



ORGANISATION FOR ECONOMIC  
CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET  
DE DÉVELOPPEMENT ÉCONOMIQUES

## **Anti-Corruption Network for Eastern Europe and Central Asia**

### Istanbul Anti-Corruption Action Plan

#### Second Round of Monitoring

## **Azerbaijan**

## **Progress Report**

Report is presented by Azerbaijan at the 10<sup>th</sup> Monitoring Meeting on 28-30 September 2011.

# 1. Anti-Corruption Policy

## ***1.1-1.2.-1.3. Political will to fight corruption, anti-corruption policy documents and corruption surveys***

### Previous Recommendation 1

Speed up efforts to adopt a comprehensive Anti-Corruption Program (Special State Program for Fighting Corruption) aiming at strengthening the implementation of anti-corruption measures. The Program should build on an analysis of the patterns of corruption in the country. It should propose focused anti- corruption measures or plans for selected institutions and have a balanced approach of repressive and preventive measures. The Program should also envisage effective monitoring and reporting mechanisms based on a participatory process which would include civil society in general and associations with experience in the area of anti-corruption, as well as the private sector / business community. In the light of this, ensure that the adopted strategy is widely disseminated within the civil service and among general public.

*Recommendation 1 is largely implemented.*

### Previous Recommendation 5

Conduct further surveys and relevant research, based on transparent, internationally comparable methodology, to obtain more precise information about the scale of corruption in the country, and in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.

### **New Recommendation 1.1.-1.2.-1.3.**

**Strengthen political will and practical measures to implement the NSITCC and its Action Plan adopted in 2007. Improve a mechanism for civil society's participation in the assessment. Periodically carry out and publish surveys about levels and trends of corruption in different sectors. Implement measures to improve the quality and the implementation of the actions plans by specific institutions, develop policy and measures to address corruption risks at the municipal level.**

The anticorruption political will of any state is manifested through the active actions of the Government in support of the anticorruption programs. While Azerbaijan is running its second anticorruption strategy, which provides a framework for a wide range of anticorruption measures in all areas of the society, the Government of Azerbaijan expresses full support and encourages active approach by all the actors.

On January 14th 2011, President Ilham ALIYEV in the meeting of the Cabinet of Ministers gave instructions that all the negative facts hindering the development of the country should be eliminated. He stated that "we should continue to take further measures for the imprudent of the business environment. Bureaucratic obstacles should be eliminated, corruption and bribery should be combated

more severely, and public control should be strengthened. These are very important issues. If we attain our goals, Azerbaijan's economy will grow faster, our GDP will increase further, more taxes will be collected and as a result transfers from the State Oil Fund to the state budget will decrease."

Following the Cabinet of Ministers meeting on January 27, 2011 the Commission on Combating Corruption held a special meeting with the participation of all the relevant state bodies. Special task and missions were assigned to the state bodies in order to preserve the development tendency in the country and eliminate negative facts to the economic-social development of the country.

The necessity for eliminating negatives facts and for increasing transparency and efficiency were reiterated by Mr. Ilham Aliyev in his speeches during his visits to the Gazakh and Tovuz regions on February 9, 2011.

During this meeting with the public representatives in Gazakh, President Ilham Aliyev stated that great attention will be paid to private enterprise development and for this purpose political support is highly important. He further affirmed that "serious work is under way to stop unfair treatment of businessmen. Such activities are conducted on a regular basis but I think we should further step up our efforts. We must put an end to unfounded interference and inspections."

"Azerbaijan is doing a lot, but much remains to be done. We must modernize our country and bring it to the level of developed countries in all respects – in terms of both political and economic reforms. We need to strengthen public control in the country, fight bribery and corruption. The instructions I issued earlier this year at the Cabinet meeting are being fulfilled."

"Great prospects are opening up before us. Azerbaijan must become a developed country in the truest sense of the word, and this is our goal. I have repeatedly expressed my thoughts about that. Although there are not many developed countries in the world, I believe that we have every opportunity to become one of them by all criteria. Economic successes alone are not enough. It is necessary for all spheres of life in the country to be measured by highest standards. Social welfare, infrastructure projects, principles of social justice, reforms and fair decisions in the judicial system, transparency in the executive branch, maximum transparency in our financial system, public oversight, promotion of democracy, i.e. developed countries are considered as such because of the successes achieved in these areas."

In Tovuz region during his meeting with public representatives President Ilham Aliyev stated that "Our work must meet the level of the most developed countries. We must rise to their level. We have already approached it, while in many cases have approached it to the maximum extent possible. But still much remains to be done. The entire work in our country – the economy, social policy, all other issues – must be done at a modern level. People must live in peace, the principles of social justice must be embedded completely. It is necessary to eliminate all shortcomings, and we are doing that. We need to step up our work in this area. Earlier this year, I issued instructions to that effect. We must fight against bribery and corruption even more rigorously. There is legal framework for that, necessary instructions and orders have been issued. We must eliminate these negative facts in Azerbaijan. For that to happen, all of us, the authorities and citizens alike, have to be more assertive."

President of the Republic during his speech on March 1, 2011 in the conference dedicated to the results of the second year in the execution of the "State Program on socioeconomic development of districts of the Republic of Azerbaijan in 2009-2013" stated the following:

"An important issue for our country, including for business development, is to strengthen the fight against bribery and corruption. I spoke about this at the Cabinet of Ministers meeting at the start of the year and gave the relevant instructions. I can say now that serious processes are under way in all parts of our country. We can see the first positive results and must ensure that the results are even more impressive, more effective. This is not a one-or two-year process, not a campaign, but our conscious choice. If we really want to see Azerbaijan as a modern country, if we want to see development in all areas, then we must wage a serious fight against negative phenomena. Bribery and corruption are a tragedy, a great wound, a great blemish. We must act to ensure transparency in all areas,"

"Administrative measures are of course being taken and will continue. Punishments are being imposed and will be imposed. At the same time, we must make structural reforms in such a way that bribery and corruption are eradicated. This is the purpose of the decrees that I have signed recently. We must use structural reforms, institutional methods, to reinforce the fight against bribery and corruption. Of course, structural reforms alone are not enough to achieve the desired results. Therefore, all state agencies, all state companies, local executive authorities, central executive authorities, must realize that every single official should do their job honestly and with a clear conscience."

President Ilham Aliyev in February and March signed several Decrees aiming to further increase transparency and efficiency in the work of state bodies.

President also expressed full support of his earlier Decree on the 22nd June 2009, On Intensification of Combat against Corruption-Related Offences in the Domain of Administration of State and Municipal Property and Means. This support encouraged the elevation of the work in this area to the new level.

