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for Eastern Europe and Central Asia**

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

**Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews
of Legal and Institutional Frameworks for the Fight against Corruption**

ARMENIA

**Update about actions to implement the recommendations taken during
December 2006-September 2007**

Presented by Armenia at the 7th Monitoring Meeting on 26-28 September 2007

I) NATIONAL ANTI-CORRUPTION POLICY, INSTITUTIONS AND ENFORCEMENT

Recommendation 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.

The Anti-Corruption Council and Anti-Corruption Monitoring Commission are the two main bodies established in Armenia in order to oversee the implementation of the Anti-corruption Strategy and the Action Plan adopted in 2003. The Anti-corruption Strategy and Action Plan focused primarily at legal reforms; the objectives of these policy documents are considered largely implemented by now. A discussion has started about the need to develop a new strategy, which will focus at the implementation issues. It was noted by some officials that when such new strategy is adopted, the new tasks may require changing the current mandate of the Council and of the Monitoring Commission, or may even call for a new institutional arrangement capable to support the implementation.

The Anti-corruption Council, which was set up according to the President Decree N° 100-N on 1 June 2004, has become operational and continues to function. The Council is not a permanent body, but it functions through regular meetings. The authorities of Armenia reported that in 2005-2006 it met once every 2 months. The Council had met twice in 2006 up to the time of the on-site visit. The Council is chaired by the Prime Minister and includes the Minister – Head of the Staff of the Government, the deputy speaker of the National Assembly, Minister of Justice, Assistant of the President, Chief Prosecutor and the Chairman of the Central Bank. The Council reports to the President about its activities.

The main objective of the Council is to coordinate anti-corruption measures implemented by various institutions. The authorities of Armenia believe that the Council successfully consolidated the efforts to fight corruption and practically implemented all the foreseen measures in the strategy. These consisted mostly of legal and institutional changes, for instance, adoption of about 50 laws related to corruption. Other sources stated that the Council has now altered its strategy to focus more on practical measures and ensure wider public awareness and involvement in the anti-corruption fight. Although there is some information about the Council and its activities posted on the government website (www.gov.am), the Council lacks visibility and does not provide sufficient and timely information on the results achieved by the Council.

The Anti-Corruption Monitoring Commission established by Decree of the Council on 2 July 2004 is also operational. Under the auspices of the Council, it aims to support the implementation of the strategy, study corruption risks in the national legislation, analyse international experience and monitor implementation of international obligations of Armenia related to the fight against corruption. The Commission is headed by its Chair, who is a full time official employee. During 2004-2005 the Commission was chaired by an Advisor to the President, with single responsibility for anti-corruption issues. In 2006, this function was passed to an Assistant to the President, anti-corruption being one of several responsibilities. The members of the Anti-Corruption Monitoring Commission include representatives of the Government staff, fractions of the Parliament and non-governmental organisations. The Center for Regional Development/Transparency International Armenia has a permanent status in the Commission. Other NGOs are nominated by fractions of the Parliament for one year period through a

rotation system. Altogether in 3 years 21 representatives of NGOs participated in the work of the Commission.

The Commission holds its own meetings. It also has established 12 working groups in different strategic areas, for example, education and public health. The information received about the regularity of the meetings varied. The authorities of Armenia informed that the Commission has to meet once a month and has met 8 times in 2005¹, the last meeting of the Commission was held on December 2005, due to the change of the Commission Chair. In the interim, working groups have met.

While both the Council and the Commission are operational, it is not possible to conclude at this stage that both bodies hold regular meetings and properly assess results of the measures taken. No specific measures were reported as to how the high moral and ethical standards of the members of both bodies were ensured. Armenia is encouraged to consider new ways to involve NGOs currently nominated by political parties. There were different opinions over the government's interest in involving NGOs in anti-corruption strategy and to take their proposals into account. For instance, one NGO withdraw from one of the working groups because it considered the work of the group not efficient; another NGO informed that the government is cooperative and supporting the efforts of the NGOs.

Armenia is largely compliant with this recommendation.

Update as of September 2007

During the meeting of the Anti-Corruption Council on December 27, 2006 (minutes #96-126) it was decided to initiate preparatory works on the development of the new Anti-Corruption strategy. The Council gave respective tasks to the heads of ministries and public officials to come up with proposals on the directions of the new Anti-Corruption strategy through involving into the process civil society and representatives of international organizations. Also, on July 19, 2007 the Government of Armenia by the decision #927 under the point 4 and 12.1 of the "EU European Neighbourhood Policy (ENP) Action Plan" decided to assess the progress of the Anti-Corruption strategy during 2006 and based on the results of the evaluation to develop respective actions that put special emphasis on improvement of law enforcement. Partnership with international organizations is given a special priority. Other points of the ENP Action Plan indirectly relate to corruption prevention, particularly point 8.1 that emphasizes application of special procedures that aim at prevention of money laundering in the field of charitable activities, regular publication of legal acts that will increase transparency of the judiciary (point 3.1), some steps aimed at continuous improvement of the civil service system (point 5) etc.

