



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

Anti-corruption Reforms in ARMENIA

Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan

This report was adopted at the ACN meeting on **8-10 October 2014** at the OECD in Paris.

About the OECD

The OECD is a forum in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD's mission is to promote policies that improve economic and social well-being of people around the world. Find out more at www.oecd.org.

About the Anti-Corruption Network for Eastern Europe and Central Asia

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor coordination via regional meetings and seminars, peer-learning programmes, and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at www.oecd.org/corruption/acn/.

About the Istanbul Anti-Corruption Action Plan

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, Kazakhstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice. Find out more at www.oecd.org/corruption/acn/istanbulactionplan/.

This report is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Contents

- Executive Summary 4**
 - Anti-corruption policy4
 - Criminalisation of Corruption.....5
 - Prevention of Corruption5
- Third Round of Monitoring 9**
- Country Background Information 11**
- Acronyms 13**
- 1. Anti-Corruption Policy..... 15**
- 2. Criminalisation of Corruption 29**
- 3. Prevention of Corruption 45**
 - Integrity in the public service.....45
 - Transparency and discretion in public administration.....56
 - Public Financial Control and Audit62
 - Corruption in Public Procurement69
 - Access to Information75
 - Political Corruption86
 - Corruption in the judiciary92
 - Integrity in the private sector97
- Summary Table102**

Executive Summary

This report analyses progress made by Armenia in carrying out anti-corruption reforms and implementing recommendations received under the Istanbul Anti-Corruption Action Plan since the second monitoring round in 2011. 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

The previous monitoring report stated that the Anti-Corruption Strategy for 2009-2012 was not properly implemented and recommended ensuring “vigorous implementation” of the Strategy in the future. Upon the completion of the Strategy, in 2013, the Government prepared an Assessment of its implementation. The Assessment report reminded that the main objective of the Strategy was to reduce the level of corruption in the country, and concluded that “the objectives mentioned in the Republic of Armenia Anti-Corruption Strategy and its implementation Action Plan for 2009-2012 have not been implemented”. The monitoring report welcomed the open and critical assessment of the implementation of the Strategy, but concluded that 66% implementation rate did not constitute “vigorous implementation” and did not comply with the recommendation.

The third round of monitoring further notes that Armenia continued commissioning public opinion surveys about economic and social issues, which included several questions on corruption, but the results of these surveys were not used for the monitoring of the Anti-Corruption Strategy. The efforts of the Government to involve the civil society in development, implementation and monitoring of the previous Anti-Corruption Strategy were insufficient. Armenia failed to strengthen the institutional capacities for development, implementation and monitoring of the Strategy: the Anti-Corruption Council was not effective and the Monitoring Commission was not operational as a group; key activities were ensured by its Chair. A number of public institutions developed anti-corruption measures in their sectors and reported about them to the Monitoring Commission, but the capacity of these state bodies to perform anti-corruption tasks was limited. There was no donor coordination mechanism.

The third round of monitoring also notes that in 2014 the Governments started developing its new Anti-Corruption Strategy. The Concept of the future Strategy was developed on the basis of the Assessment report and presented for the discussion with the civil society. The Concept focused on the prevention of corruption in public administration. It included a provision for a permanent Secretariat for the Anti-Corruption Council.

The new recommendations adopted during the third round of monitoring call upon the Armenian government to demonstrate political will to fight corruption by taking practical measures to plan and implement anti-corruption measures in practice, such as to organise consultations about the new strategy; ensure that the strategy has a mechanism for coordination and monitoring; and that it has its own budget. The recommendations further suggest commissioning surveys for specific high risk sectors, and using the results of the surveys conducted by the government and by the NGOs for the development and monitoring of the new Strategy. The recommendations provide for a comprehensive public awareness campaign to send a message about intolerance of corruption and about practical solutions when facing corruption. Finally, the third round of monitoring recommends strengthening institutional arrangement for the coordination and monitoring of the Strategy, including a stronger Anti-Corruption Council and its permanent secretariat, building capacity of sectoral bodies to develop and implement their anti-corruption measures, and a donor coordination mechanism.

Criminalisation of Corruption

The report recognises some progress made by Armenia in the area of criminalisation of corruption since the second round of monitoring. Namely, legislative changes were introduced to explicitly criminalise the request and solicitation of an undue advantage and acceptance of an offer and of a promise; bribery in private sector was fully criminalised; some elements of the trading in influence offence were brought in line with international standards albeit with some deficiencies still remaining; the statute of limitations for some bribery offences was increased and there seems to be no problems with it in practice.

Despite these positive steps the report stresses lack of enforcement of these new provisions, most of them remain dormant. Overall poor record of general enforcement of corruption offences in Armenia, especially those involving complex nature, is identified throughout Criminalization Chapter of the report. It concludes that higher priority must be placed on pursuit of these elements in law enforcement regulatory instruments and that law enforcement must be generally more proactive in their detection efforts and should approach corruption in a more targeted manner, aiming at main risk areas in public administration and economy and high level public officials. Armenia is also called to take steps to change the conservative mind-set of the courts and law enforcement through targeted trainings on the new elements of the bribery offence and trading in influence for both judiciary and the law enforcement.

In Armenia an array of law enforcement bodies play a role in the detection, investigation and prosecutions of corruption. In the course of the third round of monitoring the National Investigation Committee which unites investigative bodies from police and ministry of defence was established. Armenian authorities maintained that this reform will increase the quality of preliminary investigation and guarantee independence of investigation; the report notes this development and proposes to follow up on the success of this endeavor. It states however that currently the degree of anti-corruption specialisation in Armenia differs greatly from agency to agency. Some have specialised departments created to focus on corruption crimes; the same bodies however, in addition, have structures that deal with corruption crimes, as well as other crimes of a high-profile – with no clarity on distribution of cases among them.

Functioning of multiple law enforcement agencies dealing with corruption phenomena is not against international standards but such approach requires a very well-coordinated mechanism to exchange information and ensure cooperation – this element seems to be missing in Armenia. In addition, Armenian dispersed and loose specialisation model places none of the law enforcement agencies under pressure to take on corruption cases, especially complex ones or those involving high-level public officials. The report also draws attention to some concerns regarding allocation of adequate resources into detection, investigation and prosecution of corruption crimes in Armenia. The issue of proper training also needs to be addressed in the context of all involved institutions. Anti-Corruption training should be developed and conducted in each institution; individual institutional courses should be complemented by joint trainings.

And finally, liability of legal persons for corruption offences is an international standard that Armenia took obligation to implement. Armenia reports to still be in the process of defining its approach to the type of liability it would select. This has been ongoing since before the second round of monitoring and Armenia is therefore urged to take practical steps and introduce such liability without further delay.

Prevention of Corruption

In the area of integrity in public service, the Ethics Commission for High-Ranking Officials became operational, but it does not have its own budget. The new system of asset declaration for high-ranking officials is now in place, but the declarations are narrow in scope, the Ethics Commission has no mandate or resources to verify the declarations or to sanction non-compliance. Ethics commissions were also

established in state bodies but they are not operational. Enforcement of conflict of interest rules in state bodies is not ensured.

Codes of ethics in risk sectors were not updated and promoted. Mandatory course on anti-corruption was introduced for civil servants, brief anti-corruption course is provided to the public officials at the local level, and the Ethics Commission is developing ethics training for high ranking official. But it is not known if the training provides an impact on the awareness and behavior of public officials. No consideration was given to establishing a central body or capacity to promote uniform enforcement of ethics rules in the whole public service, contrary to the recommendation.

Merit based appointment procedures for junior officials were improved, but no such improvements were introduced for high level officials and temporary employees. The monitoring report praises Armenia for the introduction of the unified pay system.

New recommendations focus on strengthening the mandate and the operational independence of the Ethics Commission for High-Ranking Officials, and ensuring the effectiveness of ethics commissions in public institutions. The report also recommends updating, developing and promoting codes of ethics for various categories of public servants, further strengthening the system of merit based appointments and conflict of interests rules, creating channels for reporting corruption in public institutions, and providing effective anti-corruption and ethics training and consultations to public officials.

The report praises the efforts of the Government to simplify regulation, to increase transparency and effectiveness public services and to prevent corruption risks, but noted that these measures have had no impact on the level of corruption, which remains worryingly high. The report encourages Armenia to further continue the work on simplification of procedures, introduce the modern regulatory systems and address the remaining challenges. The recommendations focus on such practical measures as regulatory impact assessment, e-governance tools, OGP and the completion of the inspections, tax and customs reforms.

In the area of public financial control and audit the report commends Chamber of Control's (CoC) capacity to routinely detect instances of potential crime, including fraud and corruption, and to make referrals to the law enforcement bodies often resulting in initiation of criminal cases. It encourages building further capacity of the auditors to specifically identify instances of corruption through a number of specific trainings; inclusion of these issues into the manuals and new methodology; as well as introduction of a specific chapter about the role of the CoC in combating fraud and corruption into its Action Plan. In addition, good experience of the CoC should be shared and further replicated; real cooperation with Internal Audit (IA) should be established and contributions into the trainings programs for public officials, as well as IA units should be made by the CoC based on this experience on a regular basis.

The report also recognizes measures implemented under the Public Internal Financial Control (PIFC) Strategy. Establishment of the IA units is almost completed and its staffing is well on its way. Armenia now has to ensure that these persons are well qualified to carry out their functions and focus on their training. The financial management and control (FMC) elements of the PIFC Strategy are however not addressed. Taking into account the importance of the FMC in the context of preventative functions it carries out in deterring corruption Armenia is strongly encouraged to address other elements of the PIFC strategy in the spirit of measures related to IA.

Many recommendations regarding public procurement were formally implemented within the past 3 years: a central procurement policy and advisory body under the Ministry of Finance has been established, there is a centralised Procurement Complaints Review Board, and an electronic procurement system has been introduced. However, whilst these institutions, committees and procedures have been introduced, the practical application of the rules still requires substantial improvements and focus on ensuring the integrity

of the procurement processes. The Government procurement, and in particular the Project Implementation Units of IFI/donor financed projects, is still perceived to be riddled with corruption.

While the members of the Procurement Complaint Review Board are perceived as professionally trained and impartial, the independence of the Board raised concerns from an institutional point of view as well as in the selection process for members. The lack of rotation of members, the dominance of Government bodies' representatives and the fact that the Board has only ever overturned one of the recommendations of the PSC puts the independence of the decision making process of the Board into question.

An electronic procurement system was introduced in Armenia in 2011. The share of electronic procurement in relation to the total volume of public sector procurement is still very low (in 2013, the total was AMD 208.3 billion, with e-procurement at AMD 12 151.0 million or 5.8 %) and should be substantially increased.

Announcements of procurement and technical descriptions as well as concluded contracts are subject to random examination. The Prosecutor must be informed of any result of verification if they identify false information or other suspicious information. No such cases were detected and reported so far. According to members of the business community, shortcoming or irregularity are often not reported by potential bidders.

The report recommends enhancing the e-procurement system, ensuring the timely publication of all relevant procurement information; ensure that procurement co-ordinators are well trained; introducing additional safeguards to ensure that technical specifications and tender requirements are not biased; introduce declarations of conflicts of interest for officials involved in public tenders. The report also recommends reinforcing competition in quasi-monopoly/oligopoly sectors and reducing the use of single source procurement and of negotiated procedure without notification.

Access to information right has not been properly enforced in Armenia, mandatory proactive publication of information is not implemented in practice properly, and there is a legislative gap in terms of electronic information requests. No measures were taken to promote enforcement and improve state oversight in this area. Public Defender's Office cannot be seen as an effective oversight institution for enforcement of FOI provisions. The Government reported about some initial steps to start contemplating over establishment of a much needed supervisory authority, however, it seems that this recommendation has not been ultimately favored by relevant authorities. At the same time, Armenian access to information legislative provisions would benefit from revision in order to increase compliance with international standards. The secondary legislation referred to in the law has to be developed as a matter of priority. Finally and perhaps most importantly, awareness needs to be raised among the civil servants in order to foster the culture of openness and transparency in public administration.

New recommendations in this area focus on the need to review the FOI Law to bring it in line with international standards, to ensure proactive publication of information by state bodies, to clarify records management and classification system and to introduce the registries of public information in state bodies, and ensure implementation in practice of the provisions related to transparency of the entities using public resources. Regarding the institutional arrangements, the report recommends to ensure efficient supervision and oversight of enforcement of the right of access to information, and ensure designation of FOI officers in each agency. The report also calls upon the Government to raise awareness of public officials to foster the culture of openness and transparency and to carry out systematic training of information officers and of other public officials dealing with access to information issues.

In the area of political corruption it appears that while in general disclosures were being done by most political parties and candidates during the 2012 parliamentary elections, there were those who did not comply. At the same time Central Election Commission (CEC) did not find any campaign finance violations. This raises serious concerns regarding the absence of a mechanism to ensure proper enforcement of the

legislation and of deterring sanctions to prevent its violations. The report also concludes that while CEC's Secretariat is adequately staffed there is a perceived lack of independence of the CEC members themselves. Their appointment appears to be heavily influenced by the executive. Armenia therefore is called to review and perhaps reform nomination and appointment procedures. Armenia also is called to address the issue related to Control and Verification Service limited mandate, lack of proper independence and most importantly its capacity to carry out its functions, including proper verification with the limited staff resources that it has and within the limited timeframes that are set in the law. The fact that part of the work is carried out by the auditors appointed by the political parties does not help but further aggravates the matters.

The report commends Armenia for taking certain steps aimed at regulation of ethics and conflict of interests of the political officials. Establishment of the Ethics Commission and adoption of its rules of procedure is the step in the right direction but there are concerns that Commission's decisions were not always made free of bias. In addition, there seems to be a general confusion regarding conflict of interest rules as opposed to asset declarations; as well as some ambiguities in the roles of the CEC and the Ethics Commission.

In the third round of monitoring a number of serious deficiencies in the judicial system of Armenia which need to be addressed in the context of anti-corruption were identified. This resulted in a new recommendation and Armenia is now called to continue its constitutional reform providing for better separation of powers and independence of the judiciary; to ensure that judicial independence encompasses independence from interference by other judges; to ensure proper financing of the judiciary and equal participation of judges in self-governing bodies; to ensure that automated cases assignment is functioning; to modify grounds for disciplinary liability of judges and ensure that disciplinary proceedings comply with fair trial guarantees.

In the area of business integrity the Government took measure to simplify business regulations, and in some instances involved business in this process. But apart from several punctual examples, like the project facilitating self-regulations in the medical sector, it did fail to develop a dialogue with the private sector on prevention of corruption and promoting business integrity. No measures were taken by the Government to raise awareness of companies about integrity in business such as compliance, ethics and anti-corruption programmes, corporate responsibility for corruption and public-private partnerships against corruption.

The new recommendation focus on the need to conduct assessment of corruption risks involving the private sector, and to identify integrity measures that can be included in the national anti-corruption or another relevant policy document. The recommendations also stress that the implementation of these measure should be carefully monitored by the government and by the private sector, and that business representatives should become members of the anti-corruption bodies foreseen under the new Anti-Corruption Strategy.

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 Armenia were endorsed in June 2004. The first monitoring round report, which assessed the implementation of initial recommendations and established compliance ratings of Armenia, was adopted in December 2006. The second monitoring round report was adopted in September 2011 and included updated compliance ratings of Armenia with regard to its initial recommendations, as well as new recommendations. In between of the monitoring rounds Armenia had provided updates about national actions to implement the recommendations at all IAP monitoring meetings. Armenia has also actively participated and supported other activities of the ACN. All reports and updates are available at the ACN website here: 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. Armenian Government provided replies to the third round country-specific questionnaire on 11 July 2014. Also, according to the methodology of the third round, feedback to the questionnaire was obtained from non-governmental partners, businesses and international community.

The country visit to Yerevan took place on 21-24 July 2014. 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 Armenia 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. Armenian authorities organized 10 thematic sessions with relevant public institutions, including Ministry of Justice, Administration of the President, Prime Minister's Office, Parliament, judges, Judicial Department, School of Judges, High Council of Justice, Ministry of Finance, Ministry of Education and Science, Ministry of Health, Ministry of Economy, Ministry of Defense, Police, Special Investigative Service, National Security Service, General Prosecutor's Office, Civil Service Council, Public Service Academy, Ethics Commission for High-Ranking Officials, Chamber of Control, Ombudsman office, and Central Election Commission. In co-operation with TI Anti-corruption Center, the ACN Secretariat organized special monitoring session with civil society; special monitoring session with businesses was hosted by the Enterprise Development and Market Competitiveness (EDMC); a session for international organizations, donors and foreign missions was organized in co-operation with and hosted by the OSCE office in Yerevan. Armenian Government provided additional materials after the on-site visit as requested by the monitoring team.

The third round examination of Armenia was led by the team leader Mr Goran Klemencic (Slovenia). The monitoring team also included Ms. Rusudan Mekhelidze (Georgia), Mr. Cornel Virgiliu Calinescu (Romania), Ms. Tamara Gheorghita (Moldova), Mr. Dirk Plutz (EBRD), Mr. Joop Vrolijk (SIGMA), Mrs Olga Savran and Ms. Tanya Khavanska represented OECD Secretariat. The co-ordination on behalf of Armenia was ensured by the National Co-ordinator – Ministry of Justice of Armenia.

The monitoring team would like to thank the Government of Armenia for excellent co-operation during the third round of monitoring; non-governmental, business and international partners who contributed to the monitoring process in various forms and helped organize and host special sessions meeting with international representatives. The monitoring team is also grateful to Armenian 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 Armenia and NGOs and 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 10 October 2014. It contains the following compliance ratings with regard to recommendations of the second round of monitoring: out of 18 previous recommendations Armenia was found to be fully compliant with 1 recommendation, largely compliant with 1 recommendation, partially compliant with 13 recommendations and not compliant with 3 recommendations. 22 new recommendations were made as a result of the third monitoring round; 1 previous recommendation was recognised to be still valid.

The report is made public after the meeting, including at www.oecd.org/corruption/acn. Authorities of Armenia 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 Armenia, which will include meetings with representatives of the public authorities, civil society, business and international communities. The Government of Armenia will be invited to provide regular updates on the measures taken to implement recommendations at the Istanbul Action Plan plenary 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 situation

Armenia is a landlocked country in the Caucasus covering an area of 29,743 square kilometers with population of 2.97 millions in 2013. Armenia has a GDP of 10,3 billion US dollars in 2013. With a per-capita GDP of US\$ 3,870 (GNI, 2013), Armenia is a lower middle-income country. Remittances from migrant workers play an important role in Armenia's economy. The growth of household deposits is strongly supported by an 11 percent growth in remittances as of June 2013. With exports and remittances dependent on international prices for commodities, the Armenian economy is vulnerable to adverse shock to terms of trade from global developments. The effect of the financial crisis on rural and urban poverty has been dramatic—the poverty rate increased from 27.6% in 2008 to 35% in 2011. The poor have been supported through targeted social expenditures and pension increases, and as growth picks up the number of people living in poverty is expected to fall.¹

Armenia's main sector of economy remains industry. Armenia has some mineral deposits. Pig iron, unwrought copper, and other nonferrous metals are Armenia's highest valued exports; exports also include machinery, equipment and brandy. Armenia imports natural gas and oil products. Main trade partners are Belgium, Israel and Russia.²

Political structure

Armenia is a presidential republic, where the President is elected by a popular vote for a 5-years period term. Last presidential elections took place in February 2013, elections resulted in a victory for incumbent President Sargsyan, who received 59% of the vote. The executive power is exercised by the Government. The Prime Minister is appointed by the President; members of the Government are appointed by the President based on the nomination by the Prime Minister.

Armenia has a unicameral parliament, National Assembly, elected for a 4-years term, with 131 seats. In Parliamentary elections of 2012 Republic Party won majority of the parliament. Prosperous Armenia came second with about one fourth of the seats, while ANC, ARF, Rule of Law and Heritage won less than 10 percent each.

¹ The World Bank's data as of February 2014; See Armenian Overview at <http://www.worldbank.org/en/country/armenia/overview>.

² CIA, the World Factbook, Armenia

Trends in corruption

Many surveys show that corruption remains a very serious problem in Armenia and is widespread. Various international surveys on perception of corruption also show that the perception remains high. Armenian CPI went down slightly from 2.7 in 2009 to 2.6 in 2011 (higher score indicated less corruption); in 2012 CPI for Armenia was 34 and in 2013 went up to 36 (higher score indicates a cleaner country).

The below compilation of various international indexes summarizes the overall improvements and challenges of business climate in Armenia.

	Rank	Change	No. of Countries
DOING BUSINESS 2014	37	▲ 3	189
INDEX OF ECONOMIC FREEDOM 2014	41	▼ -3	186
GLOBAL COMPETITIVENESS INDEX 2013-2014	79	▲ 3	148
NETWORKED READINESS INDEX 2014	65	▲ 17	148
CORRUPTION PERCEPTIONS INDEX 2013	94	▲ 11	177
HUMAN DEVELOPMENT INDEX 2013	87	▼ -1	187
KNOWLEDGE ECONOMY INDEX 2012	71	▼ -13	146

Acronyms

AML	Anti-money laundering
CAO	Code of Administrative Offences of Armenia
CC	Criminal Code of Armenia
CEC	Central Electoral Commission of Armenia
CoC	Chamber of Control of Armenia
CoE	Council of Europe
CPC	Criminal Procedure Code of Armenia
CSC	Civil Service Council of Armenia
CVC	Control and Verification Service
EBRD	European Bank for Reconstruction and Development
EU	European Union
FIO	Freedom of Information
FIU	Financial Intelligence Unit
FOICA	Freedom of Information Centre of Armenia
GPO	General Prosecutor's Office of Armenia
GRECO	Council of Europe Group of States against Corruption
IA	Internal audit
IAP	Istanbul Anti-Corruption Action Plan
MoD	Ministry of Defence
MP	Member of Parliament
NIS	National Investigative Service of Armenia
NSS	National Security Service of Armenia
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
RA	Republic of Armenia

SIGMA	Support for Improvement in Governance and Management, a joint initiative of the European Union and the OECD
SIS	Special Investigative Service of Armenia
STR	Suspicious Transaction Report
TI	Transparency International
TIAC	Transparency International Armenian Center
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

Previous Recommendation 1.2.

Ensure vigorous implementation of current and future anti-corruption strategies and action plans. In particular, ensure that actions foreseen are implemented in practice.

Ensure effective monitoring of implementation of the current and future anti-corruption strategies and action plans to assess progress made and impact of these measures on corruption in Armenia, with better involvement of civil society.

Level of implementation of the anti-corruption strategies and action plans

The previous monitoring report stated that the Anti-Corruption Strategy adopted in 2009 was an important component of the national anti-corruption policy, but it was not properly implemented, and no institutional support or resources were allocated by the Government to support its enforcement in practice.

The Assessment of the Anti-Corruption Strategy and its Implementation Action Plan for 2010-2012, prepared by the Anti-Corruption Strategy Implementation Monitoring Commission in 2013, estimates that 66% of the outputs foreseen under the Strategy were fully implemented.³ This estimate is based on self-assessment reports prepared by individual ministries; there is no procedure or mechanism to verify these reports.⁴ According to the Assessment report, there were discrepancies between annual monitoring reports provided by the ministries during 2010-2011 and their final implementation reports in 2012. The monitoring team was concerned about the quality of the implementation rate figures.

The answers to the monitoring questionnaire, the Assessment report as well as the state and non-governmental representatives interviewed during the on-site visit highlighted achievements in the implementation of the Strategy, such as the adoption of the Law on Public Service, introduction of e-governance, reforms in such sectors as education, health, police, public registry, tax and customs. Several ministries developed their own anti-corruption programmes to support the implementation of the Strategy: the Ministries of Education and of Health developed their own anti-corruption plans based on the 2009-2012 Strategy. They have also continued their own sectoral anti-corruption efforts during the absence of the national anti-corruption strategy, and developed their own anti-corruption plans for 2013-2014, and the Ministry of Health and for 2014-2017 in the Ministry of Education. The monitoring team commended these initiatives.

Despite the positive examples of implementation of the Strategy, the monitoring team was of the opinion that even if 66% measures foreseen by the Strategy were implemented, the impact of implementation of these measures on the level of corruption was insignificant. This opinion is confirmed by the Assessment report which stated that the main objective of the Strategy was to reduce the level of corruption in the

³ The Assessment report prepared by the Anti-Corruption Strategy Implementation Monitoring Commission states that 494 out of 755 outcomes foreseen by the Strategy have been achieved fully (66%); 123 outcomes have been achieved partially, and 138 outcomes have not been achieved.

⁴ The methodology for monitoring the implementation of the Strategy was developed with the assistance of the USAID-funded Mobilising Action against Corruption Activity (MAAC) in 2010.

country and concluded that “the objectives mentioned in the Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2009-2012 have not been implemented”. The criteria used for the assessment of the Strategy implementation include the Transparency International’s Corruption Perception Index (CPI) and the World Bank’s Control of Corruption Indicators. The CPI index and the World Bank’s Control of Corruption Indicators for Armenia have slightly improved since 2011, though insignificantly.⁵ But according to the World Bank, the control of corruption indicator has deteriorated.⁶ Corruption research conducted in Armenia for the Government and by the NGOs also indicates there is no significant improvement in the level of corruption as perceived by the Armenian citizens.

According to the Government, the main reasons which could have impacted implementation of the Strategy negatively, and which were discussed in the Assessment report, are related to the quality of the Strategy itself and inaccurate planning of the Action Plan. For instance, the Strategy and the Action Plan included only seven measures aimed at reducing corruption risks in the judicial system during the period of more than three years, including amendment of legislation and training. It is obvious that even thorough implementation of these measures cannot produce a significant impact on corruption risks. The Government also noted shortcomings in the assessment system, and lack of resources for measures envisaged by the Anti-corruption Strategy as reasons for its insufficient implementation.

Taking into account the answers to the monitoring questionnaire prepared by the Government for the monitoring team as well as the Assessment report, and views of the state and non-governmental delegates interviewed during the on-site visit, the monitoring team concluded that insufficient political will to take effective actions the lack of effective institutions, human and financial resources specifically dedicated to the implementation of the Strategy were the key reason for the weak implementation of the Strategy. More specifically, in Armenia there are no public officials whose main duty is to ensure the implementation of the Anti-Corruption Strategy. There is no budget or specifically allocated funds for the implementation of the Anti-Corruption Strategy. Many interlocutors during the on-site visit also stressed that the previous Strategy was very comprehensive and included a large range of anti-corruption measures, but did not have priorities, thus weakening implementation measures.

No new anti-corruption policy was adopted in Armenia since the termination of the previous Anti-Corruption Strategy in 2012. As noted above, the Government conducted the Assessment of the implementation of the Strategy in 2013. This Assessment was prepared by the Assistant to the President of Armenia who chairs the Monitoring Commission and one more staff member of the Presidential Administration; several external experts supported by international and donor organisations reviewed the Assessment report. This Assessment report was supposed to serve a basis for the development of the new Anti-Corruption Strategy. While the Assessment report was made available to the working group engaged in development of the Strategy, it was not published on any governmental web site, and was not made available to all other governmental and non-governmental stakeholders.

To prepare the new Strategy, the Government established an inter-agency working group which includes two deputy ministers of justice, the Aide to the President/the Chairperson of the Ethics Commission for High-Ranking Officials and representatives of TIAC. The group worked from December 2013 till March 2014, and prepared the “Concept for the Fight against Corruption in Public Administration System”, which was adopted by the decision of the outgoing Cabinet of Ministers on 10 April 2014. On the basis of this Concept,

⁵ Armenian CPI went down slightly from 2.7 in 2009 to 2.6 in 2011 (higher score indicated less corruption); in 2012 CPI for Armenia was 34 and in 2013 went up to 36 (higher score indicates a cleaner country).

⁶ Information about World Bank good governance indicators is available at <http://www.worldbank.org/governance/wgi/index.asp> and is referred to in diagram 2 of the “Assessment of the Republic of Armenia Anti-Corruption Strategy and Its Implementation Action Plan for 2009-2012”.

the working group started the drafting of the new Strategy. During the on-site visit, the Government informed the monitoring team that it would conduct consultations about the new Strategy with the non-governmental partners in August, with the view of adopting the new Strategy in autumn 2014. After the on-site visit the Freedom of Information Centre of Armenia (FOICA) confirmed that the first public discussion of the new Anti-Corruption Strategy was organised by the Ministry of Justice with the participation of the FOICA, Armenian Young Lawyers' Association (AYLA) and other civil society groups on 26 August 2014; the structure of the draft Strategy was presented by the Deputy Minister of Justice. According to the Government, discussions with NGOs continued throughout September and October 2014 on the level of marzes (municipalities). The Government further reported that the draft Anti-Corruption Strategy was prepared by the Ministry of Justice and sent to the Staff of the Government on 12 September 2014 with a suggestion to organise large-scale discussions on the Strategy.

The monitoring team had an opportunity to review the Concept and noted that it focused on reform of public service and administration, and provided for a permanent Task Force under the anti-corruption council and inclusion of NGOs in the council. Two other important pillars of effective anti-corruption policy – criminalisation of corruption and public participation and education – are mentioned in the section about implementation mechanism. While good international practice suggests that effective anti-corruption strategies build on three-pronged approach including criminalisation, prevention and education, the approach proposed by the Concept can be valid as well in order to concentrate resources for the implementation the key priorities.

During the interviews, the government officials further explained that the future strategy will focus only on four sectors, including education, health, tax and the policy. While focusing on few priorities is needed to facilitate implementation, several important areas, such as reform of the judiciary, law-enforcement and political corruption or possibly other priorities are missing from the debate. While these issues can be addressed by other sector-specific reforms such as the reforms of the Criminal Procedure and Administrative Codes or Judiciary Reform Strategy, which can integrate anti-corruption measures, it is important to establish cross references with the future anti-corruption strategy and effective coordination of these reforms. According to the Government, the Anti-Corruption Council shall, through coordinated meetings, create a platform for cooperation with representatives of bodies, which have a role in implementation of the Anti-Corruption Strategy, as well as representatives of institutes, which contribute to prevention of corruption. In the view of the monitoring team, cross references mentioned above will facilitate the coordination task of the Council and ensure a holistic approach to reforms.

In the view of the monitoring team, the very quick process proposed by the government for the development and adoption of the new Strategy is not necessary and can be counterproductive, despite the long gap between two strategies. It would be advisable to ensure a proper consultation process, the good quality of the new Strategy and its support in the society. According to the information provided by the Ministry of Justice after the on-site visit, it has submitted a proposal to the Government to organize wide-ranging discussions on the draft strategy, and the Prime Minister has instructed to conduct wide-ranging discussions till December.

Monitoring of implementation of the anti-corruption strategies

The institutional mechanism established for the monitoring of the Anti-Corruption Strategy for 2009-2012 included the Anti-Corruption Council as a policy body and the Monitoring Commission as a technical body (See Section on Recommendation 1.6. for more information about these bodies). The monitoring methodology was developed under the USAID-funded programme for Mobilising Action against Corruption Activity (MAAC) in 2010, and required the relevant state bodies to submit their reports on the implementation of the anti-corruption measures to the Monitoring Commission once a year. The reports

included quantitative indicators about the level of implementation of anti-corruption measures foreseen by the Strategy.

