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Istanbul Anti-Corruption Action Plan for
Armenia, Azerbaijan, Georgia, Republic of Kazakhstan,
the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine

ARMENIA

MONITORING REPORT
OCTOBER 2005

This report includes two main parts: the update presented by the government of Armenia about national actions to implement the recommendations, which were carried out since the previous update in December 2004; the summary of the expert opinion by Goran Klemencic, Slovenia, and Valts Kalnins, Latvia, and of the discussion, which took place at the Istanbul Action Plan meeting on 20-21 October 2005, Paris, France.

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I) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

1. Continue with the activities to make the Anti-corruption Council and the Monitoring Group operational and ensure their proper functioning. Special attention should be given to ensuring high moral and ethical standards of the members of both bodies, including representatives of relevant executive bodies (administrative, financial, law enforcement, prosecution), as well as from the Parliament and Civil Society (e.g. NGOs, academia, respected professionals etc.) in the Monitoring Group.

National implementation actions:

Anticorruption council and strategy monitoring commission were established by RA presidential edict NH-100, June 2004. The decree clearly sets issued and functions of the board and the monitoring commission, which will allow the latter to operate relevantly. Commission and explicitly outlined their functions. Commission members include both representatives of the executive and legislative authorities, and representatives NGOs. The council and the commission occasionally conduct monitoring of anticorruption strategy according to the agreed schedule of the meetings. Under the monitoring commission with participation of NGO representatives there are working groups developed. Which implement monitoring of relevant activities according to the project areas. The council and anticorruption commission occasionally invited meeting and discussed the process of implementation activities in relevant spheres of RA anticorruption strategy and gave directive assignments

2. Upgrade statistical monitoring and reporting of corruption and corruption-related offences by introducing strict reporting mechanisms on the basis of a harmonised methodology. Ensure regular reporting to the Anti-corruption Coordination Monitoring Group, covering all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts, which would enable comparisons among institutions.

National implementation actions:

RA anticorruption strategy monitoring commission developed and adopted by the RA prosecutor's office and RA police under the Government. There is a unified system for statistical analysis of corruptive crimes. It allows obtaining of comprehensive information on registration of corruptive crimes, their identification and follow up: By the mentioned methods the bodies carrying out statistics of corruptive crimes the data and information are presented to anticorruption strategy monitoring commission.

3. Consolidate law enforcement efforts in the fight against corruption and ensure better cooperation, in particular with the newly established specialized department within the Prosecution Service. Further specialize anticorruption units within the Police and ensure functional links between specialised law enforcement bodies and the specialised prosecution department. Undertake steps to minimize possible improper influence of or interference into the work of law enforcement officials investigating corruption offences. Exchange of knowledge and information should be direct and confidential, the number of administrative decision makers (heads of different departments for example) should be minimized.

National implementation actions:

Armenian Public Prosecution Office as the supervisor of the lawfulness of conducting criminal investigations coordinates activities of the investigative bodies /police and the national security/ for investigation of corruption crimes. During the investigation of corruption crimes in prosecutor's office, police and the national security cooperation of anticorruption divisions is ensured by forming operative groups and through investigation.

4. Armenia should study examples of countries where specialized independent anticorruption bodies with a combination of repressive (investigative, prosecutorial), preventive and educational tasks and powers have been established (Hong Kong's Independent Commission Against Corruption (ICAC) might serve as the most well known example of such body).

National implementation actions:

In the framework of "Support to Information Society and Democratic Government" programme of GoA and UNDP in October-November 2005 an international expert Mr. Bertrand de Speville will be invited to Armenia to provide consultancy to members of Anticorruption strategy council, authorities and staff of the National Assembly, as well as specialist of professional bodies. Mr. Speville has acted as the commissioner of anticorruption independent council of Hong Kong.

5. Continue with efforts in the area of corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation.

National implementation actions:

Training sessions on struggle against corruption organised for judges, policemen, prosecutors and other law protecting bodies is being organised on basis of separate projects in training centre of each body/institution. The prosecutor's office organised seminars on RA anticorruption strategy, activities for its implementation, as well as the international experience, with participation of representatives/employees of law protecting bodies.

6. Conduct awareness raising campaigns and organise training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.

National implementation actions:

Public awareness campaigns, seminars and conferences are organised and conducted with Participation of members of RA anticorruption strategy monitoring council, as well as with support of a number of International Organisations. This is an occasional event with active involvement and high level of public participation. Besides the training centre of the RA prosecutor's office with the support of OBSE Yerevan office is preparing the Armenian version of the book "How to fight against corruption" for publication. At the same time training sessions were organised on topics " fighting against legalisation of illegal incomes", "criminal-legal characteristics of corruption, its ways and methods for its identification" and others.

7. Ratify Council of Europe Criminal and Civil Law Conventions on Corruption; sign and ratify the UN Convention against Corruption.

