



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

Istanbul Anti-Corruption Action Plan

Second Round of Monitoring

**Tajikistan**

Progress Report

Report is presented by Tajikistan at the 11<sup>th</sup> Monitoring Meeting on 22-24 February 2012.

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***On the progress of Tajikistan in the implementation of the ACN Istanbul Action Plan recommendations, as of February 2012***

Comprehensive fight against corruption in the Republic of Tajikistan is reflected in the consistent reforms conducted on the basis of the ACN Istanbul Action Plan, the UN Convention against Corruption and other international standards.

In response to the new realities and the need to combat corruption, and in line with Recommendation 1.2, there have been made plans in 2012 to conduct monitoring of the progress achieved under the Anti-Corruption Strategy in Tajikistan in 2008-2012, and stemming from that, as was noted in the previous report, to develop a new strategy for 2013-2020; for that purpose a working group was set up at the Tajik State Agency for Financial Control and Combating Corruption as the coordinating authority; the working group would include all entities as recommended by the Istanbul Plan of Actions; plans for that were discussed at the joint meetings with the Tajik Agency for State Financial Control and Anti-Corruption, the agency with a 5-year experience in fighting corruption (<http://www.anticorruption.tj/>). International ratings will be analysed in the course of the monitoring.

The priority for the Government of Republic of Tajikistan in its 2012 economic policies is to focus on improving the investment climate and entrepreneurship, among other things, by eliminating artificial administrative barriers and corruption.

Directly in line with the December 2010 Recommendation 3.9, the Financial Control Agency is to provide its opinion on the draft law on private-public partnership. This draft law deems private-public partnership as involvement of the private sector in infrastructure projects or social sector services. The draft law provides for the establishment and functioning of the Private-Public Partnership Council and Centre for Private-Public Partnership, the latter serving as the Council's Secretariat; draft's Chapter 4 is about the private-public partnership agreements. It is proposed that the law shall define the legal, economic and organizational basis for the private-public partnership; it is to help stimulate and facilitate private-public partnership projects in infrastructure and social sector services; its main focus is on transferring some of the state's powers in this and other areas to the private sector as well as to formulate the opportunities for the private sector to use state property, land and other resources, and most importantly to incentivize active involvement of the private sector in state governance. Before that, on 25 March 2011 the Law of the Republic of Tajikistan on Accounting and Financial Reporting was approved; its Article 10, para 7, states that "subjects of public interests must keep accounts and submit financial reporting in accordance with the international standards and this law". It is also planned to draw up the law on safeguards and support to entrepreneurship in the Republic of Tajikistan as well as a reviewed Tax Code whose draft can be found on the web-site of the National Association of SMEs (<http://www.namsb.tj/>).

On 2 August 2011 the Law of the Republic of Tajikistan on the Licensing System was approved, defining the legal, organizational and economic basis of the licensing system; the exclusive list of activities subject to the licensing by the authorized state authority, and the procedures for issuing permits to businesses; it also defines the types of permits and offers protection to legitimate interests of citizens, environment and national security.

The notion of the licensing system, as defined by the law, is a set of business regulations by licensing authorities relating to the issue, re-issue, suspension, renewal or cancelation of the licenses, or issue of its duplicates; introduction of the Single State Electronic Register of licenses; monitoring of compliance by legal entities and individuals with the license terms and conditions and instructing to remedy any non-compliance with these terms and conditions. It foresees **a one-stop shop**, *i.e.* a simplified procedure to apply for a license; have the relevant documents validated and/or application referred to the authorized agencies for approval, unless otherwise provided for by the law, without involving the applicant in the process; the law introduces the single state electronic register of licenses as a uniform licenses online data base.

Article 11 of the law sets the following underlying principles of the licensing system:

- transparency of approvals, regulation and predictability of licensing;
- uniform procedure of the issuance of licensing documents;
- stated accountability;
- one-stop shop;
- approval by default;
- proportionality of public interests and rights of individual businesses in determining the need for a licensing permit;
- regulatory impact assessment each time new types of permits are introduced.

Doubts, conflicts or vagueness of licensing regulatory acts, if any, shall be interpreted in favour of the business.

