ISTANBUL ANTI-CORRUPTION ACTION PLAN

THIRD ROUND OF MONITORING

KAZAKHSTAN

PROGRESS UPDATE

[Translation from Russian]
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BACKGROUND

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

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

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

After the adoption of the Monitoring Report, the evaluated country presents a Progress Update at each subsequent ACN Plenary meeting.

The Progress Update begins with a description of the methodology, followed by the summary of the assessment of implementation of recommendations, as agreed during the Plenary Meeting of September 2016. It then goes into each recommendation separately, providing the country report, as well as the ACN and expert evaluation.

The Progress Update follows the following steps:

1. Progress Update reports are prepared by country representatives
These documents include information on implementation measures taken for each recommendation, and may also cover additional anti-corruption developments. Country representatives submit a written Progress Update report to the ACN Secretariat through appointed National Co-ordinators, together with supporting documents, such as laws and statistical data. Civil society also submits alternative reports on progress.

2. Preparation of preliminary assessment by ACN Secretariat and experts
The Secretariat and the experts who contributed to the Monitoring Reports (or delegates replacing the experts) study the Progress Update reports and prepare a draft progress assessment for the Plenary Meeting. Civil society is also invited to contribute to the evaluation.

3. Discussion at ACN Plenary meeting
ACN Secretariat and experts discuss the Progress Update during a bilateral preparatory meeting with country representatives. The Plenary then discusses and endorses the assessment.

4. Finalisation of Progress Update
Following the Plenary Meeting, the Secretariat adds the final assessment to the Progress Update reports, finalises and publishes them on the ACN website.
**SUMMARY**

**17th ACN Istanbul Action Plan Meeting on 14-15 September 2016:** Assessment for this progress update was made by the following experts: Mr Bohdan Shapka, Ukraine; Mr Yevgeniy Kolenko, Uzbekistan; Mr Yevgeniy Smirnov, EBRD, and Dmytro Kotlyar, ACN Secretariat. This assessment takes into account the alternative report on Recommendation 3.6, provided by NGOs “Internews-Kazakhstan” and Legal Policy Research Centre.

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**Note:**

**Significant progress** – important practical measures were taken by the country to adequately address many elements of the recommendation (more than a half). This can involve the adoption and/or enforcement of an important law.

**Progress** – some practical measures were taken towards the implementation of the recommendation. For example, drafts of laws that have been at least approved by the government and submitted to the parliament would constitute "progress" for the assessment of Progress Updates.

**Lack of progress** – no such actions were taken.

Recommendations, that appear to be fully addressed can be closed for the progress update procedure and further evaluated only as a part of the monitoring procedure.

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1 This progress update uses a new methodology with new ratings, which has been adopted for the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan. The full methodology is available online at [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn).
PROGRESS UPDATES BY RECOMMENDATION

Pillar I. Anti-corruption policy

Recommendation 1.1.-1.2. Political will and anti-corruption policy

- To ensure adoption and proper implementation by responsible authorities of a new anti-corruption strategy and action plan based on a thorough analysis of the status of and trends in corruption; assessment of the earlier efforts against corruption, results of the research on corruption in Kazakhstan, including the research conducted by NGOs, statistical and other data on the performance of public authorities fighting corruption, and suggestions and analysis by public authorities, civil society and representatives of the business sector.

- To provide in the new anti-corruption strategy and implement in practice a proper mechanism for its monitoring and assessment of implementation results, which would involve an analysis of implementation of the measures, their effectiveness, achieved performance indicators, impact of the strategy on the level of corruption, and the elaboration and implementation of the necessary actions following up on the monitoring results. To ensure civil society engagement in such monitoring process and publication of all monitoring reports (assessments).

17th ACN Plenary Meeting, September 2016

The Anti-Corruption Strategy of the Republic of Kazakhstan 2015-2025 (hereinafter - the Anti-Corruption Strategy) was adopted on December 26, 2014.

Its development process included studying advanced anti-corruption experience of Singapore, Hong Kong, Finland, Norway, South Korea, as well as the latest strategies of Georgia, Moldova, Russia, Estonia and Romania.

Country index markers have been taken into account in assessing the spread of corruption. The index is based on the legal statistics data in the government context.

The following areas of anti-corruption policy have been established as a priority of the Strategy: countering corruption in the public service, quasi-government and private sectors, introduction of public oversight mechanisms, prevention of corruption in the judiciary and law enforcement, promotion of anti-corruption culture and development of international cooperation on anti-corruption issues.

On April 14, 2015, with the aim of ensuring phased implementation of the Anti-Corruption Strategy, the Government issued Decree No. 234 to approve the Action Plan 2015 - 2017 to implement the Strategy (hereinafter - the Plan). Besides, the mechanisms of internal and external monitoring and evaluation of its performance have been put in place.

Internal monitoring and evaluation shall be carried out directly by the public authority responsible for the implementation of the events.

In parallel, the Civil Service Ministry as the authorized agency responsible for combating corruption shall coordinate their actions to implement the Action Plan and its activities, as well as prepare an annual report on the Strategy’s monitoring and evaluation results.

As a result of the last year’s analysis, government agencies have implemented 30 activities of the Action Plan, while 2 activities have not been implemented.

On April 15, 2016 the above-mentioned report was posted on the official web site of the Civil Service Ministry (kyzmet.gov.kz/ru/kategorii/antikorrupcionnaya-strategiya-respubliki-kazakhstan-na-2015-2025-gody-0), as well as published by Kazpravda newspaper (19 April, 2016) and Egemen Kazakhstan newspaper (April 23, 2016).

A specially established group has been doing external monitoring. The group consists of the representatives of the public and the media (9) and government agencies (5).

The group is chaired by Ms. Erimbetova, the President of the Civil Alliance of Kazakhstan.
On February 11, 2016 the composition and the powers of the group were approved by the Civil Service Minister’s order No.34.

A regular meeting of the Monitoring Group responsible for external analysis and evaluation of the 2015 Anti-Corruption Strategy implementation took part on August 3, 2016.

Ms. Malyarchuk – a member of the Monitoring Group and the Chairman of the Board of Trustees of the Public Fund - Transparency Kazakhstan drew attention of the Ministries of Information and Communication, Education and Science to the need to enhance information and education activities for the development of anti-corruption culture.

Overall, the monitoring group provided a positive assessment to the work conducted by the government agencies regarding organization of the external analysis and evaluation of the execution of the Plan by involving non-governmental organizations and the media in accordance with OECD guidelines and approaches.

As a result of the above-mentioned meeting, government authorities received recommendations for the timely and effective implementation of the Plan and its provisions.

At the same time, the monitoring group meeting report has been published on the website of the Civil Service Ministry.

In addition, in accordance with the Law On Combating Corruption, the authorized agency responsible for combating corruption issues drafts an annual National Report on the fight against corruption. The agency then sends the Report to the Government in the manner prescribed by the law for subsequent submission to the President of the Republic.

The first National Report on the fight against corruption will be submitted to the Government in 2017.

This report will contain information on the implementation of the Anti-Corruption Strategy, analysis and evaluation of the status and trends of corruption growth at the international and national levels, and proposals on the development, implementation and improvement of anti-corruption policies.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

Over the time since the last update Kazakhstan has launched the mechanisms of both internal and external monitoring and evaluation of the Anti-Corruption Strategy implementation. In April 2016 the official website of the Ministry of Civil Service and the newspapers "Kazpravda" and "Egemen Kazakhstan" made public an internal report on the implementation of the Strategy in 2015, according to which 30 actions under the Action Plan were deemed fulfilled and 2 - unfulfilled.

The newly established (in February 2016) group of external monitoring consists of representatives of the public and the mass media (9 persons) as well as of the government agencies (5 persons). The reports on this group’s meetings are published on the web-site of the Ministry of Civil Service.

At the same time, it should be noted that the Recommendation in this part mentions a monitoring and assessment mechanism that involves, among other components, an analysis of impact of the Strategy on the level of corruption and, also, elaboration and implementation of the follow-up actions, with direct engagement of the civil society in this process. The provided information does not include any external evaluation and fails to refer to the opinion of the public about the report on the implementation of the relevant anti-corruption measures or on their impact on the overall situation with corruption in the country.

It appears necessary to examine the first National Report on combating of corruption (the drafting of which is planned for 2017) and the reaction in the society to this report.

In general, as regards Recommendation 1.1.-1.2 Kazakhstan has achieved Progress.
Recommendation 1.3. Corruption surveys

- To develop and apply in practice a national methodology for evaluation of corruption on the basis of the respective international experience. Such methodology should cover both public and private sectors and include at least such components as the most corrupt areas, frequency and models of corruption practices, actors taking part in corruption, types of corruption benefits. To ensure regular evaluation of the corruption situation in the country based on such methodology and also to continue the practice of sectoral corruption surveys in specific, most corrupt-prone areas.

- To consider a possibility of assigning the co-ordination role in the field of evaluation of the corruption situation and conducting corruption surveys to the body which is responsible for implementation of the anti-corruption strategy.

Evaluation of the problem of corruption is carried out by such mechanisms as anti-corruption monitoring and analysis of corruption risks.

In accordance with the Law On Combating Corruption, anti-corruption monitoring means actions of the participants of anti-corruption activities including collection, processing, compilation, analysis and evaluation of information regarding the effectiveness of anti-corruption policy, enforcement practices in the field of combating corruption, as well as the perception and assessment of the extent of public corruption by the members of the society.

The purpose of anti-corruption monitoring is to assess the enforcement practices in the field of combating corruption.

Anti-corruption monitoring results serve as the basis for the analysis of corruption risks and improving measures aimed at the development of anti-corruption culture.

The Rules of anti-corruption monitoring have been approved by the order of the Civil Service Minister issued on December 29, 2015, No. 16. The Rules describe the participants, the subject, the sources of information and the procedure for its implementation.

Anti-corruption monitoring is carried out on a quarterly basis through the collection, processing, compilation, analysis and evaluation of enforcement statistics data and publications about corruption in the media and other sources.

The information used to carry out anti-corruption monitoring is presented by the Enforcement Statistics and Special Records Committee and the Communications, Information and Technology Committee. The electronic information database of the Supreme Court of Kazakhstan is also used to this end.

In the first half of this year, anti-corruption monitoring analyzed subsidies issued to small and medium-sized businesses (http://kyzmet.gov.kz/ru/pages/rezultaty-antikorrupcionnogo-monitoringa-v-sfere-subsidirovaniya-malogo-i-srednego-biznesa).

This work resulted in the external analysis of corruption risks at the government agencies operating in this area in the regions.

In the second half of this year, the results of anti-corruption monitoring in all areas of government operations helped identify the following agencies whose activities are the most prone to corruption:

1) At the central level - the Interior and State Revenue authorities;
2) At the local level – the administrations of akims and educational organizations.

To assess corruption issues, a new Law On Combating Corruption has introduced a mechanism of corruption risk analysis (external and internal) helping identify and examine the causes and conditions that facilitate the commission of corruption offenses.

External analysis of corruption risks present in the work of government agencies, organizations and entities of quasi-public sector is conducted by the Ministry.

The analysis procedure that includes the areas to be analyzed, duration, period, sources of information, etc. is set in the Decree of the President No. 155 issued on December 29, 2015 On Approval
of the Rules for Conducting External Analysis of Corruption Risks.

In 2015, the analysis covered seven government agencies: the Ministries of Investment and Development, Agriculture, Health and Social Development, Culture and Sports, Education and Science, Finance, and the Committee for Regulation of Natural Monopolies and Protection of Competition.

The results of the analysis showed that the areas most prone to corruption include: the provision of public services, exercising oversight functions and regulation of the conflict of interest. Following the analysis, government agencies received appropriate recommendations to address the identified corruption risks. These recommendations are being implemented in the framework of the action plan implementation process.

This work resulted in the improvement of the 21 public services standards and 19 regulations.

This year, the external analysis of corruption risks has been held at the Committee for Construction, Housing, Utility Services and Land Management, the Ministry of Defense’s Department of organization and mobilization work and its subordinated local military administration authorities, and JSC Samruk-Kazyna National Welfare Foundation.

Currently, the Ministry is monitoring the implementation of the recommendations made to the abovementioned agencies following the analysis.

The internal analysis is carried out by the government agencies, organizations and entities of quasi-public sector regarding their own activities.

The analysis procedure was set by the order of the Civil Service Minister on December 29, 2015, No. 18.

Also, to fulfill its coordinating role and to provide methodological support and secure a unified approach to the conduct of an internal review of corruption risks, the Ministry has developed guidelines for the analysis of the internal corruption risks.

These recommendations are publicly available on the official website of the Ministry.

As a result, more than 200 organizations have completed internal analysis of own corruption risks in the course of 8 months in 2016, including government agencies and quasi-public sector entities. The following system-based corruption risks have been identified as inherent to all organizations: deficient regulations and discretionary powers.

The results of the internal analysis of corruption risks within government agencies are submitted to the Ministry. This information will be used in the National report on the fight against corruption in terms of the situation in government agencies regarding combating corruption.

At the same time, in accordance with the Civil Service Ministry Regulation No. 1081, approved by the Government Decree on December 26, 2015, the Ministry shall carry out the following functions within the framework of inter-sectoral coordination for the prevention, detection, disruption and successful investigation of corruption offenses:

1) Identification of the causes and conditions that facilitate the commission of corruption offenses in the work of government agencies, organizations and entities of quasi-public sector;

2) Sending recommendations to the Government of the Republic of Kazakhstan to minimize and eliminate the causes and conditions of corruption in the activities of government agencies, organizations and entities of quasi-public sector;

3) Annual presentation of the National Report on combating corruption to the Government of the Republic of Kazakhstan for subsequent submission to the President of the Republic in accordance with the legislation of the Republic of Kazakhstan.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

The provided information demonstrates continuation of the practical implementation of sectoral surveys and other measures for identification and elimination of corruption risks (external analysis has covered seven government agencies, internal analysis - over 200 entities).

However, such activity cannot be regarded as complete compliance with the recommendation on periodic evaluation of corruption in the country in general, covering not only the public sector but also the private sector.
Accordingly, a remaining issue is that the powers of organizing and conducting such comprehensive surveys have not been vested with the body responsible for the implementation of the Anti-Corruption Strategy. Regarding this part of the Recommendation there is no progress.

In general, with regard to Recommendation 1.3 Kazakhstan has achieved Progress.

Recommendation 1.4. Public participation

- To ensure broad involvement of the civil society organizations in development and implementation of the anti-corruption policy, having excluded a selective approach towards such co-operation. To maintain dialogue with the civil society in consultations on anti-corruption policy and anti-corruption screening; to consider broadening the composition of the Interdepartmental Commission for Improvement of the Legislation in Anti-Corruption Area by inclusion of non-governmental experts. To consider introducing rules on mandatory public discussion of the most important draft legal acts with an obligation of the drafting body to publicly provide explanation in case of rejection of proposals from non-governmental organizations and other civil society institutions.

- To revise the ways of establishment and work of the public and expert councils in order to exclude intervention of the State into the process of nomination of delegates from non-governmental organizations into such councils. To spread into other areas positive experience of the National Council of the interested parties for the EITI promotion.

17th ACN Plenary Meeting, September 2016

In accordance with the Anti-Corruption Strategy, one of the top priorities of anti-corruption policy includes involvement of the entire society in the anti-corruption movement through the creation of an atmosphere of zero tolerance toward any manifestation of corruption.

The new Law On Combating Corruption, which entered into effect on January 1, 2016, has expanded the range of participants of corruption combating process.

These include: government agencies, quasi-public sector entities, public associations, as well as other natural and legal persons.

Provisions have been developed regulating public participation in combating corruption.

Thus, according to Art. 23 of the Law, natural persons, public associations and other legal entities shall use the following anti-corruption measures: report the facts of corruption offenses that became known to them in accordance with the legislation of the Republic of Kazakhstan; make proposals to improve the legislation and enforcement practices on combating corruption; participate in the promotion of anti-corruption culture; request and receive information on anti-corruption activities from public authorities in accordance with the legislation; conduct research, including scientific and sociological on combating corruption; raise awareness in the media and organize socially important activities on combating corruption.

In addition, the possibility of active cooperation with the civil society allowed for a new format of countering corruption in the framework of the Open Agreement on Consolidation of Efforts.

Today, the participants include more than two thousand organizations (2 081) and forty four thousand citizens (44 528). The information about the participants of the Open Agreement is posted on the Adaldyk Alany website (http://adaldyk.kz/index.php/agreement)

The Agreement is unique in the way that anyone involved in the fight against corruption may accede to it.