In the new Government programme for 2007-2012 a separate section is devoted to the fight against corruption, which will be one of the priority areas for the newly appointed Armenian Government. The latter will ensure continuation of the directions and approaches started during implementation of the Anti-Corruption strategy for 2003-2007, which are corruption prevention, improvement of legal field, capacity building of state institutions, international membership in different anti-corruption initiatives, and implementation of international commitments. The Government will pay a special attention to coverage of corruption cases that are revealed by the law enforcement bodies.

For the new Government the major priority in fight against corruption in Armenia is development of the second phase of the Anti-Corruption strategy. The Government will continue realization of its international obligations and commitments and will emphasize in the new Anti-Corruption strategy continuation of implementation of GRECO and OECD recommendations.

¹ After the on-site visit, from October to December 2006 the Commission has met 3 times.

Recommendation 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.

The authorities of Armenia reported that the Government together with the Prosecutor's Office, Police, the Ministry of Justice and the National Statistics Office developed the framework of statistical reporting consisting altogether of 59 corruption-related offences from the Criminal Code. On 8 July 2005 this methodology was adopted by the Monitoring Commission. According to the authorities of Armenia, there is now a system of regular reporting on these offences using the new methodology. The reports are centralised by the Police; information about the corruption-related offences is included in the reports published by the National Statistics Service that are also available on the website www.armstat.am.

The Anti-Corruption Monitoring Commission at its meetings has been listening to statistical reports of several institutions, such as the State Tax Service, State Customs Committee and the National Security Service. The team of examiners was told that these reports were rather brief presentations.

The authorities of Armenia provided statistical data about corruption-related crimes taken place in Armenia in 2005 and limited data about 2004 (see in the annex). The GRECO Evaluation Report on Armenia published on 10 March 2006 included statistics received from Armenian authorities on the number of officials convicted of bribery and statistics on the number of prosecutions of "cases of corruption/corruption-related offences" in 2000-2002, for instance, 463 in 2002. The authorities of Armenia informed that 266 criminal cases on corruption-related offences were started in 2005 and 364 cases in 9 months of 2006.

The team of examiners commends Armenia for its efforts to improve and centralise the statistical monitoring on corruption related offences, including involvement of the Monitoring Commission. The team of examiners takes note of the statistics provided by the Armenian authorities. However, the overall impression was that in practice there is still a lack of comprehensive and accessible statistics about corruption offences in Armenia and that the current system of reporting does not provide detailed information about types and trends of corruption-related crimes, the level of public officials and public institutions involved to allow efficient comparison among the institutions and identify trends in corruption in Armenia. This system also does not include administrative violations committed by public officials. Further elaboration of the law-enforcement statistics is needed, together with analysis of such statistics over a time period, in order to support the development of anti-corruption measures in high risk areas.

Armenia is largely compliant with this recommendation.

No progress has been made under this recommendation

Recommendation 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.

According to the information provided by the authorities of Armenia, the Decree Nr 25 issued on 25 April 2006 by the Prosecutor General of Armenia stipulates that consolidating the efforts of law enforcement institutions in Armenia is the responsibility of the Prosecution Service. The Article 2.1.3 provides that the Department of Anti-Corruption of the Prosecution Office is responsible for ensuring coordination among the Prosecution Office, Police, military police, the National Security Service, tax and customs services in the area of fight against corruption. In the area of corruption, this is the specific responsibility of the Anti-corruption Division of the Prosecution Service. The Division has 8 staff members. It is in charge of coordinating the investigation and prosecution of corruption offences and also of money-laundering offences. The Divisions investigates corruption cases; and prepares cases for the trial. The Criminal Procedure Code allows the use of joint investigation teams in serious cases and the Prosecution Service has organised such teams in several corruption investigations. Experts can be involved in such groups, but there is no permanent staff inside the Division with, for example, economic or accounting expertise. The Division reported that as of September, it had investigated or was investigating 11 cases of corruption, most of which involved allegations of abuse of power. No high level cases were reported.

In addition to Prosecution Service, corruption crimes are investigated by the Police and the National Security Service. The Police Department for the Fight against Corruption and other Economic Crime includes the Division for the Fight against Corruption. Altogether, there are 34 staff members at the Department. The National Security Service has parallel jurisdiction to investigate large-scale corruption crimes but there are no clear criteria as to when the service would handle an investigation as opposed to the police. A common database for Police and the National Security Service is to be created. There are common decisions taken by the Police, the National Security Service and the Prosecution Service.

The authorities of Armenia stressed that coordination among law enforcement institutions is ensured, but no new functional links were developed such as inter-institutional agreements or guidelines. The authorities believe that one of the problems is lack of willingness of the public to report corruption to law enforcement institutions and that it is generally difficult to detect and prove corruption.

The new Law on the Operational-Investigative Activities has been drafted and submitted to the Parliament. This Law should further clarify the tasks of different investigatory bodies and methods used in detecting crimes.

