Evaluation Round Report (Theme II) on Georgia, *www.coe.int*.

Source: IAP and GRECO Monitoring Reports; OECD/ACN Secretariat research.

Membership fees are a traditional source of income for political parties. However, they may be used to circumvent restrictions on private contributions. Therefore, there should be limits for membership fees as well. Similarly *anonymous donations* should either be prohibited (except for donations raised at public events, e.g. fundraisers; although there should be maximum limit on such type of donations as well, e.g. annually) or allowed only if they do not exceed certain a limit. A useful instrument to control private donations is to prohibit cash payments beyond certain limit, thus requiring the keeping of *bank transfer* records.

Similarly, states establish ceilings for donations to *election campaigns* of parties or individual candidates and may also limit the size of election fund of the party/candidate, while requiring that all expenses related to election campaigning be carried out from a campaign fund.

To guarantee equal conditions, there also often exist restrictions on the amount of expenditures for an election campaign. As noted in the Council of Europe's Parliamentary Assembly recommendation, states should impose limits on the maximum expenditure permitted during election campaigns, given that in the absence of an upper threshold on expenditure, there are no limits to the escalation of costs, which is an incentive for parties to intensify their search for funds.[72]

Such limits do exist in some IAP countries. For instance, in Armenia, not more than EUR 10 000 can be spent by candidate in parliamentary elections through the majority voting system. For parties running through the proportional system, the limit is EUR 120 000. Such low limits were found by GRECO to actually have an adverse effect, encouraging underreporting and contributing to a general mistrust by the public regarding the published documents on party and campaign financing. Unrealistic expenditure limits make it virtually impossible for parties and candidates to carry out an effective campaign by using (and reporting) only funds which fall within the expenditure limits set by the law.[73] In Azerbaijan, an election fund of a candidate for parliamentary elections may not exceed about EUR 450 000. In Kyrgyzstan, an election fund for the party which takes part in parliamentary elections is limited to about EUR 1 600 000. In Kazakhstan, an election fund of a senate candidate is limited to about EUR 54 000, while the election fund of the party during election to the lower chamber of the parliament – to about EUR 1 170 000.

Table 4.8. **Regulation of donations to parties and parliamentary election campaigns in the IAP countries**

	Membership fees	Anonymous donations	Donations by legal persons	Max. donation	Only via bank transfer	Donations to election campaigns
Armenia	No limits.	Prohibited	Allowed (except for: charitable and religious organisations; state and local self-government bodies; legal persons registered within 6 months prior to the date of the donation; foreign entities).	Annual limit for all donations – about 2 million EUR. Max. annual donation from single natural person or commercial legal person – about EUR 20 000, for non-commercial legal person – about EUR 2 000.	No restriction.	For candidate's personal contribution – about EUR 2 000. For contributions to lists of candidates from their political party or coalition – about EUR 4 000. For donations by natural persons – about EUR 100 and for donations by legal persons – about EUR 300.
Azerbaijan	No limits.	Prohibited indirectly (financial accounts of political parties must indicate the name of the donor, his address and the amount of the donation).	Allowed (except for: State entities; charitable or religious organisations; trade unions; foreign entities).	No limits.	No restriction.	For natural person – about EUR 2 700; for legal persons – EUR about 45 000.
Georgia	Not more than about EUR 560 per year per person.	Prohibited	Prohibited for any legal person.	About EUR 28 000 per natural person annually (or services of the same value).	Only via bank transfer	Limits for natural and legal persons similar to regular donations to parties. Lower ceilings for majoritarian candidates (about EUR 4 000 for natural person). No restriction on donations by party to its own election fund or to its candidates.

Table 4.8. **Regulation of donations to parties and parliamentary election campaigns in the IAP countries** *(cont.)*

	Membership fees	Anonymous donations	Donations by legal persons	Max. donation	Only via bank transfer	Donations to election campaigns
Kazakhstan	No limits.	Prohibited.	Allowed (except for: state bodies and organisations; foreign entities; religious and charitable organisations; legal entities with foreign participation; NGOs receiving funds from international or foreign organisations).	No limits.	Only via bank transfer for election donations.	Candidate for the Senate may contribute to his own election fund not more than about EUR 15 500. Natural and legal persons may donate to campaign of such candidate overall not more than about EUR 39 000. For elections to lower chamber of the parliament parties which proposed party lists may contribute to their own election fund not more than about EUR 390 000; overall maximum amount of donations of natural and legal persons to such fund is about EUR 780 000. No limits on individual donations.
Kyrgyzstan	No limits.	Prohibited for election donations.	Allowed (except for foreign entities).	No limits.	No restriction.	Own contribution of the party to its election fund may not exceed about EUR 320 000; own contribution of the candidate included in the party list for election – about EUR 8 000. Donation by natural person is limited to about EUR 1 600, by legal person – to about EUR 8 000.
Tajikistan	No limits.	Prohibited.	Allowed (except for charitable or religious organisations; state enterprises and organisations, enterprises with state share; foreign entities)	No limits.	No restriction.	Own contributions by candidate or party in the election fund are limited respectively by about EUR 6 500 and EUR 130 000. Additionally voluntary contributions may be raised by the party – not more than about EUR 390 000 and candidate – not more than about EUR 19 500.
Ukraine	No limits.	Prohibited	Allowed (except for state and local self-government bodies; state and municipally owned enterprises, institutions and organisations, as well as enterprises, institutions and organisations having government or municipal share; foreign entities; charity and religious organisations)	No limits.	No restriction.	Donations to election fund are allowed only from natural persons and candidate/party itself. Limit for donation by natural person to the party's election fund – about EUR 43 000, to the majoritarian candidate – about EUR 2 100. Contributions by candidates and parties to their own election funds are not limited.
Uzbekistan	No limits.	Prohibited.	Allowed (except for foreign entities; legal persons with foreign investment; religious organisations)	For legal person annual limit for donations is 5 000 times the minimum salary; for natural person – 500 times the minimum salary.	All donations only via bank transfers.	Private persons are not allowed to finance election campaigns.

Source: Prepared by the OECD/ACN Secretariat based on the IAP Second Monitoring Round Reports (*www.oecd.org) and GRECO Third Evaluation Round (Theme II) reports (www.coe.int)*.

Transparency

Transparency of party finances is essential for their effective supervision by the state authorities and for the sake of public accountability. As in other areas, it is a strong preventive instrument. This is why international standards provide that states should require political parties and the entities connected with political parties (all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party) to keep proper books and accounts. The accounts of political parties should be consolidated to include the accounts of the connected entities. Party accounts should specify all donations received by the party, including the nature and value of each donation, as well as name of the donor (for donations over certain value). Party accounts should be annually presented to the state supervising authority and should be published for general scrutiny.[74]

Most IAP countries have only basic requirements with regard to transparency of party finances for their daily (not related to elections) operations and their implementation is often weak and not properly supervised. In Kazakhstan according to the Law "On Political Parties", annual financial reports of political parties shall be published in the national print media. At the same time, there are no provisions on the form and contents of such reports, level of their detail, deadlines for publication and submission to the state control body, etc. There is also no regulation of the financial accounting in political parties or reference to the relevant legislation.[75]

In Tajikistan, political parties are obliged to publish annual reports on sources and amounts of income and about expenditure on routine party operations in the course of a calendar year, as well as about party's assets and paid taxes. However, no such reports are published in practice.[76] In Ukraine, the Law on Political Parties requires parties to submit their income and expense statement, property statement, and to publish this information on annual basis in national mass media. The Law, however, does not establish requirements as to the form and content of such statements; there is also no supervision over compliance with these provisions.[77] There is no financial disclosure obligation for parties in Azerbaijan and party accounts are generally submitted only to their executive boards.[78]

In Georgia, information on donations to the party, including on each natural and legal person making a contribution, shall be made public. By 1 February each year, parties need to publish their annual financial declarations in the press together with an opinion of an independent auditor. IAP monitoring was concerned with regard to the impartiality of the auditors, as parties are entitled to choose any auditor they like, who might disregard violations by the party and give less than accurate opinion on the financial declaration. Moreover, the same auditor may audit the same party each year, which makes it even more difficult to have objective information on party's finances.[79] Financial declarations by parties are to be kept for 6 years. To address recommendations by the OECD and GRECO, relevant legal framework was revised in December 2011. State Audit Office (former Chamber of Control) was assigned monitoring and supervision functions with regard to party finances. It developed a standardized form for financial declarations and requirements to auditing of political parties based on International Auditing Standards. It also carries our verification of parties' financial declarations and compliance with relevant regulations.

Box 4.12. **Reporting obligations for parties in Armenia**

According to the Law on Accounting and the Law on Political Parties, political parties are required to submit an annual financial report on their income and expenditures to the Ministry of Justice by 25 March of the year following the reporting year. Article 28 of the Law on Political Parties and the Order No. 39-N of the Minister of Justice of 31 March 2005, define what items should be included in this financial report:

- the amount and type of monetary donations (including the name and address of the donor, if the donation exceeds about EUR 200);
- the value, type of donation and further details on donated moveable assets (including the name and address of the donor, if the donation exceeds about EUR 200);
- the value, type, address and further information on donated real estate (including the name and address of the donor, regardless of the value of the estate);
- the value, type and further details on income received from civil law transactions, such as proceeds of leased or sold property;
- the amount and type of received state funding;
- different types of expenditure, including salaries, rent, utility payments, acquisition of property and transport;
- the capital (money, real estate and moveable property) of the party at the end of the year.

Annual financial reports by parties should also be published in the media by 25 March.

Source: IAP Second Monitoring Round Report on Armenia, pp. 67-68, *www.oecd.org*; GRECO Third Evaluation Round (Theme II) report on Armenia, §41, *www.coe.int*.

In Uzbekistan, political parties publish their budgets for public information annually and submit to the parliament or a body authorised by it reports on sources of financing of their activities. The report should include conclusions by the Central Election Commission, Audit Chamber and Ministry of Justice of Uzbekistan, with regard to the revenues and expenses during the reporting period concerning the state financing provided for the funding of election campaigning and statutory activity of the party. The party's report is reviewed by the parliament with mass media and NGOs invited to take part in the hearing.[80]

Reporting obligations also apply to *financing of election campaigns*. Political parties should be required to keep records of all direct and in-kind contributions given to parties and candidates during the electoral period. Such records should be available for public review and must fall in line with pre-determined expenditure limits. Reports on campaign financing should be submitted to the proper authorities after the elections. The law should define the format of reports so those of different parties can be compared. Such reports should be timely filed and publicly available on the internet.[81]

In Armenia, the candidates and parties participating in parliamentary elections should submit a declaration of payments made to their electoral funds and their use to the electoral commissions on the 10th day following the start of election campaign and by no later than six days after the end of the election. Declarations should contain: information on monetary donations (made chronologically to the pre-election fund, the first and last names of all contributors, their registered address and the size of their contribution;

Box 4.13. **Financial reporting during election period in Azerbaijan**

According to Election Code of Azerbaijan, candidates are required to register the collection and expenditure of their election/referendum funds. They have to submit the following financial reports to the relevant election commission:

- an initial financial report is to be submitted together with the required documents for registration with the election commission, providing financial information for the period of two days prior to the date of the report;
- a second financial report is to be submitted between 10 to 20 days prior to election day, providing financial information for the period of seven days prior to the date of the report;
- a final financial report is to be submitted at latest 10 days after official publication of the final results of elections; the initial financial documents on the collection and expenditure of election/referendum funds must be attached to the final financial report.

The financial reports are required to disclose the financial sources of the election funds, i.e. donations by citizens and legal persons, funds of parties and candidates, and to indicate the amount of resources denominated in the national currency. The precise format and content of the financial reports are determined by the CEC. At least 70 days prior to the day of elections, the CEC defines in agreement with the Central Bank the record keeping pertaining to the opening and use of special bank accounts, the rules for reporting, and the rules for collection and expenditure of election funds.

Source: GRECO Third Evaluation Round (Theme II) Report on Azerbaijan, §§50-51, *www.coe.int*.

all expenses made from the pre-election fund, their date and information on documents confirming the expenses; the amount remaining in the pre-election fund (if any). The electoral commissions then forward the declarations to the Oversight and Audit Service of the CEC. The latter publishes the declarations on the CEC website.[82]

While financial reporting by candidates and parties after election day is provided in all IAP countries, only a few ensure reporting beforehand. In this regard, one of the IAP reports noted that the lack of disclosure and reporting before election day does not allow voters to be apprised of the party's or candidate's election campaign funding sources.[83]

In Ukraine, the administrator of the party's election fund, within 15 days after election day, submits a report on incoming and outgoing payments to/from the fund to the Central Election Commission. The report is then to be published on the CEC website. A financial report is also to be submitted by the administrator of the candidate's election fund within 10 days after election day. However, no disclosure of such report is provided. Specific forms for such reports are determined by the CEC not later than 80 days prior to election day.

In Kazakhstan, a candidate or a political party shall submit to the respective election commission a report on using money from their election fund not later than within five days following establishment of the election results. Information on the total amount of funds received by the election funds and their sources shall be published in the mass media within 10 days following the publication of the official election results. The detailed information on the sources and amounts of revenues, on spending money of the funds is not published, although it is submitted to the Central Election Commission.[84]

Supervision and sanctions

International standards require a system of *independent monitoring* in respect of the funding of political parties and election campaigns. Such monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.[85]

There are special requirements to the status and powers of the supervisory body: "… effective measures should be taken in legislation and in state practice to ensure its independence from political pressure and commitment to impartiality. Such independence is fundamental to this body's proper functioning and should be strictly required by law. In particular, it is strongly recommended that appointment procedures be carefully drafted to avoid political influence over members."[86]

In one of the IAP reports, monitoring faced the issue of different practices in regards to independent monitoring in the well-established democracies and countries in transition. The IAP report on Kazakhstan noted that the status and procedure for forming the Central Election Commission did not meet independence requirements, which apply to bodies responsible for elections and control over political parties financing. This was due to the fact that after the constitutional reform of 2007, the procedure for forming the Commission was changed. Its members are now appointed by the President, lower and higher chambers of the parliament – Majilis and Senate (two members each), while the Chairperson of the Commission is additionally appointed by the President.

All members of the Central Election Commission were previously elected by the Majilis. Powers of the Central Election Commission are outlined in a presidential decree, not in the law. Members of the Central Election Commission are political civil servants. The report also noted that while in many European countries, the executive power bodies are responsible for the administration of elections, the practice of "old" democracies is not exactly exemplary. The Code of Good Practice in Electoral Matters, adopted by the Venice Commission, states in this regard: *"Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level."*[87]

At the time of second round of monitoring, no IAP country has designated a state authority which would have the mandate and capacity to monitor and supervise party finances not related to election campaigning. Even if such supervision is mentioned in laws, it usually is not implemented in practice and state supervision remains nominal. However, in December 2011, Georgia conducted comprehensive reforms in this area, particularly by amending the Law on Political Unions of Citizens. The State Audit Office was designated as the body responsible for supervising party finances, including analysis and verification of party financial declarations, on-going monitoring of their compliance with relevant regulations, reviewing information about possible violations, conducting inquiries and applying sanctions.

The situation is different with regard to election campaign financing, where all IAP countries have structures (usually Central Election Commission or temporary bodies affiliated with election authorities) that are responsible for controlling election financing. However, supervision of election financing is, as a rule, not their main priority, except in Armenia and Georgia, where special monitoring groups are set up. For more details see the table below. Another common problem is the lack of sufficient powers to effectively monitor

and oversee party finances – while all relevant institutions receive financial reports from parties or election subjects, they often lack instruments to investigate their accuracy and establish violations of the law.