The Ministry has secured a system of feedback with those who joined the Agreement through means of videoconference discussion of the most urgent issues and ways to solve them.

A public project focused on meeting social demands called Civil Oversight has been launched this year. The aim of this project is involvement of non-governmental organizations in the implementation of a
range of measures to prevent corruption, including anti-corruption monitoring and promoting anti-corruption culture.

The Law On Public Councils has been adopted in order to make the government accountable to the people, ensure broad participation of non-profit organizations and citizens in decision-making by government authorities at all levels.

According to the Law On Public Councils, working groups establish community councils and approve their members at national and local levels. At the national level, the working groups are chaired by the heads of the relevant public authorities and by the heads of representative bodies at the local level. Thus, the country has 226 community councils, including 13 councils at the central level.

Representation of the civil society is not less than two thirds of the members of the working group and it is formed on the basis of proposals received from non-profit organizations and citizens.

Expert business councils shall be set up at the government agencies according to Article 64, paragraph 1 of the Entrepreneurship Code.

The procedure of establishment and operations of the expert councils is set by the Business Expert Councils ToRs.

The council is composed of the representatives of the National Chamber of Entrepreneurs (hereinafter - the National Chamber), duly accredited associations of private businesses, non-profit organizations, as well as representatives of the relevant government authority.

The National Stakeholder Council (hereinafter - NSC) has discussed the comments and recommendations to the National Report and the methodology used.

At the NSC level, the NGOs are represented by a Dialogue Platform - an organization designed to unite all NGOs interested in implementation of the Extractive Industries Transparency Initiative (hereinafter - EITI), as well as for the consolidation of all the views of NGOs and to develop a joint policy to be presented at NSC. It should be noted that according to one of EITI principles, parties cannot interfere in one another’s activities. Consequently, the Committee of geology and subsoil use cannot impose its terms on the NGOs Dialogue Platform.

However, the issues of improving communication and awareness among NGOs, as well as the transparency of their procedures have been put before the Dialogue Platform by NSC.

The procedures for the development of a joint policy on the part of the business representatives did not raise any issues with NSC. Oil & Gas companies are represented by Kazenergy Association, while the mining sector companies are represented by the Association of mining and steel producing enterprises. The process of informing and taking the necessary decisions regarding EITI has been established by the provisions and regulations of the abovementioned Associations.

According to the Memorandum of Understanding, all NSC meetings are open. Participation is not limited upon condition of advance notification sent to the EITI Secretariat.

All EITI materials and updated information are publicly available on the website of the Geology and Mining Committee under the EITI section.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

Kazakhstan has taken some actions to involve civil society organizations into the development and implementation of anti-corruption policies (Joint Agreement on consolidation of efforts to combat corruption and the draft of the public project on “Civil Oversight”). Yet, lack of information on the results of practical implementation of these measures implies inconsiderable progress under this part of the Recommendation. At the same time positive mention should be made of the adoption of the Law “On Public Councils” that aims at ensuring broad participation of civic institutions and individuals in public authorities’ decision-making both at the national and local levels. The Law has also changed the format of the procedure for establishment of public councils.

The provided information enables a conclusion on Progress under Recommendation 1.4.
Recommendation 1.5. Raising awareness and public education

- To carry out an evaluation of how awareness-raising campaigns influenced the dynamics of qualitative and quantitative characteristics of corruption. To use the research data during development of the strategy for further awareness-raising campaigns taking into account the pursued goals and the target audiences. To direct awareness-raising campaigns to the practical aspects of preventing and fighting corruption.

17th ACN Plenary Meeting, September 2016

The Law On Combating Corruption provides for the development of an annual National Anti-Corruption Report. The Report should reflect the results of the analysis and evaluation of the status and trends of corruption spread at the international and national levels, proposals regarding development, implementation and improvement of anti-corruption policies.

According to the Rules for Drafting and Presenting the National Anti-Corruption Report to the President of the Republic and its Publication, approved by the presidential Decree on December 29, 2015 No. 154, the Report should contain information on progress in removing corruption challenges, the impact of this work on the reduction of corruption risks in the activities of public agencies, local executive authorities, quasi-public sector participants and socio-economic development of the sectors, regions and more.

Work is under way on an annual basis to conduct a sociological study to identify the level of anti-corruption culture in the society. The main results are posted on the official web-site of the Civil Service Ministry. The study is conducted to determine the corruption perception index demonstrating public opinion regarding the situation with corruption at the government agencies. The index is based on the following indicators: evaluation of the corruption perception level, evaluation of the level of satisfaction with the government’s anti-corruption policy and evaluation of openness of government agencies in terms of information.

One of the tasks of the sociological research is the assessment of the impact of awareness campaigns on the dynamics of corruption.

In addition, the Ministry uses questionnaires in order to obtain feedback with the audience in the course of educational and awareness-raising activities.

Within the framework of the joint project Support to public service reform in the field of professional ethics, protection of meritocracy and prevention of corruption, the UN Development Programme in Kazakhstan (hereinafter - UNDP) is working on a sociological study to establish the level of anti-corruption culture in the society.

The study is conducted to establish the corruption perception index demonstrating public opinion regarding the situation with corruption in government agencies. The index is based on the following indicators: evaluation of the corruption perception level, evaluation of the level of satisfaction with the government’s anti-corruption policy and evaluation of openness of government agencies in terms of information.

The results of the sociological research will be presented in December, 2016.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

Further conduct of annual studies to determine the level of anti-corruption culture in the society and the index of corruption perception undoubtedly deserves attention as efforts to implement measures in order to fulfil the Recommendations.

However, there is no information regarding the impact of ongoing sociological and awareness campaigns on the dynamics of qualitative and quantitative characteristics of corruption; therefore, it is impossible to assess their practical results in prevention and combating of corruption, which, in its turn, does not allow concluding about any progress in the implementation of the Recommendations.

It is also necessary to study the results of the survey that will become available in December 2016 and to
explore their impact on further elaboration and implementation of anti-corruption awareness-raising campaigns.

With regard to Recommendation 1.5 there is No progress.

Recommendation 1.6. Specialised anti-corruption policy and co-ordination institutions

- To introduce legislative amendments aimed at assigning the powers of developing and coordinating anti-corruption policy to a specific state agency.
- To ensure compliance with Articles 6 and 36 of the UN Convention against Corruption concerning the independence of the specialised anti-corruption agency.

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In accordance with the Law On Combating Corruption and Civil Service Ministry ToRs, approved by the Government Resolution No. 1081 issued on December 26, 2015, the Civil Service Ministry was identified as the authorized agency in the field of public service and combating corruption.

Also, in accordance with the Presidential Decree issued on December 11, 2015 No. 128, the structure of the Civil Service Ministry has been enhanced by adding the National Anti-Corruption Bureau with the following functions: prevention, detection, disruption and investigation of corruption offenses.

The Chairman of the National Anti-Corruption Bureau is appointed and dismissed by the President of the Republic of Kazakhstan under paragraph 2 of the Decree.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

Assignment of the Ministry of Civil Service (a body subordinate and accountable to the President of the Republic) as the authority that also acts as a specialized anti-corruption body and establishment, within its structure, of the National Anti-Corruption Bureau (the Head of which is appointed and dismissed by the President of the Republic) does not allow making conclusion about progress in the fulfillment of the Recommendation. Kazakhstan has not provided any additional information that would indicate progress in the implementation of the recommendations on ensuring the independence of the above mentioned anti-corruption bodies.

It should also be noted that according to the Law "On Combating Corruption" the specialized anti-corruption agency is not authorized to develop anti-corruption policies and to coordinate their implementation. Although the Regulation on the Ministry specifies that one of its tasks is "to develop and implement the government policy in the spheres of ... combating corruption", "to coordinate the activities of government bodies and organizations in matters of compliance with the legislation ... on prevention of corruption and minimization of the causes and conditions that facilitate perpetration of corruption offences", the National Bureau (pursuant to the Regulation on the National Anti-Corruption Bureau of the Ministry of Civil Service of the Republic of Kazakhstan) is just a department of the Ministry that, within the competence of this central executive authority, performs implementation functions of prevention, identification, suppression, detection and investigation of corruption offences and carries out other functions in accordance with the legislation of the Republic of Kazakhstan.

During the ACN Plenary Meeting it transpired that as a result of restructuring on 13 September 2016 under a Presidential Decree the Ministry of Civil Service of the Republic of Kazakhstan had been transformed into the Civil Service and Anti-Corruption Agency directly subordinated and accountable to the President of the Republic of Kazakhstan. The National Anti-Corruption Bureau is thus now a separate body in the new Civil Service and Anti-Corruption Agency Department; it has the status of a law enforcement authority empowered with detection, suppression, detection and investigation of the criminal offences of corruption.

As regards Recommendation 1.6. there is No progress.
Pillar II. Criminalisation of corruption

Recommendation 2.1.-2.2. Offences and elements of offence

- To continue harmonisation of the legislation on corruption offences (Law on the Fight against Corruption, Criminal Code, Code of Administrative Offences).

- To bring provisions on criminal liability for corruption offences in compliance with international standards, namely:
  - to establish criminal liability for: promise/proposal of a bribe, acceptance of promise/proposal of a bribe, as well as for solicitation of a bribe as completed corruption crimes in the public and private sectors; giving a bribe and commercial bribery for the benefit of third parties; trading in influence;
  - to define the notion of ‘bribe’ in the Criminal Code and to envisage that the object of corruption crimes and administrative offences can be both material and any other (non-material) benefits;
  - to consider establishing criminal liability for illicit enrichment.

- To ensure that the offence of money laundering is criminalized in line with the international instruments and definitions from the Criminal Code and the Law on Combating Money Laundering and Financing of Terrorism are consistent.

- To envisage an effective and dissuasive liability of legal entities for corruption crimes with proportionate sanctions, which should be commensurate with the committed crime. Both commission of a crime by certain officials and lack of proper control by the governing bodies / persons of such legal entity, which facilitated commission of the crime, shall trigger corporate liability. To conduct additional consultations with business representatives regarding criminal liability of legal entities and the respective draft law; to envisage deferred enactment of the law introducing criminal liability of legal entities.

- To analyse application of provisions on effective regret in administrative and criminal corruption offences and, if necessary, introduce changes which will exclude possibility of unjustified avoidance of liability.

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Since the beginning of 2015, four new codes have been enacted: Criminal, Criminal Procedure, Criminal Enforcement and Administrative Offences codes.

New features include heavier penalties for corruption crimes and consist of the following:
- A ban on granting conditional sentence to the persons convicted for corruption crimes;
- A ban on wavering criminal liability for persons who have committed corruption crimes following reconciliation of the parties;
- Criminal penalties include fines multiplying the total amount or the size of the bribes received, which corresponds to the international standards. Non-payment of a court-appointed several-fold penalty will unavoidably invoke imprisonment;
- All corruption offenses shall result in the mandatory confiscation of property.

Besides, confiscation for committing such acts extends to property obtained through criminal means or purchased with funds obtained by criminal means and transferred in the third parties’ possession by the perpetrator.

Also, a lifetime ban on taking certain positions in government agencies and organizations has been introduced for committing corruption offenses.

The Law On Combating Corruption gave a new definition to “corruption”, introduced anti-corruption
restrictions for all public servants and quasi-public sector entities and extended the range of the subjects of corruption offenses.

Disciplinary liability for corruption offenses has been excluded for the purpose of separating violations of professional ethics from corruption offenses. Now they recognized as actions (misconduct) discrediting public service.

Thus, liability of the individuals taking part in corruption offences will only be considered through the prism of criminal and administrative law.

The next stage of modernization of the anti-corruption policy is the adoption of the Law On Combating Corruption.

At the same time in order to harmonize the Law On Combating Corruption the definitions of the subjects of corruption offenses have been brought into conformity with the new Criminal Code.

Actions such as: "promising, offering undue advantage to a public official" are essentially the process of communicating to the public official, orally or otherwise, the intention to give him a bribe. Recognition of intent to commit a crime as a component of crime is unacceptable for the criminal law doctrine of Kazakhstan. Only actions (inaction) which pose threat to the public, cause socially dangerous harm or pose a real threat of such damage may be recognized as criminal offenses.

Bribery committed for the benefit of third parties has been criminalized by introducing criminal liability for bribery in favor of third parties. At the same time, acts committed by the briber in favor of third parties, are covered by the disposition of such counts as "Bribery" and "Commercial bribery" (Articles 367 and 253 of the Criminal Code).

Article 18 of the UN Convention against Corruption (Trading in Influence) does not require mandatory criminalization of the offense. In accordance with the requirements of this article, States should consider the possibility of recognition of trading in influence as a criminal offense.

This issue was considered during the preparation of the new draft Criminal Code but was not supported.

The concept of a bribe was introduced in the disposition of Part 1, Article 366 of the Criminal Code (Receipt of ... in person or through the intermediary of a bribe in the form of money, securities, other property rights to property or property-related benefits ...) and the concept of "property" in the meaning of "bribe" includes intangible benefits under the Criminal Code.

According to Article 2 of the UN Convention against Corruption, "property" means assets of every kind, whether tangible or intangible, movable or immovable, items or rights and legal documents or instruments evidencing title to such assets or an interest in them.

"The possibilities to criminalize illicit enrichment" are under discussion.

The Law On introducing amendments and addenda to some legislative acts of Kazakhstan on the issues of arbitration was adopted on April 8, 2016. The Law includes amendments to Art. 3 and 218 of the Criminal Code regarding the removal of the following phrase from the disposition: "if the committed acts amount to a serious sum" (2000 MCI) and Article 1 of the Law On counteracting legalization (laundering) of proceeds from crime and financing of terrorism. The aim is to bring the concept of "legalization (laundering) of money and (or) other property obtained by criminal means" in line with Article 218 of the Criminal Code. Thus, the conflict between the provisions of the Criminal Code and the Law On counteraction to legalization (laundering) of proceeds from crime and terrorist financing has been eliminated.

The law introduces administrative liability of legal persons if such persons are authorized to perform government functions, or are persons with equal status, that illegally grant material remunerations, gifts, benefits or services if these actions do not contain features of a criminal offense (Article 534 in the previous version of the Administrative Code) (Article 678 of the Administrative Code, as amended). Article 44 of the Civil Code provides for liability of legal persons under their own obligations with their property, except for special financial companies financed by the founders of organizations, government agencies and state-
owned enterprises (SOE). Civil liability of legal persons for corruption offenses is subject to the general liability rules (contractual, tort and unjust enrichment resulting from such offenses). Legal persons may also be held legally liable resulting in the court issued liquidation verdict for failure to meet the requirements of the legislation on countering legalization (laundering) of proceeds from illicit traffic in narcotic drugs (paragraph 2, Article 30 of the Law On Narcotic Drugs, Psychotropic Substances, precursors and measures to counter illegal trafficking and abuse). The need to introduce criminal liability of legal persons is mentioned in the Legal Policy Concept. Currently, this issue is being discussed by government agencies.

Kazakhstan has conducted analysis of enforcement of the provisions regarding voluntary repentance in administrative and criminal proceedings resulting in corresponding changes introduced by the new Criminal Code and Code of Administrative Offences (hereinafter - CAO).

The article providing for exemption from administrative liability in connection with voluntary repentance was removed in the new version of the Administrative Code adopted in July 2014 (Article 67 in the previous version of CAO).

The provision of Article 65 CAO: "Exemption from criminal liability in connection with voluntary repentance" applies to corruption-related crimes, as it actually helps investigators in solving them. It is also unacceptable to claim that the person in respect of whom this provision was is manages to unreasonably avoid criminal liability.

The analysis of enforcement of the provisions regarding voluntary repentance in such criminal offenses as corruption in 2015 established that Article 65 of the Criminal Code has been invoked in 3 criminal cases against 6 persons.

 Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

Since the previous update Kazakhstan has amended the provisions of the Criminal Code and the Law “On Countering of Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism” as regards the definition of legalization (laundering) by deleting such element of this crime as ”if committed in significant amount”. These amendments were adopted on 8 April 2016. It should be noted that in the previous report Kazakhstan did not agree that such language of the clause failed to meet the international standards and that it should be removed. It is laudable that the appropriate changes have been made and that the definition of the crime of money laundering has been brought into conformity with the standards and recommendations of ACN monitoring. In this respect significant progress has been made.