National implementation actions:

Convention of criminal rights on “Corruption” and additional records were adopted by decisions of RA National Assembly # N105-3 and N106-3, 8th of June 2004. RA National Assembly adopted Convention of Civil Rights (decision #. N-158-3, 8th December, 2004) on “Corruption” signed in Strasbourg on November 4, 1999.

Convention on UNO “Struggle against Corruption” was signed in New York, USA by the Ambassador extraordinary and plenipotentiary of Armenia in USA on May 19th, 2005. Adoption of the convention is in process in the RA National Assembly.

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION

8. Amend the incriminations of corruption offences to meet the requirements of international standards as enshrined in the United Nation’s Convention against Corruption, the Council of Europe’s Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In order to make the provisions criminalising bribery offences more transparent and foreseeable consider replacing existing complex fragmented provisions by a lesser number of general provisions addressing passive and active bribery. The provision which legalises the receipt by a public official of a gift not exceeding five times minimum salary under certain circumstances should be repealed. Furthermore, criminalise trading in influence.

National implementation actions:

RA National Assembly approved changes in criminal code in May 20th, 2005, according to which the concept of an official in corruption crime cases is reviewed (article 308), as a result of which foreign officials go through criminal responsibility for on job crimes and international deals.

9. Review the existing levels of the statute of limitations for corruption offences to ensure that current relatively low time limits for basic bribery offences do not hinder effective detection, investigation and prosecution.

National implementation actions:

Not for all kinds of corruption cases there are the same time limits set, since crimes are of different levels of heaviness. On 20th May 2005, the National Assembly of Armenia adopted the law on Introducing amendments in civil code, according to which the time limit for reimbursement for the caused damage by corruptive activities is set 10 years.

10. Adopt clear, simple and transparent rules for the lifting of immunity and review the categories of persons benefiting from immunity and the scope of such immunities to ensure that they comply with international standards and cannot be abused for shielding persons from criminal liability for corruption offences.

National implementation actions:

The Republic of Armenia is now dealing with the issues connected with depriving immunity of certain people. In RA immunity is given to the RA president, members of constitutional court, judges, members of electoral committees, members of parliament and the ombudsman. The anticorruption council proposed the authors of the constitutional amendments to include relevant recommendations in the package. There is no new progress.

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

National implementation actions:

There is no progress; the issue is presented for discussion in the RA Ministry of Justice.

12. Amend the legislation on confiscation of proceeds from crime to comply with international standards (such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime). Ensure that the confiscation of proceeds applies mandatory to all corruption and corruption-related offences. Ensure that the confiscation regime allowed for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect, and that confiscation from third persons is possible. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

National implementation actions:

The Republic of Armenia has joined the Strasburg convention on “finding money laundering cases through criminal routes and confiscation of the money”. In conference organised by the USA State Department in Ankara in June 2002, the Republic of Armenia has been given concrete recommendations, for implementation of which some work has been carried out.

In the result the RA National Assembly adopted the RA law on “legalisation of income through criminal routes and struggle against financing of terrorism”.

In accordance with the recommendations made by European council experts’ committee fighting against money laundering”, confiscation as additional punishment can be assigned only by the court’s decision and only in cases planned by special articles of RA criminal code.

13. Ensure that the concept of an “official” encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.

National implementation actions:

By the law on introducing amendments in the criminal code of 2005 an official is considered anyone who carries out responsibilities of a government official and represents the government on permanent, temporary basis.

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

National implementation actions:

By the law on introducing amendments and additions in the criminal code of 2005 the concept of an official has been enlarged.

15. Contribute to ensuring effective international mutual legal assistance in investigation and prosecution of corruption cases.

National implementation actions:

On December 14th 2004, the National Assembly of the Republic of Armenia adopted the RA law on “introducing amendments in RA code of criminal court case”, which is in power/operational from February 10th, 2005. In accordance with International standard this law sets the rules and regulations for RA officials to implement recommendations made by International organisations. International cooperation is ensured by bilateral or multilateral treaty/agreement with different countries.

III) TRANSPARENCY OF CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

16. Introduce a unified system for recruitment in the civil service, which would, to the extent practicable, limit discretionary decisions.

National implementation actions:

Peculiarities of state service in different bodies, as well as the rules to be employed by state/public service are being regulated by separate laws.

Work is being carried out concerning to transferring to unified system of employment by state services. Particularly in the framework of WB “Public Sector Modernisation Project” it is planned to develop of the new concept paper and strategy for public services in 2005-2007, where one of the issues for discussion is the question of unifying public services. In 2005 the National Assembly adopted the laws on “Criminal executive services”, “Rescue services”, that enlarged the framework of state/public services.