Within the specified period a number of measures was taken to improve a mechanism for civil society's participation in the assessment. Periodically carry out and publish surveys about levels and trends of corruption in different sectors. Thus earlier this year, the joint Anticorruption NGO Information Network, Constitutional Research Foundation and State Support to the NGOs Council under the President of the Republic of Azerbaijan (financed by the latter) research project entitled 'Corruption Condition in the Country' was conducted in 2010 and the results of this research was published, also in the web-page - <http://anticornet.az/qanunlar/2-3.pdf>

Under this project, the NGOs carried out interview among the public in order to figure out the perception of the population of the corruption, find put the general prospective, as well as evaluate the state of implementation of the National Anticorruption Strategy and obligations under international instruments, to which the Republic of Azerbaijan is a party.

A list of other researches with active links is located on the web-page <http://anticornet.az/az/index.php?newsid=45>:

- The instances of corruption in the domestic trade, their causes and ways of resolving these problems;
- Institutional Support to the Anticorruption NGOs Information Network;
- Unofficial payments in the secondary education institutions;
- Monitoring of the Addressed Social Security Payments;
- Monitoring of the Hit-lines run by the State Institutions

### ***1.4-1.5. Public participation in anti-corruption policy work, raising awareness and public education***

#### Previous Recommendation 2

Ensure involvement and participation of civil society in general and through associations with experience in the area of anti-corruption, as well as representatives of the private sector / business community in the work of the existing Commission on Combating Corruption at the Civil Service Executive Board.

*Recommendation 2 is partially implemented.*

#### Previous Recommendation 6

Conduct awareness raising campaigns and organize training for the relevant public associations, 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.

*Recommendation 6 is largely implemented.*

#### **New Recommendation 1.4.-1.5.**

**Enhance mechanisms to ensure civil society participation in the work of the Commission on Combating Corruption. Expand civil society participation in the Working Group on Legislation. Develop mechanisms for civil society involvement in sector specific anti-corruption activities as well as in the activities of local authorities. Increase efforts to raise public awareness through comprehensive and sustained campaigns, including for target groups, with the focus on practical skills needed to prevent and fight corruption.**

Although the NGOs were not included as a full member of the Commission on Combating Corruption, they continued to participate in the work of the Working Groups under the Commission. The Commission launched a grant program to finance and support logistically the NGOs, including the Information Network.

Commission on Corruption is a member of the Information and Cooperation Network of NGOs. The Network unites more than 20 NGO active in the fights against corruption such as Transparency Azerbaijan, Fund for struggle against Corruption, Young Lawyers Association of Azerbaijan etc.

Commission on Combating Corruption launched a public survey and study programs in September 2007 and 2009, in order to gain a clearer insight into the extent of corruption in

Azerbaijan, its causes, its features and the sectors most affected by it. The Commission entrusted the Information and Cooperation Network of NGOs involved in the fight against corruption. The results were published in the press and internet (see the above answer).

In December 2007 the Council of State Support to Non-Governmental Organizations under the President of the Republic of Azerbaijan was established. The Council allocates grants to the NGO's in Azerbaijan. One of the priority areas of the Council is also anticorruption and good governance issues.

With the support of the Commission on Combating Corruption were set up web pages on state tariffs [www.rusum.az](http://www.rusum.az) (2010) and on ethics [www.etika.az](http://www.etika.az) (2011).

## ***1.6. Specialized anti-corruption policy and coordination institution***

### **New Recommendation 1.6.**

**Strengthen the role of the Commission in public awareness raising and in anti-corruption training for public administration, and in anti-corruption research. Focus the efforts of the Commission at the implementation of the priority measures of the strategy, such as adoption of legislation and sector specific action plans. Strengthen the capacity of the Commission and its Secretariat to verify asset declarations of public officials. The Commission should collect and analyze information about various violations of anti-corruption provisions gathered by ministries and agencies, including the internal investigative sections within each agency, based on standardized reporting mechanisms.**

CCC has reviewed the new recommendation 1.6 and has arrived at the following result, which in essence address the issues reflected in it, although in a different format. In the Period of assessment CCC its coordinating powers in fight against corruption, including public awareness raising and in anti-corruption training for public administration, and in anti-corruption research.

As mentioned above, the commissioned NGOs with carrying out researches in order to secure the credibility of such research. Obviously the NGO research gains more credit than a research by a governmental agency. The Commission continued its efforts in coordinating the awareness raising and training for public administration.

Subject to the CCC Instruction the anticorruption segment becomes an indispensable part of the trainings, such as *Preparation of the business plans and investment projects Seminar* arranged with the support of the Ministry of Economic Development included an anticorruption segment.

In order to promote awareness-raising, the CCC continues to promote the similar patters in different public agencies. Thus the pattern of establishing public councils was applied by the

State Fund for Social Security, which become the latest state body to establish the body to coordinate cooperation with the civil society on an on-going basis.

Collection and analysis of information about various violations of anti-corruption provisions gathered by ministries and agencies, including the internal investigative sections has been entrusted with the other specialized national anticorruption agency, which is better equipped to this end and already has developed practical relations with the Internal Investigation units. (See answer related to the ACD).

In the meantime, the Commission is concentrated on the development of its capacities to verify asset declarations of public officials.

## **2. Criminalization of Corruption**

### ***2.1.-2.2. Offences and Elements of Offence***

#### Previous Recommendation 8

Speed up the adoption and implementation of the draft legislation which should harmonize the criminal legislation in the area of corruption with the relevant international standards (such as the United Nation's Convention on Corruption, the Council of Europe's Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

#### Previous Recommendation 9

Amend the incriminations of corruption offences to meet international standards. In particular ensure that undue benefits include material as well as non-material benefits, and that bribery through intermediaries is fully covered.

*Azerbaijan remains largely compliant with the recommendation 9.*

#### Previous Recommendation 14

Recognizing that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Azerbaijan should, with the assistance of organizations that have experience in implementing the concept of liability of legal persons (such as the OECD and the Council of Europe), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.

*Azerbaijan remains partially compliant with the recommendation 14.*

#### **New Recommendation 2.1.-2.2.**

**Consider amending the Criminal Code to include a separate provision criminalizing illicit enrichment. Ensure criminalization of "promising" or "offering" a bribe, including making these provisions applicable to Article 312-1, Trading in Influence. Develop cases based on non-material benefits as an object of bribery. Introduce into the legal system the concept of responsibility of legal persons for corruption-related criminal offences.**

Azerbaijan is in the process of considering amending the Criminal Code to include a separate provision criminalizing illicit enrichment and introducing into the legal system the concept of responsibility of legal persons for corruption-related criminal offences. The appropriate draft was developed and submitted for the consideration of the Committee of the Parliament.

With Criminal Law (Amendment) Act 2011, the recommendation on the criminalization of “promising” or “offering” a bribe and application of similar provisions to Section 312-1 (Trading in Influence) of the Criminal Code was implemented. The new versions of the law looks as follows:

Section 311.1. Receiving of bribe, i.e. requesting or receiving **or accepting of the offer or promise** by official person directly or indirectly, personally or by intermediary of third persons, of any material and other values, privileges or advantages for himself (or herself) or third persons, for any act (inaction), as well as general patronage or indifference, in the exercise of his (or her) official functions shall be punished by four to eight year imprisonment with deprivation of the right to hold certain positions and be engaged in certain activities up to three years with confiscation of property.