In the context of harmonization of the legislation on corruption offences Kazakhstan has really reconciled the definitions of subjects of offenses in the new Law “On Combating Corruption” and the Criminal Code of the Republic. Moreover, in December 2014 Kazakhstan amended Article 274 of the Code of Administrative Offences, which now also stipulates liability for “willful submission of incomplete and inaccurate declarations and information about income and property”. This language reconciles this Article of the Code with the provisions of the Law ”On Combating Corruption” and is a proper response to one of the criticisms in the third round monitoring report. Therefore, in this area significant progress has been achieved.

Kazakhstan has not provided information on any progress with other parts of Recommendations 2.1.-2.2 and, specifically, no information on changes with regard to corruption crimes and their obligatory elements. Kazakhstan continues to disagree with some previous recommendations, which, however, goes beyond this progress update. Regarding liability of legal entities and active repentance no new information has been provided (see the assessment in the previous updates).

In general, as regards Recommendation of 2.1.-2.2 Kazakhstan has made Significant progress.
Recommendation 2.3. Definition of a public official

- To harmonise provisions of the Criminal Code which determine the subjects of criminal liability for corruption crimes. To ensure application of the legislation on liability for corruption offences to all persons assigned with state powers.
- To envisage criminal liability of foreign public officials for all bribery offences and also to provide definition of such foreign public officials in accordance with international standards.

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The following definitions of participants of corruption offenses have been harmonized in the Criminal Code and the Law On Combating Corruption:
- A top level official;
- public official;
- A person authorized to perform government functions;
- A person with status equal to the persons authorized to perform government functions

The definitions of these concepts in the Law On Combating Corruption have been brought in line with the new Criminal Code.

Article 366 of the Criminal Code provides for criminal responsibility for receiving of a bribe by an official of a foreign state or international organization in person or through an intermediary. The bribe may have the form of money, securities, other property, the rights to property or property-related benefits for oneself or other persons for actions (inaction) in favor of the briber or persons represented by him, if such actions (inaction) are included in the official duties of the person or by virtue of his official position allowing him to promote such actions (inaction), as well as for general patronage or connivance.

Article 367 of the Criminal Code provides for criminal liability for bribery committed by an official of a foreign state or an international organization in person or through an intermediary.

In addition, in accordance with paragraph 2 of Regulatory Resolution of the Supreme Court issued on November 27, 2015, No. 8 - On the case law regarding considerations of some corruption offences, the officials of a foreign state or an international organization are considered participants of corruption crimes.

According to paragraph 3 of the Resolution the officials of a foreign state or an international organization referred to in Articles 366, 367 of the Criminal Code are the persons recognized as such by the international treaties of the Republic of Kazakhstan in the field of combating corruption.

An official of a foreign state is any appointed or elected person holding any office in the legislative, executive, administrative or judicial office of a foreign state and any person exercising a public function for a foreign country, including for a public agency or the enterprise.

An official of an international organization is an international civil servant or any person authorized by such an organization to act on its behalf.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

1. Kazakhstan harmonized the definitions of the subjects of the offences indicated in the new Law "On Combating Corruption" (adopted in November 2015) and the Criminal Code of Republic of Kazakhstan.

2. The definition of "officials of a foreign state or an international organization" was included into the Regulatory Resolution of the Supreme Court (of 27 November 2015, no. 8) "On the case law regarding some corruption offences." Thus, this resolution fills a gap in the Criminal Code, which does not contain such a definition. The said definition appears to be consistent with the international standards (the final assessment will be given during the fourth round of monitoring in the framework of the IAP).

3. Kazakhstan has not provided any information on implementation of the recommendations concerning extension of liability for corruption offences onto all persons assigned with state powers, including jurors (see p. 57 of the 3rd round monitoring report).
In general, as regards Recommendation 2.3 Kazakhstan has made Significant progress.

Recommendation 2.4–2.5. Sanctions, confiscation

- To analyse the application of the sanctions established by the 2014 Criminal Code for corruption offences from the point of view of their effectiveness and proportionality to crime committed.
- To provide for mandatory confiscation for all corruption offences. To consider enforcing the new confiscation provisions of the 2014 Criminal Code ahead of the schedule.
- To provide for the confiscation from those third parties who knew or must have known about the criminal origins of the property in question, together with protection for the bonâ fide buyers of the property to be confiscated.

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In the 1st quarter of 2016, analysis has been conducted regarding enforcement of individual sanctions under the Criminal Code in 2015 in terms of their effectiveness and proportionality to the offense. In addition, monitoring in this area was conducted during 2015 and continued in the 1st quarter of 2016.

Consolidated proposals developed by public authorities on the basis of monitoring of practical application of the new Criminal Code were approved on March 15, 2016, at a meeting of the National Modernization Commission at the Office of the President of the Republic of Kazakhstan.

Thus, the sanctions for corruption offenses mentioned in the articles have been brought in compliance with the international standards. The following alternative sanctions have been introduced: general penalty, a several-fold fine based on the amount of bribe, lifelong ban on occupying certain positions or engaging in certain activities.

Article 48 of the Criminal Code on property confiscation was put into effect on January 1, 2016.

Money and other assets are subject to confiscation, as follows:
1) Proceeds derived from the commission of a criminal offense and any income received from this property with the exception of property and income received from it which is to be returned to the legitimate owner;
2) Assets in which the property received as a result of a criminal offense and the income from that property have been partially or completely transformed or converted;
3) Money/assets used or intended for financing or other support of extremist or terrorist activities or criminal group;
4) Money/assets that are the instrument or means of committing a criminal offense;
5) Money/assets transferred to others by sentenced individuals.

If confiscation of certain items included in the above types of property cannot be made at the time of the court decision on confiscation due to their use, sale or otherwise, a sum of money that corresponds to the value of the item in question is subject to confiscation by a decision of the court.

Confiscation is provided for all counts of corruption crimes by the Criminal Code.

In accordance with Article 261 of the Civil Code, if the property has been procured from a person who had no right to alienate it and the acquirer had or should have had the knowledge of it (bona fide purchaser), the owner has the right to reclaim the property from the purchaser only when property has been lost by the owner or the person in whose possession the property was transferred to by the owner or stolen from one or the other, or the property falling out of their possession in some other way against their will.

However, if the property was acquired free of charge from a person who had no right to alienate it, the owner has the right to reclaim it in all cases.
Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

1. With regard to analysis of the application of sanctions under the 2014 Criminal Code for corruption crimes, in terms of their effectiveness and proportionality, Kazakhstan reported that such analysis was conducted in the first quarter of 2016. The results of such analysis were not provided and, therefore, it is impossible to judge on whether this analysis was consistent with the recommendation.

2. In November 2015 the Criminal Code was amended, and the new provisions on confiscation came into effect as of 1 January 2016, instead of 1 January 2018, as earlier planned (which was criticized in the IAP monitoring report). Thus, Kazakhstan has fulfilled this part of the recommendation.

However, as noted in the report on the third round of monitoring, confiscation is just a possible punishment and not a mandatory sanction for active bribery, mediation in bribery or acceptance of illegal remuneration. Thus, mandatory confiscation is not provided for all corruption offences, contrary to what Kazakhstan asserts.

3. The amendments of November 2015 extended confiscation on "property transferred by the convicted into ownership of other persons". This in part meets the IAP recommendations on confiscation from third parties. However, it appears that the changes are not sufficient, because the recommendation was to provide for "confiscation from third parties who knew or should have known about the criminal origin of the property in question, together with protection of the bona fide buyers of the property to be confiscated."

In general, with regard to Recommendation 2.4.-2.5 Significant progress has been made.

Recommendation 2.6. Immunities and statute of limitations

- To improve procedures for lifting immunity from criminal prosecution, in particular, to specify in the legislation clear procedures for taking such decision by the President with the participation of the Supreme Judicial Council in established cases, to specify the terms for consideration of issues related to lifting of immunity by the relevant authorities. To limit immunities to acts committed in the course of execution of official duties.

- To consider increasing the statute of limitations for bringing to administrative liability for corruption offences. To ensure consistency among provisions of laws concerning suspension of terms for imposing disciplinary and administrative sanctions.

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Chapter 57 of the Criminal Procedure Code regulates the details of proceedings regarding individuals possessing privileges and immunity from prosecution.

Article 553 of the Criminal Procedure Code stipulates that persons possessing diplomatic immunity from criminal prosecution, as well as other persons in accordance with international treaty of the Republic of Kazakhstan can only be prosecuted if the foreign state expressly provides for a waived immunity from prosecution. Such waiver is granted following the Prosecutor General’s motion sent through the Ministry of Foreign Affairs using diplomatic channels. The criminal case shall be terminated in the absence of the waiver from the corresponding foreign state regarding the immunity from prosecution of these persons.

In addition, MPs and judges also possess immunity.

Pre-trial investigation may be continued in respect of the said persons with the consent of the Prosecutor General.

In accordance with Article 547 of the Criminal Procedure Code, the Prosecutor General shall submit a motion to the Senate or the Majilis of the Parliament with the purpose of obtaining consent regarding bringing an MP to criminal liability, putting under arrest, detention, house arrest or production. The motion is submitted before delivering the ruling to the MP qualifying the actions of the suspect and making a
motion before the court requesting a preventive measure in the form of detention, house arrest, making the
decision on the need for arrest or enforcement of MP’s production to pre-trial investigation authority.

On June 22, 2016 there has been adopted Resolution No. 40/137 "On Approval of the ToRs regarding
preparations for parliamentary consideration of issues connected with the sanctions for MPs, including their
compliance with restrictions related to their parliamentary work, the rules of parliamentary ethics, as well as
the termination of powers of MPs and withdrawal of their powers and immunity". The ToRs set the terms of
consideration of the Prosecutor General’s motion regarding the consent to lift the parliamentary immunity,
as well as issuing an opinion following the results of the motion review.

In accordance with Article 550 of the Criminal Procedure Code, the Prosecutor General makes a
motion to the President with the purpose of obtaining the approval to bring judges to criminal liability,
putting under arrest, detention, house arrest or production. In case of lifting immunity of the Procurator
General, the Supreme Court President and the judges, the motion is sent to the Senate of the Parliament.
The motion is submitted before delivering the ruling to the judge qualifying the actions of the suspect and
making a motion before the court requesting a preventive measure in the form of detention, house arrest,
making the decision on the need for arrest or enforcement of judge’s production to pre-trial investigation
authority.

According to article 62 of the Code of Administrative Offences, a person shall not be subject to
administrative liability for corruption offenses after one year from the date of its commission and legal
persons - after three years. Practical experience shows that there are no objective reasons for the increase of
the above statute of limitations.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

1. Immunities. On 22 June 2016, the Central Election Commission of the RK adopted the Regulation “On
preparations for parliamentary review of issues connected with the sanctions for MPs, including their
compliance with restrictions related to their parliamentary work, the rules of parliamentary ethics, as well as
the termination of powers of MPs and revocation of their powers and immunity”. It regulates the time
frame for examination of the Prosecutor General’s motion on lifting of the parliamentary immunity and
making of an opinion about the outcomes of examination of such motion. However, the said Regulation is
silent about the period of review of the motion at the Parliament, in spite of the relevant criticism in the IAP
monitoring report.

Any other new information on the implementation of this part of the recommendations was not provided.

2. As for possible increase of the statute of limitations for bringing to administrative liability for corruption
offences Kazakhstan has not provided any information about how such possibility was ever considered
(public authority’s report, analysis, hearing at a meeting of a government authority, etc.). The conclusion
in the progress update (“Practical experience shows that there are no objective reasons for the increase of
the above indicated statute of limitations”) is not enough proof of the conducted review.

In general, there was No progress as regards Recommendation 2.6.
Recommendation 2.7. International co-operation and mutual legal assistance

- To provide in the legislation measures for direct asset recovery as envisaged by Article 53 of the UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention.

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Article 57 of the UN Convention against Corruption was fully reflected in Chapter 71 of the Criminal Procedure Code.

This Chapter of the Code regulates the procedure for the confiscation of property obtained by illegal means, including the proceeds of corruption, before sentencing. It also includes such issues as launching proceedings to confiscate property obtained by illegal means prior to sentencing; pre-trial confiscation proceedings; court consideration of confiscation request; issues that may be decided by the court in the conference room regarding confiscation; judgment in confiscation proceedings; appeal of the confiscation verdict.

Sub-paragraph “a”, Article 53 of the Convention is mentioned in Article 472 of the Civil Procedure Code (hereinafter - CPC).

Thus, according to this CPC article, foreigners and stateless persons, foreign and international organizations (hereinafter - foreign persons) have the right to apply to the courts of the Republic of Kazakhstan for protection of their rights that were violated or disputed, including freedoms and legitimate interests. They can also enjoy the procedural rights and fulfill procedural obligations in the same manner as the citizens and legal entities of the Republic of Kazakhstan, unless otherwise stipulated by an international treaty ratified by the Republic of Kazakhstan.

Sub-paragraph “b”, Article 53 of the Convention is mentioned in Article 466 CPC regarding the competences of the courts of the Republic of Kazakhstan to hear cases featuring foreign persons.

The courts of Kazakhstan hear cases involving foreign persons, if the defendant organization or a citizen have residency in the territory of the Republic of Kazakhstan.

The provisions of subparagraph "c", Article 53 of the Convention were introduced into the standards of Article 501 and 503 CPC regarding the recognition and enforcement of foreign judgments, foreign arbitral awards and enforcement of foreign judgments and arbitral awards, respectively.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

New information regarding implementation of Recommendation 2.7 was not provided. All earlier provided information was already analyzed during previous evaluations.

As regards Recommendation 2.7 there has been No progress.

Recommendation 2.8.-2.9. Application, interpretation and procedure, specialized anti-corruption law enforcement bodies

- To introduce specialization of prosecutors to supervise investigations and to press charges for corruption crimes during trial.

- To ensure free access via Internet to regularly updated detailed statistic data on criminal and other corruption offences, in particular, on the number of reports of such offences, number of registered cases, the outcomes of their investigation and criminal prosecution, and the outcome of trial (among other things, data on sanctions imposed, and categories of the accused depending on their position and place of work). The above data should come together with analysis of current trends and causes of changes in trends.
The new Code of Criminal Procedure introduced the office of Procedural Prosecutor, who supervises a particular criminal case (including corruption cases) since the start of the pre-trial investigation to provision of support to public prosecutor in court.

According to subparagraph "35", Article 7 CPC, the procedural prosecutor is the prosecutor vested with the function of supervision of compliance with the law in a criminal case. These powers are granted by the head of the prosecutor's office in accordance with the Code.

According to Part 3, Article 193 CPC, the procedural prosecutor supervises the criminal case from the start of pre-trial investigation and participates in the court of 1st instance as a public prosecutor.

Currently, government puts into practice the use of procedural prosecutors in pressing and highly complex criminal cases, regardless of the category. This is due, primarily, to limited human resources. In the long term, as these issues being gradually solved, it is planned to establish specific categories and increase the number of cases where supervision and participation in court proceedings will be covered by procedural prosecutors.

The acts allocating the responsibilities among virtually every structural unit of the Office of the Prosecutor General and territorial offices of public prosecutors also assign the supervisory function to different officers regarding the application of anti-corruption legislation.

In addition, the Law Enforcement Academy was established at the General Prosecutor's Office by the Presidential Decree issued on May 4, 2015, No. 15.

The main areas of work in the Academy are:

1) Professional development of law enforcement officials, including future law enforcement managers remaining in the Presidential reserve;
2) Coordination and conducting interdepartmental research in the field of law enforcement;
3) Implementation of postgraduate programs.

According to subparagraph "7", paragraph 3, Article 16 of the Law On Access to Information owners of information, within their competence, are obliged to post the following statistics in the Internet: departmental statistical database; information about the condition and development dynamics of an industry (sector) as it pertains to the competence of the information holder.

The Committee for Enforcement Statistics and Special Records of the General Prosecutor's Office (hereinafter - CESSR) generates a monthly report using form 1M "On registered crimes and the results of the prosecutorial authorities", which also reflects statistical data on corruption crimes.

This report is posted on the CESSR website on a monthly basis with free access for every citizen of the Republic of Kazakhstan (http://service.pravstat.kz/portal/page/portal/POPageGroup/Services/Su1ap).

The Nation’s Plan “100 Concrete Steps” provided for the creation of the Internet website called "Crime Map" on the basis of a national information system with the same title.

