



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA
ISTANBUL ANTI-CORRUPTION ACTION PLAN

Third Round of Monitoring

AZERBAIJAN

Monitoring Report

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Executive Summary

This report analyses progress made by Azerbaijan in carrying out anti-corruption reforms and implementing recommendations received under the Istanbul Anti-Corruption Action Plan since the second monitoring round in 2010. The report also analyses recent developments and provides new recommendations in three areas: anti-corruption policy and institutions, criminalisation and prevention of corruption.

Anti-corruption policy

Since 2010, some legal and institutional developments have taken place and some practical measures were taken in Azerbaijan, which seem to have positive effect and demonstrate willingness to fight corruption. Such measures include the development of electronic services and facilitation of access to public services, in particular creation of ASAN centres - State Service for Social Innovations and Service to Citizens in 2012. A number of laws incorporating international anti-corruption standards into the national legislation were adopted, for example, on liability of legal persons for corruption. Capacity of the specialized anticorruption law-enforcement authority was enhanced.

At the same time, a number of reforms remain unaccomplished and limited. Significant anti-corruption laws have not been adopted for a long time, for example, legislation on conflict of interest prevention or whistleblowers protection. Public service reform is underway. Legislation in the area of prevention of political corruption and access to information lack vigorous implementation or control mechanisms.

There is a continuous anti-corruption policy in Azerbaijan. The second national anti-corruption strategy and action plan for 2007–2011 were accomplished in 2012. New, third anti-corruption action plans were adopted for 2012–2015. However, the mechanism for civil society's participation in assessing the anti-corruption policy was not improved. Besides, the 2007 – 2011 strategy and action plan and the new anti-corruption action plans adopted in 2012 lack references to surveys or some analysis of trends in corruption in Azerbaijan or correlations between corruption causes and anti-corruption measures proposed by the Government. Moreover, the monitoring report finds that there is a lack of clarity about the strategic basis for anti-corruption policy in 2012 – 2015.

There seems to be various efforts to further involve civil society. The monitoring team welcomes that civil society organisations were consulted in developing the new anti-corruption action plans and some of their proposals were taken into account. The state increased financial support to NGOs for anti-corruption activities since the second round of monitoring; under the new anti-corruption action plans such support should continue in 2012 – 2015. There are public councils with civil society representatives in some public institutions. The monitoring team encourages the Government to ensure formal obligation to consult civil society, as foreseen in the Public Participation Bill and also to involve civil society as permanent member in the Commission on Combating Corruption. Moreover, the potential of civil society could be used in a much wider and more effective ways in sector-specific activities or at the local level.

The monitoring team welcomes the study on corruption situation in Azerbaijan in 2009 and 2010, including a public opinion survey, commissioned by the Commission on Combating Corruption and carried out by NGOs with financial support from public institutions, and the 2012 surveys on corruption. However, the monitoring report finds that more efforts are needed to survey corruption perception, evaluate trends in corruption and the effectiveness and impact of the anti-corruption

policy, including through opinion polls. To be meaningful, such surveys and opinion polls should be conducted on a regular basis, made public, disseminated and their conclusions should be used.

The majority of public institutions have developed their anti-corruption action plans and report on their implementation to the Commission on Combating Corruption. Nevertheless, it remains difficult to say how comprehensive these plans are, to what extent each institution assessed specific corruption and integrity risks it faces and to what extent the corruption risks are properly addressed.

Monitoring report also finds that the effectiveness of campaigns to raise awareness about corruption could be increased, adapting them to targeted institutions, sectors or social groups and envisaging outcome or impact it should make.

Finally, the monitoring report finds that while the Commission on Combating Corruption has made some efforts as the focal point for developing and monitoring anti-corruption policies, for instance, organising roundtables with civil society and international partners or supporting some corruption surveys by NGOs, results are less visible in the areas of measuring corruption, organising work to raise awareness about corruption or conducting, disseminating and using surveys on corruption in a proactive manner. Therefore, the capacity of the Commission on Combating Corruption to be an effective anti-corruption authority could be further strengthened and more resources provided to its Secretariat. The monitoring report finds that overall it could be useful to assess the needs and capacity in the area of co-ordination of anti-corruption efforts in Azerbaijan.

Criminalisation of Corruption

Since 2010 Azerbaijan has largely brought its criminal legislation in compliance with international standards and recommendations from the second round of monitoring. To this end it has introduced the “offer” and “promise” both into active and passive bribery, as well as trading in influence. Azerbaijan also expanded the definition of official to clearly include foreign public officials, thereby ensuring a proper criminalisation of bribery of foreign public officials.

Practical application of the law in regard to these newly introduced offences however appears to be a challenge and the report stresses the need for further efforts to develop case practice. It similarly raises concerns over a continued lack of enforcement of “non material benefits” as objects of bribery. Therefore, it highlights that the prosecutors and investigators in Azerbaijan could benefit from a more specialised training on detecting, investigating and prosecuting such cases and that Azerbaijan courts would similarly benefit from awareness raising and training, as well as from development of the guidance on interpretation and application of these concepts.

In March 2012 Azerbaijan introduced amendments into Criminal Code whereby establishing liability of legal persons for corruption and money laundering offences, becoming a second IAP country to do so. However, newly introduced liability of legal persons, which are largely in line with international standards, cannot yet be applied in practice because the criminal law provisions have not been correlated with criminal procedural law, and only as case practice develops their effectiveness will be tested.

In regards to the scope of immunity and the use of special investigative measures in investigation of persons with immunity, no legislative changes were introduced since the second round of monitoring. Therefore, the report recommends that Azerbaijan move swiftly with reducing the scope of immunities of the MPs and judges. Such changes will be crucial for the chances of the Azerbaijan prosecutors in tackling high level corruption cases and would demonstrate real political will to address serious corruption.

In general, the report calls for more efforts to increase the capacity of the law enforcement authorities in Azerbaijan to proactively detect corruption offences committed both by physical and legal persons. In particular, it says that special attention should be given to corruption prone sectors, and various potential sources for detection should be more vigorously pursued.

In the area of law enforcement and institutional capacities to detect, investigate and prosecute corruption, the report recognizes serious progress made by Azerbaijan in reforming both its procedural and institutional framework. In 2011 the Anti-Corruption Department was vested with authority to carry out all types of special investigation measures in respect to corruption offences and has undergone major restructuring, acquiring new powers and responsibilities. The report recognizes that not only its structure was built up, but also the methodology of its work has improved and its analytical capacity was further strengthened. Now the investigation of corruption is carried out in a holistic manner by a team composed of investigator/s, detectives and analytical officers under the supervision of a prosecutor.

Anticorruption specialization has also been further strengthened by ensuring that the prosecutors from the Department of Public Prosecution are also specialized in the field of anti-corruption, and are being trained together with the staff of Anti-Corruption Department.

At the same time, in order to further support Anti-Corruption Department's role in the fight against corruption, the internal investigations, control and inspection bodies within the ministries or other public authorities relevant for the sectors that are most vulnerable to corruption, as well as the audit bodies, and intelligence services should improve their capacity to identify corruption or corruption related incidents within the institutions they control or survey, and make quick referrals. In this regard the report places a special emphasis on establishment of strong referral mechanisms.

In addition, the report highlights that effective mechanisms to ease access to the bank, financial and commercial records, as well as other data bases kept by public authorities, should be introduced in Azerbaijan, as it was previously recommended in the second round of monitoring. Current systems appear ineffective and may impede the immediate actions necessary in corruption cases and result in significant delays in investigation of such cases.

Prevention of Corruption

In the area of public service, Azerbaijan has taken steps to implement the existing competition-based recruitment procedures in practice and apply them more widely. These efforts mainly apply to middle and lower level civil servants. Nevertheless, more efforts are needed to develop and implement a transparent and merit-based recruitment of senior and high level civil servants. In 2012, Azerbaijan started to work on a new civil service code, which aims to codify the segmented legislation on civil service and also could regulate ethical behaviour and prevention of conflicts of interest.

In the meantime, a number of important corruption prevention laws remain unimplemented or not adopted. A system of asset declarations by public officials has not been made operational and do not function in practice, despite that it is provided for in the law since 2005. In the area of conflict of interest prevention and ethics, no changes were made since the second round report to improve laws in these areas or implement existing provisions in practice more vigorously. Also, no steps were taken to introduce a legal obligation to report corruption or regulation on protection of whistleblowers.

The monitoring team welcomes the efforts of Azerbaijan in the field of simplification and modernisation of administrative procedures and in introducing more transparency and efficiency in the delivery of public services to citizens. This appears to be an area of positive developments and concrete practical steps in Azerbaijan that can be extended, for example, to business sector or most corruption-prone sectors.

In regard to implementation of the recommendation on financial control and audit, report notes a number of positive steps undertaken by Azerbaijan. In particular, Azerbaijan launched ex ante control of budget; developed a risk identification guidebook for planning financial control measures in budget funded organisations; widened the powers of the internal audit units in a number of public authorities, authorizing them to initiate anti-corruption and anti-fraud audits; and conducted regular joint trainings for personnel of internal audit units and Anti-Corruption Department. The report encourages continuation of these efforts. It also identifies areas for further improvement, urging the Chamber of Accounts to develop its own capabilities for continued professional training and officially include corruption and fraud audits into its competence, as well as publish information on public accounts and budget in a more comprehensive and holistic manner.

In the area of public procurement, some steps were taken to increase transparency, such as publishing information about tenders and procurement plans widely and systematically; training for officials involved in the tendering commissions was conducted in 2012. Further practical measures to improve transparency in public procurement are foreseen in the national anti-corruption action plan for 2012-2015. Overall, the monitoring report finds that it would be useful to improve the planning and the monitoring of public procurement of goods, works and services and investments projects in Azerbaijan, in particular the single-source and emergency procurements. It is necessary to streamline the role of the State Procurement Agency and provide it with tools to more efficiently enforce legal requirements in the field of public procurement and contribute to policy development, review and monitoring more actively.

In the area of access to information the main development was the creation of a freedom of information institution, as recommended during the second round of monitoring, namely assigning this function to the Ombudsperson. The Ombudsperson is an independent body, and its mandate and powers in the area of access to information have been established in the law, but its resources need to be strengthened. The report calls upon Azerbaijan to more vigorously implement the Law on Access to Information, including through a permanent follow-up mechanism with participation of civil society and awareness-raising measures. In this area, Azerbaijan is also encouraged to decriminalise defamation and insult and avoid improper use of civil law instruments for restricting activity of media.

In 2012, the Law on Political Parties of Azerbaijan was amended to address GRECO recommendations covering various aspects of political parties financing, including increasing its transparency. Further, legislation was amended to establish the format for financial reports by political parties, which now should be submitted to the Ministry of Finance and published in the media with an auditor's opinion. However, the monitoring team could not assess the enforcement of this new legislation in practice. Both GRECO and the Istanbul Action Plan reports in 2010 called upon Azerbaijan to streamline its supervision and monitoring of campaign funding and political parties financing by an independent authority, however, no substantive measures have been taken.

The report highlights that despite the high perception of corruption among members of judiciary in the society; no judge was ever convicted or even investigated for corruption offences. It further notes little progress in regards to abolishing or limiting immunity of judges against prosecution and calls for prompt steps to better balance the protection of judges against retaliation or pressure with

the need to be able to carry out secret investigations prior to lifting of immunity. Alongside with addressing of the legal obstacle to the investigation of judges, the anticorruption prosecutors and investigators should develop a methodology to detect and investigate corruption allegations in this sector. At the same time the report recognizes that introduction of the random case assignment in the Azerbaijani courts is an important progress towards meeting the citizens' trust in an impartial trial. It however, recommends to do more in this regard, including conducting analysis on causes for such perception, systematic training on ethical conduct, further improving existing system for the selection and appointment of the Supreme court and appellate court judges, and further strengthening the capacity of the Judicial Legal Council to pursue allegations of misconduct of judges that can denote the lack of integrity.

The report recognizes that Azerbaijan made considerable efforts to organize a public awareness campaign on risks of corruption for the private sector, and to provide systematic and targeted programmes to educate private sector about the risks of corruption. In contrast, it appears that no real efforts to promote the development of self-regulation within the private sector were undertaken and private sector appears to be under no pressure to introduce any compliance measures and does not see benefits to them. Therefore, efforts that have been undertaken to date mark only the beginning and concerns raised in the 2nd round of monitoring report remain valid.

Third Round of Monitoring

The Istanbul Anti-Corruption Action Plan was endorsed in 2003. It is the main sub-regional initiative in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan covers Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes systematic and regular peer review of legal and institutional framework for fighting corruption in the covered countries.

The initial review of legal and institutional framework for the fight against corruption and recommendations for Azerbaijan were endorsed in June 2004. The first monitoring round report, which assessed the implementation of initial recommendations and established compliance ratings of Azerbaijan, was adopted in October 2005. The second monitoring round report was adopted in March 2010 and included updated compliance ratings of Azerbaijan with regard to its initial recommendations, as well as new recommendations. In between of the monitoring rounds Azerbaijan had provided updates about national actions to implement the recommendations at all IAP monitoring meetings. Azerbaijan has also actively participated and supported other activities of the ACN. All reports and progress updates are available at the ACN website at: www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

The third round of monitoring under the Istanbul Action Plan was endorsed by the participating countries in December 2012. Azerbaijan is one of the first two countries to undergo the new round of monitoring. Azerbaijani Government provided replies to the third round country-specific questionnaire in April 2013 and additional materials requested by the monitoring team before and after the on-site visit.

The country visit to Baku took place on 3–7 June 2013. The aim of the on-site visit was to meet with relevant public institutions, civil society, business representatives and foreign missions to discuss progress made in Azerbaijan in implementation of the previous IAP recommendations and identify issues for further improvement in the areas of anti-corruption policy and institutions, criminalisation and prevention of corruption. Azerbaijani authorities organized 10 thematic sessions with relevant public institutions, including the Commission on Combating Corruption, Anti-Corruption Department at the General Prosecutor's Office, Ministry of Justice, Central Bank, the Prosecutor's Office, the Financial Monitoring Service, Civil Service Commission, the Parliament, the State Agency for Public Service and Social Innovations ("ASAN Service"), the Office of the Commissioner for Human Rights (Ombudsman), State Committee for Property Affairs, State Social Security Fund, Ministry for Labour and Social Security, Ministry of Finance, Ministry of Economic Development, Ministry of Taxes, Ministry of Health, Ministry of Transport, Ministry of Agriculture, Ministry of Education, State Customs Committee, State Land and Mapping Committee, State Urban and Architecture Committee, State Procurement Agency, Chamber of Accounts, Central Election Commission, Prosecutor's Office, Judicial Legal Council and judges.

In co-operation with the NGO "Constitution Researches Fund", the ACN Secretariat organized special sessions with civil society and the business sector hosted by the National Confederation of Entrepreneurs Organizations of Azerbaijan. A session with international organizations, donors and foreign missions was organized in co-operation with the Delegation of the European Union to Azerbaijan.

The third round examination of Azerbaijan was conducted by monitoring team including Mr Ruslan Riaboshapka (Cabinet of Ministers, Ukraine), Ms Anca Jurma (prosecutor, Romania), Mr Magomed Akayev (prosecutor, Kazakhstan), Mr Aleksandras Zinovičius (Chief Official Ethics Commission

Lithuania), Mr Bakhrom Bakhronov (Agency for State Financial Control and Combating Corruption, Tajikistan), as well as Ms Inese Gaika and Ms Tanya Khavanska (OECD Secretariat). The co-ordination on behalf of Azerbaijan was ensured by the National Co-ordinator Mr Kamran Aliyev, Head of Anti-Corruption Department at the General Prosecutor's Office.

The monitoring team would like to thank the Government of Azerbaijan for excellent co-operation during the third round of monitoring, notably representatives of the Anti-Corruption Department of the General Prosecutor's Office of Azerbaijan Mr Kamran Aliyev and Mr Elnur Musayev; non-governmental partners who contributed to the monitoring process in various forms, in particular Mr Alimammad Nuriyev, President of the NGO "Constitution Researches Fund" and the Coordinator of the NGOs Anti-Corruption Information and Cooperation Network. The monitoring team would like to thank Mr Daniel Ivarsson and Ms Airi Alakivi from SIGMA Programme who provided valuable comments on some sections of the report. The monitoring team is grateful to Azerbaijani authorities and non-governmental representatives for open and constructive discussions during the on-site visit.

This report was prepared on the basis of answers to the questionnaire and findings of the on-site visit, additional information provided by the government of Azerbaijan and NGOs, as well as research by the monitoring team, as well as relevant information received during the plenary meeting.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 25 September 2013. It contains the following compliance ratings with regard to recommendations of the second round of monitoring: out of 19 previous recommendations Azerbaijan was found to be fully compliant with 1 recommendation, largely compliant with 4 recommendations and partially compliant with 14 recommendations. 18 new recommendations were made as a result of the third monitoring round; 2 previous recommendations were recognised to be still valid.

The report will be made public after the meeting, including at www.oecd.org/corruption/acn.

Authorities of Azerbaijan are invited to disseminate the report as widely as possible. To present and promote implementation of the results of the third round of monitoring the ACN Secretariat will organize a return mission to Azerbaijan, which will include meetings with representatives of the public authorities, civil society, business and international communities. The Government of Azerbaijan will be invited to provide regular updates on the measures taken to implement recommendations at the Istanbul Action Plan monitoring meetings.

Third round of monitoring under the OECD/ACN Istanbul Anti-Corruption Action Plan is carried out with the financial support of the United States, Switzerland and the United Kingdom.

Country Background Information

Economic situation¹

Azerbaijan covers an area of 86 600 km²; 20% of its territory is not under government control. In 2012, the population of Azerbaijan was 9.3 million. Azerbaijan's GDP in 2012 was 53.4 euros (compared to 39.9 million euros in 2010) or 5823 euros per capita (4471 euros in 2010).

After an extremely rapid economic growth reaching a 31% increase in GDP in 2006 and 25 % in 2007, the increase of GDP in Azerbaijan slowed down to 10.8 % in 2008 and 7.5% in 2009. In 2011 and 2012, economic growth rate was around 3.7%. The rapid growth was mainly due to increased oil prices and high volume of exports of both oil and gas, before the financial and economic crisis hit the country and decline in oil production in 2010 – 2012.

Azerbaijan is one of the oldest oil producing countries in the world and remains an important oil and gas supplier, particularly for European markets. Large oil reserves remain major contributor to the economy of Azerbaijan. More than 90% of its total exports account for by oil and gas exports.

Other important resources in Azerbaijan include cotton, natural gas and agriculture. In recent years, as production in the oil sector declines, it is balanced by growth in the non-oil sectors, mainly driven by government investment. Efforts to boost Azerbaijan's gas production are underway. The eventual completion of the geopolitically important Southern Gas Corridor between Azerbaijan and Europe will open up source of revenue from gas exports.

According to the EU statistics, Azerbaijan's main import, export and trading partners for 2012 are the European Union countries, in particular Italy, France, Germany and the UK, as well as Turkey, Russia, Indonesia, India and China. Trade with Russia and other former Soviet republics is declining in importance, while trade is building with Turkey and European countries.

Political structure

Azerbaijan has developed a strong presidential system. The executive branch is made up of a president, his office, a prime minister, and the Cabinet of Ministers. The president has wide range of powers, for example, he can propose appointment of judges, cancel a decision of the Cabinet of Ministers or dismiss it. Since 2003 the President of Azerbaijan is Ilham Aliyev; he was re-elected for the third term in October 2013. For the presidential elections in 2013, 10 candidates were registered and, according to the Statement of OSCE Election Observation Mission, elections formally were efficiently administered, in practice limitations on the freedoms of expression and assembly were observed, questioning if a level playing field for all candidates was ensured.²

The legislative branch in Azerbaijan is represented by the Parliament (*Milli Majlis*). The Parliament consists of one chamber of 125 members, who are elected for the period of 5 years. Latest parliamentary elections were held in 2010. New Azerbaijan Party won the majority and currently holds 69 seats. The second largest parliamentary group is composed of 42 independent deputies, who usually vote in support of the ruling party.

¹ This section is prepared based on European Union, International Monetary Fund, State Statistical Committee of Azerbaijan and the World Factbook information.

² OSCE/ODIHR International Election Observation Mission Statement of Preliminary Findings and Conclusions, Baku, 10 October 2013, <http://www.osce.org/odihr/elections/106901>

The judicial branch in Azerbaijan is comprised of the Constitutional Court, the Supreme Court and the Economic Court, the judges of which are nominated by the President. It also includes Courts of Appeal, ordinary and other specialized law courts.

Regarding civil society, the situation with the right to freedom of association in Azerbaijan was subject of criticism in the resolution of the Council of Europe's Parliamentary Assembly "The Functioning of Democratic Institutions in Azerbaijan" in 2010. In 2013, the Code of Administrative Offences and the Law on Non-Governmental Organisations (Public Unions and Foundations) were amended obliging the civil society organisations to present to the Ministry of Justice all copies of grant agreements, increasing the total number of reports to be presented yearly up to 19, banning accepting grants for more than 190 euros without grant agreement and considerably increasing fines for failing to meet requirements of laws. While more than 60 NGOs signed a petition against this Law, it has been adopted and promulgated. In 2013, the Parliamentary Assembly of Council of Europe called on the Azerbaijani authorities to review the legislation on NGOs and improve the environment for NGOs to carry out their activities, including those expressing critical opinions³.

Trends in corruption

In 2012, the Transparency International Corruption Perception Index ranked Azerbaijan 139 out of 176 (it scored 27 on the scale from 0 to 100). In both, 2010 and 2011, Azerbaijan scored 2.4 on the scale of 0 to 10 and was ranked 134th of 178 in 2010 and 143rd of 183 in 2011.

The Transparency International Global Corruption Barometer in 2013 noted that the institutions perceived to be the most corrupt in Azerbaijan are judiciary, health care and police.

In 2013, the Freedom House report "Nations in Transit" describes corruption situation in Azerbaijan, highlighting limited access to information on ownership and assets of businesses, lack of transparency in the spending and distribution of oil revenues, weak media, judiciary and civil society, as well as lack of follow-up to some public allegations of corrupt dealings. Azerbaijan's rating on corruption, according to the analysis in the Freedom House reports, declines: it was 6.25 in 2004-2008, 6.50 in 2009-2012 and 6.75 in 2013.⁴

In the latest World Bank's Doing Business report (2013) Azerbaijan ranked 67th out of 185 countries on the ease of doing business, with the nearest countries from Eastern Europe and Central Asia being Bulgaria and the Kyrgyz Republic; the average regional ranking was 73. Comparatively, Azerbaijan ranked 69th in 2011 and 66th in 2012 in Doing Business Reports.⁵

The World Economic Forum Global Competitiveness Report 2012 – 2013 ranked Azerbaijan 46th out of 144 economies. In this report, corruption is considered to be the most problematic factor for doing business in Azerbaijan. Such opinion was expressed by 23.4% of business executives participating in the Executive Opinion Survey in 2012 quoted in this report.⁶

³Resolution of Parliamentary Assembly of Council of Europe Nr. 1917 (2013), "The honouring of obligations and commitments by Azerbaijan", <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19451&lang=en>

⁴ Freedom House (2013), *Nations in Transit 2013*, www.freedomhouse.org/sites/default/files/NIT13_Azerbaijan_2ndProof.pdf

⁵ International Bank for Reconstruction and Development / The World Bank (2013, 2012), *Doing Business*, www.doingbusiness.org

⁶ World Economic Forum (2012), *the Global Competitiveness Report 2012-2013*, www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf

Acronyms

ACD	Anti-Corruption Department at the General Prosecutor's Office
AML	Anti-money laundering
BSEC	Organisation of the Black Sea Economic Cooperation
CCC	Commission on Combating Corruption
CoE	Council of Europe
CSC	Civil Service Commission
EBRD	European Bank for Reconstruction and Development
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FMS	Financial Monitoring Service
GPO	General Prosecutor's Office of Azerbaijan
GRECO	Council of Europe Group of States against Corruption
GUAM	Organization for Democracy and Economic Development of Georgia, Ukraine, Azerbaijan and Moldova
IA	Internal audit
IAP	Istanbul Anti-Corruption Action Plan
IT	Information technology
JLC	Judicial Legal Council
MIA	Ministry of Internal Affairs
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures
MP	Member of Parliament
NACAP	National Anti-Corruption Action Plan for 2012-2015
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PEP	Politically Exposed Person
SIGMA	Support for Improvement in Governance and Management, a joint initiative of the European Union and the OECD
SIMs	Special investigative measures
SPA	State Procurement Agency
STR	Suspicious Transaction Report

TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
USAID	U.S. Agency for International Development

1. Anti-Corruption Policy

Political Will to Fight Corruption and Anti-Corruption Policy Documents

Previous Recommendation 1.1.-1.2.-1.3.

Strengthen political will and practical measures to implement the National Strategy on Increasing Transparency and Combating Corruption and its Action Plan adopted in 2007.

Improve a mechanism for civil society's participation in the assessment.

Periodically carry out and publish surveys about levels and trends of corruption in different sectors.

Implement measures to improve the quality and the implementation of the actions plans by specific institutions, develop policy and measures to address corruption risks at the municipal level.

Since the second monitoring report adopted in March 2010, new National Anti-Corruption Action Plan 2012-2015 (NACAP for 2012 - 2015) and the Open Government Initiative National Action Plan 2012 - 2015 were endorsed by the Presidential Decree No. 2421 on 5 September 2012⁷.

This report will mainly assess the implementation of the 2007 anti-corruption policy, but it will also look at the more recent developments related to the elaboration of the new anti-corruption policy documents covering the period of 2012 - 2015.

Political will and practical measures to implement the 2007 National Strategy and Action Plan

Strong **political will** is essential for anti-corruption reforms to succeed in any country. In many Istanbul Action Plan countries it has resulted in important reforms, and in some countries strong political leadership combined with effective reforms and enforcement has allowed reducing the levels of corruption.⁸ The Government of Azerbaijan also noted in its Istanbul Action Plan progress report in September 2011 that political will to fight corruption is demonstrated through active actions by the Government in support to anti-corruption programmes. In the replies to the questionnaire in April 2013 Azerbaijan reported that more concretely the political will is expressed in the form of legislative changes, facilitation of services, training, building on dialogue with the civil society, involvement in international initiatives, efforts to increase transparency and accountability and more robust criminal prosecutions.

Regarding **practical measures to fight corruption** and their results, in 2011 - 2013, President Ilham Aliyev in his speeches singles out such major achievements in fighting corruption in Azerbaijan as development of electronic public services, in particular the creation of ASAN service centres in 2012, the increase of transparency, in particular in the State Oil Fund of Azerbaijan, as an example of transparency, and Azerbaijan's participation in the Extractive Industry Transparency Initiative.

Many interlocutors met during the on-site visit also referred to e-services introduced in their public institutions as an important anti-corruption measure, which seemed to be a consequence of the 23

⁷ See the full text at <http://antikorrupsiya.gov.az/upload/file/OGP%20AP%20Azerbaijan%202012-2015%20Eng.pdf> and <http://antikorrupsiya.gov.az/upload/file/NACAP%20Azerbaijan%202012-2015%20Eng.pdf>

⁸ OECD (2013), *Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges. 2009-2013*, OECD, Paris, pp. 24-26.

May 2011 Presidential Decree on the Measures in Organizing E-Services and the 24 November 2011 Cabinet of Ministers Ordinance on Rules for E-Services by Central Executive Authorities.

The Government of Azerbaijan, in answering the Istanbul Action Plan questionnaire in April 2013, named following main practical measures taken based on the National Strategy and Action Plan for 2007–2011: Law on Ethics of Civil Servants (adopted in 2007); Decree on Fighting Corruption in Management of State and Municipal Property and Resources (2009); Code of Ethics for Prosecutors (2008), one-window business, customs and migration registration service (2008-2009); surveys on corruption and study programs by the Commission on Combating Corruption; EU and Council of Europe anti-corruption programs in Azerbaijan; and creation of Council on State Support to Non-governmental Organizations under the President.

The monitoring team notes that, on the one hand, there is support to the fight against corruption expressed through continuous anti-corruption policy, legal and institutional reforms and practical measures. The National Strategy and Action Plan for 2007–2011 was implemented and followed by the NACAP for 2012-2015 and the Open Government Initiative National Action Plan for 2012–2015. A number of laws incorporating international anti-corruption standards into the national legislation were adopted (for example, establishing liability of legal persons for corruption and other amendments to the Criminal Code), capacity of the specialized anticorruption law-enforcement authority, the Anti-Corruption Department (ACD), was enhanced and the delivery of public services indeed appears to improve.