Section 312.1 Giving of bribe, i.e. giving **or offering or promising** of any material and other values, privileges or advantages, directly or indirectly, personally or by intermediary of third persons, to official person for himself (or herself) or third persons to act or refrain from acting in the exercise of his (or her) functions shall be punished by fine in the amount of one thousand to two thousand nominal financial unit or imprisonment from two years to five years with confiscation of property.

Section 312-1

312-1.1. Requesting or receiving **or accepting of the offer or promise** by any person of any material and other values, privileges or advantages for himself (or herself) or third persons, **directly or indirectly, personally or by intermediary of third persons,** for exerting an improper influence over the decision-making of an official using his (or her) real or assumed possibilities of influence shall be punished by the fine in the amount of three thousand to five thousand nominal financial unit or imprisonment from three years to seven years with confiscation of property.

312-1.2. Giving **or offering or promising** to any person of any material and other values, privileges or advantages **for himself (or herself) or third persons, directly or indirectly, personally or by intermediary of third persons,** for exerting an improper influence over the decision-making of an official using his (or her) real or assumed possibilities of influence shall be punished by the fine in the amount of one thousand to two thousand nominal financial unit or imprisonment from two years to five years with confiscation of property

## ***2.3. Definition of Public Official***

### Previous Recommendation 11

Ensure the criminalization of bribery of foreign and international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

*Azerbaijan remains partially compliant with the recommendation 11.*

### **New Recommendation 2.3.**

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

Azerbaijan has fully implemented this recommendation through Criminal Law (Amendment) Act 2011 (24.06.2011)

#### **Note to Section 308 of the Criminal Code:**

The ‘official’ in the present Chapter shall be understood to include:

1. Representatives of the Authority, including persons, elected or appointed to the state bodies in order provided by the Constitution and Statutes of the Republic of Azerbaijan, or representing state or self-governing bodies through the special powers, or military servicemen, such as officers, ensigns, or warrant officers, civil servants (including special category of civil service), members and employees of the municipalities;
2. Persons registered as candidates for elected position in a state body, in order provided by law;
3. Managers and employees of state and municipal organizations, enterprise, department or institution and other commercial and non-commercial organizations;
4. Persons carrying out organizational- administrative or administrative functions in state and municipal organizations, enterprise, department or institution and other commercial and non-commercial organizations on the basis of special powers;
5. Persons engaged in entrepreneurial activity without incorporation of a legal person;
6. Officials of the foreign state bodies, members of the elected foreign state organs, officials and other employees of the international organizations, members of the international assemblies;

7. Judges and other officials of international courts, arbiters of foreign or domestic arbitrations, foreign and domestic jurors.

## ***2.4.-2.5.-2.6 Sanctions, Confiscation, Immunities and Statute of Limitations***

### Previous Recommendation 10

Take steps to make the actual period of limitation for corruption cases longer and consider increasing the punishment for active bribery.

*Azerbaijan remains fully compliant with the recommendation 10.*

### New Recommendation 2.4.-2.6.1.

**Amend the Note to Section 312 of the Criminal Code so that the person who pays a bribe and then reports it to the authorities is only exempt from criminal prosecution if that person reports the crime to the authorities before it is discovered by them. Also, make clear in the legislation that this exemption cannot be applied to bribery of foreign or international public officials. Consider amending the statutory and constitutional provisions regarding immunity for public officials to limit such immunity to acts committed in the performance of official duties. Alternatively, amend these same provisions to apply only when a criminal case is ready to be filed to court or when the arrest of an official is requested. Lift the prohibition on using special investigative measures (SIMs), allowing detective activities (SIMs) and criminal investigations of officials with immunity to be conducted confidentially, as are all other criminal investigations. (See also New Recommendation 3.8. regarding immunity of judges which is consistent with this recommendation).**

There is no exception on the exemption from criminal liability in case if person reports the crime to the authorities, i.e. that it cannot be applied to bribery of foreign or international public officials. The concept of the officials has been extended to cover foreign or international public officials and Section 312 has no limitation to exempt the cases involving foreign public officials.

The Note to Section 312 of the Criminal Code has not been amended so that the person who pays a bribe and then reports it to the authorities is only exempt from criminal prosecution if that person reports the crime to the authorities before it is discovered by them. It is a highly contested matter of when exactly the law enforcement agencies came to know about the crime. This order is established through good practice and requires individual case approach. In any case, the prosecutorial and judicial control exists at the stage of investigation. If not a prosecutor in charge, then the attorney is capable of brining and challenging this matter before the court. Any formulation, which may in effect limit or condition the application of this fragile, in essence *plea bargain norm*, could have opposite effect and lead to abuses.

### Previous Recommendation 13

Amend the legislation on confiscation of proceeds from crime to comply with international standards (such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime). Introduce a proposal to amend the Criminal Code ensuring that the 'confiscation of proceeds' measure applies mandatory to all corruption and corruption-related offences. Ensure that confiscation regime allows for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect.

*Azerbaijan remains largely compliant with the recommendation 13.*

**New Recommendation 2.4.-2.6.2.**

**Analyze the practice of application of confiscation provisions to identify deficiencies and develop measures to ensure their more effective application. Collect and analyze accurate statistics on what property is being confiscated, how the property is being disposed of, and the amount of money deposited into the government treasury. Consider adopting civil provisions for confiscation of the proceeds of crime.**

Under the exclusive powers of procedural management of the pre-trial investigation, the General Prosecutor's Office has conducted a review of the application of the provisional measures (to ensure confiscation) in all investigative institutions, as well as local prosecutor's offices. The Anticorruption Department with the Prosecutor General of the Republic of Azerbaijan (ACD) summarized the review reports and submitted its findings. Based on the findings of the summary of the review, the General Prosecutor issued a Decree to endorse *Rules for Enforcement of the Provisional Measures aimed at Ensuring Confiscation* on the 24.09.2010 Ref. 10/88.

The Review of the application of the confiscation by courts has been carried out also by the Department for Public Prosecutions, which is a unit within the General Prosecutor's Office and has the exclusive authority to prosecute in courts on behalf of all investigative authorities, including the prosecutor's offices.

In Parallel, the appropriate department of the Ministry of Finance, which is in charge of registering and disposing of the confiscated property, has also carried out its own review, in order to evaluate the efficiency of the confiscatory mechanism.

According to the statistical data, ACD seized property and means worth 7,000,000.00 Manats (1Euro = 1.14 Manats) and in 2010, and 820,000.00 Manats in the first nine months of 2011.