Twenty one state bodies submitted their annual reports to the Monitoring Commission in 2010, 2011 (only for the first half of the year) and 2012. With the assistance of MAAC experts the Monitoring Commission compiled annual monitoring reports from the state bodies and published the consolidated report on the web site of the government.⁷ The state bodies also submitted the final report upon the completion of the current Strategy in 2012.

The Assessment report notes that the monitoring was not properly implemented, the submitted reports were incomplete and inaccurate, no measurable description of the implemented measures and their impact was provided, and the monitoring methodology used by the state bodies remained unclear. Besides, there were essential discrepancies between the annual and final reports “which called into question the completeness and reliability of the reports”.⁸ The monitoring team noted that outside the references to the TI CPI, and the 2011 monitoring report, there is no information about the impact of the implemented measures on the level of corruption in specific sectors, such as sector-specific surveys or studies about levels of perceived corruption in selected sectors, levels of trust of citizens to specific state bodies or perception of risk of corruption in specific state bodies by their own employees.⁹

During the on-site visit the monitoring team learned that the Monitoring Commission collected the reports submitted by the state bodies, but did not take any follow-up measures; in fact, as a non-standing body it did not have a mandate or capacity to take such follow-up measures. While the low level of implementation must have been visible already through the annual reports submitted during 2010-2012, the dysfunctional Anti-Corruption Council could not take actions to increase the level of implementation by recommending specific measure to individual state bodies, by providing support to them or by putting pressure on them to boost implementation. According to the information provided by the Government after the on-site visit “measures necessary for efficient response to identified drawbacks have been taken”. The reports prepared by the Monitoring Committee were considered during the elaboration of the annual programmes of the Government. Recognizing the high corruption risks in the judiciary, the Strategic programme for legal and judicial reforms for 2012-2016 was adopted, which include several anti-corruption measures. Responding to the monitoring reports which indicated high levels of corruption in the health and education sectors, the Prime-Minister visited the Ministry of education and science, Ministry of Healthcare, Ministry of Labor and social issues. As a result, sector-specific anti-corruption programmes were developed in these sectors. While the above mentioned measures are welcome, in the view of the monitoring team they very slow and formalistic and did not boost the implementation of the Strategy.

As noted earlier, upon the completion of the Strategy, the Government prepared the assessment of its implementation; the monitoring team commends Armenia for this undertaking. The Assessment report was prepared in 2013 by the Chair of the Monitoring Commission and one more employee of the Administration of the President; the report was reviewed by several independent experts hired by several international and donor organisations on the request of the Monitoring Commission. The Assessment report analyses the

⁷ The 2011 Report for is posted on the official web-site of the Government in Armenian only <http://www.gov.am/files/docs/915.pdf>.

⁸ Assessment of the Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2009-2012, Yerevan, 2013.

⁹ The 2011 Report includes an impact assessment by fields, where the “reduction of contact” between a state servant and a citizen in the fields implying high corruption risks is mentioned and assessment of citizens’ perceptions is given.

corruption trends in Armenia, assesses the achievements and challenges in the implementation of the Strategy by different state bodies, and the effectiveness of anti-corruption bodies that were established to support the implementation of the Strategy. The Assessment report also contacts sections on implementation of international anti-corruption commitments of Armenia, as well as the recommendations. The Assessment report, according to the Armenian authorities, was developed to serve a basis for the preparation of the new Anti-Corruption Strategy.

According to the answers to the questionnaire “Monitoring is carried out also by the Transparency International Anti-Corruption Centre (TIAC), Armenian Young Lawyers Association (AYLA), and Freedom of Information Centre of Armenia (FOICA). For example, in 2011 FOICA conducted a countrywide monitoring by the support of OSCE”. FOICA representatives have also participated at the session of the Council and discussion of the monitoring report in the first semester of 2011. While the government is well aware of the civil society monitoring, the results of this monitoring were not used in the official monitoring process, no references were provided to the NGO monitoring reports in the Assessment report either.

Conclusions

In conclusion, 66% of expected outputs were delivered according to the available assessment however the monitoring team finds that this does not meet the requirement of the recommendation which requires vigorous implementation. The monitoring of its implementation was transparent and helped identify deficiencies, but did not allow taking timely measures to strengthen implementation and did not involve the civil society. The assessment of the implementation of the previous Strategy was a useful undertaking, but the results are not published¹⁰. The development of the new Strategy should not be rushed, should involve meaningful consultations with the public authorities and non-governmental partners, despite the current gap in anti-corruption strategy.

Armenia is not compliant with the recommendation 1.2.

New Recommendation 1

- ***Organise meaningful consultations about the new strategy with the public authorities and the non-governmental partners, including civil society, business and international partners, to ensure that the strategy focus on the right priorities and to build the support of the society to its implementation***
- ***Ensure that the new strategy has a strong mechanism for its coordination and monitoring, including a set of performance indicators and the use of surveys and inputs from non-governmental organisations***
- ***Develop a budget for the implementation of the strategy including sufficient human and financial resources to ensure necessary financing from the state budget.***

¹⁰ The assessment report was published on the Governmental website in October 2014 at the time of the adoption of this report.

Previous Recommendation 1.3.

Continue supporting and using research about corruption.

Conduct, using a transparent methodology, and publish surveys that reveal corruption risk areas and trends of corruption in different sectors, surveys on perception and experience with corruption, and on trust in public institutions.

Use results of studies and surveys in development, implementation and monitoring of anti-corruption policies.

Research about corruption

According to the answers to the monitoring questionnaire, since 2010 the Government Staff periodically orders public opinion surveys about various economic and social issues, including corruption. These surveys are conducted by an independent professional organization – Institute of Political and Sociological Consulting (IPSC). During the on-site visit, the monitoring group learned that the IPSC was selected in 2010 through a bidding process and signed a long-term contract with the Government with the total budget of 35,000 USD. Since 2010 the IPSC conducted 4 studies per year assessing the activities of the government, life quality and community needs. To date 14 studies were conducted covering 11 different sectors, corruption being only one of many topics covered by the studies. The surveys provide a general view about the perception of the citizens about the spread of corruption in different sectors. For instance the 2011 and 2012 results indicate that police and the judiciary are perceived as the most corrupt structures in Armenia, and the level of corruption in this field has increased further. This survey also indicates that the level of corruption in tax, customs, and education sectors has slightly decreased. The monitoring team commended the Government for conducting these regular surveys, but noted that they were not sufficient for identification of corruption risk areas for the purposes of the development of national anti-corruption policy or for monitoring the implementation of anti-corruption policy.

The Assessment report also refers to the survey of corruption perception by the Armenian households conducted by the Caucasus Resource Research Centre (CRRC) in 2009 and 2010, within the MAAC project, which were already mentioned in the previous monitoring report.

The results of the IPSC and CRRC studies are published on the web sites of these organisations, in Armenian only. They are not published or referred to on the governmental sites and many state and non-governmental representatives interviewed during the on-sight visit were not aware about these studies. These reports were not used for the monitoring of the previous Anti-Corruption Strategy, which in the view of the monitoring team was an important failure to improve the monitoring process. Both the IPSC and the CRRC surveys were already discussed in the previous monitoring report and are referred to in the Assessment report. According to the answers to the questionnaire the results of the research were used while developing the Concept paper; however the priorities identified by the surveys included judiciary, law-enforcement and elections, which are not covered by the Concept. The Government also submitted the above-mentioned reports to state bodies so that they take them into account while implementing anti-corruption programmes in their fields. For example, on the basis of the results published in 2013, the Ministry of Healthcare has implemented a programme of fight against corruption in the field of healthcare.

The studies conducted so far provided comparison of corruption trends between several sectors, but they did not cover systematically all sectors and did not focus on the corruption perceptions and trends inside the specific sectors, thus limiting their value for the monitoring and providing little insights about the corruption risks and solutions that can be implemented. The Assessment report confirms that failure to conduct risk assessment and research about reasons of corruption prior to the development of specific anti-

corruption measures, e.g. in the education sector, was one of the reasons for poor design of these measures.

A study which is on-going in the framework of an EU funded project may serve as an inspiration for conducting more in-depth assessment of corruption risks in selected sectors.¹¹ This study on management of conflict of interests showed that 78% of public officials were considering that they were taking decision in potential conflict of interest situations. This type of studies can provide a basis for developing training programs and guidelines for public officials to deal with conflict of interest situations.

Armenian NGOs interviewed during the on-site visit noted a number of anti-corruption studies that they have conducted over the past years with the funding from the donor organisations, including the study on the public procurement. Government officials interviewed by the monitoring team were not aware about some of these studies. The inputs of the civil society in assessment of the previous strategy were insufficient.

Conclusions

In a sum, Armenia continued commissioning public opinion surveys to one independent institution, the focus of these surveys on corruption was limited, and the results were not properly disseminated. The studies did not focus on specific sectors, and were not used for the monitoring of the previous Anti-Corruption Strategies. The Government intends to use the studies for the development of the new Strategy. The cooperation with NGOs in the area of research is weak.

Armenia is partially compliant with Recommendation 1.3.

New Recommendation 2

- ***In addition to general surveys, commission surveys for specific high risk sectors to help the development and monitoring of anti-corruption policy and measures***
- ***Provide support to NGOs in their corruption research***
- ***Use the results of the surveys commissioned by the government and conducted by the NGOs for the development of the new Strategy and for the monitoring of its implementation and publish them on the site of the anti-corruption council***

Previous Recommendation 1.5.

Take concrete measures to support and involve civil society and take joint actions and projects with it in the development, implementation and monitoring of anti-corruption policies and in anti-corruption activities.

Develop and implement Government's measures to raise awareness of the citizens about corruption and how to prevent it.

Undertake Government-led efforts to build public trust, by providing practical information on citizens' rights and public services.

¹¹ The study has not been yet published.

Support, involve and take joint actions with the civil society

According to the answers to the questionnaire, there are several examples of joint actions of the civil society and the state bodies in anti-corruption activities. For example, the Armenian Young Lawyers Association (AYLA) signed Memoranda of Understanding with Prosecutor General Office and several governors' offices and city halls. In 2013 the AYLA organized awareness raising events in different regions of Armenia together with the Ministry of Justice, the Civil Service Council and the Ministry of Territorial Administration. Another NGO "The future is yours" has signed a Cooperation Memorandum with the Ministry of Education and Science and the Yerevan State University; this NGO conducted training activities, often with the funding of donors and international organisations, such as the USAID, UNESCO, UN Children's fund. It is worth noting that this NGO conducted a corruption risk assessment in the education sector and developed recommendations how to address these risks; they also organised a study visit for students to Georgia to learn about their anti-corruption reforms. Civil society and business delegates interviewed during the on-site also confirmed that public councils which are established in many state bodies provided a useful mechanism for public consultations on specific issues.

Despite these positive examples, the NGOs interviewed during the on-site visit stated that support of the government to the civil society groups, and its efforts to involve them in development, implementation and monitoring of anti-corruption policies were limited. Absence of NGOs in the monitoring process¹² for the previous Strategy, and limited involvement of NGOs in the development of the new Strategy are the main failures in this respect. The Transparency International participated in the development of the Concept paper. In April 2014 a joint workshop was organized by the Government with the FOICA and AYLA to discuss the Concept adopted by the Government several days earlier. The intention of the Government to conduct consultations with NGOs about the new Strategy very quickly during August 2014 also indicates insufficient effort to involve civil society.

The institutional arrangement proposed for the implementation of the new Anti-Corruption Strategy includes a renewed Anti-Corruption Council that will include two NGO delegates as well as two other non-governmental representatives (one from community unions and the chairman of the public committee). While this proposal was commended by the monitoring team, the NGOs have expressed a view that two NGOs are too few to represent the civil society in the Council, and proposed increasing their quota.

The government held consultations with the civil society representatives on issues of appointment to the Council and based on the results of these consultations the procedure was revised to exclude direct nomination by a competition based process. The competition procedure and eligibility criteria for NGOs should be approved by the Council. The monitoring team remained unclear as to the selection procedure: it is concerned about the proposed use of a competitive procedure by the executive powers for selection of civil society members to a representative body.

¹² According to the Statute of the Anti-Corruption Council, the Monitoring committee should include seven members from the list of representatives of NGOs recommended by factions and deputy groups of the National Assembly. The representatives of NGOs shall be rotate on an annual basis upon decision of the Council. However, this legal provision has never been implemented in practice as discussed under Recommendation 1.6.

Raise awareness and build trust

Armenian NGOs and several state bodies carry out a large number of awareness raising activities. The answers to the questionnaire quote the awareness raising activities conducted by the State Commission for the Protection of Economic Competition, including seminars about competition legislation. The Government also took measures to raise awareness of the citizens about the new e-services provided by several state bodies (please refer to the relevant section for more information about e-services). However, after the completion of the MAAC project, which funded anti-corruption education projects through the Advocacy and Assistance Centres in all 10 regions of Armenia, no similar large-scale awareness raising programmes focusing on corruption were implemented neither by the government nor by donors.

A proactive and practical awareness raising campaign led by the Government is still missing in Armenia. In the view of the monitoring team this is an important shortcoming in the country where pessimism and passive acceptance of corruption are wide spread, and trust in the government's intention to fight corruption is low.

Both the state and non-governmental representatives interviewed during the on-site visit agreed that the citizens of Armenia continue accepting corruption as business as usual; they do not protest against bribe solicitation or wide spread conflict of interest, and do not know about their rights and duties in situations involving corruption. According to one study over 60% of citizens in Armenia are not willing to report about corruption.¹³ This indicates that awareness of citizens about risks of corruption and about the practical tools to resist corruption is low. This also indicates that citizens will not be motivated to report about corruption to law-enforcement authorities, undermining their efforts to combat corruption, since Armenian law-enforcement agencies, like law-enforcement agencies in many other countries, rely on the incoming reports about corruption in order to start their investigative procedures.

Many interlocutors interviewed by the monitoring team also stressed about the low trust of citizens in the Government's intention to fight corruption. The Concept recognises that public trust in the activities of state bodies was not sufficient. It suggested that asset declaration for high-ranking officials and foreseen participation of NGOs and parliamentary opposition in the Anti-Corruption Council will help address this challenge. The answers to the questionnaire also suggest that hotlines in various state institutions also help increase trust: in bodies where hotlines are available, an annual 10% increase in phone calls has been registered, for example, the Staff of the Government, the Police adjunct to the Government, the Ministry of Justice, Ministry of Health and other ministries, the Municipality of Yerevan. Comments provided by the government after the on-site visit further note that effective programmes implemented in the field of state registration of legal persons, e-payments, and real estate cadaster are acknowledged by citizens, and allowed reducing corruption risks.

While such measures as asset declarations and hot lines can indeed increase transparency and efficiency of relevant state bodies contribute to building trust, they may not be sufficient in the Armenian circumstances. Trust in public institutions can for example be increased through fair and transparent elections, establishment of independent judiciary, demonopolisation of economy and separation of business and politics. In order to effectively address this issue Armenian authorities will need to develop and implement well targeted measures.

¹³ Transparency International Global Corruption Barometer 2013.

Conclusions

In a sum, there are several examples of joint actions against corruption between the NGOs and the state bodies and several state bodies conducted awareness raising campaigns to inform the citizens about improvements in their public services. The efforts of the Government to involve the civil society in development, implementation and monitoring of the previous anti-corruption strategy and its action plan were insufficient, but it is taking several measures to involve the NGOs in the development of the new anti-corruption strategy. A proactive and trustworthy awareness raising campaign led by the Government is still missing.

Armenia is partially compliant recommendation 1.5.

New Recommendation 3

- ***Provide broader opportunities for the NGOs to participate in the Anti-Corruption Council***
- ***During the launch of the new Strategy organise a public awareness campaign to send a strong message from the government to the citizens about intolerance of corruption***
- ***Support the implementation of the new Strategy with a regular public information campaign about practical solutions, rights and duties of citizens when facing corruption***

Previous Recommendation 1.6.

In order to strengthen the institutional capacities for development, implementation and monitoring of anti-corruption policies, it is necessary to:

- i. Ensure effective oversight of anti-corruption policies at the highest political level, with participation of civil society and other key stakeholders;***
- ii. Ensure a permanent Secretariat function for development, implementation and monitoring of anti-corruption policies; ensure it has clear responsibilities and sufficient human, material and financial resources;***
- iii. Ensure that public institutions clearly allocate responsibilities for development and implementation of anti-corruption measures in their respective sectors, for the monitoring and exchange of information, including the reporting to the above Secretariat.***

Institutional Framework for Coordination and Monitoring of the Anti-Corruption Strategy

The institutional framework for specialised anti-corruption policy and coordination bodies was established in Armenia in 2004 and includes the Anti-Corruption Council and the Anti-Corruption Strategy Implementation Monitoring Commission. Both bodies operate through meetings, and do not have permanent secretariats. The institutional framework provides for working expert groups that can be established for different issues. The Anti-Corruption Strategy for 2009-2012 stipulated the establishment of focal points in sectoral ministries to coordinate the development and implementation of anti-corruption measures in these sectors.

The previous monitoring report adopted in 2011 noted that little was known about the actual results of the work of the Council and of the Monitoring Commission. The report also noted that the involvement of the civil society in these bodies remained limited. During the previous round of monitoring the Government had an intention to create a structural unit under the Council, and a permanent Secretariat in a form of a working group under the Monitoring Council. However, these intentions were not put in practice. The

report concluded that the lack of the permanent Secretariat was the main obstacle for necessary institutional support for the implementation of the Anti-Corruption Strategy. According to the answers to the questionnaire provided by the Government under the third round of monitoring of Armenia, no major changes were introduced in the institutional framework since 2011.

According to the answers to the questionnaire, the Council, chaired by the Prime Minister and composed of the heads of relevant state bodies, was supposed to meet not less than twice in each quarter, i.e. 8 times a year. During the on-site visit the government officials and the civil society confirmed that the Council met once in 2011 and once in 2012; it was also planning to meet in 2013, but failed to convene. After the on-site visit, the government informed the monitoring team that the Council met twice in 2013 and once in 2014 at the working level meeting; and therefore none of the persons interviewed during the on-site visit have heard of these meetings and the monitoring team cannot verify this information. Minutes of the 2011-2014 Council meetings were not published, but the Council issued press releases from these two meetings which summarised the main decisions.

The Monitoring Commission has never become an operational group. According to the public and non-governmental representatives interviewed during the on-site, this may be due to the complicated composition: the Commission is chaired by the Assistant to the President and is composed of representatives of all faction of the Parliament; the head of the Armenian delegation to GRECO; Secretary of the Commission of Public Administration System Reforms, the head of the working group in the anti-corruption initiative of the countries with transitional economy; Head of Legal Department of the Government Staff; Chairperson of TI Armenia and representatives of non-governmental organizations. According to TI Armenia, they were once contacted by the Commission with the invitation to attend a meeting, but this meeting never took place. According to another interviewee, members of the Parliament factions never attended the meetings. As a result, the Commission never functioned as a group.

The key level of the operation of the Monitoring Commission was assured by its Chair with the assistance of several external experts. The main achievements of the Monitoring Commission include the following: collected and compilation of monitoring reports for 2010, 2011 and 2012; submission of 2011 report to the Council, based on which the Council has given necessary assignments to the responsible bodies; establishment of a new expert group in 2011; preparation of the Assessment report of the Anti-Corruption Strategy and Action Plan for 2009-2012; ensured the continuity of its activities after the completion of the previous Strategy, including the preparation of the Concept.

The Monitoring team commended the initiative of the Chair of the Commission to prepare the Assessment report. The Assessment report is very critical about the institutional framework and states that the institutional system for the fight against corruption established in Armenia is not effective. The Assessment report includes a detailed analysis of international standards regarding specialised anti-corruption bodies, analyses Armenia's compliance with these standards, and concludes that corruption prevention bodies are needed in the country.

To address the institutional shortcomings highlighted in the Assessment report, according to the answers to the questionnaire, an anti-corruption programmes monitoring division has been established with the Government Staff by the Decision of the Government No 1363-N of 5 December 2013. This division is expected have 3 staff positions and to carry out the functions of the Secretariat. During the on-site visit the monitoring team learned that these positions were still vacant, and the Secretariat was not operational. After the on-site visit, the Government informed the monitoring team that "the Government has fulfilled its function. It has established a division, appointed the head of the division and filled the other vacancies". As noted above, the Anti-Corruption Strategy for 2009-2012 provided for the establishment of anti-corruption focal points in sectoral ministries. During the on-site visit, the monitoring team interviewed representatives of the Ministries of Health and Education and learned that the responsibilities for development and

implementation of anti-corruption measures, monitoring and reporting to the Monitoring Commission were allocated to one of the Deputy Ministers, who instructed various Departments of the Ministry to develop and implement various measures. The anti-corruption tasks are additional tasks for the staff of the Ministries; there are no staff members who are responsible for anti-corruption work, i.e. would have anti-corruption in their job description, and there is no specific budget allocated for this work.

In the comments provided by the Government to the draft report, they state that “There was no need to make changes in the job descriptions, as the actions intended by the Anti-Corruption Strategy Action Plan become a part of the working task of that structural unit. Therefore additional budgetary financing was not needed, either. Besides, the mentioned actions do not have strict peculiarities in terms of their content, and they were fully incorporated in the job descriptions of officials of the Ministries.” The monitoring team does not agree with this statement, and remains convinced that anti-corruption tasks in sectoral ministries have to be clearly allocated, and their implementation should be supported with necessary resources. This view was confirmed by the representatives of the sectoral ministries interviewed during the on-site visit.

The anti-corruption capacity in the state bodies is limited. While officials in respective ministries were trained on programme monitoring methodology within the framework of the MAAC programme in 2010 they did not receive any methodological or analytical assistance necessary for the development and implementation of anti-corruption measures in their sectors since then. They do not receive feedback from the Monitoring Commission to their reports or information from the law-enforcement bodies about corruption cases involving public officials in their sectors.

The anti-corruption focal points interviewed by the monitoring team did not know how they should cooperate with the ethics commissions that should be established in all state bodies according to the Law on Public Service, despite very closely related mandates of these entities.

According to the Concept paper, the institutional mechanism for the implementation of the future Anti-Corruption Strategy will be slightly changed. The Anti-Corruption Council will remain the main policy body, and will be responsible for coordination of the implementation of the anti-corruption strategy, ensuring the control over the implementation of sector-specific programmes. But it will have new membership: it will be chaired by the Prime Minister, and will include the Chief of Staff of the Government, Ministers of Finance and of Justice, Prosecutor General, the Chair of the Ethics Commission for High-Ranking Officials, representatives from opposition parties, Chair of the Public Council, a representative of the Union of Communities and two representatives from the civil society. Opening of the Council for civil society was commended by the monitoring team; indeed, this reform may ensure the leading role of this body in the development, coordination and monitoring of the anti-corruption policy in Armenia. While the government insists that eight representatives from outside the ruling authorities in the Council should be sufficient, the civil society representatives interviewed during the on-site visit had a view that the number of their representatives should be increased to ensure their proper representation in the Council. This position of the civil society was also confirmed at the consultation organized by the Ministry of Justice with NGOs on 26 August 2014.

The Council will be supported by a Task Force of independent experts and by the Monitoring Division; the Monitoring Commission will cease to exist. According to the Concept paper, the experts will be hired through a competition procedure, the Council will have the right to recruit and dismiss the experts. The Staff of the Government will provide the logistical support the Task Force through the Monitoring Division. The Task Force will be responsible for a broad range of tasks, including supporting the development of the national anti-corruption strategy and sector-specific programmes; coordination of the implementation of the Anti-Corruption Strategy, control over the implementation of sector-specific programmes, organising studies and

surveys; providing methodologies support to state bodies; raising awareness and ensuring cooperation between the Council and regional and international organisations in the fight against corruption and representation of the parliamentary opposition factions and civil society. In the view of the monitoring team, it was unclear how in practice the Task Force can be established and managed by the Council, which is not a permanent body itself. The monitoring team is also concerned that the Task Team will not be able to perform its broad tasks without a status of a permanent and high level body, e.g. independent experts can provide technical advice, but cannot coordinate other state institutions, or represent parliamentary opposition factions and civil society.

The third element of the institutional mechanism proposed by the Concept paper are the responsible bodies including the Government, the Prime Minister and the heads of the state bodies implementing the anti-corruption policy in separate sectors. The Concept paper also refers to other bodies contributing to corruption prevention, such as the Ethics Committee, Control Chamber, the Civil Service Council, the Central Electoral Commission and the State Commission for the Protection of Economic Competition, and law-enforcement bodies responsible for combatting corruption-related crimes.

The Concept paper refers to the intention to establish a structural subdivision under the Staff of Government that will provide logistical support to the Task Force. After the on-site visit, the Government confirmed that the anti-corruption programmes monitoring division established with the Government Staff by the Decision of the Government No 1363-N of 5 December 2013 will fulfill this task, and will act as the permanent secretariat to the Anti-Corruption Council. This step may address the main weakness of the institutional anti-corruption framework in Armenia, if it is provided with resources necessary to effectively develop, coordinate and monitor the implementation of the Anti-Corruption Strategy. In the view of the monitoring team, the future Strategy must have a clear mechanism for its implementation that should include an explicit establishment of a permanent Secretariat that would be responsible for the coordination and monitoring the implementation of the Strategy, i.e. the responsibility of coordination and monitoring of the Strategy should stay with the Council and its permanent Secretariat, and not with the Task Force of external experts.

Civil society groups in Armenia, including TIAC, have a position that instead of trying to revive the institutional model that did not work under the previous Strategy, the country should establish an independent corruption prevention agency. The EU also recommends the establishment of an independent and permanent anti-corruption body in Armenia through a legally binding degree and in line with the UNCAC requirements.¹⁴ The public officials interviewed during the on-site visit never referred to any discussion or consideration that is given to the possibility of establishing a corruption prevention body in addition to the institutional framework described above, and if the Anti-Corruption Council, the Task Force of the structural subdivision of the Staff may have other corruption prevention responsibilities beyond coordination and monitoring of the Strategy. After the on-site visit the Government has clarified that the Assessment report included a consideration for various institutional models, and decided against an independent and permanent anti-corruption body.

One of the important elements of the development and coordination of anti-corruption policy in Armenia is donor coordination. Donors, including international organisations, bi-lateral development agencies and foundations, play a very important role in supporting anti-corruption reforms in Armenia; some anti-corruption activities do not receive any state funding at all and are fully supported by donors, questioning the ownership of the government. The previous monitoring report noted that a better coordination between the Government and the donors could channel the financial resources to the real beneficiaries within the implementing bodies. During the on-site visit of the third round of monitoring, the international community representatives confirmed that donor coordination remained a serious challenge and there was

¹⁴ ENPI/2011/023-094

no effective mechanism to ensure funding for the priority measures and to avoid duplication of efforts, while ensuring Government's leadership in this area. After the on-site visit, the Government clarified that funding for the implementation of the Strategy will be allocated from the state budget and almost all the actions would to be financed from the state budget. However, the monitoring team remained concerned as donor funding may still be needed to implement anti-corruption reforms and a mechanism is needed to ensure effective and transparent donor funding in the future.

Conclusions

In a sum, Armenia failed to strengthen the institutional capacities for development, implementation and monitoring of anti-corruption strategy for 2009-2012 and follow up sectoral action plans: the Anti-Corruption Council was not effective and the Monitoring Commission was not operational as a group, key activities were ensured by its Chair. A number of public institutions developed anti-corruption measures in their respective sectors and reported about them to the Monitoring Commission, but the capacity of these state bodies to perform anti-corruption tasks was limited and apart from monitoring methodology no further methodological or analytical support to develop and implement anti-corruption actions was provided to them. There is no donor coordination mechanism.

Armenia is partially compliant with recommendation 1.6.

New Recommendation 4

- ***Ensure that the Anti-Corruption Council leads the coordination of the Anti-Corruption Strategy and its monitoring, regularly informs the state bodies and the public about progress and challenges in its implementation and takes measure to strengthen the implementation where necessary***
- ***Provide the permanent secretariat for the coordination and monitoring of the Anti-Corruption Strategy with a clear mandate for coordination and monitoring of anti-corruption policy and with the human and financial resources necessary for effective and independent work***
- ***Strengthen the capacity of state bodies to develop and implement sectoral anti-corruption measures, provide them with analytical and methodological support, ensure coordination between the anti-corruption focal points and ethics commissions in the state bodies and with the law-enforcement bodies***
- ***Establish a donor coordination mechanism to ensure effective support of the donors to the implementation of the Anti-Corruption Strategy and other anti-corruption, integrity and good governance programmes [Government is requesting a more precise recommendation]***

2. Criminalisation of Corruption

Previous Recommendation 2.1.-2.2.

- i. Armenia should explicitly criminalise the request and solicitation of an undue advantage and acceptance of an offer and of a promise of an undue advantage (Article 311 and Article 311-2 of the Criminal Code of Armenia), in line with Article 15 paragraph b) of the UN Convention and Article 3 of the Council of Europe’s Criminal Law Convention.*
- ii. Armenia should consider fully covering trading in influence in its criminal law in line with international standards, namely to include active side of trading in influence, request or the acceptance of an offer or promise of an undue advantage to exert improper influence, other acts apart from those committed for “mercenary purposes” and refer to third party beneficiaries.*
- iii. Armenia should fully criminalise bribery in the private sector by expanding the definition of persons subjected to these provisions to include all individuals who work for private sector entities.*
- iv. Armenia is encouraged to conduct further analysis of needs and possibilities to criminalise illicit enrichment.*
- v. Armenia should introduce liability (criminal, civil or administrative, as it deems appropriate) of legal persons for corruption offences with appropriate sanctions.*

Request and solicitation and acceptance of an offer and of a promise of undue advantage

On 9 February 2012 National Assembly of the RA adopted Law HO-18-N introducing the elements of “request”, “solicitation”, “acceptance of an offer” and “acceptance of a promise” of undue advantage into the CC of Armenia. Relevant amendments were made to CC Articles 311, and 311.1 in line with international standards.

Statistical data on enforcement provided by Armenian authorities prior to the on-site visit covered initiation, indictments and convictions of all cases under general articles and it was unclear whether any cases have been investigated and prosecuted specifically on “request” and “solicitation” or “acceptance of an offer” or “acceptance of a promise” of undue advantage.

Practitioners met during the on-site visit provided diverging information regarding practical application of these norms. Monitoring team was told by some representatives of the Police and Special Investigative Service (SIS) that cases with qualification of the “request”, “solicitation” and or “acceptance of an offer or a promise” have been initiated; although they could not provide any details on such cases. Subsequently, the monitoring team requested to provide more detailed information regarding such cases following the on-site visit; however, provided information states that presently there are no such cases in Armenia.

The rather recent amendments to the law can partially account for the lack of cases on these elements. However, the discussions held during the on-site visit on the whole highlighted the fact that the practice of investigating the bribery offences is rather traditionally oriented and practitioners focus on 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.

Trading in influence

The active side of the trading of influence was criminalised through the same Law HO-18-N adopted on 9 February 2012 which introduced new CC Article 312.2 (active trading in influence). All elements required by the international standards are contained within this Article.

However, Recommendation 2.1-2.2 calls to address other elements of the trading in influence, for example, covering other acts apart from those committed for “mercenary purposes” and referring to third party beneficiaries. It also requires criminalising “request or the acceptance of an offer or promise of an undue advantage to exert improper influence”.