On the other hand, a number of factors and overall findings of this report indicate that anti-corruption reforms remain limited. The anti-corruption policy in Azerbaijan lacks an in-depth analysis of corruption. There are no instruments to measure trends in corruption or the integrity of the Government. The Commission on Combating Corruption (CCC), designated as the focal point for developing and monitoring anti-corruption policies, is rather passive than proactive, and its capacity to be an effective anti-corruption authority do not seem to be strengthened, as recommended in the previous monitoring round. A number of significant anti-corruption laws have not been adopted for a long time, for example, legislation on conflict of interest prevention or whistleblowers protection.⁹ The public service reform, including widening merit-based recruitment, is still to be carried out. Important laws to fighting corruption on asset declarations or criminal measures on legal persons while adopted, cannot be implemented without additional laws¹⁰. The involvement of civil society as a partner in anti-corruption efforts remains limited. New laws in 2012 limited public access to information about the ownership and statutory capital of commercial entities and in 2013 widened the scope of criminal liability for defamation. The Law on the Right to Obtain Information has not been properly implemented so far. As regards prevention of political corruption, recently adopted legislation on transparency of political parties and electoral campaign needs to be revised in order to be brought in compliance with international standards. Issues relating to effectiveness of criminal investigations and independence of judiciary will be reflected in the relevant sections of the report.

Azerbaijani authorities claim that they assess and evaluate the implementation of the National Strategy and Action Plan for 2007–2011¹¹. The monitoring team received some evidence

⁹ According to the National Strategy on Increasing Transparency for 2007 – 2011, the relevant draft laws had to be developed in 2007 and 2008 respectively.

¹⁰ Under the law public officials in Azerbaijan since 2005 have to make annual declarations, but in practice the income declaration system is not operational. Another example is the law on Amendments to the Criminal Code on Criminal Measures on Legal Persons. To implement the Law it is still necessary to adopt the Enforcement rules for the Criminal Law Measures on Legal persons.

¹¹ See, for example, 22-24 February 2012 Azerbaijan Progress Report, p. 2 and 3.

demonstrating how it is done in practice by the Government. According to its statutes and the National Strategy on Increasing Transparency for 2007–2011, part of the mandate of the CCC is to analyse the implementation of anti-corruption strategy and efficiency of anti-corruption efforts in Azerbaijan and to submit annual reports about the fight against corruption to the President, using in its assessments World Bank governance indicators and public opinion surveys. The monitoring team heard that responsible public institutions regularly submit reports to the CCC on the status of implementation. An assessment of the implementation of anti-corruption strategy and a public opinion survey were commissioned by the Government and prepared by civil society and, according to NGOs met during the on-site visit, the assessment was used by the CCC. Nevertheless, from the Government the monitoring team only obtained the final report of the CCC on efforts to fight corruption in view of implementing the National Strategy on Increasing Transparency for 2007 – 2011, adopted in January 2012; it was provided to the monitoring team two weeks before the plenary meeting.¹² In this report the monitoring team could not find information demonstrating the corruption picture before the adoption of the Strategy and after accomplishing it. Overall in these circumstances it was difficult to draw conclusions on the results of the anti-corruption policy, how successful these measures were and also to what extent the achievements in fighting corruption in Azerbaijan derive from its anti-corruption policy.

In February 2012 progress report Azerbaijani authorities reported that the second anti-corruption strategy has been accomplished and Azerbaijan has started to elaborate a new, third national anti-corruption strategy.¹³ Also, the Open Government Initiative National Action Plan 2012–2015 states that the National Anti-Corruption Strategy for 2007 – 2011 has been implemented. Consequently, on 5 September 2012, the National Anti-Corruption Action Plan 2012–2015 (NACAP for 2012 – 2015) and the Open Government Initiative National Action Plan 2012–2015 were endorsed by the Presidential Decree No. 2421.

The NACAP for 2012 – 2015, as its name implies, it is an action plan. It lists areas, specific measures to be taken, the institutions in charge of the implementation and includes the schedule. The NACAP for 2012 – 2015 seems to be more focused and contain a broader set of measures as the 2007 Action Plan. For example, it now includes civil service legislation, support to its professionalization and anti-corruption education, ethics and conflict of interest training. It also takes in measures not implemented from the 2007 Action Plan, for example, whistleblowers protection act or conflict of interest legislation.

The monitoring team welcomes that civil society organisations and international partners were consulted and some of their proposals were taken into account in drafting the new policy documents. In the course of drafting the new 2012-2015 anti-corruption action plans, two public hearings were organized with participation of NGOs and international organizations. One was held in co-operation with the Council of Europe. More than twenty-five NGOs together with international partners took part and later submitted comments. According to the information provided by the Government, majority of proposals submitted were taken into account and reflected in the action plans.

Yet NACAP for 2012 – 2015 is a set of measures rather than a system of activities, unified by common purposes to achieve and concrete results in the defined areas. Also, a coordination and implementation mechanism is not clearly defined; the document only refers to monitoring of the implementation of the Action Plan and research on corruption by the CCC as measures to improve

¹² This report is available in Azeri at <http://antikorrupsiya.gov.az/view.php?lang=az&menu=31>

¹³ See 22-24 February 2012 Azerbaijan Progress Report, p. 2.

CCC's work and to the oversight of implementation of the Action Plan by the civil society as a measure to develop co-operation with the civil society.

The Azerbaijani authorities consider the National Strategy on Increasing Transparency for 2007 – 2011 still to be the basis for the NACAP for 2012 – 2015. However, this Strategy was considered to be implemented and the final report on its implementation was presented to the monitoring team. Therefore, there is a lack of clarity as to the legal basis of the NACAP 2012 – 2015. The monitoring team considers that there does not seem to be a strategy or similar programme document for the current policy planning period.

Improve civil society's participation in the assessment

The second round report in 2010 found that, according to the anti-corruption policy in Azerbaijan, inputs from NGOs should be taken into account in the assessment of anti-corruption policy, but there are no formal channels or established practice for that. The second round report mentions that NGOs organised public discussions on the implementation of the anti-corruption strategy in 2008 and submitted to the government results of their monitoring. It was recommended to institutionalise such practice.

See p. 22 for more detail on this element of this recommendation.

Conduct and publish surveys about corruption

According to the UN Convention against Corruption, anti-corruption policies have to be grounded on a clear understanding of the situation with corruption, its quantitative and qualitative characteristics, manifestations and causes of corruption. With this in mind, Azerbaijan was recommended in 2010 to “periodically carry out and publish surveys about levels and trends of corruption in different sectors”.

In the progress reports in September 2011 and February 2012, and the answers to the IAP questionnaire in April 2013, the Government of Azerbaijan noted that many surveys and opinion polls about corruption were conducted by NGOs and that the two specialised anti-corruption agencies conduct research on the level of corruption and trends in corruption. In particular, the Government named surveys on corruption in the domestic trade and unofficial payments in the secondary education institutions, monitoring of the social security payments and monitoring of the hot-lines run by the Anti-Corruption Department and other state institutions, as well as support to the Information Network of NGOs on Combating Corruption.¹⁴

Also, the Anti-corruption Department reported that it has produced an analysis of corruption situation, showing areas and institutions prone to corruption, based on information from 162 hot-lines, complaints received, media publications and materials submitted by law enforcement agencies, criminal cases and materials from various public bodies and private persons and analysis of information accumulated in the Corruption Offences Data Base.

The CCC, according to its statutes, is entrusted to analyse the efficiency of anti-corruption efforts in Azerbaijan. Moreover, according to the 2007 – 2011 Action Plan, the CCC was in charge of conducting surveys, analysing the results and undertaking appropriate measures. During the on-site visit the monitoring team heard about a survey commissioned by the CCC, which is described later in this section. During the on-site visit the monitoring team could not obtain further information about

¹⁴ See some of these studies in Azeri at <http://anticornet.az/az/index.php?newsid=45>.

this or other surveys commissioned or conducted by the CCC or information, how their results were disseminated or used. Two weeks prior to the monitoring meeting the Government informed that in April and May 2012 the CCC conducted two surveys on corruption on national and sectoral levels and a separate one on private sector corruption, which were used in the elaboration of the NACAP for 2012 – 2015. These surveys so far are not published.

It seems that the major corruption research project since the second round of monitoring was the project entitled “Corruption situation in the country”. The monitoring team welcomes that it was commissioned by the CCC and carried out with the support from the Council on State Support to Non-governmental Organizations under the President. This project was implemented by the Information Network of NGOs on Combating Corruption, led by the NGO Constitutional Research Foundation. The final report contained analysis and recommendations on: the anti-corruption strategy; anti-corruption institutions; prosecution of corruption; good governance in state bodies; entrepreneurship and corruption; co-operation and awareness and a summary of evaluation and recommendations. The final report, as explained above, was presented to the CCC; NGOs confirmed that many of their recommendations were taken into account in the 2012-2015 Anti-Corruption Action Plan.

Within the above project, a public opinion survey on situation with corruption was conducted in 2009. The survey resulted in a number of findings demonstrating public perception of corruption and corruption levels in Azerbaijan, personal experience with corruption, perception of the most corrupt areas, organizations considered the most effective in fighting corruption or most trustworthy and transparent. The monitoring team was explained by NGOs that this survey was presented to the government in 2010.

A summary of the above mentioned 2009 public opinion survey and a note summarizing the project “Annual Report and public opinion survey on state of corruption in Azerbaijan” implemented by the Information Network of NGOs on Combating Corruption in 2010 – 2011 were provided by the involved NGOs.

It appears that since the second round report in 2010, the CCC had a limited role in analysing situation with corruption in Azerbaijan, despite its role, as an anti-corruption agency, to analyse the situation with corruption and to develop anti-corruption policy documents. Apart the above project, no periodical surveys or researches seem to be conducted in order to survey perception of corruption, evaluate trends in corruption and the effectiveness and impact of the anti-corruption policy. The Strategy on Action Plan for 2007 – 2011 and the Action Plan adopted in 2012 contain no references to surveys and researches used as its source or some analysis of trends in corruption in Azerbaijan or correlations between corruption causes and anti-corruption measures proposed by the Government.

According to the NACAP for 2012 – 2015, the CCC is in charge of specialised corruption research and regular opinion polls about the levels of corruption. The monitoring team strongly supports conducting such opinion polls on a regular basis, but also making them public and using their conclusions. Also, the monitoring team believes it is key to assess the overall impact of the NACAP on the situation with corruption and to identify the main problems to be solved by the anti-corruption action plan that should be elaborated.

Monitoring team also did not come across a methodology or other guidelines on measuring corruption or analysing its nature and trends. The Azerbaijani authorities stated that the assessment of progress made in fighting corruption stands on the principles of collecting and analysing reports

submitted by state agencies, via website, feedback provided by NGOs and communications from the ACD.

In this context, the monitoring team recalls the above-mentioned international standards and reminds that there is a number of international reports highlighting the importance and approaches that can be taken to corruption research and surveys¹⁵. The monitoring team believes it would be worthwhile that the Azerbaijani authorities develop its own methodology on assessing various aspects of corruption problematic on the basis of international standards and experience. Further, it is important that the Government ensures, on a regular basis, application of this methodology in order to assess its efforts against corruption and the trends in corruption.

Implement anti-corruption actions plans by institutions and measures at municipal level

The National Strategy for 2007 – 2011 obliged all state authorities, as well as local self-government to prepare annual reports, including information on fighting corruption. CCC has developed templates for drafting institutional anti-corruption action plans and for submitting the information on implementation of national action plans. The requirement of institutional anti-corruption action plans is continued under the new NACAP 2012-2015 and the Open Government Initiative National Action Plan 2012 – 2015.

The second round monitoring report in 2010 noted that more than twenty ministries and public agencies, or the majority, have anti-corruption plans. In the answers to the questionnaire in 2013 Azerbaijan reported that all central executive authorities and the General Prosecutor's Office have developed and submitted to the CCC their annual action plans, and that they are built upon measures in the national anti-corruption policy. During the on-site visit the monitoring team briefly discussed with some public institutions their anti-corruption action plans.

Overall, it seems that these institutional annual anti-corruption action plans are done because it is a requirement of the 2007 National Strategy or Action Plan. During the on-site visit the CCC and other interlocutors confirmed that they report on the basis of the above template. Before 15 January each year, the CCC collects the reports from all central and local executive authorities and the General Prosecutor's Office and, if necessary, may require ministers to report on measures attributed to his ministry and measures described in the ministerial action plan.

Regarding quality of these plans, it remains difficult to say to what extent an assessment is done in each institution to identify specific corruption and integrity risks it faces and how comprehensive these anti-corruption action plans are. The monitoring team believes that it is important not only to include national anti-corruption measures, but also own analysis, risks and countermeasures specific of each agency and comprehensive preventive measures. Also, corruption risks in different agencies

¹⁵See, for example, "Methodologies, including evidence-based approaches, for assessing areas of special vulnerability to corruption in the public and private sectors", document adopted by the Conference of the State Parties to the United Nations Convention against Corruption on 13-15 December 2010, CAC/COSP/WG/2010/4, www.unodc.org/documents/data-and-analysis/statistics/corruption/WG4_doc-4-FINAL.pdf,

OECD (2009), *Integrity in Government: Towards Output and Outcome Measurement*, paper prepared by the OECD Expert Group on Conflict of Interest, GOV/PGC/ETH (2009)4, 27/94/2009, www.oecd.org/gov/ethics/publicsectorintegrityreviews.htm, Council of Europe (2013), *Handbook on Designing and Implementing Anti-corruption Policies*, prepared within the framework of the Eastern Partnership-Council of Europe Facility Project on "Good Governance and Fight against Corruption", www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/EaP-CoE%20Facility/Publication/AC%20Handbook%20EN-Final.pdf

should be addressed appropriately through training programmes or rules for conduct and conflict of interest.

It seems that little has been done to improve the quality of institutional anti-corruption plans, as it was recommended. The Government of Azerbaijan reported that the CCC conducted trainings and roundtables with the involvement of international experts to teach public institutions on how to develop institutional action plans. Also, each institution shall submit its draft action plan to the CCC and, as the monitoring team was confirmed during the on-site visit, the CCC approves them. It may be worthwhile to develop a more thorough methodology for designing anti-corruption plans and arrange regular trainings for the respective staff in the institutions.

The monitoring team heard during the on-site visit that with anti-corruption measures are entrusted internal audit units, internal control units, internal security and internal investigation divisions depending from institution. Sometimes human resources departments ensure some anti-corruption functions. Azerbaijan may wish to centralise information about units in charge of implementing institutional anti-corruption plans in central and regional institutions and create their network. The functions of anti-corruption units within the institutions could be unified, entrusting them, for example, to lead the development of analysis of corruption risks, suggesting the most suitable measures to prevent them, development and updating anti-corruption plans and monitoring of their implementation, conducting trainings for personal, providing advice on behaviour in situation of potential conflict of interests, conduct internal investigations or others.

As regards the **measures at municipal level**, Azerbaijan reported that the Centre for the Work with Municipalities in the Ministry of Justice is leading the efforts of prevention of corruption in municipalities. The Centre conducts trainings and audits of the implementation of the municipal legislation. The monitoring team heard that the Centre for the Work with Municipalities submitted in a number of cases materials concerning violations in the municipalities to the ACD, which served as grounds for launching criminal investigations. The ACD's proposals to the Centre have led to reforms limiting some discretionary powers of municipalities.

It is worth noting in this respect that, according to the Law on Administrative Supervision under the Municipalities, Ministry of Justice of Azerbaijan oversees compliance of municipalities and their officials with the legislation in Azerbaijan. Under the paragraph 4.2 of the Article 4 of this Law, "administrative supervision of activities of municipalities is performed only from the point of view of respecting the rule of law". Article 5 of the Law states that administrative supervision may be triggered: if there are sufficient grounds evidencing that there is a contradiction between municipal legislative acts and the Constitution, laws of the Azerbaijani Republic, presidential decrees and resolutions of the Cabinet of Ministers; or in case there is a statement by an individual or legal entity or state authority that their rights or legal interests have been violated by the municipalities. These provisions indicate that the Ministry of Justice has not been designated to execute anti-corruption policy functions with regard to local governments. It may react on facts of corruption only retroactively – upon the statements of state agency or individual if they considered their rights or interests have been violated.

Moreover, it seems that the CCC should play a more prominent role in developing anti-corruption policy with respect to the municipalities. According to its Statute, the CCC acts as a specialized agency in the field of prevention of corruption. The main objectives of the CCC are: participate in the formulation of the state anticorruption policy and coordination of public institutions in this area; analyse the state and efficiency of the fight against corruption; supervise the implementation of the State Program against Corruption; collect, analyse and summarize information regarding corruption related law violations and make proposals to the appropriate public institutions.

Conclusions

The monitoring team acknowledges the efforts of Azerbaijan to implement its second anti-corruption policy and adopt a new anti-corruption action plan. Some legal and institutional developments have taken place and some practical measures, such as creation of ASAN centres-State Service for Social Innovations and Service to Citizens, seem to have positive effect and demonstrate willingness to fight corruption. At the same time, a number of reforms remain unaccomplished and seem rather formalistic. There is the lack of clarity about the strategic basis for anti-corruption policy. The mechanism for civil society to participate in assessing the anti-corruption policy was not improved. There is little evidence on periodical surveys on corruption or publishing corruption surveys. While all institutions seem to have anti-corruption action plans, their quality and effective implementation remains to be boosted up. There is little evidence also that anti-corruption measures at municipal level would be properly led and enhanced.

The monitoring team believes that in the area of anti-corruption policy there is a room for improvement. The monitoring team encourages the Government of Azerbaijan to develop such anti-corruption policy, which is based on an in-depth analysis of corruption and its causes and reflects a clear vision of main corruption problems and necessary remedies, which promotes research on corruption and draws on lessons learned from previous anti-corruption efforts. It is important to build in the anti-corruption policies a clear and efficient implementation and monitoring mechanism. Finally, the Government should develop, monitor and implement anti-corruption measures, pro-actively involving all the key public and local institutions and various parts of Azerbaijani society, in particular the civil society organisations. As a result, the implementation of the anti-corruption policy should lead to practical and measurable changes in the situation with corruption.

Azerbaijan is partially compliant with the recommendation 1.1.-1.2.-1.3.

New Recommendation 1

- *Develop a methodology and conduct, on a regular basis, surveys of corruption situation in Azerbaijan and assessments of anti-corruption efforts. Their outcomes should be widely disseminated, discussed and used in the anti-corruption policy.*
- *Ensure the existence of a strategic basis of anti-corruption policy taking into account the results of the assessment and the discussion and reflecting main corruption problems in different areas, priorities and measures to fight corruption in a systematic way; effectively implement, monitor and regularly review it.*
- *Develop common guiding principles and methodology for anti-corruption plans by state and local public institutions, promoting their own corruption risk assessment, and enforce these plans; ensure units responsible for implementation of anti-corruption plans in state and local public institutions and promote their networking under the umbrella of the competent central government anti-corruption institution.*
- *Analyse corruption problems at municipal level and develop measures to target them. Ensure a central institution has clearly defined mandate and takes leadership in prevention of corruption in local governments.*

Public Participation, Awareness Raising and Education

Previous Recommendation 1.4.-1.5.

Enhance mechanisms to ensure civil society participation in the work of the Commission on Combating Corruption. Expand civil society participation in the Working Group on Legislation.

Develop mechanisms for civil society involvement in sector specific anti-corruption activities as well as in the activities of local authorities.

Increase efforts to raise public awareness through comprehensive and sustained campaigns, including for target groups, with the focus on practical skills needed to prevent and fight corruption.

Civil society's participation in the Commission on Combating Corruption and assessment of anti-corruption strategy

In the 2012 progress report Azerbaijan reported that the number of NGOs participating in the work of the CCC is increasing. In 2013, the answers to the questionnaire say that the number of NGOs participating in the Working Group on Legislation has increased considerably. The monitoring team found limited evidence for these statements. It appears that the Government involved some civil society organisations in the development of the 2012 anti-corruption policy, but it is not clear how widely. The monitoring team found that two NGOs and one independent expert are permanent members in the Working Group on Legislation under the Commission and four NGOs participated in the most recent sessions of the CCC. However, no NGO is a permanent member of the CCC.

The Azerbaijani authorities informed on various efforts to further involve civil society. The state increases financial support to NGOs for activities in the anti-corruption area. More anti-corruption projects implemented by NGOs are supported by the Council on State Support to Non-governmental Organizations under the President. The Council included anti-corruption among its priorities for financing in 2010, on the basis of the initiative coming from the CCC. 33 projects of NGOs have been financed since 2010 covering such topics as, for example, public awareness and research. In 2013, the NGO Support Council held a tender and awarded a grant to a consortium of five NGOs to support raising awareness about the Open Government Initiative National Action Plan 2012 – 2015. Also, the CCC provides financial support to anti-corruption projects of NGOs. Financial support to anti-corruption projects implemented with civil society organisations is foreseen also in both, the NACAP 2012-2015 and the Action Plan on Open Government Initiative National Action Plan 2012 – 2015.

Further, there are public councils with civil society representatives in some public institutions, for example in the Ministry of Taxes on issues of simplification and digitalization of tax procedures or in Ministry of Labour and Social Security of Population, involving TI Azerbaijan.

Besides, the monitoring team welcomes the Public Participation Bill aiming to introduce public hearings, public discussions and mandatory establishment of public councils adopted recently in second reading in the Parliament of Azerbaijan and encourages to promulgate the law, and to ensure its effective implementation.¹⁶

In the meantime, some NGOs during the on-site visit expressed concerns about limited opportunities to participate in the development of anti-corruption policies and to monitor their implementation. The monitoring team heard concerns from civil society representatives about the lack of effective co-operation among civil society and the state agencies. In particular, such problems were mentioned as limited opportunities to present civil society's point of view to the state authorities, unwillingness to take into account recommendations by NGOs or weak application of the access to information legislation. Overall, a number of international organisation's reports express concerns

¹⁶ The text of the draft law is available at www.meclis.gov.az/?/az/law/459/2. See for an overview, for example, www.azernews.az/azerbaijan/51582.html.

about the weakness of the civil society in Azerbaijan and that it lacks resources and faces many legal and practical impediments.¹⁷

As mentioned earlier in this report, for Azerbaijani authorities the co-operation with civil society in the anti-corruption field is rather practical than formal. The monitoring team believes that the sustainability of government and civil society co-operation may be a challenge and it encourages the Government to ensure formal obligation to consult civil society, as foreseen in the Public Participation Bill.

Regarding **civil society's participation in the assessment of anti-corruption policy**, in the progress reports in 2011 and 2012 the Government of Azerbaijan reported that measures were taken to improve it. In 2012, civil society was consulted in the elaboration of the new anti-corruption policy. In 2010, the government commissioned to the Information Network of NGOs on Combating Corruption research project "Corruption situation in the country", which included an assessment of the efficiency of the 2005 – 2011 anti-corruption strategy and provided recommendations to improve anti-corruption policy. The representatives of the civil society confirmed to the monitoring team that the CCC assisted NGOs in obtaining information from state agencies in this project and participated in discussions of the report. The final report was presented to the CCC and, according to NGOs, its recommendations have been used by the Government, including in the new, 2012 anti-corruption policy documents.

Despite these positive steps, it does not seem that specifically a mechanism for civil society's participation in the assessment of the anti-corruption policy was put in place since the second round report in 2010. In its answers to the questionnaire, the Government of Azerbaijan notes that the relationship between the CCC and civil society is more practical rather than formal. The monitoring team strongly welcomes this informal co-operation, but suggests this approach to become more sustainable. The monitoring team is of the opinion that clarifying rules requiring state bodies to involve civil society representatives on a permanent basis in developing the anti-corruption policy and assessing its implementation would be a positive development. Making the relations between the state and civil society formal and mandatory would provide a stronger and clearer basis for the civil society to contribute to the anti-corruption efforts in Azerbaijan. For example, a mechanism could be set up under the authority of CCC to carry out monitoring and evaluation of the implementation of anti-corruption policy, like the working group on improving legislation, which includes civil society.

The NACAP 2012-2015 and the Open Government Initiative National Action Plan both call for continued involvement and co-operation with the civil society in the fight against corruption, including in the assessment of the implementation. In particular, the NACAP 2012-2015 provides for the involvement of civil society in the oversight of implementation of the Action Plan¹⁸.

¹⁷ See, for example, Council of Europe (2011), *Opinion of the European Commission for Democracy Through Law (Venice Commission) on the Compatibility with Human Rights Standards of The Legislation on Non-Governmental Organisations*, Opinion #636/2011, CDL-AD(2011)035, [www.venice.coe.int/webforms/documents/CDL-AD\(2011\)035-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2011)035-e.aspx) or Freedom House (2013), *Nations in Transit 2013*, www.freedomhouse.org/report/nations-transit/2013/azerbaijan.

¹⁸ Information by the Commission on Combating Corruption on adoption of Action Plan on Open Government and Action Plan on Combating Corruption of the Republic of Azerbaijan, a notice published on 7 September 2012 at www.antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=301.

Involving civil society in sector-specific activities and at local level

Joint round tables were organized by *Transparency International Azerbaijan* with such public institutions and companies as *Azerigaz*, power distribution company in Baku *Baki Elektrik Shebeke* or the State Committee on Property Affairs. These events allowed raising awareness among public institutions on the importance to be accountable and responsive and contributed to increasing public trust. Further, the Public Union for Traders and Producers held a series of regional seminars for local authorities and non-state actors. These events contributed to awareness raising and enhanced public discussions about the results of the National Strategy 2007-2012 and also involved the ACD.

Seminars and round tables targeting awareness rising are very important component of anti-corruption efforts. Moreover, in the opinion of the monitoring team, civil society potential could be used in a much wider and more effective way, for example, providing analysis of risks of corruption, evaluating effectiveness of authorities' efforts in fighting corruption or increasing transparency, assessing the level of support and trust in the government. The monitoring team was not informed of any efforts to involve NGOs in such activities at the level of specific sectors or at local level.

Anti-corruption awareness raising

Azerbaijan reported on such anti-corruption awareness raising activities as articles in newspapers, regular TV appearances and press-conferences by the CCC and the ACD, regional roundtables and public discussions by NGOs with support of the CCC and the ACD. Such tools as the ACD's hotline and CCC's website-complaints were promoted. Media coverage of sting operations accentuated the fact that the operation was initiated as a result of information received via hotline. It appears that the number of calls increase after such publications. At sector-level awareness raising activities targeted corruption in social security, education and municipalities.

In the future, a number of awareness raising activities are foreseen in the NACAP 2012-2015: annual evaluation of the implementation of the Action Plan and disclosure of the results to the public; special TV and radio programs and debates; awareness raising campaigns to promote public trust in state institutions; anti-corruption modules and contests in schools and high and secondary educational institutions; and leaflets and similar promoting materials.

Azerbaijani authorities concurred that the result and impact of awareness raising activities are long-term and depend on the success of breaking the scepticism of citizens and gaining citizen's trust. Judging from the results of the above-mentioned 2009 public opinion survey "Assessment of corruption level in Azerbaijan" there is a need to seriously improve the work on rising awareness. For instance, more than 60 per cent of respondents stated that they are not sufficiently informed about fight against corruption. A large majority believes that corruption means just "bribery". The majority answered that "corruption is accepted as a common case" (42 per cent in the capital, 37 per cent in regions), "people show no interests in fighting against corruption" (34 per cent in the capital, 20 per cent in regions), "people are very patient towards corruption cases" (20 per cent in the capital, 10 per cent in regions). Another important figure reflecting the trust in the government is only 2 per cent of population in the capital and 3 per cent in regions who have complained about officials to the state authorities.

The view of the monitoring team is that the effectiveness of awareness rising campaigns could be increased if they are adapted to the targeted institution, sector or social group and to an envisaged outcome or impact it should make. It is also worthwhile to conduct periodical assessment of

awareness rising activities, as part of periodic corruption and impact of anti-corruption efforts' assessments, to determine the effectiveness of such campaigns and their impact on corruption.

Conclusions

The monitoring team did not confirm that civil society's participation in the work of the CCC and its working groups was enhanced or formalised since 2010. Also generally, in its opinion, civil society potential could be used in a much wider and more effective way in sector-specific activities or at the local level, for example, providing analysis of corruption risks, evaluating the effectiveness of authorities' work to fight corruption and increase transparency, etc. Finally, the part of the recommendation asking to conduct systematic and comprehensive awareness raising, targeting most problematic groups, with the focus on practical skills needed to prevent and fight corruption, remains unimplemented.