Also, Article 12 (Transparency of decision-making and regulation in the licensing system and predictability of the licensing process) stipulates that the licensing authorities must inform the public about any regulatory drafts and ensure transparency of their decision-making, by involving businesses in the drafting and licensing decision-making processes.

The licensing authorities shall ensure transparency of licensing regulation by providing a free access to the developed regulatory drafts and through their publication pursuant to this law.

Information about the licensing permits shall be incorporated in the Single State Electronic Register following their publication in the official editions.

Access to the Electronic Register shall be free and provided via the Internet.

Article 15 (One-stop shop) states:

Upon the request of the licensing authority, the government agencies are obliged to share the requested information by providing access to the relevant state information resources.

The government agencies must provide, at the request of the licensing authority, the required documents and information on paper or electronically, attested by a digital signature, within five days after the relevant request was made.

Should the government agency fail to respond to the request of the licensing authority or another state body within the prescribed deadlines, or else fail to provide access to the information resources, relevant documents and information shall be considered agreed and approved.

Also, Article 16 provides for approval by default, where the license is considered issued or renewed, as the case may be, if the licensing authority failed to respond to the applicant within the deadlines prescribed by the law for the issue or renewal of the relevant license.

Finally, Article 17 (proportionality of public interests and rights of businesses) prescribes that the relations between the licensing authorities and businesses must facilitate in equal measure the interests of the society and the protected rights of entrepreneurs. Other articles of the law describe in detail the procedures for executing permits.

On 30 September 2011 the President of the Tajik Republic issued his [Decree on introducing moratorium for all types of inspections of businesses in the manufacturing sector](#), which orders, inter alia, to draft and have approved a relevant law regulating these issues

On 3 October 2011 the President of the Tajik Republic issued his [Decree on proper use of private land plots](#).

The Government of the Republic of Tajikistan approved on 3 December 2011 [“National Employment Programme in the Republic of Tajikistan for 2012-2013”](#); [“On approving the terms of reference and membership of the Advisory Council of the Tajik Government to monitor implementation and events under the National Employment strategy on the labour market of the Republic of Tajikistan for the period through 2020”](#).

According to the internet newspaper Asia-Plus News (No 31 (3428) of 14 February 2012), the Tajik Government’s Migration Service on 13 February made a presentation of the proposed automated IT system developed by the International Organisation for Migration (IOM). The purpose of the automated system is to allow automated collection, processing, keeping, sharing and use of data to facilitate monitoring over the migration by Tajik residents and help set up relevant data base. Earlier, the same source (No 31 (3428) of 9 August 2011) reported that the Charge d’Affaires of the US Embassy and the First Deputy Chairman of the Tajik Customs Service attended the official ceremony unveiling a new Help Desk software to the Tajik Customs Service IT system. The software was developed with the

assistance of the Regional Trade Liberalisation Project of the USAID (USAID/RTLCL), and it is hoped to promote trade in Tajikistan and thus help facilitate economic activity and tax collection, and also help fight corruption.

Further modernization aiming to offer new effective opportunities in corruption prevention was achieved owing to the [National programme of computerisation of central and local authorities, bodies of local self-government in towns and villages in 2012 - 2015](#), approved by resolution No 550 of the Tajik Government of 2 November 2011. Pursuant to this programme, by 2021 all public servants should have access to computers, and the number of public servants at central and local authorities with access to the Internet should double by 2015 compared to 2011, and the number of internet users among public servants at bodies of local self-government in towns and villages over the same period should grow 14 times.

The work is under way to implement [the Concept for establishing an e-government in the Republic of Tajikistan](#), approved by the government's resolution of 30 December 2011.

**The e-government in the Republic of Tajikistan is expected to facilitate, together with the national anti-corruption programmes and plans, a more transparent governance system and a standing and dynamic corruption prevention mechanism; it pursues the following objectives:**

enhanced efficiency of the executive authorities and administration through broad utilization of ICT (information and communication technologies);

improved quality and accessibility of public services to citizens and organisations;

simplified procedures and shorter deadlines in public services, and the reduced administrative burden and costs associated with such services;

higher accessibility of information about the functioning of the executive authorities;

a unified information sharing system based on the e-resources and online communication, with a limited network of users;

economic incentives to boost the use of the Internet and advanced IT.