The offence of CC Article 311.2 is currently restricted to acts committed “for mercenary purposes” and it does not include a reference to third party beneficiaries. GRECO Compliance report on Armenia from December 2012 points out that: “these gaps are partly filled by Articles 311 and 311.1 on passive bribery, which also cover trading in influence. These articles, however, only apply in cases in which the influence peddler is an official or a public servant. Moreover, Articles 311, 311.1 and 311.2 all require that the influence is actually exerted (even if it is irrelevant whether the exertion of influence has the intended result or not).”

Even though passive trading in influence is criminalised since before the 2nd round of monitoring, no cases of passive trading of influence or cases qualified under new CC Article 312.2 have been initiated to date. Interlocutors met at the on-site visit shared that it is difficult to pursue new offences and that once the first case is investigated and prosecuted successfully, the others will follow. The monitoring team was also explained that in practice, due to the fact that the disposition of the Article is such that the other offences overlap with this one and the investigators inevitably go for the familiar Article.

Bribery in private sector

CC Article 200 (commercial bribery) has been amended since the 2nd round of monitoring and now covers all individuals who work for private sector entities. It is no longer limited to persons with regulatory or other management functions as was the case during the second round of monitoring; it was amended with the wording “or hold any other position”, which has brought this provision in line with international requirements.

Statistical information provided by Armenian authorities on commercial bribery cases shows a similar (rather limited) number of cases being initiated under Article 200, the indictments and convictions would be on par with those regarding other corruption crimes. No difficulties in pursuing these cases have been however identified during the on-site visit, apart from the fact that effective regret defence is not applicable and therefore persons are not willing to report such types of crimes and cooperate with the law enforcement.

Illicit enrichment

According to the answers to the questionnaire, provided by Armenian authorities, this issue was discussed but no final decision was made in this regard. This was further confirmed by Armenian representatives of the criminal justice system met during the on-site visit. They told the monitoring team that the concept is being discussed in the context of the CC reform, as well as in the context of the Constitutional reform taking place in Armenia. Moreover, representatives of the GPO further explained that this issue was included into the ENP Action Plan and Armenia is currently studying EU experience in this regard in order to make an informed decision.

Liability of legal persons for corruption offences

No changes have been made in Armenian legislation to introduce liability of legal persons for corruption offences in any form since the second round of IAP monitoring. However, Armenian authorities report that these issues are being considered in the context of the CC and CAO reform. Diverging views have been communicated to the monitoring team in regards to the type of the liability that Armenia will select, as well as in regard of at which stage such draft legislation is currently. Some interlocutors met at the on-site visit mentioned that the decision regarding the type of liability is not made, while others mentioned that it will be administrative liability. Both draft CC and draft CAO have been cited in the replies to the questionnaire. Concept paper of New Draft CC of the RA, provided to the monitoring team after the on-site visit, however does not contain any mention of the liability of the legal persons for corruption offences or any other offences for that matter.

General enforcement of corruption offences

Focus of the third round of IAP monitoring is on the enforcement and practical implementation, therefore the monitoring team paid special attention to the issue of how successfully corruption offences are being detected, investigated and prosecuted in Armenia.

After the on-site visit the monitoring team was provided with the following statistics from the law-enforcement agencies involved in such cases¹⁵:

CC Article 311 (receiving a bribe)

<i>Year</i>	<i>Criminal cases opened</i>	<i>Criminal cases brought to court</i>	<i>Criminal cases with convictions</i>
2011	In total 55 of them: 39 (by police) 13 (by SIS) 1 (by NSS) 2 (by MoD)	In total 21 of them: 13 (by police) 7 (by SIS) 1 (by NSS)	In total 22 of them: 13 (by police) 9 (by SIS)
2012	In total 59 of them: 42 (by police) 13 (by SIS) 2 (by NSS) 2 (by MoD)	In total 47 of them: 40 (by police) 6 (by SIS) 1 (by NSS)	In total 28 of them: 19 (by police) 9 (by SIS)
2013	In total 47 of them: 22 (by police) 18 (by SIS)	In total 14 of them: 5 (by police) 4 (by SIS)	In total 18 of them: 7 (by police) 9 (by SIS)

¹⁵ Such agencies include the Police, Special Investigative Service (SIS), National Security Service (NSS), and Ministry of Defence (MoD) investigators.

5 (by NSS)	3 (by NSS)	2 (by MoD)
2 (by MoD)	2 (by MoD)	

CC Article 311.1 (receiving a bribe by public servant – non-official)

<i>Year</i>	<i>Criminal cases opened</i>	<i>Criminal cases brought to court</i>	<i>Criminal cases with convictions</i>
2011	In total 26 of them: 20 (by police) 6 (by NSS)	In total 8 of them: 6 (by police) 2 (by NSS)	In total 6 of them: 6 (by police)
2012	In total 15 of them: 11 (by police) 4 (by NSS)	In total 7 of them: 5 (by police) 2 (by NSS)	In total 6 of them: 6 (by police)
2013	In total 33 of them: 33 (by police)	In total 29 of them: 29 (by police)	In total 8 of them: 8 (by police)

CC Article 312 (giving a bribe)

<i>Year</i>	<i>Criminal cases opened</i>	<i>Criminal cases brought to court</i>	<i>Criminal cases with convictions</i>
2011	In total 6 of them: 5 (by police) 1 (by MoD)	In total 3 of them: 3 (by police)	In total 5 of them: 5 (by police)
2012	In total 28 of them: 22 (by police) 2 (by SIS) 1 (by NSS) 3 (by MoD)	In total 5 of them: 4 (by police) 1 (by NSS)	In total 6 of them: 6 (by police)
2013	In total 15 of them: 9 (by police) 2 (by SIS) 4 (by MoD)	In total 6 of them: 4 (by police) 1 (by SIS) 1 (by MoD)	In total 10 of them: 6 (by police) 3 (by SIS) 1 (by MoD)

CC Article 312.1. (giving a bribe to public servant – non-official)

<i>Year</i>	<i>Criminal cases opened</i>	<i>Criminal cases brought to court</i>	<i>Criminal cases with convictions</i>
2011	0	0	In total 1 of them: 1 (by police)
2012	0	0	0
2013	In total 13 of them: 13 (by police)	0	0

CC Article 312.2. (active trading in influence)

<i>Year</i>	<i>Criminal cases opened</i>	<i>Criminal cases brought to court</i>	<i>Criminal cases with convictions</i>
2011	0	0	0
2012	0	0	0
2013	0	0	0

CC Article 200 (commercial bribery)

<i>Year</i>	<i>Criminal cases opened</i>	<i>Criminal cases brought to court</i>	<i>Criminal cases with convictions</i>
2011	In total 29 of them: 28 (by police) 1 (by NSS)	In total 10 of them: 10 (by police)	In total 10 of them: 10 (by police)
2012	In total 25 of them: 24 (by police) 1 (by NSS)	In total 15 of them: 15 (by police)	In total 21 of them: 21 (by police)
2013	In total 9 of them: 9 (by police)	In total 3 of them: 3 (by police)	In total 6 of them: 6 (by police)

Monitoring team expressed concern with a low number of corruption cases initiated, investigated and prosecuted overall. For instance in 2013 117 cases have been cumulatively initiated by all four law enforcement agencies that have jurisdiction to investigate corruption offences. Further on 52 cases were brought to court that year and conviction was obtained in 42 corruption cases. These numbers would also include petty corruption. The number of active corruption cases is especially low among these cases and trading in influence cases are non-existent.

To substantiate poor evaluation of the effectiveness of the law enforcement efforts in Armenia, the EU project report makes a comparison of general corruption-related crimes statistics of Armenia to those of Lithuania, which is similar in population size and legal background. The monitoring team would like to turn to these comparative figures despite their date of 2010 as they illustrate the differences in efficiency well and show the general picture. The EU project report cites the following figures: “In Lithuania 100 cases of passive bribery were recorded in 2010, in Armenia the number was just 36. For active bribery, in 2010 Lithuania had 449 cases, while Armenia recorded only 2.”¹⁶

Issues of practical enforcement were extensively discussed during the on-site visit with the practitioners. Various reasons were given for limited number of cases but a general explanation provided to the monitoring team was that corruption is a covert crime and lack of reporting makes detection and prosecution very complicated. The team was further explained that in Armenia very few reports and complaints are being made specifically on active bribery. This appears to reflect a general trend in detection, investigation and prosecution of corruption offences in the country.

It was confirmed that 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 bribes 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 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 considerably weakens the investigatory reach and undermines potential for effective detection of complex corruption.

In addition, practitioners shared that there are no cases under new offences or elements of the offence because it takes time to develop expertise. Example of money-laundering crimes was provided and how it took some years for the cases to appear. However, many of the provisions in question have been in place in Armenia since the 2nd round of monitoring. Moreover, the issues of “offering, promising, requesting and accepting offers and promises” appear to be covered only in the topics of the training courses organised by Police Academy. Such trainings have been reportedly organised for representatives of the police, prosecutors, Ministry of Justice staff – while many of the corruption offences with such elements would fall under the competence of the SIS; also a number of cases would be investigated by the NSS, while police would deal mostly with petty corruption cases.

¹⁶ Situation Analysis of Public Sector Corruption in Armenia, pp.:30-31.

Conclusions

On its face it appears that formally Armenia has implemented part (i) of the Recommendation 2.1.-2.2. On the other hand the 3rd round of monitoring aims to focus on issues of enforcement and practical application and in this area Armenia lacks progress as these new amendments are not being applied in practice.

The following can be concluded in regard to each element of part (ii) of this recommendation:

- *include active side* – this have been addressed by the new Article 312.2 and all elements of the offence are being properly covered;
- *request or the acceptance of an offer or promise* – was partially addressed by changes into Articles 311 and 311.1 but they limit application to officials and public servants;
- *other acts than for “mercenary purposes”* – Article 311.2 is still restricted to these acts; and
- *third party beneficiaries* – Article 311.2 does not include reference to third party beneficiaries.

In practice provisions criminalising trading in influence appear to be dormant, the monitoring team believes that more must be done to ensure and promote enforcement of these norms. This being said, part (ii) of this recommendation has a wording of “consider”. This was taken into consideration by the monitoring team when evaluating progress made by Armenia and concluding that it was implemented partially.

On its face it appears that part (iii) of this recommendation has been implemented. However, as the case with other elements of this recommendation enforcement of this offence appears to be fairly limited, especially if compared to “public bribery” cases.

Part (iv) of this recommendation encourages Armenia to conduct further analysis into the need and possibility to criminalise “illicit enrichment”. It appears that meaningful considerations have been made, and keeping in mind voluntary nature of this part of the recommendation the monitoring team made a conclusion that Armenia took measures to implement it.

Part (v) of this recommendation has not been implemented by Armenia at all. Armenian authorities provided confusing information in regard to legislative drafting activities undertaken to introduce corporate liability. The monitoring team expresses serious concern in regard to lack of any meaningful progress under this recommendation over the years of monitoring – according to the 2nd round of monitoring report back in 2007 Armenia established a Working Group to study the issue and develop draft legislation; no such legislation has been presented to the monitoring team. Liability of legal persons for corruption offences is an international standard that Armenia took obligation to implement. Armenia is urged to introduce such liability without further delay.

As stated before, the monitoring team is also seriously concerned with overall poor record of enforcement of corruption offences in Armenia, especially those involving new elements or of complex nature. To address this issue, a higher priority must be placed on pursuit of these elements in law enforcement regulatory instruments; this would send a reinforcing top-down signal. Armenia will also need to take steps to change the conservative mind-set of the courts and law enforcement. This could be achieved through targeted trainings on the new elements of the bribery offence and trading in influence for both judiciary and the law enforcement. Court practice should be further followed up on to see the progress made and to address challenges which will appear as case practice develops.

And finally, there appears to be general lack of pro-activeness in law enforcement approach to detection and investigation of corruption crimes. Armenia will need to encourage proactive pursuit of these new elements by investigators and prosecutors. This could 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. In this context the monitoring team believes that special attention should be also 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 Control Chamber and private auditors, as well as STRs from the FIU. In the opinion of the monitoring team this will considerably enhance the effectiveness of Armenian general enforcement efforts, as well as enforcement of offences covered in this section in particular.

Armenia is partially compliant with the Recommendation 2.1.-2.2.

New Recommendation 5

- ***Without further delay Introduce liability of legal persons for corruption offences (criminal, administrative or civil) in line with international standards and enable law enforcement to effectively pursue corruption cases that involve legal persons.***
- ***Bring provisions on the offence of the trading in influence in full compliance with international standards.***
- ***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 of trading in influence, and develop guidelines for investigators, prosecutors and judges on application of these offences.***
- ***Facilitate the detection and investigation of newly introduced provisions and new elements of the previously existing corruption offences by:***
 - (i) increasing pro-activeness of the law enforcement and prosecution authorities notably through an increased use of analytical tools;***
 - (ii) using 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, complaints received via government websites and hotlines, as well as information from other complaint mechanisms, as a basis for launching investigations.***

Previous Recommendation 2.6.1.

Armenia should increase the statutory limitation periods for bribery to ensure for effective investigation and prosecution.

Statutory limitations

According to the answers to the questionnaire provided by Armenian authorities no legislative changes have been made to address this recommendation. Armenia reports that this issue will be dealt with in the context of the CC reform.

At the same time, Armenia in GRECO Compliance report from 7 December 2012, reported the following: ["amendments to the Criminal Code, which have raised the sanctions foreseen in Articles 312.1, paragraph 1, 200 and 201 paragraphs 1 and 3. As a result, basic active bribery of a public servant who is not an official is now punished with a penalty in the amount of 200 to 400 minimal salaries or imprisonment for a maximum term of three years and with a deprivation of the right to engage in certain activities for a maximum period of three years. Basic active commercial bribery is punished with a penalty in the amount of 200- 400 minimal salaries or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or imprisonment for a period of three years. The sanction for

bribery in sports has also been raised – the penalty now being 300-500 minimal salaries or deprivation of the right to hold certain position or to engage in certain activities for a maximum term of three years or detention for a term of two to three months or imprisonment for a period of three years. As a consequence of these increased sanctions, the statutory limitation period for these offences has also been extended from two to five years.”] Based on this information GRECO concluded that its recommendation (vi) dealing with statutory limitations was implemented.

Effect on corruption investigations and prosecutions

Armenian authorities in their answers to the questionnaire also state that the statutory limitations do not present practical challenges in the opinion of investigators and prosecutors. This was further corroborated by the statistical data that no corruption cases have been discontinued due to the running out of the statute of limitations from 2011 to 2013 and was finally confirmed during the discussions with practitioners met at the on-site visit.

Conclusions

Based on the information examined by the monitoring team, it appears that Armenia took steps to implement this recommendation. The statute of limitations for some bribery offences has been increased and there seems to be no problems with it in practice.

Armenia is fully compliant with the recommendation 2.6.1.

Previous Recommendation 2.6.2.

Adopt rules in order to restrict the status of immunities only to the situations when prevention measures need to be taken.

Consider modifying legal provisions according to which the immunities lead to situations of exceeding the legal terms of statute of limitations. Adopt rules according to which immunities constitutes ground for suspending the statute of limitation.

Consider repealing the legal provisions requiring the consent of the National Assembly and the consent of the President for accusing or for detaining a judge or a Member of Parliament.

Consider modifying the specific legal provision allowing arresting a judge in any legal situation, not only when he is caught red-handed.

Limiting immunities to situations when prevention measures need to be taken

No changes have been made in respect to provisions regulating immunity of any category of officials since the 2nd round of monitoring. The authorities report that these issues will be partially addressed in the context of the CPC and CC reform. Commission on Constitutional Amendments was also mentioned in this respect and some interlocutors met during the on-site visit told the monitoring team that some changes can be introduced through amendments into the Constitution.

Suspension of statute of limitation when immunity applies

The same situation is being reported by Armenian authorities under this element of the recommendation. No changes have been made and the issues are expected to be addressed through CC and constitutional

reform.

Procedures for accusing or detaining a judge

Similarly no changes were introduced and no concrete actions have been cited to illustrate that consideration was given to this matter.

Procedures for accusing or detaining a Member of Parliament

Again no changes were introduced and no concrete actions have been cited to illustrate that consideration was given to this matter.

Arrest of the judge

No changes were introduced and no concrete actions have been cited to illustrate that consideration was given to this matter.

On practical challenges which relate to lifting of immunities that the investigators and prosecutors are encountering, Armenia reports no such challenges. Nevertheless, the monitoring team notes that since 2011 only one case was initiated against a judge and it has not yet been filed with court.

Conclusions

When assessing progress made under this Recommendation, it is important to keep in mind that only first part of the recommendation has a mandatory nature; the other parts call on Armenia to consider various steps in reforming immunities. Nevertheless, it appears that no real steps have been taken to address this recommendation: no legislative changes were made and all legislation reforms are very vaguely described if at all.

Regarding practical implementation, while Armenia reports that no challenges have been identified by the investigators and prosecutors, this issue should be followed up on in the next round of monitoring, especially in view of only one case being initiated since 2011 against persons which enjoy immunity. No MPs have been investigated, although according to TI's Corruption Barometer – parliamentarians are perceived as some of the most corruption groups by the population of Armenia.

Armenia is not compliant with the recommendation 2.6.2.

New Recommendation 6.

Ensure that immunity procedures do not impede successful investigations and prosecutions of corruption cases.

Previous Recommendation 2.8.

Armenia should ensure that law enforcement agencies have necessary access to financial data for detecting and investigating corruption-related offences. In particular, allow access to financial data of a broader range of persons than suspects and accused persons in criminal investigations, including, for example, family members or other close persons, when there are enough suspicions that those persons participated, helped or are aware of the committed crime or when there are grounds to believe that the money are provided by the suspect without any legal justification, respecting international standards for data protection.

Armenia should extend the time period of preliminary investigations of criminal case on corruption-offences currently referred to in Article 197 of the Criminal Procedure Code.

Access to financial data

At the time of the third round of monitoring no procedural provisions have been amended to address this part of the recommendation and no other mechanism aimed at easing law enforcement access to bank, financial and commercial records was introduced. Armenian authorities reported that initially 2 pieces of draft legislation were developed to address the first part of the Recommendation: draft law “On amendments to the Law on Bank Secrecy”, and draft law “On amendments to the CPC”. However, it was later decided to abandon these drafts and address these issues in the context of the CPC reform. They further report that draft CPC has new relevant provisions, including Article 248.

The monitoring team discussed this issue with the practitioners during the on-site visit. Only a few investigators said that access to the financial data of the witnesses could be potentially a problem. While most investigators met at the on-site visit assured that they do not encounter problems in the context of access to bank information when investigating corruption cases, they also confirmed that access to financial information, as previously, can only be granted for suspects and the accused. This would leave family members or other close persons out of reach for the investigators and would considerably limit potential for proper financial investigations.

Officials at the on-site visit didn’t seem to be aware of the importance of expertise in forensic accounting or information technology in corruption investigations. Naturally, they could not identify prosecutors or investigators with such expertise. Prosecutors also could not provide an example in which such expertise was used in a corruption investigation. Some law enforcement officials further argued that expertise in complex financial investigations is not necessary because they did not have such cases. However, the absence of such investigations could itself be the result of an inability to open these cases.

Time limits for preliminary investigations of corruption offences

No legislative changes have been made to CPC Article 197 since 2006. Some planned reforms were identified by the Armenian authorities in the context of the CPC reform.

Investigators and prosecutors met during the on-site visit stated that they see no problem with current procedural time limits. The monitoring team was also provided with information that on average an investigation into corruption case is finalised anywhere between 2 to 4 months.

Conclusions

No legislative changes were made to address first part of the recommendation. It appears that while some drafting steps have been initially taken to address this recommendation, they were then reversed or postponed through linking them to a bigger time-consuming reform of the CPC.

Complex corruption investigations should involve the examination of numerous financial transactions to determine the flow of funds, or to trace and quantify the bribes and the proceeds of corruption. These investigations should also require the gathering of voluminous material, frequently in electronic form. It is difficult to make any definitive judgement on challenges that the law enforcement officials are facing or not facing when conducting investigations requiring access to financial data. Information provided by Armenian authorities in this respect is very limited. However, the monitoring team is concerned that inability of law enforcement officials met at the on-site visit to identify such challenges might be a direct reflection of how rare complex financial investigations are conducted in general.

The monitoring team therefore concluded that Armenia does not routinely conduct complex financial investigations in corruption cases, nor does it have the capacity to do so. This could hamper Armenia's ability to investigate complex corruption cases in the future. They therefore recommend that Armenia provide training to prosecutors and investigators on how to conduct complex financial investigations, and take steps to ensure that such investigations are conducted whenever appropriate. They also recommend that Armenia ensure that adequate resources are available to conduct such investigations, including the availability of expertise in forensic accounting and information technology.

Procedural time limits similarly have not been changed since the 2nd round of monitoring and the monitoring team is not fully satisfied with the arguments of the law enforcement officials that the time limits are perfectly sufficient. In fact, the average time limits for corruption investigations raise concerns and the monitoring team is sceptical about a possibility of investigation of the complex corruption case within even a cited four months period. If the case would involve international elements, elements of money laundering, complex corporate or organised crime schemes, etc. – it would not be possible to conduct a full-fledged investigation into such corruption allegation in such short time frame.

Armenia is partially compliant with the recommendation 2.8.

New Recommendation 7

- ***Examine the rules applicable to the lifting of bank secrecy and access to financial and commercial records in the course of financial investigations and the manner in which they are currently applied, to ensure that the process is simple and consistently implemented and that it does not impede investigators' and prosecutors' ability to pursue complex corruption crimes.***
- ***Train investigators and prosecutors on investigations and prosecutions of complex financial cases, and take steps to ensure that such investigations are conducted whenever appropriate and that adequate human and financial resources are allocated, including the availability of expertise in forensic accounting and information technology.***

Previous Recommendation 2.9.

Clearly delineate competences of different inquiry, investigating and prosecuting bodies in detecting, investigating and prosecuting corruption-related offences, especially among the police units. Ensure other bodies apart from the Special Investigation Service (SIS) are clearly assigned to detect, investigate and prosecute corruption offences, as long as this is not defined as exclusive competence of the SIS.

Foster cooperation between law enforcement bodies and control bodies in detecting, investigating and prosecuting corruption-related offences.

Encourage the criminal investigation and prosecution bodies to approach the corruption phenomenon in a more targeted and proactive manner, aiming at persons among high level officials, main risk areas in public administration, economy and the society.

Delineation of law enforcement competences

The 2nd round of IAP monitoring report recommended narrowing down the list of 31 offences identified as corruption-related by the Order of the Prosecutor General No 82 of 19 November 2008 for the benefit of further specialising of the law enforcement bodies and for the purposes of criminal statistics. Although the order has been amended by Order No 12 on 19 March 2013, the list of offences remains the same.

Until July 2014, the same institutions could be involved in conducting preliminary investigations involving corruption offences as during the 2nd round of IAP monitoring and no changes: legislative or institutional were made. These institutions included the Police, Special Investigative Service, National Security Service and investigators from the MoD and the State Revenue Committee which includes Tax and Customs Services. The police had jurisdiction over 28 out of 31 crimes identified as corruption-related; the SIS had jurisdiction over crimes committed by managerial officials of the executive, legislative and judicial branches and officials performing special state services; NSS out of the crimes listed in the GPO Order were responsible only for the crimes of money laundering.

In the course of the on-site visit the monitoring team was informed that a new law enforcement body – the Investigative Committee – was established on 28 June 2014. The monitoring team was further informed that the government approved a reform program for the police for 2013-2014 in which the establishment of this new independent investigation body was announced. The monitoring team was not provided with details on the newly created body and didn't have enough time to properly review legislation regulating its activity. After the on-site visit, Armenian authorities informed the monitoring team that the Investigative Committee will be formed by simply joining the investigative departments of the Police and the Ministry of Defence. It will have a staff of 686, from which 568 will be police investigators and 118 from Ministry of Defence. It is unclear when this agency will become operational and how its cooperation and coordination with other already existing law enforcement bodies will be ensured.

Article 190 of the CPC which regulates investigative jurisdiction was amended and supplemented first by HO-28-N of 19 May 2014 and further supplemented by HO-85-N of 21 June 2014. According to this Article, investigators from the newly created Investigative Committee will be responsible for preliminary investigations into 27 of the 31 "corruption-related crimes"; preliminary investigations into one crime (CC Article 205 - tax evasion) will be conducted by the investigators of the Investigation Committee or tax authorities; preliminary investigations into one crime (CC Article 209 – money laundering) will be conducted by investigators of the NSS; preliminary investigations into one crime (CC Article 215 – smuggling) will be conducted by investigators of the NSS or Customs authorities; corruption related offences that relate to military service will be now investigated by the investigators of the Investigative Committee; and, as previously, crimes committed by managing officials of legislative, executive and judicial bodies and persons performing special state service in relation to their official position will be investigated by SIS.

By law in cases of competing jurisdiction the prosecutor is deciding on appropriate agency for the investigation of such crimes and assigns them according to the guidelines outlined in CPC Article 190; in practice it appears that this can be done subjectively. For example Ombudsman annual report for 2013 draws attention to this problem exactly. Among problems and shortcomings related to the GPO, it states that "cases of SIS were often passed to other investigative bodies by the Prosecutor's Office which don't have the freedom of the service and cannot provide fair investigation of those cases. Namely, the Prosecutor's Office didn't reasonably use the discretion granted by law."¹⁷

In the replies to the questionnaire it is stated that Information Centre of the Police ensures exchange of information among various law enforcement institutions. It is also mentioned that a specialised structural unit was created within SIS to ensure cooperation with other law enforcement bodies. No other cooperation mechanisms are mentioned. One case is cited as a successful example of cooperation however no details of such cooperation were provided.

¹⁷ See "Annual report on the activities of the RA Human Rights Defender and on the violations of human rights and fundamental freedoms in the country in 2013", published in 2014, p.14.

Cooperation of law enforcement with control bodies

For relevant information – please see section *Detection of “fraud” and “incidents of corruption” and referrals to the law enforcement* under Recommendation 3.4 and subsequent conclusions.

Pro-activeness of the criminal investigators and prosecutors

For relevant information – please see section *General enforcement of corruption offences* under Recommendation 2.1 -2.2 and subsequent conclusions.

Investigations of corruption perpetrated by high level officials

The level of high-level officials investigated and prosecuted in Armenia according to the provided statistical data ranges from the Head of the traffic police to department heads. A number of international reports and Civil Society organisations express rather sceptical views on willingness of the law enforcement to pursue high-profile corruption allegations. For example, Partnership for Open Society report “Armenia’s ENP Implementation in 2013” highlights lack of notable progress in the detection of corruption and points out that “despite multiple investigative reports revealing criminal acts by high-ranking officials, very few of these cases have been pursued”. TIAC reports lack of adequate follow-up on cases related to high-ranking officials. It states that all 8 corruption reports (5 in 2012 and 3 in 2013) made by TIAC on criminal acts committed by high-ranking officials (cases involving 2 MPs, 2 ministers, 2 heads of the governmental committees, the head of the President’s oversight service) to the GPO, police and SIS were rejected on the basis of absence of crime, without due examination of materials and with no proper justification. Armenian authorities object to these statements insisting that they are subjective and not backed up by factual data. Some reports paint a better picture. For example Nations in Transit 2013 report provides a number of examples of relatively high-level public officials that have been investigated and prosecuted for corruption offences.¹⁸

Investigation of corruption in main risk areas

In their replies to the questionnaire Armenian authorities identified only traffic violations as the only high-risk area for corruption. The same was repeated during the on-site visit; a few other areas have been mentioned, including tax evasion, health and education spheres.

In terms of building up of analytical capacity, Armenian authorities informed that on July 8, 2014 Department on Organizing Investigative Activities and Processing Investigative Methodology was created. This was reportedly done with the view to further strengthen analytical support for detection, investigation and prosecution of corruption. No further information was provided on this Department which is explained by Armenian authorities with the newness of its establishment.

Conclusions

The monitoring team would like to first of all note that the number of “corruption-related crimes” has not been narrowed down since the 2nd round of IAP monitoring. The list continues to be diluted by crimes like smuggling, tax evasion, obstruction to the economic activities, unlawful anti-competition, etc. and lacks the focus necessary for anti-corruption specialisation.

Furthermore, no legislative or regulatory changes have been cited by Armenian authorities to demonstrate steps in delineation of the law enforcement competences on corruption-related cases. Having reviewed

¹⁸ See Nations in Transit 2013, p. 80.

amended CPC Article 190, the monitoring team concludes that the situation remains the same with several law enforcement agencies having overlapping jurisdiction.

While the monitoring team takes note of the explanation that the GPO will be responsible for deciding on jurisdiction of such cases, it sees several deficiencies with such an approach. Firstly, there could be situations when the cases would be initiated by different law enforcement bodies without knowledge that the same conduct is being already investigated by someone for instance in another administrative jurisdiction – this can result in the prosecutors which oversee these cases not being aware of the multiple investigations. Secondly, concerns regarding objective nature of such decisions by the prosecutors put this approach under a more serious threat.

The monitoring team notes a major development in the institutional framework – creation of the new law enforcement agency – the Investigative Committee. It however regrets that this information was shared with the team at a very late stage and no detailed information has been provided to help understand implications of this change.

Regarding cooperation, coordination and exchange of information it is stated that the cooperation and exchange of information between the law enforcement bodies is carried out by the Information Center of Police, it is unclear what it means in practical terms. In addition a specialised unit newly created within SIS is also being mentioned. To make any conclusions on the level and effectiveness of cooperation more examples of cases were requested from Armenia but were not provided to the monitoring team.

Monitoring team notes examples of good cooperation between law enforcement and control bodies and would like to further encourage their development.

The issue of pro-activeness, as well as targeting of complex and high-profile cases has been dealt with in the context of Recommendation 2.1-2.2 (See section “General enforcement of corruption offences”) and some additional information provided under this section supports previous conclusion of the monitoring team on the lack of pro-activity, limited number of high-profile corruption investigations and prosecutions, and lack of analytical capacities to identify and look into risk areas.

The monitoring team welcomes the establishment of the National Investigation Committee which unites investigative bodies from police and ministry of defence. In the view of the Armenian authorities this reform will increase the quality of preliminary investigation and guarantee independence of investigation. This issue should be further followed up on in the following monitoring to make a judgment on the success of this endeavor.

Armenia is not compliant with the recommendation 2.9.

New findings: Institutional framework to detect, investigate and prosecute corruption

Specialisation

Specialisation is essential for effective detection, investigation and prosecution of corruption crimes; it can take various forms; and it doesn't necessarily mean an establishment of the specialised body – this can be done through creation of specialised units or persons.

As it was mentioned before in Armenia an array of law enforcement bodies play a role in the detection, investigation and prosecutions of corruption. The monitoring team understood that the degree of anti-corruption specialisation differs greatly from agency to agency. Some have specialised departments created to focus on corruption crimes, such as department of corruption and organised crime in the GPO, or department of SIS focusing on corruption (department for examination of corruption related, organised and official crimes). The same bodies however, in addition, have structures that deal with corruption crimes, as

well as other crimes of a high-profile: i.e., Department of Investigation of Particularly Important cases in the GPO and Group of senior investigators for the Particularly Important cases adjunct to the head of the SIS. It is unclear how the cases are assigned among these two types of departments in both SIS and GPO. It is also unclear what specialised units/persons exist in other law enforcement bodies involved in anti-corruption.

During the on-site visit the monitoring team formed an impression that because of such a dispersed and loose specialisation model none of the law enforcement agencies in Armenia are placed under pressure to take on corruption cases, especially complex ones or those involving high-level public officials.