While the state financial support to NGOs seems reasonable and necessary, it should not cause dependence of these NGOs or to reduce their potential for productive criticism government's efforts to fight corruption. It is key for the Government to ensure grants are distributed in an open and competitive manner and support is spread among a variety of civil society organisations.

Azerbaijan is partially compliant with the recommendation 1.4.-1.5.

New Recommendation 2

- *Ensure more effective and regular involvement of civil society in the development, implementation and monitoring of anti-corruption policies, research on corruption and in the work of the CCC, for example, by including a representative of the civil society as a member of the CCC.*
- *Set up a mechanism under the authority of CCC to carry out monitoring and evaluation of the implementation of anti-corruption policy including civil society.*
- *Implement well-targeted awareness raising activities in the most corruption-prone sectors and assess their outcomes.*

Specialized anti-corruption policy and coordination bodies

Previous Recommendation 1.6.

Strengthen the role of the Commission on Combating Corruption in public awareness raising and in anti-corruption training for public administration, and in anti-corruption research.

Focus the efforts of the Commission at the implementation of the priority measures of the strategy, such as adoption of legislation and sector specific action plans.

Strengthen the capacity of the Commission and its Secretariat to verify asset declarations of public officials.

The Commission should collect and analyse information about various violations of anti-corruption provisions gathered by ministries and agencies, including the internal investigative sections within each agency, based on standardized reporting mechanisms.

The monitoring team did not find information about any **awareness rising** campaign designed and implemented by the CCC. Concerning the awareness raising, the 2011 progress report notes that

with the support of the CCC two web pages were set up, in 2010, www.rusum.az on state tariffs and, in 2011, www.etika.az on ethics. The answers to the questionnaire in 2013 state that members of the CCC and its Working Groups regularly appear in the media, highlighting implementation of anti-corruption measures.

As regards the **anti-corruption training**, the answers to questionnaire only note that it is an indispensable element of training in all public institutions. No information was provided with regard to the number of trainings, their subject and categories of public officials that took part in such trainings.

Regarding **anti-corruption research**, there seems to be the above-described corruption research project “Corruption situation in the country” conducted by the Information Network of Anticorruption NGOs in 2009 and 2010 and commissioned by the CCC. The monitoring team learned that the CCC provided its methodology. In addition, in April and May 2012 the CCC commissioned two surveys on corruption on national and sectoral levels and a separate one on private sector corruption, which were used in the elaboration of the NACAP for 2012 – 2015. However, the CCC did not play a leading role in planning and conducting anti-corruption research in general.

It is stated in the February 2012 progress report that in elaborating the NACAP 2012-2015 it is foreseen to give the CCC a more prominent role in all the three areas of concern: awareness raising; anti-corruption research; and coordination of anti-corruption training.

More could be done **to focus CCC’s efforts on the implementation of priority measures in the anti-corruption strategy**. So far the efforts of the CCC focused on gathering reports on the status of implementation by responsible state agencies and disseminating information about anti-corruption measures through mass media. The monitoring team encourages the CCC to prioritize anti-corruption measures and focus on their implementation in practice.

Regarding **verifying asset declarations**, the CCC is entitled by law to verify asset declaration of certain category of officials. As further described in the Part 3 of this report, no measures have been taken to strengthen the capacity of the CCC and its Secretariat to verify asset declarations of public officials since the second round of monitoring in 2010, given that this system is not operational and declarations are not submitted to the CCC.

In the area of **reporting of violations by ministries and agencies**, the CCC is entitled, by its Charter, to receive information about corruption violations from ministries and agencies, examine it and reflect in its reports or send to the relevant agency, including General Prosecutor’s Office, for further examination. No information was provided how this part of the recommendation was addressed.

More generally, important issues remain regarding the effectiveness of the CCC. The Article 6 of the UNCAC calls for granting the anti-corruption bodies the necessary independence to enable them to carry out their functions effectively and free from any undue influence. In this respect, it is encouraging that the status, powers and competences of the CCC are established by Law. Meanwhile, the CCC consists of 15 members appointed as follows: five members by the President of the Republic of Azerbaijan, five members by the Parliament, five members by the Constitutional Court. The CCC is composed mainly of high-ranking public official and politicians. However, there are no criteria for appointing and dismissal of the members of the Commission. In the view of the monitoring team, this raises concerns about CCC’s independence from possible political influence, outside pressure and generally impartiality when it comes, for instance, to evaluation of anti-corruption measures or possible allegations of corruption in their spheres of responsibilities.

Moreover, international standards urge to provide the anti-corruption institutions with necessary material resources and specialized staff (Article 6 of the United Nations Convention against Corruption). The work of CCC is supported by a small Secretariat of four persons. There are also working groups to support the Secretariat. Still under its Statute the CCC is entrusted with a very wide scope of competences in different spheres of anti-corruption policy, and the monitoring team is concerned whether these resources are sufficient.

Conclusions

As explained above, the CCC has not achieved visible results in such important spheres as measuring corruption and conducting surveys on corruption, assessing corruption risks and integrity of public institutions, in organizing effective awareness rising work, etc. In the view of the monitoring team, it is related to its limited capacity and eventually risks related to its independence.

The monitoring team encourages the Government of Azerbaijan to conduct a needs and capacity assessment in the area of co-ordination of its anti-corruption efforts, in particular the capacity of the CCC. It may be advisable to evaluate such issues as: political context and institutional framework; capacity to engage stakeholders, including the capacity to identify, motivate and mobilize stakeholders, create partnerships and networks, promote engagement of civil society and the private sector, manage large group processes and open dialogue, mediate divergent interests, establish collaborative mechanisms; capacity to assess a situation and define a vision and mandate; capacity to formulate policies and strategies; capacity to budget, manage and implement, including the capacity to formulate, plan, manage and implement projects and programs; capacity to evaluate¹⁹.

Azerbaijan is partially compliant with the recommendation 1.6.

New Recommendation 3

- ***Conduct an assessment of co-ordination of anti-corruption efforts in Azerbaijan, in particular the capacity of the Commission on Combating Corruption and its Secretariat.***
- ***Take measures to ensure a more active role of the Commission on Combating Corruption in conducting its mandate, ensure the necessary degree of independence and take measures to better resource its Secretariat.***

¹⁹For details, see UNDP (2009), *Methodology for Assessing the Capacities of Anti-Corruption Agencies to Perform Preventive Functions*, UNDP, 2009, http://europeandcis.undp.org/uploads/public1/files/Methodology_for_Assessing_the_Capacities_of_Anti_Corruption_Agencies_to_Perform_Preventive_Functions.pdf

2. Criminalisation of Corruption

Previous Recommendation 2.1.-2.2.

Consider amending the Criminal Code to include a separate provision criminalising illicit enrichment.

Ensure criminalisation of “promising” or “offering” a bribe, including making these provisions applicable to Article 312-1, Trading in Influence.

Develop cases based on non-material benefits as an object of bribery.

Introduce into the legal system the concept of responsibility of legal persons for corruption-related criminal offences.

Illicit enrichment

Azerbaijani authorities reported that consideration has been given to introduction of the “illicit enrichment” provision into its legislation and that its introduction along with other legislative proposals was included into the draft Anti-Corruption Strategy as a target measure.²⁰ Further to this effect, the General Prosecutor’s Office reportedly put forward a formal proposal to the Chief Legislative Department of the Ministry of Justice. Azerbaijan authorities reported that this proposal was rejected due to the fact that “it would require amendment of the Constitutional provisions”. 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.²¹

During the on-site visit, the authorities of Azerbaijan stated that there are competing views as to the need and usefulness of introducing the offence of “illicit enrichment” in the criminal law, taking into consideration the risk of abuse that the enforcement of such a criminal offence might bring. In addition, some references were made to the offence of “legalization of illegally obtained property” provided by Article 193/1 and 194 of the Criminal Code that the investigative authorities claimed to be using instead. This offence however criminalizes money laundering covering other types of illegal conduct and does not cover situations with a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income, as stipulated in the UNCAC standard.

“Promising” or “offering”

Since adoption of the 2nd round of monitoring report, Azerbaijan has been reporting on its legislative efforts to bring its legislation in line with UNCAC and CoE Criminal Law Convention, as well as Recommendation of the IAP in regards to “offer” and “promise”. The legislative drafting efforts came to fruition with the adoption of the Criminal Law Amendment Act in 2011. This law introduced the above elements both into active and passive bribery, as well as trading in influence.

The rather recent amendments to the law can partially account for the lack of cases on offer and promise. To this end, Azerbaijan prosecutors met at the on-site visit explained that historic

²⁰ See Azerbaijan Progress Report, 22-24 February 2012, p.4.

²¹ For more information, please see OECD (2013), Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2009-2013, Fighting Corruption in Eastern Europe and Central Asia; p.60

corruption cases cannot be qualified under this new element which limits the number of cases further. Azerbaijan authorities reported that four cases have been opened under this qualification to date.

However, the discussions held with the practitioners met at the on-site visit highlighted the fact that the practice of investigating the bribery offences is rather traditionally oriented to proving the offence of bribe giving or receiving and not instances when the transaction – or pact – is incomplete. The prosecutors and investigators also pointed out that in practice the stages of this offence are difficult to qualify and they are faced with evidentiary challenges. Although there is no legal requirement for the prosecutor to prove the existence of a “pact” between the bribe-giver and the bribe-taker, in practice, bribery offence is considered proven when the bribed public official is caught in the act of receiving the bribe. The courts seem to expect this level of evidence.

Non-material benefits

Azerbaijan authorities reported no practice on non-material benefits to date in bribery cases, explaining that the major challenge the investigators and prosecutors face when working on such cases is the perception in the society that the benefit shall be of material nature, and that in turn this perception leads to placing a higher priority to the cases with material benefits and in which such damages can be restored.

It appears that, in practice, the prosecutors consider that they have better chances to obtain a conviction decision in court in a corruption case if they can indicate a concrete, tangible, material benefit pursued by the bribed official.

The offence of abuse of powers, which is criminalised by Section 308 of the Penal Code, also contains a provision on the obtaining of illegal advantage. Azerbaijan has developed a body of case law, where public officials were prosecuted for acting or failing to act in exchange for 'interest other than material gain', such as doing a favour, obtaining a good image in the society, etc. Therefore Azerbaijan is invited to extend this practice to the application of bribery provisions of the Penal Code.

Responsibility of legal persons

In March 2012 Azerbaijan introduced amendments in the Criminal Code whereby establishing liability of legal persons for a number of offences, including corruption and money laundering. However, newly introduced liability of legal persons for corruption offences cannot yet be applied in practice because the criminal law provisions have not yet been correlated with criminal procedural law provisions. To this end, Azerbaijan authorities reported that they are working on the development of the draft Enforcement Rules for the Criminal Law Measures on Legal Persons as part of the National Anti-Corruption Action Plan for 2012-2013. It is important to note that the analysis below is therefore of largely theoretical nature. In order to determine whether new provisions comply with international requirements, this section looks into a number of elements contained within the requirements under UNCAC, CoE Criminal Law Convention, as well as OECD Foreign Bribery Convention²².

²² While Azerbaijan is not a signatory to this Convention, this instrument has developed most practice in application of this principle and can be considered as an appropriate reference for the good practice and guidance; and according to the methodology of the 3rd round of monitoring its objective is “to promote compliance of the participating countries with the UNCAC requirements and with other international anti-

Scope of the liability

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 offence was committed as a result of failure to oversee such employee by the mentioned officials.

Chapter 15-2 of the Criminal Code covers a broad range of corruption offences: establishing liability for abuse of office, passive and active bribery, trading in influence.

Definition of legal person

Provisions of the Chapter 15-2 of the Criminal Code that were made available by the Azerbaijan authorities do not define the legal person. The language of Article 99-4.5 that lists only state, municipalities, and international organisations as entities not covered by the law; as well as Article 99-8.4 that states “dissolution of a legal person shall not be applied to ..., state (municipal) enterprises, as well as legal persons control of package or stocks (shares) of which belongs to the state (municipality)” might be interpreted that the liability covers any entity having status of legal persons under the applicable national law, and that state-owned and state-controlled enterprises fall under the scope of these provisions. Furthermore, the discussions with the authorities met at the on-site visit confirmed that they have the same interpretation of these provisions and Azerbaijan authorities after the on-site visit clarified that definition of a legal person is contained in the Chapter on Legal Persons of the Civil Code.

Autonomous liability

Absence of the case practice makes it difficult to assess whether the existing legal provisions cover the situations of the autonomous liability of legal persons. However, the experts considered that some of the language of the Articles 99-4.4 and 99-9 of the Criminal Code may be interpreted as requiring criminal proceedings against natural persons to be opened, as a precondition to instituting proceedings against the legal person. For instance, the word “termination” from Article 99-4.4 stating that “Termination of criminal prosecution in respect of the physical person provided by Article 99-4.1 of the present Code, in cases provided by law, shall not prevent application of the Criminal Law Measure to the legal person.” might suggest that a prosecution has to be opened first. As for Article 99-9 of the Criminal Code, it establishes a clear connection between liability of a legal person and a physical person. It states “exemption of legal entities from the application of criminal law measures in cases when a person who committed crime in favour or to protect interests of a legal entity is relieved from responsibility in the manner provided for in Article 75 of this Code in connection with the passage of statute of limitation time, criminal law measures shall not be applied against the legal person.” However, the Azerbaijani authorities maintain that liability of legal person is not dependent on the prosecution of the natural person and is autonomous. Criminal cases can be launched in rem without identification of the natural perpetrator and Article 99-4.4 was introduced as a safeguard to enforce liability of legal person without prosecution or conviction of natural person.

corruption standards, such as the OECD and the Council of Europe instruments, and with international best practices.” (See Work Programme for 2013 – 2015 adopted on December 11 2012).

If the concerns of the monitoring experts are correct, then such situations, as for example, when a decision to commit a crime was taken by the collegial organ of a legal person through a secret vote, and with no possibility to identify who voted for and who voted against the decision will not be covered by the Azerbaijani legislation. This is just one of the many scenarios that will not be covered when liability is not autonomous (natural person absconds, could not be established, there is not enough evidence to prove guilt, etc.).²³ The authorities of Azerbaijan clarified that these scenarios are covered by the legislation and that autonomous liability of legal persons is ensured. In the opinion of the evaluators, the practice will have to confirm this interpretation.

In the inverse situation Article 99-4.2 clearly states that imposing the criminal liability on the legal person should not exclude the criminal liability of the natural person who perpetrated or participated in the commission of the same offence.

Sanctions

The following “criminal law measures” can be applicable to legal persons under Chapter 15-2:

- fine;
- special confiscation;
- deprivation of the legal person of the right to engage in certain activity; and
- dissolution of a legal person.

Concrete sanctions depend on the following circumstances:

- nature and degree of public danger of the crime;
- 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; and
- 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.

It is difficult to determine effectiveness, proportionality and dissuasiveness of the criminal sanctions applied, including monetary sanctions, at the moment. In theory it appears that fines, while offering a fairly low range between 50,000 to 150,000 Manats²⁴, can be alternatively calculated on the basis of the “damage (obtained income)” and go up to 5 times of their value, and therefore could establish an effective and dissuasive deterrent.

Investigations of the cases involving legal persons

All of this remains largely a theoretical discussion and until there is a correspondent to the Chapter 15-2 in the Criminal Procedural Code it is difficult for practitioners to foresee and for the monitoring team to make any meaningful conclusions in regards to practical challenges that will arise in application of the offence.

²³ For more information, please see OECD (2013), Anti-corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2009-2013, Fighting Corruption in Eastern Europe and Central Asia; p.64

²⁴ The amount is almost equal to Euros, according to current exchange rate 1 Azerbaijan Manat equals 0.99 Euros.

However, it became obvious from the discussions with the practitioners held at the on-site visit that, on one hand, there is a need to further emphasize importance and relevance of sanctioning legal persons for corruption offences, and on the other hand, to address the lack of understanding of this new concept by Azerbaijan legal community. Furthermore, the investigators, prosecutors and judges will be more likely to overcome reluctance to pursue such cases once they are properly trained on how to practically enforce these new provisions and carry out an investigation and trial with a legal person as a defendant. According to Azerbaijan authorities they are already working on development of the guidelines to promote the application of the legislation on liability of legal persons. The monitoring team did not have an opportunity to review the draft of the guidelines and could not make a preliminary assessment of its contents; it is also not clear what would be the target audience of these guidelines, and how effectively they will be used.

Finally, some of the interlocutors remarked during the on-site visit, that one could not expect many cases of corruption involving legal persons because very few reports/complaints on active bribery in general are being made. This appears to reflect a general trend in detection, investigation and prosecution of corruption offences in Azerbaijan. The vast majority of the bribery cases concern passive corruption and the law enforcement authorities appear to heavily rely on denunciations by solicited persons or by the public officials who were offered a bribe in order to open an investigation. Law enforcement representatives met at the on-site visit indicated that in theory an investigation could be commenced on the basis of information appearing, for example, in the media. However, many of them expressed open scepticism regarding this important source of allegations and said that allegations reported in the media were often vague, inaccurate, and difficult to follow up on, and, therefore, rarely proved to be a sufficient basis to launch a formal criminal investigation. Such a reactive approach will considerably weaken the investigatory reach and undermine potential for effective detection of corruption committed both by physical and legal persons. The expert team noted the positive developments in the area of detection in the recent cases investigated by Anti-Corruption Department.

Conclusions

Azerbaijan at present does not criminalize illicit enrichment nor any other means to confiscate unexplained wealth. The monitoring experts take note of the point raised by Azerbaijan on availability of some other means in the course of the investigation, but they fall short of formal criminalization. Although this is not a mandatory requirement under the UNCAC, the Azerbaijan authorities might wish to further explore most applicable manner to address this issue in the future.

Criminal Law (Amendment) Act 2011 brings Azerbaijan's criminal offence provisions in line with the requirements of the recommendation in regards to the "offer" and "promise" in active and passive bribery, as well as trading in influence. Practical application of this law in regards to these newly introduced elements however appears to be a challenge and further efforts need to be made to develop case practice.

First and foremost, Azerbaijan will need to change the conservative mind-set of the courts and law enforcement authorities. This could be achieved through targeted trainings on the new elements of the bribery offence for both judiciary and law enforcement. Azerbaijan will also need to take steps to encourage proactive use of these new elements by investigators and prosecutors. This could also be achieved through targeted trainings on methods of detection, investigation and proving of the new elements of the bribery offence, as well as through development of methodological recommendations on their use. The criminal intent ought to be proven with any valid means of evidence and the possibility of using special investigation means should ease the task of the

investigators to prove all forms of bribery offences. Court practice should therefore be further followed up on to see the progress made and to address challenges which will appear as case practice develops. And finally, a higher priority must be placed on pursuit of these elements in law enforcement regulatory instruments; this would send a reinforcing top-down signal.

A continued lack of enforcement of “non material benefits” as objects of bribery raises serious concerns. It is true that the undue benefits encountered in most corruption cases are of economic nature. However, in some situations, the bribe cannot be immediately translated into an economic value, for instance: when the bribe-giver offers to the public official, in exchange of the action/inaction required from him/her, a position that is not necessary better paid, but which has other advantages (i.e., smaller workload, better visibility, political connections, etc.). These types of cases require the same level of attention and diligence if not more from the prosecutors and investigators; their proving is more complicated and requires courts to be more accepting of the circumstantial evidence. Therefore, the prosecutors and investigators in Azerbaijan could benefit from a more specialized training on detecting and investigating bribery cases that go beyond the giving/receiving of money or other tangible objects and build on the existing practices applied in regards to other corruption offences. Azerbaijan courts would similarly benefit from awareness raising and training on non-material benefits as an object of bribery, as well as from development of the guidance on interpretation and application of this concept.

The monitoring team congratulates Azerbaijan for being the second country of the Istanbul Action Plan that introduces criminal liability of legal persons. Newly introduced provisions of the Criminal Code concerning the liability of the legal person seem to be largely in line with international standards. Chapter 15-2 of the Criminal Code appears to bring Azerbaijan in compliance with international requirements in relation to the scope of the liability covering a broad range of corruption offences. It also appears to cover both natural persons in leading positions (the list is almost identical to the wording of the Article 18 of the CoE Criminal Law Convention), as well as situations where a person in leading position fails to prevent commission of offence for the benefit of the legal person through a failure to supervise. It appears that the situation when the official in leading position failed to implement adequate internal controls would be also covered by these provisions but this have to be clarified through practice. Furthermore, Article 99.4.1 appears to be in line with the CoE Criminal Law Convention by requiring that the offence is committed “for the benefit of the legal person”. Sanctions in the form of fines can in theory establish an effective and dissuasive deterrent but their actual application and how they will be calculated by courts will be key to determining real compliance with the standard. Other types of “criminal measures” also appear to fall within the spirit of the international standards, and if properly applied by the courts would ensure Azerbaijan’s compliance with its obligations under the Conventions.

There are a few elements which require special attention, however. The first and most important one relates to autonomy of the liability, if such autonomy is not clearly established by Azerbaijan law, it will fall short of the international standard. The monitoring team therefore calls Azerbaijan authorities to address this issue as a matter of urgency. The second one concerns circumstances which are being evaluated when the sanction is selected. The last criteria of “characteristics of the legal person... benevolent or other publicly useful activities it was involved in” appears to be vague and can be used to arbitrarily release company from liability. Azerbaijan should consider replacing it, and/or complimenting the list with existence of effective internal controls and compliance programmes. To this end, it is recommended to use good practice of other countries and introduce for companies, which are liable for an offence committed in their interest, as a mitigating factor or an exemption from liability if they implemented such programmes and it can be shown that perpetrator acted in violation of such measures. (See also section on Integrity in the private sector).

Most importantly, however, liability of legal persons needs to be tested in practice, which is a task still ahead of Azerbaijan. To effectively detect, investigate and prosecute cases involving legal persons, in addition to clarity and fullness of the offence, proper investigative tools and well trained investigators and prosecutors are necessary, as well as policy prioritization should be given to these types of crimes. The judges should also be well aware of the offence and receive proper training and guidance on its interpretation.

Firstly, Azerbaijan authorities will need to develop clear Enforcement Rules for the Criminal Law Measures on Legal Persons. Guidelines will need to be developed as to how the special investigative means provided by the Law on Search and Detective activities can be applied against a legal person; how preventive measures can be ordered against the legal person during the investigation (e.g.: seizure of the proceeds of crime in view of confiscation; freezing of certain transactions; suspending of some activities); how a legal person will stand in court; what happens if the representative of the legal person is him/herself a defendant in the same case, etc.

Secondly, the guidelines and training measures which are reportedly in the process of preparation will need to target the investigators, the prosecutors and the judges. Training curricula which will be developed should similarly target all members of the criminal justice profession and be based not only on the material and procedural law but also successful examples from other jurisdictions.

Finally, to improve general enforcement of the corruption offences covered in this recommendation, more efforts need to be made in order to increase the capacity of the law enforcement authorities in Azerbaijan to proactively detect corruption offences committed both by physical and legal persons. Special attention should be given to corruption prone sectors, such as the public procurement, licensing and award of concessions, etc. Various potential sources for detection should be pursued, including media reports, referrals from tax inspectors, inspectors of the Accounts Chamber and private auditors, as well as Suspicious Transaction Reports from the FIU. In the opinion of the monitoring team this will considerably enhance the effectiveness of Azerbaijan's general enforcement efforts, as well as enforcement of offences covered in this section in particular.

Azerbaijan is largely compliant with the recommendation 2.1.-2.2.

New Recommendation 4

- ***Develop training curricula and organize training sessions for investigators and prosecutors with regard to detecting, investigating and prosecuting of bribery offences, when the bribe was merely offered or promised, as well as cases based on non-material benefits as an object of bribery.***
- ***Introduce criminal procedure provisions for the enforcement of the criminal liability of legal persons that will enable investigators and prosecutors to effectively pursue corruption cases that involve legal persons. Ensure autonomous nature of the corporate liability, namely that it is not dependent on investigation, prosecution or adjudication of the case against a natural person.***
- ***Develop guidelines for investigators, prosecutors and judges on the application of both substantial and procedural rules on criminal liability of legal person.***
- ***Organize training sessions for the above mentioned practitioners based on the legislation and the guidelines for practical application and use successful examples of application of this concept by other jurisdictions.***
- ***Consider introducing in the legislation an exemption (defence) from liability for legal persons with effective internal controls and compliance programmes.***
- ***Facilitate the detection and investigation of newly introduced provisions and new elements of the previously existing corruption offences:***

- (i) increase proactiveness of the law enforcement and prosecution authorities notably through an increased use of analytical tools;*
- (ii) use more actively other detection tools in addition to intelligence information gathered by law enforcement, such as media reports, information received from other jurisdictions, referrals from tax inspectors, auditors and FIUs, as well as complaints received via government websites and hotlines, as well as information from other complaint mechanisms, as a basis for launching investigations.*

Previous Recommendation 2.3.

Ensure a proper criminalisation of bribery of foreign public officials by introducing a separate criminal offence in the Criminal Code or by expanding the definition of official in Note 1 to Section 308 to clearly include foreign public officials.

To implement the above-mentioned recommendation Azerbaijan amended its Criminal Code in 2011²⁵. Azerbaijan selected a second avenue proposed in the recommendation and expanded the definition of official in Note 1 to Section 308 of Criminal Code to clearly include foreign public officials in the list. The definition now includes “officials of the foreign state bodies, members of the elected foreign state organs, officials and other employees of the international organizations, members of the international assemblies; judges and other officials of international courts, arbiters of foreign or domestic arbitrations, foreign and domestic jurors.”

Next step to ensure effective criminalisation of bribery of foreign public officials is enforcement of the offence. So far, Azerbaijan reported no cases involving bribery of foreign public officials, and, in its responses to the questionnaire, stated that among challenges in investigating and prosecuting such cases are formalities of legal assistance procedures. During the on-site visit, another reason was indicated for the lack of cases regarding foreign bribery namely the absence of complaints or notifications involving such crimes.

Conclusions

Expansion of the definition of official in Note 1 to Article 308 allowed Azerbaijan to cover an even broader scope of corruption-related acts than required by the CoE Criminal Law Convention, UNCAC or OECD Convention; now committal of all crimes within the Chapter 33 involving foreign public officials is criminalized. This made Azerbaijan formally compliant with the recommendation.

From the discussions at the on-site visit the monitoring team concluded that similarly to the findings in the previous section, Azerbaijan law enforcement authorities have to take a more proactive approach in order to initiate investigations of foreign bribery. This is necessary, especially given that evidence and witnesses of foreign bribery are often located abroad, perpetrators of foreign bribery are less likely to report it to Azerbaijani authorities, and potential victims of foreign bribery are often not aware of it. Taking note of the explanations provided by Azerbaijan with respect to the absence of foreign bribery cases, the monitoring team is of the view that increased attention by Azerbaijan authorities to the specific issues outlined in the New Recommendation 4 will similarly help facilitate the detection and investigation of foreign bribery offences. Those measures, coupled with additionally proposed proactive techniques should help raise effectiveness of law enforcement authorities to detect and investigate foreign bribery.

Azerbaijan is fully compliant with the recommendation 2.3.

²⁵ Criminal Law (Amendment) Act 2011 adopted on 24 June 2011.

New Recommendation 5

- **Develop training curricula and organize training sessions for investigators and prosecutors with regard to detecting, investigating and prosecuting of bribery of foreign public officials.**
- **Develop guidelines for investigators, prosecutors and judges on the application of the offence of bribery of foreign public officials.**
- **Increase proactiveness of the prosecution authorities in detection of foreign bribery. (Last bullet point of Recommendation 4 applies here)**

Previous Recommendation 2.4.-2.6.1.

Amend the Note to Section 312 of the Criminal Code so that the person who pays a bribe and then reports it to the authorities is only exempt from criminal prosecution if that person reports the crime to the authorities before it is discovered by them. Also, make clear in the legislation that this exemption cannot be applied to bribery of foreign or international public officials.

Consider amending the statutory and constitutional provisions regarding immunity for public officials to limit such immunity to acts committed in the performance of official duties. Alternatively, amend these same provisions to apply only when a criminal case is ready to be filed to court or when the arrest of an official is requested.

Lift the prohibition on using special investigative measures (SIMs), allowing detective activities (SIMs) and criminal investigations of officials with immunity to be conducted confidentially, as are all other criminal investigations. (See also New Recommendation 3.8. regarding immunity of judges which is consistent with this recommendation).

Defence of effective regret

The 2nd round monitoring report concluded that the lack of active bribery cases appeared “to be due in large part to Section 312 of the Criminal Code which exempts from liability anyone who reports the paying of a bribe to the relevant authorities”²⁶ and recommended limiting such exemption to cases when the report is made before the crime was discovered by the authorities and to cases of domestic corruption.