Table 4.9. **Bodies responsible for supervision of party financing in the IAP countries**

	Body(ies) responsible for supervision of party finances	Body responsible for supervision of election-related financing
Armenia	Ministry of Justice.	– Oversight and Audit Service of the CEC (temporary body set up for specific elections; its head is appointed by the Head of the CEC). – Central Election Commission is composed of five members nominated by the political parties represented in the parliament, one member is appointed by the President, two members are nominated by judicial authorities.
Azerbaijan	No designated institution.	– Central Election Commission (consists of 18 members elected by the parliament): the parliamentary majority, parliamentary opposition and independent members each nominate six members; – election commission also establishes supervisory and audit services which supervise election funds of candidates. The services are composed of a head and of election commission members appointed to that service by the CEC as well as experts from the government, the National Bank and other organisations and institutions.
Georgia	State Audit Office (former Chamber of Control), according to amendments adopted December 2011. Chairman of the State Audit Office is elected by parliament for a 5-year term. Its new unit – Financial Monitoring Service (employing lawyers and auditors) – deals with party finances.	State Audit Office.
Kazakhstan	No designated authority.	Central Election Commission (consists of seven members: chairman of the CEC and its two members are appointed by the President; each chamber of the parliament elects two members of the CEC).
Kyrgyzstan	No designated authority.	Central Election Commission (consists of twelve members elected by the parliament: four members nominated by the President, four – by the parliamentary majority and four – by the parliamentary opposition).
Tajikistan	No designated authority.	Central Commission for Elections and Referenda (consists of fifteen members appointed by the parliament upon nomination of the President)
Ukraine	Ministry of Justice.	Central Election Commission (consists of fifteen members appointed by parliament upon proposal of the President).
Uzbekistan	Ministry of Finance, State Tax Service, Audit Chamber and Ministry of Justice. Main body for supervision of party finances is Audit Chamber.	Central Election Commission (consists of fifteen members appointed by the lower and higher chambers of the parliament upon proposal of regional councils of deputies) and Audit Chamber.

Source: IAP Monitoring Reports; OECD/ACN Secretariat research.

In the case of violations, political parties should be subject to effective sanctions, including but not limited to the partial or total loss or mandatory reimbursement of state contributions and fines. When individual responsibility is established, sanctions should include the annulment of the elected mandate or a period of ineligibility.[88]

IAP countries often fail to establish dissuasive sanctions for irregularities with political parties finances (which do not concern election campaigning). This is partly explained by the lack of comprehensive and meaningful restrictions with regard to donations and other aspects of party finances. Sanctions are also often too general and even disproportionate. For example, in Ukraine, while no specific sanctions exist for the violation of party finance rules, a warning or prohibition are provided as possible sanctions for violation of legislation by a political party. Not formally a sanction, but funds of political parties which come from sources prohibited by

law (e.g. from state bodies, foreign or anonymous donors) should be transferred by the party to the state budget or confiscated by a court for the benefit of the state.[89]

Box 4.14. **Sanctions for violations of the rules on party financing in Georgia**

Georgian legislation provides an elaborate system of sanctions for various infringements of financing regulations by parties. However, their enforcement in practice is almost non-existent.

The Law on Political Unions of Citizens provides for confiscation of donations and loss of state funding. Donations received by the violating party are transferred to the state treasury within one month of reception. If a donation received by the party in violation of the Law has a total value of between approximately EUR 833 to EUR 6 250, the party will not receive state funding for a one year period. If the overall value of the prohibited donations is between approximately EUR 6 250 to EUR 20 833, the party will not receive state funding for a two year period, and if their value is more than approximately EUR 20 833 the party in question will not receive state funding for a four year period. In addition, if a political party fails to publish its "financial declaration" in time (i.e. by 1 February each year) it will not receive any state funding for a one year period.

In any event, the Code of Administrative Violations of Georgia provides for the acceptance of a monetary or in-kind donation, prohibited by law, and/or concealment of this donation by an authorised person of the political party a fine of between approximately EUR 417 to EUR 625; if the donation has a value of more than approximately EUR 2 100 – a fine of approximately EUR 1 250 to EUR 2 083 can be imposed.

Finally, Article 204 of the Criminal Code provides for a fine and up to two years' imprisonment for violating the obligation to keep accounts and related documentation. Article 204-1 of the Criminal Code provides for fines (and, in case of a repeat offence or if the offence has caused substantial damage, up to one year of imprisonment) for creating and using forged or incomplete accounting documents.

Source: GRECO Third Evaluation Round Report on Georgia (Theme II), §§50-51, *www.coe.int*.

Integrity of political officials

In its recent report Transparency International, based on its national integrity systems assessments, found that only 3 out of 24 EU national Parliaments had appropriate and well-functioning integrity mechanisms for their MPs.[90] Integrity of political officials has become a focus of monitoring and analysis by international organisations. GRECO dedicated its fourth round of evaluation, launched in 2012, to particularly focus on corruption prevention in respect of members of parliament. In 2009, the Global Organisation of Parliamentarians against Corruption issued a "Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians".[91]

The IAP Second round of monitoring has also looked, for the first time, at the rules on incompatibilities of political officials, prevention of conflict of interests, asset disclosure and other integrity mechanisms. It follows from the IAP monitoring that officials holding political office (MPs, ministers, etc.) should be covered either by general rules on prevention of conflict of interests, asset disclosure, etc. applicable to all public officials or by special provisions, e.g. in the parliament's rules of procedure and/or laws on the status of such officials. It is also a good practice to adopt special codes of conduct for parliamentarians.[92] The main challenge countries face in this regard, is to design a system of enforcement which would be sufficiently robust, but at the same time, does

not infringe on the independence of such officials. That is why in many ACN countries, enforcement of integrity rules concerning parliamentarians is entrusted to a special structure of parliament (ethics and rules of procedure committees, etc.).

Box 4.15. **Code of conduct for parliamentarians in Poland**

MPs are subject to the principles of parliamentarians' ethics. The principles set rules of behaviour for deputies and provide occupational principals for MPs: selflessness, openness, integrity, care for the good name of the parliament and accountability. Parliamentarians are obliged to report, in the register of benefits, information about the positions they hold and the relevant remuneration; financial interests; donations received; and trips financed from other sources than their own, the institution they are employed by or the party of which they are a member. Deputies who fail to conform to the code of ethics have to answer to the Deputies' Ethics Committee, which can, in a resolution, caution, reprimand or admonish them. Such a resolution is then published in Kronika Sejmowa and in the Parliamentary Information System.

Source: "Money, Politics, Power: Corruption Risks in Europe", Transparency International, June 2012, p. 32, *www.transparency.org*.

All IAP countries, establish restrictions with regard to incompatibilities of political officials, which usually include ban on entrepreneurial activity, additional paid occupations (except for scientific, teaching or creative work), membership in the executive or supervisory body of a commercial organisation. None of the IAP countries have adopted specific codes of conduct for MPs, although some provisions on ethics and proper conduct are sometimes included in the laws on the status of MPs or parliament's rules of procedure. In May 2012, Ukraine adopted separate Law on Rules of Ethical Behaviour, which covers political officials and contains rules of their conduct. The Law, however, lacks an enforcement mechanism.

For information on the regulation of asset disclosure and conflicts of interests in IAP countries see relevant chapters of this report.

Lobbying regulations

Legal regulation of lobbying activities is recommended in developed political systems, especially in those with strong parliaments representing various interests. Such regulation is also important to differentiate between legitimate lobbying and trafficking in influence (see relevant section in Chapter 4 on Criminalisation of corruption). A report by the Venice Commission defines lobbying as *"the act of individuals or groups, each with varying and specific interest, attempting to influence decisions taken at the political level"*.[93] According to European Commission, lobbying means all activities carried out with the objective of influencing the policy formulation and decision-making processes.[94] A similar definition was endorsed by the OECD: *"The oral or written communication with a public official to influence legislation, policy or administrative decisions"*.[95]

The goal of lobbying regulations is to ensure transparency, integrity and fairness in the decision-making process, which is "crucial to safeguard the public interest and promote a level playing field for businesses"; "public officials and lobbyists share responsibility to apply the principles of good governance, in particular transparency and integrity, in order to maintain confidence in public decisions".[96] Regulations on lobbying usually cover the following issues: requirement to register with the state body before contacting its public officials; declaration of expenses for lobbying purposes; publication of a list of registered

lobbyists; "cooling-off period" – a temporary ban (for 1-2 years) for former politicians to act as lobbyists.

From the IAP countries, only Georgia has adopted special rules on lobbying. It should be noted, however, that laws on lobbying exist only in very few ACN and OECD countries (see table below).

Table 4.10. **Lobbying regulations in the IAP and selected ACN and OECD countries**

State	Lobbying regulations
	Istanbul Action Plan countries
Armenia	*No regulation.*
Azerbaijan	*No regulation.*
Georgia	Law on Lobbyist Activity, 1998.
Kazakhstan	*No regulation.* In January 2010, the Government of Kazakhstan introduced a draft law into parliament entitled "On Lobbying". The draft law limits lobbyist activity to the Parliament (prohibiting lobbying in the executive authorities) and limits the lobbies to registered associations of legal entities (unions, associations uniting not less than ten legal entities), thus not allowing lobbying by professional lobbyist companies and by legal entities themselves. Also, the draft law defines legislative areas where lobbying is prohibited (for example, in the spheres of law enforcement activities and military service, judicial system and court proceedings, administrative and territorial division of the Republic of Kazakhstan, budgetary and inter-budgetary relations, international relations, enforcement of tax duties of individuals and legal entities, ecological safety). The IAP report concluded that the draft law did not contain sufficient provisions on transparency of lobbyist activities (the draft law does not stipulate publication of the lobbyist register , filing and public disclosure of information on lobbyists expenses, or declaration of the funds spent by the client on lobbyist activities).[1]
Kyrgyzstan	*No regulation.*
Tajikistan	*No regulation.*
Ukraine	*No regulation.* Several draft laws on lobbying have been introduced in the Parliament of Ukraine (the latest in October 2010[2]). The Government of Ukraine has prepared and proposed a draft law on lobbying for public discussion in 2009; though it has not been registered in parliament.
Uzbekistan	*No regulation.*
	ACN and OECD countries
Albania	*No regulation.*
Australia	Originally adopted in 1983, lobbying rules were then repealed in 1996. However, in 2008 the Commonwealth Government's Lobbying Code of Conduct came into force. Earlier, in 2006, one of the states – Western Australia – has established a Contact with Lobbyists Code.[3]
Austria	*No regulation.*
Bulgaria	*No regulation.*
Bosnia and Herzegovina	*No regulation.*
Canada	Federal Level: Rules and Register since the Lobbyists Registration Act of 1989, amended in 1995, 2003 and 2008. Provincial Level: Lobbying regulations exist in Ontario, Quebec, British Columbia, Nova Scotia, Newfoundland and Alberta.
Croatia	*No regulation.*
Estonia	*No regulation.*
EU: European Parliament	Regulated by Rule 9(2) of the Rules of Procedure, 1996.
EU: Commission	Before 2008, "self-regulation" was the model adopted. However, as of 23 June 2008, the Commission opened a voluntary register of interest representations.
France	Regulations approved in 2009. A voluntary lobbyist registry was established in the General Assembly, the lower house of Parliament, in October 2009. The registry is tied directly to a pass system that grants entry to parliament. Only individuals may participate in the registry. Any individual who wants a pass must register, submit a photo and identify their clients. There is no financial disclosure.[4]
Germany	Regulation and registration through rules of procedure of the Bundestag in 1951; later amended in 1975 and 1980. Associations wishing to be heard as the legislature debates changes in policy must register beforehand, disclosing their specific interests and the names and addresses of their representatives. Registration is published and secures a pass to the legislature.[5] A similar procedure has been established for the current Federal Government of Germany. There is no financial disclosure.
Hungary	A Law on Lobbying Activity was introduced in 2006, but repealed in 2011. The Law regulated only activities of contracted or professional lobbyists who aimed to influence the executive, legislative and local branches of government. A register of lobbyists was established in the Central Office of Justice and is easily accessible by the general public. Registered lobbyists submitted quarterly reports to the registrar, specifying such details as the executive decision they attempted to influence, the objectives behind this, means by which they lobbied, and names of officers lobbied. Violation of the law could trigger such penalties as removal from the register between 1 and 3 years and a fine up to approximately €40 000.

Table 4.10. **Lobbying regulations in the IAP and selected ACN and OECD countries** *(cont.)*

State	Lobbying regulations
Ireland	*No regulation.* According to Programme for Government as well as the Public Service Reform Plan 2011 it is planned to introduce a regulatory system for lobbying. Relevant policy proposals were issued in July 2012 by Minister for Public Expenditure and Reform.[6]
Israel	Law on Lobbying adopted in 2008.
Italy	No statutory rules at national level. Nevertheless, regional schemes have been introduced in the Consiglio regionale della Toscana in 2002 and Regione Molise in 2004.
Latvia	*No regulation.*
Lithuania	Law on Lobbying Activity, 2001 (amended in 2003). Lobbying refers to any activity, by individuals or legal entities, whether paid or not, that is undertaken in order to influence the legislative process. The law is enforced by the Chief Official Ethics Commission. Lobbyist should provide individual spending reports annually and notify the register of salary received for providing lobbying services.
Moldova	*No regulation.*
Montenegro	Law on Lobbying adopted in 2011.
Poland	Law on Legislative and Regulatory Lobbying, 2006. The Lobbyist Registry is maintained by the Minister of the Interior and Administration. Registry applies to those who lobby on a contract basis to both the legislative and executive branches of government. The registry is public information, accessible through the Public Information Bulletin of the Minister of Interior and Administration. Unlike in other countries, annual reports on lobbying contacts are submitted by government officials themselves.[7]
Romania	*No regulation.*
Russia	*No regulation.* In March 2012, President of Russia adopted the National Plan for Countering Corruption in 2012-2013, which instructs government ministries to launch a discussion on lobbying in Russia and to submit specific proposals on regulation of lobbying by 1 December 2012.[8]
Serbia	*No regulation.*
Slovenia	Regulations on lobbying are included in the 2010 Law on Integrity and Prevention of Corruption. Lobbying is defined as, "activities carried out by lobbyists who, on behalf of interest groups, exercisenon-public influence on state and local community decisions, and holders of public authority in discussing and adopting regulations and other general documents, as well as on decisions made by state bodies, the bodies and administrations of local communities, and holders of public authority on matters otherthan those which are subject to judicial and administrative proceedings and other proceedings carried out according to the regulations governing public procurement, as well as proceedings in which the rights and obligations of individuals are decided upon." Lobbying activities may be performed by a domestic or foreign natural person entered in the register of lobbyists kept by the Corruption Prevention Commission. The register is accessible to the public. Lobbyist should submit annual reports including: data on organisations for which he has provided lobbying services; the amount of payment received from those organisations for each matter in which he lobbied; statement of the purpose and objective of lobbying on behalf of an organisation; statements of government bodies and those individuals lobbied where lobbying was performed; an indication of lobbying methods and techniques for a specific case in which a lobbyist has performed lobbying activity; statement of the type and value of donations to political parties and organisers or election and referendum campaigns.[9]
Sweden	*No regulation.*
Switzerland	*No regulation.*
Turkey	*No regulation.*
United Kingdom	No statutory rules in either the House of Commons or the House of Lords, although the Government is considering introduction of a mandatory lobbyist register. Also, a rule was introduced in 2010 that bans lobbying by ministers and senior officials for a two-year period from the date they leave public office.
United States	Federal Level: The Lobbying Act 1946, amended in 1995 and 2007. State Level: All states have lobbying regulations.

1. IAP Second Monitoring Round Report on Kazakhstan, p. 101, *www.oecd.org*.
2. Text available at *eng.lobbying.in.ua*.
3. The Regulation of Lobbying, Briefing Paper No. 5/08, June 2008, *www.parliament.nsw.gov.au*. See also: *lobbyists.pmc.gov.au*.
4. Lobbyists, government and public trust: Promoting integrity by self-regulation. Paper by OECD, October 2009, §177, *search.oecd.org*.
5. "Lobbyists, Government and Public Trust. Volume 1: Increasing transparency through legislation", OECD, 2009, p. 52, *www.oecd.org*.
6. See: *per.gov.ie*.
7. Lobbyists, government and public trust: Promoting integrity by self-regulation. Paper by OECD, October 2009, §§174-176, *search.oecd.org*.
8. See: *kremlin.ru* (in Russian).
9. See text of the Law, *www.kpk-rs.si*.

Source: IAP Second Monitoring Round Reports; Venice Commission Report on the legal framework for the regulation of lobbying in the Council of Europe member states; OECD publications and additional research.