17. Adopt a uniformed Code of Ethic / Code of Conduct for Public Officials modelled on international standards (e.g. such as Council of Europe Model Code of Conduct for Public Officials) as well as specific codes of conduct for professions particularly exposed to corruption, such as police officers, judges, tax officials, accountants, etc. In addition, prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflict of interests, ethical standards, sanctions and reporting of corruption. Consider introducing disciplinary liability for the breach of codes of conduct. Consider the introduction of an ethics supervision body/commissioner.

National implementation actions:

In the Republic of Armenia, depending from the peculiarities of the service, ethics code for public servants is adopted, which is developed according to international standards.

For not following the civil servants' ethics rules behavioural punishment is foreseen by RA law on "Introducing amendments in civil service law".

What refers to establishment of ethics supervision body it is necessary to mention that by the decision of RA Civil Service Council the ethics code is adopted, according to which each body will be able to have ethics commission, which will help to ensure moral-ethical atmosphere. In the framework of Department for International Development "Armenia-Public Sector Reform Project" pilot ethics commissions have been established in RA Ministries of Labour and Social Issues, Health, Education and Science, ethics code has been revised including specialists' issues in the sphere. After the pilot project it will be publicised. It is planned to develop and adopt unified code of conduct in accordance with international standards for state/public servants and special code of conduct for those specialisations that are greatly influenced by corruption. "The code of conduct for a member of the prosecutor's office" is adopted by the decree of the chief prosecutor of the Republic of Armenia. The above mentioned rules have legal value as well, in case of not obeying or violating the rules the employee of the prosecutor's office is punished by the order set by RA law on "Prosecutor's office".

- 18.Ensure that there is constant monitoring of the observance of rules on gift acceptance and the avoidance of conflicts of interest and that sufficient sanctions are in place in cases of non-compliance.

National implementation actions:

The acceptance of gifts by public officials in cases not provided for by the law shall serve as grounds for dismissal from service. The abidance by the rules of gift acceptance procedures is under permanent control of public authorities and is regulated with the help of the institution of public officials' assets and incomes declaration and the public institutions' internal control mechanisms. There is no new progress.

- 19.Screen the system for the control of assets of public officials to detect any possible loopholes and develop proposals to eliminate such loopholes. Consider increasing responsibility for public officials for failure to comply with requirements to declare income, assets and liabilities.

National implementation actions:

The Government of the Republic of Armenia has developed and submitted to the National Assembly the new draft Law on Declaration of Assets and Incomes of Physical Persons, extending the physical persons' assets and incomes declaration framework. Additionally, the aforementioned draft law envisages more efficient mechanisms for verifying the declared assets and incomes information. The RA National Assembly in first reading has adopted the draft law. There is no new progress.

- 20.Enhance the obligation to report suspicions of corruption. Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants.

National implementation actions:

The duties to inform law enforcement authorities of suspicions of corruption are being explored, including the experience of foreign countries. These studies will be summarised to work out specific proposals. There is no new progress.

21. In order to ensure the publicity and transparency of public procurement, introduce an electronic contracting and bidding system. In the electronic system, publish inter alia all the cases of complaints to the authorized agency and reactions to such appeals. All procurement information, which is not published, should be disclosed upon request save for commercial and state secrets.

National implementation actions:

The RA law on “Procurement” was adopted on 6th December 2004 and put in force from January 1st, 2005, which foresees electronic procurement.

In RA “Public Sector Modernisation Project” activities for 2005-2007 it is planned to introduce electronic procurement in state procurement system. This electronic version includes also publicity of information, and cases to reply and give feedback to citizens’ queries and complaints. At the same time the new law on “Freedom of Information” requires to publicise all the information about procurement, except from trade and state secrets. Electronic versions for tender announcement for state procurement and contracting are planned in 2006.

22. Adopt the full set of anti-money-laundering legislation, which brings Armenia in compliance with the international standard, and ensure that a financial intelligence unit is set-up as soon as possible.

National implementation actions:

The Government of the Republic of Armenia, at its session No.46 of 11 November 2004 has approved and 14 December 2004 the National Assembly has adopted the law on the Laundering of Proceeds of Crime and Fighting the Financing of Terrorism, elaborated by the Council of Europe anti-money-laundering expert committee (MONEYVAL) in accordance with international standards.

As a result of adopting the above-mentioned laws amendments were made in RA laws on “Banks and banking”, “Loan providing organisations”, “RA Central Bank”, “Banking secret” and other laws.

In the staff of the central bank there is a new department established for fighting against legalisation of money obtained through criminal routes. The assignment is fully carried out.

23. Rigorously follow the Anti-corruption Strategy in improving the rules governing the relationship between public officials and citizens and the procedures associated with access to information. Describe the specific measures that will be undertaken if an applicant does not receive a timely and thorough response.