In responses to the questionnaire Azerbaijan authorities stated that for the effective regret defence to be available there is already a requirement that such report be made prior to detection by law enforcement agencies. This was further confirmed by the GRECO report adopted in September-October 2010²⁷. In addition, GRECO recommended “to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery who report to law enforcement authorities”.²⁸ The recommended analysis was subsequently conducted

²⁶ See Azerbaijan Second Round of Monitoring Report, adopted on 31 March 2010, p. 22.

²⁷ “It emerged from the interviews that in the second case – effective regret – the defence may be applied in situations where the bribe-giver reports the offence either before it is discovered or before s/he learns that the offence has already been discovered.” *GRECO Third evaluation round, Evaluation report on Azerbaijan on Incriminations, Theme I, adopted in September-October 2010. (p. 21)*

²⁸ GRECO Third evaluation round, Evaluation report on Azerbaijan on Incriminations, Theme I, adopted in September-October 2010.

by Azerbaijan. The Azerbaijan authorities stated that the defence of effective regret does apply to bribery of foreign public officials.

As regards to practice of application of the “effective regret” defence, in many cases the defendants were reportedly denied this defence either by the investigators or prosecutor during the pre-trial investigation or by the judge at the trial stage. It was also noted at the on-site visit that, now when the Anticorruption Department of the General Prosecutor’s Office can use special investigative measures, the use of the effective regret clause no longer plays such a significant role as it did before in detection and/or securing of successful prosecution in corruption cases.²⁹

At the same time, the Azerbaijan authorities during the on-site visit confirmed that still very few cases of active bribery reach the prosecution. The monitoring team was unable to verify the exact number of such cases and make comparisons of progress made in the past years. From the discussion with the Azerbaijani authorities, it emerged that most of the efforts to prevent corruption are concentrated to counter the passive side of corruption, and not its active side.

Scope of immunity

It appears that formal consideration to reforming the regime of application of immunities of public officials was given. To this end, Azerbaijan authorities reported that the Working Group of the Commission on Combating Corruption considered the possibility of limiting the scope of immunity to functional. However, the General Prosecutor’s Office submitted its own proposals which follow the second approach proposed by the Recommendation 2.4.-2.6.1. – limiting commencement of the application of immunities to the stage of indictment or to the stage when arrest of the official is requested. No decision in regards to such legislative changes however has been taken yet.

On a practical side, Azerbaijan authorities confirmed that despite the fact that there is some case practice indicating that investigations and prosecutions of persons enjoying immunities can be done, immunity does pose challenges for investigators and that there might be cases when it would limit the ability of law enforcement agencies to collect sufficient information for opening of the criminal case. One case was reportedly opened against an MP in the last 3 years. However, no other statistical information regarding criminal investigations against other categories of persons enjoying immunity³⁰ was provided by Azerbaijan.

Special investigative measures

Azerbaijan authorities clarified that there is no prohibition on using special investigative measures (SIMs) that allow detective activities and criminal investigations of officials with immunity to be conducted confidentially; the same rules as for all other criminal investigations would apply. However, the problem appears even before such investigative measures can be applied – at the stage of obtaining a permission to conduct them.³¹ The investigators and prosecutors are caught in a vicious circle. The authorization of the court to perform detective activities cannot be requested before the waiving of the immunity in the cases of MPs and judges, while the request for the waiving

²⁹ For more details, see analysis on implementation of Previous Recommendation 2.8., section “Control over operative activities and SIMs” of this report.

³⁰ In Azerbaijan the following persons enjoy immunities: President; members of the Parliament (the duration of immunity of MPs has been limited to their term in office), Prime Minister only (this privilege was curtailed for other ministers), judges, Ombudsman, and election candidates.

³¹ Detective and search activities can be performed on the grounds of (a) decision of the court; (b) decision of the investigative authority; and (c) decision of the authorized agents of the Detective-Search activities (Section 11 of the Detective Search Activity act (1999) with amendments from 2011).

of immunity cannot be presented without some evidentiary support that in most cases needs to be collected with the use of special investigative measures.

Conclusions

According to the Azerbaijan authorities the scope of application of the defence of effective regret is limited to reporting prior to crime detection by law enforcement; this would formally bring Azerbaijan in partial compliance with the first element of the recommendation. The monitoring team expressed concerns in regards to the non-application of this defence to foreign bribery. The monitoring team is further concerned with the other related issue which was pointed out in the GRECO 3rd round of evaluation report – namely, the totality of the defence once the conditions are met, and would like to echo its recommendation on the issue. Currently it appears that if the formal conditions (the condition that either the bribe was given under threat or that the bribe-giver voluntarily reports the offence to the law enforcement bodies) are met, “the bribe-giver is in any case completely released from criminal liability, independently from the concrete circumstances of the case”³². This could result in very serious cases of active corruption going unpunished and it could be misused by the bribe-giver as a means of exerting pressure on the bribe-taker to obtain further advantages.

Overall, the monitoring team believes that although the practical benefits of the effective regret for the detection and proving of the passive corruption cases are obvious; the mere existence of such a strong defence might give the wrong signal to the citizens, hindering the prevention of the active side of corruption. Therefore, more should be done in stimulating detection and discouragement of active corruption and the effective regret defence needs to be revised.

In regards to the scope of immunity and the use of special investigative measures in investigation of persons with immunity, no legislative changes were introduced since the second round of monitoring. Furthermore, while some proposals, with GPO’s draft being the latest, have been tabled, it appears that their further movement towards adoption is constantly stalled. In practice, it remains to be very difficult to present to the Parliament (in the case of MPs) or to the Judicial Council (in the case of judges) a substantiated request to lift the immunity, since no investigative act is allowed to be carried out.

Therefore, it is recommended that Azerbaijan move swiftly with reducing the scope of immunities of the MPs and judges. Moreover, the decision on lifting of immunity should be based only on the appreciation of the request as being non-abusive (no *fumus persecutionis*) and reasonable and should be given as quickly as possible in order not to impede the investigation. Investigative measures should be allowed to carry out against persons with immunity, and the procedure for lifting of the immunity should be made swift and effective. Such changes will be crucial for the chances of the Azerbaijan prosecutors in tackling high level corruption cases and would demonstrate real political will to address serious corruption.

Azerbaijan is partially compliant with the recommendation 2.4.-2.6.1.

New Recommendation 6

- ***Further analyse application of the effective regret defence with the view of identifying the elements that can be revised in order to limit its application and incentivise the detection and discouragement of the active bribery offences.***

³² GRECO Third evaluation round, Evaluation report on Azerbaijan on Incriminations, Theme I, adopted in September-October 2010.

- ***Pursue the efforts to reduce the scope of immunity of the MPs and judges and regulate the procedure for lifting the immunity in such a manner that would not be an obstacle for the investigation and prosecution.***

Previous Recommendation 2.4.-2.6.2.

Analyse the practice of application of confiscation provisions to identify deficiencies and develop measures to ensure their more effective application.

Collect and analyse accurate statistics on what property is being confiscated, how the property is being disposed of, and the amount of money deposited into the government treasury.

Consider adopting civil provisions for confiscation of the proceeds of crime.

Analysis of application of confiscation

General Prosecutor's Office has conducted a review of the application of the provisional measures to ensure confiscation in all investigative institutions, as well as local prosecutor's offices.³³ The Anticorruption Department of the Prosecutor General's Office then summarized collected information and formulated main findings. Similar review of the application of the confiscation by courts has been carried out by another Department of the General Prosecutor's office which is responsible for support of accusation in the courts – the Department for Public Prosecutions. On the basis of these findings, and in order to implement Recommendation 2.4.-2.6.2., the Prosecutor General issued a Decree to endorse *Rules for Enforcement of the Provisional Measures aimed at Ensuring Confiscation* on the 24.09.2010 Ref. 10/88. The Rules describe in great detail what needs to be done to ensure confiscation. Control over the implementation of these Rules is the responsibility of the Deputy Prosecutor General and the head of the Anticorruption Department of General Prosecutor's Office. In addition, Azerbaijan authorities cited as a result of such analysis the Prosecutor General's Ordinance 10/70 from 28.07.2010 *On increasing efficiency of prosecutorial procedural management of pre-trial process and oversight of preliminary investigation*, paragraph 12/10 of which is focused on the need to undertake all measures to restore damages caused by the crime.

According to Azerbaijan authorities analysis of the practice of application of confiscation provisions became a regular item of the work plan of the Anticorruption Department and other Departments of the General Prosecutor's Office responsible for supervision over the lawfulness of investigation in all competent bodies. As a result of such analysis conducted prior to submission of the answers to the questionnaire no major deficiencies were identified in the application of these provisions. They stated that problems sometimes occur due to untimely application of the provisional measures, i.e. when the investigator misses the crucial time to prevent the transfer of property. This can be caused by the fact that the investigation was not conducted properly and was not in-depth, and the investigator failed to establish links between perpetrators and concealed illegally acquired property. According to the Azerbaijan authorities the main difficulties are in the field of tracking of the property. To help investigators and prosecutors address these challenges annual Methodological Handbook on Detection, Investigation and Prosecution of Crimes since 2011 contains a section with guidelines on confiscation and identification and tracing of assets. Besides practical recommendations, these sections also contain information on typologies of methods employed by

³³ See Azerbaijan Progress Report, 5-8 December 2010, pp. 2-3; Azerbaijan Progress Report, 28-30 September 2011, pp. 11-12; and See Azerbaijan Progress Report, 22-24 February 2012, p.5.

criminals to hide the money through members of their family, third persons, shell companies, fake invoices, etc.

To illustrate that confiscation is applied in corruption cases and that the trend is increasing the following statistics was provided: in 2010 – confiscation was applied in 3 cases, in 2011 – in 2 cases, and finally in 2012 – in 7 cases (court decision is still pending on one of these cases). The ACD has taken extensive measures to secure monetary confiscation at the provisional stage. The monetary value of the arrested and subsequently confiscated assets and property had increased dramatically. Thus, in 2012 total value of confiscated assets and property amounted to approximately 6.5 million Manats, with another 3 million Manats³⁴ arrested in the case which is still on trial; this number compares favourably to 1.2 million Manats³⁵ confiscated in 2010.

In December 2010 and subsequently in September 2011 it was reported by Azerbaijan authorities that in parallel, the appropriate department of the Ministry of Finance, which is in charge of registering and disposal of the confiscated property, has also carried out its own review in order to evaluate the efficiency of the confiscatory mechanism.

Collection and analysis of statistics

Azerbaijan has been collecting and regularly providing data in regards to confiscation applied in corruption cases. It appears however that while information on the amount of money deposited into the government treasury through criminal confiscation is readily available, along with information on confiscated property and vehicles; information on how the property was evaluated, stored, and being disposed of is either not available or simply was not provided to the monitoring team. At the on-site visit Azerbaijan authorities explained that currently money, precious metals and stones, jewellery, stocks, bonds, etc. are being stored within the National Bank of Azerbaijan, while storage of other assets is the responsibility of the investigative/prosecutorial bodies which arrest them. They provided diverging opinions on what would happen in more complicated cases, where assets in question include running enterprises, invested funds, or goods that devalue quickly.

Representatives of law enforcement bodies of Azerbaijan agreed that establishment of the confiscation fund would help rid investigators and prosecutors from additional burdens in regards to deciding what to do with property under arrest. It was also reported that the General Prosecutor's Office, along with other investigative authorities, courts and the Ministry of Finance were considering establishment of an institution in charge of the administering of the confiscated assets. In September 2011 Azerbaijan reported that the proposal on establishment of such body was submitted to the Cabinet of Ministers, and in February 2012 they reported that this proposal was still being discussed. At the on-site visit Azerbaijan authorities confirmed that the decision in regards to this body is still pending and currently money, precious metals and stones, jewellery, stocks, bonds, etc. are being stored within the National Bank of Azerbaijan, while other storage of other assets is the responsibility of the investigative/prosecutorial bodies which arrest them.

Conclusions

It appears that considerable efforts have been undertaken by Azerbaijan to address the first element of the recommendation since the adoption of the 2nd round monitoring report. Azerbaijan has been regularly reporting on the measures undertaken to properly collect and analyse information in

³⁴ The equivalent of 2.88 million Euros or 3.84 million US dollars.

³⁵ The equivalent of 1.15 million Euros or 1.92 million US dollars.

regards to the practice of application of confiscation. Certain deficiencies have been identified and guidelines and detailed rules were developed and adopted to try and address them and further improve effectiveness of provisional measures. The monitoring team welcomes the increase in application of the confiscation and would like to reiterate the importance of these tendencies to continue. Moreover, the monitoring team would like to recognize the importance of Azerbaijan's consistent emphasis through policy documents on the need to apply confiscation more vigorously and encourage Azerbaijan authorities to continue this practice of stimulating investigators and prosecutors.

In regards to the second part of recommendation, statistical data is being currently collected, however, some information, such as information in regards to what happens to the confiscated property, what agency is responsible for its storage and disposal appears to be missing. Moreover, it appears that set up of a specialised institution that would administer confiscated property, which has been in the works for some time now, may help address a number of practical challenges that investigators and prosecutors currently have to deal with, such as how to ensure safety and value of the confiscated property, what to do with property that requires some special treatment, etc.

Azerbaijan is partially compliant with the recommendation 2.4.-2.6.2.

New Recommendation 7

- ***Continue to monitor the effectiveness of the confiscation regime.***
- ***Continue to collect and analyse accurate statistics on what property is being confiscated, how the property is being disposed of, and the amount of proceeds of crime recovered.***

Previous Recommendation 2.8.

Introduce measures to ease the proceedings for the access of the prosecutor's office and, particularly of the ACD, to bank, financial and commercial records. Consider amending the C.P.C. to allow these activities to be performed by order of a prosecutor, without authorization from a court.

Amend the actual laws on SIMs or draw up methodologies in order to ensure full and direct control of the case-prosecutor to the operative activity and SIMs performed by law enforcement agents, by the direct participation of the prosecutor in such operations or by simultaneous access in the course of conducting detective operations and using special investigative measures (SIMs) and remote coordination by the case prosecutor.

Access to the bank, financial and commercial records

According to Article 41 of the Law on Banks, the banks shall keep the confidentiality of the accounts, operations and balances, as well as client information, addresses and management. Information protected by confidentiality can be disclosed to state authorities under a valid court order related with resolution of claim, arrest, confiscation of property for compensation of client liabilities and property in the bank's depository. Allegedly, the bank information can be requested at the earliest stage of the procedure, as soon as a criminal case is opened.

The interlocutors met at the on-site visit explained that in practice it is rather difficult to obtain bank information because the investigator or prosecutor needs to identify a specific bank in which the suspect has an account or other investment and on that basis to request the authorization of the court in order to obtain information from that bank. A different approach would be considered as a

“fishing expedition” and is not favourably treated by the courts. The authorities of Azerbaijan didn’t indicate any foreseen measures to ease the access of the investigators or prosecutors to bank information.

With regard to commercial information, it appears that it is also strongly protected by confidentiality. The prosecutors have direct access to the basic information (e.g.: name of owner/s, location, structure) only on the commercial companies that are publicly listed. For commercial records of other companies, there is need of a court order.

Very limited information was provided by the Azerbaijan authorities in regards to measures undertaken to address this part of the recommendation. In its responses to the questionnaire, they mentioned that Anticorruption Department developed proposals on easing of the rules for obtaining commercial records and submitted them to the Cabinet of Ministers in order to collect feed-back from other state institutions.³⁶ No further information in regards to when these proposals were submitted, what their status is, whether the deadline for comments was set, scheduling for their review by the Cabinet of Ministers, or the actual content of these proposals was shared with the monitoring team.

Control over operative activities and SIMs

In March 2011 the Detective-Search Activity Law and the Law on Prosecutor’s Office were amended and the Anti-Corruption Department was vested with the authority to carry out all types of special investigation measures in respect to corruption offences. The amendments went even further than what was recommended and excluded all other law enforcement agencies from carrying out such measures in respect of corruption offences, except when the ACD issues to them mandatory written instructions to carry out such measures.³⁷

Two new divisions have been created within the structure of the Anti-Corruption Department to perform these new functions: Detective Division and Detective Support Division. These divisions were staffed by lawyers, as well as technical staff. In total there are 32 officers in these two divisions. The nature of the work is intelligence and therefore the workload of these units is not open for disclosure. The Charter and methodologies of the newly established divisions of the Anti-Corruption Department were developed soon after their establishment. The detectives of the Anti-Corruption Department have equal status to prosecutors and investigators and are employees of the General Prosecutor’s Office.

These divisions have already been fully staffed, furnished with all necessary equipment, and began their operations. In February 2012 Azerbaijan authorities reported that since the establishment of the detective divisions in the Anti-Corruption Department, they looked into 176 reports received through the Anti-Corruption Department hotline and 11 reports from citizens. Based on these reports the Anti-Corruption Department’s detective divisions took actions and committed operations in 18 cases. The sting operations conducted by the Anti-Corruption Department detectives under supervision of the prosecutors allowed launching of another 18 criminal cases; eight out of these 18 cases were referred to court. The rest are pending investigation. Some high-level officials were among officials arrested in the course of these sting operations.³⁸ These operations were conducted

³⁶ See Answer to the Questionnaire, Question 8.1.

³⁷ IAP Progress Update by Azerbaijan, February 2012, p. 6.

³⁸ They included the Director of the Regional Transport Corporation under Ganja (Second biggest city in Azerbaijan) Transport Auto Transport Department of the Ministry of Transport, Chairman of the Medical Social Commission under the Ministry of Labour and Social Security, Chief of Staff of the Lachin Department of the

with the participation of the prosecutor, directing the operation and ensuring the proper enforcement of procedural law.

According to information provided by Azerbaijan following the on-site visit, in the first half of 2013, as a result of operational measures carried out by the detective divisions, 25 people were caught red-handed and 16 criminal cases were instituted in their respect. These operations were conducted in conjunction with the Investigation Division of the Anti-Corruption Department. The overall number of criminal cases instituted exclusively as a result of operational activity in this period of time is 20 and only two of them were instituted on the basis of operational information obtained from the State Border Service (one) and the State Migration Service (one).

Conclusions

No mechanisms to ease access to the bank, financial and commercial records were introduced in Azerbaijan, and it appears that no consideration was given to amending the Criminal Procedure Code to allow authorization of such actions by prosecutors, not courts. The first part of the recommendation therefore is not implemented.

Access to financial information only on the basis of a judicial order is not per se against the international standards, but the existing very strict procedure in Azerbaijan, together with the conditions required for obtaining such an order, makes the bank secrecy lifting very cumbersome and lengthy, in the detriment of an efficient investigation in corruption cases.

In regards to commercial records, it appears that Anti-Corruption Department developed proposals on easing of the rules for obtaining commercial records but the monitoring team was not able to familiarize themselves with the content of these proposals and is not aware of their status. This issue should be further followed up on with Azerbaijan and might be a good initiative to pursue.

Overall, Azerbaijan should take steps to ensure that investigators and prosecutors are able to swiftly obtain data on specific person or specific transaction upon request within proper legal proceedings; more direct access can be provided to databases operated by public authorities and it is up to Azerbaijan to decide how this could be best ensured.

With introduction of amendments to the Detective Search Act in 2011, responsibility for operative activities and SIMs that relate to corruption offences was transferred to the newly established detective divisions of the Anti-Corruption Department of the Prosecutor General's Office. They can alternatively be performed at the written instruction issued by this specialized body. The above-mentioned units are fully operational and show considerable results.

The monitoring team welcomes this major development in regards to implementation of the second part of this Recommendation, as well as Recommendation 2.9.1. Before Anti-Corruption Department had to request the appropriate law enforcement agency to perform operative activities, which limited its ability to detect high-level corruption, *e.g.* involving senior management of law-enforcement bodies such as of the Ministry of Internal Affairs, or in the Ministry of National Security. As it was previously mentioned, it appears that establishment of the detection divisions within Anti-

Ministry of Education, Assistant to the Chief of the Children's Surgery Department of the Azerbaijani Medical University, Chief of Circuit in the Sabunchu District Gas Supply Department in Baku, tax officer, Chief of the Labour Union of Tafakkur University, Mayor of Masally city, Executive director of the Tourism Company, Chairman, lawyer and chief of commission of the central municipality of Baku, etc.

Corruption Department has directly boosted detection of corruption crimes, especially those involving high-level public officials.

Azerbaijan is partially compliant with the recommendation 2.8.

New Recommendation 8

- *Introduce measures to ease the proceedings for the access of the prosecutors, and particularly in corruption cases, to bank, financial and commercial records.*
- *Consider amending the Criminal Procedure Code to allow these activities to be performed by order of a prosecutor, without authorization from a court.*

Previous Recommendation 2.9.1.

Establish criteria for defining the investigational jurisdiction of the Anti-Corruption Department.

Continue efforts to strengthen the ability of the ACD to detect, investigate and prosecute corruption. To enable the ACD to detect high-level corruption, empower the ACD with full scale detection of corruption functions.

Ensure direct access for the ACD to all public data bases kept by the public authorities.

Consider reducing the role of other law-enforcement agencies in detection and investigation of corruption, improve inter-agency cooperation and exchange of information. Review the role of all law enforcement bodies, including the Ministry of Internal Affairs and Ministry of National Security, in detection of corruption offenses to ensure that corruption detection and investigation are carried out by a specialised anti-corruption body.

Building up on the work implemented by the analytical division of the ACD to date, consider further strengthening analytical support for detection, investigation and prosecution of corruption, e.g. through provision of information which enables comparison among institutions, and/or development of typologies and identifying high risk areas, where detection and investigation, and other anti-corruption measures should be focused.

Provide a legal basis and establish a special unit in the ACD empowered to perform all SIMs, composed of specialised personnel who are competent to perform these tasks.

Recommendation 2.9.1 was developed to primarily strengthen Anti-Corruption Department of the General Prosecutor's Office and can be divided into two blocks with the following sub-elements that are being evaluated in this section of the report:

- Investigational jurisdiction:
 - (a) define criteria;
 - (b) consider reducing role of other law enforcement agencies; and
 - (c) review the roles of other law enforcement agencies to ensure better specialization.
- Capacity to detect and investigate high-level corruption:
 - (a) establish special unit in the ACD empowered to perform all SIMs;
 - (b) consider further strengthening analytical support for detection, investigation and prosecution;
 - (c) improve cooperation and exchange of information; and
 - (d) ensure access to public databases.

Investigational jurisdiction

Criteria for defining investigative jurisdiction of the Anti-Corruption Department were established by the Order of the Prosecutor General, drafted by the working group composed of the representatives of almost all departments of the General Prosecutor's Office, as well as representatives of the Anti-Corruption Department itself. This working group analysed cases investigated by the Anti-Corruption Department and compared those cases to the ones investigated by the local prosecution offices. The following criteria have been developed based on the results of this analysis:

- crimes in the Chapter 33;
- level of officials;
- amount of damage;
- public significance; and
- money laundering offences with predicate corruption offences.

Since 2010, Anti-Corruption Department became an almost exclusive investigating authority for corruption offences. A corruption case is rarely investigated in the district or city prosecutor's office. As a rule, the case is referred for investigation to the Anti-Corruption Department which has national jurisdiction. And while the powers of the Anti-Corruption Department were not broadened by law, they were *de jure* consolidated through the adoption of the Prosecutor General's Ordinance on the Anti-Corruption Department's investigative jurisdiction in 2012.³⁹ Local prosecutor's offices may investigate petty corruption offences in cases referred to them by the Prosecutor General. It is mostly done due to low significance of such cases and such referrals are based on the motion of the Director of Anti-Corruption Department.

In addition to the local prosecutor's offices, the Main Investigation and Inquiry Directorate of the Tax Ministry, is entitled to investigate certain corruption offences, including receiving and giving of the bribe. And although these crimes fall within the jurisdiction of the Prosecutor's Office under Section 215 of the Criminal Procedure Code, when these offences were detected in the course of the investigation of tax offences according to the Presidential Decree on the Application of the Criminal Procedure Code issued in 2000 – they would be investigated by the above-mentioned tax authority.

And finally in cases of jurisdictional overlap, the case shall be investigated by the investigational team headed by the prosecutor or investigator of the Anti-Corruption Department of the Prosecutor's Office. The Prosecutor General may use his exclusive powers to decide which agency will investigate the case.⁴⁰

The on-site visit revealed that in practice, notifications regarding corruption offences are received by the Prosecutor General's Office. They are then, based on the abovementioned criteria of jurisdiction, redirected in most of the cases to its Anti-Corruption Department. If, during an investigation carried out by other law enforcement or prosecution office, a corruption offence is detected, the case is immediately sent to the Prosecutor General's Office which then redirects it to the Anti-Corruption Department.

Capacity to detect and investigate high-level corruption

The Anti-Corruption Department has undergone major restructuring in 2011, acquiring new powers and responsibilities described in more detail below. Its previous three divisions have been replaced

³⁹ Ordinance of the Prosecutor General 10/5 from January 18th 2012.

⁴⁰ Article 215 of the Criminal Procedure Code of Azerbaijan.

by seven new ones. Its staff has more than tripled since 2nd round of monitoring, with total staff number of 145 employees.

Former investigative division was expanded but retained the same functions as before; Internal Inquiries Division was restructured into an Internal Security Service. A new Preventative Measures and Inquiry Division was created to primarily look into potential allegations received from state agencies and citizens and advice on which allegations are grounded and should be followed up on. This division is also in charge of strategic and practical prevention measures, including institutional analysis and identification of factors generating corruption. Two new divisions were created to carry out detection, as was described above. Technical staff of the Anti-Corruption Department now also includes specialists with various areas of expertise who assist the prosecutors and investigators with expert opinions and analysis; they are organized into a separate unit called Group of Specialists. And, finally, new Organization and Information Support Division was created and its functions will be further elaborated.

Anticorruption specialization has also been further strengthened by ensuring that the prosecutors from the Department of Public Prosecution who have exclusive jurisdiction to appear for prosecution in court trials are also specialized in the field of anti-corruption, and are being trained together with the staff of Anti-Corruption Department.

Analytical support for detection, investigation and prosecution

In April 2011 as part of the restructuring process Analytical Information Division that existed during the 2nd round of monitoring and was referred to in the recommendation was abolished. It appears that analytical work is now performed by several units within the Anti-Corruption Department. Organization and Information Support Division holds the main responsibility for this area of work, but analytical work is also performed by the Detective Support Division and Preventative Measures and Inquiry Division in their respective areas. The first one analyses anti-corruption measures in the context of prevention; and the second one provides analytical support in the area of detection.

In 2009 Anti-Corruption Department established a National Corruption Crimes Database with information extracted from all criminal cases on corruption offences. The data base is confidential, but the analysts of the Anti-Corruption Department can use the data with the purpose of drafting analytical reports on various topics in order to find out tendencies in corruption.

The reports drafted so far were either six months or annual analysis and regarded, among other sectors, the education and the social security. The purpose of the analysis was to identify vulnerabilities, loopholes in the applicable laws, in the secondary legislation, that created opportunity to corruption and to propose amendments to these pieces of legislation. An example offered by Anti-Corruption Department was the proposal made by this Department to adopt a law on plea bargaining.

On the other hand, Anti-Corruption Department asserts that, based on the information gathered from its Central Data Base, in the course of investigation of cases and examination of facts and information sent for its consideration it can develop motions and give recommendations directly to the ministries (e.g. Ministry of Labour, of Health, of Education) on the existing problems with the applicable bylaws. The Ministries are obliged to study the motions and take appropriate measures within one month.

*Special unit empowered to perform Special Investigative Measures*⁴¹

Please see analysis and conclusions related to section on “Control over operative activities and SIMs” under previous recommendation 2.8. of this report.

Cooperation and exchange of information

Criminal Procedure Code of Azerbaijan requires law enforcement agencies to inform each other when they detect offences falling outside of their jurisdiction. Violation of this requirement entails serious consequences, up to the criminal prosecution for abuse of office or excess of powers.

Other additional indirect mechanisms help ensure exchange of information. They include prosecutorial oversight which is conducted by the designated departments within the General Prosecutor’s Office. These departments oversee the lawfulness of detective-search activity, inquiry and pre-trial investigation in each of the law enforcement agency.

Prosecutorial role in authorization of the mandatory (coercive) measures is another such mechanism. When the law enforcement agencies need to carry out any mandatory (coercive) measure they cannot directly apply for authorization to courts but have to go via their local prosecutors. Local prosecutors, in their turn, are supervised by the designated departments of the General Prosecutor’s Office. These departments regularly exchange information and make sure that law enforcement agencies share necessary information with each other.