The "Crime Map" website is available to any citizen who has access to the Internet and allows you to read crime data online, as well as see the most crime intensive areas.

Currently, the existing service "Crime Map" is available on the website of the Committee on Enforcement Statistics and Special Records of the General Prosecutor's Office (http://service.pravstat.kz/map.html) representing regional centers and 19 monotowns (one-company towns). Awareness campaigns are under way to inform the public and local executive agencies.

**Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS**

1. No new information was provided as regards specialization of prosecutors. Specialization of procedural prosecutors for corruption crimes does not exist.

2. The Committee for Legal Statistics and Special Records of the Prosecutor General's Office posts on its site generally accessible statistical data on officially registered crimes and on relevant response of the investigative authorities, as well as statistics on convictions, sentences, etc. Analysis of such statistics is not published.

As regards Recommendation 2.8.-2.9 Progress has been achieved.
Pillar III. Prevention of corruption

Recommendation 3.2. Integrity of civil service

**Legal framework.** To revise the existing legislative differentiation between administrative and political civil servants, in particular to substantially decrease the list of political servants, in order to ensure professionalism and real protection of administrative civil servants as well as law enforcement officers from political influence.

**Recruitment and promotion.** To continue reforming the system of recruitment and promotion of civil servants by establishing clear criteria for evaluation based on personal merit and qualifications; to eliminate the possibility of occupying administrative positions without a competitive selection; to envisage in the law a procedure for merit-based promotion and procedure for carrying out internal competitions.

**Remuneration.** To set clear statutory limitations on the amounts and frequency of additional remuneration (awards), which is not included in the basic fixed salary, and to envisage criteria for such awards in order to limit discretionary powers in taking decisions on such issues and to ensure transparency of such payments.

**Conflict of interest.** To develop and broadly disseminate among employees of state authorities practical guides on prevention and resolution of conflict of interest with taking due account of the specifics of work of certain authorities. To introduce a practice of consulting employees with respect to observance of the regulations on conflict of interests, requirements of incompatibility and other restrictions both at the level of separate authorities and on a centralized basis (by the authorized body in the field of civil service). To carry out monitoring and analysis of implementation of the regulations on conflict of interests and restrictions in the civil service.

**Internal control.** To strengthen preventive work of the internal control (security) units, including work on raising awareness of anti-corruption regulations, assistance in prevention and resolution of conflicts of interests. To ensure methodological support of and guidance to such units.

**Declaration of assets.** To amend legislation and practice of asset and income declarations in order to ensure their effectiveness, in particular, to envisage verification of part of declarations (for example, of high-level administrative civil servants, political civil servants, judges, prosecutors, employees of bodies which are most prone to corruption). To envisage mandatory publication of data from declarations of the high-level officials, political servants, judges, as well as availability of all other declarations of public servants upon request.

**Codes of ethics and anti-corruption training.** To define in the Code of Ethics the observance of the rule of law principles and ensuring professionalism of civil service as the main duty of civil servants; to revise provisions on obligatory refutation of public accusations; to ensure regular and practical training on observance of the codes of ethics (codes of conduct). To create a system of annual education and continuous training on the issues of preventing and combating corruption with the focus on the practical implementation of the legislation.

**Restrictions in receiving gifts.** To develop and disseminate detailed guidelines on the implementation of provisions on gifts in order to clarify established restrictions and liability for their violation. To carry out monitoring of the implementation of provisions on gifts and to develop proposals on their improvement.

**Protection of whistle-blowers.** To stipulate in the legislative acts detailed provisions for the protection of whistle-blowers, in particular, effective guarantees of their protection from oppression and
persecution. Review provisions of the Code of Administrative Offences, which establish administrative liability for reporting false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional disinformation.

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The legal framework. The law On Civil Service (hereinafter - the Law) delineated the powers between the political and administrative civil servants. Change of political civil servants, as well as heads of public agencies that are administrative civil servants cannot be the reason for termination of the administrative civil servant's operations in his respective post upon the initiative of the newly appointed political and (or) administrative civil servants. The work of political civil servants is aimed at making policies and deciding on strategic development areas of the public authority, while the executive secretaries and chiefs of staff (administrative staff) are responsible for the efficiency and functioning of the government system, strengthening continuity and institutional memory of the public organization.

The number of political appointees has reduced by 8 times in the past 3 years in line with the OECD's recommendations (from 3 272 in 2013 to 422 in 2016).

Recruitment and promotion. With the introduction of the new legislation, the civil service of Kazakhstan has moved to a new competence-based career development model, where the selection for positions in public service is made on a competitive basis. The new legislation ensures that hiring and promotion take place on the principles of meritocracy. Thus, the Law On the Civil Service of the Republic of Kazakhstan (hereinafter - the Law) has introduced a three-tier model of selection to the civil service.

At the first stage candidates for public office are tested on their knowledge of the law.

Upon successful completion of the test, the candidates are allowed to participate in the second stage – evaluation of individual qualities. An automated system for evaluating individual qualities establishes the following competences of the candidates: ability to show initiative, communicate, analytic abilities, self-discipline, ethics, focus on quality, customer focus, intolerance to corruption. Candidates for executive positions also take tests on strategic thinking and leadership.

These two stages of testing are carried out centrally by the Civil Service Ministry.

During the third stage the candidates are interviewed by the agency that is advertising vacancies where their specialized knowledge and skills are tested.

To ensure objective competitive procedures, the legislation provides the possibility of participation of observers and experts.

New approaches include hiring civil servants from lower level positions and a gradual promotion in accordance with their competencies. Thus, the legislation requires work experience at lower positions for promotion to higher level.

In addition, with the introduction of the new law, 97 % of civil servants can no longer be transferred.

As a result, the number of non-competitive appointments in the form of transfers dropped 32 times compared to the same period last year.

An annual work assessment of their activities is made to establish the effectiveness and quality of civil servants. If an administrative civil servant receives unsatisfactory ratings for two consecutive years, it results in demotion to a lower level vacant post in civil service or dismissal in the absence thereof.

In accordance with Article 27 of the Law, the competition for vacant or temporarily vacant administrative public office for category "B" civil servants consists of a general competition for the citizens and the internal competition for public servants.

Article 29 of the Law regulates the procedure of internal competition.

Salary. In accordance with Article 33 of the Law On Civil Service (hereinafter - the Law) the evaluation results of public employees are the basis for making decisions on the payment of bonuses, promotion, training, job rotation, a demotion or dismissal.

At the same time, taking into account the standards of the Law, the Ministry of National Economy developed a draft decree of the President On approval of the Rules and terms of payment of bonuses,
allowances to civil servants, as well as the establishment of bonuses to the salaries of CAT “B” administrative civil servants and amendments to the Decree of the President issued on January 17, 2004 No. 1284 On a unified wage system for public officials supported at the expense of the national budget and the budget of the National Bank (hereinafter - the draft decree).

The draft Decree provides for the procedure and conditions for the payment of bonuses to civil servants as a result of their performance assessment, payment of allowances, as well as the establishment of bonuses to the salaries of CAT “B” administrative civil servants for the implementation of emergency and pre-contingency work, provision of practical assistance (mentoring) for a new civil servant, the use of state or a foreign language directly for implementation of functional responsibilities, etc.

Conflict of interest. In accordance with paragraph 1, Article 12 of the Law On Combating Corruption (hereinafter - the Law), the following categories of civil servants take on the anti-corruption restrictions, in order to avoid actions that may lead to the use of their powers for personal, group, and other unofficial interests, including taking into account the issues of the conflict of interest: persons occupying important public office, persons authorized to perform government functions and persons with a similar status (with the exception of the presidential candidates of the Republic of Kazakhstan, MPs and members of maslikhats, akims of regional cities, settlements, villages, rural districts, as well as members of the elected local self-government bodies), officials, as well as candidates, authorized to perform these functions.

HR services of government agencies shall notify the persons entering civil service regarding the obligation to accept anti-corruption restrictions.

In accordance with paragraph 3 of Article 12 of the Law, the consent of such persons to accept anti-corruption restrictions is documented by HR services in writing.

In addition, conflict of interest regulation aspects are examined during the analysis of corruption risks in the work of government agencies, organizations and quasi-public sector entities.

In case when corruption risk analysis reveals the facts of the conflict of interests, appropriate recommendations will be made to resolve it.

In addition, in cooperation with the UNDP there has been designed a guide to help deal with the conflict of interest in civil service.

In addition, the Civil Service Ministry and its territorial departments regularly conduct information campaigns about compliance with anti-corruption laws, including the conflict of interest regulation.

So, during the first six months, over 450 outreach events have been conducted by the territorial departments in the regions (seminars, round tables, lectures and meetings).

Internal oversight. Ethics Commissioner’s position has been introduced in order to improve ethical standards and rules of conduct for public servants in all central government agencies and akim administrations in the oblasts, cities of Astana and Almaty.

Ethics Commissioner is a public servant carrying out activities to ensure compliance with the standards of professional ethics and prevent violations of civil service and anti-corruption legislation, and the Code of Ethics of civil servants of the Republic of Kazakhstan (hereinafter - the Code of Ethics). The Commissioner is also consulting civil servants and citizens within its competencies.

Presidential Decree No. 153 issued on December 29, 2015 approved the Ethics Commissioner ToRs.

In addition, in accordance with Article 8 of the Law On Combating Corruption, government agencies, organizations and entities of quasi-public sector carry out internal review of corruption risks. Following the results of the review, the steps are taken to address the causes and conditions that facilitate commission of corruption offenses.

The Order of the Civil Service Minister No. 18 issued on December 29, 2015 approved the Model Rules of the internal analysis of corruption risks that give definition to the participants, the subject and the sources of information and the procedure for its implementation.

Property declaration. The Law On introducing amendments and addenda to some legislative acts of
Kazakhstan on the declaration of income and assets of natural persons (hereinafter - the Law on the universal declaration) was adopted on November 18, 2015.

The law on universal declaration allows all individuals to submit their declarations instead of a limited number of persons as is the case at present.

Also, the Law on the universal declaration provided that when natural persons enter the declaration system, they submit a declaration of assets and liabilities for the purpose of recording the information about individual’s property and savings. Subsequently, the person who submitted the original declaration will submit a declaration of income and assets reflecting the income for the reporting period, as well as information on the alienation and (or) the acquisition of property rights and (or) transactions which are subject to state or other registration, thus allowing to identify discrepancy between income and expenses of physical persons, including civil servants.

At the same time, with a view to a gradual entry of the declaration system into force, there has been envisaged a gradual transition for certain categories of taxpayers. So, during the first stage (2017) it is expected that the declaration of assets and liabilities will be filed by the staff of public institutions (persons who are responsible for submission of declarations in line with the current legislation), as well as the staff of national companies and employees of government-owned enterprises as the most prepared categories of taxpayers. In the second stage (2020) it is expected that declarations will be filed by other individuals.

In order to implement oversight of personal income and spending is expected that the tax audits of individuals will be based on a risk management system after the full implementation of the universal declaration.

In accordance with subparagraph 2, paragraph 1, Article 27 of the Law On Combating Corruption, starting January 1, 2020 the information reflected in the declarations of the following categories of individuals and their spouses will be published within a period not later than 31 December of the year following the reporting calendar year:
1) Persons holding political public office;
2) Persons holding administrative CAT "A" public positions;
3) Members of Parliament;
4) Judges;
5) Persons performing managerial functions in the quasi-public sector entities.

The Law On Combating Corruption vested the Civil Service Ministry with the powers to approve the list of information to be published.

Thus, at present, the Ministry is working on the development of a relevant order on the approval of the above list.

The codes of honor and anti-corruption training. The Code of Ethics of civil servants, approved by the Decree of the President No.153 issued on December 29, 2015 contains the following standards of conduct for the civil servants of Kazakhstan:
1) Off-duty time (paragraph 7);
2) Service relations (paragraphs 8-10);
3) Conduct associated with public speaking, including in the media (paragraphs 11-14).

In accordance with Article 4 of the Law On Civil Service, one of the principles of civil service is the continuity of training for civil servants and development of the necessary competencies.

In 2014, the approved Model training program for civil servants on anti-corruption developed by the Academy of Public Administration under the Office of the President of the Republic of Kazakhstan and agreed with the Agency for Civil Service Affairs and Anti-Corruption.

The model training program highlights the issues of a new approach to the public service, namely strengthening of anti-corruption measures, enhancing transparency in the selection of civil servants, ethical oversight and implementation of the principle of meritocracy.

Restrictions on receiving gifts. According to subparagraph "4", Article 12 of the Law On Combating Corruption, in order to prevent persons occupying important public office, persons authorized to perform government functions and persons with a similar status (with the exception of the presidential candidates of the Republic of Kazakhstan, MPs and members of maslikhats, akims of regional cities, settlements, villages,
rural districts, as well as members of the elected local self-government bodies), officials, as well as candidates, authorized to perform these functions (hereinafter - persons), committing actions that may lead to the use of their powers for personal, group and other unofficial interests take up the anti-corruption restrictions regarding acceptance of gifts in connection with the performance of official duties in accordance with the legislation of the Republic of Kazakhstan.

Subparagraph "17", paragraph 1, Article 50 of the Law On Civil Service establishes that the acceptance of gifts or services in connection with the performance of their public or equivalent functions from civil servants and other persons dependent upon them within the service for the general protection or connivance is recognized as misconduct, defamatory to public service.

Gifts received without the knowledge of the civil servant, as well as gifts received in connection with the performance of official functions shall be handed over to a special government fund within seven days of receipt without any reimbursement. Services provided to public servant under the same circumstances have to be paid by the official by transferring money to the national budget.

With the approval of a superior officer, the civil servant receiving the gifts has the right to redeem them from the fund at market retail prices which are current for the respective area. The proceeds received from the sale of gifts are transferred to the national budget by the special government fund.

The process of implementation of the Law On Combating Corruption has been amended by the decision of the Government No. 1166 issued on December 31, 2015. The change is covering The Rules of accounting, storage, evaluation and further use of the property, transferred (handed over) to the government on certain grounds regarding the transfer of gifts to the authorized agency responsible for managing government property or local executive agencies of districts and cities of regional importance, the process of their redemption and sale.

In addition, the Ministry of Finance developed a Memorandum and disseminated it among all government agencies. The Memo provides for the mechanism and deadlines for handing over the gifts to the special government fund, gift redemption procedure, as well as the procedure of sale in case of refusal to redeem it (MOF letter No. KGIP-7/1287 sent on February 1, 2016).

Also, in accordance with subparagraph "4", paragraph 1, Article 472 of the Administrative Code, administrative and legal responsibility is provided for incomplete and (or) late transfer of property (gifts) to the authorized body if these actions do not have features of a criminal offense.

Protection of persons who report about corruption offenses (whistleblowers). In accordance with the Law On Combating Corruption (hereinafter - the Law) persons reporting about corruption offense or otherwise assisting in the fight against corruption fall under government protection and encouraged in line with the law (Article 8, paragraph 3 of the Law).

To implement the Law, there were approved the Rules of motivating persons who reported about corruption offense or otherwise assisting in the fight against corruption (Government Resolution No. 1131 issued on December 30, 2015). The amount of rewards is ranging from thirty to one hundred MCI and the payment amount depends on the severity of the corruption offence.

The remuneration is paid exclusively in the following cases: Availability of confirmation of the facts contained in the report; Entry into force of the court judgment, or termination of a criminal case under non-rehabilitating grounds.

43.7 million tenge were allocated for this purpose from the central budget in the current year.

In this case, the persons assisting in the fight against corruption fall under government protection and information about them is considered state secret (paragraph 4, Article 24 of the Law).

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

Further practical implementation of measures aimed at improving legislation in the area of integrity of the civil service and, specifically, the effect of the new legislation on civil service and universal asset and income disclosure, drafting of the Guidance on conflict of interest in public service and of the Checklist on gifts, adoption of the Sample Rules of internal analysis of corruption risks, of the Code of Ethics for civil servants and of the Rules of encouragement of whistleblowers lead to a conclusion on Significant progress in the implementation of Recommendation 3.2.
Recommendation 3.3. Promoting transparency and reducing discretion in public administration

- To envisage mandatory anti-corruption screening of all draft normative acts. To consider the possibility of placing on the web-sites of the respective state authorities draft laws and draft normative acts of the Government and other central state authorities, accompanied with conclusions of the anti-corruption screening. To consider the possibility of assigning to a state authority functions of carrying out anti-corruption screening.