**Implementation of e-government will help to address the following issues:**

develop and introduce functional systems of information and analysis that support management decision-making within the specific executive authority;

automate interagency cooperation in managerial decision-making;

automate procedures for rendering public services;

raise the transparency of executive government; improve access and direct involvement of citizens, organizations and civil society intuitions in decision-making and assessment of decisions taken at all levels of state administration;

enhance the quality of administrative and managerial processes;

ensure promptness and proper monitoring over the operations of the executive authorities;

provide for the required level of information security of e-government and its operations;

promote and stimulate broad introduction of remote access by citizens and organisations to data on the functioning of the executive government;

eliminate “digital inequality” (inequality among citizens in access to ICT technologies as a result of socioeconomic variations and geographic location; it is one of the key objectives to ensure the e-government efficiency, and it shall be addressed by promoting the development of the ICT infrastructure (regional expansion of communications network; improved quality of communications; computerization and access to the Internet across the country).

**The stated objectives shall be achieved relying on the following areas and mechanisms of the Concept’s implementation:**

draft the underlying regulatory legal basis of e-government, providing it with a single infrastructure to support legally meaningful electronic interaction;

set up key e-government infrastructure components;

create and promote e-services to be offered by the executive authorities;

set up and promote interagency and model agency IT systems;

create and promote information resources and systems for the executive authorities of the local self-government;

develop systems ensuring public access to information;

develop the e-government’s portal and gateways;

establish a national automated system for resources management;

ensure security of the IT infrastructure;

train personnel to support the e-government;

develop the ICT architecture; set up and promote key ICT standards.

According to the Concept Paper, the e-government will be a new form of organisation for the executive government which will achieve, through a broad application of ICTs, a radically new level of speed and convenience for citizens and organisations seeking public services, together with their access to information about the performance of the executive authorities.

Setting up an e-government will pursue interconnected objectives to improve interaction within the executive government; paperless document flow, and implementation of the majority of public administration functions aimed to ensure cooperation between the central government and the civil society based on the ICT.

With the e-government in place, there will be positive changes in the relations between the government and all of the users: citizens, executive authorities, public organisations; public servants and businesses. The Concept seeks to improve the quality of public services and reduce the time needed for the citizens and entities to get access to public services and executive authorities' data bases, and going forward, together with the improved governance system, help set up an efficient public administration of reasonable strength.

The e-government is intended to help modernize and stimulate all levels of state administration – from interagency cooperation to cooperation between the government and its public. The anti-corruption monitoring and planning for specific measures to be taken by Tajikistan to comply with the international anti-corruption standards are the related and concomitant measures in the process of implementation of the E-Government Concept.

These issues relate to the corruption prevention as the expected final outcome and essence of the anti-corruption policies, through comprehensive implementation and monitoring of the processes, and long-term planning of the stabilization of the reform process.

The Lower Chamber of the Parliament adopted the law of the Republic of Tajikistan, amending the effective anti-corruption law, on 12 October 2011; it was subsequently approved and signed by the Upper Chamber and by the President of the Republic of Tajikistan on 26 December 2011. The amendments focus on supplementing the anti-corruption principles with the priority need to recognise, ensure and protect human rights and freedoms; ensure equality of all before law and court; transparency; inevitability of prosecution for corruption crimes; ban conflicts between personal and public interests from public offices; prevention of nepotism, cronyism and patronage as elements of corruption; operative and detective measures to be undertaken not only to detect, disrupt and prevent corruption crime but also to identify and detect persons perpetrating or conspiring to commit them; ensure personal safety and safeguards to whistle-blowers helping to fight corruption; cooperation between the state and civil society, international organisations and individuals.

The law received a new Article 6<sup>1</sup> (International Anti-Corruption Cooperation by the Republic of Tajikistan) which provides that “the Republic of Tajikistan, under the international legal instruments in the anti-corruption area, recognized by Tajikistan, shall cooperate with foreign states and international organisations based on principles of international legal cooperation for purposes of preventing and fighting corruption”.