Conclusions and recommendations

Corruption in politics remains an acute problem for all IAP countries. It can be partially explained by weak regulations on political party financing and election campaigns, which often serve as an entry point for corrupt influences and state capture. Most IAP countries have only basic provisions regulating party financing. These provisions are not in line with international standards, as they do not include necessary restrictions with regard to financing sources and limits on individual contributions. They do not ensure transparency of party finances and adequate state monitoring and supervision. More detailed rules are provided for election campaign financing, but they often lack enforcement and effective supervision. One of the important conclusions of the IAP second round monitoring is that crucial prerequisites for effectively combating political corruption is a strong multi-party system of political competition and mechanisms of democratic governance and control.

Also common for IAP countries is poor enforcement of integrity rules for political officials. While all IAP countries have incompatibility restrictions, and political officials are often covered by the conflict of interests and asset disclosure mechanisms, these regulations lack effective enforcement.

Recommendations:

- In order to restrict private capital influence on the politics, provide direct state funding to political parties with a certain level of voter support (parties with parliamentary representation, but also those which have gained a certain share of votes, e.g. 1-2% less than the election threshold). Such funding should not, however, be disproportionate to make parties overly dependent on the state.
- In order to diversify funding sources and limit influence over parties, establish reasonable restrictions on party financing sources and limits on individual contributions, including membership fees. Prohibit both cash contributions beyond a certain amount and anonymous donations.
- Ensure transparency of party finances, by requiring annual financial reports with details of all contributions (except for very small ones) and each contributor, as well as party expenses. Such reports should be standardised and published on the internet. Reinforce rules for disclosure of election campaign finances, including submission and publication of financial reports before election day.
- Establish an independent monitoring and supervision mechanism for party finances and financing of election campaigns with adequate resources and powers, in particular to impose proportionate and dissuasive sanctions.
- Adopt codes of conduct for parliamentarians and determine the institution (e.g. parliamentary commission) to oversee its enforcement. Ensure that political public officials are covered by the rules on conflict of interests, restrictions on gifts, asset and income disclosure, incompatibilities, etc. Asset declarations of officials holding political offices should be published and be open for public scrutiny.

Integrity in judiciary

The judiciary plays a crucial role in democracies and in sustaining the rule of law. Judicial corruption erodes legitimacy of public authorities, undermines the justice system

of the country and fosters impunity. Effective anti-corruption efforts are impossible in the system where judicial institutions lack integrity and are vulnerable to undue influence. A "clean" judiciary requires robust safeguards of judicial independence, integrity and accountability.

There are a number of international instruments establishing standards in this area, which were used by IAP monitoring as a benchmark. The UN Convention against Corruption (Art. 11) states, that bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Independence and impartiality of courts is a part of the fundamental human right to fair trial as outlined in global and regional binding international treaties[97] and their interpretation by relevant bodies, notably in the case-law of the European Court of Human Rights.[98] Council of Europe's Committee of Ministers,[99] Venice Commission,[100] Consultative Council of European Judges[101] and other bodies[102] laid down detailed guidelines on judicial independence and integrity. The same concerns other organisations, notably UN[103] and OSCE.[104]

This topic was not examined during the first round of the Istanbul Action Plan monitoring, but became one of the new areas explored during the second round – covering both the legal framework and real situation with judicial independence and integrity. The monitoring found that a number of IAP countries had conducted important reforms in the area of judiciary aimed at safeguarding its independence and ensuring better accountability. For example, in December 2006, Georgia introduced amendments in its Constitution to reform, in particular, the status, composition and authority of the High Council of Justice (see also below). Armenia passed a new Judicial Code in February 2007. In June 2007, the President of Tajikistan adopted a programme on judicial legal reform. In July 2010, Ukraine passed a new comprehensive Law on the Court System and Status of Judges. In June 2011, Kyrgyzstan overhauled its judiciary by adopting or revising two constitutional laws and four ordinary laws.[105] However, a number of deficiencies still remain and require further improvement.

Independence of judiciary

"A judiciary that is not independent can easily be corrupted or co-opted by interests other than those of applying the law in a fair and impartial manner. Strengthening the judiciary from within, as well as providing all the safeguards for its independence vis-à-vis other public officials and private actors, is essential in combating and preventing instances of judicial corruption."[106]

Independence of individual judges is safeguarded by independence of the judiciary as a whole. Judicial independence should be enshrined in the constitution with more specific rules provided at the legislative level.[107] Judicial independence shall be statutory, functional and financial. It shall be guaranteed with regard to other powers of the state, to those seeking justice, other judges and society in general.[108] Judicial independence thus involves independence from actors external to the judiciary (executive and legislative branches, other institutions) and internal independence within the judiciary (from court presidents, courts of higher instance, judicial councils, judicial administration, etc.).[109]

Constitutional guarantees

All IAP countries guarantee independence of the judiciary in their constitutions in various provisions. For example, the Constitution of Azerbaijan (Art. 127) proclaims that judges are independent. They are subordinate only to Constitution and laws of the Republic of Azerbaijan and cannot be replaced during the term of their authority. In consideration of legal cases, judges must be impartial, fair, should ensure equality of parties, act based on facts and according to the law. Direct and indirect restriction of legal proceedings from somebody's part and due to some reason (illegal influence, threats, interference) are not allowed. At the same time, the IAP report criticised another provision of the Azerbaijan's Constitution whereby the President is declared as the guarantor of judicial independence. This was seen as an encroachment on the separation of powers and judicial institutional independence.[110]

Tenure of judges

Tenure of judges and guarantees of their irremovability (guaranteed tenure until a mandatory retirement age) is an important aspect of the judicial independence. Several IAP countries use *de facto* probationary periods by appointing judges for an initial term (e.g. five years in Azerbaijan, Tajikistan, Ukraine). According to international standards, such arrangements may be seen as problematic, if judges have to be re-confirmed at the end of their initial appointment and there are no clear criteria to base their confirmation in the office. The European Charter on the statute for judges states that the existence of probationary periods or renewal requirements presents difficulties if not dangers from the angle of the independence and impartiality of the judge in question, who is hoping to be established in post or to have his or her contract renewed.

However, in countries with relatively new judicial systems, there might be a practical need to first ascertain whether a judge is really able to carry out his or her functions effectively before permanent appointment.[111] Therefore, in the Venice Commission's opinion, if probationary appointments are considered indispensable, a refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office.[112] With regard to Ukraine, the IAP monitoring report particularly criticised the fact that the new law on courts and judges did not provide for a list of grounds on which the High Qualification Commission of Judges (HCQJ) could recommend not to elect a judge for life tenure.[113] At the same time the law mentions information that is verified by the HCQJ when deciding on such recommendation and it includes a broad range of issues – from compliance with the Constitution in judge's work, his performance to complaints of natural and legal persons.

In Georgia, terms of office for judges of common courts is 10 years and it can be renewed. The IAP report noted in this regard that the fixed-term tenure of judges and the possibility of their re-appointment raises the question of whether such decisions are made objectively, on merit and without taking political considerations into account.[114] In Tajikistan, a term of office for judges is five years. It is also problematic when there is discretion whether to extend one's term of judicial office, as in Kazakhstan, where the chairperson of the Supreme Court (upon consent of the Supreme Judicial Council) may decide on the extension of a judge's tenure who reached 65 years (for not more than five years).[115]

Irremovability guarantees should not only be fixed in the law, but be observed in practice. For example, there should be no arbitrary dissolution of courts or reorganisation which leads to the dismissal of judges, or dismissal due to redundancy. In Kazakhstan, following the decision to reduce the number of all public servants in 2010, 65 judges were made redundant. IAP monitoring noted that not only did that appear to have violated the Constitution and laws of Kazakhstan itself (which establish an exhaustive list of grounds for dismissal of judges and redundancy is not one of them), but also did not comply with international standards. Therefore, judges should enjoy a special status and guarantees of irremovability that are different from other public servants. Redundancy of judges, if it is absolutely necessary for economic reasons and when the current judicial workload permits, can be done though gradual non-filling in of new vacancies, but not through dismissal of existing judges.[116]

A similar situation of mass dismissals of judges in violation of relevant procedures was noted in Kyrgyzstan, where following the events of April 2010, more than 60 judges were dismissed. This was in particular exacerbated by the fact that the Prosecutor's General Office played a leading role in compiling the list of judges to be removed. IAP monitoring concluded that such a practice violated the principle of judicial irremovability and will have an extremely adverse effect on real judicial independence in future.[117] A welcomed example of a proper approach to regulation of the court system occurred in October 2011. Kyrgyzstan adopted a special law which approved the exact structure of local courts and number of local courts judges. This means that establishment of new courts, reorganisation or liquidation of the existing ones, as well as changes in the number of judges in specific courts will require legislative approval.

Judicial Councils

An important institution to ensure independence of the judiciary, as well as integrity and accountability of judges is Judicial Council.[118] Such a council, itself independent from legislative and executive interference, should be endowed with broad powers for all matters concerning the status of judges as well as the organisation, the functioning and the image of judicial institutions. The council shall be composed either exclusively or substantially of judges elected by their peers.[119] All IAP countries have Judicial Council or a similar body; although not all them comply with the respective international standards.

In 2006, Georgia conducted an important reform of its High Council of Justice (HCOJ), which had previously been an advisory body to the President of Georgia. It was reorganized into an independent agency of the judicial branch. The HCOJ is now directly responsible for appointing and dismissing judges of the regional (city) and appellate courts, whereas before, it merely made respective recommendations to the President. The HCOJ has also been restructured and expanded from 9 to 15 members. In conformity with international standards, more than half of the members are now judges (namely, the Chairman of the Supreme Court and eight other common court judges elected by the Conference of Judges). The Chairman of the Supreme Court now chairs the HCOJ (previously it was the President of Georgia).[120] In Armenia, the Council of Justice consists of 9 justices elected by the General Assembly of Judges, 2 legal scholars appointed by the President and 2 – by the National Assembly.

Supreme Judicial Council (SJC) in Kazakhstan was found not in compliance with international standards and seriously affecting the judiciary's independence. It is hand-picked by the President . The body itself is defined as a consultative and advisory body to

the President, not an institution of the judiciary. Staff of the SJC's secretariat are employees of the President's Administration; the latter also provides technical and material resources for its operation. IAP monitoring report therefore recommended that the SJC should be transformed into a judicial body (body of the judiciary), be independent from the legislative and executive bodies and even from the head of state; the majority of its members should be judges elected by their peers.[121]

In Kyrgyzstan, there are two judicial bodies responsible for the careers of judges and other matters concerning court system administration. The Council for Selection of Judges carries out selection. Matters of early dismissal of a judge from office, disciplinary responsibility, lifting of judicial immunity, formation of the budget of courts, and many others matters are decided by the Council of Judges, which is an elected body of judicial self-government. Only one third of the Council for Selection of Judges is composed of judges (elected by the Council of Judges); the rest are selected by the parliamentary opposition and the parliamentary majority from a pool of civil society representatives. Such an approach was criticised in the IAP monitoring report, although it is partly compensated by the fact that the Council of Judges comprises 15 members elected by the congress of all judges from among members of the judicial community (judges and retired judges).[122]

In Ukraine, the High Council of Justice (HCJ) includes only three members selected by the judiciary itself. Other members are appointed/elected by the parliament, the President, congress of attorneys, congress of legal universities, national conference of prosecutor plus Supreme Court's President, Minister of Justice and Prosecutor General are *ex officio* members. In reality, such an arrangement has led to a situation when for some time, the Head of the Security Service was a member of the HCJ. Currently, in addition to the *ex officio* member Prosecutor General, there are also two Deputy Prosecutors General in the HCJ composition. Several members of the HCJ have strong links to the governing party and the President. Therefore, the current legal and *de facto* composition of the HCJ does not ensure its independence and falls short of international standards. Citing constitutional obstacles to the reform of the HCJ in 2010, Ukrainian authorities introduced changes in the law whereby entities entitled to elect/appoint members of the Council had to select some of their candidates from among judges. Such approach, however, was recognized not to be fully in line with international standards as judicial members of the Council should be elected by other judges representing different levels of the judicial system.[123]

In Uzbekistan, the main role in the selection, disciplining and dismissal of judges belongs to the Higher Qualification Commission for Selecting and Recommending to Judicial Positions under the President of Uzbekistan. Its composition is approved by the President. Such an arrangement was criticized by IAP monitoring, which noted that composition, status and functioning of the council should be regulated by law and guarantee necessary independence from political institutions.[124]

Appointment procedures

Independence of the judiciary can be undermined if the decisive role in judicial appointments is played by political bodies, e.g. the parliament or the president. As noted in one of the IAP monitoring reports, it is advisable to remove such bodies from the appointment and dismissal procedures of judges. If it is impossible to do so, it is then necessary to configure the procedure for introduction of candidates in such a way that the main decision would be adopted by the judicial council (provided that

the majority of its members are elected by judges), while political bodies would only endorse Council's decision.[125]

In Kyrgyzstan, the President, upon recommendation of the Council for Selection of Judges, appoints judges of local courts and submits to the parliament recommendations on candidates for the Supreme Court and the Constitutional Chamber of the Supreme Court. The President has the right to return the nominated candidacy to the Council for Selection of Judges along with his reasoned opinion. If the Council once again submits the same candidate, the President is required to approve it (submit it to parliament) within 10 days. However, no such limitation of discretion is provided for decisions on judicial appointments and dismissals by the parliament.[126] As noted by the Venice Commission, the appointment of ordinary judges are not an appropriate subject for a vote by Parliament, because the danger of political considerations prevailing over the objective merits of a candidate cannot be excluded.[127]

Therefore the best model for judicial appointments and dismissals is when the Judicial Council directly decides on these matters, provided independence and a proper composition of the Council are ensured. From IAP countries, only Georgia directly appoints and dismisses judges of general courts by the Judicial Council (except for justices of the Supreme Court who are still appointed by the Parliament upon proposal of the President).

In a number of other European countries, including several ACN members, direct appointment (not only a proposal) is made by the Judicial Council. In Italy and Portugal, the judicial council has the power to appoint, assign, transfer and promote the judges of the courts of law and to exercise disciplinary control over them. In Bulgaria, judges, prosecutors and investigating magistrates are appointed by the Supreme Judicial Council. In Croatia, judges are appointed and relieved of duty by the State Judicial Council. In Cyprus, the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary matters of judicial officers are exclusively within the competence of the Supreme Council of Judicature. In the Former Yugoslav Republic of Macedonia judges and court presidents shall be elected and dismissed by the Judicial Council. In Turkey, the Supreme Council of Judges and Public Prosecutors is competent to appoint judges, transfer them to other posts, decide on their promotion and disciplinary matters.[128]

Court presidents

Presidents of courts may have adverse impact on internal independence of judges, by having excessive powers in court administration, deciding on the distribution of cases, allocating resources within the court and influencing the career growth of judges. It is therefore recommended to limit their powers. The best way to appoint court chairpersons, in order to ensure their maximum level of independence, is election either by judges of the respective court or by a judicial self-government body (conferences of judges or even the Judicial Council if its composition complies with the standards).[129] Court chairpersons should be appointed for a limited term with the option of only one renewal.[130] In Kyrgyzstan, presidents of courts and their deputies are elected by the gatherings of the respective courts' judges. In Ukraine, court presidents are appointed by the High Council of Justice (although see the aforementioned concerns as to the HCJ composition and lack of independence).

Case assignment

Arbitrary distribution of cases among judges creates conditions for corruption and undue influence on the administration of justice. This function should not belong to the court's chairperson. Case assignment should be either random or on the basis of predetermined, clear and objective criteria determined by a board of judges of the court.[131] It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.[132] Laws in some IAP countries (e.g. Kazakhstan, Kyrgyzstan, Ukraine) have formally introduced automatic case assignment, but its full implementation in some countries is obstructed by lack of funds. There are also concerns that automatic systems may be tampered with (e.g. through fake specialization of judges, assigning certain court districts to the judges of the appellate courts, thus narrowing down the pool of judges to whom specific cases may be assigned). It is therefore important to ensure access of the parties and the general public to information on the results of the automated case assignments (either by publishing it proactively or providing it upon request). In Kazakhstan, a registration card with information on the distribution of the case is included in the case-file. There should also be strict liability for illegal interference with the electronic system of distribution.[133] Oversight over the system of case distribution can be given to the judges of the relevant court.

Financial autonomy

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

An example of good approach to legal rules on the funding can be found in Kyrgyzstan. where the Government has to incorporate in the draft state budget proposals by the Council of Judges without any changes (in case of objection it attaches its opinion to such proposals). Chairman of the Council of Judges participates personally in the debate on the state budget in the parliament.[134] However, in practice financial and material situation of the judiciary in Kyrgyzstan is not satisfactory. For instance, there is lack of funds to introduce automated case assignment in courts as prescribed by the law.