Adequate resources, means and training

The monitoring team also has some concerns regarding allocation of adequate resources into detection, investigation and prosecution of corruption crimes in Armenia. It was informed during the on-site visit that the GPO department of corruption and organized crime has 9 prosecutors, and the GPO department of investigation of particularly important cases has 14 prosecutors. The number of investigators in SIS working in a new department focusing on corruption is 10. These numbers seem to be insufficient but without knowing the work-load of an average investigator and prosecutor it is difficult to make a proper judgement.

In addition to the issue of sufficient human resources, the monitoring team discovered that the SIS doesn't have the right to conduct operation and intelligence activities. This would limit the scope of what can be done by them.

And finally, the issue of proper training needs to be addressed in the context of all involved institutions. Anti-Corruption training should be developed and conducted in each institution; individual institutional courses should be complemented by joint trainings.

Functioning of multiple law enforcement agencies dealing with corruption phenomena is not against international standards *per se* but such approach requires existence of a very well-coordinated mechanism to exchange information and ensure cooperation – this element seems to be missing in Armenia. The monitoring team agrees with the assessment made in the EU project report that: "Coordination is often overlooked at the design stage of institutional arrangements, resulting in inadequate or in-existent coordination mechanisms, a lack of resources, capacity, authority, leadership and political backing."

New Recommendation 8

- ***Strengthen anti-corruption specialization within law enforcement and prosecutorial bodies.***
- ***Foster cooperation between law enforcement bodies and control bodies in detecting, investigating and prosecuting corruption-related offences.***
- ***Encourage the criminal investigation and prosecution bodies to approach the corruption phenomenon in a more targeted and proactive manner, aiming at persons among high level officials, main risk areas in public administration and economy.***

Previous Recommendation 2.10.

To ensure comprehensive criminal statistics on corruption-related offences, the government should make available the data that allows to determine the following:

- ***position/rank/occupation of the suspect/indicted/convicted person,***
- ***number of investigations, prosecutions and convictions for each type of offence,***
- ***sanctions applied,***

- *the amount of the bribe and/or the damage caused by the offender, and*
- *value of properties seized and confiscated.*

No legislative/regulatory/institutional changes in the collection of the statistical data have been identified by Armenian authorities. At the same time, in the answer to the question 10.2 it is stated that all information required by this Recommendation is available at the Information Centre of Police.

Conclusions

Although, the monitoring team had very little information on progress under this recommendation, it was able to draw some conclusions from the statistical data provided by Armenian for other recommendations. It appears that information is available at least on:

- position/rank/occupation of the suspect/indicted/convicted person,
- number of investigations, prosecutions and convictions for each type of offence,
- sanctions applied.

After the on-site visit the monitoring team was alerted by the representatives of the Civil Society that for the first time since 2009, no statistics on corruption crimes was published on the Website of the Prosecutor General of Armenia for the period of 2013 and first half of 2014. This is a concerning development and should be further followed up upon in the monitoring of the progress.

Armenia is partially compliant with the recommendation 2.10.

This recommendation remains in force under its new number 9.

3. Prevention of Corruption

Integrity in the public service

Previous Recommendation 3.2.1.

Consider establishing a central coordinative body for the whole public service, taking into account the need to support the implementation of the new Public Service Law, promote the establishment and enforcement of common standards and practices for the whole public service, especially for high-level officials.

Taking into account the role of high-ranking officials in building trusts of citizens in public administration and in setting the ethical and professional example for the whole administration, ensure vigorous implementation of new ethical norms by high-level officials.

Elaborate in a participative way, adopt and ensure effective application of specific Codes of Conduct for professions and positions particularly exposed to corruption, as foreseen in the Law on Public Service.

Ensure ethics commissions are put in place and function properly in public institutions where they are required by the law. Assess effectiveness of ethics commissions, in particular in most at risk public institutions. Reinforce their independence and trust in their members.

Ensure the Ethics Commission for High-Ranking Officials functions properly and has adequate resources.

Ensure adequate disclosure of the activity developed and the results obtained by ethics commissions, including the Ethics Commission for the High-Ranking Officials.

Establish channels of coordination between the ethics commissions, the coordinating bodies for public service and the human resources management departments in each body.

Further strengthen the system of merit-based recruitment and promotion, including through the Civil

Service Council/public service coordinative body, but also build up capacity of individual institutions in the application of merit-based rules.

Improve the “out-of-competition” procedure of recruitment of civil servants, e.g. introducing a system of internal competition or reducing the use of this procedure to fulfil temporary positions in emergency cases, while an open competition is started.

Include the integrity and ethics competencies to the core competencies’ list to be evaluated during the selection process.

Establish a unitary pay system for all branches of the public service. Strive to increase the attractiveness, trustworthiness, openness and professionalism in the civil service through more competitive salaries in relation to non-governmental sector within the fiscal capacity of Armenia.

Central coordinative body on ethics for the whole public service

As during the previous round of monitoring, there is no central entity responsible for the establishment and enforcement of common standards and practices for the whole public service in Armenia. The Law “On Public Service” adopted in 2011 did not envisage establishing a central authorised body for enforcing public service standards across the whole public service. The Ethics Commission for High-Ranking Officials is responsible for enforcing this Law in relation to the high-ranking officials. The Civil Service Council ensures implementation of public service standards in relation to the civil servants within 46 state bodies; the Ministry of Territorial Administration is responsible for their implementation in relation to community service. Separate ethics commissions for MPs, prosecutors, judiciary and Constitutional Court are responsible for the application of standards for these groups of officials. There is no mechanism for implementing the provisions of the Law "On Public Service" in other entities.¹⁹

Lack of a central coordinative body for the whole public service leads to inconsistency in application of public service standards. Implementation of the Law "On Public Service" is fragmentary and incomplete. There is no mechanism of coordination between these bodies, no analytical or methodological support is provided to them to ensure common standards and practices. For example, the Ethics Commission of High Ranking Officials and Parliament’s Ethics Commission demonstrate different practices of acceptance of complaints. The former does not accept complaints from citizens unless their rights have been violated as a result of breach of ethical norms by public servants.

The answers to the questionnaire did not provide information about consideration given to the possibility of creating a central coordinative body. State and non-governmental representatives interviewed by the monitoring team during the on-site visit could not provide any evidence of such consideration either: they were not aware of any analysis or discussion that was conducted or any working group that was established to address this issue. The reason for the current institutional arrangement provided by Armenian authorities was the following: establishing a central body for all public service will lead to existence of two or more authorized bodies in the same field. This argument fails to recognise that there are already several bodies in the same field, but there is no effective coordination between them. In the comments provided after the on-site visit, the government points out that the Concept recognized that the ethics rules in various parts of the public service is not uniform, and there are certain gaps in the criteria and their implementing

¹⁹ Public service includes state service, community service, state and community positions. State service includes civil service, judicial service, diplomatic service; special services within defense, national security, police, taxation, customs republican executive bodies and republican executive bodies of the Rescue Service, the State Service within the Staff of the National Assembly of the Republic of Armenia, in the National Security Council, the Investigation Committee of the Republic of Armenia, the Department of the Investigation Committee of the Republic of Armenia, as well as other services envisaged by law.

procedures. The Concept proposed to establish an institutional system ensuring ethical conduct of public servants and officials and to provide the High-Ranking Officials Ethics Commission with adequate tools to study, analyse and summarise the practice of compliance with rules of conduct in individual spheres of public service.

The monitoring team remained convinced that a central coordination is needed to ensure consistency application of public service standards across the whole public service in Armenia. It became clear to the monitoring team that the capacity of state bodies and local administrations to implement ethics rules in an effective and coordinated manner is limited and needs to be supported. The monitoring team concluded that the Government did not implement this element of the recommendation.

Ethics Commission for High-Ranking Officials

The Ethics Commission for High-Ranking Officials was established by the Law on Public Service that was adopted in 2011, but was not fully operational at the time of the second round of monitoring. At the time of the third round of monitoring the Commission became operational: 5 members of the commission have been appointed. The members of the Ethics Commission are appointed for a fixed 6 years by the President upon the nomination of the Chair of Parliament, Prime Minister, Chairs of the Constitutional and Cassation Courts and Prosecutor General. The President may also terminate the powers of the member of the Commission if the latter failed to implement his/her duties.

The salaries of the members of the Commission are established by law. The President's office provides other resources to the Commission based on the needs of the Commission, but there is no budget or any other formal process for determining the needs of the Commission. Technically the Commission is located in the office of the President, but it does not report to him. The monitoring team was concerned about the operational independence of the Commission.

The Commission is responsible for the collection and analysis of asset declarations of the high-ranking officials. In 2013 the Commission has collected the electronic asset declarations for the first time. Declarations were published on the site of the Commission (<http://www.ethics.am>). While the Commission has the right to analyse the declarations, it cannot verify the declared information, and cannot identify false or incomplete information. There are no sanctions for non-compliance with rules on asset declarations. (More information about the declarations for high-ranking officials is provided in section 3.2.2 on Enforcement of asset declarations for high-ranking officials.)

The Commission has the right to start investigations based on external reports or on its own initiative, to request information from other bodies, and to ask other bodies to conduct investigations. The Commission has so far received 57 applications from natural persons and civil society organizations including: information requests, requests for clarification of legislation and applications related to conflict of interest and ethics rules. Since 2012 the Commission has instituted 4 investigations, two of them based on the applications from civil society organizations including Transparency International Anti-Corruption Centre in Armenia, Helsinki Citizens' Assembly of Vanadzor, one based on the application from an individual citizen and one based on its own initiative. The Commission has not detected elements of crime to have legal grounds for transferring the respective materials to law-enforcement bodies. It should be mentioned that the Criminal Code of Armenia does not have provision on illicit enrichment.

In addition to the main responsibilities discussed above, the Commission has conducted many other activities: it prepared a guide and started the training about the declarations for the high-ranking officials; it engaged in a regional project supported by GTZ that aims to develop a manual on ethics that will include case studies for practical trainings, and will be ready in October 2014. The Commission is currently engaged in the development of the code of conduct for the high-ranking officials, with the advice from the SIGMA

programme. The Commission publishes reports about its activities, as well as press releases on various events. They have also organised study visits to Romania and Slovenia to learn about good practices.

The representatives of the civil society and international community interviewed during the on-site visit expressed the view that the Commission was 'toothless' and that with its current mandate it would not be able to significantly reduce wide spread conflict of interest involving influential politicians and the business.

Taking into account that the Ethics Commission has started its work, but also its limited capacity to train, investigate and to sanction high-level officials, the monitoring team concluded that this section of the recommendation from the second round of monitoring was partially implemented by the Government.

Ethics Commissions in state bodies

The Law on Public Service provided that in addition to the Ethics Commission for High-Ranking Officials, ethics commissions should also be established in all state bodies and local self-governing bodies.

According to the answers to the questionnaire, the ethics commissions were established in all state bodies, as well as in the Parliament, the Judiciary and the Prosecution. The monitoring team was able to confirm that the National Assembly's Ethics Commission was established in 2012, information about its activities is available at www.parliament.am. The Ethics Commission of Prosecutor's Office operates since May 2007 in accordance with the Law on Prosecutor's Office, information about this commission is available at www.prosecutor.am. The Judges' Ethics and Disciplinary Commission was established in July 2014, information is provided on www.court.am. There is no ethics commission established for the Constitutional Court or Central Election Commission. The civil society delegates informed the monitoring team that they studied the work of the ethics commissions and confirmed that 20 out of 26 state bodies²⁰ created such commissions; no information was provided by the Ministry of Education, while other bodies assigned the functions of the ethics commissions to other officials or existing units. According to TIAC the commissions are dysfunctional at the moment.

The Decision N 844-N from September 26, 2012, adopted by the Civil Service Council, establishes a general procedure for establishing, objectives and activities of ethics commissions. There are no further instructions for or information about the activities of these commissions. According to the answers to the questionnaire, the ethics commissions are independent bodies and no reports were available about their activities. During the on-site visit the monitoring team did not meet any representatives of the ethics commissions from state bodies. Many state representatives interviewed by the monitoring team did not have any knowledge about the ethics commissions. Some interlocutors stated that to their knowledge members of the ethics commissions were appointed by the senior civil servant of each state body, the commissions are usually composed of the employees of the human resources subdivision, raising doubts about their independence. After the on-site visit, the government draw the attention of the monitoring team to the provision of the Decision N 844-N according to which the commissions shall "submit clarifications or conclusions upon the recommendations of the Civil Service Council". However, none of the interlocutors interviewed during the on-site visit could confirm that this provision was implemented in practice.

There are no common instructions for the operation of the ethics commissions and their relations and coordination with other bodies. Except for a few provisions listed in Article 28 of the Law on Public Service there is no common guidance for understanding, interpreting, implementing the public service standards by the commissions. These commissions do not receive any analytical or methodological support, and their activities are not coordinated to ensure a coherent application of ethics rules across the whole public

²⁰ Within the Civil service system there are 45 state bodies, including 18 ministries; all state bodies have to establish Ethics Commission according to the Decision N 844-N of Civil Service Council.

service. Besides, NGOs noted that the members of the commissions have lack of understanding how to handle such 'soft' issues such as ethics and conflict of interest, and are more used to apply various sanctions and punishments for not-compliance.

As a result, the monitoring team concluded that while formally ethics commissions were created in many state bodies, they remain dysfunctional, and this part of the recommendation was not implemented.

Codes of ethics for risk sectors

As noted in the previous monitoring report, the 2002 Law on Civil Service provided rules of ethics for civil servants, and several sector specific codes of ethics were adopted, but the actual impact of the existing codes was limited. The 2011 Law on Public Service established new public service principles, rules on ethics and limitations for public officials, leading to multiple contradictions and inconsistencies between the new rules and old codes of ethics. No information was provided by the Government about any efforts to upgrade the sector specific codes on the basis of the new principles and rules, about trainings or practical guides that were developed to promote the compliance with the codes, especially in high risk sectors. The monitoring team concluded that as in the past, the impact of the sector specific codes was limited, especially in the view of dysfunctional ethics commissions in the state bodies, and this part of recommendation was not implemented.

Merit based appointments

The previous monitoring report acknowledged that the merit based procedures for competitive recruitment to the civil service were well developed in Armenia, but the scope of competitions was narrow and was mostly used to fill in the junior positions. The report also noted that the use of 'out-of-competition' procedures was not compliant with merit-based principles.

The answers to the questionnaire provided by the Government in the third monitoring round, confirmed by the interviews with the Civil Service Council and the Work Bank, point out some improvements regarding merit based appointments. A new scoring evaluation system and centralized testing system for recruiting junior civil service positions that was introduced by the Law "On making amendments and supplements to the Law of the Republic of Armenia on civil service", adopted on 7 June 2010. During the on-site visit the state representatives confirmed that this system became operational in 2012. The Law "On making amendments and supplements to the Law on civil service" adopted in June 2014, envisages the introduction of new systems of evaluation, final evaluation of performance of civil servants, the review of the training system; while the attestation system is going to be abolished.

According to information provided by Civil Service Council, in 2011, 635 persons (8.9% from all employed persons) were recruited through competition, in 2012 – 788 persons (11.6% from all employed persons), in 2013 – 781 persons (11.6% from all employed persons) and in the 1st half-year of 2014 – 387 persons (5.9% from all employed persons). These data demonstrate small share of employment by competition. There is no information about the employment by competition in other public institutions under the Law on Public Service, except Civil Service Bodies. The state representatives confirmed, that like in the past, temporary contracts can be concluded with the employees using Labour Law rules, without competitive procedures. Besides, no information was provided about any capacity building about merit-based rules that was provided to the state bodies.

The monitoring team concluded that while the new developments regarding merit based appointments were positive, they did not apply to senior or temporary positions and the share of competition based appointments in practice remained low. Armenia did not implement this part of the recommendation.

Remuneration of public officials

On 12 December 2013, the National Assembly adopted the Law on Remuneration for Persons Holding State Positions which establishes a unitary pay system of public service. The answers to the questionnaire also mention the decision of the Government on social packages and “drastic increase of remuneration rates” under the Law on remuneration, which aim to improve the attractiveness of the public service. During the on-site visit the representatives of the Government confirmed that the new Law on Remuneration covered all public officials, including the high-ranking officials, provided for transparency and predictability of the remuneration, and excluded the possibility of arbitrary or politicised decisions regarding the remuneration of public officials.

The Government further explained that the Law also regulates bonuses and social benefits for public officials. Bonuses can be provided to public officials based on the results of the performance evaluation, which is conducted twice a year for public officials, and one a year for judges, and for the performance of special tasks. The amount of bonuses is fixed; the decision about the bonuses should be reflected in a governmental decision to ensure the transparency. Bonuses can be as high as one monthly salary; each public official can receive not more than two additional salaries per year. The salary fund for the public official includes a 10% reserve for bonuses. If there are savings in the salary fund, these savings can also be used for additional bonuses, which are decided by the head of each state body. In addition to the salaries and bonuses, the public officials are entitled to pensions and insurance package, but political and high-ranking officials are not entitled to it.

The monitoring team agreed that Armenia has fully implemented this part of the recommendation, taking into account the commitment of Armenian authorities to avoid unfairness when deciding on performance bonuses.

Conclusions

In a sum, no consideration was given to establishing a central body or capacity to promote uniform enforcement of ethics rules in the whole public service. The Ethics Commission for High-Ranking Officials became operational, but its independence is not ensured, it does not have mandate or capacity to verify and sanction non-compliance. Ethics commissions were established in state bodies but they are not operational. Codes of ethics in risk sectors were not updated and promoted. Merit based appointment procedures for junior officials were improved, but no such improvements were introduced for high level officials and temporary employees. Unified pay system was introduced.

Armenia is partially compliant with recommendation 3.2.1.

New Recommendation 10

- ***Provide the Ethics Commission for High-Ranking Officials with the right and the capacities to verify asset declarations, introduce rules in the legislation and apply sanctions for failure to submit or for submitting false or incomplete information***
- ***Provide the Ethics Commission for High-Ranking Officials with an independent budget which will ensure necessary human, financial and technical resources***
- ***Designate the Ethics Commission for High-Ranking Officials - or another body - to promote and control of common public service standards and practices across the public administration***

New Recommendation 11

- ***Ensure that ethics commissions in public institutions function properly, define their competencies, rules for their creation and operation, their role regarding conflict of interests, restrictions and***

sanctioning of public servants, and establish their obligation to present reports about their activity to the coordination body and to the public

- *Designate a body responsible for coordination the activity of ethics commissions, for providing them with methodological guidance and training, monitoring and assessing effectiveness of ethics commissions*
- *Establish a mechanism for coordination between the ethics commissions, the human resources management departments and the anti-corruption focal points in each state body*

New Recommendation 12

- *Develop codes of ethics or conduct for special categories of public servants prescribed by Law on Public Service (art.4)*
- *Revise and update codes of conduct for special categories of public servants in order to eliminate discordances existing in legal framework and to align them with the Law on Public Service*
- *Provide practical training to public officials about the use of code of ethics in practice*

New Recommendation 13

- *Develop clear rules regarding positions that are to be considered for merit based appointments and ensure their enforcement in practice, maintain records about merit based appointments*
- *Ensure that the majority of vacant posts are filled through competition and designate a body responsible for coordination and monitoring the process of filling in vacant service posts*
- *Develop guidelines on evaluating integrity and ethics competencies in the selection process*

New Recommendation 14

- *Develop clear legal norms regarding the procedure of conflict of interests and declaration by different categories of public servants, including high risk sectors such as public procurement procedure, and public officials who do not have superiors*
- *Without delay analyze the implementation of the Law on Public Service and identify inconsistencies in different laws such as the Law on Civil Service, the Law on NA Procedures, the Law on Municipal Service, the Law on Constitutional Court, the Judicial Code, and the Law on the Prosecutor's Office), and revise legislation in order to address the identified deficiencies*

Previous Recommendation 3.2.2.

Ensure adequate rules and practical mechanisms are in place regarding conflicts of interest, incompatibilities and acceptance of gifts in all public bodies and branches of power, including those that are not covered by the Law on Public Service.

Ensure proper enforcement of new declarations of property and income for high-ranking officials introduced by the Law on Public Service entering into force on 1 January 2012.

To ensure obligation for public officials to report suspicions of corruption and protection of public officials reporting corruption is implemented in practice, it is necessary to:

- *adopt necessary secondary legislation;*
- *create specific channels to report corruption in each public institution, out of the hierarchical chain; and*
- *launch campaign to raise awareness of those measures among public servants.*

Develop a practical training course on Public Service Ethics and include it in the public service training programs offered regularly and mandatory to all public servants.

Offer a special Public Service Ethics Training Program for high-ranking public officials (500 persons), in particular political officials, Ministers, Members of Parliament, mayors and local councillors. This program could be managed by the Ethics Commission for the High-Ranking Officials, in coordination with the Civil Service Council/public service coordinating body.

Enforcement of conflicts of interest rules in state bodies

As noted earlier in this report, the rules regarding conflicts of interest, incompatibilities and gifts are established by the 2011 Law on Public Service. The enforcement of these rules in relation to the high-ranking officials is the responsibility of the Ethics Commission for High-Ranking officials. The responsibility for enforcing these rules among other categories of public officials lies with the state bodies and local administrations. While the government reported about the enforcement by the Ethics Commission for High-Ranking Officials, no similar information was provided about measures taken to enforce the rules in state bodies.

Civil servants, except for high-ranking officials, no longer submit asset declarations, since the previous system of submitting such declarations to the Tax Administration has been abolished and the Law on Public Service does not clarify how conflict of interest rules should be enforced in the state bodies. There are no practical guidelines or instructions on the application of the Law on Public Service in state bodies. It is not clear if the ethics commissions that were established in state bodies should be responsible for ensuring practical implementation of rules on conflicts of interest, incompatibilities and of gifts. No information or statistical data about enforcement of conflicts of interest rules by the state bodies could be provided. Armenia is not compliant with this part of the recommendation.

In addition to the assessment of progress in implementing the recommendation regarding the enforcement of conflict of interest rules, the monitoring team has also noted a number of deficiencies in the regulation of conflict of interest within the Law on Public Service, including the following:

- The regulation of conflict of interest established by the Law apply only to high-ranking officials and no regulation is established for other categories of public officials;
- The regulation established by the Law apply only to public servants working in the executive branch, while regulation of conflict of interest of MPs, prosecutors, judges, members of the constitutional court is with the discretion of these branches of power; the National Assembly has developed such regulations under the Rules of Procedure;
- The definition of conflict of interest established by the Law is restricted to the actual conflict of interest, i.e. when the public servant has already taken an action or decision, and does not cover potential or apparent conflict of interest, when there is a risk of conflict of personal interests and the official duties;
- List of persons related to the public officials for the purposes of the conflict of interest regulation is limited to the spouse, parents and children living in the same household (e.g. siblings, parents and children living separately, parents in law, cousins are not considered as related persons), which is not reflecting the actual kinship relationships within the traditional Armenian society, where most of the property is registered on the names of the relatives;
- The Law has a provision according to which the public official has to inform his/her supervisor about the conflict of interest situation, but it does not regulate conflict of interest for public officials who do not have supervisors;
- The Law does not include sanctions to public officials for taking decisions in a situation of conflict of interests thus undermining the effectiveness of the Law.

Enforcement of asset declarations for high-ranking officials

As discussed earlier, the Ethics Commission for High-Ranking Officials is responsible for collecting asset declarations. In total 720 high-ranking officials are required to submit declarations; the definition and the number of high-ranking officials increased since the previous monitoring round due to the legislative amendments introduced in June 2014. In 2013, 98% of high-ranking officials submitted their declarations through the new electronic system for the first time. Two per cent of official who did not submit the declarations include mostly the political officials who have left their posts and who the Commission had difficulties to reach to.

The Commission publishes the declarations on its web site (<http://www.ethics.am>). Declarations submitted by high-ranking officials are published only partially in accordance with restrictions introduced by Government decision N1835-N. The address of the property, as well as personal data such as the ID or passport number are not declared. The decision also defines a threshold of values of acquisition or alienation of property, and transactions with values below the thresholds shall not be declared; for instance, 50m Armenian drams — for real estate, seven million Armenian drams — for movable property, five million Armenian drams — for securities, three million Armenian drams — for loans. According to the civil society, information on assets and incomes in the beginning and end of the year is hidden from the public.

The Commission has the right to analyse the declarations, but it cannot verify them to detect false or incomplete information. In this regards, the Commission relies on the declaration analysis manual elaborated together with experts of Council of Europe within the scope of “Good Governance and fight against Corruption” project by Eastern Partnership and European Council. According to the manual, the Commission has conducted initial check of declarations to ensure that declarations are filled in appropriately; 452 corrections were made to declarations in 2014. After the initial analysis of declarations, the Commission has initiated check of declarations - in-depth examination of declarations for revealing the cases of possible violations by high-ranking officials that may include the following:

- violations of regulations on having other jobs and income,
- suspicious transactions and deals (the Armenian legislation does not have provisions on illicit enrichment, hence the cases relevant to it are classified under this section)
- violations of regulations on received financial and other gifts and donations
- violations of regulations on working with related persons
- other violations

As a result of analysis of asset declarations, the Commission has conducted preliminary study by contacting 16 high-ranking officials for clarifications and explanations in 2013. But no criminal or ethics violations were detected.

There are no sanctions for failure to submit the declaration, or for the submission of false or incomplete information. To address this shortcoming, the Commission has used soft sanctions: in one of the conclusions of the proceeding concerning a high-ranking official - the city mayor of Vanadzor - the Commission recommended that the mayor apologise to the citizens of the city, and the mayor followed the recommendation.

Representatives of the Ethics Commission for High-Ranking Officials interviewed during the on-site visit noted that the Commission has conducted a study of the current system of the asset declarations, has identified legal gaps and has developed proposals on the further development of the system. The main legal gaps of the current system include the narrow scope of the asset declarations, which do not require declarations of interests including beneficiary ownership and cover only a limited number of relatives of the

officials, lack of sanctions for Open Governance Partnership (OGP), the Commission has already proposed to make the declaration forms more complete, as at present the declarations do not explicitly request to declare business and other interests. The Commission is also preparing a legal basis for asset declaration information verification through electronic databases of state agencies to be able to detect doubtful transactions and other violations for referring them to law-enforcement bodies.

The Commission admitted that its capacity for conducting investigations is limited. The Commission plans to present its recommendations for the improvement of the asset declaration system for public consultations, and believes that improvements can be introduced in 2016. The monitoring team was concerned that the proposed timeframe is too long, and encouraged the Commission to speed up its efforts.

The monitoring team concluded that Armenia has largely implemented this section of the recommendation.

Obligation of public officials to report about corruption

According to the answers to the questionnaire, obligation for public officials to report suspicions related to corruption is established by the Law on Public Service; failure to comply with this obligation may entail criminal responsibility. Decision No 1816-N of 15 December 2011 of the Government regulates the procedure for reporting offences having been committed by other servants, and illegal actions relating to public service, including corruption-related actions to relevant officials, competent state bodies by public servants while performing their official duties, and the procedure for guaranteeing the security of public servants.

The new anti-corruption Concept contains a section on public awareness, education, reporting of corruption.

The answers to the questionnaire did not provide any further information about practical measures that were taken to facilitate the reporting about corruption by public officials. It is not known if there are any specific channels where the officials can report their suspicions outside the hierarchical chain. State officials interviewed during the on-site visit did not know about any campaign that was organised by the government to raise awareness about reporting obligations and reporting channels for the public officials. They did not know any examples of public officials informing their superiors, law-enforcement bodies or other parties about suspicions that corrupt acts were prepared or carried out inside their institutions. They did not know any examples when sanctions were imposed on public officials for failure to report suspicions of corruption.

The monitoring team concluded that the reporting obligations and whistleblowers's protection did not function in Armenia because of the lack of trust of citizens in the fight against corruption, in law enforcement bodies and the fear that the reporter of corruption may be pursued for false reporting or defamation. None of institutions surveyed by civil society (TIAC) reported on any case of whistle-blowing.

The monitoring team concluded that Armenia has not implemented this part of recommendation.

Training on anti-corruption for public officials

The Civil Service Council by decrees N 499-A of 23 June 2010, N 949-A of 1 November 2012, N 1080-A of 10 December 2012, approved training programmes for civil servants related to the area "Fight against corruption". Since January 2013, the 72 hour programme "Fight against corruption" is a part of the mandatory training program for civil servants. However, the number civil servants that received this training is low: according to statics provided by the Civil Service Council, in 2011 training was provided to 26 officials, in 2012 – 61, in 2013 – 107, and in 2014 (1st half-year) – 38 officials. This number is very small in relation to the total number of public servants (only the total number of civil servants in the Republic of Armenia comprises 7 476).

The Public Administration Academy is also engaged in anti-corruption trainings; they have concluded an agreement with the Ethics Commission and with the Justice Academy to provide joint trainings. The Academy provides anti-corruption training to community chiefs and council members. Every year over 740 community chiefs and council members are training in the Academy. During this 24-hour programme, a 4 hour course is provided covering such issues as the definition of corruption; honesty, political will, and institutional capacity for the fight against corruption and the national Anti-Corruption Strategy, perception level of corruption in the local self-government system and anti-corruption skills at the local level. The programmes for training are implemented by the professors and lectures of the Academy, head of department of the local self-government and employees of the Regional Administrations. Trainings are implemented in the form of lectures and workshop discussions.

The Commission on Ethics for High-Ranking Officials also provides training to public officials, mainly in relation to asset declarations. The Commission prepared a guide and started the training on asset declarations for high-ranking officials, 200 out of 720 high-ranking officials have already been trained. The Commission can also provide advice to the official over the phone, taking into consideration that high-ranking officials are not always available to attend training seminars. By October 2014 the Commission plans to finalise a full training course on asset declarations. The Commission is also engaged in a regional project supported by GTZ that aims to develop a manual on ethics. The manual will include case studies for practical trainings, and will be ready in October 2014. The Ethics Commission in cooperation with Judicial Academy provided training on integrity to judges and prosecutors.

Training seminars on integrity were provided with the support of donor programmes, including USAID, GIZ, OSCE and others.

The monitoring team commended the introduction of the mandatory training for civil servants on anti-corruption, training to the local public officials, judiciary officials, and the plan to provide conflict of interest training to high-ranking officials. However, the monitoring team could not assess the contents and the methodology of the training programmes, and noted that the number of public officials that received the training is very low. There is no information about the impact of the training on awareness and practical behaviour of the public officials. The monitoring team concluded that this part of the recommendations is partially implemented.

Conclusions

In a sum, enforcement of conflict of interest rules in state bodies is not ensured. The new system of asset declaration for high-ranking officials became operational, but it has important deficiencies: the declarations are narrow in scope, the system lacks verification mechanism and sanctions for non-compliance. Secondary legislation on reporting of corruption was adopted, but no measures were taken to facilitate its implementation such as raising awareness and establishing effective reporting channels. Mandatory course on anti-corruption was introduced for civil servants, brief anti-corruption course is provided to the public officials at the local level, and the Ethics Commission is developing ethics training for high ranking official. But it is not known if the training provides an impact of the awareness and behavior of public officials.

Armenia is partially compliant with recommendation 3.2.2.