Concerning the safeguards to prevent improper influence and interference into the work of law enforcement officials investigating corruption offences, the authorities informed that the number of persons involved is limited to the law enforcement officer and the Prosecutor. No specific additional measures were reported.

The number of prosecutions, especially of large-scale bribery cases, remains very low.

Armenia is partially compliant with this recommendation

Update as of September 2007

On February 21, 2007 the National Assembly adopted “Judicial Code”, which regulates the whole chain of organization and activities of the judiciary. As per the new “Judicial Code” it is anticipated to establish general and professional courts, the mechanisms for ensuring independence of judiciary and

judges are clearly defined, as well as the procedures for hiring and firing judges, status of the Judicial School etc.

The process of improvement of the Prosecution system started by the adoption of law “On Prosecution” on February 22, 2007, which clarifies such issues as rights and duties of prosecutors, responsibilities of the prosecution services, procedures of defence and accusation in court. At the same, the functions of issuing indictments, preliminary examination and investigation of crime are transferred to the Armenian Police, and partially to the RA Customs Committee, State Tax Service and Ministry of Defence. The Prosecution Service is no longer responsible for the investigation of crimes, and only maintains the function of supervision over the preliminary investigation and investigation of crime.

Recommendation 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).

The authorities of Armenia have gained knowledge about a number of specialised anti-corruption institutions in other countries over the past two years. For example, an international expert was invited to share his experience working with Hong Kong’s Independent Commission Against Corruption. Within the framework of the OSCE conference “Experience of national and international anti-corruption strategies” in November 2005 in Yerevan, the representatives of government bodies and NGOs presented anti-corruption models from Latvia and Singapore.

During the on-site visit, the team of examiners learned that there is discussion about possibly establishing a specialised, independent anti-corruption agency in Armenia (see Recommendation 1)

No specific studies, working groups or other specific measures were undertaken by the authorities of Armenia to analyse the experience in other countries more thoroughly and draw conclusions how it could be applied in Armenia.

Armenia is largely compliant with this recommendation.

No progress has been made under this recommendation

Recommendation 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.

A number of separate corruption-specific/ethics-related training activities for the law enforcement officials and judges were carried out in Armenia since June 2004. However, the team of examiners was unable to find out information about any joint corruption-specific training.

In 2004, the following training seminars were organised by the Training Centre of the Prosecution Service: “The Anti-Corruption Strategy Programme and the Action Plan and the Objectives of the Prosecutor’s Office”; “International Practice in the Fight against Corruption”; “Anti-Corruption Strategy and the National Legislation”. In 2005 these seminars were pursued addressing the following topics: “The methodology of examination of economic and official offences and the peculiarities of prosecution

control”; “Legalisation of crime proceeds, nature of the elements of crime, peculiarities and the methodology of investigation”; “The criminal-legal characteristics of corruption, main ways of its manifestation and the methodology of the detection”. The authorities report that 89 employees participated in these seminars.

The Police Academy regularly provides training for police officers, including on bribery and money-laundering issues. Police officers participate to training on investigation for CIS countries organized by the United States in Egypt and OSCE training in Armenia. In addition, there are weekly meetings at the Police to discuss the ongoing investigations.

Judges are required to attend regular training at the School of Judges. The authorities reported that this training also addresses corruption-specific matters. There is also training on judicial ethics.

Although there were formally no joint training, authorities of Armenia informed that the Courts and the Prosecution Service exchange invitations to training. For instance, judges attended training organised by the Prosecution Service addressing economic crime, prosecutorial supervision, money laundering and also detection of corruption cases in 2005.

No further information on joint training for police, prosecutors and judges was provided.

Armenia is partially compliant with this recommendation.

No progress has been made under this recommendation

Recommendation 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.

Under the initiative of the Civil Service Council, the School of Public Administration developed a training programme on prevention of corruption in 2006. No other activity aimed at raising awareness on corruption was carried out by the authorities themselves. In the meantime, the authorities of Armenia supported awareness raising and training activities of NGOs and international organisations, including providing about 150 million ARM (about 398 thousand USD) in 2006 to grants for NGOs carrying out corruption-related awareness raising/other activities.

Various activities aimed at raising awareness about corruption were organised by NGOs. For instance, Transparency International Armenia has conducted 6 public sector announcement campaigns related to corruption, national posters competition “Arts against corruption”, anti-corruption awards, and public discussions about anti-corruption strategy in 5 regions of Armenia. The NGO Freedom of Information Center of Armenia organised a public campaign focused on access to information, developed an Internet data base of breaches of Freedom of Information Law at www.foi.am and gives annual awards on the system for providing information.

International organisations and foreign embassies in Armenia organised several activities to raise awareness about corruption. The OSCE and UNDP have both specific anti-corruption projects, which include awareness campaigns. The OSCE project will continue in 2007. The UNDP plans to organise a campaign to encourage the government to be more serious about corruption. The UNDP has also provided training for investigation journalists on corruption cases and seeks to strengthen the role of civil society

audits of specific sectors of public services, such as health and education. The Eurasia Foundation also conduct training for journalists and exchanges of experience related to corruption.