Another important aspect of financial independence and removing incentives for corruption is judicial remuneration commensurate with the status and duties of judges. A good approach to relevant legal provisions can be found in Ukraine, where the 2010 reform set directly in the law the salary rates for judges while providing their gradual increasing, eliminated bonuses which constituted a significant part of the judicial remuneration and served as an instrument of influencing judges by the court presidents, and subordinated State Court Administration to the judiciary. However, IAP monitoring report also highlighted situation with scarce resources available to the Ukraine's judiciary in reality. Lack of sufficient funding from the state budget, untimely payment of salaries, insufficient staff, lack of proper court premises and equipment are often compensated by private contributions and assistance from the local self-government authorities. This undermines the integrity and independence of the judiciary and fosters corruption.[135]

When control issues related to allocation of financial resources, payment of salaries, assignment of qualification ranks, etc. is exercised by the executive branch, it creates a

serious challenge to genuine independence of the judiciary.[136] Payment of bonuses to judges may also negatively affect judicial independence and lead to abuses.[137] Therefore, IAP monitoring recommended that the remuneration rates for judges, including the amount of wage and possible increments, for example, for the judicial length of service, qualification class, extra payments for special employment conditions (e.g., for working overtime during consideration of election disputes, judges on duty) and holding of an administrative position in a court, should not only be sufficient but also be fixed directly in the law.[138]

Integrity of judges

Building integrity of judges is an important condition for preventing judicial corruption. It includes a number of instruments: merit-based recruitment and promotion, rules on judicial ethics, guarantees of impartiality (in particular, through rules on recusal), incompatibilities, provisions on conflicts of interests, gifts and other instruments (see also relevant parts of this report).

Procedures for selection and promotion

Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the responsible authorities. Such decisions should be based on merit, taking into account qualifications, skills and capacity.[139]

After recent reforms in 2011, all vacancies in Kyrgyzstan within the judiciary, including those of judges of the Supreme Court and of the Constitutional Chamber of the Supreme Court, shall be filled by competitive selection. However, selection consists solely of an interview, with no selection criteria established, and without a provision that the successful candidate is the one who best meets the criteria. While conducting an interview, the Council for Selection of Judges "has the right" to request the candidate's declaration of income and "other information as a proof of the candidate's integrity". The IAP monitoring concluded that this may lead to a selective approach in the assessment of candidates.[140]

A 2010 Law on the Judiciary in Ukraine introduced a complex competitive selection system for first-instance court judges: candidates have to pass theoretical exam on knowledge of law (anonymous test), undergo a vetting procedure, then study for 6 months in the National School of Judges and pass another qualification examination, consisting of an anonymous written test and practical assignment. Successful candidates are then included in the judicial "reserve"; when a vacancy appears, it is filled with the reserve candidates who applied and scored highest at the qualification examination.

A merit-based system was also introduced in Georgia, where the High Council of Justice appoints candidates to vacant positions based on person's qualification shown in written and oral examination, professional and moral reputation, ability to assess issues freely and impartially, professional work experience and physical health. However, the IAP report noted that there are no established criteria and selection appears to be totally discretionary.[141] A system of oral and written examination is also used in Azerbaijan, where successful candidates then undergo initial long-term training in the Legal Training Centre under the Ministry of Justice. There exists a "Judicial Selection Committee Chart" with criteria for the judicial selection.[142] Judges selection in Armenia is administered by the Judicial School, which submits lists of pre-selected candidates to the Council of Justice for oral interviews. Notably, the Judicial Code of Armenia (Art. 135) provides for a list of criteria that are taken into account when the promotion of a judge is decided by the Council of Justice.[143]

In Kazakhstan, competition is envisaged for selection of judges not only of local, but also of regional courts (although not for Supreme Court's justices). One of the candidate requirements is passing the qualification exam, which consists of a computerized test and an interview conducted by the commission. The law sets such candidate selection criteria for vacant positions of district courts judges as "high standard of knowledge, moral and ethical qualities and impeccable reputation". However, the law also provides that priority is given to candidates who have passed the qualification exam in the specialized Master's programme (i.e. in the Institute of Justice); who have at least five years of experience in legal profession in the state authorities supporting the judiciary's activities, law enforcement bodies and the bar; according to results of the qualification exam.

The IAP report found that the criterion related to the length of experience is questionable as it does not necessarily reflect the knowledge and skills of the candidate (while service in the law enforcement bodies has rather a negative impact and will not always be positive for the future judge). Also, it is unclear what is the weight of each of these criteria. While introduction of electronic tests was a positive step, oral interview gave rise to concern as it may have a subjective effect on evaluation of the candidate. It was recommended to Kazakhstan to limit to the maximum possibilities of subjective influence on the procedure for selecting judges and to consider introducing an obligatory training in the specialized institution for judges, as a pre-condition for holding the position of a judge.[144]

Independence standards for the Judicial Councils also apply to the institutions responsible for judicial selection. They should also consist of a majority of judges elected by their peers.[145] For example, in Kyrgyzstan, a Council for Selection of Judges if formed by the congress of judges exclusively from active and retired judges. In Ukraine, High Qualification Commission of Judges includes 6 judicial members elected by the congress of judges and 5 members appointed by various actors (Minister of Justice, Ombudsman, congress of legal universities, etc.).

Ethics rules

According to international standards, judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves. These principles should be laid out in codes of judicial ethics. Judges should play a leading role in the development of such codes. Judges should be able to seek advice on ethics from a body within the judiciary.[146]

While judiciaries in all IAP countries have developed judicial ethics codes, their enforcement and level of awareness are often weak. In several countries, there is no enforcement mechanism to provide judges with advice on how to apply ethics rules and how to deal with violations of these rules by judges.[147] In Kyrgyzstan, in addition to the Judicial Code of Honour, judges should comply with the ethics rules for civil servants set by law, which was found to be an interference with the judicial independence by the IAP report, as civil servants ethics standards are established by the executive power and not all of them are applicable to judges (e.g. the obligation to retain loyalty to the administrative authority).[148]

A good approach to the enforcement mechanism can be found in Kazakhstan, where each regional court functions as a judicial ethics commission of the Union of Judges of Kazakhstan (a professional association of judges). These commissions are separate from

the body responsible for conducting disciplinary measures against judges (Disciplinary and Qualification Board); the latter may request the ethics commission to issue an opinion on whether a judge's behaviour can be considered in violation of the Code of Judicial Ethics. However, there is no requirement that says bringing a judge to disciplinary liability or violation of ethics is possible only after the establishment of such a violation by the judicial ethics commission.[149] It is also a good practice to have separate rules of conduct for non-judicial court staff (e.g. adopted in Armenia, Ukraine).

Training

Initial and in-service training of judges is crucial for building their integrity, raising awareness about rules of ethics and anti-corruption legislation. According to international standards, judicial training should be conducted by a dedicated institution, which is subordinated to the judiciary (e.g. judicial council) and not to the executive (e.g. ministry of education or justice). An independent authority, the judicial council for example, should ensure that training programmes for judges meet requirements of openness, competence and impartiality inherent in judicial office.[150] In the following IAP countries, judicial schools are subordinated to the judiciary: Armenia, Georgia, Kyrgyzstan, Tajikistan, Ukraine.

Accountability

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

Transparency

All procedures related to the selection, promotion, dismissal, disciplining, etc. of judges should be transparent and open to public scrutiny. It should include publication of vacancies, results of tests and other competitive selection procedures, open records of meetings and decisions of the relevant bodies. Also, the public should be aware of how relevant procedures are regulated (criteria for recruitment, promotion, etc.). The IAP monitoring report on Georgia noted in this regard that lack of information about grounds for appointment or dismissal of judges, about reorganisation of courts might have led to low trust in the courts.[151] According to Georgian authorities, this issue has been addressed since then.[152] In Kazakhstan, since April 2011, information about candidates nominated for positions of chairpersons of local courts and chairpersons of judicial panels is published in the press and on the website of the Supreme Court.[153]

It is also important to ensure transparency of court proceedings – from distribution of cases among judges (see above), physical access to court premises and hearings to publication of court decisions. In Kazakhstan there is a publicly accessible database of electronic texts of judicial decisions on the official website of the Supreme Court. Also in April 2011 public access was granted to information provided by courts regarding case movement, including the date of proceedings, copies of judicial decisions, name of the

judge as well as information on the judiciary, addresses and contact details of the courts. At the same time IAP monitoring took note of the reported problems with obtaining access to court sessions, which in the most cases should be open, as well as a prohibition to record proceedings with technical means.[154] Judicial decision are also available on-line in Armenia and Ukraine.

Disciplinary liability

Weak disciplinary rules and lack of their enforcement may foster impunity among judges, while too broad provisions and arbitrary application may seriously encroach on the judicial independence. It is therefore important to find a necessary balance.

In Ukraine, the definition of grounds for disciplinary liability of judges was extended in May 2010, which was found to be problematic by IAP monitoring, as the wording of the new provisions lacked clarity and thus failed to provide a clear definition of what constitutes the breach of the judge's oath (one of the grounds for dismissal) and leaving possibilities for abuse.[155] A similar issue of overly broad grounds for bringing judges to disciplinary responsibility, including dismissal from office, was identified in Kyrgyzstan[156] and Kazakhstan.[157]

Disciplinary proceedings should also include guarantees against arbitrariness to ensure that judges are protected from persecution for political or other ulterior motives. For example, as was noted in the IAP monitoring reports, there should be separation of functions of initiating disciplinary proceedings and conducting investigation and taking decision on the case. Otherwise there would be violation of the principles of a fair trial ("nobody can be a judge in his own case").[158] The system where a member of the judicial council is in charge of the disciplinary inquiry and presentation of the case to the full panel of the council affects impartiality of the proceedings, as the same person will perform the roles of a "prosecutor" and a "judge".[159] Lack of possibility for appeal against decisions on disciplinary liability of judges contravenes the human right to a fair trial.[160]

Conclusions and recommendations

The independence and integrity of the judiciary are crucial for anti-corruption efforts and proper democratic governance. The second round of IAP monitoring reviewed these issues for the first time and found that many IAP countries had recently conducted comprehensive reforms in this area, but much remains to be done to align legal framework with applicable international standards. There are also cases when legal safeguards are ignored in practice, e.g. when judges are dismissed under the pretext of reorganisation or job cuts contrary to irremovability guarantees enshrined in the law. Financial independence of courts is often undermined in practice. Creating a judicial accountability system that does not impair independence and impartiality of the judiciary also remains a challenging task in the region. Along with these issues, further monitoring should also pay attention to the independence and integrity of the public prosecution as an important element of the justice system.

Recommendations:

- Continue necessary reforms of the judiciary and public prosecution bodies to ensure their independence, impartiality, integrity and accountability, if necessary through constitutional amendments, in line with international standards.

- Strengthen and strictly abide by the guarantees of independence of the judiciary, including provisions on irremovability of judges and safeguards against undue influence on judges. Consider abolishing initial temporary appointment of judges where it exists; if it is retained, non-confirmation in the judicial office should be based on clear and transparent criteria. Minimise, as much as possible, the involvement of political bodies in the appointment and dismissal of judges. Determine the system of existing courts and number of judges in each court directly in the law.
- Reform institutions of judicial councils in line with international standards (composition, status, powers, procedures) to make them responsible for judicial careers, disciplining, training of judges, etc.
- Introduce automated case assignment among judges based on objective criteria, preferably agreed upon by the judges of the court. To prevent abuse, ensure that information on case assignment is open to judges, parties and the public.
- Revoke the powers of court presidents related to careers of judges, their material provision, bringing to liability, etc. which may affect judicial independence; consider electing court presidents by judges of the relevant court.
- Ensure in law and in practice the financial autonomy of the court system, in particular, by allowing the judiciary to be responsible for its own budget through its drafting and defending before the parliament, establishing that judicial bodies (e.g. judicial council) are responsible for controlling the administration of the judiciary's budget. Remuneration rates and all wage increments of judges should be fixed directly in the law; avoid the payment of bonuses to judges.
- Introduce effective instruments for ensuring integrity of judges, in particular, merit-based competitive recruitment and promotion, rules on ethics, incompatibilities, conflict of interests management, gifts, etc. Training on ethics, anti-corruption and integrity should be an important part of the judicial initial and on-going training curricula. Training of judges should be delivered by a dedicated training institution subordinated to the judiciary.
- Ensure accountability of the judiciary, first and foremost, through transparency of all issues related to judicial careers (publication of vacancies and candidates who applied, results of various stages of the competitive selection, etc.), of court proceedings and decisions. Asset and income disclosure of judges should be an important instrument to prevent and detect corruption among judges; consider publishing of judges' declarations online (excluding certain sensitive personal data).
- While judicial bodies should have adequate means to effectively discipline judges, disciplinary liability should not be used to arbitrarily persecute independent judges. To this end, grounds for liability should be clear and established in the law in line with legal certainty requirements, disciplinary proceedings should comply with fair trial guarantees (in particular, by separating investigation, prosecution and decision-making in such proceedings and affording judges with adequate means to defend themselves and appealing against relevant decisions in court).

Corruption prevention in the private sector

Measures to prevent corruption and ensure integrity in the private sector were not systematically examined during the first round of monitoring under the Istanbul Action

Plan. As a result, the summary report of 2008 did not provide a benchmark for measuring progress in this area.

Business environment and corruption

A general lack of legal certainty is the fundamental challenge for business development and investment in many Istanbul Action Plan countries. As discussed in Section 2 of the report, private companies operating in the IAP countries see corruption as one of the most problematic factors for doing business. Only in Georgia is corruption reported as one of the least problematic issues.

Corruption is widespread in all forms of interaction between the private and public sectors, and with businesses as well. Public funds are often diverted to companies that are well connected to public officials. Small, medium and large enterprises, both domestic and foreign, face major problems related to irregular court and administrative practices concerning property rights. Complex administrative procedures in tax, customs, licensing, permits and public procurement represent areas prone to arbitrary decisions. Various types of inspections are used to solicit bribes. One of the business representatives interviewed during the second round of monitoring in Ukraine stated that companies had to accept corruption or be forced out of business.

Awareness raising

Few examples of private sector corruption awareness-raising activities were identified during the second round of monitoring. Most of them were implemented by non-governmental groups and donor funded programmes. In Armenia, for example, USAID and the Ministry of Finance and Economy organized an anti-corruption conference in March 2010 entitled, "Towards Stronger Corporate Integrity". The Armenian Chamber of Commerce has issued an anti-corruption handbook for businesses, based on the experience of the OECD and the International Chamber of Commerce. Transparency Azerbaijan and several bilateral and multilateral donors in country actively raise awareness about private sector corruption .

The monitoring reports suggest that IAP governments did not provide systematic and targeted programmes to educate private sector about the risks of corruption; such measures are not even planned in the anti-corruption strategies.

Despite the general lack of awareness raising activities, the private sector is fully aware of serious nature of the corruption problem. What is missing is practical and systematic information to companies about solutions and ways to resist corruption. There are also no regular surveys or studies that would assess corruption risks for business in individual countries, and would identify emerging best business practices of integrity measures in the region.

Reporting channels and business ombudsman

Many governments in IAP countries have established mechanisms to facilitate corruption reporting by citizens and businessmen to law-enforcement and other public officials. Measures include telephone hotlines and websites which can be used to report bribery and other violations.

For instance, a special complaint and suggestion hotline for small and medium businesses on the actions of public officials has been established by the Ministry of Justice

of Uzbekistan.[161] In 9 months of 2011, 700 complaints and suggestions were received. Entrepreneurs can also file a complaint on the Ministry website.[162] In 9 months of 2011, 99 reports were received online. In 2011, an agreement was concluded between the General Prosecutor's Office and Trade and Industry Chamber, according to which the Chamber can pass over information from entrepreneurs, including on facts of corruption.

However, there is little information to assess if these hotlines provide an effective feedback, if business people use them to report corruption and if law-enforcement and other public authorities take genuine action to follow up on these reports. It appears that there is little private sector trust in the effectiveness of these reporting channels. One of the main reasons is low trust in law-enforcement and the judiciary in general in most IAP countries. Business representatives in Armenia, for instance, were not convinced that they would report suspicion of corruption to the police or prosecution services; this was considered to be a "waste of time" due to the perceived lack of professionalism and dishonesty in these agencies. Furthermore, protection of whistle-blowers is not regulated or promoted in the public or private sector.

