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**Regional Anti-Corruption Action Plan
for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan
and Ukraine**

Tajikistan

Summary assessment and recommendations

Endorsed on 21 January 2004

I) NATIONAL ANTI-CORRUPTION POLICY, INSTITUTIONS AND ENFORCEMENT

General assessment

In 1999, Tajikistan started to develop core statutory instruments to address the problem of corruption: the Presidential Decree on Additional Measures to Step up the Struggle against Economic Crime and Corruption, the Law on the Fight against Corruption, the relevant sections of the Criminal Code, the Law on Civil Service and others. Importantly, the Law on the Fight against Corruption recognizes the need to tackle corruption with the help of both preventive (control of conflicts of interest and annual declarations of income and assets) and repressive measures.

However, a focused nation-wide anti-corruption plan has yet to be developed and adopted, and an interdisciplinary anti-corruption coordinating body envisaged in the Presidential Decree has yet to be established. Research conducted in Tajikistan to assess the level of corruption has not been sufficient to provide an adequate analytical basis for the development of an effective anti-corruption policy.

Detection and investigation of corruption is split between a number of law enforcement agencies, with often overlapping jurisdictions and limited inter-agency co-operation: internal affairs, security service, tax police, customs, military administration and state border, agency for drug control, etc. Each law enforcement agency has units specializing, to various degrees, in fighting corruption: in order to tackle corruption within the tax and customs administrations, there is a separate Anti-corruption Division within the Tax Police Department; the Ministry for State Revenues and Duties also has an Internal Security Department, whose tasks include dealing with corruption among the ministry's employees. Additionally, a specialised department within the Ministry of Interior and a separate anti-drug agency were established to fight trans-border and drug trafficking. On the other hand, there are no specialised units/departments in the prosecution service to focus exclusively on corruption. Neither do the prosecution service nor the law enforcement bodies have analytical capacities to monitor the corruption situation in the country.

Implementation and enforcement of legislation remains the key challenge. When discussing anti-corruption measures, Tajikistan's limited resources should be taken into account, as well as the fact that the country has only recently emerged from internal armed conflict.

General recommendations

Building on the Presidential Decree on Additional Measures to Step up the Struggle against Economic Crime and Corruption and the Law on the Fight against Corruption, Tajikistan should develop its first Anti-Corruption Programme (or Strategy), aiming to strengthen implementation measures. A special study or survey mapping the patterns of corruption in various segments of Tajikistan's public life and analysing the extent of corruption in specific institutions, such as the police, judiciary, public procurement, tax and custom services, the education and health systems should be conducted. It may support the development of the Programme and help to prioritise the measure to be undertaken. The study could possibly be conducted in cooperation with academic research institutions, relevant NGOs, and the international community.

To facilitate the development and implementation of the Anti-Corruption Programme (or Strategy), Tajikistan should establish a multi-stakeholder national anti-corruption body. This body should concentrate strategic, analytical, policy, preventive and coordinative tasks of the fight against corruption. Stakeholders of the body should include the representatives of the Presidency and the Government (including law enforcement and financial control branches), the Parliament and Civil Society as equal partners. The lack of resources and a need for focused and measurable achievements in the repression of corruption may call for a concentration of administrative and criminal repressive measures against corruption in one agency, which would combine investigative and prosecutorial functions.

It is difficult to tackle corruption in all public agencies at the same time. Focusing efforts at a few selected institutions could demonstrate the possibility of positive changes. Such focused measures should comprise a review of regulatory and institutional settings of such agencies and their operational practices in order to identify and minimise factors which favour corruption (e.g. by limiting discretionary powers of civil servants, strengthening internal control, introducing preventive measures, recruiting and promoting new staff through transparent procedures, measuring and reporting improvements). Accordingly, one or two pilot projects, covering preventive and repressive aspects, could be undertaken in one or two selected corruption-prone public institutions. Specific anti-corruption action plans should be drafted and implemented in those public agencies, where corruption is considered to be particularly widespread, and where it causes most harm for citizens (for example, in the judiciary, custom, police, tax administration).

Specific recommendations

1. *Elaborate and adopt a comprehensive Anti-Corruption Programme (or Strategy), which will build on and further develop the Presidential Decree and the Law on the Fight against Corruption aiming to strengthen the implementation of anti-corruption measures. The Anti-Corruption Programme should build on an analysis of the patterns of corruption in the country and be developed in a participatory process. It should propose focused anti-corruption measures or plans for selected institutions. The Programme should also envisage effective monitoring and reporting mechanisms.*
2. *Establish a national multi-stakeholder Anti-Corruption Council to facilitate the development and implementation of the Anti-Corruption Programme (Strategy). Stakeholders of the body should include the representatives of the Presidency and the Government, the Parliament and Civil Society as equal partners.*
3. *Consider establishing a Special Anti-corruption Department, which would be empowered to detect, investigate and prosecute corruption offences, as an autonomous Department with a special status integrated in the Prosecutor's Office with officers seconded from the main law enforcement agencies. This Department should have investigative, prosecutorial, administrative and analytical tasks. It is important that such a Department would include specialised prosecutors. Apart from working on actual corruption cases, one of the main tasks of this Department would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.); and to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonised methodology, which would enable comparisons among institutions.*
4. *Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and trans-border trafficking, including drug trafficking on the one hand, and agencies responsible for the fight against corruption on the other hand.*
5. *Organize corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation; ensure the possibility of effective search and seizure of financial records.*
6. *Conduct awareness raising campaigns and organise training for the public, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.*

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION AND THE RELATED MONEY-LAUNDERING OFFENCE

General assessment

The Law on the Fight against Corruption defines corruption as: "actions (inaction) of persons authorized to fulfil governmental functions, or equivalent persons, aimed at using their position and related opportunities for gaining material and other advantages and benefits not envisaged by law, as well as illegal provision of these advantages and benefits by individuals and legal entities." (Art.2). The Law further specifies a number of corruption offences involving illegal receipt of benefits and advantages, and provides for disciplinary sanctions for violators in the form of removal from office or another form of suspension from fulfilling governmental functions. On the other hand, the Criminal Code of Tajikistan includes the main criminal offences relating to corruption, including active (Art. 319) and passive (Art. 320 and 325) bribery of domestic public officials, abuse of official authority, money laundering, private corruption etc.