Article 11 (Offences conducive to corruption and liability) which establishes disciplinary sanctions for such offences, complete with the dismissal of public servants for committing two or more such offences, has been supplemented with the following qualifications:

“unlawful requirement from legal entities or individuals to comply with additional terms and conditions, produce documents and fulfil other requirements that are not provided for by normative legal acts; creating other artificial and unlawful barriers for the appointment (election) and/or nomination to a public service office; or else to the recruitment, rotation, training or academic research, or exercise of other rights and duties or performance of public service objectives;

- conducting activities, exercising office rights and duties on the basis of mercenary and personal interests; making decisions and other unlawful acts, including recruiting, and committing other acts that infringe on the rights and interests of other individuals or legal entities or do them harm”.

The need for the new Article 6<sup>1</sup> in the Anti-Corruption Law was explained by the Agency Director to the Lower Chamber of the Parliament who talked about the need for cooperation between anti-corruption agencies (which, under Article 5, para 1, of the law, include bodies of state financial control and anti-corruption; office of the prosecution; Ministry of the Interior; national security; defence administration; drugs control; tax and customs authorities) at the international level, quoting the success of such cooperation with international organisations and foreign anti-corruption bodies. Apart from the recent cooperation in detection, prevention and investigation of corruption crimes, the anti-corruption agencies received support from their foreign peers and international organisations helping in training, technical assistance, best practices and methods of prevention, which positively impacted the capacities and performance by such agencies, and created the conditions for the normalization of the process.

Amendments to Article 11, too, will help implement principles of transparency and prevention of conflicts of interests and corruption incidences in recruitment and promotion of staff, enhancing the accountability of public officials in human resources selection.

On 12 December 2011 the President promulgated its [Decree on the Audit Chamber of the Republic of Tajikistan](#) establishing the Tajik Audit Chamber and the numerical strength of the chamber of 15 officers (less auxiliary staff), including 8 staff of the Tajik Audit Chamber. As was communicated in the previous report, [the Law of the Republic of Tajikistan on the Audit Chamber](#) was adopted earlier.

**Since the last meeting at the OECD in Paris the following measures have been taken as part of the continued development of anti-corruption policies:**

As mentioned in the previous report, the ministries and agencies have agreed the text of the draft law of the Republic of Tajikistan on anti-corruption assessment of normative legal acts and drafts of normative legal acts, to help identify and eliminate in them any corruption factors; at the end of 2011 the draft was submitted to the Government of the Republic of Tajikistan. During its drafting the Office of the OSCE in Tajikistan, through the offices of the Ministry for Foreign Affairs and based on the best European practices, offered the anti-corruption agency their legal opinion on the draft law; the bill also drew on the provisions of the draft Model Law on anti-corruption assessment of legislation, offered by the Secretariat of the Parliamentary Assembly of the CIS countries to the Parliament and the Agency.

The draft law provides for a basic (interagency) anti-corruption assessment of an draft normative legal act, in the form of a legal opinion from the point of view of corruption provisions, by the government authority that has drafted the act, and an independent anti-corruption assessment of such legal act or its draft, in the form of a legal opinion, by independent well-known experts or an expert institution (an academic entity) specializing in anti-corruption issues, whose opinions may be advisory but should be considered by the standard-setting authority. The range of corruption factors has been substantially broadened; principles of the assessment detailed, together with the priorities in the anti-corruption assessment of normative legal acts and their drafts, and the order of sequence in choosing acts regulating relations between state authorities and institutions, on the one hand, and citizens and entities in the economic and other spheres, on the other. The acts are to be assessed from the point of view of their compliance with the anti-corruption international instruments ratified by the Republic of Tajikistan as well as legal acts regulating constitutional human rights, freedoms and duties.