In some countries, business ombudsmen were established to receive and review complaints from companies related to unlawful government action, which may include bribery and other forms of corruption. For example, business ombudsmen are established in Georgia and Russia. These institutions are relatively young, and it is too early to assess their contribution to stronger reporting of corruption by companies, or to the protection of legitimate interests of companies in cases of bribery by public officials.

Public-private dialogue

There are many examples of governments organising public consultations about draft legal acts; however, there is no structured and continued dialogue on prevention of corruption, especially targeted on specific sectors where corruption is prevalent. In Armenia, representatives of the private sector interviewed during the second round of monitoring confirmed that government-business meetings were organised, but not on a regular basis. They were not structured or productive, and did not allow meaningful participation in legislation drafting or decision-making processes.

For example, expert councils on entrepreneurship are established at all state authorities in Kazakhstan in accordance with the Law on Private Entrepreneurship. These councils are consultative bodies and provide expert opinions on draft legal acts affecting the interests of private entrepreneurs. One of the biggest associations of entrepreneurs of Kazakhstan, the National Economic Chamber "Soyuz-Atameken", provides around 5 000 opinions on draft legal acts per year. At the same time, representatives of these entrepreneurial unions note the formal nature of certain consultations. More importantly, the sphere of activities of these councils does not include issues of prevention and combating corruption.

Accounting and audit

Regarding *accounting rules*, IAP countries are generally compliant with international standards. While it appears that countries do not disallow of-the-book records explicitly, they prohibit making off-the-books accounts, inadequately identified transactions, recording of non-existent expenditures, entry of liabilities with incorrect identification of their objects and use of false documents. Violations of tax and accounting laws can enact strict administrative and criminal sanctions, and broad interpretation of laws is allowed in

several countries (Ukraine for example). From a law enforcement perspective, flexibility in interpretation is a good tool to address complex financial and economic crimes. However, such discretion may lead to legal uncertainty and create opportunities for corruption. Indeed, solicitation of bribes by tax inspectors is often quoted by the regional business community as a widespread practice.

Concerning *auditing and disclosure*, many IAP countries have made significant progress in developing modern legislation. They adopted new audit standards, including requirements of mandatory external audit for some categories of companies, and disclosure rules. For instance, Kazakhstan has established a Financial Reporting Depositary for reports by public interest organisations. The Depository is an electronic database of financial reports submitted annually by the public interest organisations. This general progress can be undermined by exemptions, as demonstrated by the National Wealth Fund of Kazakhstan "Samruk Kazyna". The Fund's group controls over half of the national assets and has special powers and privileges, for example, the right to approve the procurement rules on its own. Special law adopted in February 2009 waived general requirements of internal and external audit, reporting and disclosure requirement in relation to the Fund. Absence of such provisions creates wide opportunities for corruption. In 2009 Standard&Poor's rated transparency of the Fund at 24 points out of 100 possible.[163]

Information about *beneficiary owners* of companies is a hot topic in the region. Lack of transparency in this area makes corporations a potential tool for hiding illegal wealth, including proceeds of corruption. It also undermines effective measures to control conflict of interests among public and private officials and to investigate and prosecution corruption allegations. Therefore, it is important to ensure transparency of corporate ownership, in particular, by opening up company registers for public scrutiny, and to eliminate possibilities for using various legal structures (e.g. shell companies) to hide ownership and business interests.

Many countries have developed rules to protect the independence and integrity of auditors. The effectiveness of these rules is not well examined in the region. The *duty of auditors to report corruption* in particular requires further examination. In many countries, when auditors uncover indications of illegal acts, including corruption, they have to report to the audited entity. In some countries, they also have to report to public authorities, such as the State Commission on Standards of Financial Reporting and Audit in Kyrgyzstan. However, more often than not, information provided by the company to the auditor is confidential and cannot be disclosed without the agreement of the company, as it is the case in Ukraine. If company management buries the report, the auditor cannot report further to the law-enforcement bodies, thus decreasing the value of the audit in the fight against corruption.

Internal controls and compliance programmes

Regarding *internal controls*, legislation in many IAP countries is quite loose, apart from regulations applicable to Joint Stock Companies. In Armenia and Kyrgyzstan, Joint-Stock companies are required to establish control or revision commissions elected by the company's general assembly in order to control its financial and business activities. A similar requirement was introduced recently in Uzbekistan, but the monitoring team could not confirm that any new regulations pertaining to audit committees in private enterprises were implemented. Generally, little is known about effectiveness of internal

control, audit or revision committees in the IAP countries, and the role they plan in preventing corruption in companies.

Introduction of *corporate compliance programmes* is a new trend in IAP countries.[164] Companies with foreign investments and offices of transnational companies are usually the frontrunners, compliance programmes are required by their head offices. Many domestic companies are becoming increasingly interested in compliance, especially when they involve in international trading, seek international loans and investments, and consider collaboration with multi-national enterprises.

Governance of state owned enterprises is weak across ACN countries. In some countries, like Kazakhstan, governments are making efforts to improve corporate governance in the national companies and holdings. Some other, like Croatia, are also taking efforts to introduce anti-corruption programmes in state-owned enterprises.

Box 4.16. **Anti-Corruption Programmes in State Owned Enterprises in Croatia**

State-owned companies operating in strategic sectors of Croatia, such as water, forestry, energy, transport, finance, shipbuilding, science, defence, airports and others account for a significant amount of assets and employ a large number of employees. However, uneconomic use of assets is common in these companies; recently they were marked by serious corruption scandals. To address these problems, the government started an anti-corruption programme for state owned enterprise; currently 84 companies are implementing this programme.

The objective of the programme is to improve the delivery of public services by strengthening the responsibility of management for company performance, and for promoting integrity and transparency. To ensure proper implementation of the programme, its co-ordination was instructed to the competent ministries and co-ordinators in every state owned company. To monitor progress, companies were asked to fill out detailed questionnaires about implementation measure, and to provide evidence, such as copies of company decisions, documents and published information. By September 2011, the following results were achieved:

- 92% of companies appointed ethics commissioners,
- 88% of company informed employees about the ethics rules,
- 79% of companies prepared and published lists of employees in posts with a high risk of corruption which were determined based on risk analysis,
- 74% of companies developed lists of information for disclosure, for instance, information about the management of the company (its organisation, work and decisions , costs and sources of financing, reports by independent auditors about company financial operations); information about public procurement procedures (notices, tenders and documentation, meeting minutes on the opening of tenders, decision on selection, notices of concluded contracts), and recruitment procedures (announcements and calls for testing, interview times, information on the status of the recruitment procedure and decisions made by recruitment commissions),
- 86% of companies appointed information officer to ensure disclosure and access to information,
- 86% of companies developed and published anti-corruption goals for the forthcoming three-year period on their websites,

Box 4.16. **Anti-Corruption Programmes in State Owned Enterprises in Croatia** *(cont.)*

- 86% of companies prepared and published organisational values and principles of relations with third parties, including service users, suppliers, the state and other partners,
- 86% of companies appointed irregularities officers who are responsible for the system of reporting of irregularities within companies.

Programme monitoring and publication of monitoring results provided effective pressure on the management of the companies to deliver results. It also allowed identifying priorities for further programme implementation , including education of management on employee anti-corruption and ethics and education of internal auditors.

Source: Presentation by the Croatian Ministry of Justice at the ACN Steering Group in September 2011.

To date, IAP countries governments have not taken measures to encourage companies to adopt corporate compliance programmes. A growing number of prosecutions under the FCPA and foreign bribery provisions in other OECD countries, recent adoption of the UK Anti-Bribery Act provide a much stronger incentive for corporate compliance programmes in Eastern and Europe and Central Asia than any government actions in the region.

Many ACN governments do not understand what role they can play in promoting good governance in the private sector. For example in Lithuania, government agencies interviewed during ACN consultations on business integrity considered that their sole task was punishment of any illegal behaviour and priority should be given to law-enforcement.

Introducing and enforcing corporate liability for corruption would be important measure to stimulate companies' efforts to prevent corruption. It is crucial that corporate liability statutes are developed in consultation with the private sector. It is also important that the introduction of this international standard should go hand in hand with strong and visible sanction for bribe-taking by public officials and effective measures to ensure the integrity of law-enforcement and judiciary.

Collective actions

In addition to the leading role that the governments should play in enforcing the rule of law, creating incentives for integrity measures for companies, and launching dialogue with the private sector, the role of individual companies and business associations is equally important.

It is difficult for individual companies to take strong anti-corruption measures on their own even when they can no longer carry the burden that corruption puts on their business. Companies may not have sufficient resources, they may be afraid that unilateral anti-corruption measures will undermine their competitiveness in the markets where corruption is a common tool to resolve conflicts and win contracts. In general, they do not want to be seen as leaders in an area as sensitive as corruption.

Collective action involving many companies is considered as the most effective form of business self-organisation for anti-corruption measures. When companies act together, they may create a stronger position and put more intense pressure on governments to demand anti-corruption reforms.

Organising collective action is a challenging task. First, companies need to agree on a common objective. Examples include stopping corruption in specific sector (tax, customs, public procurement) proposing solutions (which may involve commitments not to pay bribes), and other measures that could contribute to removing obstacles. The role of business associations in collective action is very important, as they may provide necessary clearing house for the individual companies and provide technical support.

Box 4.17. **Clear Wave – a business transparency initiative in Lithuania**

The main objective of the initiative is to encourage transparent business practices in Lithuania. Companies involved in this project assume the responsibility for responsible and transparent business operations, and encourage their business partners to:

- ensure transparent and fare participation in tenders (public procurement) without offering bribes to their organizers and members of the jury, without resorting to illegal financial and non-financial measures to gain advantage against other participants;
- comply with the Lithuanian laws and honestly pay the applicable fees and taxes;
- maintain transparent accounts and records of payments to their employees.

During this project, the business transparency label "Clear wave" was presented to the public and to businesses and became popularized and used. This label could become a symbolic reference of transparency for citizens and businessmen. Businesses with this transparency label should earn higher customer trust, an improved reputation in the community, and encourage other companies to act responsibly. This is the first label indicating a responsible and transparent business in Lithuania.

This responsible and transparent business-labelling initiative started in 2007. By 2011, the initiative had already united more than forty member companies. Companies use the "Clear Wave" label for their products, services and marketing material. Labelling examples are presented on webpage: *www.baltojibanga.lt/lt/baltieji_produktai.html*.

The President of the Republic of Lithuania H.E. Dalia Grybauskaitė is the patroness of the initiative. The project has attracted the attention of other authorities as well – the Ministry of Finance of the Republic of Lithuania, Tax Inspection of the Republic of Lithuania and others.

The project "Clear Wave" was initiated by: Association "Investors Forum", Civil Society Institute, United Nations Development Programme in Lithuania, "Transparency International" Lithuania, civil association "Dalios sąskaita", the Lithuanian Business Support Agency (initiative group). The right to use the label for businesses is provided by a board, formed especially for this aim, which operates on a voluntary basis.

For more information, please refer to: *www.baltojibanga.lt*.

Source: information of Government of Lithuania; *www.baltojibanga.lt*.

During the second round of monitoring, no examples of collective action against corruption were identified in IAP countries. This indicates that individual companies and business associations are not ready yet to take such actions. During business consultations, companies in many countries were complaining about corruption, and noted that business associations provided useful lobbying in individual cases. Some business associations have established integrity or anti-corruption committees (e.g. American Chamber of Commerce in Ukraine), or organised corruption-related studies and surveys to document business case against corruption (e.g. European Business Association in Ukraine). So far, these measures fall short of a collective action.

In order to promote collective action in IAP countries, it would be useful to learn about the experiences of other countries in the ACN region and beyond.

Conclusions and recommendations

Business integrity is a relatively unexplored area on the anti-corruption agenda in Eastern Europe and Central Asia. The governments of IAP countries have not yet taken systematic and focused measures to promote integrity in companies. Companies in IAP countries are well aware of corruption risks and the majority of countries see corruption as one of the main obstacles for doing business. Some companies, mostly large international enterprises, have introduced internal compliance programmes. Business associations are starting to develop ethics and anti-corruption activities. However, up until now, the business community has not yet become a strong player in the fight against corruption in the region, and further efforts are needed to develop effective private-public dialogue and collective actions of companies against corruption.

Recommendations to governments of IAP countries:

- Launch a dialogue with the private sector, raise awareness about the risks of corruption and about practical solutions for companies;
- Involve companies in meaningful consultations about how to stimulate business integrity, such as corporate liability for corruption, accounting and auditing, corporate governance, simplification of business regulation, targeted measures for sectors with high level of corruption and others;
- Introduce transparency and disclosure requirements, as well as anti-corruption programmes in state-owned and state-controlled enterprises;
- Promote corporate transparency, in particular about beneficiary owners, by limiting possibilities for hiding ownership and making obligatory disclosure of certain information about companies; public registers of companies should be accessible and transparent;
- Ensure that the existing channels to report corruption are effective, promote reporting by strengthening the integrity in law-enforcement and the judiciary and ensure effective investigation and prosecution of corruption crimes;
- Encourage companies to develop codes of conduct, internal controls and compliance programmes, as recommended in Good Practice Guidance on Internal Controls, Ethics and Compliance (Annex 2 to the OECD Council Recommendation of 26 November 2009);
- Support business associations in their efforts to promote business integrity and, especially in domestic companies and SMEs, as well as collective action of companies and associations against corruption.

Notes

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3. IAP Second Round Monitoring Report on Armenia, p. 49, *www.oecd.org*.
4. IAP Joint First and Second Round Monitoring Report on Uzbekistan, pp. 37-38, *www.oecd.org*.
5. Istanbul Anti-Corruption Action Plan, Summary Report, An assessment of progress in the period 2003-2007, p. 79, *www.oecd.org*.

6. For more information, see *www.hr.gov.ge*.
7. IAP Second Round Monitoring Report on Azerbaijan, p. 31, *www.oecd.org*.
8. See IAP Second Round Monitoring Report on Kazakhstan, pp. 54-55, *www.oecd.org*.
9. See IAP Second Round Monitoring Report on Georgia, p. 28, *www.oecd.org*.
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12. See IAP Second Round Monitoring Report on Georgia, p. 32, *www.oecd.org*.
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32. IAP Second Monitoring Round Report on Georgia, p. 36, *www.oecd.org*.
33. IAP Second Monitoring Round Report on Azerbaijan, p. 40-41, *www.oecd.org*. See also EBRD Legal Diagnostic Report on Compliance of the Public Procurement Legislation in Azerbaijan with International Best Practice as expressed by the 2011 UNCITRAL Model Law on Public Procurement, Draft report, July 2012.
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35. OECD Principles for Enhancing Integrity in Public Procurement, October 2008.
36. IAP Second Monitoring Round Report on Azerbaijan, p. 40, *www.oecd.org*.
37. IAP Second Monitoring Round Report on Kazakhstan, p. 87-88, *www.oecd.org*.
38. IAP Second Monitoring Round Report on Tajikistan, p. 50, *www.oecd.org*.
39. See, among other standards, OECD Principles for Enhancing Integrity in Public Procurement, October 2008.
40. Should be noted though that the 1994 UNCITRAL Model Procurement Law allowed such exception from the review, but it was abolished by the new 2011 wording of the Model Law.