Armenia is partially compliant with this recommendation.

Update as of September 2007

In 2007 the Government of Armenia allocated about 150 million Armenian drams for grants to NGOs to implement different projects. The projects that relate to public awareness on anti-corruption, monitoring initiatives are paid special attention. The Public TV regularly broadcasts series of programs called “My rights” and “Against shadow”. Also, within the frames of its Anti-Corruption programme, UNDP Armenia supports preparation and broadcast of TV programmes (talk shows, debates, discussions, PSAs, documentaries, etc.) dedicated to discouraging and preventing corrupt behaviour. UNDP also continues capacity building of journalists and government press-secretaries. The project actively involves civil society in the assessment of corruption risks in health and education system and plans to furnish the Government of Armenia and respective ministries with the recommendations on the improvement of situation in health and education sectors by the end of 2007. Centre for Regional Development/Transparency International – Armenia, with UNDP Armenia’s support conducted 2006 Corruption Perception Survey, which underlined that corruption in Armenia is still a problem. Anti-Corruption programmes are also continued by OSCE, Eurasia Foundation. USAID launched its Anti-Corruption project in September 2007.

Recommendation 7

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

The Council of Europe Criminal Law Convention of Corruption and its Additional Protocol were ratified by the National Assembly of Armenia on 8 June 2004 by the Decrees N-105-3 and N-106-3. The Council of Europe Civil Law Convention on Corruption was ratified by the National Assembly on 8 December 2004 by the Decree #N-158-3.

The UN Convention on the Fight against Corruption (UNCAC) is in the process of ratification². At the time of the on-site visit, the team of examiners was told that the ratification of the UNCAC is currently reviewed by the Committees of Foreign Affairs and Legal Affairs of the National Assembly and only one reading will be necessary to adopt it.

Armenia is fully compliant with this recommendation

Update as of September 2007

After ratification of the UN Convention against Corruption by the National Assembly, UNDP Armenia, initiated a targeted gap analysis of the UN Convention Against Corruption (UNCAC) and Armenia’s institutional framework on anti-corruption. The findings of the gaps assessment will be presented to the Government of Armenia to enable it to trigger the process of implementation of UNCAC and assist with the development of policies and institutional frameworks as provided for in chapter 2 of the Convention.

² The UN Convention on the Fight against Corruption was ratified by the Decision N 303-3 of the National Assembly of Armenia on 25 October 2006.

These recommendations will complement those of OECD and GRECO and will become part of the Action Plan of the new Anti-Corruption strategy.

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

Recommendation 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.

Several amendments have been made to the Armenian Criminal Code in an effort to strengthen the anti-corruption laws, implementing parts of Recommendation 8.

Articles 311 and 312 of the Criminal Code defining passive and active bribery were amended just before the monitoring meeting on 5 December 2006.³ The revised articles included expanded definitions of bribery to include the offer or receipt of not just money or property but also the transfer of "any other privilege." Further, the amended Article 311 followed the recommendation in repealing the provision mentioned in the recommendation that permitted public officials to accept gifts of up to five times the minimum monthly salary.

The bribery statutes do not specifically cover the offer or promise of a bribe. However, authorities argue that offers or solicitations of a bribe which are not accepted could be punished as attempts under Article 34 of the Criminal Code. However, this was considered insufficient during the review of Armenia, as attempts cannot cover all elements of offer and promise of a briber.

There is no provision in the Armenian Criminal Code criminalizing trading-in-influence (trading-in-influence is the situation where a person seeks money or other advantage in return for improperly using their alleged influence over a public official). Armenian authorities have indicated a willingness to consider adding such a provision.

Armenia is partially compliant with this recommendation.

No progress has been made

³ Because this legislation had just been passed, the delegation explained that no English or Russian official translation was available. The descriptions of the articles contained in this report are based upon an unofficial translation provided by the delegation.

Recommendation 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.

The statute of limitations regime has not been substantially changed. Under Article 75 of the Armenian Criminal Code the statute of limitations for a criminal offence is determined by looking at the maximum sentence for that offence under the Criminal Code. Since the recommendation, the penalties for corruption offences remain unchanged. Depending upon the presence of absence of aggravating factors, the statute of limitations for a public official taking a bribe (Article 311) ranges from 5 to 15 years, the statute of limitations for active bribery of a public official (Article 312) ranges from 5 to 10 years, and the limitation period for commercial bribery (Article 200 of the Criminal Code) ranges from 2 to 5 years. The running of the limitation period is suspended if the suspect avoids investigation or trial or if the suspect commits a new offence of medium or greater gravity. In June 2006 Article 75 was amended to provide that for continuing crimes the statute does not begin to run until the criminal conduct has ended.

Armenia is partially compliant with this recommendation.

No progress has been made

Recommendation 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.