- To revise the Law on State Control and Supervision, namely to bring it in line with the Law on Private Entrepreneurship, to eliminate inaccuracies and clearly define its sphere of regulation, which should not cover internal control issues, to put emphasis on protection of rights of the inspected entities from possible infringements by the inspection bodies.

- To bring the legislative act on the administrative procedure in line with international standards of regulation of the procedure for considering administrative cases.

- To reform the system of administrative justice in accordance with international standards and best practices, namely to adopt the Administrative Adjudication Code, which should not regulate issues of bringing to administrative liability, and to set up specialized administrative courts for consideration of private persons’ claims against public administration.

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Today, identification of corruption-prone norms is carried out during legal assessment of draft legal acts and expert legal analysis of draft laws.

Legal assessment is carried out by justice system agencies in accordance with the laws “On Justice Agencies” and “On Legal Acts”. Under the Law on Legal Acts, the Ministry of Justice shall verify the compliance of drafts or adopted legal acts with the Constitution and legislation in force, in particular anti-corruption legislation.

At the same time, to increase the quality of legal assessment, the Ministry of Justice is developing legal assessment methodology that will cover, inter alia, the verification of draft laws’ compliance with anti-corruption legislation.

Therefore, legal assessment of compliance of legal acts with anti-corruption legislation as exercised by the Ministry of Justice is consistent with the OECD recommendation that the function of anti-corruption assessment shall be carried out by public agencies.

At the same time, all draft laws and regulations must be subject to expert legal examination aimed at, in particular, identifying the circumstances that might result in corruption offenses due to the adoption of the normative act.

Identification of corruption risks is also carried out by public agencies responsible for monitoring of legal acts.

Under the Law “On Legal Acts”, legal acts in force can also be subject to public monitoring by the National Chamber of Entrepreneurs to identify the risks of corruption.

Moreover, under legislation currently in force, all citizens and organizations can discuss draft concepts of legal acts at the web-portal for public legal acts (hereinafter -- the Portal) which is a part of electronic government.

Thus, citizens can provide article-by-article comments to the provisions suggested by the drafter. At the same time, authors must consider the comments and suggestions by the citizens and accept or dismiss them indicating the reasons for such dismissal. Following public discussion, a report must be published at the Portal.

To ensure transparency of the law-making process, all draft legal acts relating to individual rights, freedoms and obligations must be forwarded to central and local public councils for discussion and
elaboration of recommendations.

Prior to their adoption, all draft legal acts must be accompanied by the recommendations, including every subsequent approval of the draft act by the government stakeholders.

Moreover, under the Anti-Corruption Law, citizens have the right to participate in the fight against corruption through relevant mechanisms, in particular through anti-corruption monitoring aimed at assessing the application of anti-corruption legislation.


The Code is aimed at the improvement and development of the Kazakh legislation on cooperation between business entities and the State, including state regulation and state support of business, eliminating gaps in the regulation of business relations as well as defining legal, economic and social rules and safeguards ensuring the freedom of entrepreneurship in the Republic of Kazakhstan.


Incorporation of the Law “On state control and supervision in the Republic of Kazakhstan” into the Business Code is based on the principle of supremacy of the relations under regulation. E.g., provisions on internal control contained in the said Law have been excluded from the Business Code.

Instead, issues of internal control are regulated by the Law “On administrative procedures”.

Thus, according to para. 2-12 Article 1 of the Law “On administrative procedures”, internal control is exercised by a public agency over its structural and territorial divisions, subordinated public agencies and organizations and officials as to their compliance with the decisions adopted by the agency and legislative requirements of the Republic of Kazakhstan.

Moreover, the Law “On public audit and financial control” was adopted in 2015 to implement the National Plan “100 concrete steps to implement five institutional reforms” aimed at introducing a comprehensive public audit system and furthering response measures for financial control.

Under Article 1 of the Law, public audit means analysis, evaluation and assessment of the effectiveness of management and use of budget funds, public assets and entities of quasi-public sector, related grants, state and guaranteed loans as well as loans secured by state, including other activities related to budgetary performance, based on a risk-management system.

Public audit and financial control can be exercised over public agencies and institutions, entities of quasi-public sector and recipients of budget funds.

In its turn, public financial control has been defined as a response measure aimed at the elimination of violations identified during public audits.


Concepts of the draft laws were adopted on 16 October 2015 at the 378th meeting of the Interagency Commission on legislative activities.

Currently, the draft Law “On Administrative Procedures” (new edition) and the draft Code of Administrative Procedure are being discussed by government agencies and general public.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

1. Anti-corruption screening. The new Law "On Legal Acts" (approved on 6 April 2016) provides for legal expertise ("scrutiny of a draft legal act or enacted legal act for its compliance with the Constitution of the Republic of Kazakhstan and legislation of the Republic of Kazakhstan, including legislation in the anti-corruption sphere") and academic evaluation of legal act drafts. Legal expertise is done by the bodies of the Ministry of Justice, but only as regards a relatively limited list of legal acts, during their state registration (Articles 18 and 44 of the Law "On Legal Acts"). According to the representatives of the
Ministry of Justice such screening also extends to drafts of presidential decrees, since they undergo examination by the Government. The only drafts not subject to such screening are the drafts of regulatory decisions of the Parliament. Regarding academic evaluation the new Law retains the provision that drafts of legal acts submitted to the Parliament always undergo such evaluation except instances of legislative initiative of the President of the Republic of Kazakhstan. I.e., academic evaluation is not required for all drafts of legal acts. These statements will be analyzed in the course of monitoring.

As for considering "the possibility of placing on the web-sites of the respective state authorities draft laws and draft normative acts of the Government and other central state authorities", this part of the Recommendation was deemed fulfilled in the third round monitoring report.

As to the recommendation "to consider the possibility of assigning to a state authority functions of carrying out anti-corruption screening" it should be noted that such screening, including anti-corruption screening, is assigned by the new Law "On Legal Acts" to the Ministry of Justice.

In general, Kazakhstan has achieved progress as regards this part of the recommendation.

2. Adoption of the Entrepreneurship Code in October 2015 technically solves the issue of harmonization of the Law “On State Control and Supervision” with the Law “On Private Entrepreneurship”, since both these Laws are abolished by the Code and embraced by its provisions. The next round of monitoring will make it possible to assess whether the content of the Code complies with the Recommendation. However, it is worth recalling the provisions of the reports on the second and third rounds of monitoring, where the very idea of adoption of the Entrepreneurship Code was criticized, and that the Code was adopted after a short time after the approval of the comprehensive Law “On State Control and Supervision”. The representatives of Kazakhstan stated that the Entrepreneurship Code did not duplicate the provisions of the Civil Code and, therefore, was consistent with the recommendations in the monitoring report. The content of the Business Code will be examined during the next round of monitoring of the Republic of Kazakhstan.

3. With respect to the legislation on administrative procedure (that would correspond to the international standards regulating proceedings in administrative cases) the assessors welcome the drafting of the revised Law "On Administrative Procedures" and of the Administrative Procedure Code. The content of these drafts will be examined during the next round of monitoring of the Republic of Kazakhstan.

With regard to Recommendation 3.3. Progress has been made.
Recommendation 3.4. Public financial control and audit

- To specify the main directions of reforms in the area of the public financial control in order to clearly separate the key functions: external audit, internal audit, internal control, and financial inspections.

- To adopt and ensure enforcement of the legislative provisions on public internal audit and internal control in compliance with international standards and best practice. To approve and implement in practice general standards of internal audit and relevant guidelines and codes of conduct for internal auditors in accordance with international standards of internal audit. To establish internal audit units in the executive authorities and the Central Unit of Harmonization of Methodology of Internal Audit in the Ministry of Finance.

- To prepare and adopt a separate law on the Accounting Committee in order to regulate principles of its activity and to ensure the necessary level of functional and institutional independence of the Accounting Committee in line with the Lima Declaration and other international standards; to strengthen legislative guarantees of the financial independence of the Accounting Committee.

- To introduce a practice of detection and response to corruption risks, especially in state authorities who face a high level of corruption risk.

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Laws “On public audit and financial control” and “On the introduction of amendments to certain legislation of the Republic of Kazakhstan on public audit and financial control” were signed by the Head of the State on 12 November 2015. The principal goal of the Law is to set up a comprehensive public audit system that will take into account law enforcement practices of the financial control system currently in place.

The function of external public audit and financial control rests upon the Accounts Committee and auditing commissions.

The function of internal public audit and financial control rests upon the authorized agency for the internal public audit as well as internal audit services.

Provisions on the internal public audit and internal control are contained in the Law on public audit and financial control (hereinafter -- the Law) in compliance with international standards.

The Law includes a number of provisions: unified rules of public audit (standards of public audit and financial control), provisions on setting up internal control services at central government agencies and local executive agencies, provisions on setting up an authorized agency for internal public audit which is, inter alia, responsible for overall methodological coordination of the internal audit services.

Risk and Audit Councils (consulting and advisory agencies) have been set up to introduce elements of corporate governance, ensure effective cooperation in the process of internal audit and risk-management within public agencies; every council is presided by the top manager of the public agency and is comprised of heads of units and divisions of that agency.

To ensure implementation of the Law, 30 regulations had been prepared and adopted in cooperation with the Accounts Committee for Control of Budget Performance, including the President’s Decree of 11 January 2016 No. 167 “On the adoption of joint standards of pubic audit and financial control and repealing the President’s Decree of 7 April 2009 No. 778 “On the adoption of standards for public financial control” and instruction of the Accounts Committee for Control of Budget Performance of 28 November 2015 No. 14-HK “On the adoption of Rules for the elaboration and adoption of procedural standards of external public audit and financial control”. Moreover, three other legal acts are to be drafted:

-- on the adoption of standard eligibility requirements for grades of public auditors of competent
agencies responsible for the internal public audit and financial control (category “B” administrative public officials) -- November 2016;
   -- on the adoption of certification procedures for officials responsible for administration of national budgetary programs and local agencies responsible for the performance of regional, city-of-national-status and capital city budgets authorized to perform the accounting and financial reporting -- November 2018;
   -- on the adoption of procedural standards for internal public audit and financial control -- November 2016.

To date, internal audit services have been set up at all central public agencies and local executive agencies.

Financial Control Committee of the Ministry of Finance (hereinafter -- FCC) was designated as the authorized public agency responsible for internal public audit. On May 3 of this year, FCC was renamed in accordance with the Governmental decree No. 264 and is now called “Internal Public Audit Committee”.

Activities of the Audit Committee, powers and status of the Committee officials and principles of its cooperation with other public agencies are regulated by Chapter 2 of the Law “On public audit and financial control” in accordance with the Lima declaration and other international standards.

In this context, due to consolidation of laws and simplification of law enforcement practices it was decided that drafting of a separate law would be unreasonable. However, it does not mean that the recommendation has not been implemented as what matters is the substance of the provisions governing the status and activities of the Accounts Committee and their regulation by the law, and not subordinate legislation.

Ministry for Public Service has adopted the Action Plan for Anti-corruption Monitoring and Use of its Results (hereinafter -- the Plan).

The Plan is meant to increase the effectiveness of the measures in place through the use of the results of the anti-corruption monitoring during the analysis of corruption risks of and conduct of preventive measures.

According to the Plan, the activities are divided into three stages:
1. preparation for the anti-corruption monitoring;
2. processing, generalization, analysis and evaluation of the information;
3. application of the results of anti-corruption monitoring.

Following the anti-corruption monitoring it was suggested to organize video-conferences with representatives of public agencies involved in the activities most vulnerable to corruption as well as representatives of the civil society, including members of the Open Agreement on Cooperation for the Promotion of Anti-corruption Culture in the Society.

Moreover, the Ministry has developed anti-corruption methodology aimed at systematization of data collection, analysis and evaluation.

Anti-corruption monitoring is based on the following consistent step-by-step measures:
1) identification of the areas where national and local executive agencies are most vulnerable to corruption;
2) identification of regions and units in the said agencies where employees are most vulnerable to corruption;
3) identification of the types of offenses for which the employees in the areas most vulnerable to corruption have been brought to criminal, administrative or disciplinary responsibility.

Anti-corruption monitoring was carried out on the basis of the methodology following the results of the second quarter of the current year. The areas of activity of public agencies most vulnerable to corruption were identified.

**Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS**

Adoption (in November 2015) of the Law “On State Audit and Financial Control” and of other related regulations leads to a conclusion on **Significant progress** in the implementation of Recommendation 3.4.
Recommendation 3.5. Public procurement

- To continue reforming public procurement legislation, in particular, by substantially decreasing the number of areas which are exempt from the scope of regulation of the Public Procurement Law, by stipulating a competitive public procurement procedure - based on the law and in line with international standards - for national management holdings, national holdings, national management companies, national companies and legal entities affiliated with them.

- To establish a system of statistical recording and analysis of data on the performed procurement, complaints and results of their consideration, frequent violations and sanctions, etc. These materials should be updated and made public on a regular basis.

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On December 4, 2015, a new edition of the Law “On Public Procurement” was adopted limiting the possibility of procurement from a single source, resolving the problems encountered by businesses and reducing the risks of corruption.

Prior to this, public procurement of certain goods, works and services by the customers was not subject to the Law “On public procurement” (Article 4 of the old edition of the Law).

Under the new Law, procurement of such goods, works and services is subject to rules of public procurement by virtue of single source method (Article 39 of the new edition of the Law).

The list of items to be procured from a single source was reduced from 68 to 54.

Therefore, the public procurement system ensures transparency of public procurement, provides equal opportunities for participation of potential suppliers in tenders, thereby contributing to improved competition and decrease of corruptogenic factors in procurement.

Please note: Number of participants per tender has increased five times as compared to a similar period last year. Conditional savings have increased twofold.

On December 31, 2008, the Government has adopted decree “On the selection of a single operator in the area of electronic public procurement”, and the limited liability company “E-commerce Center” was chosen to perform this function. Prior to that, at the anti-corruption forum held in November 2008, the Head of State had set a goal for the Government: “We should make better use of e-government and recent technological developments for administration and management. The major goal of e-government is to exclude as much as possible personal contacts between the general public and public officials in the process of rendering public services”.

Thus, at the third stage of e-government development, the information system “Electronic public procurement” was set up; the system was launched in the test mode in October 2007, and public procurement portal www.goszakup.gov.kz started functioning on 1 January 2010.

In this context, statistical accounting and analysis of data on the completed procurements is carried out through the public procurement web-portal of the “Electronic public procurement” information system. Information on most common violations and liability therefor is published at the public procurement web-portal (“Information” section) on a regular basis.

An automated system for complaints registration and review will be launched in 2016.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS

The new Law of RK "On Public Procurement" (adopted in December 2015) includes in its scope most types of procurement that were previously beyond its scope. The list of exemptions has been reduced to 7 entries (this list still includes procurement of goods, works and services by the national managing holdings, national holdings, national managing companies, national companies and their affiliated entities, the National Bank of the Republic of Kazakhstan, its departments and other organizations in its structure). At the same time the Law considerably widened (from 5 to 54) the list of single source procurements.
Kazakhstan has not provided any new information on approval of competitive procurement procedures, either under the law or in accordance with international standards, for the national managing holdings, national holdings, national managing companies, national companies and their affiliated entities.

The portal of public e-procurement carries extensive statistical and analytical information on procurements, including data on frequent violations and imposed liability. However, information on complaints and their outcomes is so far not available.

In general, implementation of Recommendation 3.5 may be assessed as Progress.

Recommendation 3.6. Access to information

- To ensure speedy adoption of the Law on Access to Public Information, which would comply with international standards and recommendations. To revise provisions on liability for non-provision or incomplete (untimely) provision of information upon request of individuals and legal entities.

- To achieve compliance with standards of the Extractive Industries Transparency Initiative.

- To avoid using liability for defamation to suppress the freedom of speech and reports of corruption; to consider repealing criminal liability for libel and insult as well as similar special offences against public officials.

- To provide effective legislative mechanisms for preventing lawsuits that seek compensation for moral damages in excessive amounts (for example, by setting court fees in proportion to the declared amount of claims, introducing shorter periods of limitations for such lawsuits, exempting from liability for expression of value judgments), and to carry out relevant training for judges.

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ws “On access to public information” and “On introduction of amendments to certain laws and regulations of the Republic of Kazakhstan relating to the access to information” were adopted on 16 November 2015 and entered into force on 1 January 2016.

The Law is meant to ensure implementation of the constitutional right to freely receive and disseminate information by any means not prohibited by the law.