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43. See other examples from OECD and ACN countries: *www.oecd.org*.
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51. Article 3 of the Convention, *conventions.coe.int*. See also IAP Second Monitoring Round Reports on Armenia (p. 64, *www.oecd.org*), Kazakhstan (p. 91-92, *www.oecd.org*), Kyrgyzstan (p. 62, *www.oecd.org*).
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61. IAP Second Monitoring Round Report on Kyrgyzstan, p. 64, *www.oecd.org*.
62. IAP Second Monitoring Round Report on Kazakhstan, p. 94, *www.oecd.org*.
63. Source: *wcd.coe.int*. See also, among others: Venice Commission's Guidelines for Financing of Political Parties (CDL-INF (2001) 8, *www.venice.coe.int*); Guidelines on Political Party Regulation by the Venice Commission and OSCE/ODIHR (CDL-AD(2010)024, *www.venice.coe.int*); Venice Commission country specific opinions (*www.venice.coe.int*); Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe on Financing of political parties (*assembly.coe.int*); GRECO Third Evaluation Round Reports (*www.coe.int*) and Thematic review of GRECO's Third Evaluation Round (*www.coe.int*).
64. First round of the IAP monitoring provided only a cursory glance at the situation in this area and only for two countries which were evaluated last among the group (Kazakhstan and Kyrgyzstan). See some observations in the 2008 Summary Report, p. 78-79, *www.oecd.org*.
65. IAP Second Monitoring Round Report on Kazakhstan, p. 96, *http://www.oecd.org*.
66. Guidelines on political party regulation, Venice Commission and OSCE/ODIHR, October 2010, CDL-AD(2010)024, §176, *www.venice.coe.int*.
67. Law on Financing of Political Parties, Article 8.
68. For more details see: Regulation of Political Parties in Ukraine, Denys Kovryzhenko, Agency for Legislative Initiatives, September 2010, pp. 91-92, *parlament.org.ua*. See also GRECO Third Evaluation Round Report (Theme II) on Ukraine, §§26-27, *www.coe.int*.

69. Guidelines for Financing of Political Parties, Venice Commission, December 2000, CDL-INF (2001) 8, §4, *www.venice.coe.int*.

70. IAP Second Monitoring Round Report on Kazakhstan, p. 97, *www.oecd.org*. Restriction of state financing only to parliamentary parties have also been criticized by GRECO during its Third Evaluation Round (Theme II), see, among others, reports on Finland (§64, *www.coe.int*), Spain (§69, *www.coe.int*).

71. Recommendation of the Committee of Ministers Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, Article 5, *wcd.coe.int*.

72. Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe on Financing of political parties (*assembly.coe.int*)

73. GRECO Third Evaluation Round (Theme II) Report on Armenia, §66, *www.coe.int*.

74. Recommendation of the Committee of Ministers Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, Articles 11-12, *wcd.coe.int*.

75. IAP Second Monitoring Round Report on Kazakhstan, p. 97, *www.oecd.org*.

76. IAP Second Monitoring Round Report on Tajikistan, p. 55, *www.oecd.org*.

77. IAP Second Monitoring Round Report on Ukraine, p. 64, *www.oecd.org*.

78. GRECO Third Evaluation Round (Theme II) Report on Azerbaijan, §89, *www.coe.int*.

79. IAP Second Monitoring Round Report on Georgia, p. 41, *www.oecd.org*.

80. IAP Joint First and Second Monitoring Rounds Report on Uzbekistan, p. 57, *www.oecd.org*.

81. Guidelines on Political Party Regulation by the Venice Commission and OSCE/ODIHR, CDL-AD(2010)024, §§198-200, *www.venice.coe.int*.

82. IAP Second Monitoring Round Report on Armenia, pp. 67-68, *www.oecd.org*; GRECO Third Evaluation Round (Theme II) Report on Armenia, §42, *www.coe.int*.

83. IAP Second Monitoring Round Report on Georgia, p. 41, *www.oecd.org*.

84. IAP Second Monitoring Round Report on Kazakhstan, p. 98, *www.oecd.org*.

85. Recommendation of the Committee of Ministers Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, Article 14, *wcd.coe.int*.

86. Guidelines on Political Party Regulation by the Venice Commission and OSCE/ODIHR, CDL-AD(2010)024, §212, *www.venice.coe.int*.

87. Code of Good Practice in Electoral Matters, Venice Commission, Council of Europe, October 2002, paragraph 3.1.b. in Section II, *www.venice.coe.int*. The Code further states that a Central Election Commission *"should include: i. at least one member of the judiciary; ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters"* (paragraph 3.1.b., Section II).

88. Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe on Financing of political parties, *assembly.coe.int*.

89. IAP Second Monitoring Round Report on Ukraine, p. 65, *www.oecd.org*. See also GRECO Third Evaluation Round Report on Ukraine (Theme II), §90, *www.coe.int*: *"The GET is of the opinion that mere warnings issued by ...the Ministry of Justice to the party or confiscation of illicit funds fail to have the desired dissuasive effect. It considers that additional measures need to be taken to extend the range of sanctions in force for breaches of the rules on party funding, so as to guarantee that the penalty is proportionate to the seriousness of the offence (i.e. through a flexible system of criminal/administrative/civil sanctions)."*

90. *Money, Politics, Power: Corruption Risks in Europe*, Transparency International, June 2012, *www.transparency.org*.

91. See at *www.gopacnetwork.org*.

92. Article 8 of the UN Convention against Corruption calls on states to apply codes or standards of conduct for the correct, honourable and proper performance of public functions. According to TI, only few European countries have established codes of conducts for parliamentarians: France, Germany, Greece, Ireland, Latvia, Lithuania, Poland, UK (*Source*: TI, June 2012, *www.transparency.org*).

93. Report on the legal framework for the regulation of lobbying in the Council of Europe member states, Venice Commission, Study No. 590/2010, CDL-DEM(2011)002, May 2011, p. 3, *www.venice.coe.int*.

94. Green Paper of the European Transparency Initiative, cited from "Lobbyists, Government and Public Trust. Volume 1: Increasing transparency through legislation", OECD, 2009, p. 34, *www.oecd.org*.

95. Recommendation of the OECD Council on Principles for Transparency and Integrity in Lobbying, February 2010, *acts.oecd.org*.

96. Idem.

97. Universal Declaration of Human Rights (Art. 10), International Pact on Civil and Political Rights (Art. 14), European Convention of Human Rights (Art. 6), etc.

98. See, among many others, judgments in cases of *Campbell and Fell v. UK* (applications No. 7819/77, 7878/77), *Incal v. Turkey* (No. 22678/93), *Kyprianou v. Cyprus* (No. 73797/01), *Sovtransavto Holding v. Ukraine* (No. 48553/99), *Brumarescu v. Romania* (No. 28342/95), *Ryabykh v. Russia* (No. 52854/99), *Henryk Urban and Ryszard Urban v. Poland* (No. 23614/08).

99. See, in particular, Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, 17 November 2010, *wcd.coe.int*.

100. See, in particular, reports on the Independence of the Judicial System (*www.venice.coe.int*), on Judicial Appointments (*www.venice.coe.int*) and numerous country-specific opinions, including on Armenia, Azerbaijan, Kyrgyzstan, Georgia and Ukraine (*www.venice.coe.int*).

101. See opinions of the CCJE (*www.coe.int*), especially Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, Opinion No. 3 (2002) on ethics and liability of judges, Opinion No. 10 (2007) on "Council for the Judiciary in the service of society". See also Magna Carta of Judges (Fundamental Principles), 17 November 2010, *wcd.coe.int*.

102. See, e.g., the Parliamentary Assembly of the Council of Europe Resolution 1703 (2010) on judicial corruption, 27 January 2010, *assembly.coe.int*; European Charter on the Statute of Judges, July 1998, *wcd.coe.int*.

103. Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly resolutions No. 40/32 of 29 November 1985 and No. 40/146 of 13 December 1985, *www2.ohchr.org*; Bangalore Principles of Judicial Conduct, 2002, *www.unodc.org*. See also report on the judicial corruption by the UN Special Rapporteur on the independence of judges and lawyers, August 2012, *daccess-dds-ny.un.org*.

104. See, among others: documents of Copenhagen, Moscow, Istanbul meetings of the OSCE Conference on the Human Dimension; Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, OSCE/ODIHR (*www.osce.org*).

105. Fifth law – On Approval of the Structure of Local Courts and Number of Local Courts Judges of the Kyrgyz Republic – was adopted in October 2011. IAP monitoring report concluded that having too many laws on the judiciary with overlapping provisions creates a problem and recommended to adopt a single law (see IAP Second Monitoring Round report on Kyrgyzstan, p. 71, *www.oecd.org*).

106. *"Corruption in the judiciary threatens the rule of law and protection for human rights"*, Press-release, United Nations Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, October 2012, *www.ohchr.org*.

107. Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities, §§4 and 7 of the Appendix, *wcd.coe.int*.

108. Magna Carta of Judges, §3, *wcd.coe.int*.

109. Recommendation CM/Rec(2010)12, §22 of the Appendix: *"In their decision-making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary."*

110. IAP Second Monitoring Round Report on Azerbaijan, p. 45, *www.oecd.org*.

111. Venice Commission, Report on Judicial Appointments, §41, *www.venice.coe.int*.

112. Venice Commission, Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in "the Former Yugoslav Republic of Macedonia", §23, *www.venice.coe.int*.

113. IAP Second Monitoring Round Report on Ukraine, p. 66, *www.oecd.org*.

114. IAP Second Monitoring Round Report on Georgia, p. 43, *www.oecd.org*. According to Georgian authorities, Georgia's Constitution (Article 86.2) was amended to introduce the life-time appointment of judges. This amendment will enter into force in autumn 2013.

115. IAP Second Monitoring Round Report on Kazakhstan, p. 104, *www.oecd.org*.

116. IAP Second Monitoring Round Report on Kazakhstan, p. 107, *www.oecd.org*.

117. IAP Second Monitoring Round Report on Kyrgyzstan, p. 71, *www.oecd.org*.

118. See standards on the Councils for the Judiciary, in particular, in the CCJE Opinion No. 10 (*wcd.coe.int*), Council of Europe's Committee of Ministers Recommendation CM/Rec(2010)12 (*wcd.coe.int*) and the OSCE/ODIHR Kyiv Recommendations on Judicial Independence (*www.osce.org*).

119. Magna Carta of Judges, §13, *wcd.coe.int*.

120. IAP Second Monitoring Round Report on Georgia, p. 43, *www.oecd.org*.

121. IAP Second Monitoring Round Report on Kazakhstan, pp. 103 and 111, *www.oecd.org*.

122. IAP Second Monitoring Round Report on Kyrgyzstan, pp. 68-69, *www.oecd.org*.

123. IAP Second Monitoring Round Report on Ukraine, p. 66, *www.oecd.org*.

124. IAP Joint First and Second Monitoring Rounds Report on Uzbekistan, p. 59, *www.oecd.org*.

125. IAP Second Monitoring Round Report on Kazakhstan, p. 104, *www.oecd.org*.

126. IAP Second Monitoring Round Report on Kyrgyzstan, pp. 69-70, *www.oecd.org*. See also Venice Commission report on Judicial Appointments (§14, *www.venice.coe.int*): "*As long as the President is bound by a proposal made by an independent judicial council …, the appointment by the President does not appear to be problematic*."

127. Venice Commission, Report on Judicial Appointments, §12, *www.venice.coe.int*.

128. Venice Commission, Report on Judicial Appointments, §16, *www.venice.coe.int*.

129. IAP Second Monitoring Round Report on Kazakhstan, p. 104, *www.oecd.org*.

130. OSCE Kyiv Recommendations on Judicial Independence, "The Role of Court Chairpersons", §15, *www.osce.org*. OSCE Recommendations also provide (§11): "*They [court chairpersons] may have representative and administrative functions, including the control over non-judicial staff. Administrative functions require training in management capacities. Court chairpersons must not misuse their competence to distribute court facilities to exercise influence on the judges*."

131. OSCE Kyiv Recommendations on Judicial Independence, "The Role of Court Chairpersons", §12, *www.osce.org*.

132. Council of Europe's Committee of Ministers Recommendation CM/Rec(2010)12, §24, *wcd.coe.int*.

133. See IAP Second Monitoring Round Reports on Kazakhstan (p. 110, *www.oecd.org*) and Kyrgyzstan (p. 70, *www.oecd.org)*.

134. IAP Second Monitoring Round Report on Kyrgyzstan, p. 68, *www.oecd.org*.

135. IAP Second Monitoring Round Report on Ukraine, p. 66, *www.oecd.org*.

136. See, e.g., IAP Second Monitoring Round Reports on Kyrgyzstan (p. 71, *www.oecd.org*) and Tajikistan (p. 59, *www.oecd.org*).

137. According to Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12 of 17 November 2010 (§55): *"Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges*."

138. IAP Second Monitoring Round Report on Kazakhstan, p. 109, *www.oecd.org*.

139. Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12, §44, *wcd.coe.int*.

140. IAP Second Monitoring Round Report on Kyrgyzstan, pp. 68 and 70, *www.oecd.org*.

141. IAP Second Monitoring Round Report on Georgia, p. 43, *www.oecd.org*.

142. IAP Second Monitoring Round Report on Azerbaijan, p. 45, *www.oecd.org*.

143. Professional knowledge of a judge, including the judge's professional activities and professional and post-university education; professional reputation; work skills; quality of judicial acts made by the judge; judge's respect for the reputation of the judiciary and judges and compliance with the Judicial Code of Conduct; oral and written communication skills, based on the minutes of court sessions and the judicial acts made by the judge; judge's participation in educational and professional training programs; participation in the self-governance of the judiciary; participation in legislation development projects; attitude towards colleagues during performance of judicial duties; organisational skills and qualities displayed by the judge in the performance of managerial duties.

144. IAP Second Monitoring Round Report on Kazakhstan, pp. 108 and 111, *www.oecd.org*.

145. See, e.g., IAP Second Monitoring Round Report on Kazakhstan, p. 108, *www.oecd.org*.

146. Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12, §§72-74, *wcd.coe.int*.

147. See, e.g., IAP Second Monitoring Round Report on Tajikistan, p. 59, *www.oecd.org*.

148. IAP Second Monitoring Round Report on Kyrgyzstan, p. 70, *www.oecd.org*.

149. IAP Second Monitoring Round Report on Kazakhstan, pp. 109-110, *www.oecd.org*.

150. Recommendation of the Committee of Ministers of the Council of Europe No. CM/Rec(2010)12, §57, *wcd.coe.int*.

151. IAP Second Monitoring Round Report on Georgia, p. 45, *www.oecd.org*.

152. According to information by Georgia's Government, the process of selection of judges is transparent as the High Council of Justice (HCOJ) publishes on its website information on all selective steps, such as the qualification exam of judges, interview of listeners of the High School of Justice and judicial candidates. Civil society representative are allowed to attend the HCOJ meetings where interviews of listeners of the High School of Justice are conducted. By 2013 qualification exam of judges will be conducted electronically. Criteria for recruitment of judicial candidates are determined by the decision of the HCOJ of 9 October 2009.

153. IAP Second Monitoring Round Report on Kazakhstan, p. 108, *www.oecd.org*.

154. IAP Second Monitoring Round Report on Kazakhstan, p. 110, *www.oecd.org*.

155. IAP Second Monitoring Round Report on Ukraine, p. 68, *www.oecd.org*.

156. Regarding such ground as breaching the "impeccability", e.g. violating such duties as "remaining true to the judge's oath", "avoiding anything which could tarnish the judge's authority and dignity", etc. See IAP Second Monitoring Round Report on Kyrgyzstan, p. 70, *www.oecd.org*.

157. IAP monitoring concluded that the requirements to the judge are stated vaguely (for example, the wording "doubts in honesty, fairness, objectiveness and impartiality" of a judge may cover many situations, likewise violation of the requirement to adhere to the judge's oath). Such terms as "professional unfitness", "low rates in delivering justice", "violation of legality" were found to be ambiguous as well. See IAP Second Monitoring Round report on Kazakhstan, p. 105, *www.oecd.org*.

158. IAP Second Monitoring Round Report on Kazakhstan, p. 105, *www.oecd.org*.

159. IAP Second Monitoring Round Report on Ukraine, p. 68, *www.oecd.org*.

160. IAP Second Monitoring Round Report on Kyrgyzstan, p. 70, *www.oecd.org*.

161. Source: *www.minjust.uz*.

162. This report can be found in Russian at *www.minjust.uz*.

163. IAP Second Monitoring Round Report on Kazakhstan, p. 113, *www.oecd.org*.

164. For more information about corportate compliance programmes, see Annex 2 to the Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions of 26 November 2009 available at *www.oecd.org*.

Chapter 5

The Anti-corruption Network for Eastern Europe and Central Asia

Chapter 5 describes the role that the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) played in supporting anti-corruption reforms in the region. It describes the governance structure and funding mechanism of the ACN. It describes the main ACN activities over the past five years, including the second round of monitoring under the Istanbul Action Plan, thematic studies and training seminars for practitioners. The Chapter stresses that peer review and peer learning methodologies proved to be an effective tool for mobilising anti-corruption reforms in the region. It further identifies key features that ensured the success of the ACN work, including strong ownership by the governments, participation of non-governmental partners, effective co-operation with other international organisations and stable support of the OECD Secretariat. The Chapter concludes with the discusses how to increase the impact of future ACN anti-corruption activities to support practical implementation of anti-corruption reforms in the region.