Several categories of public officials benefit from immunity under Armenian law, including judges and members of the Constitutional Court, delegates of the National Assembly, candidates for the national assembly, candidates for local elections, and members of election commissions. Constitutional amendments approved in 2005 broadened the immunity accorded to the President and added immunity for the Ombudsman.

Armenian law is specific in identifying which body or institution has the right to lift immunity for specific officials. However, it is not clear what criteria these institutions will or should use in exercising this authority. For example, the constitution provides that only the President, acting on the recommendation of the Council of Justice, may lift the immunity of judges. However, it is unclear if the President is required to follow either a positive recommendation or if he is prevented from lifting immunity in the case there is a negative recommendation from the Council. Also troublesome, there are no rules stipulating the criteria either body shall use in deciding whether lifting immunity is appropriate. For example, criteria could be written indicating that immunity will be lifted as long as there is no indication that the charges are politically motivated or designed to pressure or retaliate against the officeholder for their official actions, or a policy could be written stating that immunity will only be lifted when the alleged criminal conduct is unrelated to any exercise of powers related to the official's position.

Armenia is not compliant with this recommendation.

No progress has been made

Recommendation 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.

To date, Armenian law does not provide for criminal responsibility for legal persons. Authorities have indicated that a working group has been established and that plans are to develop a draft law establishing such responsibility in 2007.

Armenia is partially compliant with this recommendation.

Update as of September 2007

The Working group continues its work. No other progress has been made under this recommendation.

Recommendation 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.

Article 119, paragraph 4 of the Criminal Procedure Code provides that at the end of a case, money and valuables that had been obtained illegally shall be used to cover damages to the victim or forwarded to the state budget. However, the application of this section is limited to cases where the proceeds of corruption crimes have been seized as evidence for use during the proceedings.

Less than two weeks before the monitoring meeting, on 29 November 2006, Parliament passed legislation that included amendments to Article 55 of the Armenian Criminal Code.⁴ The revised article now provides that for grave and especially grave crimes (crimes carrying a maximum sentence of over 5 years) confiscation of property is mandatory if the property was directly or indirectly acquired as the result of criminal activity. The amended Article 55 also now provides for the confiscation of an equivalent value if the proceeds of the offence cannot be found or seized and that property may be confiscated if it has been transferred to third party, unless the third party was not aware or could not be aware of the criminal purpose or criminal origin of the property (which in practice will be difficult for the prosecution to rebut).

⁴ Because this legislation had just been passed, the delegation explained that no English or Russian official translation was available. The description of the article contained in this report is based upon an unofficial translation provided by the delegation.

However, to date little actual confiscation has taken place.

Armenia is partially compliant with this recommendation.

Update as of September 2007

The amendment to the RA Criminal Code Article 55 has been approved by the National Assembly. No other progress has been made under this recommendation.

Recommendation 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.

The definition of “public officials” for purposes of Armenia’s criminal laws on bribery and corruption is quite broad and includes “persons performing the functions of a representative of the authorities, permanently, temporarily, or by special authorization; and persons, permanently, temporarily, or by special authorization, performing organizational, disciplinary and administrative functions in state bodies, local self-government bodies, organizations thereof, as well as, in the army of the Republic of Armenia, or other forces of the Republic of Armenia.” There are no reports of courts interpreting this definition to exclude any persons performing official duties in the executive, legislative or judicial branches of government. However, it is unclear whether this definition would cover legislators in the national or local assemblies.

Armenia is largely compliant with this recommendation.

No progress has been made

Recommendation 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.

In June 2006 the Criminal Code of Armenia was amended to include foreign officials. A new Paragraph 4 was added to Article 308 of the Criminal Code, providing:

“From the viewpoint of committing actions envisaged in articles 311, 312 and 313 of this code, the following persons are also considered as officials:

- 1) foreign nationals carrying out the functions of public official in accordance with the national legislation of the given country, as well as members of the legislative body or any representational body with administrative powers of the given foreign state;
- 2) Officials of international or supranational public organization or body, or in cases envisaged by the statute of that organization or body, contracted employees or other persons, who carry out functions similar to the functions carried out by the mentioned officials or employees;
- 3) Members of the parliamentary assembly of an international or supranational organization, of which the Republic of Armenia is a member, or another body with similar functions;

- 4) Members or officials of an international court, the jurisdiction of which has been acknowledged by the Republic of Armenia, carrying out judiciary functions;
- 5) Members of jury in courts of foreign states.”

Section 2 of Paragraph 4 above previously limited the definition of foreign public officials of international or supranational organizations to those “of which the Republic of Armenia is a member,” but this unnecessary qualification was removed by the recent legislation passed on 5 December 2006.

Armenia is largely compliant with this recommendation.