Among the findings of the analysis performed by the ACD and Ministry of Finances were the following deficiencies:

- the courts do not specify the identifying information, as to the property to be confiscated;
- the courts do not specify the technical condition and other specifications related to the value of the confiscated property;

- the draft *Rules for Evaluating, Storing and Transporting, as well as Auctioning of the Confiscated Property* is still pending Endorsement.

Currently, the General Prosecutor's Office, along with other investigative authorities, courts and the Ministry of Finance is considering the establishment of an independent body charged with the abovementioned issues near the State Commission on Real Estate and the appropriate proposal was submitted to the Cabinet of Ministers. All the appropriate bodies provided its comments to the Financial Ministry.

The information on the confiscated property and its payment into the budget is reflected in the quarter and annual reports on the budget.

According to the financial statistics of the Ministry of Finance of the Republic of Azerbaijan, 240,882.00 Manats<sup>1</sup> was paid to the budget in the first 6 months of 2011, as a result of confiscation (please note that property shall be confiscated only according to a court decision).

## ***2.8. Application, Interpretation and Procedure***

### **New Recommendation 2.8.**

**Introduce measures to ease the proceedings for the access of the prosecutor's office and, particularly of the ACD, to bank, financial and commercial records. Consider amending the C.P.C. to allow these activities to be performed by order of a prosecutor, without authorization from a court. Amend the actual laws on SIMs or draw up methodologies in order to ensure full and direct control of the case- prosecutor to the operative activity and SIMs performed by law enforcement agents, by the direct participation of the prosecutor in such operations or by simultaneous access in the course of conducting detective operations and using special investigative measures (SIMs) and remote coordination by the case prosecutor.**

The Detective-Search Activity Act (1999) is the law which provides all possible special investigative measures (SIMs) available for the law enforcement agencies. Section 10 of the Act establishes the following SIMs: interviews of people; informal inquiries; wiretapping of telephone conversation; surveillance of post and other communications; extraction of information from technical electronic communication channels; checking the letters of convicts; examination of vehicles; entrance and examination of dwellings and other premises as well as other closed buildings; monitoring of buildings, including dwelling premises, as well as other closed buildings, construction sites and land plots; surveillance of persons; person's identification; controlled purchase of goods; examination of objects and documents; collection of samples for comparative analysis; controlled delivery; undercover penetration of criminal groups or marginal association; incorporation of a legal person; conducting investigatory experiments- i.e. application of model simulating the criminal behavior.

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<sup>1</sup> 1 manat = 1.14 Euro

Under the Decree of the Prosecutor General issued in March 2010, the ACD was commissioned as the Department to supervise all SIMs regardless of the body exercising it. Even though there are separate departments in the structure of the General Prosecutor's Office, which supervise legality of SIMs by police, security, tax, etc., the ACD would be the point of reporting and accountability for all these bodies.

According to the statistics, 26 anticorruption sting operations, mostly through controlled delivery, were carried out in 2009, 17 by Ministry of Justice, 3 by the National Security, 1 by the police, 4 by the Tax bodies, 1 by body guard agency. 28 sting operations were carried out in 2010, of which 18 were made by Ministry of Justice, 4 by the National Security, 4 by the police, 1 by tax bodies, and 1 by Ministry of Emergencies. Again 28 sting operations were carried out in 9 months of 2011, of which 16 were made by Ministry of Justice, 4 by the National Security, 3 by the police, 1 by the Tax bodies, 1 by body guard agency, and 3 by Ministry of Emergencies.

According to the Detective-Search Activity (Amendment) Act 2011 (18.03.2011) the Anti Corruption Department near the General Prosecutor, which used to be empowered only with the criminal investigational (pre-trial) powers, has been vested with the authority to carry out all types of special investigation means (SIM) in respect of the corruption offences. The amendments go beyond this to exclude all other law enforcement agencies from carrying out SIMs in respect of the corruption offences, except the cases when ACD issues to them mandatory written instructions to carry out such measures. The appropriate changes was reflected in the Prosecutor's Office (Amendment) Act 2011(18.03.2011), which defined the ACD as a body specialized in the investigation and operative detection of corruption offences.

## ***2.9. Specialized Anti-Corruption Law-Enforcement Bodies***

### Previous Recommendation 3

Speed up activities to implement the President's Decree "On Application of Anti-corruption Law" of 3 March 2004 and support the work of the Special Anti-corruption Department within the Prosecution Service with adequate resource for its proper functioning. This Department should 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 it includes specialized prosecutors. Apart from working on actual corruption cases, one of the main task 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 investigation 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 Office and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions.

*Azerbaijan is largely compliant with the recommendation 3.*

**New Recommendation 2.9.1.**

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

**Continue efforts to strengthen the ability of the ACD to detect, investigate and prosecute corruption. To enable the ACD to detect high-level corruption, empower the ACD with full scale detection of corruption functions. Ensure direct access for the ACD to all public data bases kept by the public authorities. Consider reducing the role of other law-enforcement agencies in detection and investigation of corruption, improve inter-agency cooperation and exchange of information. Review the role of all law enforcement bodies, including the Ministry of Internal Affairs and Ministry of National Security, in detection of corruption offenses to ensure that corruption detection and investigation are carried out by a specialized anti-corruption body.**

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

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

National Corruption Database is operational since January 1, 2009. It provides a proper mechanism for the monitoring of corruption and corruption related offences.

According to the Prosecutor's Office Amendment Act (Implementation) Presidential Decree 2011, the instruments detailing the implementation of the appropriate Act, the Cabinet of Ministers was commissioned with taking necessary measures in order to ensure the Access of the ACD to the databases of state institutions. Currently, ACD has already joined to the AMAS integrated database covering several ministries.

According to the ACD Charter Presidential Decree 2011, seven following divisions were established within the ACD:

- Organization and Information Support Division;
- Criminal Investigations Division;
- Prevention Measures and Inquiry Division;
- Internal Security Service;
- Detective (SIM) Division;
- Detective Support Division;
- Group of Specialists.

The newly established units are charged, among others with analysis of the data, control of the seized property (Organization and Information Support Division), prevention of corruption also

through examination of the information on the non-criminal and criminal offences of corruption (Prevention Measures and Inquiry Division). The ACD has elaborated a Corruption Detection Toolkit in cooperation with the STT (Lithuania), in order to arrange seminars and build contacts with the Internal Investigation units of other state institutions. The newly established units are also charged with strengthening analytical support and expertise investigation of corruption (Group of Specialists), and detection of corruption (Detective (SIM) Division; Detective Support Division). Prevention Measures and Inquiry Division has also been empowered with developing indicators for comparison among institutions, and/or development of typologies and identifying high risk areas.

The number of the employees (prosecutors and investigators) was raised to 100, with 45 detectives/specialists and technical staff. Whereas the detectives are recruited from the law enforcement bodies with SIM powers, the specialists are recruited from among the experienced specialists the economic, finance, banking, municipal and other areas.