New Recommendation 15

- ***Create specific channels to report corruption in each public institution, out of the hierarchical chain and launch campaign to raise awareness of those measures among public servants***
- ***Adopt legislation and practical mechanism for the protection of whistleblowers***

New Recommendation 16

- ***Provide anti-corruption and ethics training (linked to creating awareness on codes of ethics) for all/majority of public servants: different programs should be developed for different categories of public servants, such as new public officials, ethics commissions' members and internal auditors, as well as official in high risk sectors such as public procurement; and provide consultations for high-level and political officials;***
- ***Include measurable performance indicators (quantitative and qualitative) for anti-corruption, conflict of interests and ethics training, including of the impact of training on ethical standards in public administration, in the new Anti-Corruption Strategy and designate responsible body to coordinate and monitor training activities.***

Transparency and discretion in public administration

Previous Recommendation 3.3.

Continue reforms aimed at simplifying regulation necessary to prevent corruption and to increase transparency and effectiveness of various administrative procedures.

Increase awareness of citizens and business sector about administrative procedures relevant to them and their rights.

Simplifying regulations and e-governance initiatives

Excessive and complex regulations, as well as bureaucratic barriers can create fertile soil for corruption. During the second monitoring round it was considered that the regulations in Armenia would benefit from simplification, increased transparency and effectiveness to reduce the risks of corruption.

According to the answers to the questionnaire, the Government took a number of measures to simplify various regulations to improve business environment. The Legislative Guillotine project implemented by the State Agency "National Centre for Legislative Regulation" is a good example in this regard. The project, financed by donors, aims to reduce compliance costs for companies by 50%. To achieve this aim the Agency reviews existing laws and regulations as well as newly drafted regulations in 17 sectors (8 sectors have been reviewed at the time of the on-site visit), identifies outdated or unnecessary regulations, and proposes to repeal, merge or replace such regulations.

During the on-site visit the monitoring team was told that the Agency consults with the respective ministries and business associations about proposed changes, and often faces resistance from the ministries, e.g. to replace certain licences by a notification procedure, and lack of interest from the private sector. The proposals of the Agency are presented to the Reform Council; about 80% of recommendations of the Agency were approved by the Council.

To date 1,100 regulations were repealed or changed, e.g. job record books were eliminated, licences for gas and electricity were merged, regulations regarding health checks of taxi drivers were simplified, and many other. Business representatives interviewed during the on-site visit confirmed that this project has simplified regulations to some extent; however they insisted that further clarifications of regulations and improvements of transparency and efficiency of public services are needed in all sectors.

This is indeed a very good initiative, which if coupled with the high level political support to implement recommendations proposed by the Agency and followed by vigorous implementation will most likely bring tangible results for Armenian society. At the same time, it is important that the bold targets are set and focus is made on bigger reform projects than just "technical examination of cars" or abolishing the

obligation of morning medical checks for taxi drivers, mentioned as achievements by the authorities during the onsite, which in turn are good initiatives but far from being sufficient in Armenian context.

In the process of implementation of the Regulatory Guillotine project or any other initiatives aiming at changing legislation, due consideration shall be given to the negative effect on the businesses of frequent amendments. Although it is important to simplify regulations, equally crucial is to maintain certain stability and predictability in legislation. Frequent changes and improper regulatory impact assessment in the process of elaboration of legal acts have been mentioned as challenges by business community in Armenia.

Introduction of e-governance is another important measure that simplifies administrative procedures, increases the transparency and efficiency of services and reduces opportunities for corruption. One of the e-governance measures that were welcomed by the civil society and business representatives was company registration and registration in the tax bodies: these registrations can now be done on-line. However, business delegates noted that these on-line services should be improved further, e.g. while company can be registered on line, the change of the company's director or even the change of the director's passport details cannot be made on-line.

The Ministry of Energy and Natural Resources introduced "one-stop shop" for issuing permits for natural resource use. The Ministry is considering joining the Extractive Industries Transparency Initiative (EITI). "One-stop shop" has also been introduced in the Ministry of Healthcare in the field of import of medication, and in the "National Centre of Technical Safety" of the Ministry of the Emergency Situations.

Tax and customs

The selective and non-transparent application of tax, customs and regulatory rules - as well as the weak enforcement of court decisions - increase opportunities for corruption. Despite measures taken by the government to reform tax and customs, interlocutors interviewed during the on-site visit confirmed that tax and customs remain to be high corruption risk areas in Armenia. Further reform steps are to be made in order to root out corruption in the mentioned areas.

Regarding the tax, non-governmental interlocutors welcomed the public consultations which were organised by the government about the reform of the Tax Code, as well as the e-governance solution that was introduced for tax registration. However, a number of surveys indicate that these measures have not produced visible impact on the spread of corruption yet. Companies surveyed in the Global Competitiveness Report 2013-2014 identify tax regulations and inefficient government bureaucracy to be among the most problematic factors for doing business, alongside corruption. Similarly, the Global Competitiveness Report 2013-2014 states tax regulations are considered the fourth most problematic factor for conducting business in Armenia. According to the Investment Climate Statement 2013, the inconsistent application of tax legislation and tax evasion undermine fair competition in Armenia and increase uncertainty for SMEs.

Customs administration is considered by SMEs as one of the most corrupt institutions in Armenia. According to the Investment Climate Statement 2013, the inconsistent application of customs, especially with respect to valuation and regulatory rules in the area of trade, challenges the competitiveness of SMEs and new market entrants. For example, during a large customs conference organized by EDMC one participant complained that in order to receive marketing catalogues and samples Armenian businesses have to go through the same burdensome customs clearance procedures and pay import duties. As a result, Armenian businesses often have to specifically ask their foreign partners not to send them any marketing materials.²¹ Foreign businesses must frequently cope with customs processes that lack transparency and add to costs.

²¹ The Enterprise Development & Market Competitiveness Project (EDMC) is a USAID funded programme in Armenia.

Also, Global Integrity 2011 reports that customs and excise laws are not enforced uniformly or without discrimination in practice, and some groups, such as well-connected companies, may consistently evade customs laws. At the same time, Government reports that the rate of turnover tax applicable to SMEs was reduced from 3.5 to 1 per cent; at the same time SMEs are required to provide invoices for their purchasing transactions.

Traffic Police

Traffic police was mentioned as one of the corruption risk areas in the second monitoring round. The answers to the questionnaire report a number of practical measures that were implemented since 2011, including: procedures for transparency of revenues and spending of the traffic police funds, software on registration of road accidents and access to this data by insurance companies, recording of traffic offences by means of video control equipment automatic system for issuing number plates, easier procedures for driving tests and registration of vehicles.

A standing commission for investigation against police officers was established in 2012; the number of the appeals in 2012 was 1576, and the number of official investigations was 1802. New web site of the police www.police.am attracted 5,517 visits.

However, regrettably traffic police in Armenia is still considered one of the high corruption risk areas. Despite all the efforts described in the replies to the questionnaire and highlighted during the monitoring mission, fundamental changes are yet to be advanced in Armenia in order to tackle pervasive bribery in the police and build trust of the public toward this institution. According to the latest Global Corruption Barometer by TI, Armenian society perceives police as very corrupt, 66% of Armenian population think that police is corrupt or extremely corrupt.

Licensing

Licensing was also identified as a corruption risk area during the previous monitoring round, the answers to the questionnaire mention a number of practical measures here as well: simplified licensing procedure introduced in 2013 allowed reducing the time for obtaining licenses to 5 working days. After the monitoring visit, the Government informed the monitoring team that the number of activities subject to licensing was reduced from 169 to 93, including 12 simple and 84 complicated licenses. Measures to simplify construction licensing were implemented: “one-stop shop” was introduced for technical engineering conditions; risk based approach for development procedures was introduced which simplified procedures for average risk developments; in 2011 the Ministry of Urban Development initiated the process of introduction of the system of the electronic permissions in the construction sector, according to which it is planned to carry out introduction of the system in 37 large urban communities of the republic by the end of 2016 with the assistance of a World Bank. The list of the licensed organizations operating in Armenia and the legal acts related to licensing are posted at the official website of the Ministry of Urban Development of the Republic of Armenia (www.mud.am), which makes the activity of the agency transparent.

Inspection reform

Second round monitoring report on Armenia refers to the problem of corruption in inspections. It is mentioned that the regular controls are often linked with extortion of bribes. Simplifying the system of inspections was one of the important steps to be taken as a matter of priority.²²

As reported by authorities, steps were taken for simplifying the system of inspections, which include risk-

²² Second round monitoring report on Armenia at pg. 56

based inspection system; development of checklists for business inspections for each sector; publication of annual inspection plans and reports on conducted inspections by state inspectorates. Introduction of e-reports to inspectors regarding licenses reduces opportunities for corruption. In 2009, the Government announced the moratorium on inspections for small and medium business; inspections could be conducted only under special conditions (Prime-Minister approval, epidemics, etc.); for 10 inspection bodies the Moratorium was lifted in the end of 2013. The new Law for Inspection Bodies is under preparation, and will introduce new governance system in inspectorates, allowing the Government to make institutional changes in the whole inspection system, which can lead to the reduction of number of inspection bodies (currently 17 bodies have the right to conduct inspections). The new governance system was designed according to the OECD Regulatory Enforcement and Inspections principles.²³

This is a very welcome development, often highlighted by various interlocutors during the onsite visit. Government is encouraged to continue to finalize the reform with the participation of relevant stakeholders, including by adopting the elaborated legislation and implementing it in practice.

Notary reform

Notary services have been and remain one of the corruption risk areas in Armenia according to available surveys. Amendments to the Civil Code of the Republic of 2012, real estate transactions no longer require notary certificates. Tariffs on the notarial operations were clarified. The Government also approved the concept of electronic management system in the notarial field with the financial support of the EU and Council of Europe. The introduction of the electronic management system will create an opportunity for introduction of the “one-stop shop” in public notaries. After the on-site visit, the Government informed the monitoring team of additional measures to prevent corruption in the notary, including: introduction of model contracts which allow concluding real estate transactions without notary ratification by the Government Decree #1851-N of December 22, 2011; defining procedures for submitting online applications for the state registration of the rights of ownership and restrictions to the property at <http://www.e-cadastre.am/en>) by the Government Decree N165-N of February 9, 2012; creating on official website that provides online consultancy on state registration of property rights at <http://www.e-cadastre.am/en>.

Administrative procedures

Administrative Court of First Instance, the Administrative Court of Appeal and the Civil and Administrative Chamber of the Court of Cassation constitute administrative justice sector in Armenia. In 2011 the Administrative Court of First Instance received 15 444 administrative cases and 73 426 orders for payment; in 2012, 19 982 administrative cases and 123102 orders for payment were received; in 2013, 24 893 administrative cases and 198 812 orders for payment were received. According to the answers to the questionnaire, these numbers confirm good awareness of the citizens and businesses about administrative procedures that can be used to protect their rights. A number of measures for raising the level of awareness about administrative action have been implemented by the Government, seminars have been organized; administrative action has become more transparent in the fields of tax service, customs service and licensing. Information on administrative action is posted on many websites (<http://www.gov.am>, <http://www.taxservice.am>, <http://www.azdarar.am>, <http://www.e-register.am>). The business representatives interviewed during the on-site visit confirmed that the administrative courts are considered more efficient and clean than the rest of the judiciary system of Armenia, but insisted that further awareness raising is needed.

Regarding the regulatory impact assessment (RIA), the Government informed the monitoring team after the on-site visit that the main directions of economic development provide for the introduction of RIA to the

²³ <http://www.oecd.org/gov/regulatory-policy/enforcement-inspections.htm>.

process of development of legal acts. The legal basis for RIA in Armenia was laid in 2008 by introducing corresponding amendments in the Law on Legal Acts and establishing a mandatory requirement for conducting RIA of the draft legal acts. This provision legally came into force on January 1, 2011. Currently RIA is conducted in 7 sectors by 6 ministries, including:

1. Ministry of Economy carries out impact assessment on SME according to Governmental decree N1159 dated 15.10.2009 and impact assessment on competitiveness according to Governmental decree N1237 dated 29.10.2009;
2. Ministry of Justice carries out impact assessment on anticorruption according to Governmental decree N1205 dated 22.10.2009;
3. Ministry of Labor and Social Affairs carries out impact assessment on social protection according to Governmental decree N18 dated 14.01.2010;
4. Ministry of Finance carries out impact assessment on budget according to Governmental decree N1021 dated 10.09.2009;
5. Ministry of Health Care carries out impact assessment on healthcare according to Governmental decree N1104 dated 23.09.2009;
6. Ministry of Nature Protection carries out impact assessment on nature protection according to Governmental decree N921 dated 13.08.2009.

Open Government Partnership

Armenia is a member of the Open Government Partnership (OGP). It has completed its first action plan and adopted the second national action plan on open government. Participation in OGP generally, facilitates implementation of transparency, accountability and citizen engagement agenda at the national level. The relevant regulations of OGP require that the participating countries develop national coordination mechanisms for OGP, conduct large-scale public consultations on the draft action plan and ensure implementation of the commitments enshrined in it, thus ensuring that most relevant commitments are covered by the action plan.

Monitoring team was informed that Armenian Government has created a new dedicated working group on OGP recently in July, 2014 substituting the previously established (in 2012) one. It is chaired by the First Deputy Minister-Chief of the Government Staff, OGP Coordinator. Working group includes CSOs as members. The work in this area is supported by UNDP. Working group only had 3 meetings prior to onsite visit.

However, the CSOs point out that the OGP processes are more CSO driven rather than led by Government. This is especially true for public consultations conducted for the elaboration of second action plan. FOICA informed that NGOs conducted public consultations and collected 26 ideas for commitments from citizens. The results of consultations have been analysed by CSOs and presented to the Government. Draft action plan has not yet been finalized and monitoring team was not able to see it. As FOICA informed, it consists of 11 commitments out of which 7 were those recommended by NGOs. As mentioned by FOICA however, these commitments are not ambitious at all.

FOICA pointed out that second action plan elaboration process was better than previous, however, it was also noted they would wish to have much more proactive approach from the Government and taking a lead on OGP issues.

Creation of dedicated working group on OGP is a welcome development. The platform should be made operational and used by the Government as a regular forum for consulting with the non-governmental sector on the initiatives of transparency, accountability and citizen engagement, e-governance and other related actions. Armenia is also encouraged to dedicate necessary resources to the initiative to make

maximum use of the platforms available under OGP at the international level.

Awareness of implemented measures

As a part of the second monitoring round Armenia was recommended to raise awareness of citizens and businesses about the administrative procedures relevant to them. Authorities report the following actions in this regard: in particular, seminars, posting information on various websites, notifications posted on so-called public notifications website. The Government reports that it has substantially improved the level of public awareness on administrative procedures, among them on the mechanism of obtaining licenses, registration of legal persons, tax and customs related procedures and other services, during the reporting period. During the onsite visit no further information was provided in this regard. Interlocutors mentioned that more could be done in order to make public aware of the reforms carried out in the relevant fields.

Impact of regulatory and administrative reforms

The monitoring team commends the Government for the measures carried out by Armenia to implement the recommendation, including the introduction of e-government tools and one-stop-shops, simplification of regulations and related other measures that were carried out in the corruption risk areas after the previous monitoring round. However, the team also notes that the measures implemented so far have not impacted the level of corruption in Armenia yet according to the available surveys. According to one business representative, ‘the progress made so far with regulatory simplifications is marginal and major issues such as tax and customs remain to be cumbersome’.

Policy Forum Armenia for example stresses out in its report that: “over the years, corruption has become more and more of a problem to entrepreneurs operating in Armenia. Both macro level top evidence and firm level data confirms that corruption is now one of the three problems faced by Armenian firms. It imposes a significant cost on Armenian firms, both in terms of time spent and sales lost. With an estimated cost to firms of approximately 5 percent of sales per year— the highest of all comparator countries—the ultimate impact of this is undermining the productivity and competitiveness of Armenia’s economy.” Further it is noted that “inspections and other administrative barriers are used to extract rents from entrepreneurs. This confirms once again that barriers for progress and development in Armenia are man-made and therefore can be reduced, if not eliminated, in the presence of political will.”²⁴

The EU report on implementation of European Neighbourhood Policy in Armenia underlines: “Legal provisions are in place, but results in the fight against corruption remain somewhat unconvincing, including among others the police and judiciary. Real progress in this area remains fundamental to achieving progress in other reform areas including socio-economic improvements.”²⁵

The NGO and business community interviewed during were also of the opinion that those measures have not changed corruption situation in the country. TIAC is of the view that steps implemented so have had no positive impact on the level of corruption in Armenia: “The reduction of contacts between the citizens and state bodies does not necessarily mean that the levels of corruption in the public sector decreased. As has already been mentioned, according to the TI’s Global Corruption Barometer (GCB) 2013 results, public sector/officials, together with health and courts are perceived as the most corrupt institutions by Armenian population.”

²⁴ Corruption in Armenia, 2013 Policy Forum Armenia at pg. 61.

²⁵ Implementation of the European Neighborhood Policy in Armenia Progress in 2013 and recommendations for action, Brussels, 27.3.2014 SWD (2014) 69 at pg. 7.

Conclusions

The Government with the assistance of the donors and international organisations and in cooperation with the private sector has introduced important measures to simplify regulation, to increase transparency and effectiveness public services and to prevent corruption risks. The government also took some measures to increase awareness of citizens and business sector about administrative procedures relevant to them and their rights.

However, it is regrettable that all these measures have not been reflected on the level of corruption in Armenia, which remains worryingly high. Overall, the reason behind this can be illustrated with what the monitoring team has heard most of the times from the non-government sector, including businesses and donor communities – measures with regard to fighting corruption are small, cosmetic, thus not enough to ensure real change in the country.

Armenian authorities are encouraged to further continue the work on simplification of procedures, introduce the modern regulatory systems and address the remaining challenges. However, there will always be the possibility to circumvent the rules if there is no firm political will to seriously fight corruption and implement the regulations in practice. Without political will the changes will always be incremental and impotent to root out corruption.

Armenia is largely compliant with recommendation 3.3.

New Recommendation 17

- *Ensure proper regulatory impact assessment before adopting legislation and stability of legislation as much as possible to the benefit of businesses in Armenia;*
- *Continue introducing e-governance tools aimed at decreasing the customer contact with the Government bureaucracy and reducing the risks of corruption;*
- *Make the OGP national platform operational and efficient forum for discussing policy initiatives and monitoring of implementation of e-governance, transparency and accountability initiatives;*
- *Finalize inspections reforms with the involvement of the relevant stakeholders;*
- *Complete Tax and Customs Reform and ensure their implementation in practice.*

Public Financial Control and Audit

Previous Recommendation 3.4.

Ensure that in the course of its audits of the Control Chamber makes systematic efforts to detect “fraud” and “incidents of corruption”; improve the mechanism for the Control Chamber to alert law enforcement authorities on suspicions of corruption; ensure experience of the Control Chamber is used in developing training for public servants and cooperates with new internal audit units.

Continue to implement measures to put in place an effective financial control and internal audit system in public administration, according to the Strategy and the Action Plan 2011–2013 for Public Internal Financial Control System.

Continue to provide for sufficient human resources to conduct internal audit at the central and local level public administration bodies; ensure the certification of internal auditors; ensure performance compliance audits are conducted.

Continue to provide training to the heads of administrative bodies and financial management staff in administrative bodies of central and local governments on prevention of corruption.

Chamber of Control

Detection of “fraud” and “incidents of corruption” and referrals to the law enforcement

In the course of its work Chamber of Control (CoC) records violations and if there are any suspicions of criminal activities, this information is immediately forwarded to the bodies of the prosecution, namely the GPO. The CoC can send both prepared protocols and current reports to the General Prosecutor’s Office (GPO).²⁶ The GPO then decide what law enforcement agency should look into each referral based on their competence and jurisdiction. Reportedly law enforcement has to provide feed-back about outcomes of the cases initiated based on referrals from the CoC in a prescribed manner. It is however unclear where this procedure is defined. Interlocutors met at the on-site visit also could not specify how this procedure is formally regulated; however, they assured that it is routinely being done. Both representatives of the CoC and the law enforcement confirmed that they cooperate well and that referrals from the CoC often result in successful criminal investigations.

According to the replies to the questionnaire provided by Armenian authorities 9 referrals of suspicion of criminal activities were made to the GPO by the decision of the CoC in 2012 and based on these referrals 7 criminal cases have been initiated. The monitoring team was unable to confirm how many of them were instances of possible corruption violations. One high-profile case has been emphasized involving 40 accused, including the head of the Social Insurance State Foundation. In 2013, 17 such referrals were made to the GPO. Based on these referrals criminal cases have been initiated under articles of fraud, misappropriation and abuse of official position.

Annual reports of the CoC, after they are approved by the Council of the CoC, are presented along with conclusions to the National Assembly; the President and the Government are also being informed; the reports are then published on CoC’s website. It appears that the annual reports of the CoC have often been very critical and pointed out serious systemic problems related among other things to corruption. In its 2011 annual report CoC made serious exposures in the administration of the state property. 2012 report focused on procurement and constructions and contained statements like: “The real competition takes place not during the competition but out of it”²⁷, and among other things exposed that the e-procurement system is non-operational.

Some international reports state that the government does not always react on the findings of the audit institution and may sometimes ignore or give only superficial attention to the audit reports.²⁸ It provides an example, when in June 2013, the CoC chairman, Ishkhan Zakaryan, presented the new CoC report for 2012, where serious misappropriation and misuse of money in the sectors of construction and public procurement were presented. This was further corroborated by SIGMA experience and information that they received from the staff of the CoC who complained on the lack of attention for their findings. The CoC published similar findings on gross violations and financial abuse in numerous state bodies since 2009, but the presented cases were rarely prosecuted. On the other hand, Nations in Transit 2013 reports an increase in charges following CoC investigations, and although with a long delay, the findings of the 2012 CoC report on procurement violations and deficiencies of the system are being acknowledged and followed up on. Moreover, Armenian authorities informed the monitoring team after the on-site visit that the tripartite cooperation between the National Assembly, the Control Chamber and the Government is further improving. For example, before discussing the 2013 CoC annual report at the plenary session, the report is being currently discussed in the respective standing committees of the National Assembly, where representatives of the Government (ministers, etc.) are also invited. Discussions are open, enabling also the

²⁶ Article 6 of the Law on Chamber of Control.

²⁷ Annual report of the CoC for 2011; p. 2.

²⁸ See <https://www.globalintegrity.org/global/report-2011/armenia/2011/>

participation of the mass media.

Anti-corruption training and capacity building

The control carried out by the CoC is organized according to the Law on Chamber of Control, as well as by-laws, manuals, rules, standards, methodological procedures and instructions from 2008. In March 2014 a technical assistance project started, which will among other things revisit the 2008 manuals based on the methodology laid down in the International Standards for Supreme Audit Institutions (ISSAIs). At the on-site visit the monitoring team asked whether these new manuals will pay attention to combatting fraud and corruption and most of the interlocutors did not think so. In 2011, the Strategic Development Programme and Action Plan of the Chamber of Control were developed and approved. This development programme does elaborate on the role of CoC in combatting fraud and corruption, but the Action Plan of the development programme does not explicitly include activities related to that role.

Trainings for public servants and cooperation with Internal Audit Units

It became clear during the on-site visit that the experience of the CoC is not being used in development of the training for the civil servants or for Internal Audit (IA) units. Moreover, during the on-site visit the monitoring team confirmed the information obtained from SIGMA that in practice there is no cooperation between and CoC and recently created IA units. The only communication that happens is that the CoC can ask for the results of the work of IA units; however, such results are very limited because the IA units are too young and do not yet function according to the IA standards. This information was also further confirmed during the on-site visit. In addition, there seems to be a more serious problem in this regard, namely, the CoC and IA (as well as MoF overall) do not see themselves as allies but rather as competitors.

Strategy and the Action Plan 2011–2013 for Public Internal Financial Control System

During the second round of IAP monitoring the GoA approved the Strategy for Public Internal Financial Control (PIFC Strategy) by Protocol Decision No 44 of 11 November 2010. An Action Plan for the Implementation of Phase I of the PIFC Strategy covering years from 2011–2014 was also adopted by this strategic document. Recommendation 3.4 asked Armenia to continue implementing measures identified in these documents in order to put in place an effective financial control and internal audit system in the public administration of Armenia.

The Ministry of Finance (MoF) is the body responsible for coordination and monitoring of activities undertaken to introduce the international-standard-based systems of financial management, control and internal audit. Armenian authorities reported an impressive number of activities that have already been implemented during finalization of the second round of IAP monitoring report and after its adoption, including:

- The Law of the Republic of Armenia “On Internal Audit” was adopted on 22 December 2010 and entered into force in 2011 (this took place when the second round of monitoring report was being finalised).
- “Standards of Professional Activity of Internal Audit of the Republic of Armenia and Rules of Conduct of Internal Auditors” were developed on the basis of internationally recognised standards and best practices and approved by Decision No 1233-N of the GoA on 11 August 2011.
- “Methodical Instructions for Application of Standards of Professional Activity of Internal Audit of the Republic of Armenia” were approved by Order No 974-N of 8 December 2011 of the Minister of Finance.
- “Guidelines for Developing Manuals for Internal Audit of Public Sector of the Republic of Armenia and Statute of Internal Audit” were approved by Order No 143-N of 17 February 2012 of the Minister of Finance; they clearly define the requirements for developing the statute of internal audit.

- Main requirements for the subdivision of IA and the committee of IA were approved by Order No 165-N of 23 February 2012 of the Minister of Finance, which define the model structure of the organisation of IA in the public sector and the staff composition of the subdivision.
- The IA environment of the public sector organisations was established and the procedure for description of functions was approved by Order No 1050-N of 30 November 2012 of the Minister of Finance; this facilitates the description of business processes for organisations in the public sector.
- The model of the statute of IA and the peculiarities of the procedure for the formation thereof were approved by Order No 1096-N of 12 December 2012 of the Minister of Finance.
- Automated information system was designed and developed for IA in 2012 and tested in a number of selected organisations in the public sector the same year. The information system for uniform management of IA was introduced in almost all public administration bodies and local self-government bodies in 2013.
- Order No 143-N of 17 February 2012 of the Minister of Finance was amended by Order No 45-N of 15 January 2014 of the Minister of Finance, according to which the requirements defined in the initial order should be fulfilled through the information system for uniform management of IA. The introduced amendment formed legal grounds for working with the information system for uniform management of IA, ensuring full functioning of the mentioned system and the accountability of public administration bodies and local self-government bodies.
- Procedures for conducting assessments of the IA system of an organisation by persons not related to the activities of the organisation, as well as the procedures for cooperation of the internal audit with bodies, conducting inspections and with the external audit body, with a view to guarantee the IA quality of organisations were approved by Government Decision No 896-N of 8 August 2013.
- Procedure for the certification of internal auditors and the main requirements for the organisations to conduct audit in the public sector were established by the Government Decision No 176-N of 13 February 2014; essentially increasing transparency of the given procedure.

In 2012 and 2013, the Ministry of Finance of the Republic of Armenia organised ongoing professional training courses for certified practicing internal auditors and internal auditors certification training courses for beginner internal auditors of the public sector. A number of 15 ongoing professional training courses were organized in 2013 with 192 certified internal auditors trained. The number of auditors who participated in the ongoing professional training increased by 16.7% as compared to 2012.

Internal audit

Human resources

The second round of IAP monitoring report recommended that Armenia continue to provide sufficient human resources to conduct internal audit both central and local level of the public administration. Simultaneously with other measures described above which were undertaken to develop legislative and methodological base, Armenia has been building up an institutional structure.

According to the Law on Internal Audit, internal audits can be conducted either by an IA unit of the public sector organization or by the invited person. Public sector organisations include bodies of state administration, bodies of local self-governance, state and community institutions, state or community non trade organisations, and organisations with more than 50% state or community participation. The Law on Internal Audit doesn't specify in which PSO internal audits must be conducted by IA divisions and in which by invited persons. However, Annex I of the Order of the MoF no 165-N stipulates that IA divisions should be established in state administration bodies and local self-governance bodies; the rest are being 'serviced'

by the invited persons.

The monitoring team was informed during the on-site visit that all state agencies apart from 2 have now IA units established within their structures; 44 local communities out of 48 have their IA units with the pool of available 200 auditors. The monitoring team was also informed of the efforts that Armenian authorities are undertaking to staff these units. As of 2012, the total number of persons required for full staffing of the IA units of bodies of state administration constituted 205, of which 130 were hired; by 2013, 164 positions were already filled. The total number of persons required for full staffing at the municipal city level was determined at 70 and by 2013 59 of those positions were filled. Introduction of the IA at the municipal village level will be launched in 2016.²⁹

The number of tasks based on the annual plans for 2012 was set at 750 – 696 of them were implemented. As a result one fraud case was registered, 11 cases of with elements of malfeasance and one embezzlement case; no cases of bribery have been registered – all 13 of these cases were referred to the law enforcement agencies. The number of tasks based on annual plans for 2013 was set at 2011; 1865 of them were implemented. As a result 2 fraud cases were registered and no cases of bribery have been registered.

Certification of internal auditors

It was also recommended to Armenia to ensure the certification of internal auditors. As mentioned earlier according to the Law on Internal Audit, internal audits can be conducted by the IA units or invited persons. MoF is the state body authorised to secure the registration of the internal auditors, both qualified physical persons and organisations, as well as persons with qualification of an internationally recognised auditor which can be accepted in Armenia. It is also responsible for the publication of the list of certified auditors. In practice two lists are published by the MoF: one of qualified internal auditors and one of internationally recognised auditors. There is no indication in the law which list of auditors it refers to. There also seems to be no mechanism in place as to how the list of qualified auditors is being drawn up.

Procedure for the certification of internal auditors and the main requirements for the organisations to conduct IA in the public sector in which the whole process of certification is described was adopted by the Government Decision No 176-N of 13 February 2014. Certification examination is held electronically with the use of special computer software, based on random choice principle. Questionnaire which is drawn up on the basis of the legislation on IA and other guidelines for IA is being used for these purposes. The questionnaire is being modified each year and gets published on the website of the MoF. The monitoring team didn't not have a possibility to take a look at the content of the certification programme or the questionnaire.

The monitoring team was also confused by various statistical figures in regard to the number of the certified auditors. In its replies to the questionnaire Armenian authorities stated that in 2012 191 auditors have been certified; another 25 auditors were certified in October-December of 2013. At the same time, according to the 2012 Report on IA published by the MoF 160 employees of IA units from state administration bodies and 50 employees from IA units of the city municipalities took part in the requalification training "Internal Audit in Public Sector" and as a result received qualification of the internal auditors; the same 2012 Report on IA states that there were 144 internal auditors. And finally according to the list of qualified internal auditors published on the MoF's website there were 177 of them.

Armenian authorities provided the following clarifications in regards to the number of internal auditors: In 2012 the total number of internal auditors amounted to 144, of which 133 were qualified and 11 were undergoing training. In 2013 the total number of internal auditors amounted to 197, of which 166 were qualified and 31 were undergoing training. According to the legislation on IA, certified internal auditors

²⁹ Government Decision No 1233 of 11 August 2011.

must every year undergo training courses which do not involve examination and certification, since the latter are already certified. Thus, in 2012, 160 certified internal auditors have undergone training, and 190 - in 2013.

Performance compliance audits

And finally in the context of the establishment of the IA in Armenia, the 2nd round of IAP monitoring recommended to Armenian authorities to ensure that performance compliance audits are conducted. Armenian authorities in their answers to the questionnaire informed the monitoring group that this is being done; namely in 2012 out of 696 audits 22 compliance audits were conducted and in 2013 out of 1667 – 62 were compliance audits.