How does ACN work

The Anti-Corruption Network for Eastern Europe and Central Asia was established in 1998 as a regional forum for the promotion of anti-corruption reforms, exchange of information, development of best practices and donor co-ordination. The ACN is a regional anti-corruption programme established under the OECD Working Group on Bribery.[1]

The ACN Steering Group is the main governing body of the ACN. It is composed of National Coordinators from all ACN countries and representatives of partner organisations.[2] The Steering Group, at its regular meetings, supervises the development and implementation of the Work Programme and guides the activities of the Secretariat. During the past four years, the ACN Steering Group played an increasingly active role in the regional exchange of experience, implementing the Istanbul Action Plan monitoring programme, designing thematic peer learning activities and ensuring effective involvement of national experts from the ACN countries in these activities.

The Secretariat organises the implementation of the Work Programme. It is located at the OECD Anti-Corruption Division and includes ACN Manager, three ACN Project Managers and one assistant. Apart from reporting to the Steering Group, the Secretariat also reports to the OECD Working Group on Bribery.

Voluntary contributions by OECD members-states constitute the main funding for the implementation of the ACN Work Programme. In addition, ACN countries provide co-funding by hosting various events and in-kind support for individual Work Programmes expenditures. Over the past few years, co-funding by ACN countries has increased. Co-funding was also provided by many international organisations. The OECD provides core funding to the ACN Secretariat (see section 6.4. below for more details on funding).

What the ACN did during the past four years

The ACN Work Programme for 2009–2012 supported countries' efforts through a variety of activities, including high-level regional dialogue to reinforce political will, continuous peer pressure through the Istanbul Anti-Corruption Action Plan, and peer learning programme to fill the capacity gaps identified by the practitioners of the countries.

Astana Conference to strengthen political will for the fight against corruption

In September 2009, the Agency of the Republic of Kazakhstan on Fighting Economic and Corruption Crime (Financial Police) hosted the Astana Conference "Creating Conditions for Sustainable Economic and Social Development in Eastern Europe and Central Asia: Fighting Corruption and Promoting Good Governance". The Conference brought together about 130 decision-makers and experts representing governments, civil society, business and international organisations from approximately 47 countries across Europe, Asia, Africa and America and provided a forum to exchange experiences on the prosecution of international bribery, preventing corruption in public procurement, preventing corruption

in education and the role of good corporate governance in economic development. A Special High-Level Session adopted the Astana Statement on Good Governance and Fighting Corruption which expressed political will for fighting corruption in the ACN region.

The statement provided important political backing for the effective implementation of the second round of monitoring under the Istanbul Anti-Corruption Action Plan and established a formal basis and thematic direction for the launch of the peer-learning programme for all ACN countries.[3]

Istanbul Action Plan to maintain peer pressure and measure progress

The Istanbul Action Plan (IAP) is a programme that involves eight ACN countries – Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan. These countries agreed to voluntarily undergo regular anti-corruption monitoring. The UNCAC and other international conventions and best practice are used as standards against which the progress of these countries is assessed.

Since the launch of the IAP in 2003, all countries were reviewed and received initial recommendations (2003-2005) and underwent the first round of monitoring and received compliance ratings for the implementation of the initial recommendations (2005-2007).[4] During the second round of monitoring, presented in this report, all countries received compliance ratings related to the initial recommendations, as well as new updated recommendations (2009-2012).[5]

The main feature of the IAP is the use of the peer review methodology, where governments review each other, collectively agree on recommendations and continuously monitor their implementation. This methodology is one of the main working methods of the OECD in different policy areas; the Working Group on Bribery uses this method in its monitoring. The Council of Europe's GRECO and the UNCAC also use peer reviews. But other than that, intergovernmental peer reviews are rarely used in the region, where international organisations and donors more often rely upon external consultants and experts who prepare their reports independently and then present them to their employers and/or the governments. In this way, the IAP peer review is a unique process where governments are engaged in mutual reviews and pledge commitments to implement recommendations, which are enforced through continuous peer pressure.

Another important IAP feature is its comprehensive approach. Country reviews and monitoring examine all major anti-corruption activities, including the anti-corruption strategies and action plans, criminalisation and fighting of corruption through law-enforcement measures, and prevention of corruption in public administration and the private sector. Other anti-corruption monitoring programmes active in the region examine several issues at one time, e.g. GRECO has assessed criminalisation and political party financing in its 3rd round and corruption in respect to MPs, judges and prosecutors in its 4th round; the first cycle under the UNCAC review mechanism examines UNCAC Chapters III and IV on criminalization and law-enforcement, and international co-operation. In contrast, the IAP process gives governments a comprehensive and regular assessment of their anti-corruption efforts, which they can then use for developing and monitoring their anti-corruption policies.

While the IAP is an intergovernmental process, it is open to participation of non-governmental partners. Civil society and business groups, representatives of international organisations, diplomatic missions and bilateral donor-funded programmes are invited to

participate in the monitoring process They are consulted during on-site visits, invited to attend plenary meetings and they submit their views on progress updates. This feature was a very valuable tool that helped to ensure the objectivity and legitimacy of IAP reports by including information from both governmental and NGO sources. It also helped promote implementation of recommendations.

All IAP reports are published in English and Russian on the ACN website[6] after their adoption by the plenary meetings without authorisation of the countries concerned. This is in contrast with UNCAC[7] and GRECO reports, which are kept confidential until the reviewed country gives its explicit consent to publication. This is a very important tool for promoting transparency and accountability in the region, where traditions of secrecy are still strong. It also ensures higher visibility and better policy impact of the findings, and can be used not only by the governments, but also by civil society, business and international organisations as a road-map for reform.

Box 5.1. **Few figures about the second round of monitoring**

During the second round of monitoring, between 2008 and 2012, on-site visits to Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan were organized. During on-site visits, the monitoring teams held meetings with approximately 156 state institutions. In addition, during all on-site visits, special sessions were organised with the representatives of civil society and business groups, international organisations and donors.

During the second round of monitoring, 32 monitoring experts from 16 ACN countries and several international organisations participated in examining IAP countries, including Albania, Armenia, Azerbaijan, Estonia, Georgia, Kazakhstan, Latvia, Lithuania, Macedonia, Romania, Serbia, Slovenia, Spain, Switzerland, US, Ukraine, Tajikistan, as well as OECD, SIGMA, OSCE and UNODC.

Four plenary meetings were organized (March and December 2010, September 2011 and February 2012) to discuss and adopt country reports. The plenary meetings brought together 246 delegates from ACN countries, international organisations and NGO partners.

One review report (for Uzbekistan) and eight monitoring country reports (for all IAP countries) were adopted and published. 8 return missions were organized to present the reports back in the countries. Twenty follow-up progress updates were discussed and published.

In total, 200 recommendations adopted for eight countries were examined during the second round of monitoring. seventy recommendations were fully, largely or partially implemented.

Source: OECD/ACN Secretariat.

Peer learning to build capacity of practitioners and support implementation

The 2009-2012 ACN Work Programme, in addition to the peer review component under the IAP, also included peer learning activities. The objective of peer learning activities was to provide analytical and technical assistance to all ACN countries by addressing shared problems and common challenges. General thematic directions for the peer learning activities were suggested already in the Work Programme, and were further identified in consultations with the ACN Steering Group and taking into account the findings of the

IAP monitoring process, which identified some of the areas where countries faced similar challenges. Over the past four years, the ACN carried out the following peer learning work:

Asset declarations for public officials: the majority of ACN countries have introduced asset declaration systems. However, their contribution to the fight against corruption is not significant enough. Several seminars were organized for asset declaration experts to exchange experiences and identify best practices. A thematic study "Asset Declarations for Public Officials: A Tool to Fight Corruption" that analyses asset declaration systems in different countries was published in 2011. A result of the project were policy recommendations how to improve the effectiveness of asset declarations.[8] The box below provides a description of this project in more detail.

Box 5.2. **Asset Declarations for Public Officials**

This project was implemented jointly by the ACN and the OECD-EU SIGMA programme. The purpose was to analyse how asset declaration systems work in the ACN and in some OECD countries, to identify strengths and weaknesses of various systems and to develop policy recommendations to make these systems more effective in the fight against corruption. All ACN countries were invited to fill out detailed questionnaires about their asset declaration systems and external consultants were hired by the ACN Secretariat to draft a report. The draft report was discussed at a seminar co-organized by the ACN and OSCE in Belgrade, Serbia in October 2009.

The seminar brought together public officials who were directly involved in their respective country's asset declaration systems. Based on the seminar discussion, the consultants under the guidance of the Secretariat further developed the report and presented it at the second expert seminar that was organized by the ACN in March 2010, back-to-back with the ACN Steering Group meeting. On that basis the policy recommendations were finalized and the study "Asset Declarations for Public Officials: A Tool to Fight Corruption" was published in 2011.

In addition to ACN and SIGMA's efforts to disseminate the study through their networks, the OSCE assisted in disseminating the study through their country offices. Transparency International Russia together with the ACN Secretariat organized a presentation of the study in Moscow in December 2011. The OSCE Centre in Bishkek, Kyrgyzstan, hosted a follow-up seminar for Central Asian countries in June 2012 to discuss how their asset declaration systems can be reformed in the light of the recommendations. Policy recommendations presented in the study are further used as benchmarks during the IAP monitoring process. This project attracted attention of experts from outside the ACN countries: experts from Afghanistan, Brazil, Iran and Mongolia attended some of the seminars. In addition to the OSCE, SIGMA and ACN experts, the World Bank and the UNODC also took part in the project.

This study provides a practical tool to guide reforms of asset declaration systems. It was used by many reformers in the ACN countries to benchmark progress already achieved and to identify necessary reforms. They used the study to convince policy-makers and other stakeholders about the importance of these reforms. They also used the study as a source of inspiration and practical references for specific legal and institutional measures.

Source: OECD/ACN Secretariat.

Investigation and prosecution of corruption offences: ACN countries have introduced new corruption offences in their criminal legislation as required by international conventions. They have also reformed legislation that regulates procedures for investigation, prosecution of corruption and created new specialized anti-corruption law-enforcement bodies. At the

same time, corruption crimes have become more complex, and the level of corruption remains high in the region. In order to help investigators and prosecutors address these challenges and learn about modern and effective law-enforcement methods from each other, the ACN organized several seminars (in October 2010 in Bucharest, Romania; in June 2011 in Kyiv, Ukraine; and September 2012 in Batumi, Georgia). These seminars provide a very effective forum for professional learning and networking among law-enforcement practitioners.[9]

In addition to the regional programme for investigators and prosecutors, the Secretariat also implemented one country specific programme for Ukraine, and one sub-regional project for Georgia, Ukraine, Azerbaijan and Moldova (GUAM). The purpose of both projects was to strengthen capacity of law-enforcement bodies to effectively detect, investigate and prosecute corruption in line with international standards. In the framework of these projects the "Training Manual on Investigation and Prosecution of Corruption Offences in Ukraine"[10] was developed. The manual covers all stages of investigation and prosecution of corruption cases and presents modern methods which can be applied by law-enforcement officers. The manual was further supplemented with the working papers on the co-operation instruments for GUAM countries[11] and on anti-corruption specialisation of prosecutors in selected European countries.[12] The projects also involved an expert seminar "Developing and Conducting Training on Investigation and Prosecution of Corruption Offences" in January 2012 in Kyiv, Ukraine. Both the Manual and the working papers can be used to inform the debate about legal and institutional reforms necessary to bring criminal legislation against corruption in full compliance with international standards in the ACN countries and to teach university students and operating investigators and prosecutors to improve their practical skills to deal with corruption crimes.

Anti-corruption policies and ethics training: the majority of ACN countries have adopted anti-corruption strategies and action plans and implemented anti-corruption awareness campaigns, but the impact of these policy documents on the level of corruption does not stand out. The ACN, together with the OSCE, organized a seminar on anti-corruption policy in March 2011 in Vilnius, Lithuania. It brought together experts who are directly involved in development and co-ordination of anti-corruption strategies and action plans in their countries. Experts discussed ways to improve the effectiveness of anti-corruption policies and of anti-corruption and ethics training for public officials.[13]

As a follow-up to this discussion, the ACN together with SIGMA and the OECD Public Integrity Network launched a new study on Ethics Training for Public Officials. The study analyses how ethics training is provided to public officials in several ACN and OECD countries, provides recommendations how to make this training more effective and includes a check list for training programme that can be used by the ACN and other countries in their efforts to deliver modern and effective ethics training to their public officials.[14]

Integrity in the judiciary: many available studies, including the IAP monitoring reports identified corruption in the judiciary as an important problem in the ACN region. This issue was selected by GRECO for its fourth round of evaluation. To help ACN experts to identity challenges and solutions in this field, the ACN together with GRECO and UNODC organized a seminar in June 2012 in Istanbul, Turkey. This seminar brought together representatives of the judiciary councils and other judicial self-governing bodies who identified ways to strengthen the independence of the judiciary as well as methods that can be used to insure integrity among judges.[15]

Business consultations: already during the 2008 ACN General Meeting in Tbilisi, Georgia, and at the 2009 ACN Conference in Astana, Kazakhstan, the role of business in

fighting corruption was raised. Furthermore, during the second round of monitoring, special sessions were organized for the representatives of business associations and of companies to learn about the views of business on government efforts in the fight against corruption. To better understand the challenges, opportunities and best practices in this field, the Secretariat organized several consultations with business representatives, as well as with governmental officials responsible for various types of business regulations. Consultations were organized in Vilnius, Lithuania in March 2011 and in Kyiv, Ukraine in June 2011. These consultations, together with the business panels during the monitoring missions, showed that there is a lot of demand in the business sector for stronger anti-corruption measures by the government and growing willingness of companies to independently introduce various anti-corruption compliance programmes. However, there is relatively limited experience of business collective action against corruption in the region.

Corruption in education: OECD Directorate for Education, Programme for Co-operation with Non-member Economies, developed and presented a methodology for assessing the integrity of education systems, which could be useful for ministries of education (particularly in the design or assessment of education phases or sector anti-corruption strategies) to the ACN Steering Group in September 2011.. This methodology was tested in Serbia, the first ACN country to voluntarily undergo such an assessment. The on-site visit was conducted in September 2011 and the report was published in September 2012.[16] The report was highly appreciated by the Serbian anti-corruption and public education experts as a unique study that examined corruption risks in this important sector of public services, and provided an innovative view on the reforms needed to improve the integrity and prevent corruption.

Box 5.3. **A few figures about the peer learning activities**

During 2009-2012, the ACN held twelve peer learning seminars, including:

- three seminars for law-enforcement officials from ACN countries (2010, Bucharest, 2011, Kyiv, 2012, Batumi), and four seminars for Ukraine/GUAM (two seminars in 2009, Kyiv, 2009, Lviv, and 2012, Kyiv);
- three seminars on asset declarations (2009, Belgrade, 2010, Paris, and 2012 Bishkek);
- one seminar on anti-corruption policy (2011, Vilnius) ; and
- one seminar on judiciary (2012, Istanbul)

Total number of participants which benefited from the above seminars was around 530.

In addition, peer learning activities also included two business consultations (2011, Vilnius and Kiev), one consultation on ethics training for public officials (2011, Paris) and a project on fighting corruption in education in Serbia (2012).

The following publications were produced under the ACN peer learning programme:

1. Corruption: a glossary of international standards in criminal law, 2008.
2. Specialised anti-corruption institutions: review of models, 2008.
3. Asset declarations for public officials: a tool to prevent corruption, 2011.
4. Training manual on investigation and prosecution of corruption offences in Ukraine, 2012.
5. Anti-Corruption specialisation of prosecutors in selected European countries, 2012.
6. Co-operation Instruments for GUAM countries, 2012.
7. Study on ethics training for public officials, 2013 (forthcoming).
8. Proceedings of the above mentioned seminars.

Source: OECD/ACN Secretariat.