At the Stage of the [pre-trial] criminal investigation the jurisdiction of the Anticorruption Department covers all corruption offences and the offence of the money laundering. According to the established practice, only in the case of low profile of the case and overload of the department, the case is referred to the territorial prosecutor's office. The statistics speaks for itself: **only in the period of January-September 2011, the ACD has instituted 133 criminal cases/investigations, of which 88 criminal cases in respect of 147 persons were submitted to courts.** The criminal cases cover the investigation bribery, trade in influence, abuse of office, excess of authority, official fraud, misappropriation, swindle, money laundering, etc. For comparison only **104 criminal cases in respect of 188 persons were submitted to court throughout entire year of 2010.**

At the stage of the detective activity, including application of the SIMs, the ACD has an exclusive competence, excluding all other agencies, such as police and security bodies, which is clearly stated in the new version of the Detective Search Activity ACT 1999.

As of March 2011, the ACD installed its own hot-line service. Prosecutors and investigators of the department take 24 hour shift all days of the week, including holidays. The ACD staff does not only accept the information from the primary source (citizens and organizations) and take necessary measures when the elements of the corruption offences are present, but also provide counseling and advice on dealing with the matter even outside criminal justice, if necessary. The information on the new hotline has been circulated at the inauguration press conference, series of press releases informing on the results of activity and series of seminars in the regions. The President of the state, the Prosecutor General repeatedly informed population of the hot line. The ACD Director, on many occasions, including quarter press conferences, which have become usual practice, interviews and other events called upon population and

especially whistleblowers from state institutions to be more active. The number of hotline is easy to remember and dial; it is toll free even for mobile networks, 161. As a result, since March 2011, more than 2,000 communications were received. Many communications laid the foundation of criminal prosecutions and sting operations against public officials, including directors of regional departments of social security, education, transportation and other ministries, chairmen of municipal administration boards. Furthermore, the ACD prosecutors initiated administrative and disciplinary proceedings against officials for omissions which did not qualify as corruption offenses. Also, the analysis of the incoming information allowed the ACD Director to use his statutory powers of submitting motions for elimination of corruption generating conditions, which are mandatory for review by the concerned bodies, whether private or public.

#### Previous Recommendation 4

To continue with corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation.

*Azerbaijan is fully compliant with Recommendation 4.*

#### Previous Recommendation 15

Recognizing that a strong nexus can exist between organized crime and corruption, with the possible assistance of organizations that have experience in fighting against these forms of criminal activity, study the interrelations between the two.

*Azerbaijan is largely compliant with this recommendation.*

#### **New Recommendation 2.9.2.**

**Take measures to design a normative base for improving inter-linkage efforts to fight organized crime and corruption. Enhance cooperation with international organizations and NGOs dealing with both organized crime and corruption in order to ensure a holistic view about common areas of concern of both organized crime and corruption.**

#### Previous Recommendation 22

Introduce legislation that fully covers the international standard as to combating money laundering, namely, as to criminalize the laundering of proceeds of all serious crimes (including corruption). Establish a financial intelligence unit.

*Azerbaijan is largely compliant with this recommendation.*

#### **New Recommendation 2.9.3.**

**Continue the establishment of the FMS in accordance with international standards and ensure its operational autonomy. Continue with the implementation of FATF Recommendation 6 that deals with politically exposed persons. FMS should work with ACD to develop a mechanism to identify appropriate criminal cases from the relevant suspicious activity reports.**

The Anti-Corruption Department under General Prosecutor's Office of the Republic of Azerbaijan established within consistent and systematically implemented anti-corruption measures in the country is a law-enforcement body directly involved in AML/CFT field. Thus, pursuant to the Code of Criminal Procedure of the Republic of Azerbaijan, preliminary investigations on criminal cases related to anti-money laundering and combating the financing of terrorism shall be handled by prosecution bodies.

The Memorandum of Understanding on mutual cooperation in AML/CFT sphere was signed between the Financial Monitoring Service and the Anti-Corruption Department under General Prosecutor's Office in February 2010. Thus, the Anti-Corruption Department was identified as the prosecution body responsible for AML/CFT activities.

In accordance with the AML/CFT legislation and the mentioned Memorandum of Understanding, both agencies share information on facts of legalization of criminally obtained funds or other property and investigation of such facts.

Moreover, based on the Curriculum jointly developed by the Financial Monitoring Service and the Scientific-Education Center of the General Prosecutor's Office, employees of the General Prosecutor's Office receive training on specific features of preliminary investigations of AML/CFT-related criminal cases.

### **3. Prevention of corruption**

#### Previous Recommendation 17

Screen the system for the control of assets of public officials to detect any possible loopholes and develop proposals to eliminate such loopholes. Consider increasing responsibility (not just disciplinary) for public officials for failure to comply with requirement to declare income, assets and liabilities. Consider disclosing publicly the declarations of certain groups of public officials.

*Azerbaijan was partially compliant with recommendation 17.*

#### Previous Recommendation 18

Adopt a uniformed Code of Ethic/Code of Conduct for Public Officials modeled on international standards (e.g. such as Council of Europe Model Code of Conduct for Public Officials) as well as specific codes of conduct for professions particularly exposed to corruption, such as police officers, prosecutors, tax officials, lawyers, accountants, etc. in addition, prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflict of interests, ethical standards, sanctions and reporting of corruption.

*Azerbaijan is largely compliant with the recommendation 18.*

#### Previous Recommendation 19

Set up a state authority body to supervise the implementation of laws and regulations in the civil service and, particularly, control the observance of conflict of interest regulations. Where needed, introduce legally binding regulations to directly address conflicts of interest in the civil service.

*Azerbaijan is partially compliant with the recommendation 19.*

#### Previous Recommendation 20

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, and launch an internal campaign to raise awareness of those measures among civil servants. Adopt regulations on the protection of “whistleblowers”.

*Azerbaijan remains not compliant with the recommendation 20.*

#### **New Recommendation 3.2.**

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

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

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

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

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

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

Azerbaijan continued to pursue the implementation of civil service reform to streamline the legal framework and cover even wider scope of public officials. Appointment persons to the public officials became a rule, effective for all the executive bodies, now even the judicial branch with judicial employees, ACD detectives and specialists being recruited through a competitive process. In practice, the entire judicial corpse and half of the Prosecutor’s Office have been employed through the multi stage competition.

In connection with the separation of the political and administrative positions, the Civil Service Act states that the provisions of this act do not apply to political positions (Section 10.4). The matter shall be subject of consultations between the General Prosecutor's Office and the Civil Service Affairs Commission (CSAC) under the President of the Republic of Azerbaijan.