No progress has been made

Recommendation 15

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

Armenia is a state party to the European Convention on Mutual Legal Assistance in Criminal Matters; Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, 1993 Minsk Convention on Legal Assistance and Cooperation in Civil, Family and Criminal Law Matters as well a number of bilateral agreements. Since the recommendations the Criminal Procedure Code of Armenia has been amended to strengthen the ability of Armenian authorities to cooperate with other countries courts and law enforcement. A new section of the Criminal Procedure Code, Part 54.1 has been added to provide for cooperation with countries even without an international agreement.

According to information provided by Armenian authorities, international legal assistance is functioning effectively in Armenia. The Armenian Prosecutor’s office sent 29 requests for legal assistance to foreign states in 2004 and 26 in 2005 The Prosecutors office statistics record 62 requests for assistance received from other states in 2004 and 160 in 2005. The Prosecutor’s office told the assessment team that it has acted upon all of these requests. Sources from other countries confirm that there is frequent dialog and requests for assistance from and to the Armenian authorities. However, no examples have been provided to the assessment team of requests for assistance involving corruption cases.

Armenia is largely compliant with this recommendation.

Cooperation is in progress. No other progress has been made

III) TRANSPARENCY OF THE CIVIL SERVICE

Recommendation 16

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

There are 7,136 civil servants in Armenia. At the time of the visit, their average salary was about 72 US dollars. According to the Armenian legislation, in addition to the civil servants, the public service includes the judiciary, the special services, Executive Bodies of Defence, National Security, Police, Tax, Customs, Emergencies, as well as Diplomatic and other Services envisaged by the laws.

Armenia has introduced a new system for recruitment in the civil service and all other public administration bodies, except the Prosecution Service and the Chamber of Control of the National Assembly. For the civil service, this recruitment system is managed by the Civil Service Council, but for others - their respective institutions. The system involves a comprehensive procedure of competitive selection with mandatory testing and an enrolment commission that selects candidates and recommends them to the head of the relevant institution who then decides on the winner. The system is currently applicable to all newly recruited civil servants and was also used in an attestation procedure for all existing public officials. No statistics were provided as to what extent this system was actually applied.

Except the Prosecution Service and the Chamber of Control, the enrolment commissions include a variety of specialists in this area, representatives of the government, academics and civil society. Meanwhile, for instance, in the Prosecutor General's Office, 11 out of the 13 commission members are employees of the Prosecutor General's Office.

While there has been some progress in implementing a fair and transparent recruitment procedure, the opportunity for discretionary decision-making is still rather broad; in particular what concerns the final decision, which is still made by the recruiting agency on the basis of the recommendation of the enrolment commission.

The authorities of Armenia informed that since 2005 they are implementing a programme "Modernisation of the Public Sector" that intends to develop a unified public sector with a common legal framework for all public administration bodies; the draft law on public services is envisaged in 2007.

Armenia is largely compliant with this recommendation.

Update as of September 2007

Currently the Civil Service Council finalized draft law on "Public Service", which will be passed to the Government for discussion and approval by the end of December 2007.

Recommendation 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.

According to the law On Civil Service and legislation regulating the activities of other public administration bodies in Armenia, all public institutions should adopt their codes of conduct/ethics rules. During the on-site visit information was provided that some public bodies, such as ministries of Justice, Labour, Health and Education, as well as the Prosecution Service, the Central Bank and the Parliament, do have codes of conduct. Authorities reported that code for judges is being drafted.

Although there is no uniform code of conduct for all public officials, authorities of Armenia confirmed that there is intention to introduce such code of professional conduct or ethics of all public officials. At this stage there is no single body exercising control over the activities of all public officials

and observance of ethic norms or rules of conduct. There are no uniform mechanisms for settling conflicts of interest.

Since two years an Ethics Commission has been operational in the Council of the Court Chairman. It has found disciplinary liable persons in 16 cases, 1 concerning corruption. Among the possible sanctions which can be used by this Council are the reduction of salary and removal from a post.

Also, the State Tax Service reported that they have complaints review committee that meets weekly and had ten disciplinary cases.

NGOs reported that they can participate to ethics councils in Ministries, but no complaints were filed.

It is necessary to develop a system of pre-trial appeals and guidelines for the implementation and application of codes of conduct.

Armenia is partially compliant with this recommendation.

Update as of September 2007

The RA “Judicial Code” provide a detailed description of Code of Ethic of judges when carrying out their duties during or outside office hours. Besides, the limitations of the conflict of interests are also defined, as well as penalties for violating Codes of Conduct and conflict of interests’ norms. The same system is adapted to the Prosecution Service. The new system envisages increase of salaries for judges and prosecutors, optimization of Prosecution Service and judiciary. As per the law, respective commissions, the scope of responsibilities of which is also regulated by the mentioned law, will be monitoring the process of application of Code of Ethic and conflict of interests. As per Article 74 of the “Judicial Code” the Council of the Court Chairmen is established by the Ethics commission. As per Article 11 the judge should report to the Ethics Commission of the Council of the Court Chairmen on any action that is not envisaged in the scope of his/her responsibilities. If the Ethics commission decides that an intervention that was not envisioned by the law has taken place, then the latter should apply to respective bodies to call to responsibility those who are guilty.