National implementation actions:

The RA Government has also issued a decision approving a model charter for public relations departments of governmental agencies, according to which its main function shall consist in providing information concerning a given agency. By a number of government decrees in RA ministries and agencies there are new PR departments established. Training of the staff is ensured with the help of International organisations. The departments were furnished with technical equipment, and methodological material needed for organisation of the work. For a number of ministries an Inforcentre/reception is established, which is a part of the PR department. The latter ensures relations/links with citizens. The employees of the centre are civil servants and their responsibilities cover work with citizens.

24. Ensure fluent and permanent contacts and coordination among financial control/auditing institutions in order to facilitate revealing of corruption offences.

National implementation actions:

Legal acts regulating the activity of state financial control and auditing institutions envisage cooperation between those institutions. These regulations are being constantly upgraded.

According to para 4.43 of the Anti-corruption Strategy Monitoring Programme, measures planned for the period of 2004-2005 are aimed at development and strengthening the internal and external control system. The RA Ministry of Finance and Economy and the Auditors Chamber of the RA National Assembly have been appointed as bodies responsible for implementing the said measures.

In addition, in order to regulate the implementation of this task, the RA Government issued decision N 1376 on 17 September 2004 to approve the development strategy of the internal audit system of the government and bodies of local self-government, their subordinate institutions, local, and communal non-commercial organisations, which was developed with the support of US treasury and US experts.

With the support of the World Bank consultancy was provided to RA government on “RA internal and external audit and control/supervision systems”. The RA Public Sector Reform Commission approved the latest report. According to the proposed recommendations the first steps for structural reforms were done, i.e. the supervision department of RA Ministry of Finance and Economy was renamed to “Department for internal audit and supervision”. Huge work on internal and external audit, as well as establishment of new supervision system is planned in the framework of WB Public Sector Modernisation Project. There is no new progress.

SUMMARY OF DISCUSSION

The Istanbul Action Plan congratulated the Armenian delegation with the concise update report, and welcomed overall efforts of the Armenian government aimed at the implementation of the recommendations, endorsed in June 2004. Tangible progress was noted in the area of strengthening legal and institutional framework for fighting corruption.

Under pillar one of the recommendations on anti-corruption policies and institutions, the Anti-Corruption Council and the Monitoring Group became operational. While it is too early to assess actual achievements of these bodies, certain progress was noted. In particular the Council, which is a coordinative body, has been listening to reports of several agencies on their anti-corruption activities. The Monitoring Group has launched activities on its main four

functions; notably, it has introduced a system of statistical reporting on 59 criminal offences related to corruption. With the assistance of UNDP, in summer this year a system of public monitoring of corruption in the health and education sectors was introduced.

The specialisation of prosecutors in corruption cases is underway. It was clarified that the recommendation 3, which calls to restrict undue influence on the anti-corruption law-enforcement bodies and required to ensure effective exchange of information, reflect a soft international standard in this field, and should be maintained as such. Following the recommendations 4, which has instructed the government to study the examples of specialised anti-corruption institutions, Mr Bertrand de Speville was invited to visit Armenia in the autumn this year to present the Honk Kong experience and to advise on enforcement of criminal legislation. Models of similar institutions in the transition economies, e.g. Latvia and Lithuania, are also being examined, including a study tour and expert exchange with Lithuania.

Armenia has recently joined GRECO, which is an important achievement.

Under the pillar two of the recommendations, on legislation and criminalisation of corruption, the discussion focused at the recommendation 10 concerning the clarification of the system of immunities. Responding to this recommendation, the scope of immunities for judges and prosecutors, as well as the procedure of lifting such immunities was analysed. A Referendum is scheduled for November this year on the above subject.

Under pillar three of the recommendations on transparency of civil service, it was noted that the modernisation of civil service has started in Armenia. This process requires years to achieve tangible results. However, certain elements of the civil service reform may have a more immediate effect, such as the system of declaration of assets by civil servants. Apparently, the draft law introducing such a system has been submitted to the parliament and foresees that the control function will be moved from the tax authorities to internal audit bodies, but there are difficulties in passing the bill. It remained unclear if the regulation about the gifts for civil servants is sufficient (recommendation 18).

While the previous update mentioned a new law regulating access to information, as required by recommendation 23, it was not fully clear if there was a change in the actual procedures, and if sanctions for late delivery were introduced.

It also remained unclear is municipal level of service is covered by the civil service regulations.

Other positive developments include World Bank project on good governance (the project is for 5 years), which includes provisions on e-governance. With the help of this project, all the public agencies, including regional administrations, have opened their web sites, which will provide a source of proper information to the public.

Draft law on lobbying activities is being debated. UNDP Armenia has also informed the meeting about the project planned for the next year, which will aim to consolidate different participatory methods related to public policy in one standard procedure for public institutions.

The meeting called on Armenia to continue the implementation of the recommendations. The Istanbul Action Plan will carry out an on-site visit of the country in spring 2006 in order to examine the progress in greater detail.