What impact did ACN make

The ACN's work over the past four years has illustrated the power of collective action. It has also shown that transition countries are best positioned to identify their own needs. It has proven that under consistent peer pressure and in combination with practical mutual learning, they can find solutions to common challenges and improve their anti-corruption performance. Stable support of a professional and neutral Secretariat is important in ensuring the continuity of regional collective action.

Achievements and lessons learned

The compliance ratings from the second round of the Istanbul Action Plan monitoring indicate that countries are making important efforts to implement recommendations. 30% of all recommendations were fully, largely or partially implemented by the governments. In many countries, IAP recommendations were included in national anti-corruption strategies and action plans (e.g. Armenia, Azerbaijan, Georgia, Kazakhstan and Tajikistan), were published on official government websites (e.g. Azerbaijan, Kyrgyzstan and Ukraine), and working groups were established to co-ordinate the implementation of IAP recommendations (e.g. Kyrgyzstan).

The peer learning programme demonstrated that there is a very strong demand for specialized practical training in the region. A distinct feature of ACN peer learning was the direct involvement of practitioners and narrow focus on very specific issues. Professional networking was an important value added of the peer learning seminars. This new approach to training has shifted discussions from theoretical/conceptual to a more practical exchange of experience, which has contributed to practice-oriented capacity building.

Strong ACN ownership by participating countries allows for increased impact of activities. Not a single country has left the IAP monitoring process and one new country (Uzbekistan) has joined, which shows the continued interest and commitment of countries towards this process. The demand for the peer learning programme is very high. ACN countries contribute to the implementation of the ACN programme not only by their active participation in its continuing development and implementation, but also through co-financing of its activities, which is an key indicator of ownership.

The active role of the National Coordinators was crucial to the success of the ACN. National Co-ordinators from the IAP countries played a crucial role: they prepared answers to questionnaires, organized on-site visits, sent high level national delegations to the plenary meetings, organised return missions, and provided regular progress updates. National Coordinators from other ACN countries were very keen to nominate an official to participate in the IAP monitoring on their behalf; they were highly motivated to share the experience of their countries with other IAP member countries. All National Coordinators worked closely with the Secretariat on the organisation of peer learning activities and development of the ACN Work Programme.

Participation of civil society and business was enthusiastic, but lacked follow-up. Special sessions with civil society and business groups were organised during the on-site visits and their representatives also participated in the plenary meetings (except for Uzbekistan). Their participation was very important for strengthening recommendations. While NGOs were willing to contribute to the follow-up implementation monitoring of recommendations, and in several cases TI country chapters organised such independent

monitoring (Armenia, Azerbaijan and Georgia), more often than not, it remains difficult to ensure regular monitoring of progress by the civil society.

The ACN programme provided a useful framework to strengthen co-ordination and co-operation with other international organisations and donors. The IAP monitoring programme was well co-ordinated with GRECO and the UNCAC implementation review programme. Further efforts are needed to ensure that IAP countries formally submit ACN reports to the UNCAC review process. Peer learning programmes were often co-organised and co-financed with other international organisations (OSCE, Council of Europe, UNODC, World Bank and others). ACN donors continue playing an important role in shaping up the ACN Work Programme and ensuring its stable funding; they also help the Secretariat to involve experts from their countries in various ACN activities.

Way forward

Over the past few years, ACN countries have implemented important anti-corruption reforms: they adopted anti-corruption strategies, reformed anti-corruption legislation, established a variety of anti-corruption institutions and joined international anti-corruption efforts. All ACN countries are now Parties to the UN Convention against Corruption (UNCAC), many are parties to the Council of Europe anti-corruption conventions, and several have become members of the OECD and Parties to the OECD Anti-Bribery Convention.[17] The IAP compliance ratings show that countries are making progress in implementing the recommendations.

This report demonstrates that while legal and institutional reforms have advanced in the region, practical implementation and enforcement of anti-corruption policies and legislation remain the key challenges. The regional dialogue provided by the ACN, together with the peer pressure and mutual learning, provides an effective mechanism for supporting practical implementation of reforms. The main focus for future ACN work should be to promote the implementation of UNCAC standards in the region. In this way, the ACN will also support the implementation of the OECD Anti-Bribery Convention by addressing the demand side of foreign bribery by strengthening prevention and combating of domestic bribery, building law-enforcement capacity and involving the private sector in the fight against corruption.

Building the political will to fight corruption is crucial to support practical implementation of reforms. Many reform-oriented mid-level officials who were directly involved in the ACN, take measures within their power to implement recommendations and use new knowledge in their work. Genuine support at the highest levels of governments is needed to allow these reform-oriented officials to implement concrete and efficient measures against corruption.

The IAP has shown that a regional peer review programme is especially useful in politically sensitive areas of corruption. Instead of singling out failures in an individual country, the process identifies problems that are common to many countries and proposes common solutions. Accepting difficult recommendations becomes easier if other countries show that similar solutions have worked in similar conditions. It is important to build on the achievements of the second round of monitoring and to continue the IAP process. In doing so it would be important to focus monitoring not only on the legal and institutional reforms, but to examine the practical implementation of various measures and their impact on corruption.

Building on the past peer learning activities, specialised programmes should be developed for selected groups of professionals. In particular, it would be useful to continue the meetings of the ACN law-enforcement practitioners to promote professional learning and networking and to support stronger law-enforcement actions against corruption. It would also be useful to develop and promote thematic studies on practical measures to prevent corruption in public administration. Finally, it would be important to develop a relatively new theme for the ACN on the role of business in preventing and fighting corruption and to promote the exchange of best practices in this area between both the private sector and the public authorities responsible for business regulations.

The main directions for the future anti-corruption work in the region was established at the High Level "Fighting Corruption in Eastern Europe and Central Asia: Strategic Directions for Future Actions" which was hosted by the ACN on 10 December 2012 in Paris, France. The High Level meeting adopted a statement on strategic directions, which will be serve a policy basis for the new ACN Work Programmes for 2013-2015, also approved at the ACN Steering group meeting on 11 December 2012. The adopted Statement is attached to this report.

ACN Funding

Table 5.1. **ACN FUNDING IN 2009-2012**

ACN funding in 2009-2012		Amount (EUR)
Voluntary contributions by OECD members		Received
ACN regional programme		
Switzerland, 2009-2011 (ACN)		325 000
United States, 2010 (ACN)		184 114
United Kingdom, 2010-2012 (Central Asia)		169 275
Switzerland, 2012 (ACN)		200 000
United States, 2012 (ACN)		195 664
	Sub-total	1 074 053
ACN country specific programmes		
United States, 2009 (Ukraine)		300 651
United States, 2010 (GUAM: Georgia, Ukraine, Azerbaijan, Moldova)		118 666
	Sub-total	419 317
In kind contributions by ACN countries		Estimate only
Kazakhstan's funding for the Astana conference 2009		150 000
Self-funding of country delegates to plenary meetings by ACN countries: 10 delegates per meeting x 1 500 EURO per delegate x 4 plenary meetings		60 000
In-kind funding of local expenses during on-site and return missions by IAP countries: – meeting rooms and dinner receptions at 2 000 EURO x 8 countries; – hotel accommodation for monitoring teams a 5 experts x 5 nights x 2 countries x 100 EURO; – meals and local transport for monitoring teams at 5 experts x 5 nights x 2 countries x 100 EURO;		26 000
In-kind funding of ACN seminars by hosting countries: – Bucharest law-enforcement seminar: dinner reception and airport transfers at 2 000 EURO; – Vilnius anti-corruption policy seminar: dinner reception at 2 000 EURO; – Istanbul judiciary seminar: meeting room, interpretation equipment and dinner reception at 9 000 EURO; – Batumi law-enforcement seminar: dinner reception and equipment for the meeting room at 3 000 EURO.		16 000
	Sub-total	252 000
Co-funding by international organisations and donors		Estimate only
OSCE co-funding of joint seminars on asset declarations: Belgrade at 20 000 EURO, Vilnius at 20 000 EURO, Bishkek at 20 000 EURO.		60 000

Table 5.1. **ACN FUNDING IN 2009-2012** *(cont.)*

ACN funding in 2009-2012		Amount (EUR)
UNODC, GRECO, OSCE, USAID and other projects' funding of speakers, participants, experts and NGO delegates to ACN seminars, 10 participants x 1 500 EURO		15 000
GUAM co-funding of a joint seminar on anti-corruption trainings-Kyiv: airport transfers, meeting rooms with interpretation equipment, interpretation services, coffee breaks, dinner reception.		15 000
EU, US, UNODC, OSCE, TI, ABA, CoE and other projects hosting monitoring sessions for NGOs and international partners: meeting rooms and coffee breaks: 300 EURO per meeting x 3 meetings x 8 countries		7 200
	Sub-total	97 200
OECD contributions		
Staff costs: ACN management and support staff		354 160
Operational costs: meeting rooms, interpretation, translations		270 977
	Sub-total	625 137
total ESTIMATED CONTRIBUTIONS TO acn pROGRAMME IN 2009-2012		2 467 707

Source: OECD/ACN secretariat.

Notes

1. The OECD Working Group on Bribery in International Business Transactions is made up of representatives from the Parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The ACN is one of the regional global relations programme of the Working Group on Bribery. For information about the Working Group, please refer to *www.oecd.org/daf/nocorruption*.
2. The ACN is open for all countries in Eastern Europe and Central Asia, including Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. OECD countries participate in the ACN as partners or donors. The ACN is open for participation by international organisations, such as the Council of Europe and its Group of States against Corruption (GRECO), the Organisation for Security and Cooperation in Europe (OSCE), the UN Office on Drugs and Crime (UNODC), and the UN Development Programme (UNDP), as well as multi-lateral development banks, such as the Asian Development Bank, Council of Europe Investment Bank, EBRD, and the World Bank. The ACN is also open for participation by non-governmental partners, including Transparency International and other non-governmental and business associations. Detailed information about the ACN is available on its website *www.oecd.org/corruption/acn*.
3. Astana statement, proceedings of the conference and other relevant materials are available at *www.oecd.org/corruption/acn*.
4. With the exception of Uzbekistan which joined IAP in 2009; its review was carried out in December 2010 and its joint first and second rounds of monitoring report was adopted in February 2012.
5. The procedure and questionnaire for the second round of monitoring are available at *www.oecd.org/corruption/acn*.
6. See: *www.oecd.org/corruption/acn*.
7. Summaries of reports of the UNCAC Review Mechanism are not confidential and are subject to publication.
8. Asset declarations study, *www.oecd.org* (also available in *Russian*).
9. See Proceedings and other materials of the Bucharest seminar (*www.oecd.org*), Kyiv seminar (*www.oecd.org*) and Batumi seminar (*www.oecd.org*).
10. Upcoming OECD/ACN publication.
11. Upcoming OECD/ACN publication.
12. See at *www.oecd.org*.

13. See Proceedings and other materials of the Vilnius seminar at *www.oecd.org*.
14. Upcoming OECD/ACN publication.
15. See Proceedings and other materials of the Istanbul seminar (*www.oecd.org*).
16. See at *www.oecd-ilibrary.org*.
17. Bulgaria has become Party to the OECD Anti-Bribery Convention since 1998, it is not a member of the OECD; Estonia became party to the Convention in 2004 and is a member of the OECD since 2010; Slovenia is Party to the Convention since 2001 and is a member of the OECD since 2010; Russia became a Party to the Convention on 17 April 2012, it is also candidate to OECD membership.

Annex A
Statement on "Reinforcing Political Will to Fight Corruption in Eastern Europe and Central Asia"

We, Ministers, Heads of Anti-Corruption Agencies and other High Level Officials from countries participating in the Anti-Corruption Network for Eastern Europe and Central Asia, as well as other participants of the High-Level Meeting "Reinforcing Political Will to Fight Corruption in Eastern Europe and Central Asia" hosted by the Organisation for Economic Co-operation and Development (OECD) on 10 December 2012 in Paris,

Recognising that corruption impedes sustainable economic growth and social development, threatens the stability and security of our countries, corrodes democratic institutions and undermines public trust in the state authorities,

Commending the significant efforts that have been made by our governments together with civil society, private sector and international organisations to reduce the level of corruption and to improve public and corporate governance,

Acknowledging, however, that corruption in many countries in Eastern Europe and Central Asia remains a serious challenge, and that further reinforced efforts are needed to achieve progress in combating corruption,

Stressing that practical measures need to be taken by governments and other stakeholders against corruption, including measures to prevent corruption in public administration and in the private sector, to prosecute corruption-related crimes and to educate and involve society,

Noting that international standards established by the United Nations Convention against Corruption (UNCAC), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Council of Europe Criminal Law Convention on Corruption and other international instruments provide direction for the governments towards effective fight against corruption,

Confirming that international co-operation, mutual learning and country reviews facilitated by the UNCAC implementation review mechanism, the OECD Working Group on Bribery (WGB) and the Council of Europe Group of States against Corruption (GRECO) reinforce national anti-corruption efforts,

Convinced that regional anti-corruption initiatives such as the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) provide an effective mechanism for regional dialogue and mutual support in developing and implementing anti-corruption

reforms, for promoting implementation of international standards and exchanging good practices on the regional level,

Recalling our commitments to strengthen the fight against corruption embodied in the Astana Statement on Good Governance and Fighting Corruption adopted under the auspices of the Anti-Corruption Network for Eastern Europe and Central Asia in Kazakhstan in 2009,

Agree that fighting corruption will continue to be one of our top priorities and ***commit to*** further strengthen our efforts to:

1. Implement robust anti-corruption policies, ensure credible and transparent monitoring and reporting about progress in their implementation and involve civil society in this process in a meaningful way;
2. Bring anti-corruption legislation in full compliance with international standards to equip our law-enforcement systems with modern legislation necessary for the effective fight against the corruption crimes;
3. Build capacity of law-enforcement and criminal justice bodies to detect, investigate and prosecute corruption using modern investigative means such as financial investigations, and ensure integrity of these bodies to restore public trust in them;
4. Enforce anti-corruption legislation and ensure that corrupt behaviour is punished with effective, proportionate and dissuasive sanctions without any regard to the political, economic or social standing of persons committing those crimes;
5. Strengthen integrity of the judiciary and build capacity of courts to adjudicate corruption crimes without bias and using modern anti-corruption legislation;
6. Take legislative and institutional measures to prevent corruption in politics, ensure transparency of financing of political parties and electoral campaigns, and increase integrity among elected or political public officials;
7. Prevent corruption in public administration and protect professional public servants from undue political pressure, ensure merit based recruitment and promotion, enact ethical rules, adopt and enforce effective conflict of interest and asset disclosure regulations, promote reporting of corruption and protect whistle-blowers;
8. Enact effective legislation on access to information, ensure proactive disclosure and fullest access to information of public interest; ensure transparency of information about ownership to limit possibilities for hiding corrupt profits;
9. Ensure independence of public financial control and audit institutions, strengthen their capacity to identify and prevent corruption risks, and improve their co-operation with law-enforcement and policy-making institutions;
10. Ensure transparency and integrity in the sectors with high risk of corruption such as public procurement, budget and expenditure systems, tax and customs administration, state inspections, issuing licences and permits, public education and other public services; launch targeted reviews of these sectors and based on such reviews implement effective anti-corruption measures;
11. Engage in a dialogue with the business sector, NGOs and media to prevent corruption, work with public and private companies and with business associations to raise awareness on risks of corruption, and support them in their efforts to promote internal control, ethics and compliance programmes and collective actions against corruption;

Support the implementation of the third round of monitoring under the Istanbul Anti-Corruption Action Plan, development of cross-country thematic reviews on prevention of corruption and promoting integrity in public administration and in the business sector, and further anti-corruption mutual learning of law-enforcement practitioners from the ACN countries with the aim to support practical implementation of UNCAC standards in the region;

Welcome Uzbekistan joining the Istanbul Action Plan in 2010, support Mongolia's joining the ACN, note Turkmenistan's participation in this High Level Meeting, and invite interested countries in the region to become members of the Anti-Corruption Network for Eastern Europe and Central Asia;

Invite participating countries, donor countries and international organisations to support the Anti-Corruption Network for Eastern Europe and Central Asia and other good governance and anti-corruption initiatives in Eastern Europe and Central Asia promoting implementation of requirements of the UNCAC. In doing so, it will be important to ensure effective co-ordination of assistance to national anti-corruption efforts, in line with Busan Declaration on Aid Effectiveness.

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PROGRESS AND CHALLENGES, 2009-2013

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