As per article 23 of the law on “Prosecution”, an Ethics Commission, adjacent to the RA General Prosecutor was established. The Ethics Commission is composed of the Deputy Prosecutor General, prosecutor, four lawyers nominated by the RA President. The Ethics Commission is headed by the Deputy Prosecutor General. As per RA President’s decision of May 31, 2007 (NH-135-A), the member of the RA Constitutional Court, Assistant to the RA President, head of the judicial department of the RA Government Staff and the member of the Civil Service Council became members of the Ethics Commission.

Within the Civil Service system, pilot Ethics Commissions are established for the staff of Ministry of Health, Ministry of Education and Sciences, Ministry of Social Affairs, as well as developed detailed Code of Ethic. By the decision of the Civil Service Council, the members and the Commission Charter are defined. In the nearest future, this experience will be spread over other state institutions as well.

Recommendation 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.

The rules of accepting gifts by public officials are regulated by the Order of the President of Armenia and the corresponding Decision of the Government. But there is no control over compliance, as there is no

authorised body to enforce the order or decision and there is no monitoring of procedures. During the on-site visit, the team of examiners was informed that there are gift reporting rules for judges.

There is no clear definition of a conflict of interest, and no legally prescribed sanctions against perpetrators. There is no system to monitor the implementation of the conflict of interest regulations. This remains one of the most vulnerable aspects of the anticorruption system in Armenia.

Armenia is non compliant with this recommendation.

No progress has been made

Recommendation 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.

Since 2001, there is a legal requirement for public officials and the family members residing with them to declare their incomes to the State Tax Service.

The threshold income level before reporting has been increased since the review.

It appears, however, that submitting declarations of income of public officials is a mere formality. The declarations are not reviewed for truthfulness or compared to any other public data on officials property or asset holdings. The State Tax Service does not carry out such verifications and cross-checking because the declarations are not a valuable source of information for tax purposes. The information is not being analysed to detect possible illegal proceeds and is not referred to any government authorities for further use. There are both criminal and administrative sanctions for failure to submit a declaration such as monetary fine and removal from office. Only limited information can be made available to media and organisations upon request to the State Tax Service that then delivers a certificate with all information in the declaration of the given official, except his personal or other sensitive data. An NGO informed that it has requested and received such information, including on ministers and judges, and that it considers this information sufficient to assess financial situation of the relevant officials.

The authorities of Armenia informed that the Parliament adopted a new law Nr 164 On declaration of Property and Income of physical persons. It is currently planned to introduce this new system in 2008; it would include control of information stated in the declarations and sanctions. When this new system is introduced, it will eventually replace the current declarations of public officials.

Armenia is partially compliant with this recommendation.

Update as of September 2007

Based on the law “On declaration of Property and Income of physical persons” ratified by the National Assembly, the RA Government on April 19, 2007 (decision #555) adopted the procedures of declaration of property and income of physical persons, approved the declaration forms, and system and time frames of filing of personal cases. The same decision regulates the procedures of declaration of non-monetary income, assets and liabilities. The law and respective procedures will come into force starting 2008 and will be applied to the 2007 income of physical persons.

Recommendation 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.

Article 335 of the Criminal Code of the Republic of Armenia provides for criminal liability for those not reporting planned grave and particularly grave crimes about which they have definite information.

However, there is lack of a mechanism 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 makes this norm inefficient from the point of view of enhancing the obligation to report suspicions of corruption.

Armenia is non compliant with this recommendation.

No progress has been made

Recommendation 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.

On 1 January 2005, the Law on Public Procurement entered into force.

The organisation of tenders is the responsibility of the non-commercial organisation Public Procurement Agency; the control over the public procurement is ensured by the Department of Public Procurement and Internal Audit of the Ministry of Finance.

For procurement from 5-10 million AMD, it envisages publicizing the entire process, from the announcement of the tender through the completion of the project, in mass media and on the official site of the Ministry of Finance as well as an official procurement bulletin. For procurement from 1 to 5 million ARM (or 1 to 10 million ARM for public works) only mass media publication is envisaged.

The decision on the winner of the tender is made by a tendering commission, which is organised for every tender above 1 million AMD.

The improvements in the transparency and access to information to the bidding information constitute important progress on the recommendation. Meanwhile, the team of examiners got the impression that the Ministry of Finance does not have sufficient capacity and sometimes lacks the necessary powers to ensure sufficient control of the tender process in order to detect possible abuses.

Electronic bidding and purchasing is envisaged in 2008.

Armenia is largely compliant with this recommendation.

Update as of September 2007

Currently the works towards introducing the electronic system for public procurement are in the process, the respective contractor has been selected and in the upcoming two-three years all the works in that regard are planned to be completed.

Recommendation 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.

Armenia has made significant progress in developing its legal Anti Money-Laundering (AML) framework with the adoption of the AML Law in 2004. In early 2005, a Financial Intelligence Unit (the Financial Monitoring Service) has been established and has become operational as a department within the Central Bank of Armenia (CBA). It collects analyses and disseminates suspicious financial information. Corruption offences are regarded as predicate offences in the criminal money laundering offence.