Key provisions of the laws:

First. Access to the following three categories of information was established:

1. Data that may not be classified.

2. Data that must published at the web-resources of government agencies, including information relating to budget funds (national and local budget projects, budgetary reporting, consolidated financial statements, results of public audits and financial control), agency-level statistic databases, general information on the activities and rules of procedures of the information holders, including law-making activities.

3. Official information available upon request, unless it was categorized as limited access information.

Second. A list of information holders was created; in addition to government authorities, it includes:
- government institutions;
- entities of quasi-public sector;
- legal persons -- receivers of public funds;
- market participants holding dominant or monopolistic positions;
- legal persons holding environmental or other sensitive information.

Third, the following ways of access to information were established:
- written or oral request, including electronic requests, sent through blog-platforms of the heads of public agencies, with no obligation to attach electronic signatures. Upon oral request, reference information about the activities of the information holder shall be provided;
- placing of the information at the location of information holders;
- ensuring access to panel meetings of public authorities;
- online broadcasting of the open meetings of the Parliament, maslikhats and panel meetings of public agencies held at the end of the year;
- publishing the information in the media;
- publishing the information online;
- discussion of the reports presented by heads of national public agencies, akims and presidents of national universities;
- publishing of the information at the e-government web-portal.

Fourth. The Law has incorporated all provisions on replying to requests in one single document and has provided a clear procedure governing the provision of responses. No fee will be charged for the provision of information requested by the citizens. Where in response to a written request it was necessary to make photocopies or print out some materials, the party requesting the information must reimburse the relevant factual expenses to the holder of such information. The rule is not applicable to the disadvantaged groups of population.

Fifth. To ensure consideration and protection of public interests, the Law has envisaged setting up of a Commission for the Access to information, an advisory body at the competent agency designated by the Government.

Sixth. To ensure compliance with legislation on access to information, liability for illegal limitation of such access was established by Article 456-1 of the Code on Administrative Offenses. Thus, illegal refusal to provide information, deliberate provision of false information, deliberate publishing of false information in the media, at online resource of the holder of the information or open data web-portal or illegal categorization of the information as limited access information entails imposition of administrative fines.

Due to implementation of the Extractive Industries Transparency Initiative (hereinafter -- EITI), in 2013 Kazakhstan received the status of “EITI Compliant Country”, nine reports on budgetary payments were issued, legislative amendments related to subsoil use were introduced, NGOs and general public in the regions were closely involved. One of the biggest goals achieved due to the implementation of EITI in Kazakhstan is that subsoil users can now submit their EITI reports through online portal of the Unified public system for the subsoil management; the reports are available online at http://egsu.mgm.gov.kz/pages/home.jsf.

Further implementation of EITI is now carried out in accordance with new international requirements applicable to this initiative. One of the major requirements implies the disclosure of maximum amount of data through annual national EITI reports and its distribution and use.

10th National EITI report of 2014 contains the latest data on comparative checks of payments and contributions to state budget from the extractive industry as well as background information (http://geology.gov.kz/ru/otchety/otchety-po-sverke-i-drugie, in particular: budget revenues, company dividends from government stock in the companies, subnational payments and social investments, local content, transportation income, volumes of extraction and export of major priority natural resources, share of the extractive industry in the total GDP, description of fiscal rules, geological exploration data, maps of major mineral deposits etc.).

A popular version of EITI report was published for the first time ever in print and in multimedia
version (http://geology.gov.kz/ru/otchety/populyarnye-versii-otchetov), including major indicative data based on the country’s macroeconomic indicators covering the period of the last five years in three different languages (Kazakh, Russian and English).

The 11th national report of 2015 is being prepared.

Moreover, a number of measures for the development of EITI has been implemented at the regional level. For the second year in a row, extended meetings are organized in all Kazakh regions on the orders of the President’s Administration; such meetings are attended by representatives of local and central government, NGOs and extracting companies. Following this, the regional akimats present their reports on the use of funds for social programs financed from the local budgets and supported by contributions from the companies for the development of social policies in accordance with their contracts.

An important strategic meeting on EITI was attended by representatives of EITI International Secretariat, members of the Parliament Mazhilis, government authorities, NGOs, business associations and other stakeholders. The participants discussed major areas for further implementation of EITI in the country with due regard to strategic goals of the industry development, recommendations were made for improvement of national reports, their broader dissemination and use, regional development was discussed.

At the Global Conference held in Lima (Peru) on February 24-25, 2016, the Board noted that Kazakhstan was the leading country in terms of implementation of EITI in the region. During the Conference, the Board decided to hold a meeting in Astana on October 25-26, 2016. It is the first time that Kazakhstan will host such a meeting.

By decision of the International Board, in 2017 Kazakhstan will undergo a regular validation to confirm the commitment of the Kazakh government and other local stakeholders to EITI principles.

During the adoption of the new Criminal Code, criminal liability for defamation was introduced. At the same time, the Criminal Code relaxed the penalty for this offense. Thus, defamation combined with statements suggesting that an individual has committed the offense of corruption, or a grave or a particularly grave offense, as well as offense resulting in grave consequences, will be punished by fines or community service.

Amendments relating to the recovery of moral damages in the civil process had been elaborated during the drafting of the new Code of Civil Procedures. In particular, the amount of state duty is now proportionate to the amount of claim.

The Law “On introduction of amendments to certain legislation of the Republic of Kazakhstan relating to the improvement of the justice system” of 15 October 2015, para. 1 Article 535 supplemented the Code on Taxes and Other Compulsory Budgetary Contributions (Tax Code) with the following paras. 15 and 16:

15) claims filed by natural persons for the recovery of moral damages in monetary form due to dissemination of information smearing their honor, dignity and business reputation -- 1% of the claim amount;

16) claims filed by legal persons relating to the recovery of damages caused by dissemination of information besmirching their business reputation -- 3% of the claim amount”.

At the same time, there is no statute of limitation for claims relating to the protection of personal non-property rights and the recovery of moral damages.

Civil liability will only take place in case of dissemination of “information” but not opinions.

Following the legal amendments on recovery of moral damages, including in the Code of Civil Procedures and Tax Code, regulation “On judicial application of legislation on the recovery of moral damages” No. 7 of 27 November 2015 was adopted by the Supreme Court (hereinafter -- the regulation) with comments on all the major provisions of the legislation on moral damages.

Thus according to para. 23 of the regulation, citizens filing claims for recovery of moral damages shall pay a state duty in accordance with the provisions of the Code of Civil Procedures and Tax Code, unless the claimant was released from this obligation in accordance with the law.

Where a statement of claim contains both property claims and claims for recovery of moral damages, the state duty shall be paid separately for each claim. The amount of state duty applicable to claims for
recovery of moral damages depends on the amount requested.

Under the Code of Civil Procedures, where the court is upholding a claim for recovery of moral damages, it must recover the state duty that the claimant has or should have paid while filing the claim; such recovery is made for benefit of the claimant or local budget. The amount of the recovered state duty must be proportionate to the amount of the satisfied claim for the recovery of moral damages.

As stated in para. 4 of the regulation, under subpara. 1 Article 187 of the Civil Code, there is no statute of limitation for claims relating to recovery of moral damages, except for the cases established by the law. It should be noted that under the Law “On Legal Acts”, legislative acts establishing the protection of personal non-property rights shall only be applicable to relations emerging after their entry into force, unless the law provides otherwise.

According to para. 8 of the Law “On entry into force of the Civil Code of the Republic of Kazakhstan (Special part)”, moral damages can be recovered in cases envisaged by Articles 922 and 923 of the Civil Code provided they were caused prior to 1 July 1999 and in any event prior to 1 July 1996 and were not recovered.

Claims for recovery of moral damages caused prior to entry into force of the legislation providing for such recovery cannot be satisfied. Similarly, such damages cannot be recovered where the individual continues experiencing moral or physical suffering after the legislation takes effect.

Where an illegal act or omission causing moral damages has started prior to and continues to exist after the entry into force of the legislation, moral damages can only be satisfied in the part caused by the act or omission committed after its entry into force.

Para. 17 of the regulation explains that according to para. 6 Article 143 of the Civil Code, if insinuating information was disseminated about an individual, he or she has the right to request the refutation of such information as well as recovery of losses and moral damages caused by such dissemination.

Respondents in such cases shall not bear any responsibility for the dissemination of their opinions.

Professional development courses for judges have been organized in accordance with the annual curriculum approved by the President of the Supreme Court.

The course program includes lectures on legislation on the recovery of moral damages. The following topics are covered: 1) case law on the recovery of damages, including moral damages, in criminal and civil cases; 2) statistics related to the recovery of moral damages; 3) case study; 4) discussion of problems related to the recovery of damages; 5) recommendations for case hearing on the recovery of damages and compensation for moral damages.

NGO report

To ensure speedy adoption of the Law on Access to Public Information, which would comply with international standards and recommendations.

The Law of the Republic of Kazakhstan "On Access to Information" was adopted by the Parliament of Kazakhstan and approved by the Head of the State in November 2015. This was an important and long-awaited step for Kazakhstan. Development and adoption of the Law "On Access to Information" was initiated, on the one hand, by Deputies of the Majilis (Parliament) of the Republic of Kazakhstan and, on the other hand, actively supported by non-governmental and international organizations.

The development and adoption of the Law "On Access to Information" was in line with Kazakhstan’s international obligations regarding respect of human rights and freedoms, the nation’s commitment to fight corruption and the willingness to create a favorable investment climate and improve the quality of public administration.

However, the mere existence of the Law "On Access to Information" in the national legal system does not guarantee the exercise of the right of access to information for citizens of Kazakhstan and will not make the authorities more transparent, accountable and open. The Law "On Access to Information" is to contain effective legal mechanisms for its implementation in practice and to comply with the basic

Information provided by NGOs “Internews-Kazakhstan” and “Legal Policy Research Centre”.

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principles of freedom of information. In this regard it must be noted that there was no progress with the part
of the recommendation on compliance of the adopted Law with the international standards and
recommendations.

According to the Global Right to Information Rating the adopted Law "On Access to Information"
do not demonstrate compliance with the international standards and basic principles in the sphere of
freedom of information. The international experts estimated the quality of the Law "On Access to
Information" with 57 points out of 150, which puts Kazakhstan in the 99th place amongst 105 countries
with similar laws.\(^3\) Kazakh experts agree with such a low estimate. The experts of the Legal Policy
Research Centre Experts (LPRC)\(^4\) deem such assessment objective and believe that it reflects the real legal
gaps and collisions of the Law "On Access to Information" - weak safeguards of the exercise and protection
of the right to information and failure to meet the basic principles of freedom of information.

The list below contains the principal shortcomings of the Law "On Access to Information" that,
according to the experts, prove its non-compliance with the international standards and recommendations:

- the Law does not presume access to all information held by public authorities unless it falls under a
  clearly defined list of exceptions. The Law of RK "On Access to Information" does not stipulate the
  principle of disclosure of all information and does not establish a narrow list of exceptions in accordance
  with the recognized principles. Instead, the law established different categories of information, such as
  "restricted information" and "information with no possible restriction of access". The first category includes
  state secrets, secrets protected by law and service information classified as "For Official Use Only." This
  division of information held by government authorities, other agencies and organizations into categories is
  not conducive to the main task of changing the culture of secrecy and closed operation of public bodies to a
  culture of their openness and transparency;

- the Law "On Access to Information" is not a law of priority: Kazakhstan, in parallel, also has the
  Law "On the Procedure for Petitions of Natural and Legal Persons" as well as relevant provisions on access
to certain kinds of information in other laws (for journalists - the Law of the RK "On Mass Media", as
regards access to the archived data – the Law of the RK "On the National Archive Fund and State
Archives");

- the Law "On Access to Information" does not provide for the three-part test as the universal legal
tool allowing full implementation of the principle of maximum disclosure and proportionality of any
restrictions on the right to information. It is very unlikely that the principle of proportionality as laid down
in Article 5 of the Law "On Access to Information" ("... only to the extent that this is necessary in order to ..."); but without any further mention of the full-fledged three-part test) will be applied in practice properly
or at all, even by courts;

- the absence of a list of exceptions and the absence of safeguards and protections for the right to
information make the Law ineffective, as it carries no adequate legal guarantees and provides weak
protection to the right of access to information;

- the Law "On Access to Information" has no provisions on establishment of an independent
administrative authority to deal with complaints against illegal actions of officials in the sphere of access
to information or with allegations regarding violation of the right to information. It is possible to appeal
against any such action only to a higher-standing official or entity, as well as to court, and these procedures
are not simple, not free and can take a long time. According to the experts, the provisions in the Law on the
Commission for matters of access to information do not provide a proper level of appeal in line with the
fundamental standards of freedom of information. The Commission has a vague status and is hardly capable
of dealing with complaints about violation or restriction of the right of access to information;

- administrative fines established by the Code of Administrative Offenses are not substantial, and the

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\(^3\) Более детальная информация расположена по ссылке: [http://goo.gl/8a2lTh](http://goo.gl/8a2lTh).

\(^4\) Более детальная информация и публикации по теме доступа к информации в Казахстане расположены
по ссылке: [www.lprc.kz](http://www.lprc.kz).
measures of officials’ liability for violation or restriction of the right of access to information are not sufficient;

- the Law does not stipulate criminal liability for willful or deliberate violation of the right of access to information or for intentional destruction of documents;

- the Law "On access to information" has no clauses on protection of whistle-blowers (persons who provide information leading to detection of crimes);

- absence in the Law of any provisions requiring owners of information or public authorities to take measures for promotion of the Law. This makes the Law vulnerable in practice. Information owners are not required to maintain registers of the documents they adopt and issue. There is also no obligation to establish structural subdivisions responsible for enforcement of and compliance with the Law.

There are significant problems with implementation of the Law "On Access to Information" in practice. Journalists, civil society activists and NGO representatives claim that in the absence of any major progress in learning more about the activities of state bodies their sites have not become more informative.\(^5\)

The Commission for matters of access to information was not established, in spite of the respective requirement in the Law. Secondary legislation necessary for the implementation of the Law "On Access to Information" was passed in the end of 2015, but the experts say these regulations are of extremely poor quality and contradictory to the legislation and suggest that they will not contribute to effective implementation of the Law "On Access to Information" in practice\(^6\), but, on the contrary, will make it difficult. …

**To revise provisions on liability for non-provision or incomplete (untimely) provision of information upon request of individuals and legal entities.**

… Since the draft Law does not mention any institution of independent administrative control over compliance with the legislation on access to information, administrative liability (in addition to disciplinary and civil liability) is another a way of holding officials accountable for violation of the requirements of the law.

In this context it is absolutely justified to review the provisions of the Code of Administrative Offences addressing liability of officials for violation of various legal requirements regarding access to information. Such review was undertaken in the course of drafting of the relevant changes in the Law of the Republic of Kazakhstan "On Amendments to Some Legislative Acts of the Republic of Kazakhstan on Matters of Access to Information."

The Code of Administrative Offences now has a new article (Article 456-1) establishing administrative liability of officials for restriction of the right of access to information. This new article discerns between different offences related to provision of access to information, enhances penalties depending on the offender and provides for administrative liability for repeated offences.

However, the administrative fines indicated in this article are rather minor, while the sanctions for violation or restriction of the right of access to information under the Kazakh law are not sufficient.

Although the said Law has been in operation for a year, there is no evidence of any official having been held accountable under Article 456-1.

It is noteworthy that the most serious administrative offense in terms of its consequences for the offender - unlawful classifying of information as information with restricted access – is punishable by the low amount of 20 monthly average indices, which is just over $ 140. In accordance with Article 456-1 an administrative penalty for violation of the right of access to information may be imposed not only on officials, but also on commercial and non-profit organizations. ...

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\(^5\) More details at: [http://goo.gl/Ny3XLi](http://goo.gl/Ny3XLi).

\(^6\) A more detailed analysis of bylaws adopted to implement the Access to Information Law can be found at [http://lprc.kz/ru/library](http://lprc.kz/ru/library).
To avoid using liability for defamation to suppress the freedom of speech and reports of corruption; to consider repealing criminal liability for libel and insult as well as similar special offences against public officials.

According to the information of the Committee on Legal Statistics and Special Records of the Prosecutor General’s Office of Kazakhstan, in 2010 - 2012 the courts heard 1,265 libel cases and passed 121 guilty verdicts. According to information from the same source, in 2013 -2015 the courts heard and delivered sentences on 549 such cases.