Anti-corruption training to the heads of administrative bodies and financial management staff

Armenian authorities in their reply to the questionnaire stated that topics related to prevention of corruption were not envisioned in the current trainings. The monitoring team was unable to find any further information in this regard during the on-site visit.

Conclusions

It appears that the CoC is able to detect instances of potential crime, including fraud and corruption in the course of its audits and does so routinely. CoC also routinely makes referrals to this effect to the law enforcement bodies and most of these referrals lead to initiation of criminal cases. This is commendable, especially on the backdrop of the lack of proactivity of the law enforcement agencies and difficulties that they reported to have with detecting corruption unless it is reported. However, the monitoring team is of the opinion that a lot more can be done to make such detection efforts more successful and build capacity of the auditors to specifically identify instances of corruption. This can be achieved through a number of measures, including specific trainings; inclusion of these issues into the manuals and new methodology to ensure that attention is paid to anti-corruption and anti-fraud, i.e., how to detect signals of corruption, what steps to take or not to take to avoid creating problems in the context of future potential criminal investigations, etc.; inclusion of a specific chapter about the role of the CoC in combating fraud and corruption into its Action Plan. It is also important to keep it in mind that all of this should be done in the context of their main tasks of assessing the performance of the Government in terms of compliance with laws and value for money.

In addition, good experience of the CoC in detecting and referring materials to the law enforcement agencies should be shared and further replicated. Real cooperation with IA should be established and contributions into the trainings programs for public officials, as well as IA units should be made by the CoC based on this experience on a regular basis – these elements currently seem to be missing. The monitoring team also believes that cooperation and exchange of information between CoC and the law enforcement agencies can be further strengthened through joint trainings, meetings, etc.

And finally, it is important that the reports and findings of the CoC are properly followed up on by the appropriate authorities, including the law enforcement. The monitoring team notes the improvements in the recent years but would like to encourage this trend and look into this issue in the further steps of the monitoring.

The monitoring team was impressed with the number of measures implemented under the PIFC Strategy. All of these however, relate exclusively to the establishment of the IA system; the financial management and control (FMC) elements of the PIFC Strategy appear not to be addressed. Therefore, while the monitoring team would like to recognize serious progress made in the area of establishment and development of the IA system of Armenia; it also strongly encourages Armenia to address other elements of

the strategy in the same spirit. The monitoring team would like to emphasize the importance of the FMC in the context of preventative functions it carries out in deterring corruption. In addition, the monitoring team was informed after the on-site visit that a new EU twinning project implemented by the Swedish administration was launched in August of 2014 and will focus on FMC reforms. This is a positive development and the monitoring team would like to express its encouragement to the implementation of this project.

The monitoring team came to the conclusion that Armenia is taking appropriate steps to set up an institutional base and to provide for its adequate staffing. It appears that the establishment of the IA units is almost completed and its staffing is well on its way. It is now important to ensure that these persons are well qualified to carry out their functions and focus on their training.

As to the certification procedure the monitoring team found it difficult to draw meaningful conclusions on the progress made under this element of the recommendation. On one hand, the certification process is underway, although it was not possible to assess the quality of the certification program and whether it really ensures proper level of training and testing, whether it is practical and challenging enough. This can be further looked into in the follow up to the 3rd round of monitoring. On the other hand there is confusion both with who was certified to be auditors already and what lists should be used.

Performance compliance audits are reportedly being done. The monitoring team could not confirm with the interlocutors during the on-site visit whether the figures provided in the replies to the questionnaire reflect compliance audits, since it appears unusual that their number will be so small to the general number of audits taking into consideration that as a rule newly established IA units start their work with this type of audits, therefore, it makes it difficult to assess progress made under this element of the recommendation properly.

It appears that no focused anti-corruption training or training containing elements of anti-corruption was conducted in Armenia for the heads of the administrative bodies and financial management staff. Therefore, the monitoring team believes this element of the recommendation to be not implemented and would like to reiterate the importance of this measure.

Armenia is partially compliant with the recommendation 3.4.

New Recommendation 18

- ***Ensure that in the course of its audits the Control Chamber pays attention to detecting “fraud” and “incidents of corruption”; improve the mechanism for the Control Chamber to alert law enforcement authorities on suspicions of corruption; ensure experience of the Control Chamber is used in developing training for public servants and cooperates with new internal audit units.***
- ***Continue to implement measures to put in place an effective financial control and internal audit system in public administration, according to the Strategy and the Action Plan 2011–2013 for Public Internal Financial Control System with specific focus on the design, existence and working in continuity of financial control and the transparent reporting of deficiencies.***
- ***Continue to provide for sufficient human resources to conduct internal audit at the central and local level public administration bodies; improve the certification programme of internal auditors; ensure that compliance audits of good quality are conducted.***
- ***Continue to provide training to the heads of administrative bodies and financial management staff in administrative bodies of central and local governments on prevention of corruption.***

Corruption in Public Procurement

Previous Recommendation 3.5.

Ensure that the Procurement Complaint Review Board acts as an independent review body to receive and treat appeals against any public procurement; ensure real independence of its members; disclosure of its decisions; provide for a clear procedure for making appeals.

Provide practical tools, such as ethics and anti-corruption training, best practices, technical advice, tailor-made support and monitoring and other to procuring authorities and Procurement Complaint Review Board, once it is established.

Fully implement and ensure effective use of e-procurement system to enhance transparency and competition in public procurement.

Implement mechanisms to ensure that results of procurement technical specifications random analysis, that could indicate suspicions of irregularities or corruption crime, are immediately sent to the prosecutor or to the relevant administrative authority.

Assign to the Chamber of Control the additional task of making recommendations (general and for specific bodies) on improving integrity in public procurement.

Take actions to improve confidence of enterprises in the impartiality of public procurement decisions and to reinforce competition in quasi-monopoly/oligopoly sectors.

Procurement complaint review board

The Procurement Complaint Review Board (“Board”) is established under Section 6 of the Law on Public Procurement, it has been operational since 2010. According to Article 46 (3) of the Law: “The Board shall include one representative of:

- 1) The public administration bodies envisaged in the Republic of Armenia Constitution and laws;
- 2) The Republic of Armenia urban communities;
- 3) The Republic of Armenia Central Bank;
- 4) Non-Governmental Organizations (Unions) registered in the Republic of Armenia, which have submitted a written request to the Authorized Body”.

This means that the members of the Board must include at least one representative of a public administration body, one from the Central Bank, one from Urban Communities and one from NGOs. The members of the Board are elected for 5 years, with the possibility of a further 5 year extension. For each procurement complaint case, three members are supposed to be randomly selected. As explained by the representatives of the Procurement Support Centre (“PSC”), in practice 40-50 individuals are nominated by Government agencies and the Civil Society to be included in a list of board members, which is published on the web site of the Ministry of Finance³⁰. At the time of the monitoring mission, the published list included 73 individuals. The list, like the vast majority of information related to public sector procurement in Armenia, is only available in Armenian language. As one of its tasks, the PSC functions as the permanent secretariat of the Board. The PSC arranges the activities of the Board. It selects 3 individuals from the list of Board members, who determine whether or not a complaint should be upheld. The PSC further evaluates the completeness of the complaints/appeals received and submits its complaint analysis and recommendation to the selected Board members on each complaint/appeal. The decisions of the Board should be published by PSC on the website of the Ministry of Finance. However, at the time of the monitoring mission, only 2 of the reported 48 complaints in 2013 were published (in Armenian only) on the website.

³⁰ <http://gnumner.am/am/home.html>

The Law on Public Procurement establishes that “the Board shall be a unit implementing a disinterested and independent examination which is not interested in the results of the given procurement process, and members of the Board shall be protected from external influences while performing their responsibilities and rights. Members of the Board shall examine appeals in a thorough and impartial manner. While exercising powers provided for by this Law, the Board and members of the Board shall be independent from bidders of the procurement process, including the contracting authorities, as well as from the state and local self-government bodies and officials. During the examination of the appeal they shall be neither bidders of the case under examination nor a representative of an undertaking nominating its candidature and shall be obliged to be solely guided by the law and apply it.” The representatives of the PSC confirmed that, although not legally obliged to do so, the individuals selected from the list of Board members for each individual complaint case sign declarations, confirming that they have no conflicts of interest in dealing with the particular case.

The procedure for appeals is established by the Law on Public Procurement: appeals should be submitted in writing to the Board during the stand-still period. According to the Government, in 2011, 26 appeals were lodged, in 2012 — 38, in 2013 — 48. In 2011, 115 appeals were satisfied, 5 were rejected, 6 were dismissed (a total of 26 appeals); in 2012, 17 appeals lodged were satisfied, 11 were rejected, 10 were dismissed (a total of 38 appeals); in 2013, 20 appeals lodged were satisfied, 19 were rejected, 9 were dismissed (a total of 48 appeals). Six decisions of the Board were appealed through a judicial procedure.

Feedback from the Armenian business community suggests that the members of the Board are professionally trained and perceived to be impartial. This is seen to be particularly important as Government procurement, and in particular the Project Implementation Units of IFI/donor financed projects, is still perceived to be riddled with corruption.

However, the independence of the Board raised concerns, according to the EU, SIGMA and civil society partners. In its “Abstract of Policy Paper on Public Procurement Appeals System in the Republic of Armenia” from 2013³¹, the Transparency International Anti-Corruption Centre (“TIAC”) states that although some reforms to increase the independence of the complaints review body as an independent institution had been initiated, “... it still lacks independence from an institutional point of view as well as in the selection process for members. In particular, the rotation mechanisms envisaged in the LoP are not fully implemented in practice. Conflicts of interest, selection of members with legal provisions of dismissal also needs considerable improvement.” TIAC also points out that whilst only 3 members of the Board represent NGOs, the remainders are representatives of state bodies. Although the Central Bank of Armenia should be represented on the Board, currently no individual has been nominated to represent this institution. The lack of rotation of members, the dominance of Government bodies’ representatives and the fact that the Board has only ever overturned one of the recommendations of the PSC puts the independence of the decision making process of the Board into question.

Practical tools

The following practical tools were developed and implemented:

- Templates of documents used in procurement procedures.
- Financial qualification requirements for undertakings participating in procurement.
- Common procurement vocabulary.
- Technical description and maximum prices for 350 items of basic consumption.
- Introduction of e-procurement system.

31 <http://transparency.am/files/publications/1404845506-1-140999.pdf>

- Accreditation and training of procurement co-ordinators in contracting authorities.

Procurement processes for the needs of contracting authorities are carried out by procurement co-ordinators who must be included in the list of qualified procurement specialists, published by PSC. Persons are included in the above-mentioned list after successfully passing examinations for the purpose of evaluating their knowledge of the legislation on procurement. Currently, 809 persons have successfully passed qualification examinations. Whilst it is commendable that dedicated and trained procurement specialists are responsible for conducting the procurement activities in public sector entities, the number of specialists should be further increased and their training expanded. According to the representatives of the PSC, the procurement co-ordinators receive their procurement certificate after successfully completing a 3 day training course. This is unlikely to be sufficient to adequately qualify a person in becoming a procurement specialist. In this context, TIAC has criticized that the training is mainly focused on the contents of the Procurement Law and lacks practical examples and case studies based, for example, on real cases reviewed by the Procurement Complaints Review Board. In their comments on the Questionnaire concerning the Third Round of Monitoring, TIAC concludes that inefficient training of procurement co-ordinators and/or corruption issues are reflected in the fact that in 2011-2012, almost half of the appeals submitted to the Board were upheld.

As there are approximately 4,000 public sector entities involved in public procurement, but only 809 certified procurement specialists, many public sector entities engage local private companies to assist them in procurement matters. According to the representatives of PSC, these companies also receive training from PSC. However, it should be further scrutinized, if these private companies are sufficiently trained in public sector procurement and whether any potential corruption and conflict of interest issues are sufficiently addressed. After the on-site visit, the government informed the monitoring team that currently, statistical data are being collected concerning private companies providing such services to the public sector

E-procurement

An electronic procurement system was introduced in Armenia in 2011. According to Government statistics, in the first year, only three e-procedures were conducted, including by the Ministry of Health, Staff of the Government and Lori Marzpetaran. In the course of 2012, 18 state administration bodies declared 55 electronic procedures. In the course of 2013, 143 procedures were declared electronically by 28 public administration bodies. About 42 per cent were concluded by the Ministry of Defence; Ministry of Urban Development carried out 24 electronic procedures; the State Revenue Committee carried out 11 such procedures. The Staff of the Government, the Ministry of Transport and Communications, the Ministry of Health, the National Security Service, the State Committee of Real Estate Cadastre, the Ministry of Nature Protection, the General Prosecutor's Office, several marzpetarans and other public administration bodies also carried out electronic procurement.

In 2012, the total procurement value was AMD 171.9 billion, e-procurement accounts for AMD 11.8 billion or 6.8 % of the total. In 2013, the total was AMD 208.3 billion, and e-procurement at AMD 12 151.0 million or 5.8 %. The share of electronic procurement in relation to the total volume of public sector procurement is still very low and should be substantially increased. The current status of electronic procurement is very difficult to assess as the relevant website³² does not contain adequate information. While the government informed the monitoring team that contract notices are published in Russian, Armenian and English and where the procurement exceeds AMD 50 mln companies may request and receive invitations in Russian and English, the monitoring team could only confirm that although there is an English section of the website, all

32 www.armeps.am

relevant information is only available in Armenian, which substantially restricts foreign participation in Armenian procurement activities.

Apparently, the Armenian e-procurement system still faces a number of deficiencies which, amongst others, were identified by TIAC³³:

- Negligible share of non-residents registered in the e-portal
- Lack of statistical information
- Almost 40% of e-tenders were cancelled
- Lack of capacity from both the demand and supply side
- Current e-tender procedures are not consistent with those adopted in procurement legislation

There has been a concerted effort by the Government of Armenia and international organisations (in particular the European Bank for Reconstruction and Development (“EBRD”) and the World Bank) to resolve existing major technical problems detected in the e-procurement platform and to further enhance the e-procurement system. This process is still ongoing.

The problems related to the e-procurement system are also reflected in the Annual Report 2013 of the Control Chamber of Armenia³⁴, where it is stated that “the Control Chamber observations of 2012 have evidenced, that the system is not functioning, moreover, the number of problems existing is growing. In addition to this, the software clues/ codes are not available, the software is not functional.” As a result, the level and quality of e-procurement in Armenia is still low.

The problems are further confirmed in the SIGMA (Joint Initiative of the OECD and the EU) draft report of the Peer Review on the Public Procurement System in Armenia³⁵. It is stated in the draft report, that concerning the e-procurement system, “Despite improvements in the last months, technical shortcomings still can be noted and lack of trust at the level of many end users is still high.”

Random control of technical specifications and informing law-enforcement

Procedures for risk assessment and for monitoring were approved in 2013 and 2012 respectively. According to these procedures, announcements of procurement and technical descriptions as well as concluded contracts are subject to random examination. PSC is obliged to inform the Prosecutor of any result of verification if they identify false information or other suspicious information. No such cases were detected and reported so far.

In contrast to the above, the draft report by SIGMA states that the technical specifications often favor certain suppliers. According to members of the business community, this kind of shortcoming or irregularity is often not reported by potential bidders in a procurement process, as they perceive to become a potential target for particular scrutiny by the tax authorities, when such bidder complains about the unfairness of technical specifications or other aspects of a procurement process. According to the Government, the Ministry of Finance is not aware of such problem, as potential suppliers are free to submit a complaint to the Procurement Review Board.

33 <http://transparency.am/files/publications/1404845133-1-847860.pdf>

34 Annual Report of the Control Chamber of the Republic of Armenia 2013 – Approved by the RA Control Chamber Council – Decision # 12/1 dated March 31, 2014 – www.coc.am.

35 SIGMA (A joint initiative of the OECD and the EU, principally financed by the EU): Peer Review – Public Procurement System in Armenia – Draft Report – May 2014

Regarding the debarment, the Government's answers to the questionnaire state that "currently, eight undertakings were included in the list of bidders ineligible to participate in the procurement procedure, four undertakings out of which were included in 2013. After the expiry of the time limit to be included in the list of bidders ineligible to participate in the procurement procedure, undertakings are removed from this list but these undertakings have not been made calculated as a result of which we cannot submit data for 2011-2012."

Recommendations by Control Chamber

Annual reports of the Control Chamber include recommendations for the procurement system. For example, for the purpose of increasing the effective use of budget resources it has proposed to the Government to fix "control" prices. As a result of investigations of the Control Chamber it has been disclosed that a number of contracting authorities, for their own needs, have acquired goods with prices higher than the market prices. As a result, based on a recommendation by the Control Chamber, technical descriptions and maximum prices of about 350 items of goods of basic consumption were approved by Decision of the Government in 2013.

In its annual report 2013, the Control Chamber, amongst others, states that "The representatives of Client agencies in charge for a concrete purchase, display unfair attitude, allowing some companies to sign contracts at higher prices, in the result of which public funds are not saved and some people gain surplus profit." Furthermore, "In some cases, the real needs of the country are not duly assessed and as a result, the goods or services procured do not serve the purpose at all, or serve the needs partially."

It is encouraging to note that the Control Chamber openly and firmly criticizes detected shortcomings in the procurement system, which suggests an adequate degree of independence. It would then need to be ensured by the Government that such detected shortcomings are followed up by adequate measures to rectify systemic or practical shortcomings in the procurement system.

Confidence of enterprises in the impartiality of procurement decisions

The reduction of the volume of documents presented with bids has been mentioned by the Government as a step aimed at improving the system. Documents certifying the bidder's qualification are required only from the bidder who submitted the lowest bid.

The streamlining of the procurement process and the introduction of e-procurement, may have contributed to a higher degree of participation in the procurement process by interested bidders.

However, as outlined in the draft SIGMA report:

- There is still an abnormal number of contracts awarded by negotiated or direct procurement.
- Technical specifications often favour certain suppliers.
- Changes to contract conditions are accepted after the award of the contract, which are neither commercially justified nor in accordance with the applicable rules.

Similar shortcomings of the current procurement system have also been identified by TIAC³⁶, who state the following:

- The information access has a lot of loopholes.

36 <http://transparency.am/files/publications/1404845795-1-171267.pdf>

- Almost 45% of e-tenders were cancelled.
- Almost 60% of tenders were done by restrictive methods (single source).
- Inefficient and ineffective complaint system.
- Almost 30% of framework agreements can be considered risky.

All of these issues have an adverse impact on a fair and transparent competitive process and are detrimental to building the required confidence of the market players in the integrity of the contract award process.

In summary, it can generally be said that, with regards to procurement, many recommendations were formally implemented within the past 3 years, e.g.:

- A central procurement policy and advisory body under the MoF has been established.
- There is a centralised Procurement Complaints Review Board, which is formally independent.
- An electronic procurement system has been introduced.

However, whilst these institutions, committees and procedures have been introduced, the practical application of the rules still requires substantial improvements as well as further focus on ensuring the integrity of the procurement processes.

In this context, it should be noted that representatives of the Civil Society, the Donor Community and, to a lesser extent, the Business Community have stated that corruption in general and in procurement in particular is still thriving, e.g.:

- There are monopolies on many imported goods.
- Conflicts of interest between businesses and politicians are widespread. There is even a lack of awareness of the concept of conflict of interest amongst a large number of local and central government officials.
- Technical specifications are targeted to particular suppliers/contractors.
- Project implementation units, including those administering IFI/Donor funded projects, are perceived as being particularly corrupt.

Armenia is partially compliant with the Recommendation 3.5.

New Recommendation 19

- ***Complete the revision and enhancement of the e-procurement system, ensuring that it reflects international best practice, including the electronic processing of every step of the procurement process up to contract award, and extend the mandatory use of the e-procurement system to all public procurement entities;***
- ***Ensure the timely publication of all relevant procurement notifications, data and statistics on the dedicated government procurement website in Armenian and English languages;***
- ***Ensure that procurement co-ordinators and any other procurement staff and procurement consultants receive adequate training (including the practical application of the procurement rules and procedures);***
- ***Introduce additional safeguards (e.g. selective review of tender documents by PSC engineers and/or procurement specialists) to ensure that technical specifications and tender requirements are not biased;***

- **Introduce formal and mandatory declarations of conflicts of interest for all members of the PSC, the Procurement Complaint Review Board, the evaluators of tenders, the heads of procuring entities and any other individuals who are involved in public sector procurement processes. Ensure verification and publication of these declarations, introduce sanctions for violations of conflict of interest declarations;**
- **Reinforce competition in quasi-monopoly/oligopoly sectors;**
- **Significantly reduce the use of single source procurement and of negotiated procedure without notification.**

Access to Information

Previous Recommendation 3.6.

In order to ensure proper implementation of the Law on Freedom of Information, ensure that necessary mechanisms related to keeping records of information and to classification of confidential and otherwise publicly not available information are in place. Ensure that a register is in place for each public institution of all information it holds.

Consider ensuring a mechanism for complaints relating to requests under Freedom of Information Law.

Fully decriminalise defamation in any form by repealing Article 344 of the Criminal Code and by providing that damages to one's reputation can be redressed only through civil proceedings, which should not result in exorbitant monetary sanctions.

Ensure concepts of laws and draft legislation are disseminated to those who will be subject to them and that laws are made public and discussed sufficiently in advance of their entry into force.

Implementation of the Freedom of Information Law

Armenia adopted the Law on Freedom of Information (the FOI Law) in 2003. The Law fully entered into force in January 2004. This very short piece of legislation (containing 15 articles in total) sets fairly good standards in some aspects of freedom of information (such as, short time limits for answering the requests; wide scope of application of the law, covering private entities and budget sponsored organizations; broad definition of the "information"; possibility of oral requests; list of information to be published proactively, etc.).³⁷ At the same time, the Law is quite ambiguous in many parts and would benefit from revision in several aspects.

The Law often refers to the secondary legislation to be developed in order to ensure its implementation.³⁸ Nevertheless, in more than a decade since the adoption of the Law no secondary legislation has been elaborated. Leading non-governmental organization on the freedom of information issues, Freedom of Information Centre of Armenia (FOICA) points out in the replies to the questionnaire that the "secondary legislation necessary for the full implementation of the FOI the Law has never been developed by the Government. This is one of the big problems in the FOI filed". In view of FOICA, this is especially problematic in respect of the e-request of public information: as mentioned during the onsite visit to the monitoring team, there are more than 25 000 e-requests received by various public agencies and they do not know how to deal with them. While the government recognizes that this issue has not been regulated by law, they states that in agencies where electronic document circulation system were introduced, e-requests are

³⁷ Global RTI rating by Centre for Law and Democracy places Armenia's FOI legislation at 31st place http://www.rti-rating.org/country_data.php. In addition, importantly, there is administrative as well as criminal responsibility for violation of FOIA.

³⁸ Articles 5, 9.2, 10,14 etc.

processed in the e-system and in practice replies to e-requests are sent in the manner defined for written correspondence.

Government authorities emphasize that although the legislation related to e-requests has not been sufficiently developed³⁹ this does not hinder in practice the implementation of e-requests. There is a Government portal www.gov.am which allows a citizen to write letters to the Government and track the letter subsequently. The system is unified for all the line ministries governmental agencies and it is technically run by government staff.

In 2013 the FOICA prepared a new draft Law on FOI and presented it to the Parliament.⁴⁰ As FOICA informed during the onsite visit, amendments mainly relate to e-request which is currently not regulated by legislation. Although the answers to the questionnaire mention that the law was developed together with the Parliament of RA, the monitoring team was not made aware of the proposed amendments during the onsite visit. Moreover, the authorities present at the relevant sessions, including the representatives of Parliament or Ministry of Justice were not aware of the draft amendments. Interlocutors informed that the amendments have been included in the agenda of the Parliament but have never been discussed eventually. Government clarified that inclusion of the topic in the agenda of the Parliament has been deferred for one year, this once again points to the fact that Armenia does not prioritize the FOI related issues.

Apart from the need to develop secondary legislation, shortcomings of the Law include the following: the Law fails to provide standards in line with the European Convention on Human Rights and Fundamental Freedoms. In particular, in order the restrictions on the right to information to be compatible with Convention it should be provided by the Law, serve legitimate purpose and be necessary in a democratic society - proportionate to the aim pursued.⁴¹ There are no grounds for extension of time limits to 30 days prescribed in the Law, it only mentions "if additional work is required". One of the grounds for denial is that the information is available online whereas the requester might not have the access to internet or might wish to receive the info in a hard copy.

Apart from underdeveloped legislation, especially the missing secondary legislation, the deficiencies in implementation of relevant regulations in practice are also evident. Regrettably, the Government does not analyse the state of affairs in the field of FOI. Answers to the questionnaire provided by the authorities refer to the regular analysis done by FOICA. After the on-site visit the government further clarified that according to the Decree of the President NH-174-N of 18 July 2007 each state structure quarterly submits to the Government Staff the summed up information on the applications, appeals received from the citizens. However it is not clear at all how this analysis is used by the Government to take necessary measures in the field. Neither does the Government collect statistics on FOI implementation contrary to the requirement of the Law (article 13).

Unsatisfactory level of enforcement of access to information provisions can be seen from the data provided by FOICA. In 2013, FOICA conducted the assessment *Request Statistics and Judicial Practices*.⁴² Statistics in a nutshell are the following: "87 requests (42.9%) – timely and complete responses, 41 requests (20.2%) – late, but complete responses, 13 requests (6.4%) – substantiated responses with redirecting references, 21

³⁹ Namely, the Law on Electronic Signature from 14.12.2004 and Governmental Decision N1595 from 4.8.2005 On circulation of electronic documents in government bodies.

⁴⁰ Available in Armenian only: <http://parliament.am/drafts.php?sel=showdraft&DraftID=32761->

⁴¹ European Convention on Human Rights and Fundamental Freedoms, Article 10. For detailed overview see: Freedom of Expression in Europe, Case-Law Concerning Article 10 of the European Convention on Human Rights, Human Rights Files, No.18, Council of Europe Publishing, Updated Edition, March 2007.

⁴² <http://foi.am/en/research/item/1352/>

requests (10.3%) – incomplete responses, 8 requests (3.9%) – unsubstantiated response, 16 requests (7.9%) – groundless refusal, 17 requests (8.4%) – silent refusals.”

Armenian authorities contest this assessment indicating that the FOICA’s given report cannot be generalized as it does not have sufficiently representative nature (only 203 requests were reviewed and analyzed).

It is pointed out in the report that: “Although the Republic of Armenia Law on Freedom of Information is in effect for about decade and the practices of its application tend to improve, however, the silent refusals to respond and incomplete, flawed responses still continue to remain a considerable problem.”

There is certain positive trend that can be seen from the statistics nevertheless: the number of silent refusals has dropped significantly over the last few years. For instance, in 2011 22% of FOICA requests remained unanswered, whereas in 2012 this percentage declined to 15% and in 2013 it dropped further down to 8%. Between 2011 and 2013 there has been an almost three-fold decrease of silent refusals. However, the decline in number of silent refusals was substituted by an increase in the number of mostly incomplete or uncorroborated responses and groundless refusals. The percentage of incomplete responses in 2013 has increased 10 times as compared to that of 2011, with groundless refusals and unsubstantiated responses increasing four times and twice, respectively – according to the report.

FOICA concludes that: “it means that in the past the officials tended to avoid providing information that could have shown themselves or their institution at a disadvantage, and left the information requests unanswered. Currently, in response to “problematic” information requests the officials prefer to provide incomplete, evasive and unessential answers, rather than leaving them unanswered at all.” It is further noted that “In this respect, the percentage of complete responses almost did not change: in 2013, 2012 and 2011 the percentages were 63%, 65% and 69%, respectively. The combined percentage of substantiated refusals and responses with redirecting references essentially did not change either, with 6% in 2013, and 5% in both 2011 and 2010.”

Transparency International Armenian Chapter (TIAC) regarding FOI implementation in the replies to the questionnaire draws the similar conclusions: “oftentimes the answers provided by institutions are irrelevant and incomplete. They seem to be responding in order “to tick the box”, while are not interested in providing a high-quality content.”

According to FOICA, key problem in the freedom of information (FOI) field in Armenia is the “lack of culture to work openly and transparently.” As to the specific areas that remain challenging, these are:

- Violation of time limits for responding the requests.
- Incomplete or inaccurate responses.
- Unlawful, among them, silent denials of information – significant amount of requests (1/3) are not even replied by Armenian authorities as pointed out by FOICA; according to TIAC information about private entities is often denied, like information about lease of public parks to private companies, taxes paid by mining companies, about owners of joint stock companies.
- Lack of appropriate appeals mechanism.
- Lack of regulations of e-request of FOI.

Additional deficiencies of implementation can also be observed, such as article 13 of the Law being not implemented by the most of the Government agencies. Apparently, there are no FOI officers appointed who would be responsible for dealing with FOI requests in every public agency contrary to the clear and direct requirement of the Law. The authorities informed that in September 2014 the Prime Minister instructed the agencies to appoint FOI officers and publish their contact information on their websites. No information was provided whether this requirement of the law followed by instruction of the Prime Minister has been

implemented by the agencies. Monitoring report by FOICA points out that these persons are not appointed in many agencies.⁴³ Additionally, although one of the strengths of Freedom of Information Law of Armenia is considered to be its wide scope of application covering the private entities as well, implementation of this provision in practice is very poor, as the monitoring team was informed. The information about those private entities is most of the times not accessible. As pointed out by TIAC in the replies to the questionnaire, information about the private entities or the entities using public resources is not transparent at all.

Second round monitoring report refers to the special software through which the citizens can track requests for information to specific public officers. No information was provided either in the answers to the questionnaire or during the onsite to the monitoring team. According to information provided by the government after the on-site visit, the system of control over the applications of the citizens involves an electronic system where citizens may write a letter to Government at <https://www.e-gov.am/en/> and they receive an electronic code which allows them to track the processing of the letter by the state administration.

It is obvious that the authorities themselves are aware of and acknowledge the existence of above mentioned problems in the FOI area, however, it is much less clear either from the answers to the questionnaire or the meetings with the authorities, what the exact plans and intentions of the Government are in order to address the existing problems. Replies to the questionnaire provided by the authorities stress out that: "There are numerous issues in the field of realisation of the right to freedom of information that may result in certain difficulties as regards search and receipt of information by the representatives of the society. In particular, in certain cases the representatives of the society do not have enough information on who is the holder of information, and they refer to non-competent state bodies; in some cases, difficulties are also observed as regards the issue of making a decision by state bodies on considering particular information as publicly available or not; in other cases the requirements for providing information to seekers of information within the terms set by law are not met, etc. Access to internet and computer is also a problem. This refers mainly to rural communities."

Regrettably, the monitoring team could not meet the relevant persons either from the Ministry of Justice or elsewhere who could have provided up-to-date information about the progress made or the next steps planned in the field of FOI.

In the comments to the draft report, the Government informed the monitoring team that in July 2014, analysis of execution of Article 13 of the Law was carried out and the Government Staff instructed state bodies to appoint responsible entities. The Government drafted and submitted to the National Assembly the Law "On Personal Data" which will regulate the relations concerning protection and circulation of the personal data. The monitoring team welcomed these new developments, but noted that they do not address the recommendation.

Based on the above, it can be concluded that the situation of FOI in Armenia is a result of the low priority Government attaches to the issues of FOI and/or non-existence of a separate dedicated body, which would ensure further development of legislation, where necessary, and proper implementation of the regulations in practice.