Banks execute the large majority of financial transactions in Armenia; remittances from Armenian Diaspora play an important role.

Some important elements of the 2004 AML Law need to be amended and brought in line with the international standard. The revised Law should namely provide for the full range of customer due diligence (CDD) measures, and to provide for enhanced due diligence for higher risk customers or transactions, such as politically exposed persons (PEPs). The exception for certain transfers from the abroad (mainly Armenian Diaspora) (Article 6.3) that are by definition not to be treated as suspicious is not compatible with the international standard. There are plans to review the AML Law and an inter-agency working group has been created.

The CBA is working on an increase of the capacities of the current database of the FIU as the IT is not yet sufficiently developed to process and analyse all reports.

Only a few suspicious transaction reports have been disseminated to the Prosecutor's Office so far, and none of these cases have been fully investigated. No corruption related case has been identified.

Armenia is partially compliant with this recommendation.

No progress has been made

Recommendation 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.

The Law On Freedom of Information was not supplemented by the necessary regulations in order to properly implement it and ensure a more effective implementation of the access to information legislation in Armenia. The Code of Administrative Violations envisages sanctions for providing unreliable and untimely information in response to a request of any citizen, public organisation or a commercial organisation (monetary fine up to 10-50 minimal salaries). The Criminal Code also provides sanctions for failure to provide complete or correct information (monetary fine 200-500 minimal salaries). A list of information which is closed to public access was approved by the Government decision Nr 173 on 13

March 1998. Civil society stresses that despite the existing legal provisions, it is still difficult to access information from the government, especially at the local level.

Public participation in anti-corruption decision-making processes, such as about implementation of anti-corruption policies and their monitoring, could be strengthened with the new anti-corruption strategy in 2007.

Asset declarations of public officials are available on request (see recommendation 19).

Some progress has been made, but widespread concern remains among civil society and businesses as to the timely and full access to information.

Armenia is partially compliant with this recommendation.

No progress has been made

Recommendation 24

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

There is some progress in the sphere of internal audit. The Strategy for Development of Internal Audit of State and Local-Self-Government Bodies, State and Local-Self-Government Enterprises and Commercial Organisations has been developed and approved. The Department of Financial Control was created at the Ministry of Finance; internal audit units are currently being established in line ministries. Training of auditors was conducted on the basis of the internal audit programme. Financing control institutions include Ministry of Finance and the Chamber of Control of the National Assembly.

Coordination and exchange of information among financial control, external and internal audit institutions and with the law-enforcement bodies remains weak. There is not an established mechanism for information exchange and actions in the event of suspicions/detection of violations, which may indicate corruption-related crimes.

The Chamber of Control of the National Assembly has first time carried out audit of law enforcement institutions; violations found were reported to the Prosecution Service (although, this can only be done with the approval of the Speaker of the National Assembly); auditing of such institutions as customs, military and law-enforcement bodies remains difficult due to large volumes of confidential information.

While the National Anti-Corruption Strategy foresaw the adoption of the new law on state financial control in 2007, no actions were undertaken to implement this provision of the Strategy so far.

A new draft law on the Audit Chamber was developed in Armenia, which aims to create an independent supreme audit institution.

Armenia is non compliant with this recommendation.

Update as of September 2007

The Chairman of the Audit Chamber and its members will be appointed in September-November 2007 based on the law on the Audit Chamber adopted by the National Assembly on December 25, 2006 as the RA Constitution. Also, a new Audit Chamber will be formed, which will be an independent body that will monitor expenditures of state budget, use of state and community ownership. New Audit Chamber will

have new responsibilities and management structure. The role and responsibilities of the Audit Chamber, its structure, monitoring mechanisms, cooperation with other bodies, as well as guarantee of its independent status, rights of its members, their roles and responsibilities are regulated by law. The same law regulates the rights, roles and responsibilities of those bodies that undergo the monitoring of the Audit Chamber.

ADDITIONAL INFORMATION

During the last nine months the following political events occurred in Armenia. First, in March 2007 the Armenian Prime Minister untimely passed away. The new Prime Minister, Serj Sargsyan was appointed for the period of March-May 2007. On May 12, 2007 Armenian Parliamentary elections were held. The Armenian Republican Party and Prosperous Party won the majority of votes in the newly elected Parliament. Mr. Sargsyan was re-appointed to the position of the Prime Minister. The National Assembly approved Government Programme for upcoming five years, where fight against corruption is streamlined as one of the priority directions for the Cabinet, particularly development of the National Anti-Corruption Strategy Programme. On September 7, 2007 it is planned to hold the meeting of the Anti-Corruption Council where the composition of the Anti-Corruption Monitoring Commission will be discussed and approved. The second issue to be discussed will be development of the National Anti-Corruption Strategy.

In February 2008 Armenia will hold Presidential Elections.