According to the data from the International Foundation for Protection of Freedom of Expression "Adil Soz" in the period from 2003 through 2013 the courts of the Republic heard 69 cases under parts 2 and 3 of Article 129 of the Criminal Code of the Republic of Kazakhstan. The outcomes were as follows:

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<tbody>
<tr>
<td>Acquittal</td>
<td>31 cases</td>
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<tr>
<td>Guilty verdict and sentencing</td>
<td>16 cases</td>
</tr>
<tr>
<td>Discontinuation of proceedings</td>
<td>22 cases</td>
</tr>
<tr>
<td><strong>Libel cases, total (parts 2 and 3 of Article 129 of the Criminal Code)</strong></td>
<td><strong>69</strong></td>
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Initiators of libel proceedings:

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<tr>
<td>Private persons</td>
<td>29</td>
</tr>
<tr>
<td>Officials</td>
<td>37</td>
</tr>
<tr>
<td>Legal entities</td>
<td>3</td>
</tr>
<tr>
<td><strong>Initiators of libel proceedings, total (parts 2 and 3 of Article 129 of the Criminal Code)</strong></td>
<td><strong>69</strong></td>
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Criminal defendants (held liable under Article 129 of the Criminal Code):

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<tbody>
<tr>
<td>Journalists</td>
<td>51</td>
</tr>
<tr>
<td>Civic activists</td>
<td>7</td>
</tr>
<tr>
<td>Private persons</td>
<td>15</td>
</tr>
<tr>
<td>Officials</td>
<td>3</td>
</tr>
<tr>
<td><strong>Criminal defendants in libel proceedings, total (parts 2 and 3 of Article 129 of the Criminal Code)</strong></td>
<td><strong>76</strong></td>
</tr>
</tbody>
</table>

Delivered sentences (total of verdicts – 16):

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<tbody>
<tr>
<td>Imprisonment</td>
<td>3</td>
</tr>
<tr>
<td>Limitation of liberty/ conditional prison sentence</td>
<td>8</td>
</tr>
<tr>
<td>Fine</td>
<td>5</td>
</tr>
<tr>
<td>Community works</td>
<td>3</td>
</tr>
</tbody>
</table>

With the tightening of criminal liability for libel (upon enactment of the revised Criminal Code) libel cases against journalists are initiated by private parties; some of such proceedings addressed facts of
dissemination of information about corruption.

In the spring of 2015 Uralsk city court (West Kazakhstan Region) heard a criminal case against a number of journalists of the newspaper "Uralskaya Nedelya". The defendants were charged with libel. The person who accused the journalists alleged that the information they had spread about him was false and slanderous. The court acquitted the journalists. However, there are other examples where the courts have convicted journalists for publications about corruption offenses. In 2014 Petropavlovsk City Court heard a criminal case against journalist V. Miroshnichenko, on charges of using the media for the purpose of libel regarding a corruption offence. The court sentenced the defendant to a fine.

Therefore, the facts of holding journalists and their sources criminally liable for dissemination of information about corruption in Kazakhstan have really occurred. Criminal liability for libel and insult and the possibility of a prison sentence have a significant "chilling effect" on journalists and the media, do not contribute to the development of investigative journalism and limit the ability of journalists to disseminate information about corruption offences.

To provide effective legislative mechanisms for preventing lawsuits that seek compensation for moral damages in excessive amounts (for example, by setting court fees in proportion to the declared amount of claims, introducing shorter periods of limitations for such lawsuits, exempting from liability for expression of value judgments), and to carry out relevant training for judges.

January 1, 2016 was the date of coming into effect of the revised Code of Civil Procedure of the Republic of Kazakhstan, according to which claims of monetary compensation for moral damage caused by spread of information discrediting the honor, dignity and business reputation are considered property claims. Under the Tax Code of the Republic of Kazakhstan such claim by an individual entails a duty of 1 % of the amount of the claim, and a claim of a legal entity on recovery of damages caused by defamation entails a duty of 3 % of the amount of the claim. Previously such claims were considered non-property claims and were subject to a small fee (in 2015 – 50 % of the average indicator that equaled 1,982 KZT); for this reason such claims, lodged mostly against journalists and media, were quite frequent.

Despite the changes in the legislation, the monitoring done by International Foundation for Protection of Freedom of Expression "Adil Soz" does not show any decrease in the number of claims or any reduction in the amounts claimed as compensation for defamation. According to the monitoring data, in January - February 2016 there were 14 civil claims brought against media entities and journalists; these moral damage claims amounted to 616,500,001 KZT. This is considerably more than in the first half of 2015, when 42 claims and lawsuits for defamation (11 of them carrying over from the earlier period) amounted to 352,600 thousand KZT (including the carryover of 294 million KZT).

Assessment of Progress - 17th Plenary:

1. The Law on Access to Public Information was adopted in November 2015 and came into effect as of 1 January 2016. This was an important step for enhancement of the right to information in Kazakhstan in accordance with the IAP recommendations. Adoption of this Law after many years of development and discussion is to be welcomed. However, the Law does not fully comply with the international standards and contains a number of serious deficiencies which may hinder its effective implementation (see NGO comments). Therefore, in this regard only some progress may be recognized.

As regards review of the provisions on liability for failure to provide or incomplete (late) provision of information at the request of individuals and legal entities, the new Code of Administrative Offences now has an article that establishes administrative liability of officials for restriction of the right of access to information. The new provisions are better than the old ones, although fail to establish effective accountability, as the stipulated sanctions lack effectiveness and the law still prescribes no liability for failure to respond to an information request, failure to provide complete information or failure to meet the

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7 More details at http://www.adilsoz.kz/politcor/show/id/176
8 More details at http://www.adilsoz.kz/politcor/show/id/149
There is no deadline for provision of information.

2. Kazakhstan continues to actively apply provisions on defamation (see the statistics above), which has a negative impact on the situation with freedom of expression and investigative journalism. In this context there was no progress.

3. With respect to effective legislative mechanisms to prevent lawsuits seeking compensation for moral damages in excessive amounts Kazakhstan has amended the legislation and established a duty to be paid in proportion to the amount of the claim. In November 2015 the Supreme Court passed its Regulatory Resolution no. 7 "On application by courts of the legislation on compensation of moral damage", which indicates that defendants are not to be held liable for value judgments. However, available statistical data shows that these measures have not entailed any reduction of the number of such lawsuits against the media and journalists, with excessive claims. This means that the implemented measures have not proved effective, as recommended. Also, the mentioned resolution of the Supreme Court features no definition of a value judgment or explanation of how it differs from a statement of facts. Therefore, as regards this part of the Recommendations Kazakhstan has made just some progress.

Overall Kazakhstan has achieved Progress under this Recommendation.

Recommendation 3.7. Political corruption

- To revise legislation on political parties' financing by limiting the maximum size of private donations and membership fees, removing unjustified limitations on such donations, defining the term “donations” which should include non-material benefits, and by clearly prohibiting financing of parties by companies with state participation.

- To consider allocating budgetary funding to parties which received a certain percentage of votes (for example, 2-3%), even if they were unable to pass the election threshold.

- To ensure transparency of party finances, including during elections, in particular, by setting detailed requirements for the contents and form of annual reports, which have to undergo prior control by the state body, ensuring publication of detailed reports on both receiving and spending of funds by parties and candidates in the course of election campaigns. To consider cancelling the possibility of revoking election registration for providing false information in declarations and violating the financing rules.

- To ensure independence of the body in charge of control over political parties' financing, assign to it a duty of carrying out regular monitoring and control over observance of the legislation on financing and transparency of political parties and election campaigns.

- To strengthen integrity rules for political servants, which are not covered by the Law on the Civil Service (conflict of interest, codes of ethics, financial control, liability for corruption and related offences).

17th ACN Plenary Meeting, September 2016

Under para. 3 Article 18-1 of the Law on Political Parties, procedures for financing of political parties shall be adopted by the Central Election Commission.

Such procedure was adopted by the decree of the Commission No. 166/314 of September 3, 2009.

Under subpara. 2 para. 1 Article 18 of the Law on Political Parties, political parties can be financed through donations by Kazakh citizens and NGOs made in accordance with the procedures established by the central executive agency responsible for public tax control, provided that such donations are confirmed
by relevant documents indicating the source. However, the procedure had not been yet adopted.

The Ministry of Finance is planning to adopt the procedure by the end of the year.

Under para. 2 of the Rules for Financing of Political Parties adopted by the decree of the Central Election Commission No. 166/314 of September 3, 2009, budgetary funds shall be allocated on the annual basis to the political parties represented in the Mazhilis of the Parliament in accordance with the party list, i.e. following the outcome of the elections; the Ministry of Finance is administrating the process.

The funds shall be used for the implementation of statutory goals, tasks and rights of the political parties. The amount of funding is calculated on the basis of the following formula: 3% of the minimum salary per each vote the party has received during the next to last elections.

Under para. 5 of the said procedure, budgetary funds shall be distributed between the parties proportionally to the number of voices received; a relevant decision shall be adopted by the administrator as established by the law.

Under Article 9 of the Law on Political Parties, political parties and their branches must be registered as legal persons. According to para. 1 Article 2 of the Law “On accounting and financial reporting”, the Law is applicable to legal persons and their branches. Para. 2 Article 15 of the Law “On accounting and financial reporting” outlines the structure of financial reporting, except for reporting by public institutions, and provides an exhaustive list of relevant forms.

Rules of financial reporting and additional requirements to them are based on international standards, the international standards for small and medium businesses, and legislative requirements on accounting and financial reporting.

Para. 1 Article 19 of the Law “On accounting and financial reporting” also provides a list of beneficiaries of financial reporting.

Under para. 1 Article 19 of the Law “On accounting and financial reporting”, organizations (except for financial organizations, micro-financial organizations, special financial organizations set up in accordance with the laws on financing and securitization, and special Islamic financial companies set up in accordance with the laws on security market) shall return their annual financial statements by 30 April of the year following the reporting year.

Under para. 5 Article 19 of the Law on Political Parties, the annual financial statements of political parties shall be published in the national print media on the annual basis.

Moreover, information on the amount of money received by the fund and sources of such money shall be published at the official web-portal of the Central Election Commission; reports on the use of election funds shall be published in local media.

As to repealing the provision on cancellation of a person’s registration as a candidate in the elections due to his or her indication of false data in their declaration, it should be noted that a constitutional amendment should be adopted in 2017 relating to the election process. The draft law has suggested to solve this problem by establishing a maximum amount that the candidate may mistakenly indicate in the declaration without the risk of having his registration canceled.

The use of budgetary and party funds is supervised by an external audit agency, i.e. Accounts Committee whose status and the activities is regulated by the Law “On public audit and financial control”.

The Law on Combating Corruption treats MPs as public officials, members of the maslikhat are regarded as persons vested with public functions, and persons elected as members of local self-government, citizens registered as candidate members of Parliament, maslikhat or local akim as well as members of local election authority are regarded as persons equal in status to the persons vested with public functions.

Under Article 15 of the Law on Combating Corruption, public officials and persons vested with public functions and persons equal in status to persons vested with public functions cannot exercise their official duties in case of a conflict of interest.

Moreover, such persons must take measures to prevent and resolve the conflicts.

Under the Law on Combating Corruption, MPs and candidate members of the Parliament and
maslikhats are subject to financial control.
Starting from 2017, to be registered as a candidate member of the Kazakh Parliament or maslikhat, such persons and their spouses will be obliged to submit a declaration of assets and liabilities.
Moreover, a provision of the Law on Combating Corruption will enter into force in 2017 establishing an obligation to publish data indicated in the declarations submitted by the MPs.

Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS
Insignificant progress in the context of Recommendation 3.7 was achieved only as regards the rules of integrity for political servants, on adoption of the new Law on combating corruption. However, the new Law contains only basic provisions (e.g., on conflict of interest) and fails to describe in detail the procedure for application of its provisions to political officials. Similarly, it does not provide for any effective mechanism of enforcement of the restrictions or of monitoring compliance with such restrictions.
In general, with regard to Recommendation 3.7 there has been No progress.

Recommendation 3.8. Judiciary

- To amend legislative acts in order to strengthen the independence of the judiciary and judges, in particular: to change the legal status and the arrangement for providing for the activities of the Supreme Judicial Council, where the majority of members should be judges elected by their peers; to limit, to the maximum extent possible, the influence of political bodies (the President, and Parliament) on the appointment and dismissal of judges; to consider the possibility of having administrative positions in courts be elected by judges’ vote in the relevant courts; to revoke court chairmen’s powers in relation to careers of judges, their material provision, or liability; to envisage in the law a detailed procedure for making judges subject to disciplinary liability, as well as - in accordance with the principle of legal certainty and the right to defence - to limit the number of, and provide clear definition of, the grounds for disciplinary liability and dismissal, envisage a uniform system of bodies disposing of such issues and the possibility of appeal against their decisions in court; and to specify in law the salary rates for judges and an exhaustive list of all possible wage increments, eventually cancelling bonuses for judges.

- To limit to the maximum extent possible subjective influence on the procedure for selecting judges, to ensure publication of detailed information at all stages of selection (list of candidates, results of tests and other components of the qualifications exam, results of competition, etc.) and to ensure access of the public and representatives of the mass media to the respective meetings. To consider introducing mandatory training at the Institute of Justice to be able to qualify for the judicial selection and to consider re-subordination of the Institute of Justice to the body of the judiciary.

- To introduce mandatory declarations (without a link to tax obligations) of assets, income and, possibly, expenses of judges and their family members, with subsequent publication.

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More than half of the Council’s members are judges elected at the plenary meeting of the Supreme Court.
Under Article 82 of the Constitution, the President and judges of the Supreme Court shall be elected on suggestion by the President of the Republic of Kazakhstan based on the recommendation of the High Judicial Council; judges and presidents of local courts and other courts shall be appointed by the President
of the Republic of Kazakhstan upon recommendation of the High Judicial Council.

The High Judicial Council was set up to guarantee the exercise of the President’s constitutional power to create courts as well as to ensure independence and immunity of the judiciary.

It is forbidden to interfere with the activities of the Council during the exercise of its functions.

The Council’s activity is based on the principles of independence, legality, collegiality, transparency and impartiality.

Qualification and selection requirements for candidate judges have been increased in accordance with the Constitutional law “On the introduction of amendments to the Constitutional law of the Republic of Kazakhstan “On the judicial system and the status of the judge of the Republic of Kazakhstan”. The Law has introduced the evaluation of the judges following their first year in office and every five years thereafter as well as one-year paid internship for candidate judges.

If a person has at least five years of experience as a courtroom secretary or assistant judge, assistant prosecutor or assistant attorney, or at least ten years of experience in legal profession, he or she has the priority right to be appointed judge.

Starting from 1 January 2016, a number of new requirements was introduced for candidate judges.

First, an obligation to pass a lie detector test.

Second, one-year paid internship for candidate judges.

The new edition of the rules of internship for candidate judges was adopted by the decree of the President of Kazakhstan No. 201 of 22 February 2016.

Under the new rules, candidate judges must do a full-time internship, i.e. leaving their regular job.

Selection of candidate judges who will do the internship shall be made by the Commission for Selection of Interns composed of regional court judges.

The time of the internship is 12 months, including 11 months at the district courts and one month at a regional court.

During their internship, the judges will receive fixed salary in the amount of 70% of salary received by regional court judges or judges of other courts of similar status with up to one-year experience at the position of judge.

National budget covers up to 100 internships per year.

The new rules have enhanced oversight of the internship. The intern will be obliged to prepare progress reports quarterly and at the end of the internship.

Positive opinion on the completion of the internship will now be valid for four years instead of five. The reduction is explained by the fact that because of changes in legislation, judges must update their knowledge regularly.

New internship rules will improve practical skills and increase the professional level of candidate judges.

The new measures have resulted in the following:

- Strengthening of the judiciary through increasing the professional level of judges; increasing the responsibility of the judges; ensuring transparency and impartiality in the selection of candidates for high-ranking judicial positions.


Candidate presidents of regional courts and judicial panels of regional courts and judicial panels of the Supreme Courts shall be considered by the Council on an alternative basis upon suggestion of the President of the Supreme Court based on the decision taken at the plenary meeting of the Supreme Court.

Individuals with organizational skills who are included in the candidate pool have the priority right to be appointed to such positions.

Under Kazakh legislation, court presidents are not responsible for career, financial support and responsibilities of the judges.