Armenia has partially implemented this part of the recommendation.

⁴³ http://foi.am/u_files/file/Eng_monitoring.pdf, p. 35.

Classification of information

The second round monitoring report recommended Armenia to ensure that necessary mechanisms for classification of confidential and otherwise publicly not available information are in place.

Classified information among them, state or trade secrets is among the exemptions to the right of access to information listed by the Freedom of Information Law of Armenia. While this is the typical exemption across the different countries, international standards require that it needs to be accompanied with the specific safeguards. In particular, firstly, it is important that clear regulations are in place for classification of information, including criteria and authority with the right to classify information in order to ensure that the right to information is only restricted when objective grounds are present. In addition, there should be the mechanism for declassification of information, when the legitimate grounds for making it secret are not present any more. Moreover, decision to grant access or not on already classified information should be taken on a case-by-case basis upon the request of classified information using the so-called public interest test versus harm test.⁴⁴ This is the common standard in the progressive laws on FOI across the countries.⁴⁵ Contrary to this principle, the legislation of Armenia provides for blunt denial if the information is classified.

Answers to the questionnaire mention that, “as information is provided by the holder of information, he or she is the one to decide whether the relevant information may or may not be provided; whether it is or is not considered to be confidential information.” After the on-site visit, the government further noted that according to Article 8 of the Law "On Freedom of Information", provision of information may not be refused where: 1) it concerns the states of emergency threatening the security and health of citizens, also the natural disasters (including the officially anticipated ones) and their aftermath; 2) it gives the picture of the overall condition of the economy of the Republic of Armenia as well as the real situation in the fields of protection of nature and the environment, health care, education, agriculture, trade, culture; 3) non-provision will have negative impact on implementation of state programmes on social and economic, scientific and technical and spiritual and cultural development of the Republic of Armenia. There is no reference to the public interest test for making decision whether to grant access or not to the classified information, rather legislation allows for the exemptions for classified documents without the possibility to reconsider based on the public interest test whether the information can be opened in response to the request or not.

No further information was provided during the onsite visit regarding how information is being classified as confidential or restricted, what criteria are being used, and what institution/unit is responsible for conducting such classification. The monitoring team rather was told that as this is the classified information, guidelines on classification are classified as well.⁴⁶

After the on-site visit, the government noted that the Law on State Secret regulates the relations concerning the state secret; and the draft Law “On Personal Data”, which was prepared by the Ministry of Justice, approved by the Government and submitted to the National Assembly, will regulate classification and circulation of personal data. According to FOICA, Laws on State Secret and Civil Code address classification of information, but the criteria for classification are vague; there are also problems with declassification of information; very few documents are being declassified by the authorities. However, the Government noted that in practice there were cases of declassification of information in the defense sector.

⁴⁴ Relevant parts of the second round monitoring report refer to this test. See p. 64.

⁴⁵ A Model Freedom of Information Law, Part IV, Exceptions, para 22. Public Interest Override

⁴⁶ During the bi-lateral consultations, the Government noted that on 6 March 2012 Constitutional Court of Armenia considered a case related to classification of information as secret and decided that lists which classify information as secret are not secret and should be publicly open. However, the monitoring team didn't have an opportunity to review this decision.

Accordingly, based on the information provided to the monitoring team, it can be concluded that Armenia is partially compliant with this part of the recommendation.

Records keeping and registries of public information

Article 5 of the Law provides for the obligation to develop regulations on recording, classification and maintenance of the information. In order to ensure the implementation of this provision in practice, Armenia was recommended during the second round monitoring to put in place necessary mechanisms related to keeping records of information as well as each public institution develop a register of all information it holds.

During the onsite visit the monitoring team was informed that regulations on records keeping exist. However, relevant information was not provided. Neither was the monitoring team able to see the existing regulations on records keeping of public information. At the bilateral meetings authorities explained that relevant rules are provided for in the Law on Archives of Armenia adopted on 8 June, 2004. However, monitoring team was not provided with the relevant legislation and thus it was unable to conclude to what extent the law has resolved the issues raised in the second round monitoring report.

Answers to the questionnaire refer to two solutions in this regard. Firstly, the Law “On personal data” regulates the maintaining the personal database, except for the state and local self-government bodies, state or municipal institutions; establish the regulation for the maintenance of the database” Secondly, there are several state registration bodies that maintain their own data registers, including: Register of Movable and Immovable Property; Register of Rights to Motor Vehicles; State Register of Legal Entities; Register of Agricultural Machinery; Register of Intellectual Property Rights; Cadastre of road construction, route and water transportation means; Registry of Rights to Aircrafts.

However, these are the specific cases where databases have been developed as a part of the services to be delivered by relevant entities. These databases shall be distinguished from the register of all public information that an agency holds and that was recommended to Armenia as a part of the second round monitoring.

After the on-site visit, the Government informed the monitoring team that the Law “On Archive Keeping” regulates legal relations related to replenishment, registration, maintenance, use of the archives collection and other archival documents (irrespective of the right of ownership thereto), and the legal relations related to the archive keeping. However, the monitoring team was not provided with this law and was not in a position to assess if its provisions are sufficient for the implementation in practice of FOI Article 5 requirements.

FOICA points out that the websites and archives are the main mechanisms of keeping information in state or self-government bodies. They are playing the role of registers. As interlocutors informed during the onsite, registries for public information do not exist, “they do not even know what information they possess and how to find the proper document” – it was underlined.

The monitoring team is not in the position to assess progress under this part of the recommendation due to the fact that it was provided with this information only at the plenary meeting and couldn’t review it.

Oversight body

Armenia was recommended as a part of the second round monitoring to consider ensuring a mechanism for complaints relating to requests under the Law on Freedom of Information.

Lack of supervisory authority is named as one of the major problems in the field of FOI in Armenia. It is underlined that the courts are not efficient at all in dealing with FOI appeals. The monitoring team was informed during the onsite that as an example, one case lasted for 5 years. Referring to its own experience TIAC points out that “Actual complaint proceedings oftentimes take an unreasonably long time and by the time of availability lose their importance.”⁴⁷

Local NGOs are advocating for establishment of an independent supervisory body. Regrettably, general spirit among the NGOs though is that the Government does not take their recommendations seriously. FOICA addressed the Government with this issue several times. They also proposed to include it as one of the commitments in the Open Government Partnership (OGP) action plan but with no success or support from the Government.

It seems that there has been the consideration of the introduction of a supervisory authority during the discussions of the draft OGP Action Plan for 2014-2015. As FOICA informed at that time the PDO was against such an initiative. The Government rejected the recommendation to put this commitment in the OGP Action Plan and one of the arguments put forward was lack of resources for the new institution. Authorities were not in a position to provide details about the discussions held on the topic.

Government reported that it has started contemplating which agency should be performing supervisory functions. According to the answers to the questionnaire, the Ministry of Justice has taken actions to study the institutes functioning in other countries in the field of freedom of information, such as the institute of the Commissioner for Freedom of Information. FOICA informed that they contributed to the research significantly. No further information was provided neither had the monitoring team chance to meet with the authorities that would give information regarding the plans on this issue.

The complaint mechanism currently consists of the two main avenues: 1) administrative complaint to head of administrative agency/superior administrative agency; 2) complaint in court in accordance with procedure set by the Administrative Procedure Code. The Law states “Rejection to provide information may be appealed before the authorised public administration body or the court”. The answers to the questionnaire further refer to the Constitution, which states, “Everyone shall have the right to receive — on the grounds and as prescribed by law — the assistance of the Human Rights Defender for the protection of his or her rights and freedoms.”

The Public Defender’s Office (PDO) is responsible for monitoring implementation of the Freedom of Information legislation within its general mandate of overseeing human rights. However, PDO has no proper resources to perform this role and its mandate is rather general and diffused. Also PDO’s powers are generally weak – he can just submit recommendations to public agencies and can neither issue mandatory instructions, nor apply sanctions to non-complying public officials or engage in mediation.

The fact that PDO is not in a position to serve as a supervisory body on the issues of FOI is clear if one looks at the 2013 report by PDO. 128 pages long report of 2013 dedicates only one paragraph to the issues of FOI citing only FOICA’s report “Problems were identified in the sphere of ensuring freedom of information. “Freedom of Information Centre” NGO in 2013 presented 203 queries to different bodies disposing information with the aim to receive information. On the basis of the conducted surveys, the silent rejections, as well as incomplete answers were identified as the main issues of freedom of information. It was recorded by the annual report that even though the main problem still remains the lack of public and transparent working style in state bodies, the problems changed in the process of providing information. In comparison with 2011, the number of silent rejections decreased in 2013 by about 3 times. However, the number of silent rejections was reduced mostly being replaced by incomplete or unjustified responses or unreasonable rejections. In comparison with 2011, the number of incomplete responses increased ten times

⁴⁷ Statistics on complaints are available on: <http://foi.am/en/all-cases>.

in 2013, the number of unjustified rejections 4 times, the number of unjustified responses 2 times. In the sphere of freedom of information another main problem is the violation of periods of providing information.”⁴⁸

During the onsite the representatives of the PDO informed that the PD is not against instituting the new mechanism. They confirmed that currently they do not have sufficient resources or powers to implement the oversight functions on FOI.

It is an established international good practice that oversight over FOI enforcement should be vested with an independent public authority.⁴⁹ Main options in designating such institution are to set up a separate commission (or position of a commissioner) or to refer this mandate to the Ombudsman. In a number of countries in Europe Ombudsman is in charge of overseeing access to information (*e.g.* in Croatia, Denmark, Greece, Norway, Spain, Sweden). However, it is acknowledged that Ombudsman institution often lacks necessary powers and resources to be an effective oversight body. For example, it usually may only issue recommendations and may not order disclosure of information and override an administrative body's decision. Therefore the global trend is towards separate information commissioners or commissions.

In some countries (*e.g.* Estonia, Ireland, Germany, Latvia, Serbia, Slovenia, Switzerland, and the United Kingdom) there is a dedicated information commissioner, who is merged with the data protection authority. Such approach may appear at first glance unnatural, because two mandates protect seemingly opposing interests (protection of private information from disclosure on the one hand and ensuring maximum accessibility of information held by public entities on the other). However, it allows creating a beneficial symbiosis and effective mechanism to solve one of the main problems of data protection and access to information enforcement – finding a right balance when the right to privacy and the right to information come in conflict and deciding where the public interest lies. It also allows focusing resources in one institution and is therefore more viable economically.

It is recommended that Armenia pursue the idea of setting up a dedicated institution dealing with access to information enforcement – an independent commission or commissioner. Such authority should be vested with sufficient powers to enforce access to information legislation, in particular to obtain access to any information held by public entities, including classified one, to issue binding decisions with regard to access to information and impose sanctions for non-compliance (directly or through court).

At the same time, practical actions are to be taken for designation of the officials in charge of ensuring FOI in various state bodies, for which the legal ground is provided in article 13 of the Law. After the on-site visit, the Government informed the monitoring team that measures has been taken in this regard, but the team was not in a position to verify if officials were designed in all bodies.

Regrettably, monitoring team was not able to get the answers to the most of the questions on the issue from the authorities present at the relevant panel, however, assuming that the discussions on the introduction of a complaint mechanism took place and if this is supported by relevant evidence. Ministry of Justice later informed that in July-August Ministry had discussions with FOICA on this issue and prepared research of best international practice in this regard. Although there is no further information provided when and to what extent this issue was put for discussions or consideration among the stakeholders. It can be concluded that Armenia has partially complied with this part of the recommendation.

⁴⁸ PDO Report, 2013, p. 79.

⁴⁹ For overview of enforcement models see for example: Laura Neuman, Enforcement Models: Content and Context, World Bank Institute, 2009, available at: <http://siteresources.worldbank.org/EXTGOVACC/Resources/LNEumanATI.pdf>.

Proactive publication of public information

The Law obliges the entities covered by its scope to publish certain information online proactively. Article 7 contains 13 categories of information that should be proactively published by those entities. At the same time, the law includes a reservation that the authorities may decide without referring to any grounds not to publicise certain categories of information out of those 13 categories, for example, budget, vacancies etc. This is an undue limitation on proactive publication of information, which has to be remedied on the legislative level as a matter of priority. After the on-site visit, the Government informed the monitoring team that it adopted the Decision N 1521-N whereby the minimum requirements with regard to the official websites of state bodies on the Internet were approved. The monitoring team was not provided a copy of this decision, and was not in a position to assess how this decision has contributed to the improvement of the situation.

More problematic, however, is the implementation of this obligation in practice. FOICA among other things assessed the status of implementation of proactive publication of public information by state agencies. Main conclusion of the report is that the agencies do not publish information proactively in most cases.⁵⁰ As the interlocutors informed the publication process is going very slow. One of the business sector representatives noted that ‘There is a general lack of publication of information on rules and regulations. The changes of the rules are not communicated to the users in advance and properly. Basic, but customer friendly ... information in the different state agencies, such as customs, real estate cadastre, and notaries would be helpful’.

Defamation

According to the article 1 of the Law “On making amendments to the Criminal Code of the Republic of Armenia” of 18 May 2010, Articles 135 and 136 of the Criminal Code are repealed. Damages to one’s reputation can be redressed under to Article 1087.1 of the Civil Code. Sanction for insult range from apologies to a compensation in the amount of 1000-fold of the defined minimum salary; for slander a compensation up to a compensation in the amount of 2000-fold of the defined minimum salary. Thus, Armenia has fully complied with this part of the recommendation. However, according to the civil society, monetary sanctions are very high; the media outlets were obliged by court to pay very large fines, which may create a practical obstacle for investigative journalism.

Public consultations and transparency of legislative process

In the second round monitoring Armenia was recommended to ensure that the concepts of laws and draft legislation are disseminated to those who will be subject to them and that laws are made public and discussed sufficiently in advance of their entry into force.

The Law on Legal Acts regulates public consultations and prescribes the relevant obligations for state agencies. According to the law: “body elaborating the draft shall, alongside with the submission of the draft regulatory legal act to impact assessors, arrange public consultations on the draft, the aim of which is to notify natural and legal persons on the draft regulatory legal act, as well as to collect their opinions and to carry out the necessary adaptation works of the draft regulatory legal act based thereon.”

The authorities stress out that the draft laws are mainly published on the websites of the body elaborating them; consultations may be carried out through public meetings, open hearings, discussions, public opinion surveys, as well as electronic tools. The period of public consultations is at least 15 days. As suggested by

⁵⁰ <http://foi.am/en/research/item/895/>

the replies to the questionnaire, “if the submitted proposals appear to be justified, they are accepted by competent authorities and are taken into consideration in the process of further elaboration of the draft.” Moreover, besides the websites of the Ministries, any draft prior to being discussed in the Sitting of the Government, are also posted on the website of the Government.

Authorities in addition report that public consultations are always held – every draft law that is developed undergoes this process. According to the representatives of Parliament, the public hearings are conducted on the high profile legislation, the decision to conduct hearing or not is made by the factions. One of the examples when the public hearing was conducted is the Law on Cumulative Social Pensions adopted in 2013.

Website of the Ministry of Justice includes the banner for publicizing draft laws. Every draft of the Ministry of Justice is made available on the website. There is a public comments module attached to the webpage which can be used by everyone who enters the webpage. While this is a very progressive and commendable initiative, apparently little is known to the public about it. One of the most active NGOs, FOICA was not aware that such a possibility exists. Authorities are thus encouraged to raise awareness on this and similar initiatives in order for the public to be able to use opportunities available for them to the fullest possible extent. No information was provided though what the mechanism of analysing the comments and including relevant suggestions in the proposed legislation is, which is indeed not an easy task that requires substantial resources if implemented properly.

Against this information, inputs from NGOs point to the very low level of enforcement of the relevant legislation on transparency of legislative process and public engagement. As stated by TIAC in the replies to the questionnaire, “not all ministries put the draft laws on their websites and oftentimes the public learns about the upcoming draft laws right before the government sessions at which they are adopted.” Authorities however, disagree, they believe that this requirement of the law is fully implemented by government and there are not particular examples given by TIAC that would substantiate their observation. TIAC also informed that development of a centralized system of draft legislation was proposed by TIAC and included in the Draft Open Government Partnership Armenia’s 2014-2016 Action Plan. This is a very good development and authorities are encouraged to move further with the implementation of this commitment.

According to TIAC, “in practice the procedure for arranging and carrying out public consultations, established by the government decree N296-N 25.03.2010 does not work and there is no any coordination/supervision/liability for that either.”

Furthermore, TIAC points out that the most of the socially sensitive decisions are made without public consultations. Examples include the Law on Benefits for Temporary Unemployment (2010), Law on Circulation Tax (2012), Law on Amendments and Changes in Law on License Fees (2012), Law on Cumulative Social Pensions (2013), and Law on Environmental Impact Assessment (2014).

As concerns the concepts of legislation, nothing is provided for in the relevant regulations in this regard. Authorities informed during the onsite that Government created various Reform Councils to allow regular forums for business community and non-governmental sector on a number of reform initiatives. Almost every Ministry has created Public Councils with the participation of CSOs to allow for discussion on new ideas of reforms. Among them are Inspections Reform Coordination Council, Tax Reform Council, Small and Medium-Sized Enterprises Development Council, and others.⁵¹ Public Councils are regular forums for NGOs as pointed out by the Deputy Minister of Justice during the onsite visit.

⁵¹ Consultative process is described further in this report: See rec. 3.6.

However, NGO and even the donor community are sceptical about Public Councils, business community pointed out that their participation is not a usual process, however, and some good experiences have been underlined as well.

TIAC points out that “one of such “good” experiences of non-governmental engagement in legal drafting was related to the Law on Environmental Impact Assessment (EIA). According to TIAC, a draft law was developed by the Ministry of Nature Protection with active engagement of members of civil society, including TIAC. However, as TIAC points out “here again, along with successful cooperation there were some problems, as the draft law was submitted to the parliament earlier than it was actually ready and the promised parliamentary hearings were not held. Eventually the law was adopted within 24 hours at an extraordinary session to meet the World Bank’s conditionality for the provision of Armenia’s budget support loan. After the adoption of the law and its publication, NGOs learned that the text of the law was confidentially changed before the readings and hence the adopted law is radically different from the draft submitted by the government to the parliament and provides advantages for the EIA of certain types of economic activities.”

Against this background there are good examples of cooperation with civil society/general public in the legislative process. For example, cooperation in the framework of the Inspection Reform Coordination Council, which includes the private sector and NGO representatives, Small and Medium-Sized Enterprise Development Council and Tax Reform Council, which has only met once so far though. It is indeed a good practice to ensure participation of those affected by the law in the process of its development. Additionally it is apparent that there is a demand for it in the Armenian society. Both NGOs and business community expressed their willingness to work together with the Government on various policy initiatives. Government is strongly encouraged to continue and further intensify this good practice. It is important that Government makes further efforts to overcome the prevailing criticism that exists among the NGOs and business community as to their roles and real opportunities for their participation in the development of policy initiatives.

Conclusions

Access to information right has not been properly enforced in Armenia, as shown by the independent NGOs monitoring. Besides some efforts mainly stimulated by FOICA within the Open Government Partnership, and the preparation of the new Law “On Personal Data”, no new measures were undertaken to promote enforcement and improve state oversight in this area. Draft law elaborated by FOICA was not advanced in the Parliament neither have been the CSOs recommendations on instituting the independent supervisory mechanism have been taken on board. Mandatory proactive publication of information is not implemented in practice properly. There is a legislative gap in terms of electronic information requests.

Public Defender’s Office currently cannot be seen as an effective oversight institution for enforcement of FOI provisions – it lacks necessary powers and specific focus on FOI work. Setting up an effective and independent supervising authority should be an important part of the reform. It could be a separate institution or together with Data Protection Authority as supported by CSOs.

Government reported about some initial steps to start contemplating over establishment of a much needed supervisory authority, however, it seems that this recommendation has not been ultimately favoured by relevant authorities. It is important that not only further discussions take place in this regard but also actual steps are made which can help improve the level of implementation of FOI in Armenia.

At the same time, Armenian access to information legislative provisions would benefit from revision in order to increase compliance with international standards. The secondary legislation referred to in the law has to

be developed as a matter of priority. It is important to ensure implementation of proactive publication in practice preferably through unified system. Basic rules on filing and processing of e-requests should be established in the law to ensure uniform practice and easy access for requesters.

Finally and perhaps most importantly, awareness needs to be raised among the civil servants in order to foster the culture of openness and transparency in public administration.

Armenia is partially compliant with the recommendation 3.6.

New Recommendation 20

- **Analyze and subsequently review the FOI Law to bring it in line with international standards, in order to ensure clarity of existing regulations and eliminate existing shortcomings, among other issues reflect the public interest test and e-requests; adopt necessary secondary legislation for implementation of FOI**
- **Ensure proactive publication of information by state bodies, clarify records management and classification system and introduce the registries of public information in state bodies; consider establishing a unified portal for proactive publication of information;**
- **Ensure efficient supervision and oversight of enforcement of the right of access to information as well as adequate powers and resources to issue binding decisions, and ensure designation of FOI officers in each agency as required by article 13 of the Law**
- **Raise awareness of public officials to foster the culture of openness and transparency in Government and carry out systematic training of information officers and of other public officials dealing with access to information issues**
- **Ensure implementation in practice of the provisions related to transparency of the entities using public resources (article 1.2 of the Law)**

Political Corruption

Previous Recommendation 3.7.

Ensure that political parties disclose their financial data, including in-kind donations, assets, goods and services bought or rented under market prices, bank loans and contracts with foundations, associations and other bodies related to them.

Ensure adequate number of permanent staff of the Central Electoral Commission and its Control and Verification Service⁵², and guarantee that the nominations are based on merits, qualification, experience and political independence.

Ensure effective coordination between the Central Electoral Commission and the Chamber of Control to try to identify possible corruption risks of use of public procurement in financing political parties.

Ensure that new conflict of interest rules for political officials set by the Law on Public Service are enforced and all the relevant data is disclosed.

⁵² Different translations of the name of this entity can be found in different sources. For example, both GRECO and EU Project publication use the term "Oversight and Audit Service"; translation of its Statutory Regulation provided by the Government of Armenia uses the term "Control Audit Service". To ensure consistency of terminology with the second round of monitoring, the third round of monitoring report continues to use the term "Control and Verification Service".

Consider improving transparency in the relationship between politicians and business by disclosing the agenda and the register of visits of Members of the Parliament and high-ranking officials.

At the time when the second round of IAP monitoring of Armenia was being finalised new Electoral Code was adopted on 26 May 2011 and entered into force on 26 June 2011. After adoption of the IAP second round report amendments to the Law on Political Parties were adopted on 9 February 2012 and entered into force on 17 March 2012. These changes set new legal framework in the area covered by recommendation 3.7.

Disclosure of financial data by political parties

According to the replies to the questionnaire provided by Armenian authorities a number of substantive changes were introduced into the Law on Political Parties and to some extent helped address Recommendation 3.7. The text of the amended law however was not made available to the monitoring team.

The monitoring team nevertheless was able to clarify some elements of these changes through various other sources. For example, information provided by Armenian authorities to GRECO⁵³ in the context of implementation of the recommendation (ii)⁵⁴, which partially coincides with the first element of Recommendation 3.7, helped clarify that according to the new Electoral Code “if the goods and services are delivered at a price below their market value, or were acquired prior to the opening of the pre-election fund, then they shall be incorporated in the pre-election fund expenses at market value.” ... and that “Central Electoral Commission, in its decision of 16 February 2012 “on official clarification aimed at the elimination of ambiguous interpretation of Article 26 of the Electoral Code”, stated that goods and services which were obtained free of charge are also subject to declaration and oversight of the Central Electoral Commission, as defined by the Electoral Code.”⁵⁵

During the on-site visit this was confirmed by the representatives of the CEC. However, when asked regarding disclosure of information on the bank loans and contracts with foundations, associations and other bodies related to them most interlocutors hesitated and were not sure whether such information has to be disclosed. No relevant legal provisions were provided to the monitoring team in this regard, therefore, this element of the recommendation remains unaddressed.

According to Article 27 of the Electoral Code all political parties are required to submit a financial statement to the Control and Verification Service (CVS) of the CEC on the 10th and 20th days after the launch of the election campaign, as well as 3 days before the deadline for the official announcement of the election results. In addition, according to the final report of the EU Project “Situation Analyses of public sector corruption in Armenia” (EU project report) published in June 2013, CEC adopted a decision on 5 October 2012 further elaborating on the procedure and format for such reporting.

To assess implementation of these requirements in practice, the monitoring team relied on assessment of the latest Parliamentary elections held in May 2012 made by the OSCE Office for Democratic Institutions

⁵³ See GRECO’s compliance report on its third round Evaluation Report on Armenia on transparency of party funding adopted in December 2012.

⁵⁴ GRECO recommended to ensure that donations in kind to political parties and election candidates (other than voluntary work from non-professionals), as well as goods and services offered at a discounted price, are accounted for at their commercial value and included in the declarations on election campaign finances.

⁵⁵ GRECO’s compliance report on its third round Evaluation Report on Armenia on transparency of party funding adopted in December 2012.

and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP).

According to their joint Statement of Preliminary Findings and Conclusions “the new Electoral Code has strengthened campaign finance rules. However, two main concerns remain: limited independence of the Oversight and Audit Service⁵⁶ from the CEC, and a narrow legal definition of campaign expenditures. Some 12 majoritarian candidates did not open special campaign accounts, and 1 reported no expenditures prior to Election Day. All other candidates reported to the Audit Service of the CEC, and their reports were publicized in a timely manner. Up to Election Day, no campaign finance violations were identified by the CEC.”⁵⁷

Central Electoral Commission

CEC has a permanent staff of 51 civil servants, with various levels of seniority. The selection of staff is made based on the Law on Civil Service through open competitions and in the out-of-competition procedure. This would bring Armenia in compliance with this element of the Recommendation.

However, as it was rightly pointed out by the representatives of the Civil Society of Armenia the nominations of the CEC members based on merits, qualification, experience and political independence would play an even more important role in the context of anti-corruption, since they make decisions on electoral processes.

All 7 members of CEC are appointed for a six-year term by the President. Three of them are appointed upon the nomination of the Ombudsman; two - upon the nomination of the Chair of the Court of Cassation; and another two – upon the nomination of the Chair of the Chamber of Advocates. The EU project report points out that “many observing and monitoring organisations argue that the CEC is not truly independent.” All of its members are appointed by the President and the public perception of the nominating institutions is that they all strongly depend on the executive branch.⁵⁸ Armenian authorities however pointed out that Venice commission and ODIHR issued a joint opinion on electoral code of Armenia, including the appointment process and regarded stating that it is conformity with international standards

Control and Verification Service

At the time of the adoption of the 2nd round of IAP monitoring report a permanent Control and Verification Service (CVS) was established by the CEC decree of 11 August 2011. This service does not form part of the CEC and is composed of the Head and two civil servants, and can hire up to five contract employees for a one month period in case of necessity during elections. In addition, during election campaigns, each parliamentary group within the National Assembly appoints one qualified auditor, who assists the service on a voluntary basis until the fifth day after publication of the election results. The members of the CEC, as well as the Head of the CVS, cannot be members of a political party. The other civil servants employed by the Service are submitted to the principle of political restraint, which means that they cannot use their position in the interest of political parties. Their appointment is made according to the Law on Civil Service.

The monitoring team was alerted and subsequently looked into two issues in regard to the CVS:

- (i) its limited independence from the CEC (this issue is covered in the section on political party disclosures);
- (ii) limitations of its mandate overall, as well as limited capacity to implement even those functions that

⁵⁶ Aka CVS.

⁵⁷ See http://www.coe.am/docs/parliamentary_elections_2012.pdf.

⁵⁸ Insert citation to EU report

it already has.

The CVS according to its Regulation adopted by the CEC on 11 August 2011 is responsible for:

- overseeing the use of resources allocated to the electoral commissions and CEC staff;
- overseeing deposits to pre-election funds of candidates, parties and party blocs, their registration and expenditures;
- overseeing on-going financial activities of the political parties;
- checking deposits to pre-election funds of candidates, parties, party blocs and declarations on their use; and
- studying and compiling resolutions on use of resources allocated to the CEC, Electoral Commissions and CEC staff deposits to pre-election funds, their registration, expenditures and ongoing financial activities of political parties.

Within two days of receipt of the financial declarations by the parties and candidates the CVS is obliged to check them and draw up a statement which is presented to the CEC for discussion. Following such discussions the statement is made public on the CEC website. The CVS, among other things can obtain information, references, copies of the documents from the banks on the temporary “pre-election campaign” accounts, on membership fees paid to the party, donations, financial resources obtained from civil deals, etc. It can then use cross-check this information with what was submitted in the declaration.

According to the information provided to the monitoring team by the Civil Society representatives in Armenia the capacities of the CVS proved to be too limited to properly carry out their functions in practice. For example, as revealed by TIAC monitoring during the elections the CVS was only receiving reports from political parties’ and candidates’ pre-election funds authorized persons and simply checking their timely submission, as well as finding those parties or candidates, who were not opening or submitting such reports. It was not conducting any verification of pre-election funds incomes and expenditures. This becomes an even more serious problem with the adoption of the current Electoral Code, according to Article 28 of which, the CVS is currently also responsible for overseeing the ongoing financial activities of political parties.

Coordination between Central Electoral Commission and Chamber of Control

In the answers to the questionnaire Armenian authorities state that cooperation between the two entities is regulated by law and assured the monitoring team during the on-site visit that the cooperation is effective.

In the opinion of the civil society representatives of Armenia the size of public funding (from state budget) to political parties (and only those parties receive funding from state budget, which have factions in the National Assembly) is very small and it hardly is in the focus of the Chamber of Control. They informed the monitoring team that at least until now the Chamber of Control never has audited those funds (see the CoC website – www.coc.am).

Enforcement of conflict of interest rules for political officials

In responses to the questionnaire provided by Armenian authorities they only cite the legal norms. No information regarding actual practical implementation of these norms was provided to the monitoring team before or during the on-site visit.

The civil society representatives shared their concerns regarding regulations of the conflict of interest for political officials within the Law on Public Service. Namely, they identified the following deficiencies:

- (i) limitation of the circle of related persons to spouses and children sharing the households, which does not reflect the realities of the kinships and close relationships in the Armenian society and how those translate into relationships between business and politics;
- (ii) absence of reporting mechanisms for those public servants that do not have supervisors; and finally
- (iii) lack of sanctions for violation of these norms.

They also pointed out that the Law leaves it to the discretion of the Parliament to adopt or not to adopt regulations for conflict of interest of MPs; however, it was also recognised that such regulations have been introduced within the Law on Procedures of the National Assembly.

In May 2012, a special body for ensuring integrity of MPs was established by the National Assembly – the Ethics Committee at the National Assembly. It is a temporary body which does not have a set number of members, with each party having a right to nominate at least one MP. Chairperson and Vice-Chairperson represent largest opposition and non-opposition parties and are appointed by the Speaker of the National Assembly. The Committee has its own secretariat with the staff of 3. Its temporary character means that it is formed every time when the National Assembly starts a new session and functions until the next session.

Competences of the Committee are stipulated in the Article 24.2 of the Law on rules of procedure. The Committee can adopt two types of decisions on (i) violations of rules of ethics by MPs and (ii) failure by MPs to make statements of conflict of interests; and three types of conclusions: (i) on violations of incompatibility provisions by the MPs, (ii) on compatibility and (iii) on the need to make a statement on conflict of interests.