In the area of transparency and competition based recruitment and promotion of civil servants, the CSAC is running the competition-based transparent recruitment procedures on an on-going basis. In the concerned period, for the first time, the Commission launched the competition for recruitment to the vacancies in the judicial clerks positions (total of 44) pertaining to the 6-9 categories of civil servants. The necessary measures were taken to fill in vacant positions in courts, pertaining to 6-9 categories of civil servants. As a result, 44 vacant in 9 courts were filled.

The Commission, in cooperation with the appropriate public institutions has developed questions database and specific examination software related to the initial stage of the competition. The software contains the information on the topics, used sources for answers, including the statutes. The test questions used during the examination are uploaded on the web-page of the CSAC few months before the examination. This gives an opportunity for applicant to prepare themselves better and draws the start line for all competitors, i.e. stage them in equal positions.

With a view to secure transparency, run in a more efficient and professional manner, of the second stage for the competitive examination, which is the Interview, the CSAC set up the panel for independent experts. The panel was set up also through the competition, the information on which law uploaded on the web-page of the Commission, specifying the requirements for recruitment of the independent experts. The selected specialists began to take part in the interview stage of the competition process as of 05.02.2010. There is an on-going effort to involve new experts in various areas.

In addition to this, the Interview with the candidate is video-recorded and archived and the Commission arranges all necessary conditions for the participation of observers from among civil society and media in this process.

The Appellate Commission (AC) was established in order to Review the appeals by the unsatisfied failing candidates in an expedient manner. The AC looks into the appeal, reviews the examination process and passes the founded decision with the participation of the candidate. If the candidate remains unsatisfied with the AC decision, s/he is entitled to appeal to the court of law.

In order to promote transparency and fair competition during the second stage of the examination (the Interview), the CSAC has developed a software which contains the topics for

questions, as well as the sources of information for replies to these questions. This software is also uploaded to the web-page of the Commission few months in advance.

The Commission initiated the amendment to the legislation, according to which the Head of the Institution is bound to choose one of the CSAC candidates provided to him/her and appoint this candidate to the vacant position.

With regard to the promotion of the civil servants, a civil servant is entitled to the advancement in service through promotion by the management, interview or competition, according to Section 32.1 of the Civil Service Act. The interview is run by the Interview Commission, which shall include the representative of the CSAC. The Interview is conducted based on the same rules as the Interview as the second stage of the Recruitment Examination Process, mentioned above. The civil servants occupying the 6-9 categories of the civil service, the promotion is possible according to the results of the mandatory interview or other competition process. To this end, competition group shall be established to carry out this competition. The representative of CSAC shall be included in this group. The measures applied at the second stage of the competition, the interview are also applicable in this process.

In connection with the establishment of the limits to variable part of the wage of civil servants, the Civil Service Affairs Commission has formulated a proposal to the Action Plan 2011-2015 for the Implementation of the National Strategy for Reduction of Poverty and Development 2008-2015. The proposal is to determine fixed variable additional parts to the salaries of civil servants based on the results of their productivity.

As to the adoption of rules for mandatory continuous training in the area of code of ethics, integrity, conflict of interests, these types of seminars are foreseen in the National Strategy for Increasing Transparency and Anticorruption Action Plan (NSITAC) 2007-2011.

CSAC has adopted its own action plan, aimed at the implementation of the NSCITAC and AP 2007-2011, which contains measures of mandatory continuing training for categories of civil servants. Such action plans are developed on yearly basis. The Commission has implemented its action plan for 2010 and is at the stage of the implementing of this year program.

At the beginning of each year, the Commission requests information from all central and local public institutions concerning the measures, which they plan to arrange trainings in the areas of combating corruption, prevention of conflict of interests, enforcement of ethical and unbiased behavior by civil servants, and issues its recommendations on how to establish principles and arrange continuous trainings in this area. The CSAC requests these bodies to provide its with quarter reports on the taken measures (not mandatory).

Based on their replies, the CSAC issues recommendations to them, which propose to carry out continuous mandatory trainings. An example to this is the timetable for running such trainings in the Ministry of Economic Development, Ministry of Transportation, Ministry of Finances and Ministry of Education.

In order to promote the compliance with the ethics of civil servants, the Commission has improved its web-page by uploading the Civil Servants Ethic Behavior Rules Act and the Presidential Decree aimed at establishing measures to implement this statute, as well as Ethic Code related to other professions. The statutes are contained in the specific area of the web-page, which also allows the citizens to lodge on-line complaints.

According to the Institutional Action Plan of the Commission aimed at the implementation of the Action Plan for the implementation of the NSITAC, the CSAC ran joint trainings in central and local executive institutions covering such issues as the ethical behavior of the civil servants, integrity, fairness, requirements of the Civil Servants Ethic Behavior Rules Act and significance of compliance with these Rules. Thus, the CSAC held trainings in the Scientific-Practical Institute of the Ministry of Economic Development on the 18.03.2010, 15.04.2010, 06.05.2010, 16.06.2010; training center of the Ministry of Ecology and Natural Resources on the 21.04.2010; training center of the Communications and Information Technologies Ministry on the 09.06.2010.

The Seminar on Civil Servants Ethic Behavior Rules Act was held on the 24.02.2010, with the participants from the executive bodies of 11 districts of Baku city.

The CSAC also runs trainings on Civil Servants Ethic Behavior Rules Act for its own employees on an on-going basis. It also studies and analyses the state of compliance with the mentioned Rules. According to the information furnished by the public institutions, the Ministry of Transportation, Ministry of Finances, Ministry of Economic Development and Ministry of Education ran the Civil Servants Ethic Behavior Rules Act-related trainings according to the time-table agreed with the CSAC. The other institutions complied with the time-table of measures aimed at the implementation of the NSITAC AC events.

The issues under consideration is the appointment of the Commissioner for Civil Servants Ethic Behavior, review and discussion of the condition related to the compliance with the rules and setting up of the appropriate section in the web-page of the CSAC.

In order to establish a reasonable limit to the share of additional wages, exclude the possibility of discrimination and ensuring transparency in the paying of wages are the matters of scrutiny in the process of defining the wages of public servants, as well as formulation and adoption of the appropriate legislation. An example to that is the payment of additional wages to the ACD officer. Thus, subject to para 4.1 of the Presidential Decree on the *Payment of Additional to the*

*Employees of the Anticorruption Department with the Prosecutor General of the Republic of Azerbaijan, the Ministry of Finance developed a set of recommendations and submitted it to the Cabinet of Ministers. The Cabinet of Ministers reviewed the recommendations within two months and after it verification of all the grounds, issued a decision on the payment of additional wage to the ACD officer in the amount of 50% of their actual wage. Another example is the decision (according to the Presidential Decree of 25.03.2011) of payment of additional wage to the military servicemen in the amount of 25% of their wage.*

### ***3.3. Promoting transparency and reducing discretion in public administration***

#### **New Recommendation 3.3.**

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

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

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

On February 17, 2011 the Constitutional Law of the Republic of Azerbaijan on Normative Legal Acts became effective. This new comprehensive law consisting of 18 chapters and 98 articles replaced the previous law on normative legal acts dated November 26, 1999.