In addition, the following priorities were established for the order in which legal acts should be exposed to anti-corruption assessment: draft concept papers, strategies and programmes; normative legal acts promulgated by ministries, agencies and local executive authorities; normative legal acts regulating social safeguards offered to incumbent or former public officials in the government and public service; implementation of the national anti-corruption strategy and measures to strengthen fight against corruption; criminal laws, civil law; criminal and civil proceedings and economic court proceedings; laws on administrative offences and administrative proceedings; normative legal acts regulating law enforcement and anti-corruption agencies and relevant drafts; normative legal acts promulgated by law enforcement and anti-corruption agencies.

There are articles on responses and other documents reflecting the outcomes of the anti-corruption assessment of legal acts and their drafts, and on the opportunities for the civil society and citizens, following the procedures prescribed by the legal acts of the Republic of Tajikistan, to conduct, at their own expense, independent anti-corruption assessments of legal acts and their drafts.

The leading officers from the Agency's Corruption Prevention Department, Department of the Office of the General Prosecutor responsible for the supervisions over the Agency, and the legal department of the Presidential Administration, together with an expert of the OSCE Office in Tajikistan visited Lithuania in late September 2011 to exchange experience and learn from the anti-corruption authorities of the Lithuanian Republic about the anti-corruption assessment and the Service of Special Investigations, and the Anti-Corruption Committee of Parliament and Presidential Administration of Lithuania. They also learned about the regulatory and organizational system for the analysis of corruption risks and drew on other rich experience of the country to prevent corruption. The exchanges continued with the reciprocal visit by the officers of the above agencies of Lithuania to Tajikistan in November 2011; they visited the Agency of State Financial Control and Anti-corruption of the Republic of Tajikistan and talked to the leadership of the Agency's central and regional teams.

Since the previous meeting, the Anti-Corruption Agency has been actively and consistently pursued the coordination efforts in combating corruption in accordance with the plans and together with other government authorities and institutions of the civil society. A number of events were

conducted focusing on international cooperation and best practices, [raising anti-corruption awareness](#), learning [the sector-specific corruption prevention](#). By the 5<sup>th</sup> anniversary of the Agency (10.01.2012) there were in place the necessary conditions and experience to enhance the effective prevention of systemic corruption through coordinated interaction and consolidation of national efforts within the framework of the newly established National Council for the Prevention of Corruption of the Republic of Tajikistan.

Between 27-28 October 2011 investigation and prosecution officers of the Agency's HQ attended the 13<sup>th</sup> Plenary meeting of the CIS Coordination Council of the Directors of Tax (Financial) Investigative Authorities in Baku, Azerbaijan, discussing the role of the tax (financial) investigative authorities from the CIS countries in ensuring economic security of the Commonwealth (commemorating the 20<sup>th</sup> anniversary of the Commonwealth of Independent States); the Tajik officers reported on measures taken by their country to implement the decisions taken by the Council (<http://guebmvd.ru/ksonr/information/>).

On 9 December 2011 the Centre for Strategic Research advising the President of the Republic of Tajikistan, the UNDP and OCSE Office in Tajikistan presented a comprehensive sociological study of corruption in Tajikistan conducted by their experts assisted by the Parliament, the presidential staff (head of the Legal Section and Secretary of the National Anti-Corruption Council) and the Tajik Government, together with law enforcement agencies, ministries and agencies, civil society and mass media.

The first meeting of the National Anti-Corruption Council was held on 30 December 2011 and was attended by the authorized representatives of parliament, presidential staff and government, ministries and agencies, prominent civil society institutions, international organisations in Tajikistan and mass media. The meeting agenda included draft Action Plan of the National Anti-Corruption Council to raise public awareness, and the action plan to implement OECD recommendations. The plans provide for the coordinated steps by 33 ministries and agencies, as well as legislative and organisational moves to ensure timely and efficient implementation of the updated basic recommendations. It was decided to approve both plans as a whole, and formally adopt them at the next Council meeting early in 2012 following their final endorsement by all Council members.