Candidate presidents of district courts, judges of district and regional courts, and judges of the Supreme Court shall be recommended by the High Judicial Council on a competitive basis; candidate presidents of judicial panels of the Supreme Court, presidents of regional courts and judicial panels of regional courts shall be considered on an alternative basis upon recommendation by the President of the
Supreme Court based on the decision taken by plenary meeting of the Supreme Court.

Under Kazakh law, organizational and logistical support of the Supreme Court, local and other courts
is provided by a competent agency, i.e. the Department for Court Support at the Supreme Court of the
Republic of Kazakhstan.

Disciplinary proceedings and disciplinary liability of the judges are within the competence of the
Judicial Jury whose disciplinary commission is comprised of nine members, including three district court
judges, three regional court judges and three Supreme Court judges.

Disciplinary cases are reviewed by the disciplinary commission of the Jury following the decision
taken by the presidium of the plenary meeting of regional courts or the Supreme Court.

Detailed rules regulating liability of the judges are contained in the Constitutional Law “On the
Judicial System and the Status of Judges of the Republic of Kazakhstan” with relevant amendments
effective as of 1 January 2016.

Judges can be brought to disciplinary liability for commission of a disciplinary offense.

Disciplinary offense is a guilty act or omission carried out as a part of official duties or outside of
such duties and resulting in a violation of this Constitutional Law and (or) the Judicial Code of Conduct,
undermining of the authority of justice and damaging the reputation of the judiciary.

Judges may be brought to disciplinary liability for: 1) grave violation of the law during when hearing

a case;

2) commission of a dishonest act contrary to the principles of judicial ethics;

3) violation of the workplace discipline.

Presidents of the courts and judicial panels may be brought to disciplinary liability for improper
exercise of their official duties established by the Constitutional Law.

Judicial error as well as cancellation or amendment to a judicial act do not entail liability of the judge
unless it is accompanied by grave breaches of the law established by judicial act of a high instance court.

Judicial error is an act leading to incorrect interpretation or application of substantive or procedural
provisions of the law unrelated to guilty actions of the judge.

Judicial Jury is the only authority competent to hear disciplinary cases.

Decisions of the Judicial Jury can be appealed by a judge to the High Judicial Council.

Under the Constitutional Law “On the Judicial System and the Status of Judges of the Republic of
Kazakhstan”, salary of the judge is established by the President of the Republic in accordance with subpara.
9 Article 44 of the Constitution of Kazakhstan on the basis of his or her status, procedures for selection or
appointment as well as their functions.

Judges receive remuneration following the decree of the President of the Republic of Kazakhstan
“On the Uniform System of Remuneration for Public Servants”.

The amount of salary is based on coefficients and depends on the court level, the judge’s position and
working experience without any salary benefits and supplements.

Under the new edition of the Law “On the High Judicial Council of the Republic of Kazakhstan”, the
Council’s activities shall be based on the principles of independence, legality, collegiality, transparency and
impartiality.

To ensure implementation of these principles, the Council comprises the President of the Supreme
Court, the Prosecutor General, the Minister of Justice, the head of an authorized state agency for public
service and fight against corruption, presidents of permanent committees of the Parliament’s Senate and
Mazhilis, legal scholars, advocates, foreign experts and representatives of the judiciary (judges and retired
judges).

Decisions of the Council shall be adopted by at least two thirds of votes of the Council’s members
present at the meeting.

The competition shall be open, and the decisions of the High Judicial Council shall be announced
immediately upon their adoption.

The following information shall be published in the media and at the web-sites of the courts:

- individuals who passed qualification exams for the position of the judge;
- candidate judges doing internships;
- individuals participating in the competition for the selection of judges;
- candidate presidents of regional courts and panels of regional courts;
- competition announcements.

Representatives of the media shall be invited to the Council meetings.

The Academy of Justice of the Supreme Court of the Republic of Kazakhstan was set up on the order of the Head of the Republic No. 189 of 18 February 2016.

The statute of the Academy of Justice (hereinafter -- the Academy) was also adopted. The statute was registered with the competent authority of the justice system on 17 March 2016.

Major activities of the Academy include running of special post-university master programs, developing professional level of judges and individuals working in the judicial system as well as research of judicial activities.


To strengthen the implementation of anti-corruption provisions, a new system of income and property declarations will be introduced in 2017 in accordance with the Law “On the introduction of amendments to certain Kazakh legislation relating to the declaration of income and property of natural persons”.

The declarations shall reflect the income received and property subject to state registration purchased or sold during the year.

Moreover, judges as subjects of anti-corruption legislation must indicate the source of money used to purchase such property.

The declarations shall be published.

**Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS**

1. "To change the legal status and the arrangement for providing for the activities of the Supreme Judicial Council where the majority of members should be judges elected by their peers": In December 2015 Kazakhstan adopted a new Law "On the Supreme Judicial Council of the Republic of Kazakhstan". Under the new Law, the Supreme Judicial Council is an "institution without the status of legal entity, established for the purpose of exercise of the constitutional powers of the President of the Republic of Kazakhstan regarding establishment of courts, and to guarantee independence of judges and their immunity". The members of the Council are appointed and dismissed by the President of the Republic of Kazakhstan; the Council staff are employees of the Presidential Administration. Although according to the information of Kazakhstan authorities the majority of members of the Council are judges, the new Law does not ensure sufficient independence of this body and the procedure for appointment/ election of its members does not correspond to the international standards (see the Reports on the second and third rounds of monitoring).

2. "To limit, to the maximum extent possible, the influence of political bodies (the President, and Parliament) on the appointment and dismissal of judges": Information on implementation of this recommendation was not provided.

3. "To consider the possibility of having administrative positions in courts be elected by judges’ vote in the relevant courts": Information on implementation of this recommendation was not provided.

4. "To revoke court chairmen’s powers in relation to careers of judges, their material provision, or liability": In accordance with the received information, under the legislation of Kazakhstan court presidents do not have any powers related to the career, remuneration and liability of judges. In the report on the second round of monitoring one of the issues was the unclear and too broad definition of the powers of court presidents (such as "organize hearing of cases by the judges," "ensure efforts against corruption and compliance with the rules of judicial ethics", "issue ordinances"). In the report on the third round of monitoring it was noted that the presidents of courts retained too much power and capacity to influence the careers of judges, hold them accountable, assign qualification ranks, etc. ODIHR and Venice Commission’s Joint Opinion of 2001 (no. 629/2001) on the Law "On the Judicial System and Status of
Judges in the Republic of Kazakhstan” also criticized the excessive powers of court presidents in Kazakhstan (in particular, with respect to the powers “to decide on the matters of organizing the proceedings in court” and “issue ordinances”. Information on any changes in the role of presidents of courts was not provided.

5. “To envisage in the law a detailed procedure for making judges subject to disciplinary liability, as well as - in accordance with the principle of legal certainty and the right to defence - to limit the number of, and provide clear definition of, the grounds for disciplinary liability and dismissal, envisage a uniform system of bodies disposing of such issues and the possibility of appeal against their decisions in court”: The amendments of December 2015 to the Law “On the Judicial System and Status of Judges in the Republic of Kazakhstan” revised the grounds and procedures for bringing judges to disciplinary liability. Although most of the changes are positive, the grounds for liability are still not defined with sufficient clarity (e.g., the Law contains such vague language as "(action that) resulted in the weakening of the authority of the judiciary and damage to the reputation of judges", "gross violation of the rule of law", "defamatory misdemeanor"), while the procedures of the Judicial Jury and multiple aspects of the disciplinary proceedings are still regulated not by the law but by the decree of the President.

6. "To specify in law the salary rates for judges and an exhaustive list of all possible wage increments, eventually cancelling bonuses for judges": Information on implementation of this recommendation was not provided.

7. "To limit to the maximum extent possible subjective influence on the procedure for selecting judges, to ensure publication of detailed information at all stages of selection (list of candidates, results of tests and other components of the qualifications exam, results of competition, etc.) and to ensure access of the public and representatives of the mass media to the respective meetings": The recommendation on publication of information on the selection procedure was deemed fulfilled in the third round monitoring report.

8. "To consider introducing mandatory training at the Institute of Justice to be able to qualify for the judicial selection and to consider re-subordination of the Institute of Justice to the body of the judiciary": Kazakhstan reported that the Presidential Decree of February 18, 2016 established the Academy of Justice with the Supreme Court of the Republic of Kazakhstan. The main activities of the Academy are implementation of specialized master's degree programs, advanced professional training of judges and court staff and research in the field of judicial activity. Subordination of the Academy of Justice to a judicial authority is to be welcomed. At the same time, and as already noted in the Report on the third round of monitoring, initial professional training of future judges may not be identified with getting a master's degree from an educational institution. Master's programs aim at educating academic and pedagogical cadres, while the primary task of initial special training for judges is to impart specific knowledge and skills required for professional judicial activity. Therefore, initial specialized training is not a component of the university education system and should be offered to those candidates who have already received a degree in law. Admission to specialized training courses should be carried out transparently and on competitive basis. Such training is to be outside the accreditation system of the Ministry of Education. Thus, as to this part of recommendations only some progress has been made.

9. "To introduce mandatory declarations (without a link to tax obligations) of assets, income and, possibly, expenses of judges and their family members, with subsequent publication": The new Law “On Combating Corruption” and the Law "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Declaration of Income and Property of Natural Persons” introduced mandatory submission of a declaration of incomes and assets, which also extends on judges and their spouses. At the same time the declaration of incomes and assets is made in accordance with the tax legislation and submitted in the form/ manner and at the time as defined by the tax legislation of the Republic of Kazakhstan, although the monitoring report recommended introducing such declarations "without a link to tax obligations". The Law "On Combating Corruption" also provides for publication, not later than by December 31 of the year following the reporting calendar year, of the data from the declarations of judges and their spouses, on the official web-site of the Supreme Court. The list of data to be published is determined by the specialized anti-corruption authority. However, the rule on publication of information from declarations comes into effect.
only as of January 1, 2020. In general, as regards this part of the Recommendations certain progress can be recognized.

In general, Kazakhstan has achieved Progress in the implementation of Recommendation 3.8.

Recommendation 3.9. Private sector

- To consider legislative and other measures for establishing proper systems of reporting, information disclosure, internal and external audit, financial control and ensuring general transparency of national management holdings, national holdings, national development institutes, national holding companies and other similar legal entities.

- To conduct a monitoring of activities of expert councils at state authorities and to engage representatives of business organizations in dialogue on anti-corruption mechanisms in the public and private sectors. To set the minimal period of consultations to be held with the business community, and the deadline for publication of draft legal acts before their adoption.

- To facilitate, in close co-operation with business unions and civil society organisations, promotion and enforcement of internal corporate compliance programmes having taken due account of the best international practice and standards, in particular, Annex 2 to the OECD Council Recommendation of 26 November 2009.

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To ensure the implementation of corporate governance standards in OECD countries, a comprehensive action plan for the implementation of corporate governance standards in OECD countries and further development of the investment environment in the Customs Union (hereinafter -- the Plan) was adopted by the decree of the Government No. 643 of 21 June 2013.

As a part of the Plan, efforts were made to improve legislation on corporate governance; in particular, the National Bank prepared a concept of the draft Law “On introduction of amendments to certain legislation of the Republic of Kazakhstan concerning corporate governance in joint-stock companies”.

Under the decree of the Government No. 103 of 24 February 2016, the Plan was repealed and a new detailed plan for development of the investment environment in accordance with the standards of the OECD for 2016-2017 (hereinafter -- the Detailed Plan) was adopted. According to the Detailed Plan, corporate governance will be introduced in joint-stock companies with public shares (hereinafter -- the Companies).

In particular, under para. 1 of the Detailed Plan, amendments will be introduced to the Standard Code of Corporate Governance for joint-stock companies with public shares (hereinafter -- the Standard Code) by September 2016 in accordance with the OECD recommendations to ensure the implementation of better standards of corporate governance.

To ensure the implementation of this paragraph, the Ministry of National Economy is currently studying the OECD’s recommendation to introduce the amendments to the Standard Code aimed at improving the system and increasing the efficiency of corporate governance.

At the same time, a working group for amending the Standard Code is being set up to ensure comprehensive and thorough study of the issue by the Ministry of National Economy in cooperation with the relevant public agencies and institutions.

Following such study by the working group, public agencies and subjects of quasi-public sector will be able to develop a joint position, in particular, by studying the best international practices, OECD recommendations and the Code of Corporate Governance of Samruk-Kazyna National Prosperity Fund joint-stock company.

We are convinced that improvement of the corporate governance system though amending of the Standard Code will ensure transparency and efficiency of the companies’ work.

The Code of Corporate Governance of Samruk-Kazyna National Prosperity Fund (hereinafter -- the
Fund) adopted by the decree of the Government No. 1403 of 5 November 2012 was amended in accordance with the decree of the Government No. 239 of 15 April 2015, taking into account national and international developments in the area of corporate governance to increase the efficiency of corporate governance in the Fund Group, to improve corporate governance in the Fund and its organizations, and to ensure transparency of the governance.

Under the Code, to ensure transparency of the governance, the Fund and its organizations must provide accurate information on all relevant aspects of their activities, including their financial state, results of their work, and structure of ownership and governance.

To ensure implementation of the Law “On Public Property”, rules for development, adoption, approval and submission of the reports on implementation of the plans and strategies for the development of national governing holdings, national holdings and national companies with public stock were adopted by the order of the Minister of National Economy No. 139 of 26 February 2015.

A depositary for the collection of financial reports of public interest (from national management holdings, national holdings and national companies) was established; such reports must be published at the web-site of the depositary www.dfo.kz. in accordance with para. 7 Article 19 of the Law “On Accounting and Reporting”.

Rules for publishing of the government agencies reports at the web-site of the National Prosperity Fund as well as list of forms and reporting schedules ertr adopted by the decree of the Government No. 1384 of 31 October 2012.

Under Article 64 of the Business Code, analysis and monitoring of the expert councils shall be performed by the coordination committee of the authorized agency on entrepreneurship.

Currently, information is collected about the activities of expert councils at government agencies, and a monitoring report on the activity of expert councils on private entrepreneurship will be presented upon its completion.

Under Article 65 of the Code and Law “On Legal Acts”, central government agencies, local representative and executive authorities shall submit draft legal acts involving private business interests to the accredited private business associations and the National Chamber of Entrepreneurs through the expert councils; to receive expert opinions, such drafts must be accompanies by memos, including for every subsequent approval of the draft document by the government stakeholders.

Expert councils can meet in person where members of the council are called in or in real-time video conference formats.

The time established by the government authorities for the provision of expert opinions on draft legal acts involving of private business interests cannot be less than ten days from their receipt by accredited private business associations or the National Chamber of Entrepreneurs.

Therefore, the minimum time for conducting expert council meetings is established legislatively.

As to the minimum time for publishing of draft legal acts before their adoption

Under the Law “On Legal Acts”, prior to their submission to the government agencies, draft concepts of legal acts along with the memos and comparative tables (where there are amendments), except for the regulations adopted by the Constitutional Council and the Supreme Court, shall be placed for public discussion at the web portal for public legal acts.

Draft legal acts governing trade in goods, services or IP rights shall be placed for public discussion at the web resources of the authorized government agencies 30 days prior to their adoption at latest, unless otherwise established by laws or international agreements ratified by the Republic of Kazakhstan.

Under Article 19, prior to their expert council review, draft legal acts involving private business interests shall be published (distributed) by the media, including internet resources.

Moreover, a portal has been created for entrepreneurs (http://business.gov.kz), and all draft laws and regulations involving of private business rights and interests shall also be published at this portal.

In 2013, to ensure entrepreneur consolidation and capacity building, the Atameken National Chamber of Entrepreneurs was set up. Business entities that are registered under the laws of the Republic of Kazakhstan are obliged to participate in the Chamber, except for the business entities that are obliged to participate in other non-commercial organizations in accordance with Kazakh legislation, and government
enterprises, unless otherwise established by this clause.

One of the goals pursued by the Chamber is to ensure effective cooperation between businesses and their associations (unions) with the government.

On 16 June 2016, the Chamber adopted the Anti-Corruption Charter of Kazakh Entrepreneurs. The Charter has incorporated the key rules and principles of corruption-free business. The Charter is open for signature by all companies, business entities and professional associations.

**Assessment of Progress - 17th Plenary: SIGNIFICANT PROGRESS/PROGRESS/LACK OF PROGRESS**

*In general there has been Progress with implementation of Recommendation 3.9.*