Azerbaijan also gave examples of joint Orders of the Prosecutor General and various ministers, such as a Joint Order with the Minister of Internal Affairs on Proper Registration of Criminal Offences, and Memorandums of Cooperation signed between the General Prosecutor’s Office and a number of law enforcement agencies, as well as, non-law enforcement institutions, such as Chamber of Auditors, FIU, etc.

Establishment of joint investigative teams was given as yet another example of ensuring cooperation in criminal cases. When one investigative authority detects elements of crime that fall outside of its jurisdiction in the course of its own investigation a joint investigative team can be established. Such team is managed by the prosecutor and can comprise prosecutors, police officers, tax and justice investigators. So far, 21 joint investigative teams were established in the Anti-Corruption Department in 2010, 32 in 2011, and 8 in 2012.

In practice, due to the fact that detection, investigation, and prosecution of corruption offences is carried out exclusively by the Anti-Corruption Department, only exceptionally, detectives from other law enforcement agencies can be involved in detection of corruption; they may take certain measures under the written commission of the Anti-Corruption Department and be included into the joint investigative teams.

Tax Investigative Authority is the main exception. An example of successful cooperation between Anti-Corruption Department and the Tax Investigative Authority in a corruption investigation was given to the monitoring team during the on-site visit. Based on information provided by and a preliminary investigation performed by tax detectives, two tax officials have been caught in the act

⁴¹ The same as Section under Recommendation 2.8.

of receiving a large amount of bribe (215,000 Manat)⁴². The case has been tried by the court and each perpetrator sentenced to seven years of imprisonment.

*Access to public databases*⁴³

Azerbaijan has taken some steps in 2011 in the direction of improving the centralized access of prosecutors of Anti-Corruption Department to public data bases.⁴⁴ As a result the Anti-Corruption Department has joined to the IAMAS integrated database covering several ministries, including police, border police, citizens register. However, no new information in relation to the status of this initiative was given to the monitoring team, and it was not possible to understand what this access meant in practical terms for investigators and prosecutors of the Anti-Corruption Department.

The on-site visit revealed that at present, most of the information existing in public authorities' data bases can be obtained by the prosecutors only following a paper request to the ministry or agency who holds this information. Investigators and prosecutors met at the on-site visit, shared that the answer may come after two months.

In contrast, representatives of the Ministry of Taxes, met at the on-site visit, stated that they have central access to all public information of non-commercial nature held by the relevant public authorities. The monitoring team was informed that the issue of organizing public data bases within the competent ministries is related to their different level of computerization. The Ministry of Taxes is, allegedly, well endowed with IT equipment and therefore has technical capacity to access and provide information in an expedient manner.

According to clarifications provided by Azerbaijan authorities following the on-site visit, in line with the Presidential Order of 2011, the Cabinet of Ministers was commissioned to explore the means and ways of ACD joining the databases of the relevant ministries, including vehicle and real estate registers. However, the fact that these systems were developed by the ministries separately necessitates allocation of substantial resources to secure access. The Cabinet of Ministers held sessions of the working group to explore the ways of implementation of the Presidential Decree. The expected output of the Cabinet of Ministers is to secure the implementation of this task within the framework of the E-Government strategy.

Conclusions

As recommended in the 2nd round monitoring report Azerbaijan clarified which cases would fall under the competencies of the Anti-Corruption Department and which would be investigated by prosecutors from other structural units and offices (regional/local). Clear criteria have been established and are being applied in practice, making Azerbaijan compliant with this element of the recommendation.

The monitoring team is encouraged to see further strengthening of the Anti-Corruption Department and recognizes that not only Anti-Corruption Department's structure was built up, but also the methodology of its work has improved. Now the investigation of corruption is carried out in a holistic

⁴² The equivalent of 207,000 Euros or 276,000 US dollars.

⁴³ Please also see section on "Access to bank, financial and commercial records" under previous Recommendation 2.8.

⁴⁴ In 2011 President of Azerbaijan issued a Decree requiring the Cabinet of Ministers to take necessary steps to arrange access to information in the domain of public institutions.

manner by a team composed of investigator/s, detectives and analytical officers under the supervision of a prosecutor.

Another improvement in the capacity of Anti-Corruption Department to detect and investigate corruption offences was achieved through establishment of a group of specialists who have expertise in various fields and offer their expert assistance in the preliminary review of information in criminal investigation on corruption offences. To this end, eight specialists are employed as staff members (this does not include criminal intelligence, paper processing and IT specialists). Additionally, ACD may invite experts from any state institution as member of the investigation team.

It appears that progress was also made in the building up of the analytical capacity. To this end, establishment of the National Corruption Crimes Database is an encouraging development. The monitoring team, however, believes that information contained in it could be further developed and used by Anti-Corruption Department. For examples, analysts of the Anti-Corruption Department can use it to identify most frequent typologies of corruption, as well as most vulnerable sectors. Such analysis can be then used to alert the targeted agencies or sectors not only with regard to the loopholes that need to be addressed in the laws and bylaws, as it is done currently, but also, if not already done so, in the models of internal organization and organizational culture that may be conducive to corruption. And finally, this information can be used, if not already done so, to monitor effectiveness and modify the undertaken anti-corruption enforcement actions.

The fact that Anti-Corruption Department obtained its own legal ability and technical capacity to detect corruption offences is also a major achievement. At the same time, in order to support ACD's role in the fight against corruption, the internal investigations, control or inspection bodies within the ministries or other public authorities relevant for the sectors that are most vulnerable to corruption, as well as the audit bodies, like the Chamber of Audit, and intelligence services should improve their capacity to identify corruption or corruption related incidents within the institutions they control or survey, and to notify ACD whenever a suspicion of corruption is revealed. The monitoring team therefore believes that special emphasis should be made on establishment of strong referral mechanisms. Enhanced awareness raising among representatives of these institutions regarding corruption offences may also help open new channels for detection. Efforts to promote cooperation between these institutions and law enforcement should be complemented by joint trainings involving law enforcement officials responsible for detection and investigation of corruption.

An example of such enhanced cooperation and joint trainings was provided by Azerbaijan following the on-site visit. Namely, in 2009 the Anti-Corruption Department has developed within the framework of the EU Twinning Project a toolkit for training of the employees of the internal security offices operating in the Central Executive Authorities (such as ministries, committees, agencies). This toolkit contains explanation of the elements of the corruption offences and encourages consultations of the internal security officers with the prosecutors of Anti-Corruption Department. Azerbaijan reported that trainings with the use of this toolkit resulted in the considerable improvement of the quality of materials referred to the Anti-Corruption Department and, now prosecutors are able to advise their counterparts as to further steps, based on their prosecutorial prospective on the success of possible investigation and prosecution. This example demonstrates that such mechanisms yield excellent results and, in the opinion of the monitoring team, clearly indicates that such practices should be further continued and spread to other institutions.

Efforts to improve cooperation and exchange of information with other law enforcement bodies should be also continued. Formally, cooperation and exchange of information in criminal cases,

including corruption cases, can be ensured through procedure, as well as through practical measures in Azerbaijan. Examples of good mechanisms were cited to the monitoring team, including establishment of the joint investigative teams; whether they are effectively applied in corruption case was more difficult to determine.

And finally, in order to carry out in a proper and timely manner a corruption investigation, not only access to private financial or commercial information is needed, but also information detained by public institutions (i.e. criminal record, personal record, passports, vehicles registration, border police data, register of immovable property etc.). Current system of the paper requests appears to be ineffective and may impede the immediate action necessary in a corruption case and result in significant delays in its investigation. This issue needs to be urgently addressed by Azerbaijan.

Azerbaijan is largely compliant with the recommendation 2.9.1.

New Recommendation 9

- ***Further develop and make full use by Anti-Corruption Department of the information contained in the National Corruption Crimes Database and other sources in order to identify most frequent typologies of corruption, most vulnerable sectors and vulnerabilities within internal regulations and/or working methods of the public agencies that have been targeted by corruption investigations.***
- ***Pursue efforts to grant the prosecutors direct and swift access to the relevant information detained by public institutions (i.e. criminal record, personal record, passports, vehicles registration, border police data, register of immovable property etc.).***
- ***Further strengthen the capacity of the internal investigation, control, audit or inspection bodies within the ministries or other public authorities to identify corruption or corruption related incidents within the institutions they control and to notify Anti-Corruption Department whenever a suspicion of a corruption offence is revealed.***

Previous Recommendation 2.9.2.

Take measures to design a normative base for improving inter-linkage efforts to fight organized crime and corruption.

Enhance cooperation with international organizations and NGOs dealing with both organized crime and corruption in order to ensure a holistic view about common areas of concern of both organized crime and corruption.

Azerbaijan authorities reported that structurally Ministry of Internal Affairs (MIA) remains to be the main coordinating authority in the area of fighting organized crime in Azerbaijan. No legislative changes have been made to improve the efforts to link organized crime and corruption and Azerbaijan authorities do not believe that they would be necessary as a number of practical measures have been undertaken instead. During the last three years, more than 1,800 MIA employees (1,173 in Azerbaijan and 640 abroad) took part in various types of trainings. In addition, after the on-site visit, Azerbaijan authorities reported that Anti-Corruption Department conducts various joint trainings with the police. Azerbaijan is involved in various regional and relevant international initiatives aimed at cross-border cooperation in the fight against organized crime and corruption. For example, Azerbaijan is involved in the OSCE Anti-Money-Laundering/Corruption initiatives, GRECO evaluation process, Working Groups of GUAM against organized crime and subgroups against Corruption and Money Laundering, relevant NATO initiatives, BSEC, UNODC supported working groups against organized crime, etc. Azerbaijani experts regularly participate in the professional networks and bring back international best practice and experience.

Azerbaijan is also working on improving its cooperation with representatives of anticorruption NGOs. They are reportedly regular participants of trainings and round tables organized by the law enforcement agencies, especially in the field of fight against corruption. The NGO representatives usually act as trainers. Memorandum of Cooperation was signed between the Anti-Corruption Department and the Information Network of Anticorruption NGOs, which is a roadmap of cooperation. In the area of fight against organized crime, NGOs are also heavily involved in the projects that provide support to victims.

Conclusions

The monitoring team took note of some of the practical measures undertaken by Azerbaijan to ensure that links between organised crime and corruption are properly looked into and efforts in combating these crimes are coordinated with outside actors (international organisations and NGOs). Participation in regional and international training exercises, as well as in various networks is commendable and no doubt useful. However, they also noted that no legislative changes have been made to improve the normative base to link organized crime and corruption, as would be required for formal implementation of this Recommendation. Furthermore, the monitoring team found that the absence of cases regarding organized crime and corruption being detected and referred to the Anti-Corruption Department so far is not an encouraging indicator. Azerbaijan authorities state that no link between corruption and organized crime have been identified, which may explain the lack of cases and the absence of a specific change in legislation. Nevertheless, the experts hold that in the sectors in which corruption is reported to be systemic, instances when bribery offences are committed in an organized manner may occur. Therefore, possible links between corruption and organized crime continue to need monitoring.

Azerbaijan is largely compliant with the recommendation 2.9.2.

New Recommendation 10

- ***Take measures that Ministry of Internal Affairs and the Prosecutor General's Office, mainly its Anti-Corruption Department, place more emphasis in identifying and investigating cases in which organized crime and corruption are linked.***
- ***Continue to organize joint trainings in these connected areas for investigators and prosecutors of the Ministry of Internal Affairs and Anti-Corruption Department of the Prosecutor General's Office.***

Previous Recommendation 2.9.3.

Continue the establishment of the FMS in accordance with international standards and ensure its operational autonomy.

Continue with the implementation of FATF Recommendation 6 that deals with politically exposed persons.

FMS should work with ACD to develop a mechanism to identify appropriate criminal cases from the relevant suspicious activity reports.

Financial Monitoring Service

According to its Statute the Financial Monitoring Service (FMS) is subordinated only to the President of the Republic of Azerbaijan. It is headed by Director; the Director and his Deputy are appointed

and dismissed by the President. Azerbaijan authorities insisted that operational autonomy of the FMS is being exercised in practice and that there have been no cases of interference with its activities. None of the top level management of the FMS including the Director and Deputy Director was changed since October 2009.

Furthermore, the monitoring team was informed that FMS is financially independent and functions under a designated budget line to ensure its operational efficiency, as well as provide market-based salaries and motivation system for its staff. Already in October 2009 FMS was provided with the administrative building. It was also equipped with IT and other equipment. During the on-site visit, the representatives of FMS stated that FMS has been fully functional since 2010 and it is almost fully staffed.

AML legislation was largely brought in line with the MONEVAL recommendations. The Azerbaijani FIU issued bylaws and guidelines for the use of the reporting entities and internal regulations and procedures for its own staff.

FMS developed its IT capacities to receive and analyse the reports sent by the reporting entities. It started in 2010 with the launch of electronic reporting system AzAML that allowed the financial institutions to send their reports directly on the website www.fiu.az. In 2011 the FMS developed with the support from UNODC a new and improved analytical and reporting IT system called "goAML". The "goAML" was supposed to become functional in October 2012.

Politically exposed persons

From the legislative point of view the FATF Recommendation 6 has been addressed by virtue of Article 9-1 of the Fight against Legalization of Money and other Property and Financing of Terrorism Act 2009 (AML/CFT Law) which was last amended in March 2010.

Reportedly, the majority of financial institutions operating in Azerbaijan have joined systems for automated PEP-checking, such as World Check and Factiva. According to the FMS officials met at the on-site visit, the banks and other monitoring entities apply in practice the customer due diligence measures in relation to foreign PEPs, as required by art. 9-1. In 2010 – 2013 the FMS received 397 reports concerning transactions operated by PEPs on the basis of that legislation. Moreover, Azerbaijan stated that it initiated draft legislation to extend the customer due diligence measures also in relation to domestic and international PEPs as required by the new recommendation 12 (former recommendation 6) of the FATF.

Corruption cases

If FMS identifies elements of any criminal offence during the analysis of transactions or has other suspicions that the executed transactions could relate to legalization of criminally obtained funds or other property, it has to refer this information to the General Prosecutor Office.⁴⁵ FMS analyses collected reports based on the indicators called "red flags". The following aspects of these indicators are being attributed to corruption-related cases: (i) receipt or dispatch of funds from and to offshore zones by politically exposed persons and companies connected to them; (ii) untypically large scale cash operations conducted by politically exposed persons and companies connected to them; and (iii) operations by shell companies belonging to politically exposed persons. Once such red flags have been identified FMS refers corruption-related suspicious transaction reports to the Anti-Corruption Department.

⁴⁵ Article 17 of the AML/CFT Law and Article 10.9 of the Statute of Financial Monitoring Service.

Cooperation between FMS and the General Prosecutor's Office, especially the ACD, is allegedly very good. It is based on the law requirements and on the MOU signed in 2010 between the FMS and the ACD. At the on-site visit FMS representatives stated that they receive feedback on the reports sent to the ACD. The monitoring team was also assured that FMS responds to the information analysis requests received from the prosecutors in the course of an AML investigation.

The number of suspicious transaction reports has increased since 2009. In 2010-2013, FMS received 849 STRs, while it also received 508.999 currency reports and 41.543 high risk transactions reports. However, since 2009 out of the STRs received and analysed, only 12 referrals have been made to the Prosecutor General's Office and to the Anticorruption Department; so far only one criminal case was launched. On the other hand, the ACD investigated and sent to trial 6 cases regarding money laundering. In these cases, the prosecutors requested information from the FMS.

As far as the type of money laundering offences that are sent to courts, it appears that most of the cases regard money laundering offences that are committed by the same person who committed the predicate offence, the so-called self-laundering. Also, in all the cases so far, the defendants were sent to trial for money laundering offences only together with the predicate offence and only when the predicate offence was committed in Azerbaijan, although there is no legal limitation in these situations. Reportedly, judges, especially at the Supreme Court, give a narrow interpretation of the legal incrimination of the money laundering offences.

The Action Plan for the implementation of the National Strategy for Increasing Transparency and Anticorruption 2007-2011 (the second national anticorruption strategy) envisaged the organization of the joint trainings for law-enforcement officers, prosecutors and judges in the field of anticorruption and money laundering. In order to implement this task, the Ad Hoc group has been established from among the representatives of the training centres of the law enforcement agencies and included Director of the Anticorruption Department. The Ad Hoc group is charged with the development of the training curricula.

It appears that many of the trainings were organized by international or foreign institutions. According to FMS representatives met at the on-site visit, officials from this institution have also participated in some locally organized training events together with ACD prosecutors and judges. The number of these seminars and their topics has not been disclosed to the monitoring team.

Conclusions

Since the 2nd round of monitoring FMS service became fully operational and continues to be further developed and strengthened. However it is a continued process, and in order for FMS to function effectively and to respond to new challenges in the area of AML, this process should be further supported by Azerbaijan authorities.

Through 2010 March amendments into the AML/CFT Law provisions dealing with Politically Exposed Persons (PEPs) were embedded to it and reflect the language of the MONEYVAL recommendation. The monitoring team was also encouraged to see that newly introduced requirements are also being applied in practice. Azerbaijan appears to be well on track in implementation of this part of the recommendation.

It was more difficult to assess proper implementation of the third element of the recommendation on the work undertaken by FMS to cooperate with ACD on development of the mechanism for identification of corruption cases. The monitoring team was not made aware of a specific

mechanism, as such, developed for this purpose. The number of STRs sent by FMS to the prosecution is very limited, the efficiency and relevance of the feedback given to the FMS by the prosecutors could not be assessed.

In the opinion of the monitoring team, the limited number of STRs relevant for the prosecution requires, on one hand, an effort to improve capacity of banks and other reporting entities to identify suspicious elements of a transaction. On the other hand, the working methodology of the FMS, its capacity to analyse the information received from the reporting entities, to identify patterns and links and provide prosecutors with relevant information needs to be further developed. The use by the FMS of the software for data mining and analysis needs to be evaluated in order to verify whether the analysts use it at its full capacity, if they need further training or if the software needs to be further developed.

In general, in order to improve the capacity to fight against money laundering, trainings on the typology of cases, on the specificity of investigating and adjudicating these offences, on the evidence that can be used to prove the intentional element of the offence, including objective factual circumstances - need to be offered to the investigators, the prosecutors as well as to the judges. Overall, there is a need for firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements.

Azerbaijan is partially compliant with the recommendation 2.9.3.

New Recommendation 11

- *Continue to improve the capacity of the Financial Monitoring Service to analyse financial information and detect suspicious transactions, as well as the quality and percentage of referrals it makes to the prosecution.*
- *Evaluate the needs to fully use or further develop the data mining and analysis of information IT software currently in place and the training needs of the persons operating it.*
- *Pursue with the draft legislation to implement FATF Recommendation 12 regarding the domestic and international PEPs, their family members and close associates and develop subsequent bylaws and guidelines to be used by the reporting entities for the implementation of this legal provision.*
- *Take the necessary measures (either by normative acts, or instructions to prosecutors, training of judges and prosecutors, disseminating relevant jurisprudence, etc) in order to clarify that criminal liability for money laundering offences should not be dependent on a conviction for the predicate offence, nor limited to predicate offence committed within Azerbaijan's jurisdiction, should go beyond self-laundering, and should consider the possibility to infer the subjective element also from objective, factual circumstances.*
- *Continue with the organization of joint trainings for FMS officers, investigators, prosecutors and judges in the field of money laundering and anti-corruption.*

3. Prevention of Corruption

Integrity in the public service

Previous Recommendation 3.2.

Pursue the implementation of civil service reform to streamline the legal framework and cover those sectors which are not yet covered. Provide clear delineation between professional and political officials. Continue reforms of recruitment and promotion to ensure that all vacancies are open for merit-based competitive and transparent appointments and promotions.

Establish a reasonable limit to the share of additional wages; introduce measures to reduce discretion; and improve transparency related to granting of additional wages.

Speed up measures needed to enforce the provision of the Law on Combating Corruption which requires public officials to submit asset declarations. Strengthen the capacity of the Commission on Combating Corruption to verify the declarations. Start a process for reviewing the provision which prohibits public disclosure of the declarations filed by public officials while still maintaining the private, personal and sensitive information of those officials.

Speed up measures to adopt the Law on Prevention of Conflict of Interests to establish a clear definition of conflict of interest and rules on compatibility, and institutional mechanism for application of these rules.

Clarify obligation for public officials to report corruption related crime, and adopt measure to protect whistleblowers in public administration.

Establish permanent system for education of public officials ethics, integrity and prevention of conflicts of interest; and on other anti-corruption issues, such as criminal liability corruption related crime; identification of corruption risks and internal corruption prevention measures in institutions, obligation to report crime and to protect whistleblowers.

Pursue civil service reforms

The 2000 **Law on Civil Service** and relevant Presidential Decrees remain the main legal basis for the civil service in Azerbaijan. The Law on Civil Service was amended in 2010 and 2011 and several new Presidential Decree and Cabinet of Ministers decision were issued. The Azerbaijani authorities explained during the on-site visit that the main steps taken relate to the classification and to further improving and extending the recruitment based on competition (for more information in relation to recruitment, see below).

During the on-site visit the monitoring team was informed about the plans underway to develop a new **Civil Service Code**. The Government of Azerbaijan aims to codify the segmented legislation on civil service and also regulate ethical behaviour and prevention of conflicts of interest through this code. The work is led by the Civil Service Commission. In 2012, a working group was set up and it developed the first draft Civil Service Code. International experts were involved in the process of its evaluation. Moreover, the improvement of the civil service legislation is an anti-corruption measures foreseen in the National Anti-Corruption Action Plan 2012 – 2015 adopted in 2012. The NACAP 2012 – 2015 foresees, in particular, the preparation of the draft Civil Service Code by 2014.

The monitoring team notes that the draft Civil Service Code is mainly an effort to merge different laws in this field at this moment, for example, the Law on Civil Service, the law On Rules of Ethical Conduct of Civil Servants and others, but this can also be a momentum to remedy to different

loopholes in the existing civil service legal framework. In particular, it is advisable to: provide for a transparent mechanism of recruitment of high level civil servants (supreme class and 1st to 4th class); develop a more transparent salary system; ensure an efficient performance appraisal system; and improve the capacities of the Civil Service Commission. Further, it may be also worthwhile to revise and establish, through this new code, legal rules on ethics and elaborate and include rules on conflict of interest prevention. Finally, if the code will further expand the existing rules to various groups of officials in the public service, it will be also a commendable effort.

Since the second monitoring report in 2010, the Civil Service Commission has worked on several policy documents to support civil service reforms. In 2011, a draft **public administration human resources development strategy** was elaborated. According to Azerbaijani authorities, it aims to ensure a common policy in the area of human resources for public administration, based on meritocracy, equality, transparency, accountability, planning. The draft was prepared by the CSC, and the Public Administration Academy and 36 other public institutions commented on it by the end of 2012. The draft is currently submitted to the President for approval. Also, a strategy for reforms of the civil service and training strategy for civil servants are being drafted by the CSC.

“Cover those sectors which are not yet covered..”

Following amendments to the Law on Civil Service, civilian staff of a number of public institutions considered to be part of special civil service was attributed to the civil service and encompassed in the law. According to the amendments to Section 2.3 of this law, personnel of the ministries of Internal Affairs, Taxes, Foreign Affairs, Justice, National Security, Defence, Emergencies, State Border Guard Service, State Migration Service, State Customs Committees, who were not members of the main staff carrying military or special ranks, were attributed to civil service and recognised as civil service. Since 1 October 2012, similar changes were applied also to the technical staff of the Prosecutor's Office.

“..clear delineation between professional and political officials”

As during the second round of monitoring, the Law on Civil Service refers to two categories, administrative and political public officials, and its Article 10.4. stipulates that the legal status of persons holding political positions is determined by other legislative acts and they are not subject to this law. The monitoring team did not come across a definition of “political public official” or any reforms in this field. The Azerbaijani authorities told during the on-site visit that political officials are those included in the Article 109 of the Constitution, on the Competences of the President, which lists positions appointed by the President. Hence, the monitoring team notes that no changes have taken place since the second round of monitoring in clarifying the legal status of persons holding political positions or regulating their recruitment and activities.

“Continue reforms of recruitment and promotion”

The main legal provisions on recruitment, promotion and career in the civil service are provided in the 2000 Law on Civil Service and further detailed in the 2009 Decree of the President On approval of the Rules of Recruitment to the Civil Service in State Bodies through Competition. Since the second round report in 2010, some changes have occurred. The Presidential Decree of 3 March 2011 introduced amendments in the above-mentioned 2009 Rules of Recruitment to the Civil Service, according to which the head of the recruiting agency shall assign the candidates who successfully passed examination, but were not appointed to the vacant position, to a reserve fund for two years. Also as it was stressed in the progress report in September 2011, competitive procedures are increasingly used in recruitment: the judicial corps employees, ACD detectives and also a significant

part of officials working at the Prosecutor's Office are now recruited through a multi stage competition-based procedure.

In particular, the monitoring team learned about practical steps taken to implement the existing competition-based recruitment procedures. A system of electronic applications to civil service vacancies was created following the Decision of the Cabinet of Ministers on 6 March 2011. The CSC has improved the software and test templates for examination. In 2010, it launched first computer-based test examinations. The CSC also develops special programmes with a list of themes, which will be discussed during interviews, and references for further reading; several months before the competition this information is posted on the CSC's website. After the competition, all results are posted on the CSC's website. As of 2012, along with the representative of the respective recruiting authority and the CSC, specialists in particular areas can be members of the Interviewing Boards. In 2012, 64 specialists from educational institutions were involved in the interview procedures as independent specialists. Further, the CSC sends to NGOs and international organisations information on the forthcoming examinations and they can take part. Finally, an Appellate Commission was established to review applicants' complaints. In 2011, 36 applicants appealed and 5 of these applications were found grounded. In 2012, 31 applicants contested the results of the examination, of which 4 were found grounded.

Steps were also taken at the level of individual public institutions. For example, the Rules for Electronic Admission of Applications for Vacancies in Internal Affairs Bodies have been issued according to the requirements of the Rules for E-Services by Central Executive Authorities, endorsed by the Cabinet of Ministers on 24 November 2011.

Nevertheless, as noted earlier, main issues and concerns remain. The competition-based recruitment of new civil servants only applies to lower levels of civil servants (5th to 7th class), while senior civil servants (supreme class and 1st to 4th class) are recruited following an interview carried out by special commission established for this purpose and based on discretionary decisions by the heads of state administrative bodies.

Regarding **promotion**, according to the Law on Civil Service, the promotion of civil servants should also be through open competition. According to the Section 29.4 of the Law, the CSC and the recruiting agency shall announce such competition on their websites. According to the Sections 26 and 27 of the law, the CSC is responsible for promotion decision-making and shall include representatives of the CSC, the recruiting agency, as well as NGOs and independent experts. One of the promotion criteria is successful and fair performance of duties.

Besides, the monitoring team welcomes the intentions of Azerbaijan to develop a **performance evaluation system** for civil servants. In 2012, the CSC developed draft performance evaluation rules, which were tested in two institutions, the names of which were not provided. It is intended to adopt these Rules in 2013.

Granting of additional wages

According to the Section 22.2 of the Law on Civil Service, salary of a civil servant consists of a basic pay, as well as bonuses and allowances, depending from the specialization and years of service. The main concern during the second round was the share of bonuses and allowances (referred to as "additional wage") and discretion in granting them. During the visit the monitoring team did not hear about any developments to address these concerns.

In the September 2011 progress report Azerbaijan refers to two examples of a fixed additional wage. In 2011, the Cabinet of Ministers issued a decision on the payment of additional wages to the ACD personnel in the amount of 50 per cent of their actual salary and a President's Decree was adopted on the payment of additional wages to military officers in the amount of 25 per cent of their wages.

Enforce requirements to submit asset declarations by public officials

The 2005 amendments to the 2004 Law on Combating Corruption obliges public officials in Azerbaijan to submit annual declarations about their income, property, deposits in banks, securities and other financial means, information on their participation in companies, their debts and other financial and property obligations (Article 5.1.). The law stipulates that sanctions for failure to comply with these provisions should be applied. It also requires additional legislation in order to collect this information and additional rules for verifying the information submitted. Further, the Law On Approval of Procedures for Submission of Financial Information by Public Official was adopted on 24 June 2005. It lists public officials, which are subject to the obligation to declare their assets (President, Prime Minister, ministers, heads of central executive, local bodies, all civil servants, etc.), authorities responsible for collection and verification of declarations, and it contains some provisions on the content, terms and control of the asset declarations. Then in 2006 and 2007 several laws were amended to include provisions stipulating that failure to submit asset declarations may lead to disciplinary measures (laws on civil service, police, prosecutor's office, internal affairs and Ministry of Justice bodies, the Parliament, municipalities, accounting chamber). Finally, on 9 August 2005 the President issued a Decree requiring the Cabinet of Minister to prepare the form of declaration of assets.