On 31 January 2012 a workshop was held to discuss cooperation between the law enforcement agencies and civil society to prevent and fight corruption in the Republic of Tajikistan. The workshop was held at the Law Department of the Tajik National University by the Agency, together with partners from the Law and Welfare NGO; British Oxfam, and the New Century Youth NGO, who help implement anti-corruption projects in the rural areas, in the water supply sector and within the e-government strategy; there were representatives from the Supreme Court; Office of the General Prosecutor; Ministry of the Interior: Customs Service; Tax Committee, and the Tajik Government's State Procurement Agency. The workshop was part of the Plan for academic and research conferences, symposia, congresses and workshops in the Republic of Tajikistan in 2012 as approved by [Resolution No 640 of the Government of the Republic of Tajikistan of 30 December 2011](#).

The above plan also lists a republican conference to discuss national institutions to fight money laundering and terrorism financing to be held in March 2012, and an international conference on the progress of implementation of international anti-corruption standards in the Republic of Tajikistan in August 2012.

Late in January 2012 in line with the decisions taken at the first meeting of the heads of anti-corruption agencies and ombudsmen of the Asian OECD member countries on 21-22 May in Teheran, the director of the Organisation and Inspections Department of the Agency participated in the drafting of the Charter of the Organisation for Economic Cooperation's Regional Union of anti-corruption agencies and ombudsmen at its meeting. The Agency's proposals note that, given the regional significance and relevance of transnational anti-corruption, the international legal cooperation between the anti-corruption agencies and ombudsmen appears pertinent and necessary to counteract corruption, money laundering, repatriation of assets, human rights, transparency of public administration and access to information. The conclusions go on to say that the UN CAC Guidance provides that member countries should consider setting up an independent authority to look into the procedures ensuring access to information and responding to complaints, and ensuring also that the ombudsman or the state audit body should have the right to consider allegations of non-compliance with the reporting standards; in the case of the state audit authority, also to investigate allegations of bad faith in providing access to information and decision-making. The member countries are proposed to consider using the authority (authorities) listed in Article 6, to analyse and assess interaction between the access to information, decision-making and risk of corruption.

Also the member countries are proposed to ensure that relevant public institutions such as anti-corruption bodies (preventive and investigative), ombudsmen, or election commissions have an official mandate and adequate resources to initiate and implement programmes for the education and training for educational establishments, groups of citizens and other institutions of the civil society.

Overall, as the available experience shows, there is a need to set up at least two levels for the whistle-blowers to signal their concerns. The first level would include certain officers in the entity which employs the informant, e.g., his immediate superiors, heads of the entity or bodies of internal or external audit set up expressly to prevent bad-faith management at the entity employing the whistle-blower. The second level may include the ombudsman, the anti-corruption body or the Comptroller General (Guidelines to the UN CAC, NY, 2010; notes to Article 10 (Public Reporting) of the Convention, para.II.2; notes to Article 13 Involvement of the public), para II.6.; notes to Article 33 (Protection of whistle-blowers), para II.4.).

Another important thing is that para 30 of Article 46 (Mutual Legal Assistance) of the UN CAC says: "States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article". The same provision is to be found in para 18 of Article 44 (Extradition), describing the extradition procedures for persons who have committed corruption offences and reside in the territory of another state.

There is a realistic concerns in the international legal cooperation between prosecution authorities about a delay in the execution of MLATs, provision of evidence, broad application of special investigative techniques and, importantly, the possibility for direct (with preliminary online discussions and consultations) with competent authorities, mostly often anti-corruption agencies, as well as technical (financial) help in ensuring the above as part of the legal assistance in the investigation of corruption and money laundering; organization of study and business trips to conduct joint investigations. It is important to ensure a collective effort to achieve maximum access to available resources.

Detailed regional agreements (rules) help address the issues by the regional states, and there is a pressing need to address them, and the value of such agreements increases manifold. The recognized and effective agreements include the Minsk Convention of the CIS member countries on legal assistance and legal relations in civil law, family and criminal cases of 22 January, subject to which the Agency for financial control an anti-corruption of the Republic of Tajikistan actively contributes to legal assistance. This information, together with the information on the progress and results of the anti-corruption institutions of the Republic of Tajikistan over the past 5 years, will be presented in the update of the Tajik representative at the 11<sup>th</sup> monitoring meeting of the Istanbul Action Plan at the OECD I Paris.

**Agency for Financial Control and Anti-Corruption of the Republic of Tajikistan**