This Constitutional Law determines the rules for drafting, adoption, officialization, publication, effectiveness, interpretation and systematization of normative legal acts. Besides the provisions on collision of normative legal acts, gaps in legislation, types of normative legal acts The Law also covers the issues such as general requirements for normative legal acts, structure of normative legal acts, norm creating process and state registry of normative legal acts.

The 5<sup>th</sup> chapter of the Law is about realization of generally accepted principles and norms of international law and norms of the treaties which Azerbaijan is a party to in the normative legal

acts of the Republic of Azerbaijan. There are also provisions about compulsory legal and linguistic and abuse expertise of normative legal acts.

"Structure of the opinion of compulsory legal expertise of draft normative legal acts and the "List of abuse factors in normative legal acts (and its drafts)" are annexed to the Law.

On May 23, 2011 President of the Republic issued a Decree "On some measures for the establishment of the electronic services by the state bodies". The Decree envisages establishment by the state bodies of electronic services in the areas of their authority. Under the decree state bodies will receive all the documents electronically for issuing different certificates, authorizations, IDs and other documents.

### ***3.4. Public financial Control and Audit***

#### Previous Recommendation 21

Enact and implement clear rules on disclosure (making information accessible) and transparency of public expenditure. Consider possibilities to increase transparency in public procurement and with regard to credit agreements with international financial institutions.

*Azerbaijan is partially compliant with part 1 of recommendation 21 as regards PFM aspects.*

#### New Recommendation 3.4.

**Provide long-term capacity building and training in the field of corruption and fraud detection to the auditors of CoA. Introduce anti-fraud and anti-corruption audits in the activity portfolio of the CoA, as well as strict performance-based audits, especially in line ministries facing high corruption risk. Ensure that the CoA develops detailed yearly statistics on the number and types of audits carried out, the source of audit (how it was initiated), and the outcomes and impact of those audits on the decisions taken by the Parliament. Consider introducing ex-ante control of budget execution by the CoA.**

**Ensure that regularly published information on public accounts and budget includes clear explanations on discrepancies. Consider introducing a requirement to the PFCS to review agencies not according to the periodical plan (e.g. each agency to be reviewed not more than once every 2 years), but on the basis of risk-prone financial misconduct.**

**Enhance the power of the IA units in order to allow them to proactively launch anti-fraud and anti-corruption audits, especially in government spending entities, and not only on the basis of a received complaint or suspicious information. Assess the usefulness and the effectiveness of the IA units and propose further improvements; to this end, ensure that all IA unit in different entities should submit yearly statistics on the number of audits carried out, the types of audits, the source of audit (how it was initiated), and the outcomes and impact of those audits (fines, lawsuits, dismissal, financial and organizational reforms done on the basis of audit results, etc).**

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

In case if there are differences between the quarterly or annual reports and the factual expenditures figures, these differences are published on the web-page of the Ministry of Finances and the official magazine entitled *Finances and Booking*.

As regards the recommendation concerning extra-planned examination of the budgetary institutions, the State Financial Control Service (SFCS) of the Ministry of Finance acts in accordance with the *Rules for Examination by the SFCS* endorsed through the Decree I-100 dated 27.08.2009 of the Minister of Finances. According to these Rules, the Service is conducting examinations in the budgetary institutions based on the annual plan. While drafting its annual plan, the SFCS is taking into account also the information on irregularities in the budget-financed institutions, which is received by the Service from various services.

Furthermore, the SFCS is entitled by the mentioned Rules, as well as the SFCS Charter endorsed by the Presidential Decree Ref.48 dated 09.02.2009 to carry out extraordinary examinations subject to court orders or directives of the law enforcement agencies.

Finally, the Ministry of Finances is elaborating Bill on State Financial Control, which foresees the extraordinary examinations based on the well-founded information.

A Strategic Development Plan (SDP) was prepared for the improvement of capacity of the Chamber of Accounts and there are activities implemented according to SDP under the World Bank supported project CAPSAP on the account of resources allocated by SECO. Implementation of these activities is ensured on the account of resources envisaged in the Grant Agreement for Technical Assistance between the Government of the Republic of Azerbaijan and the Government of Swiss Confederation allocated specifically for categories of activities envisaged in the SDP. These activities include improvement of qualification of staff of the Chamber of Accounts, conducting professional trainings and seminars, supporting the development with the focus on international audits methodology, standards, practices and principles, establishment of twinning arrangements and other relations for the purpose of strengthening the cooperation with other Supreme Audit Organizations of different countries, etc. it is envisaged to focus professional trainings on improving knowledge and skills of the staff of the Chamber on detecting corruption crimes financial violations and pay attention on conducting special trainings leading to building of long-term capacity in the field of detection of corruption and fraud cases.

The planning of activities of the Chamber of Accounts based on the Law of the Republic of Azerbaijan "On the Chamber of Accounts", the Charter of the Chamber of Accounts and "Rules on Planning the Activities of the Chamber of Accounts", along with provisions included in the paragraph 3.4.2 (page 43) of the Istanbul Plan of Actions of Eastern Europe and Central Asia Anti-Corruption Network of the OECD, also takes in to account proposals and recommendations

from other financial institutions of the State, law-enforcement agencies, Supreme Audit Bodies of the other organizations as well as studies conducted by the Chamber itself (monitoring, analytical researches, etc). Apart from these, while setting up a plan and selecting audit objects, sources and uses of state financing, as well as possible operational risks, the volume of state resources use by the audited state agency or covered by audit activity, results of previous audits and other grounds, envisaged in the legislation are taken into account for better identification of objects with higher risk of being exposed to fraud and corruption.

It should be pointed that after strengthening the capacity of the Chamber of Accounts under the CAPSAP projects it would be expedient to introduce separate planning of audits against corruption and fraud. Currently, while detecting any case of fraud or abuse during audits performed under the existing legislation, the audit group, according to “Rules On Preparation, Performance And Documenting The Results Of Financial-Budgetary Supervision Activities Performed by the Chamber of Account of the Republic of Azerbaijan”, the relevant report (act) is being prepared and sent to the General Prosecutor’s Office based on the decision of the Board of the Chamber on detected violations.

The Chamber of Accounts, based on Law of the Republic of Azerbaijan “On the Chamber of Accounts”, the Charter of the Chamber of Accounts and other legislation regulating activities of the Chamber of Accounts of the Republic of Azerbaijan, the Chamber of Accounts reports on annual basis to the Parliament of the Republic of Azerbaijan and reports covers types of financial-budgetary supervision activities performed during the year, their number and grounds, results of such activities, identified shortcomings and discrepancies and reasons causing them, proposals of the Chamber of eliminate the and counter-activities made by audited agency, as well as other information related to current operations of the Chamber. Report also contains special notes on information to be delivered to the Parliament. It should also be mentioned that shortcomings and discrepancies, discovered as a result of audit activities, the status of implementation by the Government of proposals and recommendations of the Chamber for the purpose of elimination of gaps in the legal framework is also reflected in the Report. The Parliament of the Republic of Azerbaijan reviews and endorses the report in accordance with the provisions of paragraph 21.1 of own Charter.