Anybody can submit application to the Committee concerning violations of rules of ethics, failures to make statements on conflict of interests by MPs or breach of incompatibility provision of Armenian Constitution. Once application is received, the Chairman has 10 days to conduct a preliminary investigation and present his conclusions at the meeting of the Committee on whether there are grounds to deny investigation of the application. The decision is voted for by the members of the Committee. If it was decided to start an investigation, it has to be completed in 30 days with a possibility for further extension to another 20 days. According to the Article 24.4 of the Law on Rules of procedure, the sittings of the Committee are done in camera unless otherwise requested by the MP concerned with the application under review. Ethics and conflict of interest violations do not result in any sanctions; only violations of the incompatibility provisions of the Constitution can be sanctioned.

According to the information from the EU Project report the Committee from its establishment in May 2012 adopted 11 decisions to decline investigations, 4 decisions to start investigation, 2 decisions on violations of ethics, 1 decision to terminate the investigation and 1 decision to consider the application dismissed. Objectivity of some of these decisions has been questioned.⁵⁹

Transparency of relationship between politicians and business

Armenian authorities report that over the last years, agendas and information on visits of the members of the Parliament and officials are published on <http://www.parliament.am>, <http://www.gov.am> and electronic websites of state bodies. Especially visits of the above-mentioned officials are covered. In addition to the specified websites visits are also covered through electronic media and social networks.

However, representatives of the Civil Society raised concerns that the information on visits does not mean information about received gifts and there are no publicly available registers on gifts (and hospitality) on

⁵⁹ For more detailed information on individual cases - see final report of the EU Project “Situation Analyses of public sector corruption in Armenia”, June 2013 pp. 48-49.

any of the websites. They have informed the monitoring team that many politicians are engaged in business activities. In most of cases, the businesses are registered under the names of related persons or other close relatives (e.g. children living outside of the household, “divorced” wives, cousins, niece/nephews). However, even in the cases when the founders/participants of businesses include politicians – these instances are not being picked up and reviewed by the law enforcement authorities.

Conclusions

To illustrate progress under the part of recommendation which deals with disclosures made by the political parties Armenia cites changes made to the Law on Political Parties. Further on some details are provided as to what information is being disclosed. However, without the actual review of the text of the amended law it is impossible to make any meaningful conclusion on progress in this area.

The monitoring team would like to stress that the recommendation 3.7 requires Armenia to ensure that disclosures are being done in practice and not only required under the law. The monitoring team did not have a possibility to fully assess whether proper disclosures are being made by all political parties according to the law. However, relying on information from international organisations which monitored the latest elections into the Parliament in 2012, it appears that while in general disclosures were being done by most political parties and candidates, there were those who did not comply. At the same time CEC did not find any campaign finance violations. This raises serious concerns regarding the absence of a mechanism to ensure proper enforcement of the legislation and absence of deterring sanctions to prevent its violations.

The monitoring team concluded that the CEC’s Secretariat appears to be adequately staffed. As to their selection procedure, they follow general rules applicable to the Civil Service and it seems that overall the criteria and procedures for the open competitions are clearly defined. At the same time, since out-of-competition procedure can be applied, it would have been useful to know how often it was applied in fact; the monitoring team was not provided with such information. This being said, the monitoring team identified another related issue in this context, namely, the perceived lack of independence of the CEC members themselves. Their appointment appears to be heavily influenced by the executive; this can be addressed through review and perhaps reform of the nomination and appointment procedures.

The monitoring team is also of the opinion that Armenia needs to address the issue of CVS’s limited mandate, lack of proper independence and most importantly its capacity to carry out those functions which it already has. The monitoring team has doubts about ability of the CVS to conduct any proper verification with the limited staff resources that it has and within the limited timeframes that are set in the law. The fact that part of the work is carried out by the auditors appointed by the political parties does not help but further aggravates the matters. The monitoring team seriously questions objectivity and absence of political influence in their work, even if such influence is only perceived.

The monitoring team found it difficult to assess the effectiveness of cooperation and coordination between the CEC and the Chamber of Control. However, the civil society representatives stated that this is not a major issue of concern due to the fact that state funding provided to the political parties is rather limited.

The monitoring team commends Armenia for taking certain steps aimed at regulation of ethics and conflict of interests of the political officials. Establishment of the Ethics Committee and adoption of its rules of procedure is the step in the right direction. The monitoring team is also positively noting the fact that the Committee is actually functioning, simultaneously taking note of the concerns that Committee’s decisions were not always made free of bias.

Assessment of actual practical enforcement of the conflict of interest rules for political officials was difficult for the monitoring team both because provided information by the Government of Armenia was silent on the issues of practical enforcement and during the on-site visit the monitoring team did not have an

opportunity to meet with relevant interlocutors. The monitoring team held similar concerns as those highlighted in section on High-ranking officials (please see relevant part of the report). In addition, interlocutors met at the on-site visit seemed to be generally confused regarding conflict of interest rules as opposed to asset declarations; the monitoring team also found ambiguities in the roles of the CEC and the Ethics Commission.

And finally, while formally Armenia has carried out the last element of this recommendation; the monitoring team believes that the actual measure did not contribute to the increased transparency in the relationships between the politicians and the businesses and does not merit further examination.

Taking into consideration the above stated, at this point the monitoring team is inclined to believe that most elements of this recommendation have not been properly implemented. The monitoring team however is reserving its final judgment until after it receives all missing information from the Armenian authorities.

Armenia is partially compliant with recommendation 3.7.

New Recommendation 21

- ***Ensure that political parties disclose their financial data, including bank loans and contracts with foundations, associations and other bodies related to them.***
- ***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 proactively supervise such funding, investigate alleged infringements of political financing regulations and impose sanctions. At a minimum, the Control and Verification Service should be given the power and corresponding tools to assess and verify the validity of declarations.***
- ***Ensure clear conflict of interest prevention and ethical behaviour rules for elected and other political officials, promote their application and enforce them; introduce appropriate penalties for violations of these rules.***
- ***Consolidate the legislation on asset declarations, conflict of interests, and incompatibilities by regulating in a coherent manner the competence of the Ethics Commission.***

Corruption in the judiciary

There was no previous recommendation in the second round of monitoring.

Effective anti-corruption measures are impossible in the system where judiciary lacks integrity and can be unduly influenced. In the second round of monitoring this topic was not thoroughly examined and no recommendation was developed in this area. However, the monitoring team believes that there are a number of serious deficiencies in the judicial system of Armenia which need to be addressed in the context of anti-corruption.

The Armenian judicial system is tainted with corruption and political pressure, according to the Human Rights Report 2013. This perception is backed by the Global Corruption Barometer 2013, which states that almost three out of four surveyed citizens perceived the judiciary to be an extremely corrupt institution.⁶⁰

⁶⁰ According to the TI: Global Corruption Barometer 2013, 69 per cent of citizens consider the judiciary to be “corrupt” or “extremely corrupt”, giving the judiciary a score of 4.0 on a 5-point scale (1 being “not at all corrupt” and 5 “extremely corrupt”).

Armenian citizens are generally reluctant to go to courts because the judicial system is considered to be corrupt, inefficient and vulnerable to political influence.

The Index of Economic Freedom 2014 states that corruption in the judicial system impedes the enforcement of contracts. According to the Investment Climate Statement 2013, many Armenian courts suffer from low levels of efficiency and independence, and the Armenian judicial system needs to be strengthened. The majority of businesspeople and investors still do not consider the court system a viable option of legal recourse. Business executives largely fear that corruption and nepotism will determine the outcome of court decisions. Also, companies surveyed in the Global Competitiveness Report 2013-2014 indicate that courts are subject to political influences by members of government, citizens and companies.⁶¹ Nevertheless, despite widespread judicial corruption, courtroom observers noted that it is occurring less frequently than in the past. This is in part due to a greater number of corruption cases brought against mid- and low-level government officials, as reported in the Human Rights Report 2013.

Armenian authorities for the most part seem to be acknowledging that problems exist. The 2012-2016 Strategic programme for legal and judicial reforms in the RA adopted by the Presidential Decree (2012-2016 Strategic Programme), points out that although “a number of new legislative acts were adopted after the constitutional amendments, yet the judicial and legal reforms in general, and the Judicial Code of the RA in particular, didn’t completely solve the most important issues among pending, i.e., ensuring a far and effective judicial power”; it further points out problems which require addressing both on the legislative and institutional level, including infringements on judicial independence both of external and internal nature. To prevent judicial corruption from spreading, a new controlling inspectorate has been established, and the European Integration Department at the Ministry of Justice has been given increased authority. A number of legislative reforms also took place as part of the measures deriving from the 2012-2016 Strategic Programme. However, Nations in Transit 2013 reports that Armenia's recent attempts at judicial reform have had limited impact.

In 2013, the office of the Human Rights Defender conducted interviews with over 120 professionals including advocates, prosecutors, judges, legal scholars and other experts. A sociological survey was also conducted by the non-governmental organisation “Armenian Democratic Forum” giving an insight into the corruption cases and means of pressure in the judicial system. In addition, the office of Human Rights Defender studied all decisions of the RA Council of Justice for the period of 2006-2013, 270 cassation complaints that were taken into proceeding by the RA Court of Cassation (2012-2013), 500 applications on sentencing the judges to disciplinary liability (2011-2013), 200 cassation complaints and the decisions of the Court of Cassation in regards to them (2012-2013), as well as over 35 judicial cases provided by the advocates. All of this resulted in the elaboration of the Special Report on the Right to Fair Trial (Special Report) which is referred to in the section below.

Independence of judiciary

Statutory guarantees

Article 97 of the Constitution of Armenia stipulates that the judicial branch and judges are independent. Important institutional safeguards are provided in the Judicial Code, adopted in 2007. Article 11 stipulates that in administering justice the judge is independent and not accountable to anyone. Various more specific provisions on conditions of appointment, promotion and other aspects of carrier of judges support this general principle. However, the legislation of Armenia also provides that the President ensures the “regular

⁶¹ According to the World Economic Forum: The Global Competitiveness Report 2013-2014, business executives give the Armenian judiciary's level of independence from influences of government, citizens or companies a score of 3.0 on a 7-point scale (1 being 'heavily influenced' and 7 'entirely independent').

functioning” of the judicial branch. Moreover, Article 55 of the Constitution of Armenia stipulates that the President conducts appointments based on the suggestion and conclusion of the Council of Justice. And while the Council of Justice proposes the list of judge candidates, the President has the power to choose “candidates acceptable to him/her” to be appointed as judges⁶² and to promote judges⁶³. The monitoring team has been notified, however, that on 10 June 2014 Article 117 of the Judicial Code has been amended reducing the discretionary powers of the President in this context. Namely, Presidential veto in regards to the lists of candidates can be overcome by the Council of Justice through a 2/3 majority vote, this would not however apply to the lists of judges proposed for appointment in the higher instance courts. In September 2013, authorities announced a new process of constitutional amendments, creating a special Commission on constitutional reform. Separation of powers is among the issues that the Commission is to look into.

Financial autonomy and resources

To ensure financial independence of judges, the judiciary is financed by a separate budgetary line. An official judicial pay is determined by the Law on the State Budget. Financial and administrative matters are administered by the Judicial Department, an administrative state body, acting on the basis of the Charter approved by the Chairman of the Court of Cassation. Judicial Department presents draft budget to the Council of Chairmen of Courts for their review and approval; they have an opportunity to make appropriate changes.

In practice, according to the findings of the Eastern Partnership Working Group on Efficient Judicial Systems project report judiciary in Armenia operates with less than average resources compared to other CoE member states there is a relevant underfunding of all of the parts of the judicial system. Among the European systems where professional judges dominate, the smallest number of judges per 100.000 population is found in Armenia – 5.2; similarly Armenia has less than 1 court per 100.000 inhabitants. The judicial self-governing bodies are rather limited in terms of their capacity to present the budgetary needs of the judiciary to the government and the parliament in Armenia.

In addition, it states that in Armenia professional management of courts that would use modern tools for improving its functioning is not yet well developed. And while the workload is below the average compared to other CoE member states, Armenia faces serious difficulties in handling its annual inflow of cases and there is a negative trend in protracting case disposition time.

Judicial self-governance bodies

There are two bodies of judicial self-governance in Armenia: the General Assembly of Judges, composed from all judges, and the Council of Chairmen of Courts, which is composed from the chairmen of first instance and appellate courts, the Court of Cassation and the Chamber of the Court of Cassation.

The Chairman of the Court of Cassation, who ex-officio is the Chair of the Council, holds regular meetings of the General Assembly of Judges (no less than once a year); at these meetings 9 members of the Council of Justice are being elected. A judge with at least 5 years of experience and who was not subjected to disciplinary sanctions in the past 5 years can be elected to the Council of Justice. The Council of Justice consists of these 9 elected judges, 2 legal scholars appointed by the President and 2 by the National Assembly. All member of the Council of Justice are elected and appointed for a 5 year term⁶⁴. The remaining four members are appointed by the President and the National Assembly, their powers are terminated once the powers of the President and the National Assembly are terminated and a new appointment is made. Such composition and termination procedures further undermine independence of the judiciary, creating

⁶² Article 117 of the Judicial Code.

⁶³ Articles 137 (9) and 138 (8) of the Judicial Code.

⁶⁴ Constitution of Armenia 94.1.

even if just an impression of influence on the function of the Council of Justice by the President and the National Assembly.

The effectiveness of these self-governing bodies of the judiciary is however compromised as highlighted by the Eastern Partnership Countries Working Group on Independent Judicial system.⁶⁵ The report states that under the current legislation, the majority of core functions are vested with Council of Court Chairmen and such concentration of judicial self-governing is not in line with the philosophy of independence of judges. The survey conducted for the elaboration of the Public Defender's Office Special Report also suggests that the Council of Justice is used as the tool, through which the Court of Cassation directly or indirectly exercises pressure on judges.

Moreover, the Eastern Partnership Countries Working Group on Independent Judicial system points out that the first instance judges are excluded from the implementation of the reforms of the judiciary and functioning of courts.

Apparently, the Ministry of Justice has developed the new concept on composition of the self-governing bodies of judges but the monitoring team did not have an opportunity to review this concept.

Selection and promotion procedures

A key role in selection of judges is played by the Council of Justice of Armenia. The candidates for judicial positions are selected through a testing procedure administered by the Justice Academy. The short list of the best candidates is then provided to the Council of Justice, which interviews the short-listed candidates and selects the best candidates. Following amendments made to the Judicial Code since the 2nd round of monitoring some positive developments were made in relation to the qualification exams for judicial candidates making interviews and written tests more transparent. The amendments also introduced provisions aimed at avoiding potential conflict of interests, according to which members of the Council of Justice cannot participate in evaluation of candidates that are they are direct relatives. Based on the qualification exams, the Council of Justice compiles and presents the list of selected candidates to the President.

The Council of Justice is also responsible for promotion of judges, which is conducted according to a list of criteria. The criteria are stipulated in the Article 135 of the Judicial Code (reputation of judge, compliance with code of conduct, participation in education and training programmes, etc.). It similarly compiles and presents to the President the lists of promotion of judges.

After receiving both lists the President leaves the acceptable candidates (see additionally description on statutory guarantees above) and within 10 days issues a decree supplementing them. If the lists are not supplemented they are considered to be rejected.⁶⁶

The Council of Justice is also responsible for selection of the administrative heads of the courts. Again, the selected candidates are then sent for approval by the President.

Tenure of judges

A judge cannot be removed until the age of 65, but he can be removed from his office following disciplinary proceedings by the Council of Justice recommending the President to terminate powers of a judge.⁶⁷

⁶⁵ See Project report, Judicial self-governing bodies Judges' Careers, Director General of Human Rights and Rule of law, Strasbourg, March 2013.

⁶⁶ Articles 137 and 138 of the Judicial Code.

⁶⁷ Article 95 (5) of the Constitution of Armenia.

Case assignment

After the on-site visit the monitoring team was informed that on 10 June 2014 Judicial Code was amended with Chapter 2.1 (case assignment in courts) which introduces the requirement for an automated case allocation system. This is a welcome development and the monitoring team would like to encourage Armenia now to implement this requirement and ensure that the new system is operational and is used in all courts.

Integrity of judges

Adjudication functions

Various international reports raise concerns over independence of individual judges and integrity of their decisions being compromised through the practice of judges to consult with other judges prior to making their judgement.⁶⁸ Such practice appears to be especially prevalent between lower instance courts and the Court of Cassation, and often happens out of fear that the judgement will be reversed and the judge subjected to disciplining for an “illegal” ruling.

Public Defender’s Office Special report also confirms these statements and provides detailed information in this regard. Namely, it states that “based on the results of the RA HRDI survey, the judges can be conditionally divided into three categories: judges, who agree almost every case with the Court of Cassation. These judges are considered to be the "favorites" and receive encouragements; judges, who agree only the cases subject to mandatory agreeing; and finally there is a small number of judges who does not agree any case with the Court of Cassation but make own decisions. These judges are independent and are considered "the most unpopular" and "unpredictable" judges, therefore are subjected to a high risk of pressure and "prosecution.””

The monitoring team would like to highlight that true independence of the judiciary means among other things that each individual judge is independent in the exercise of his/her adjudicating functions. Superior courts should not address instructions to judges on how to decide individual cases. In turn lower courts should not seek such instructions when making their adjudication decisions.

Disciplinary liability

According to international standards judge should be only disciplined in the cases of violation of rules of conduct. In Armenia, however, disciplinary liability is applied for both procedural and substantial breaches of law. Therefore, disciplinary sanctions are imposed on judges for the content of their judgements, which goes directly against the principle of the judge having a freedom to render his decision based on his/her beliefs. The existing legal grounds and the practice of imposing disciplinary measures therefore do not correspond to the international standards and fail to serve their legitimate purpose. It appears that the system is used as a punitive measure for judges who do not comply with the executive control.

The power to initiate disciplinary proceedings is vested within the Commission on Disciplinary and Ethics Affairs within the General Assembly of Judges, the Chairman of the Court of Cassations, and the Minister of Justice; these have their separate roles in different types of cases and against different ranks of judges.

In practice, according to the Public Defender’s Office Special report the Chairman of the Court of Cassation has a prevailing involvement in the process of bringing the judges to disciplinary liability. In a number of cases the disciplinary proceedings are initiated by the Disciplinary Committee of the Council of Justice on the same or next day of receiving the letter from the Chairman of the Court of Cassation, which shows that

⁶⁸ Venice Commission and Directorate of Human Rights Joint Opinion on the Draft Law amending and supplementing the Judicial Code, adopted on 21-22 March 2014.

the initiation of the disciplinary proceedings and its results in the respective cases are predetermined. Throughout the years 2010-2013 out of the 51 disciplinary proceedings initiated by the Disciplinary Committee of the Council of Justice, in 31 cases the reason for the initiation of the proceedings was the letter of the Chairman of the Court of Cassation, in 8 cases based on the petition of the Ethics Committee of the Council of Courts Chairmen, in 10 cases proceedings have been initiated based on the petitions of advocates, citizens or other bodies. In 2010, the Council of Justice received 208 petitions to bringing judges to disciplinary liability; in 2011, 220 petitions; in 2012, 346 petitions; and in 2013, 434 petitions⁶⁹.

In comparison, according to this same Public Defender's Office Special Report: "In spite of all the failures in judicial system, the Minister of Justice initiated disciplinary proceedings against only 4 judges."

New Recommendation 22

- ***Continue Constitutional reform and ensure its proper implementation providing better separation of powers and independence of the judiciary, including by improving the procedures for nomination of judge candidates and appointment of judges***
- ***Ensure in practice proper financing of the judiciary.***
- ***Establish a mechanism that will ensure equal participation of judges in self-governing bodies; clarify competences of these bodies, as well as the role of the court chairpersons.***
- ***Ensure that automated case assignment among judges based on objective criteria and ensure that information on case assignment is open to judges, parties and the public is in place and functioning.***
- ***Ensure that independence of the judiciary includes the independence from interference by other judges and if such practice takes place it is dealt with through disciplinary means against judges taking part in such practice.***
- ***Modify grounds for disciplinary liability of judges by establishing clear and precise criteria in compliance with international standards and best practice, and ensure that the law reflects the fact that disciplinary liability requires a disciplinary offence and a different than the disciplinary procedure should be considered in dismissing judges who are unable to fulfil their tasks.***
- ***Ensure that the disciplinary proceedings comply with fair trial guarantees, in particular by separating investigation, prosecution and decision-making in such proceedings, and afford the judges with adequate means to defend themselves.***

Integrity in the private sector

Previous Recommendation 3.9.

Develop a dialogue between government and private sector on prevention of corruption and further involve private sector in development and simplification of business legislation.

Raise awareness by government on integrity in business, corporate responsibility and public-private partnerships.

According to the answers to the questioner, and information provided by the state and non-governmental representatives interviewed during the on-site visit, the Government of Armenia with the support of donors and private sector partners has implemented several important measures to improve business environment

⁶⁹ Statistical data provided by the RA Judicial Department as of November 27, 2013

in the country. While these measures did not explicitly aim to prevent corruption, they may have reduced risks of corruption involving the private sector. The compilation of various international indexes provided in the answers to the questionnaire and presented below summarises the overall improvements and challenges of business climate in Armenia.

	Rank	Change	No. of Countries
DOING BUSINESS 2014	37	▲ 3	189
INDEX OF ECONOMIC FREEDOM 2014	41	▼ -3	186
GLOBAL COMPETITIVENESS INDEX 2013-2014	79	▲ 3	148
NETWORKED READINESS INDEX 2014	65	▲ 17	148
CORRUPTION PERCEPTIONS INDEX 2013	94	▲ 11	177
HUMAN DEVELOPMENT INDEX 2013	87	▼ -1	187
KNOWLEDGE ECONOMY INDEX 2012	71	▼ -13	146

According to the Government, the statistics show that the number of business entities has significantly increased. Contrary to this statement, according to TIAC, the recent statistics reveal that the number of small and medium businesses is decreasing in Armenia and the monopolization of economy is very serious problem. In particular, as the Zhoghovurd daily wrote in its August 12, 2014 issue, according to the numbers from the National Statistical Service, compared to the first half of 2013 in the first half of 2014 the number of retail stores in Armenia decreased from 16,197 to 16,027.

Several examples of public-private dialogue and consultations with the private sector, that were recommended in the previous monitoring round, were provided by the answers to the questionnaire, and are presented below.

Each year the Government adopts Annual programmes of actions for improvement of business environment. The Government also adopted “The Strategy of export-led industrial policy of Armenia”, which includes 11 sectoral strategies. Sectoral boards consisting of representatives of state and private sectors, public organizations from the sector, unions, and international donor organizations were established to support the strategies. Pharmaceutical, biotechnological, precise engineering, wine and brandy making, textile, jewellery, diamond and watch-making sectoral boards are operational. Public Council under the Chairman of the State Revenue Committee is another example of a public-private dialogue that addresses business environment.

All draft laws are subject to public consultations in Armenia, and public institutions organise consultations on legal drafts that are relevant to the business community. The Ministry of Economy, for instance, sends its draft laws for comments to more than 1,000 entities, including the international organizations and the most active business associations, such as Business Advocacy Network NGO, Armenia Trade and Industry Chamber Chairman, Yerevan Trade and Industry Chamber, Armenian Freight Forwarders Union, association for the protection of taxpayers’ rights, Small and Medium Business Fund, Armenian Consumers Association, Consumer Rights Protection NGO, Armenian Exporters Association, Small and Medium Entrepreneurship Development National Centre, Armenian Union of Industrialists and Entrepreneurs.

The answers to the questionnaire refer to measures taken by the Government together with the international partners. For example, to promote policy dialogue between the state and the private sector, the Business Support Office (the BSO) has been established by the EBRD. Its mission is to raise any key issues that affect the business environment, provide technical assistance to the government in the process of developing strategies/reforms to address identified impediments, and to facilitate consultations with the business community. Through the BSO, the EBRD supports two Councils: Inspection Reform Coordination Council and SME Development Council. The activities of the Councils contributed to practical improvements of business and investment climate in such areas as tax, customs, registration, e-services and other areas.

The answers to the questionnaire describe measures taken by the Government together with the private sector organizations to promote the development of self-regulation within the private sector. While this practice was commended by the monitoring team, they also noted that these examples deal only with the business processes, such as bank or food control. So far, the practice of self-regulation was not used for promoting code of conduct, anti-corruption compliance policies, and other integrity tools in the private sector.

“5th Meeting without ties” conference was organized by the Ministry of Health and the Union of the Drug Producers and Drug Importers was held in Aghveran, Armenia from March 29-30, 2014. The draft law on drugs together with ethical issues in the drug were discussed with the members of UDPD and government representatives. Particularly, the issues related to simplifying the drug import and drug registration regulations to reduce corruption risks and to develop clear criteria for imports and registration for reducing the opportunities of discretionary decisions by public officials. The Government encouraged the union representatives to adopt internal ethical rules to promote fair competition and to avoid import of not registered drug into the country. During the meeting the importance of the ethics enforcement among the union representatives was stressed. As a result the ethics code was approved by both the government and union representatives.

During the on-site visit, the representatives of the private sector confirmed that the Government conducts consultations about draft laws. For instance, consultations were organized about the tax code – a special committee was established by the Government for business consultations. Consultations were also organized regarding customs and inspections, e-commerce and copy rights. Chamber of commerce organizes discussions of various business concerns with the SME Council under the Staff of Government. Union of manufacturers meet with the Prime Minister on a monthly basis to discuss various issues related to business environment.

The private sector representatives also confirmed that introduction of e-governance and one-stop-shops have improved business environment and reduced corruption risks. However, they noted that further improvements are needed in these systems, as discussed in section xxx above. Business associations also noted that the discretion of the government remains very broad, e.g. price control methods are selected by the customs officials arbitrarily, leading to lack of predictability in customs fees, even when the same exporter brings in the same goods. They also provided examples of awareness raising and education efforts conducted by business associations with the support of the Government and with donor funding to explain to the private sector how these new systems operate. Private sector delegates stressed that more awareness raising and training is needed.

Business representatives also quoted positive experience on the development of the check-list for sanitary and epidemiological inspections, and confirmed that self-regulation and inspections should be put on a right balance to ensure proper protection of consumers from irresponsible companies and to protect responsible companies from abusive inspections.

On the other hand, a representative of the State Agency "National Centre for Legislative Regulation" described the difficult experience of public-private consultations in the framework of the Legislative Guillotine project (for by more information, please refer to the relevant section). The aim of the project was to repeal or simplify sector regulations in order to reduce compliance costs for companies. To identify outdated or unnecessary regulations, the Agency invited business associations active in the respective sectors to fill out a check list, but no responses were received. The Agency therefore decided to skip the checklists and invited the associations to the meetings for consultations in person, but their inputs to the project remained limited.

The private sector delegates interviewed during the on-site confirmed that the level of sanctions applied to the public and private officials for corruption is low, and does not provide an incentive for the companies to improve their compliance and to prevent corruption. According to their knowledge obtained mainly from the mass media, only several mid-level public officials were prosecuted for bribery over the recent years, and while companies become more accurate in their relations with the public officials, they generally continue using bribery for business.

As a result, it is not common for the Armenian companies to introduce codes of conduct or any other anti-corruption rules in their management. Only large multi-national enterprises (MNES) operating in Armenia have compliance programmes or introduce anti-corruption clauses in the contracts with their local business partners and suppliers. Companies improve their anti-corruption efforts only when corruption causes direct business losses. An example of a water supply companies was provided, where a water companies suffered significant loses because its fee collectors were involved in fraud by using false receipts. As a response the company regularly changes its fee collectors. There are also examples of business associations and donors providing support to the private sector to improve integrity. For example, as part of its efforts to strengthen the pharmaceutical industry in Armenia EDMC reviewed and proposed amendments to the Code of Marketing Practice for the Pharmaceutical Industry in Armenia initially drafted by the Medicine Producers and Importers (MPI) Union of Armenia. Subsequently, recommendations were proposed to the MPI Union on disciplinary issues and on adoption of an ADR approach to dispute settlement. Further to this, it was suggested to the MPI Union to review their structure to make them more transparent, effective, and open to new membership.⁷⁰

More generally, business representatives confirmed that there were no explicit anti-corruption initiatives conducted by the private sector in Armenia, and no anti-corruption measures for the companies promoted by the government. There are no persons or institutions in the public administration that are responsible for the promotion of business ethics through anti-corruption or corporate governance rules. No corruption risk assessment for the private sector was conducted by the government or by the private sector. The past anti-corruption strategy did not include business integrity measures, and the Concept for the new strategy does not have such provisions either. Business representatives are not invited to take part in any of the anti-corruption policy and coordination bodies. Business representatives expressed the view that political will and enforcement of anti-corruption laws by the government, especially in relation to high level officials and politicians, were the pre-condition for a serious anti-corruption effort in the private sector. They further stressed that independence of various anti-corruption and oversight bodies needed to be improved in Armenia to strengthen the trust of the private sector in the state institutions, and suggested developing arbitration courts for companies. They also encouraged the government to continue with the e-governance reforms, awareness raising and education programmes.

⁷⁰ The Enterprise Development & Market Competitiveness Project (EDMC) is a USAID programme in Armenia.

Conclusions

In a sum, the Government took measure to simplify business regulations, and in some instances involved business in this process, as reflected in the assessment and rating of recommendation xxx. But it did fail to develop a dialogue with the private sector on prevention of corruption. No measures were taken by the Government to raise awareness of companies about integrity in business, corporate responsibility and public-private partnerships against corruption.

Armenia is partially compliant with recommendation 3.9.

New Recommendation 23

- *Conduct assessment of corruption risks involving the private sector*
- *In cooperation with business representatives identify business integrity measures and include them in the anti-corruption strategy or another relevant policy document, ensure the monitoring of implementation of these measures*
- *Include business representatives in the anti-corruption bodies foreseen under the new Anti-Corruption Strategy*

Summary Table

	New recommendation	Previous recommendation	Rating for previous recommendation			
			Fully	Largely	Partially	Not compliant
Pillar I. Anti-Corruption Policy						
A-c policy documents and surveys	+	1.2. Strategy, action plan				+
A-c surveys/research	+	1.3. Surveys/research			+	
Public participation, awareness raising and public education	+	1.5. Public participation			+	
Policy and co-ordination institutions	+	1.6. Co-ordination body			+	
Pillar II. Criminalisation of corruption						
Offences and elements of offences	+	2.1. - 2.2. offences			+	
Statute of limitations	-	2.6.1. Statute of limitation	+			
Immunities	+	2.6.2. Immunities				+
Application, procedure, specialised law-enforcement bodies	+	2.8. Investigation/prosecution			+	
	+	2.9. Law enforcement bodies				+
	Previous rec. valid	2.10. Statistics			+	
Pillar III. Prevention of corruption						
Integrity of civil service	+	3.2.1. Integrity of civil service			+	
	+	3.2.2. Integrity of civil service			+	
Public Administration	+	3.3. Corruption in public administration		+		
Public financial control and audit	+	3.4. Public financial control and audit			+	
Public procurement	+	3.5. Public procurement			+	
Access to information	+	3.6. Access to information			+	
Political corruption	+	3.7. Party financing			+	
Integrity in the judiciary	+	3.8. Integrity in the judiciary				
Private sector	+	3.9. Private sector			+	