However, bribery offences fall short of international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions). For instance, the subject of the bribe is limited to material benefits, and thus would not extend to non-pecuniary and non-tangible benefits. Offers or promises of a bribe are not criminalised, neither is the solicitation of a bribe. Only some forms of trading in influence are criminalised (as part of provisions on active and passive bribery).

The Criminal Code provides for dissuasive sanctions, including prison sentences ranging up to 15 years (for grave offences), fines, confiscation of property, and deprivation of the right to occupy certain positions or to engage in certain activities.

The Criminal Code also provides that the Court shall remit the punishment of the perpetrator of active bribery who had promised or gave the bribe after being extorted by the public official to do so, providing that such a perpetrator had reported the act to the competent law enforcement authority before the crime was detected. In addition, general and specific defences include entrapment, execution of order; and the Law on the Fight against Corruption provides an exception for social courtesy gifts and appears to provide one in cases of "effective regret". Accordingly, there is a need to review general and specific defences such as entrapment, execution of an order, and extortion to ensure that they are not too broad to permit misuse. Bribery of foreign or international public officials is not criminalised.

While money laundering has recently been criminalized as a separate offence in the Criminal Code, law enforcement bodies have problems accessing information on financial transactions, and banks and other financial institutions have no obligation to report suspicious transactions to the authorities; a Financial Intelligence Unit has yet to be established. Moreover, the money laundering offence in the Criminal Code does not appear to cover all manners of concealing, transferring, etc. the proceeds of crime.

Confiscation of proceeds from crime is possible for all criminal offences, including the proceeds of corruption and corruption-related offences – in cases of which it is mandatory according to the Law on the fight against corruption. The system is both property- and value-based: if the benefit to be confiscated is not available, the corresponding value can be confiscated. Confiscation of proceeds from third parties is also possible. The confiscation system under the Criminal Code extends beyond confiscation of proceeds from crime and preserves the old system of confiscation of property as a punishment (confiscation not linked to proceeds of crime); such a system could be considered over-broad.

The existing legislation does not provide for the administrative or criminal liability of legal entities for offences including corruption related cases. Recognising that the responsibility of legal persons for corruption offences is an international standard in all international anti-corruption conventions, there is a need to study, with the

assistance of international organisations experienced in the implementation of the concept of liability of legal persons, such as Council of Europe and the OECD, how to introduce into the legal system an effective liability of legal persons for corruption.

Specific recommendations:

7. *Harmonise and clarify relationships between violations of the Criminal Code and the Law on the Fight against Corruption.*
8. *Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards and criminalise trading in influence.*
9. *Harmonise the concept of "official" from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials elected or nominated to a representative body, as well as persons representing the state interests in commercial joint ventures or on board of companies.*
10. *Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.*
11. *Consider changing the existing confiscation regime to allow for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.*
12. *Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent in the investigation and prosecution of acts of bribery.*
13. *With respect to money-laundering, continue efforts towards the establishment of a Financial Intelligence Unit; review the money-laundering offence in the Criminal Code to ensure that it is broad enough to capture all forms of concealing of the proceeds of corruption.*
14. *Ensure effective measures for the provision of international mutual legal assistance.*

III) TRANSPARENCY OF THE CIVIL SERVICE

General note

The Information which was provided under this heading is not sufficient to support a comprehensive assessment. Therefore, only recommendations on selected sections can be made. It is recommended to further develop and elaborate these sections for the second review meeting, aiming at the publication of the report that would contain comprehensive information.

Specific recommendations:

15. *Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Strengthen the capacities of the tax and custom authorities by instituting regular basic in-service training for its officials.*
16. *Strengthen the School of Public Administration, which should conduct in-service training for public officials and the curriculum of which would include topics related to ethics and anti-corruption measures.*
17. *Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting (basic) regulations on the protection of "whistleblowers", and launch an internal campaign to raise awareness about those measures among civil servants. Additionally, study the application of the offences of defamation and insult in the Criminal Code to ensure that they do not present an obstacle to the reporting of offences.*
18. *Ensure an effective enforcement of the provisions of the Law on the Fight against Corruption that concern the declaration of assets and prevention of conflict of interest, by assigning an independent institution (possibly the Anti-corruption Council) and empowering it to monitor the implementation of the mentioned regulations. At the same time, make enforcement of these provisions manageable - obligations for asset declarations should be limited only to high-level officials and officials working in corruption exposed institutions.*
19. *Review the public procurement law to enhance the transparency of the procurement procedures, raise their efficiency, and limit the discretion of procurement officials in the selection process. To the extent possible, enhance the capacity of the procurement agency so that it is able to carry out supervisory functions. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of the legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.*
20. *Strengthen the capacity, resources and independence of the Committee of State Financial Control and enhance its reporting obligations to the Parliament and to the public in general.*
21. *Consider creating an independent office of an Information Commissioner to receive appeals under the Law on Access to Information, conduct investigations, and make reports and recommendations. Revise the Access to Information legislation, to limit discretion on the part of the public officials in charge, and to limit the scope of information that could be withheld.*