Preliminary audits, based on Law of the Republic of Azerbaijan “On Budget Systems”, “On the Chamber of Accounts”, the Charter of the Chamber of Accounts and other legislation regulating activities of the Chamber of Accounts of the Republic of Azerbaijan, for the purpose of prevention of reasons and causes of legal violations is performed by the Chamber by means of development of relevant opinions at the state of consideration of draft laws related to the State Budget, budgets of Extra Budgetary Funds and budgetary financial issues.

Currently at the state of the development of draft budgets for relevant years, draft law on changes and amendments to approved budgets the Chamber mostly reviews the ways and terms of establishment of incomes and expenditures parameters of the state budget, efficiency of implementation of the reallocation function, analysis the correspondence of state debts and budget deficit to the current economic situation and thus ensure the prevention of implementation of any financial operation that may contradict the provisions of law.

The information related to the implementation of the budget in quarter and annual segments, including the information on the difference in figures between the approved ones and real ones, are regularly published in the press and web-page of the Ministry of Finance.

### ***3.5. Public Procurement***

#### Previous Recommendation 21

Enact and implement clear rules on disclosure (making information accessible) and transparency of public expenditure. Consider possibilities to increase transparency in public procurement and with regard to credit agreements with international financial institutions.

*Azerbaijan is partially compliant with part 2 of Recommendation 21 on public procurement.*

#### **New Recommendation 3.5.**

**Review and reform the legal and institutional framework for the public procurement, including the Public Procurement Law, and strengthen the capacity of the State Procurement Agency to lead the implementation of the reform. Ensure transparency of procurement procedures, expand the use of competitive procedures, ensure that emergency and single-source procurements are reasonably limited and properly controlled. Ensure that procurement plans are developed by procurement agencies. Introduce clear criteria for establishing and operation of tendering commissions, adopt standard template for bidding documents. Continue providing professional and anti-corruption training to the officials involved in the tendering commissions. Strengthen monitoring of public procurement carried out by the procuring agencies, collect and analyze precise statistical information on procurement methods, values, and other relevant information. Establish an independent public procurement review body competent to review appeals filed by participants of the tendering procedures, introduce a freezing period to allow for filing of complaints.**

- The number of refusals issued by the State Agency for Procurement to the applications for purchase of single-source by the procuring institutions has increased 5 times in comparison to the previous year.
- The Agency is about to complete its mutual work with the USAID on elaboration of the statutory framework for the Standard Templates for procurement of goods, works and services. These templates are already worked out and printed.
- The Agency is about to complete (within the next half-a-year) its work on the single internet portal, which meets the demands of the Agency in line with its new duties under the Public Procurement Act 2010 (enacted on the 17.03.2010).

- The Agency has elaborated Draft Presidential Decree on the Additional Measures on Public Procurement.

The Agency has elaborated Public Procurement (Amendment) Bill.

### ***3.6. Access to Information***

#### Previous Recommendation 23

Encourage non-governmental participation in the solving of policy issues and continue efforts to prevent obstacles for NGO registration and activities in practice.

*Azerbaijan remains partially compliant with the recommendation 23.*

#### Previous Recommendation 24

Revise the access to information legislation to determine more precisely procedures and mechanisms for access to information and ensure that in practice the discretion of public officials is reasonably limited.

*Azerbaijan is largely compliant with this recommendation.*

#### **New Recommendation 3.6.**

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

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

Analysis of the implementation of the Access to information Act in order to identify if any difficulties is the topic, which the CCC is encouraging as the topic of research by NGOs and is considered among priority topics in allocation of grants. The situation in this area is reflected in the yearly Report of Ombudsman and Research on the Condition of Corruption, run by NGOs.

### ***3.7. Political corruption***

#### **New Recommendation 3.7.**

**In order to foster trust of citizens in the independence of political parties, introduce a requirement to disclose information about sources of private donations received by political parties, above a certain threshold. In order to ensure transparency of financing of political parties and election campaigns, establish a system, with a clearly defined mandate and powers, to carry out this function.**

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

Donations may be granted to political parties by domestic natural and legal persons and take the form of cash or non-cash donations. No value thresholds are fixed. Political parties may not receive donations intended to generate an economical or political benefit for the donor, according to the legislation. Anonymous donations are not explicitly regulated by the legislation but they are excluded in so far as the financial accounts of political parties must indicate the name (surname) of the donor, his/her address and the amount of the donation.

### ***3.8. Integrity in Judiciary***

#### Previous Recommendation 12

Introduce procedures and clear criteria for lifting immunities enjoyed by judges.

*Azerbaijan is partially compliant with this recommendation.*

#### **New Recommendation 3.8.**

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

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

The provisions of this recommendation have been reported and are currently under consideration of the Independent Self-Governing Body for the Judicial Branch of Power – the Judicial Legal Council.

### ***3.9. Integrity in the private sector***

#### **New Recommendation 3.9.**

**Develop and launch awareness raising programs about risks of corruption and solutions for private sector. Together with private sector organizations, promote the development self-regulation within the private sector (code of conduct, anti-corruption compliance policies).**

The Ministry of Economic Development runs regular training with the participation of the private sector and business community in particular, in view of its special position. Thus according to the Presidential Decree of 2002 re *Prevention of Intruding and Fiddling with Entrepreneurial Activity*, any financial examination of the private sector actors, i.e. private businesses, except tax reviews, shall be carried out only with the participation of the MED representatives. In addition, the President endorsed Establishment of United register of the Examination of Entrepreneurial Activity in March 2011. Therefore, the Minister of the MOD issued a special order in April 2011 on running regular training on prevention of corruption and abuses in this area with the involvement of the private sector agents.

The Ministry held a series of the events in Horadiz, Ganja, Shaky, Lankaran, Goychay and Baku (overall 6 events) regional centers in April, subject to the Ministerial Order of 25.02.11 on the topic of *Corruption Risks and their Elimination*. During this events the private sector representatives were informed by the Ministerial officers and representatives of the Confederation of Employers (NGO) on the *Rules of Participation of the Ministerial [ED] Representative in the Financial Examination of Entrepreneurial Activity, Ways to Complain about Abuse and Corruption Practices, Means to Suppress Corruption and Enhance Transparency in the Corporative Management, Awareness Raising of the Entrepreneurs, etc.* These events were arranged in the interactive mode, so that the participants could pose questions and get answers to their questions.