All these legal requirements have remained on paper, and the asset declarations have not been implemented in practice. The form of declaration of assets has not been adopted; the declarations are not being submitted and, hence, cannot be verified or made public. The monitoring team notes, in this light, that since 2010 no steps were taken to address the elements of the recommendation 3.1. to enforce the requirement to submit asset declarations, strengthen the capacity to verify them or to review the provisions, which prohibit to disclose this information. The monitoring team recalls remaining concerns expressed already in 2006, during the first monitoring round, that the system of declaring assets is ineffective, because it lacks a mechanism of control and its lack of transparency is another critical issue. The doubts expressed then, whether the Commission on Combating Corruption has enough capacity to verify the declarations and the view that civil society control is weakened by the existing provisions turn out to be grounded too.

Asset declarations of public officials are included in the NACAP 2012-2015, which foresees the "preparation of proposals on electronic submission of financial declarations by officials" by the Cabinet of Ministers and the Commission on Combating Corruption in 2013. The 2007 Anti-Corruption Action Plan also had a similar measure – to approve declaration form on financial disclosure of public officials in 2007-2008, – but such steps were not taken.

Definition of conflict of interest, rules on compatibility, institutional mechanism for application

Several laws, all existing already also during the second round of monitoring, contain some provisions on conflict of interest prevention, ethics and compatibilities in the public service. The Section 7 of the 2004 Law on Combating Corruption contain rules related to conflict of interest in its Articles 7 and 8, namely prohibition to work with relatives and some rules relating to gifts. The 2000 Law on Civil Service, in its Article 20, sets out limitations related to civil service, for example, to hold additional paid position in other state bodies, to be involved in teaching, to be an attorney, take part in political activities, etc. The 2007 Law on Rules of Ethics Conduct of Civil Servants has a separate

article on prevention of conflict of interest. It also contains rules on ethical behaviour, restrictions for acceptance of gifts above certain level, prohibition to accept benefits, which may influence his impartial decision-making, etc. This Law also contains provisions relevant to institutional mechanism for the application of these rules: it outlines a number of duties of the head of the public administration body, the civil servant himself and a controlling body. There are also codes of ethics and conduct in many public institutions. However, from speaking to various interlocutors during the on-site visit the monitoring team was under impression that, while the legal basis exists, in practice it does not work well.

Despite the existing legal provisions containing both rules on ethics and conflict of interest provisions and elements of implementation mechanism, it appears that no steps were taken since the second round report in 2010 to improve laws in this field.

In the meantime, it would appear that there are some developments to prevent conflicts of interest at the level of individual public administration institutions. For example, the Financial Monitoring Service Employee Code of Conduct, approved on 1 June 2010, contains provisions on conflicts of interest and how to manage them. For the Ministry of Taxes, the Code of Taxes in its Article 29 On Conflict of Interests contains provisions prohibiting the conduct of official duties when there is kinship between a official of tax authority and taxpayer and when an official of tax authority or his family members have direct or indirect financial interest in taxpayer (taxpayer's activity). The Code of Ethical Conduct of a Tax Employee approved in 2008 includes provisions on conflict of interest prevention. For the Police, there is the Ministerial Order of 10 October 2011 On Inadmissibility of Relatives Working Together and the Internal Affairs Officer Ethical Conduct Code states that internal affairs officer shall not make decisions out of his own interests or decisions which may influence his or his relative's personal and material benefits. Each police officer is obliged to report possible conflicts of interest during his work and before his appointment. Again, the monitoring team could not check how these provisions are applied in practice and if they have any impact in daily life.

According to the NACAP 2012-2015, the Cabinet of Ministers and the CCC have to develop proposals on improvement of legislation related to the prevention of conflict of interests in the activity of the civil servants and other officials working in the state institutions in 2013.

Finally, a new development should be noted in this area, the Civil Service Commission intends to develop a network of ethics commissioners in public institutions. Information about ethical commissioners and ethical rules of all institutions is available on the Civil Service Commission's website at www.csc.gov.az (mostly in Azeri).

Reporting corruption and protection of whistleblowers

It appears that no steps were taken to introduce a legal obligation to report corruption or regulation on protection of whistleblowers. The NACAP 2012-2015 foresees the Development of the draft Corruption Whistleblowers Act.

For reporting of corruption, hotlines seem to be promoted and working well in Azerbaijan. There is the hotline 161 operated by the ACD in the Prosecutor General's Office, as well as hotline section on the official website of the Ministry for Education and hotlines also in other public institutions.

Education of public officials

Limited steps were taken to establish a permanent system for education of public officials on ethics, integrity, prevention of conflicts of interest and other anti-corruption issues since second round of monitoring in 2010.

Anticorruption Department, within the framework of the Twinning Project with Lithuania, has developed a toolkit for training of internal security units of law enforcement and central executive authorities. It contains not only the conceptual and theoretical parts, but also a section describing methodology of training. In the first quarter of 2013, 1055 internal affairs officers were trained. The Police Academy Students' curricula include module of fight against corruption crimes, investigation of fraud and financial crimes.

The Civil Service Commission has developed training course, which covers, among other, prevention of corruption. This training course is universal and applies to all civil servants.

In 2012, the Ministry of Taxes held trainings on Code of Ethical Conduct of a Tax Employee, the Analysis of individual cases in the Code of Ethical Conduct of a Tax Employee, Law of the Republic of Azerbaijan on freedom of information, Analysis of individual cases on conflict of interest and freedom of information issues in the Tax Code.

In the future, according to the NACAP 2012, it is envisaged to establish a Specialised Training Centre for Civil Servants, which should conduct special training, among others, in the field of fight against corruption, prevention of the conflicts of interests, promote codes of ethics, etc. The CSC has already developed and submitted of the Cabinet of Ministers proposals on the personnel for this Centre. The monitoring team was told during the on-site visit that the Training Centre will be created by end 2013. Also, as noted above, the CSC has a training strategy for civil servants in the pipeline. However, the monitoring team notes that at this stage these remain projects.

Conclusions

In the area of civil service reform, the monitoring team welcomes practical steps taken to implement the existing competition-based recruitment procedures, which mainly apply to middle and lower level civil servants. A more transparent mechanism for recruitment of senior and high level civil servants still remains to be developed. No rules are in place for appointments to political positions. Salary system in public administration remains unequal. Initiatives of the Government of Azerbaijan to develop a performance evaluation system for civil servants are underway. The asset declarations have not been implemented in practice; no steps have been taken in this field since 2010. No steps have been taken either to improve legal provisions on conflict of interest or to promote the application of the existing rules or ensure their implementation or enforcement in practice. Regulation on whistleblowers protection remains to be developed.

In sum, steps were taken by Azerbaijani authorities to address some aspects of the Recommendation 3.1. and a number of promising initiatives are underway. However, some of the key concerns have not been addressed and more vigorous and visible steps to implement in practice and properly enforce legal rules and institutional mechanisms in the area of public sector integrity are still needed.

Azerbaijan is partly compliant with the recommendation 3.2.

New recommendation 12

- *Develop rules and implement transparent and merit-based recruitment of senior and high level civil servants as part of the new Civil Service Code and enhancing the capacities of the Civil Service Commission to enforce it.*
- *Develop rules or common principles for transparent appointments to political positions.*
- *Ensure a more transparent, adequate and equal salary system in the public administration, comparable between administrative bodies and competitive in relation to comparable enterprises/organisations.*
- *Develop a network of ethics commissioners in public administration institutions.*
- *Compose a practical public service ethics training course offered regularly and mandatory to public officials.*
- *Ensure clear and comprehensive conflict of interest and ethics rules for civil servants and other public officials and a meaningful mechanism for their implementation are in place and vigorously implemented and enforced in practice.*
- *Ensure the necessary legal, regulatory and institutional basis to implement a system requiring public officials to submit asset declarations and to verify them is completed and implement the asset declarations system in practice without further delay.*

Transparency and discretion in public administration

Previous Recommendation 3.3.

Launch as soon as possible the process of drafting a legal act regulating the evaluation of legal acts as a way to strengthen the review of laws as regard anti-corruption compliance. Pay careful attention to streamlining the methodology, allocating clear competencies to the relevant government bodies involved, specifying which anti-corruption international standards shall be taken as benchmarks and stating the consequences of the review findings, especially concerning the duty of the Parliament in that matter. The specialised anti-corruption agencies, i.e. the Commission for Combating Corruption and the Anti-Corruption Department in the Prosecutor General's Office, should be directly involved in this process.

Ensure that the requirement of the National Strategy on Increasing Transparency and Combating Corruption 2007-2011 to improve and implement anti-corruption measures by line ministries is implemented. A clear monitoring mechanism of line ministries anti-corruption action plans measures shall be put in place and monitored by the Commission on Combating Corruption. The Commission shall also recommend measures to the line ministries on the basis of reports issued by international development actors.

Continue projects to simplify regulations and procedures in public administration, such as the privatisation processes and public service delivery.

Anti-corruption review of legal acts

The 21 December 2011 Law On Legal Acts foresees a risk analysis of each legal draft. The risk factors are set out in the Annex of the Law, entitled List of risk factors in legal acts (their drafts). The list contains such factors as, for example, scope of discretionary powers of public officials, lack of administrative procedures, competitive procedures, lack of control mechanism, failure to comply

with transparency requirements. The monitoring team was told that such analysis is done regularly by the Ministry of Justice and attached to all legal drafts. In 2012, reportedly, 15 per cent of draft laws were returned following such risk analysis. The monitoring team heard that the specialised anti-corruption bodies, such as the CCC and the ACD, are not required to participate in this risk analysis.

At the same time in the NACAP 2012-2015 it is foreseen that the Ministry of Justice in 2013 elaborates United Rules for the Abuse (Corruption) Exposure Review of the draft legal instruments and legislation developed by the central executive authorities and other institutions entitled to draft legislation and legal instruments.

Implement anti-corruption measures by line ministries

See also p. 19 for the assessment of this issue under Previous Recommendation 1.1.-1.2.-1.3.

In sum, as Azerbaijani authorities reported, by March 2013, all central executive authorities and the General Prosecutor's Office have developed and submitted to the CCC their institutional anti-corruption plans. Some examples of such institutional anti-corruption action plans are described in the replies to the questionnaire. For example, in 2012, the Ministry of Taxes adopted such a plan and it includes measures to improve recruitment of tax employees, provide ethics training, expand e-services, conduct risks assessment based inspections, improve selection of tax audits, etc. Ministry of Health has annual action plans on measures against corruption, Ministry of Education has a Work Plan for 2013 developed and approved on the basis of the NACAP 2012-2015 and the 2012 Open Government National Action Plan, which was disseminated among all educational institutions and authorities in the education sector. State Committee on Property Affairs also adopted an action plan in 2013. Numerous measures taken by line ministries and other state authorities are described more in detail in the replies to the questionnaire.

As it reads, the requirement of the 2007 Anti-Corruption Strategy and Action Plan to have institutional anti-corruption action plans seems to be well implemented. Nevertheless, as stated earlier in the report, it is difficult for the monitoring team to assess how actual anti-corruption measures are implemented in line ministries. It seems that no particular monitoring mechanism was put in place by the CCC. The only way it could follow the process was regular reports on status of implementation from institutions having anti-corruption plans.

Continue to simplify regulations and procedures in public administration

Simplification of procedures and regulations and promotion of electronic services seems to be overall an area of positive developments and concrete achievements in Azerbaijan. President of Azerbaijan Ilham Aliyev also often underlies in his public speeches that e-services are a major tool in the fight against corruption⁴⁶.

The key development in this area is the creation of the State Agency for Public Services and Social Innovations – **the ASAN Service Center** established by the Presidential Decree of 13 July 2012. The aim of the ASAN Service Centers is to provide various state services through a “single window”. One of the stated goals of the ASAN Service Centers is to increase transparency and strengthen the fight against corruption. The ASAN Service Centers provide altogether 23 services corresponding to the competencies of 9 Ministries and state agencies: the Ministry of Justice (e.g., birth certificate, registration of child adoption, notary service); Ministry of Internal Affairs (e.g., issuance of identity card, passport, renewal of driving licence); Ministry of Taxes (registration of commercial legal

⁴⁶ Speech delivered at a conference on 12 February 2013

persons and tax payers); the State Commission for Property Affairs (e.g., extracts of registration of property rights); the Customs Committee; the State Migration Service; the Committee for Land and Cartography; the Social Protection Fund; and the National Archive Department. Ministries and state agencies delegate their representatives to work at the ASAN Service Centres. Three such centres exist in Baku since January 2013 and one in another region.⁴⁷

The monitoring team visited the ASAN Service Centre in Baku in June 2013 and welcomes this development. The centre was operational and the monitoring team could see that the “one window” system can be an effective solution and work well in practice. The monitoring team welcomes this development in Azerbaijan and concurs with another report stating that, if implemented correctly, the ASAN Service Centres have the potential to provide an important contribution to good governance, especially as a tool to limit petty corruption in public services.⁴⁸

The other important development in this area is the promotion of the **use of electronic services in state authorities**. As mentioned earlier, the Presidential Decree No. 429 on 23 May 2011 On Some measures on organization e-services of government’s bodies listed service to be delivered in electronic form; there is a portal created by the Government at <https://www.e-gov.az>. The monitoring team was under impression that a number of state authorities have introduced electronic services following this decision and there are projects underway.

Conclusions

While the review of legal acts seems to be strengthened by introduction of the new risks assessment under the Law on Legal Acts, it could only partly be considered an anti-corruption compliance review of legal acts. The specialised anti-corruption bodies are not involved. Overall, it seems to be rather a general positive development, but less related to specific efforts to fight corruption in Azerbaijan. Moreover, the NACAP 2012-2015 foresees the elaboration of rules for anti-corruption analysis of legislation and legal drafts.

Meanwhile, the monitoring team welcome the efforts of Azerbaijan in the field of simplification and modernisation of administrative procedures and introducing more transparency and efficiency in the delivery of public services to citizens. This appears to be an area of positive developments and concrete practical steps in Azerbaijan that can be extended to other sectors, for example, business sector or the most corruption-prone sectors.

Azerbaijan is largely compliant with the previous recommendation 3.3.

New recommendation 13

- ***Expand efforts to simplify administrative procedures and render more transparent and efficient delivery of public services towards conduct of business in Azerbaijan and in the most corruption-prone sectors.***

⁴⁷ For more information, see <http://www.asan.gov.az>.

⁴⁸ OSCE Inter-Office memo, Baku, 4 March 2013

Public Financial Control and Audit

Previous Recommendation 3.4.

Provide long-term capacity building and training in the field of corruption and fraud detection to the auditors of CoA.

Introduce anti-fraud and anti-corruption audits in the activity portfolio of the CoA, as well as strict performance-based audits, especially in line ministries facing high corruption risk.

Ensure that the CoA develops detailed yearly statistics on the number and types of audits carried out, the source of audit (how it was initiated), and the outcomes and impact of those audits on the decisions taken by the Parliament.

Consider introducing ex-ante control of budget execution by the CoA.

Ensure that regularly published information on public accounts and budget includes clear explanations on discrepancies.

Consider introducing a requirement to the PFCS to review agencies not according to the periodical plan (e.g. each agency to be reviewed not more than once every 2 years), but on the basis of risk-prone financial misconduct.

Enhance the power of the IA units in order to allow them to proactively launch anti-fraud and anti-corruption audits, especially in government spending entities, and not only on the basis of a received complaint or suspicious information.

Assess the usefulness and the effectiveness of the IA units and propose further improvements; to this end, ensure that all IA unit in different entities should submit yearly statistics on the number of audits carried out, the types of audits, the source of audit (how it was initiated), and the outcomes and impact of those audits (fines, lawsuits, dismissal, financial and organisational reforms done on the basis of audit results, etc).

Organize joint trainings including personnel from Internal Audit and ACD on how to submit material to law enforcement bodies.

Corruption and fraud detection trainings

Azerbaijan provided information on a big number of trainings and other measures, including anti-corruption and anti-fraud training activities, undertaken by the Chamber of Accounts in order to empower its human resources. The outcomes of these trainings are highly appreciated by the Azerbaijani authorities, who stressed that the staff of the Chamber became aware of new audit methodologies, including detection of financial violations, and acquired experience in detection of corruption offenses and of financial fraud.

However, during the on-site visit to Azerbaijan the monitoring team found out that by now the Chamber had not carried out any activities to improve the qualifications of its inspectors (auditors) in countering corruption and financial fraud. The seminars and conferences aimed at improving the skills in anti-corruption and anti-fraud efforts were organized exclusively in the framework of international forums and initiatives.

The group was in general terms informed that in the near future the Azerbaijani authorities were planning to hold some training courses, seminars, conferences, etc. in the anti-corruption and anti-fraud area. However, any specific plans of such activities or information on the agencies in charge or about funding and target audiences of trainings are apparently not yet available.

Corruption and fraud detection audits

The Chamber has not yet started any audits to combat corruption or fraud but pursues certain activities in accordance with the laws and Rules on the procedure of preparation, conduct and publication of the final results of fiscal examinations by the Chamber of Accounts of the Republic of Azerbaijan (approved by the Chamber); such activities essentially lead to detection of corruption and fraud facts. Specifically, auditors are supposed to reveal serious financial irregularities - for example, such as abuse of office, corruption, fraud, etc., and, if they are identified, to present such findings in the preliminary reports and take appropriate action in accordance with the applicable legislation.

The issue of formally vesting the Chamber of Accounts with the competence to conduct audits for detecting facts of corruption and fraud is still under consideration.

Audit activities in line ministries

Azerbaijan provided information that, in accordance with the effective law, the Chamber of Accounts pursues controlling activities within the framework of its financial audits. In order to strengthen public accountability and facilitate decision-making the Chamber develops regulatory instruments that ensure conduct of audits of economic performance, cost saving in the course of project management, performance effectiveness and accomplishment of performance goals.

Azerbaijan also provided information on the progress of CAPSAP Project, which includes the components of performance audit, development of the financial audit system, improvement of the legal framework and human resources development/ training. Its implementation will be completed within 18 months.

During the visit to Azerbaijan it became clear that audits for detection of corruption and fraud facts are planned only in the line ministries exposed to increased corruption risks.

Yearly statistics on audits

Azerbaijani authorities have provided annual statistics on the number and types of conducted audits, their sources and their results, including, where appropriate, relevant parliamentary decisions. This means that preparation of such data is supported by the Chamber of Accounts. All controlling activities are carried out in accordance with the yearly plan, just as during the second round of monitoring, and are, therefore, initiated according to this plan. During the on-site visit it was confirmed that such audits may also be carried out at the request of law enforcement agencies and that such information is reflected in the Chamber's statistical reports.

As for publication of such data in practice, the monitoring team examined information posted on the WEB page of the Chamber of Accounts and containing its reports on own activities from 2008 through 2012. Such publicly available information is very general. There are no indications of what agencies and their subdivisions were audited and of the amounts of damages inflicted by revealed violations; the detected offenses are not broken down by categories (e.g. the total damage or overspendings on salaries, pensions or per diems, lack of funds or goods, etc.; available data does

not refer to any revealed facts of unlawful allocation and spending of funds under public institutions' cost estimates, etc.).

Preliminary (*ex ante*) budget control

Azerbaijani officials stated that the Chamber of Accounts is to make sure that financial activities management rests on the principles of legality, efficiency, effectiveness and cost saving. Therefore, the aim of the Chamber's ongoing activities in the area of financial control – both in terms of analysis of the expected results (*ex-ante*) and *a posteriori* analysis (*ex-post*) – is to ensure efficient management of state-owned property, transparency and accountability. In accordance with the Law on the Chamber of Accounts (of 1999) and the Rules on the procedure of preparation, conduct and publication of the final results of fiscal examinations by the Chamber of Accounts, the Chamber also does preliminary analysis of the expected results by examining draft legislation, which is conducive to elimination of provisions that may create grounds for corruption.

The opinions submitted by the Chamber of Accounts to the Parliament were taken into account in the deliberations of the Committee on Economic Policy; as a result, it was recommended to hear the drafts of annual budget laws at Parliament plenary sessions.

Control activities carried out (both *ex-ante* and *ex-post*) by the Chamber involve participation of its own auditors and of the relevant structural units. When drafting its opinions the Chamber resorts not only to the documents submitted to the Parliament but also to reports of central executive authorities, social and economic development concepts, statistical reports and other materials. All auditing activities take place in strict accordance with the yearly work plans of the Chamber. Representatives of relevant government agencies, experts and other professionals participate in the Chamber's audits.

Explanations of the observed discrepancies

Budget execution reports are compiled, as before, on the monthly, quarterly and yearly basis and submitted to the Parliament and, as required, other bodies of executive power. Each report is made in a structured format, by functional and economic categories, starting with the beginning of the fiscal year, and shows cumulative total indicators. Publication of budget execution reports in the media is mandatory. Quarterly reports, as well as all others, include comparative analysis of the revenues and expenses; no discrepancies between them are allowed.

According to Articles 20.2 and 20.7 of the Law on the budgeting system the quarterly information on execution of the national budget, draft budget for the coming year and detailed figures of the consolidated budget are, before submission to the Parliament, made public on the WEB page of the Ministry of Finance. However, a visit of the Ministry of Finance's official WEB site showed that such published data will hardly help an ordinary citizen to find out what s/he might need in terms of analysis or discrepancies.

This is not to mean that the Ministry of Finance's WEB page carries no materials on execution of the budget; such information is provided, although selectively. For example, the link "Analysis of the execution of budget incomes and expenses" opens nothing but provisional data from a number of agencies for 2010-2011 and the third quarter of 2010 and 2011; therefore, the published information is not final or complete.

Audits based on detection of financial misconduct risks

Azerbaijan informed that, at present and in accordance with the Regulation on planning, implementation and institutionalization of activities of the Public Financial Control Service (last reviewed in February 2013) all activities in the area of financial control (auditing) should be based on risk assessment. This regulation was developed in the course of an EU-funded Twinning project. According to this regulation the experts of the Ministry of Finance developed a risk identification guidebook for planning financial control measures in budget-funded organizations. Such financial control activities will be included in the PFCS work plan. During the on-site visit representatives of Azerbaijan promised to provide the text of this guidebook for examination and analysis by the expert team and stated that the decision on its implementation was due in 2014. However, the text of the guidebook was not provided.

Powers of internal audit units

Units of internal audit and control exist in different agencies; their powers vary from one agency to another. According to the authorities at some agencies such units are entitled to initiate internal audits with regard to corruption and fraud and do not have just to respond to a complaint or suspicious information. Azerbaijan also provided statistical data on the total number of such audits. However, information of this kind was not provided with regard to most agencies, and the monitoring team could not readily draw conclusions about this aspect.

Usefulness and effectiveness of internal audit units

Evaluation of the usefulness and effectiveness of internal audit units was carried out by several government agencies of Azerbaijan. It entailed specific proposals on improvements in their performance, both within individual agencies and in the framework of implementation of the National Strategy of Increasing Transparency and Combating Corruption for 2007 - 2011, pursuant to proposals developed by the State Commission on Public Service in December 2010. These proposals envisaged direct access of complaining parties, regular analysis of internal audit activities and identification of regulatory gaps.

For example, the Ministry of Taxes came up with several proposals aimed at improving the competence and effectiveness of internal audit units. According to Ordinance No. 0917040100540000 (of June 3, 2009) "On some changes in the organization of a number of units and on division of structural units at the Central Office of the Ministry of Taxes", the directorate of internal audit and the department of internal security of this agency ceased to exist and were replaced by the head department of internal security.

Some other measures were taken to improve the activities of the internal audit department of PFCS and to staff it with qualified personnel. Presently this department carries out comprehensive activities to ensure functional compliance and performance discipline.

In accordance with the Decree of the President of Azerbaijan (of February 16, 2011, № 386) "On measures related to improvements in the operation of the Ministry of Labor and Social Security of the Republic of Azerbaijan" this agency formed its own department of internal audit. Personnel of this department was selected pursuant to the Law "On public service" on competitive basis, upon general and in-depth in-house interviews. In order to improve the competence and qualifications of the staff of the internal audit department it was proposed to offer relevant training courses at the Labor and Social Research Training Center under the Ministry of Labor and Social Security.

Joint trainings

Azerbaijan provided vast information on joint trainings held over the last three years for internal audit units' staff on referrals to law enforcement authorities. For instance, the trainings organized by the Anti-Corruption Department of the Prosecutor General's Office brought together the representatives of all internal audit units – from the Ministry of Taxes, Ministry of Education, Ministry of Health, Ministry of Labor and Social Security, Ministry of Internal Affairs, Ministry of Justice, Ministry of Economic Development, Ministry of Transportation and from the State Customs Committee.

It was also imparted that as a result of training and participation in seminars and conferences the IAU staff improved their skills, strengthened their ability to obtain auditing evidence and learned about new auditing techniques, which altogether raised the quality of control measures, including the quality of materials referred to the law enforcement authorities.

Such assessment was supported by information that, e.g., in 2010 – 2013 the Ministry of Taxes referred to the PGO the materials of 2 audits, with full sets of relevant documentation, and at the State Fund of Social Security the materials of its local divisions' audits were, after the trainings, referred to the law enforcement bodies.

Conclusions

The monitoring team noted a large number of activities to improve the skills of auditors of the Chamber of Accounts. Participation of the Chamber's staff in all above listed events certainly serves as a positive indicator in the context of implementation of this part of the recommendation. However, specific seminars and conferences aimed at improving professional qualifications in the effort against corruption and financial fraud were organized exclusively within the frameworks of international forums and initiatives, while, in the opinion of the monitoring team, the Chamber, in order to build up its long-term capacity, should take action for developing own capabilities of advanced professional training.

The Chamber does not yet practice regular anti-fraud and anti-corruption audits. In this regard the monitoring team emphasizes the importance of addressing official inclusion of corruption and fraud detection audits into the competence of the Chamber of Accounts, as soon as appears possible.

As to commencement of auditing activities, especially in the line ministries that face high risks of corruption, the CAPSAP Project is a step in the right direction. However, the strictly limited number of public bodies to undergo audits may make it impossible to respond to the changing corruption risks in a prompt manner and, consequently, prevention of fraud and corruption in the government will become selective. It is likely that adoption of the relevant decision will weaken the control of other ministries and other authorities, which in the future may cause a growth of corruption, fraud and other financial misconduct.

The monitoring team believes that this element of the recommendation should not be interpreted narrowly and that it may prove wiser to include anti-corruption and anti-fraud audits at all agencies into the sphere of competence of the auditors of the Chamber of Accounts, with a special focus on agencies facing high risks of corruption. Such enhancement of the auditors' competence and development of a unified program of financial audits for all ministries, in view of their specific activities, will improve the quality of financial control as a whole.

Azerbaijan launched preliminary (*ex ante*) budget control, thereby fulfilling this element of the recommendation.

Azerbaijan formally complied with the requirement of publication of annual statistics on the conducted audits. However, examination of, and familiarization with, the information posted on the WEB site of the Chamber of Accounts showed that such information may not be deemed as clear and detailed as required by the recommendation.

The monitoring team would also like to note that proper implementation of Articles 20.2 and 20.7 of the Law “On the budget system” (Budget System Act) requires publication of vaster information on execution of the state budget, including, as a minimum and with regard to revenues,

- the total of all collected taxes, customs duties, government fees and other returns for the reporting period, as compared to the relevant yearly plan;
- comparison of budget execution indicators with those for previous reporting periods;
- budget planning and execution forecasts for the coming budgeting years;
- data on discrepancies between the planned and actual figures, inclusive of expenses;
- approved and factual expenditures according to the yearly plan and classification of expenses, with indication of the changes (increase or decrease),
- analysis of execution by the classification of expenses and relevant percentages of the total budget,
- the amount and percentage of expenditures, as initially allocated or for other purposes;
- the results of financial audits of the authenticity of budget execution indicators.

In order to comply with the part of the recommendation addressing audits on the basis of risk-prone financial misconduct Azerbaijan developed a risk identification guidebook for planning financial control measures in budget-funded organizations and planning its practical application. The monitoring team welcomes these steps and emphasizes the need to continue the efforts in this direction.

In a number of public authorities of Azerbaijan the powers of internal audit units were widened, and they are presently authorized to initiate anti-corruption and anti-fraud audits on their own. This practice should be continued and extended onto other bodies that have internal audit units.

Azerbaijan assessed the usefulness and effectiveness of internal audit units and, on the basis of such analysis, developed a number of measures to improve their performance in the framework of implementation of the National Strategy of Increasing Transparency and Combating Corruption for 2007 – 2011, pursuant to relevant proposals developed by the State Commission on Public Service in December 2010. These proposals envisage direct access of complaining parties, regular analysis of internal audit activities and identification of regulatory gaps as well as of shortcomings at specific agencies. Implementation of these measures should be the next step.

With regard to joint trainings for IAU and ACD personnel staff the monitoring team appreciates their regular conduct and stresses their positive effect on the practical interaction of the involved authorities. The monitoring team maintains that such initiatives should be continued in the future.

Azerbaijan is partly compliant with Recommendation 3.4.

No new recommendation is made under this section; previous recommendation remains valid.

Corruption in Public Procurement

Previous Recommendation 3.5.

Review and reform the legal and institutional framework for the public procurement, including the Public Procurement Law, and strengthen the capacity of the State Procurement Agency to lead the implementation of the reform.

Ensure transparency of procurement procedures, expand the use of competitive procedures, ensure that emergency and single-source procurements are reasonably limited and properly controlled.

Ensure that procurement plans are developed by procurement agencies.

Introduce clear criteria for establishing and operation of tendering commissions, adopt standard template for bidding documents.

Continue providing professional and anti-corruption training to the officials involved in the tendering commissions.

Strengthen monitoring of public procurement carried out by the procuring agencies, collect and analyze precise statistical information on procurement methods, values, and other relevant information.

Establish an independent public procurement review body competent to review appeals filed by participants of the tendering procedures, introduce a freezing period to allow for filing of complaints.

Review and reform the legal and institutional framework for the public procurement

The public procurement system in Azerbaijan remains regulated by the 2001 **Law on Public Procurement**. It was last amended in March 2010. The main changes introduced concern adding information on the website of the State Procurement Agency. Announcement of tenders and requests for proposals and quotes should be now published on the official websites of procuring body and of the State Procurement Agency, as well as in the media (previously the publication of these announcements was discretionary). Moreover, the segmentation of public procurement of goods, works and services into several contracts in order to avoid open competition is now explicitly forbidden. The public procurement announcements can be made and procedures launched only upon endorsement of tender documents by the tender commissions.

The **State Procurement Agency** (SPA) remains the central government body in charge of public procurement in Azerbaijan. It is the sole body responsible for policy development, supervision of public procurement (on its own initiative) and review of complaints from tenderers or other parties concerned, and monitoring. However, its supervisory resources are limited and it has little or no authority to sanction misprocurement. When promulgated, the latest amendments to the Law on Public Procurement will give the SPA the explicit power to cancel a tender if a contracting authority fails to act according to instructions given by SPA after reviewing the procedure.

The accumulation of its responsibilities often puts the SPA in a conflict of interest situation. According to the legislation, single-source procurement can be made in certain circumstances but requires SPA's approval. Since the criteria for the exceptional use of single source procurement are suitably restrictive and reasonably clear, the responsibility for complying with them should rather lie squarely with the contracting authorities themselves, subject to review and sanctions as appropriate. Also, although never a voting member of the tender commissions that have to be set up by the contracting authorities, SPA routinely participates in their deliberations, especially for high value contracts. In both cases, its ability to independently review complaints and sanction the party

at fault is compromised. Also, an EBRD report in 2012 noted that “the concentration of functions in this manner can make it difficult in practice to ensure the required independence of review procedures, even when appeal to normal courts is possible”.⁴⁹

The monitoring team is under the impression that, while the SPA has a lot of functions, it does not always have the necessary authority and powers to implement them and its position is quite weak in practice. The SPA emphasised during the on-site visit that with more information coming from procuring entities it now has more opportunities to control and analyse the procurement process. Overall, the SPA personnel seemed enthusiastic and open to novelties, especially in the fields of policy, openness and e-procurement, but less in the areas of monitoring and control. However, it is clear that the SPA does not have enough powers and tools to conduct a meaningful monitoring and control over the legality of procedures according public procurement tenders or review of complaints. It is therefore advisable to streamline the role of the Agency. It should be in charge of policy development, review and monitoring, however, it should not participate in daily procurement decisions; the independence of its complaints review function should be ensured.

A number of measures to improve transparency in public procurement are included in the NACAP 2012–2015, which was endorsed by the Presidential Decree in 2012, namely e-procurement, improvement of the oversight over procurement contracts, debarment, review of complaints, referral of suspicions of corruption to law enforcement, development of pricing standards, procurement plans and their publication and a register of procurement transactions on the SPA’s website.

Transparency, bidding document templates, criteria for tendering commissions

The SPA develops its website, at www.tender.gov.az, into a public procurement portal. As foreseen by the above-mentioned legal amendments in 2012, announcements of tenders, requests for proposals and quotes are now being published on this website more systematically. The monitoring team could find information on the SPA’s website on open bids in 2013, also in English, as well as a list of public procurement contracts awarded in 2012 and January–June 2013 and a list of procurement plans of state agencies in Azerbaijan for 2013. The monitoring team is not aware how complete the information about each bid is or to what extent the available information generally covers public procurement of goods, works and services in Azerbaijan. It seems that such important information as the terms of references and other tender documents are not posted on the website or made available to the SPA. The monitoring team therefore welcomes these positive developments towards more openness about public procurement and how public resources are used in this field, but encourages broadening them.

The SPA in cooperation with the USAID has elaborated packages of **standard bidding documents** for goods, works and services, currently partly available on its website. A **manual for contracting authorities** was elaborated in collaboration with SIGMA. With the assistance of USAID, the SPA has also developed the **Rules for establishing procurement units** in procuring organizations. While the monitoring team welcomes this useful guidance allowing unifying and making the procurement process more transparent, however, it all remains guidance. It is difficult to enforce the use of these documents in practice. In order for their use to become mandatory, these documents currently need to be adopted by decision of the Cabinet of Ministers. In order to compensate for this and, in general, to introduce more flexibility into the system, the SPA, as a member of the Cabinet of

⁴⁹ EBRD (2012), *Legal Diagnostic Report - Compliance of the Public Procurement Legislation in Azerbaijan with International Best Practice as expressed by the 2011 UNCITRAL Model Law on Public Procurement*, version of the report dated July 2012

Ministers, could have the authority to issue binding regulations in application of the Law on Public Procurement and to enforce the use of templates, standard documents and the like.

Concerning the **tendering commissions**, the second round report in 2010 found that there are no criteria for the establishment of tender commissions for procuring authorities. Indeed, the Law on Public Procurement in its Article 23 only states that the tender commissions should be composed of members of procurement agency, relevant organisations and experts. Reportedly, the Public Procurement (Amendment) Act 2010 increased the responsibility of the tender commissions, but relevant provisions were not made available to the monitoring team.

Besides, the monitoring team notes that the very existence of tender commissions separate from the contracting authority departments in charge of planning, purchasing and operations (including contract management) leads to a dilution of responsibility inside the contracting authorities; if cases of corruption allegations, it is more difficult to identify and sanction the “real” culprits, especially those at the top level of the organisation.

Procurement plans by procurement agencies

The current legislation in Azerbaijan does not oblige procuring institutions to develop or publish **procurement plans**. However, there is a legal basis now, the National Anti-Corruption Action Plan for 2012-2015, endorsed by the Presidential Decree on 5 September 2012, which requires that all central and local executive authorities in 2013 prepare a public procurement plan and submit it to the SPA for uploading on its website. The monitoring team learned from the SPA during the on-site visit that, on this basis, 127 institutions have developed procurement plans and they are uploaded on its website⁵⁰. However, this number is still far below the actual number of operations that would be subject to the requirement. Generally, developing procurement plans would need to be a legal requirement and the SPA could be in charge to enforce it.

Competitiveness and emergency and single-source procurements

The monitoring team heard that the use of competitive procedures increases in Azerbaijan and single-source procurement is comparatively less used since second round monitoring in 2010. True, in terms of numbers of procurements single-source procurement is decreasing (see the table below), however, the information about the value of single-source procurement is not available. Also, it is not known how much procurement is not reported.

Year	Procurement procedures	Single-source procurements
2010	8 074	1 671
2011	14 830	1 262
2012	15 590	1 150

Source: Replies to IAP third round monitoring questionnaire by the Government of Azerbaijan, 29 April 2013

The legislation in Azerbaijan provides that the SPA has to approve all single-source procurements. It does it using some general criteria, for example, there is only one supplier, there are no possibilities to do a competition, etc. and using general information provided with the request. There is not a procedure to conduct a more thorough analysis, whether this is really the best method. According to replies to questionnaire in April 2013, the SPA, in 2011-2012, did not approve them in 760 cases and

⁵⁰ More precisely, there is a table listing procuring agencies, goods and expected schedule, see [here](#).

proposed to conduct a competitive procedure instead. According to the February 2012 progress report, the number of refusals issued by the SPA for single-source procurements has increased five times on year-by-year basis. During the on-site visit the monitoring team was told that in reality it is difficult for the SPA to check the single-source procurement proposals properly. It should be noted that many cases of single-source procurement for reasons of urgency are the result of late approval and availability of budgetary funds as well as an obligation (at least perceived) to spend them before the end of the fiscal year. This problem would require separate attention.

The monitoring team believes that more transparency and oversight over single-source procurements will only help to prevent corruption risks, but this should be done in a meaningful, not formalistic way. A draft amendment to the Law on Public Procurement has been prepared to further regulate emergency and single-source procurements.

Monitoring and analysis of public procurements

Second round monitoring report in 2010 recommended strengthening monitoring of public procurements carried out by procuring agencies and collecting and analysing information about the public procurement process.

The SPA does not have an explicit duty to monitor procurement or collect information about it and analyse it nor do the procuring agencies have explicit duties to submit such information. However, given SPA's central role as policy and oversight body in the area of public procurement, it would seem that it is the best placed institution to take lead in monitoring and analysing public procurement processes. As mentioned above, the monitoring team was under the impression that the SPA has limited information and tools to properly monitor the public procurement. It does not receive the technical specifications and other tender documents; it only gets final protocols of tendering commissions and information from complaints and letters requesting to use single-source procurement. Also, the monitoring team regrets that most of information from procuring agencies is submitted to the SPA on a voluntary basis. There is no legal basis stipulating what information and in what amount should be provided. This is an impediment to the monitoring work.

Independent public procurement review body

In this area no changes took place since second round report in 2010. The Law on Public Procurement provides for a complaints procedure, which describes possibilities to complain first to the procuring agency, then the SPA and also to the court. The SPA has a function to consider disputes in public procurement procedures. After launching a complaint review it can suspend procurement or recommend cancelling the tender results. In 2012, the SPA received 35 complaints.

Training to the officials involved in the tendering commissions

The Azerbaijani authorities reported that a number of training for officials involved in the tendering commissions was conducted in 2012. One of the duties of the SPA is to provide personnel training to specialists and improve their qualification level in the field of public procurement. The Azerbaijani authorities informed that the SPA has conducted a number of training events aimed at raising awareness in the field of tender regulation, studying of the appropriate legislation, resolving problems in organizing tenders by procuring institutions, including organization of e-procurement (for example, a series of training events in June, September and December 2012 with SIGMA or supported by the EU or USAID). Also, the SPA representatives took part in many sessions of tender commissions, counselling and advising the organizers and members of the commissions, furnished methodological assistance and answered the queries from participants. While this work has

advantages in terms of capacity building, it puts the SPA, as mentioned earlier, in a conflict of interest situation with regard to the review of complaints.

Conclusions

Some steps were taken towards more openness and transparency about public procurement, including publicising information about upcoming tenders, procurement plans and results of contracts concluded more widely and systematically. No institutional changes took place. The NACAP 2012-2015 foresees further positive and practical measures in the area of public procurement, if implemented.

Overall, it would be advisable to improve the monitoring and analysis of the public procurement of goods, works and services and investments projects in Azerbaijan, making it more meaningful and less formalistic and contributing to more transparency and better awareness about the use of public resources in these domains. The single-source and emergency procurements should be monitored in a more meaningful way and continue to reduce. Overall, it would be advisable to clarify and streamline the role of the Agency, in particular its rights and the tools available to it to be able to efficiently enforce legal requirements in the field of public procurement. It should be in charge of policy development, review and monitoring, however, it should not participate in daily procurement decisions and the independence of its review function must be secured. Also, the obligations of the procuring agencies should be clarified and their responsibilities with regards to the single-source procurement strengthened. It should be mandatory to develop procurement plans and the SPA should enforce this obligation. Moreover, methodological guidance for procuring agencies and procedures of tenders, as well as what information should be submitted to the SPA and published by it should be mandatory legal requirements and should be enforced in practice.

Azerbaijan is partly compliant with the recommendation 3.5.

New recommendation 14

- ***Improve the monitoring of the public procurement process and ensure effective and independent complaints mechanism.***
- ***Streamline the role and the rights of the State Procurement Agency, in the areas of control, monitoring, collection and publication of information on public procurement and e-procurement.***
- ***Ensure procurement and investments are timely and in a transparent manner planned by state and local institutions and increase transparency in this regards; ensure that state and local institutions develop comprehensive, annual procurement plans and define the information on public procurement they need to mandatory provide to the State Procurement Agency and publish.***
- ***Ensure methodological materials, standard documents and templates related to public procurement are adopted by Cabinet of Ministers decisions, or that the State Procuring Agency itself receives the right to issue corresponding, mandatory regulations as a matter of routine, and enforce them in practice.***

Access to Information

Previous Recommendation 3.6.

Analyse the implementation of the Access to information Act in order to identify if any difficulties remain in public access to information, e.g. if the provision requiring that the requestor should be duly authorised to acquire information leads to abuse of discretion by public officials.

Establish a special agency, such as Commissioner/Ombudsperson, or assign duties to monitor the implementation of the Access to information act to another already existing public institution; ensure relevant independence and impartiality as well as mandate and powers to this body.

Establish freedom of information agency; ensure independence, impartiality, mandate and powers

Since 2010 the main development is the extension of the mandate of the **Commissioner for Human Rights (the Ombudsman)** to cover access to information issues. According to the Ombudsman Constitutional (Amendment) Act 2011, the Ombudsman of the Republic of Azerbaijan is now authorised to oversee the compliance of the state owners of information, local self-governing organizations and officials with the requirements of the Information Obtaining Act 2005. “The provisions empowering the Commissioner to control whether state bodies, local self-government bodies and officials possessing information observe the Law of the Republic of Azerbaijan On Access to Information were added to the Constitutional Law of the Republic of Azerbaijan “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”⁵¹.

As regards the capacity of the Ombudsman to carry out these new duties, its Secretariat is not provided with necessary resources, although the Ombudsman requested for additional fifteen staff positions. Given the fact that two years after vesting the new powers to the Ombudsman no measures have been taken to provide this institution with necessary resources, the monitoring team is concerned if this is not a sign of limited attention of the Azerbaijani authorities to the issues of the access to information.

Analyse the implementation of the Access to information Law and identify remaining difficulties

The second round of monitoring report in 2010 found that the 2005 Access to Information Law provides basic legal provisions for access to information, however, some provisions, for example, the need for person requesting information to be duly authorised to receive it, may create difficulties to obtain information.

In order to address the part of the recommendation requiring analysing difficulties in public access to information, the Ombudsman held a series of meetings in 2011 with state authorities, Members of the Parliament, media, civil society organisations to analyse these provisions and raise the awareness of the public about the new function of the Ombudsman. As stated in the answers to the questionnaire, as a result of these meetings, the Ombudsman has formulated a number of proposals, which along with the feedback of state institutions, laid at the foundation of the Access to Information (Amendment) Act 2012.

Besides, on 26 July 2012 some rules required by the Law of On Access to Information were adopted, including the List of Paid Information Services, Rules for Preparation and Submission of Information,

⁵¹ Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan Annual Report on Provision and Protection of Human Rights and Freedoms in the Republic of Azerbaijan 2010.

Cases of Providing Information subject to Advance Payment, Conditions for Concession in Cases of Paid Services, Conditions and Rules for Providing Requests for Information According to Contract.

From studying the above-mentioned 2012 amendment to the Law of On Access to Information, the monitoring team concludes that they only bring the Access to Information Law in line with the Law on the Commissioner for Human Rights (Ombudsman), by excluding all references to the authorized agent in information matters and entrusting the Ombudsman to consider complaints and control the implementation of the Law. Hence, the monitoring team notes that the changes were of a technical nature and it does not improve the situation with guarantying the right to access information.

No other activities have been reported in respect of establishing working group for monitoring the implementation of the Law, conducting surveys, identifying the gaps and inconsistencies in the legislation or in its implementation, arranging wide public discussion or at least a dialog with civil society on this issues. Situation appears to be similar with awareness rising campaigns aimed at dissemination of knowledge on how to use the rights of access to information.

New developments

No sufficient statistics on **complaints concerning the violation of the right on access to information** submitted to the Ombudsman were provided. The Supreme Court informed that from June 2011 till April 2013 courts examined 13 cases.

As to the **liability of officials for failure to secure the right to access information**, it should be noted that the relevant legislative provisions have not been implemented as the legislation does not entrust any agencies or public officials to draw up a protocol on administrative offence.

Furthermore, the monitoring team is concerned with some other steps made by the Azerbaijani authorities affecting the right for access to information.

On 12 June 2012, a set of Laws on amendments to the Tax Code, Law on Commercial Secrets, Law on State Registry and the State Registration of Legal Persons were adopted. The amendments made **information on shareholders** identities and the stakes they hold in companies **no longer accessible to public**. This information shall only be disclosed if there is an inquiry by the courts and investigative bodies, or subjects of operational-search activities in cases specified by law, and to financial monitoring bodies in the cases and manner specified by the Law of the Republic of Azerbaijan "On the struggle against legalization of funds or other property obtained through criminal ways and the financing of terrorism".

According to the Law, this information can only be disclosed to the relevant bodies, lawyers, and third parties upon the consent of the information owner. According to the amendments to the law "On commercial secrets", this information is considered as a commercial secret. At the same time, the Law on Access to Information was amended with provision allowing not rendering information if this contradicts to the national interests of Azerbaijan in political, economic, and monetary policy, the defence of public order, the health and moral values of the people, or harms the commercial or other interests of individuals. This Law seriously limited possibilities for discovering corruption and was criticized by international organisations and civil society⁵².

⁵² OSCE Press Release, 14 June 2012, www.osce.org/fom/91281; Institute for Reporters Freedom and Safety-IRFS (2012), *President quietly signs amendments limiting access to information*, www.ifex.org/azerbaijan/2012/07/13/access_to_information, 13 July 2012.

Besides, legislative amendments were adopted by the Parliament (Milli Majlis) on 14 May 2013 broadening the scope of **criminal defamation**. The offences of criminal defamation (Art.147 of the Criminal Code) and insult (Art.148 of the Criminal Code) have been amended to include expression on the Internet, including social networks, and expression at public demonstrations. The maximum penalties for both offences remain six months imprisonment, although this may be extended to three years imprisonment for aggravated instances of defamation (Art. 147.2 of the Penal Code).⁵³ The OSCE expressed concern about these amendments, since they would keep defamation as a criminal offence and extend it to online media.⁵⁴

The above-mentioned Law was adopted in contradiction to the National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan approved by the President of the Republic of Azerbaijan in December 2011 and providing for “elaboration of proposals on improving the legislation in order to decriminalize defamation”.

The monitoring team recalls that in 2012, following an initiative by the OSCE, a **Draft Law on Protection from Defamation** was elaborated, in co-operation with the civil society institutions. The text of the Draft Law was presented to the Presidential Administration of Azerbaijan and afterwards submitted, by it, to the Council of Europe Venice Commission for its opinion. The monitoring team notes that, according to NGOs, the draft law sent to the Venice Commission did not contain provisions decriminalising defamation (and insult) and setting the maximum amount of compensation for damage caused by defamation⁵⁵.

The monitoring team supports the opinion of different international organisations, in particular, the Council of Europe, the European Court of Human Rights, the Organisation for Security and Co-Operation in Europe that the defamation has to be decriminalized in Azerbaijan. Criminal liability for defamation and insult seriously threaten the freedom of expression and reduces the society's capability in fighting corruption.

Another obstacle to obtain information about corruption in Azerbaijan identified by the monitoring team is the **disproportionate civil law sanctions** applied to the media reporting on high-profile corruption cases. For instance, there are media reports of a court decision in a defamation case allegedly connected to a minister.⁵⁶ In another case, the court ordered to freeze the bank accounts of the opposition newspaper *Azadlig* as a result of a series of fines, in total for more than 65 000 AZN (approximately 65 thousand EUR)⁵⁷.

The monitoring team recalls that independent media could play a crucial role in anti-corruption campaigns and in uncovering corruption crimes. Therefore, it is more worthwhile for the Government to support its proper access to information instead of deterring it.

As a positive development, it should be noted that, in 2012, Azerbaijan joined the **Open Government Initiative**. As already mentioned in this report, the President of Azerbaijan has

⁵³ARTICLE 19, Azerbaijan: New legislative amendments further erode rights to freedom of expression and peaceful assembly, 16 May 2013, www.article19.org/resources.php/resource/3753/en/azerbaijan:-new-legislative-amendments-further-erode-rights-to-freedom-of-expression-and-peaceful-assembly

⁵⁴ OSCE Press Release, 2 May 2013, <http://www.osce.org/fom/102413>.

⁵⁵ The Institute for Reporters' Freedom and Safety and the Media Rights Institute (2013), “Azeri government removes key clauses from draft defamation bill”, Joint Statement on 27 May 2013, www.ifex.org/azerbaijan/2013/05/27/joint_statement_azerbaijani

⁵⁶ The *Yeni Musavat* newspaper was ordered to pay damages of 50 000 AZN (approximately 50 thousand EUR) to the company

⁵⁷ www.contact.az/docs/2012/Politics/110800017537en.htm#.UqJhn9Lwnvo.

approved the Open Government Initiative National Action Plan 2012 – 2015 in September 2012. The Action Plan includes a set of comprehensive measures facilitating access to information, enhancing capacity of Ombudsman, ensuring regular publicity of the state agencies, extending public participation in activities of the state institutions, improving e-services, and increasing transparency in specific areas. The monitoring team considers this Action Plan to be a very substantive basis for successful reforms in the field of access to information and calls upon the Azerbaijani authorities to ensure its proper implementation.

Conclusions

In sum, the main step taken under this recommendation is ensuring a freedom of information institution is in place, namely assigning this function to the Ombudsperson. It is an independent body and its mandate and powers in the area of access to information have been established in the law. On the other hand, no proper analysis of the implementation of the Law on Access to information was carried out allowing identifying difficulties remaining in this field.

Azerbaijan is partly compliant with the recommendation 3.6.

New recommendation 15

- *Establish, under the authority of the Ombudsman, a working group involving non-governmental organisations and media, for monitoring, on a permanent basis, of the implementation of the Law on Access to Information. Conduct and publish periodical surveys to identify deficiencies in the Law or its improper implementation.*
- *Provide the Ombudsman with necessary resources in order to effectively perform its functions in the area of access to information.*
- *Organize a nation-wide awareness rising campaign aimed at dissemination of information on the right of access to information among different social groups.*
- *Take appropriate measures to decriminalise defamation and insult; introduce mechanisms avoiding improper use of civil law instruments for restricting activity of media.*

Political Corruption

Previous Recommendation 3.7.

In order to foster trust of citizens in the independence of political parties, introduce a requirement to disclose information about sources of private donations received by political parties, above a certain threshold.

In order to ensure transparency of financing of political parties and election campaigns, establish a system, with a clearly defined mandate and powers, to carry out this function.

Ensure that the Bill on Prevention of Conflict of Interests or a separate legal act establish conflict of interest rules for political officials and envisage sound monitoring system of the application of the above-mentioned rules.

The amendment to the Law on Political Parties of Azerbaijan in 2012 providing for new rules, including with the view to increasing transparency of political party financing is the major development in this field since 2010. This Political Parties (Amendment) Act 2012 was adopted on 20 April 2012 and entered into force on 13 May 2012. As stated in the GRECO Compliance Report on

Azerbaijan in October 2012, this amendment was adopted in order to address the GRECO recommendations covering various aspects of political parties financing.⁵⁸

Disclose information about private donations

Among others, the new party financing provisions also address **donations**, including their collection and reporting about them, which was a concern expressed during the second round monitoring in 2010. Article 19 on Donations stipulates that parties are entitled to receive donations. Article 17 on Financing of the Activities of political parties provide that political parties may be financed by the State and other funds and cannot be financed by persons who fail to indicate their name and other details on their identity required by the law. Article 19 on Donations also stipulates that the amount of donations received and information about persons granting donations must be included in financial statement.

Transparency of financing of political parties and elections (establish a system, clearly defined mandate, powers)

On 16 November 2012 the Cabinet of Ministers Rules for Format, Content and Submission of Financial Reports were adopted. These Rules establish the format for financial report, report on financial situation and report on the result of financial activity. They also require substantial accounting information and explanations, including information on all items of the report on the results of financial activity, including the number of members paying membership fees, information about persons giving donations according to Section 4.3.1.3 of the Rules, and data on name, family name patronymic name, address, number of the ID or equivalent document and amount of the donation according to Section 4.3.2 of the Rules.

Before 1 April 2013, financial reports had to be submitted to the Ministry of Finance. Nevertheless, reportedly, thirty-one political parties failed to submit their reports in time, despite the Ministry of Finance's warning about the obligation to report⁵⁹.

The monitoring team is not in a position to assess the recent changes properly, since it is not aware what measures were taken with respect to political parties, which failed to comply with the reporting obligations and on the results of the Ministry of Finance's monitoring of the political parties' reports.

The Section 21.5 of the Law on Political Parties of Azerbaijan provides that political parties shall publish their financial statements in the mass media along with an auditor's opinion. At the same time, the Law does not contain rules on when and in what kind of media the financial reports should be published. It means that the reports could be published in regional media, known by a very little number of citizens. As regards the date of publication, it should be noted that the Law fails to specify even the year when the report shall be published. Thus, all these factors can limit citizen's awareness of the political parties' revenues and expenditures. The monitoring team would like to suggest that financial reports be published on the same date on the official website of the authority responsible for its collecting as well as in the official printed media.

⁵⁸ Council of Europe GRECO (2012), *Compliance Report on Azerbaijan*, Council of Europe, Strasbourg, 15–19 October 2012, p.9.

⁵⁹ Azeri-Press Agency, "Some parties have not submitted annual financial reports in Azerbaijan", 11 May 2013, <http://en.apa.az/news/192675>

While in both the Istanbul Anti-Corruption Action Plan and GRECO reports in 2010 Azerbaijan was recommended to **streamline the existing supervision of campaign funding and political parties financing**, it appears that no substantive measures have been taken. In particular, GRECO made two recommendations to Azerbaijan: i) to improve monitoring of financial reports on election funds and independence of elections commissions; and ii) to establish an independent, substantial monitoring of general financing of political parties, coordinated with the monitoring of election campaign funding.⁶⁰ In 2012, GRECO concluded in its Compliance Report on Azerbaijan that both recommendations are not implemented.⁶¹

The Azerbaijani authorities vested the Ministry of Finance with functions to collect political parties' financial reports. However, there are no indications in the legislation about its competences and authority to carry out such monitoring, verify information contained in the reports, and to conduct investigations of financing irregularities. The 2012 amendment to the Law on Political Parties provides that political parties publish their reports accompanied by an auditor opinion. The monitoring team is of the opinion that such a mechanism does not prevent hiring an auditor close to political party and, therefore, does not, in itself, guarantee an impartial and unprejudiced opinion. Moreover, the Ministry of Finance does not enjoy the necessary independence, as required by international standards, to properly monitor the implementation of the legislation by political parties.

The monitoring team shares the view expressed in 2010 GRECO report that "transparency regime for political financing can only be effective if it regulates election campaign funding and regular party funding in a consistent manner, as it is difficult if not impossible to clearly separate campaign activities of political parties and their routine activities"⁶². Consequently, it appears reasonable that all the supervisory functions in connection with the financing of political parties and electoral campaigns are assigned to one single agency, the Central Election Commission. During the on-site visit the monitoring team heard that the Commission's competence is limited to political forces participating in elections and its experience and also powers are mostly limited to collecting and publishing reports during the electoral period and some controls by its revision commission.

Establishing conflict of interest rules for political officials and sound monitoring system

With respect to establishing legal rules related to conflict of interest prevention for political officials and monitoring their application, the monitoring team was heard during the on-site visit from Azerbaijani authorities that such a draft law was elaborated and is being considered in the Parliament, by a Committee. However, the monitoring team failed to clarify the stage of consideration of this draft and whether is still considered and if there are any other initiatives underway.

Conclusions

In sum, some positive developments took place in 2012 towards improving the legal basis for political parties financing and its transparency, including new rules on financial reports by political parties. However, legal provisions in this area do not seem to be properly implemented. There is no

⁶⁰Council of Europe GRECO (2010), *Evaluation Report on Azerbaijan Transparency of Party Funding*, Council of Europe, Strasbourg, 27 September–1 October 2010, pp. 26, 27, 29.

⁶¹ Council of Europe GRECO (2012), *Compliance Report on Azerbaijan*, Council of Europe, Strasbourg, 15–19 October 2012.

⁶²GRECO (2010), *Evaluation Report on Azerbaijan Transparency of Party Funding*, Council of Europe, Strasbourg, 27 September - 1 October 2010, p. 27.

efficient supervisory mechanism or visible actions to enforce rules on financing political parties and elections, despite GRECO recommendations and criticism.

Taking into account the mentioned above, the monitoring team recommends the Azerbaijani authorities to enhance their efforts in order to ensure more substantial and independent monitoring of election campaign funding as well as the monitoring political parties financing by independent authority, with adequate staff, material resources and powers to investigate and impose sanctions.

No steps were taken to establishing legal rules related to conflict of interest prevention for political officials and monitoring their application.

Azerbaijan is partly compliant with the recommendation 3.7.

New recommendation 16

- ***Amend the legislation to ensure that financial reports of political parties are published simultaneously on the official website of the authority responsible for their collection and in the official printed media and enforce this.***
- ***Ensure substantial and independent monitoring of election campaign funding and monitoring of political parties financing by an independent authority, with adequate staff, material resources and powers to investigate and impose sanctions.***
- ***Ensure clear conflict of interest prevention and ethical behaviour rules for elected and other political officials, promote their vigorous application and enforce them.***

Corruption in the judiciary

Previous Recommendation 3.8.

Consider abolishing immunity of judges from prosecution. Alternatively, amend the statutory and constitutional provisions regarding lifting of immunity, which should be applied only when a criminal case is ready to be filed to court or when the arrest of a judge is requested. Lift the prohibition on using special investigative measures, allowing application of detective measures (SIMs) and criminal investigations of judges to be conducted confidentially, as are all other criminal investigations.

Develop and introduce a methodology using international standards (such as the recommendations of the Council of Europe) to ensure random distribution of cases between judges and panels of judges in all courts.

Judicial immunity⁶³

It appears that formal consideration to reforming the regime of application of immunities of judges was given. To this end, Azerbaijan authorities reported that the Ministry of Justice and General Prosecutor's Office submitted their proposals to the Working Group of the Commission on Combating Corruption. As a result, preparation of the proposals on limiting the scope of immunity of judges from criminal prosecution in the context of combating corruption was included under item 3.2 of the National Anti-Corruption Action Plan (NACAP) 2012-2015, endorsed by the Presidential

⁶³ This section should be read in conjunction with the sections "Scope of immunity" and "Special Investigative Measures" under Recommendation 2.4-2.6.1.

Decree of the 5th September 2012. General Prosecutor's Office and Ministry of Justice are charged with the formulation of detailed proposals. Deadline for implementation of this measure is set for 2014.

Judicial immunity remains to be a concern in the context of successful investigation and prosecution of corruption committed by judges. Not a single case involving a judge has been opened by the law enforcement authorities of Azerbaijan since 2000 although perception of corruption and lack of trust in the judiciary is particularly high in Azerbaijan⁶⁴.

Random distribution of cases

Criminal Procedure Code, Court Chancellery Instruction and internal rules in each court define methodology for distribution of cases in courts. Court Chancellery Instruction was developed by the ad hoc group and endorsed by the President of the Supreme Court and the Minister of Justice and subsequently by the Collegial Board of the Ministry of Justice.

According to the above-mentioned instruction, each judge is assigned a random number (code). Cases are distributed in a sequenced way according to the codes attributed to judges in rounds. Chairmen of courts and collegial boards are entitled to participate in 2-7th rounds, depending on their workload. There could be exceptions to this rule in cases of sickness or annual leaves. Cases are also divided according to the type of the procedures (chambers). After distribution of cases, tables of distribution are drawn and signed by the competent officer of the chancellery. These tables are supervised by the court Presidents.

Cases could be distributed electronically. However, in practice, the random allocation of cases is done manually. Examples of electronic distribution of cases were not shared with the monitoring team. The case distribution analysis, conducted on the basis of the review of the abovementioned tables are discussed at the end of each month. The responsibility for proper functioning of the case allocation system and its monthly revision belongs to the President of each court.

This system of case assignment is reportedly applied in all courts of Azerbaijan. The judges met at the on-site visit verified that the system is in fact operational, and in their opinion helped reduce undue influences and interferences into their work.

Conclusions

It appears that little progress was made by Azerbaijan in regards to abolishing or limiting immunity of judges against prosecution. The law regarding immunity for judges remains to be broad and needs to be amended to balance the protection of judges against retaliation or pressure, especially from political sources, with the need to be able to carry out secret investigations prior to lifting of immunity. Therefore, it is recommended that Azerbaijan move swiftly with preparation and adoption of the proposals on limiting the scope of immunity of judges from criminal prosecution in the context of combating corruption as foreseen in the National Anti-Corruption Action Plan (NACAP) 2012-2015.

It is difficult to accept that, although the perception in the society of corruption among members of judiciary is high, no judge was ever investigated, tried and convicted for corruption offences. The

⁶⁴ The 2013 Global Corruption Barometer of Transparency International rates the judiciary as the second most corrupt sector in Azerbaijan, with 42%, after medical and health sector with 44%.

judges that are honest and integral should not hold the blame for those who are not. Therefore, alongside with addressing by the competent authorities of the legal obstacle to the investigation of judges, the anticorruption prosecutors and investigators should develop a methodology to detect and investigate corruption allegations in this sector.

The introduction of the random case assignment in the Azerbaijani courts is an important progress towards meeting the citizens' trust in an impartial trial. However, it is not clear whether, in the monthly analysis, the vulnerabilities of this system were identified and addressed. On the other hand, a manual system is in any way more vulnerable than an electronic one. Therefore, it would be advisable for Azerbaijan to continue developing the electronic case distribution software, to implement it at national level and to revise it periodically.

Azerbaijan is partially compliant with the recommendation 3.8.

New Recommendation 17

- ***Prepare and adopt the proposals on limiting the scope of immunity of judges from criminal prosecution in the context of combating corruption.***
- ***Take any appropriate measures, such as internal regulations, guidelines, operational methodologies for the anticorruption investigators and prosecutors and use the special investigation means allowed by the legislation in order to detect and investigate corruption allegations in the judicial sector.***

New findings: Independence and integrity of judges

Besides the two very important elements addressed by the recommendation 3.8, the monitoring team was made aware of the strong criticism that civil society and, in part lawyers, express towards judges in Azerbaijan in regards to the perceived lack of independence and corruption within the judiciary itself. It was reported that such perceptions contribute to the mistrust among citizens with regard to the fairness and impartiality of the trials. Numerous international organizations also point out to the lack of independence and allegations of corruption in the judiciary.⁶⁵

The judicial appointment system in Azerbaijan involves the judicial self-governing body, along with the executive and legislative branches. The Judicial Legal Council (JLC) has an important role in the appointment and promotion of judges, but it is not this body that has the decision power. The selection of candidates for the initial appointment is made by a Judicial Selection Committee whose members are appointed by the JLC. The process of selection is merit based, consisting in both written and oral exams. The successful candidates are then undergoing a paid training (probation) period at the end of which they have to pass an evaluation exam. The JLC then submits the successful candidates, in the order of their ranking after the evaluation exam, to the President of Azerbaijan for appointment.

In the case of Supreme Court and Appellate Court judges, the candidates are selected by the JLC from the most experienced judges, through an assessment of their performance, and proposed to the President of Azerbaijan who then submits the proposal to the Parliament. Both President and Parliament may refuse to appoint the proposed judges, but, reportedly, in practice it never happened. The President of the Supreme Court as well as the Presidents of the Courts of Appeal is

⁶⁵ Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe released in December 2012 states that "the lack of independence of the judiciary is a concern" and its visit in June of 2012 specifically focused on this issue.

appointed by the President of Azerbaijan. It is not clear whether the JLC has a role in the appointment of the President of the Supreme Court.

The JLC is formed of 15 members, among which half plus one are judges and the others are persons appointed by the political bodies (President, Parliament and the Ministry of Justice), a prosecutor and a lawyer. The members who are judges are not directly elected by their colleagues, but appointed by the Supreme Court or the Ministry of Justice from a list proposed by the associations of judges. The President of the JLC should be elected by the members from among themselves. However, the chances that the President is a non-judge member are of 46%. At present the President of JLC is the Minister of Justice.

No representative of the civil society is a member of the JLC. Although this is not an international standard as such, there are countries in which the participation of the civil society in the composition of the Judicial Council was considered to be a solution to bring the judiciary closer to the society. Alternatively, regular contacts between the JLC and the representatives of the relevant NGOs could be organized in order to discuss outstanding issues with regard to anticorruption reform of the judiciary.

In relation to the perception of corruption within judiciary, among the elements that need to be taken into consideration is the effectiveness of the ethical norms and training, as well as the effectiveness of the disciplinary proceedings.

According to the judges met at the on-site, the periodical evaluation of the judges' performance includes the assessment of their ethical behaviour. The JLC adopted an Ethical Code for judges that is made public and known to the judges. Some training on ethical norms and behaviour has been offered to them by foreign experts. However, there is no indication on how much emphasis is put on a systematic training on judicial ethics and whether this training has a practical approach, including examples of the advisable reactions to concrete, practical integrity risk situations that judges may face.

In the general training offered to the judges as well as in the examination of candidates for a judicial position, the criminal legislation on corruption is, sometimes, one of the topics, among others. Judges are also, occasionally, consulted with regard to draft laws, including to those on corruption issues. However, no training or guidance on anticorruption standards, on prevention and assessment of the corruption risks within the judiciary itself was reported. Topics like conflicts of interests, incompatibilities, requirement of financial disclosure, reactions to gifts, reporting corruption and whistle-blowing protection, etc. do not seem to be part of the regular training curriculum.

With regard to the disciplinary proceedings, the JLC is the competent body to initiate them. The grounds for disciplinary liability of judges can be found in Art. 111-1 of the Courts and Judges Act. Among these grounds there are: - a gross infringement or multiple infringements of the law requirements in the course of consideration of cases; - breach of the judge ethics; - failure to comply with the financial requirement contained in Article 5.1 of the Fight against Corruption Act.

Disciplinary proceedings against a judge may be instituted within one year after exposure and within three years after commission of the offence. The JLC performs its own investigation in disciplinary cases and may rule sanctions from reprimand to proposing to the relevant executive body the dismissal of the judge. Allegedly, the non-judges members of the JLC do not have the right to vote in disciplinary matters. The decision of the JLC is subject to appeal to the Supreme Court.

In practice, according to the JLC representative met at the on-site visit, the Council ruled on 15 disciplinary cases. Different types of infringements were addressed through these cases, such as delays in considering cases. In some cases, judges have been dismissed following a disciplinary sanction. The example of a judge that has been dismissed for being involved in a commercial business run by one of his family members was given to the monitoring team. However, with the exception of this case, no other disciplinary cases in relation to a corrupt behaviour were made available to the evaluation team during the on-site visit. Not even the case mentioned above is perceived by the judges as having a corrupt nature, although rules on incompatibilities belong to the set of anticorruption standards. After the on-site visit, the authorities of Azerbaijan presented a few examples of disciplinary cases considered by the JLC in which two judges have been dismissed for infringements of duty that could also be seen as breaches of integrity standards⁶⁶.

The judges met at the on-site visit consider that, although there are no guarantees that corruption is inexistent, this is however not a problem in the justice system of Azerbaijan and that the published court decisions of the Supreme Court are proof of judges' integrity. The fact that 80% of judges in Azerbaijan are young was also brought as an argument for the integrity of the judicial body. The representatives of the judiciary opined that the negative public perception with regard to judiciary can be mostly explained by the dissatisfaction of the parties who lost the trials. Although public perception, as expressed by the civil society, is not an objective measurement criterion for the level of corruption and integrity, it is however an element to be taken into consideration, since the justice is a public service for the citizens. An anticorruption reform cannot be performed successfully in the absence of the awareness that a problem exist.

New Recommendation 18

- ***Ensure that objective and transparent criteria apply for the selection and appointment of the Supreme Court and appellate court judges to avoid potential undue political interference.***
- ***Conduct an analysis on the internal causes of the perception of corruption and lack of independence of the judiciary and carry out a risk assessment and identify the needs for an anticorruption policy within the judicial system. Ensure, for that purpose, the cooperation of the Judicial Legal Council with the Commission on Combating Corruption, Anti-Corruption Department, and other relevant state institutions, as well as with representatives of the relevant civil society organizations.***
- ***Develop systematic training on ethical conduct and anticorruption standards for judges, paying special attention to the methodology of the training activities. Topics like conflicts of interests, incompatibilities, requirement of financial disclosure, reactions to gifts, reporting corruption, etc. should be included in the training of judges.***
- ***Develop further the capacity of the Judicial Legal Council to consider, as a disciplinary body, allegations of misconduct of judges that can denote lack of integrity (such as interventions to other judge in relation with the decision in a case, infringement of the rules on incompatibilities of the judge's position with commercial or political activity etc.).***

⁶⁶ Case 1: Justice L.N., judge of the Baku Appellate Court, was reprimanded and his judicial powers were terminated by the Judicial Legal Council on the 11/04/2008. The Judicial Legal Council found out that Justice L.N. used his status and position of a judge to procure purchase of an apartment to his daughter name. Case 2: Justice H.H., judge of thr Sumgayit Appellate Court, was reprimanded and his judicial powers were terminated by the Judicial Legal Council on the 04/03/2011. Justice H.H. tried a civil case without securing participation of a defendant, failing to use means of communication, on purpose, subsequently referred the judgment for enforcement and deprived the defendant from legal means of challenging his decision in an appeal to the Supreme Court. The motives of the judge were to favour the claimant.

Integrity in the private sector

Previous Recommendation 3.9.

Develop and launch awareness raising programmes about risks of corruption and solutions for private sector.

Together with private sector organisations, promote the development self-regulation within the private sector (code of conduct, anti-corruption compliance policies).

Awareness raising programmes

Azerbaijan authorities reported on numerous initiatives undertaken by the government to raise awareness about risks of corruption and solutions for the private sector. The main institution for implementation of these measures appears to be the Ministry of Economic Development; according to Azerbaijan authorities it was tasked with implementation of the necessary functional and methodical work.

To this end the Order of the Minister of Economic Development from December 28, 2010 No F-150 introduced a relevant Program in this field. Baku Business Training Centre was authorized to prepare the mentioned Program. Baku Business Training Centre and Scientific and Research Institute of Economic Reforms in direct contact with individuals and legal entities conducted research on problems which exist in private sector and corruption risks; based on the findings of this research it proposed to organize awareness raising events. These proposals were considered by the Ministry's relevant structural units and a schedule of planned events was compiled by the Order of the Minister of Economic Development from February 25, 2011 No E-36.

As a result awareness raising events were organized in Ganja city on March 1, 2011, in Qazakh region on March 2, 2011, in Khirdalan city on March 4, 2011, in Quba region on March 11, 2011, in Shamakhi on March 18, 2011, in Lenkoran on April 1, 2011, in Goychay on April 8, 2011, in Horadiz on April 15, 2011, in Sheki on April 22, 2011, and in Baku on April 29, 2011. These events covered issues related to the risks of corruption, anti-corruption legislation and measures to prevent corruption. They were attended by entrepreneurs, legal entities, interested individuals, representatives of district executive bodies and National Confederation of Entrepreneurs.

To compliment these measures the government undertook 4 trainings for officials of the Ministry of the Economic Development. The monitoring team could not verify the relevance of these trainings during the on-site visit.

In addition, the "National Action Plan for Promotion of Open Government for the years 2012-2015" and "National Action Plan for Combating Corruption for the years 2012-2015" foresee establishment of Social Cooperation Council at the Ministry of Economic Development. Azerbaijan stated that its creation will be relevant to awareness raising and promotion of self-regulations in the private sector; it is not exactly clear, however, in what way and remains to be seen once the Council is created.

Self-regulation within the private sector

Information provided by Azerbaijan in regards to this issue dealt with general dialogue between the government and the private sector, which can be an important element in encouragement of the self-regulation within private sector. It also covered issues of development of corporate governance as such but did not focus on issues of integrity. The only relevant information which might be of interest was that the Ministry of Economic Development prepared Azerbaijani Standards for

Corporative Management and Corporative Ethics Code. The monitoring team, however, could not establish who prepared these standards, what legal power they have, what exactly they say about anti-corruption measures, and how their implementation would be ensured.

Representatives of the companies met at the on-site visit had vague ideas about compliance programs, creating an impression that only big multi-national companies were aware of the need to introduce them. The monitoring team was told that the companies were free to have one such system or not, and the business sector was not put under pressure to adopt business ethics rules or adopt other anti-corruption measures. In fact, only one bank with operations abroad confirmed having established some sort of anti-corruption compliance programme.

Conclusions

The monitoring team recognizes that Azerbaijan made considerable efforts to organize a public awareness campaign on risks of corruption for the private sector, and to provide systematic and targeted programmes to educate private sector about the risks of corruption; such measures are now even planned in its anti-corruption policy documents. Assigning responsibility for promotion of integrity in business sector to a specific institution – namely, the Ministry of Economic Development is also a step in the right direction. In the opinion of the monitoring team, these steps, however, mark only the beginning and concerns raised in the 2nd round of monitoring report on the low level of awareness despite these efforts and the fact that a number of NGOs and international organisations are active in promoting business integrity and implement various projects aimed at reducing corruption in private sector, remain valid.

In contrast, it appears that no real efforts to promote the development of self-regulation within the private sector were undertaken by the Government of Azerbaijan. Private sector appears to be under no pressure to introduce any compliance measures and does not see benefits to them. The government has not created any real incentives and needs to come up with ways to do so.

Liability of legal persons which has been introduced in Azerbaijan can become a good tool in promotion of business integrity measures in the private sector. Its strong enforcement can stimulate companies to develop and adopt adequate internal controls, ethics, and compliance programmes. This avenue should be further explored by Azerbaijan. To further encourage such measures it is recommended to use good practice of other countries and introduce for companies, which are liable for an offence committed in their interest, an exemption from liability if they implemented such programmes and it can be shown that perpetrator acted in violation of such measures. (See also section on Responsibility of legal persons).

Azerbaijan is partially compliant with the recommendation 3.9.

No new recommendation is made under this section; previous recommendation remains valid.

Summary Table

Topic	Second round recommendation (March 2010)	Third round rating (September 2013)	New recommendation (September 2013)
Anti-Corruption Policy			
Political will and anti-corruption policy documents	Previous Recommendation 1.1.-1.2.-1.3.	partially compliant	New Recommendation 1
Public participation, awareness raising and education	Previous Recommendation 1.4.-1.5.	partially compliant	New Recommendation 2
Specialized anti-corruption policy and coordination bodies	Previous Recommendation 1.6.	partially compliant	New Recommendation 3
Criminalisation of Corruption			
	Previous Recommendation 2.1.-2.2.	largely compliant	New Recommendation 4
	Previous Recommendation 2.3.	fully compliant	New Recommendation 5
	Previous Recommendation 2.4.-2.6.1.	partially compliant	New Recommendation 6
	Previous Recommendation 2.4.-2.6.2.	partially compliant	New Recommendation 7
	Previous Recommendation 2.8.	partially compliant	New Recommendation 8
	Previous Recommendation 2.9.1.	Largely compliant	New Recommendation 9
	Previous Recommendation 2.9.2.	largely compliant	New Recommendation 10
	Previous Recommendation 2.9.3.	partially compliant	New Recommendation 11

Prevention of Corruption			
Integrity in the public service	Previous Recommendation 3.2.	partly compliant	New recommendation 12
Transparency and discretion in public administration	Previous Recommendation 3.3.	largely compliant	New recommendation 13
Public Financial Control and Audit	Previous Recommendation 3.4.	partly compliant	No new recommendation is made under this section; previous recommendation remains valid.
Corruption in Public Procurement	Previous Recommendation 3.5.	partly compliant	New recommendation 14
Access to Information	Previous Recommendation 3.6.	partly compliant	New recommendation 15
Political Corruption	Previous Recommendation 3.7.	partly compliant	New recommendation 16
Corruption in the judiciary	Previous Recommendation 3.8.	partially compliant	New Recommendation 17
			New Recommendation 18
Integrity in the private sector	Previous Recommendation 3.9.	Partially compliant	No new recommendation is made under this section; previous recommendation remains valid

Annex. Extracts from Legislation

Regulation on asset declarations for public officials

Law On Combating Corruption

(adopted on 13 January 2004)

Article 5. Requirements of financial nature

(As amended by the law of 01.04.2005)

5.1. Officials shall submit the following information within the procedure laid down by the legislation:

5.1.1. yearly, on their income, indicating the source, type and amount thereof;

5.1.2. on their property being a tax base;

5.1.3. on their deposits in banks, securities and other financial means;

5.1.4. on their participation in the activity of companies, funds and other economic entities as a shareholder or founder, on their property share in such enterprises;

5.1.5. on their debt exceeding five thousand times the nominal financial unit ;

5.1.6. on their other obligations of financial and property character exceeding a thousand times the nominal financial unit .

5.2. The information envisaged in Article 5.1 of this Law can be demanded in an order defined by the legislation.

Article 6. Responsibility for violation of requirements of financial nature

(As amended by the law of 01.04.2005)

6.1. Officials or persons wishing to take up a public office, shall be notified of the requirements envisaged in Article 5.1 of this Law as well as of the legal consequences of the failure to comply with those requirements, as provided for in the legislation.

6.2. Rules of exercising the control over compliance with the requirements envisaged in Article 5.1 of this Law shall be defined by the legislation.

6.3. Officials' failure to comply with the requirements envisaged in Article 5.1 of this Law, that is the failure, without any reasonable excuse, to timely submit the information mentioned in this Article, or the wilful submission of incomplete or distorted information may give rise to disciplinary responsibility of those persons. Persons, in respect of which a special procedure is provided for in the Constitution and laws of the Republic of Azerbaijan for initiating disciplinary proceedings, may be subject to disciplinary responsibility in accordance with those rules.

6.4. The Commission may have published in the official press information of the persons who fail to comply with the requirements envisaged in Article 5.1 of this Law.

Law On Approval of Procedures for Submission of Financial Information by Public Officials

(adopted on 24 June 2005; entered into force on 14 August 2005)

Article 3. Authorities collecting financial information

3.1. Following public officials shall submit the financial information to the Commission on Prevention of Corruption of State Service Supervision Council:

President of the Azerbaijan Republic, Chairman of the Milli Mejlis of the Azerbaijan Republic and his deputies, Prime Minister of the Azerbaijan Republic and his deputies, Heads of Apparatus of the President of the Azerbaijan Republic, Milli Mejlis of the Azerbaijan Republic and Constitution Court of the Azerbaijan Republic, Heads of Apparatus of the Supreme Court of the Azerbaijan Republic, head of central executive authorities of the Azerbaijan Republic, their deputies and persons holding equivalent positions, persons holding administrative positions in accordance with Article 11.1.2, persons holding positions of deputy heads and section heads of 2nd category state authorities as per Article 11.1.3, as well as persons holding the positions of heads or equivalent in 5th category state authorities as per Article 11.1.4 of the Law of the Azerbaijan Republic "On State Service", Chairman of the Supreme Mejlis of the Nakhichevan Autonomous Republic and his deputies, heads of central executive authorities of the Nakhichevan Autonomous Republic and their deputies, local executive authorities, judges in courts of the Azerbaijan Republic, General Prosecutor of the Azerbaijan Republic and his deputies, district and military prosecutors, Human Rights Representatives (Ombudsman), Chairman of the Board of the National Bank of the Azerbaijan Republic, Counting Chamber, Central Elections Commission and their deputies, Chairman of the National Television and Radio Board, General Director of Public Television and Radio Broadcasting Company and his deputies, extraordinary and plenipotentiary ambassadors of the Azerbaijan Republic, permanent representatives in international entities, general consuls, head of state higher education institutions, heads of economic enterprises with state holding control interest, as well as heads of state entities, enterprises, organizations and territorial and specialized executive authorities established by the Commission.

3.2. Members of the Milli Mejlis of the Azerbaijan Republic shall submit their relevant financial information to the authority identified by the Milli Mejlis of the Azerbaijan Republic.

3.3. Members of the Supreme Mejlis of Nakhichevan Autonomous Republic shall submit their relevant financial information to the authority identified by the Supreme Mejlis of the Nakhichevan Autonomous Republic.

3.4. Persons elected to local self-management authorities shall submit their financial information to relevant executive authorities, and persons implementing administrative and supervisory authorities in the local self-management authority shall submit the information to the respective self-management authority.

3.5. Other public officials shall submit their financial information to the relevant financial (accounting) authority determined by heads of their respective state authorities.

Article 4. Financial Information Statement

4.1. Financial information is submitted in the form of statement. Form of statements and rules for their submission shall be established by relevant executive authority with consideration of the recommendations of the Commission.

Article 5. Contents of the statement

Article 7. Control over submission of financial information

Article 9. Preservation of financial information

9.1. Financial information submitted by public official shall be considered as private information.

Commission on Combating Corruption Statute

(Adopted on 30 April 2009)

II. Principal Objectives of the Commission

- collect financial declarations envisaged in Section 5.1 of the law on “Combating Corruption” of the Republic of Azerbaijan;
- supervise the submission process of the financial declarations envisaged in Section 5.1 of the law on “Combating Corruption” of the Republic of Azerbaijan.

Regulation on Conflict of Interest Prevention

Law On Combating Corruption

(adopted on 13 January 2004)

Article 7. Prohibition for next of kin to work together

7.1. The next of kin of an official may not hold any office under his or her direct subordination, except for the elective offices and other cases provided for in the legislation.

7.2. Persons who violate the requirements of Article 7.1 of this Law shall, within 30 days of the finding of that violation, be transferred, if such violation is not removed voluntarily, to another office excluding subordination, and when this is not possible, either of the persons concerned shall be dismissed from his or her office.

7.3. Persons dismissed from their office on the grounds specified in Article 7.2 of this Law, may hold office in other bodies, institutions, enterprises or organizations.

Article 8. Restrictions related to gifting

8.1. No public official shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service duties, or may be or appear to be reward relating to his/her duties. This does not include, with the condition of not influencing the objectivity of the service duties, minor gifts as indicated in the article 8.2 of this Law and use of conventional hospitality.

8.2. Public officials may not solicit or accept multiple gifts from any natural or legal persons during any twelve month period where the aggregate value of the gifts exceeds fifty five manats. Gifts received above this limit shall be considered as belonging to the State authority or municipal body in which that official is performing his or her service duties (powers).

8.3. In cases where the public official cannot determine whether the acceptance of a gift violates this article, he/she must seek guidance from either his/her superior public official or the relevant state body.

8.4. In entering into civil contracts with physical and legal persons or in performing them, officials shall be prohibited from obtaining any privileges or advantages relating to their service activity.

8.5. When being offered illegal material and non-material gifts, privileges or concessions a civil servant official shall refuse them. In case if material and non-material gifts, privileges or concessions are given for reasons not depending on him/her, he/she shall inform his/her direct supervisor about this, and material and non-material gifts, privileges or concessions shall be given on a statement to a state body where the civil servant is employed.

Law on Ethical Conduct of Civil Servants

(adopted on 31 May 2007)

Article 15. Prevention of conflict of interests

15.1. Civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for his/her private interests.

15.2. In case of contradiction between service duties and private interests of civil servant he/she under the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including future period.

15.3. Civil servant shall inform the head of the state body in cases where offers of new position may cause conflicts of interest. After civil service termination, the civil servant cannot be recruited to the departments, organizations, enterprises or their branches he/she controlled during previous performance within the period determined by the legislation.

15.4. Civil servant shall implement other actions provided for by the legislation to prevent conflict of interests.

15.5. While appointed to the position, as well as during all the following period, civil servant shall know ethics rules, and standard legal acts and acts of the standard character on fighting against corruption and prevention of conflict of interests. He/she shall apply to his/her direct or superior supervisor for any questions regarding the observance of these acts if they arise.