



Anti-Corruption Network for Transition Economies
OECD Directorate for Financial and Enterprise Affairs
2, rue André Pascal
F-75775 Paris Cedex 16 (France)
phone: (+33-1) 45249106, fax: (+33-1) 44306307
e-mail: Anti-Corruption.Network@oecd.org
URL: <http://www.anticorruptionnet.org>

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

**AZERBAIJAN
MONITORING REPORT**

This report includes an update presented by the government of Azerbaijan about national actions to implement the recommendations, which were endorsed in January 2004. It also contains the summary of the expert opinion by Mr. Bostjan Penko, Slovenia, and of the discussion, which took place at the Istanbul Action Plan meeting in December 2004, Paris, France.

For more information, please contact Mrs. Olga Savran at the ACN Secretariat, tel.: 33 1 45 24 13 81, fax: 33 1 44 30 63 07, e-mail: olga.savran@oecd.org

UPDATE ON NATIONAL IMPLEMENTATION ACTIONS

Pillar 1. NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

Recommendation 1. Speed up efforts to adopt a comprehensive Anti-Corruption Program (Special State Program for Fighting Corruption) aiming at strengthening the implementation of anti-corruption measures. The Program should build on an analysis of the patterns of corruption in the country. It should propose focused anti-corruption measures or plans for selected institutions and have a balanced approach of repressive and preventive measures. The Program should also envisage effective monitoring and reporting mechanisms based on a participatory process which would include civil society in general and associations with experience in the area of anti-corruption, as well as the private sector / business community. In the light of this, ensure that the adopted strategy is widely disseminated within the civil service and among general public.

National implementation actions. The development of the strategy outlined by the Presidential Decrees of 9 August 1994 "On Measures to Step up the Fight against Crime and Strengthen Law and Order" and of 8 June 2000 "Strengthening the Fight against Corruption," has resulted in the implementation of a broad spectrum of measures to fight corruption, including the adoption of the law on the fight against corruption on 13 January 2004, determining the basis for criminalisation of corruptive offences, as well as socioeconomic measures aimed at eliminating the causes of corruption, which was fully reflected in the State Program for Fighting Corruption approved by Presidential Decree of 3 September 2004.

The main objective of the Program, consisting of a descriptive part and a list of concrete measures for the fight against corruption, is stepping up the fight against corruption and creating the necessary conditions for development of socioeconomic relations on a favourable basis. The Program outlines the general tasks and specific measures, stipulating the participation of particular institutions and agencies in their implementation as well as cooperation between them.

The Program sets the tasks of creating a legal framework, improving the performance of public agencies, law enforcement bodies and courts, implementing concrete socioeconomic measures, awareness raising among the population, upgrading the professional level of public servants, and developing cooperation.

The Cabinet of Ministers and the Commission for the Fight against Corruption at the Civil Service Executive Board supervise the State Program implementation and regularly inform the President of the Republic of the pace of implementation of its measures.

The State Program envisages public control over the pace of its implementation.

Recommendation 2. Ensure involvement and participation of civil society in general and through associations with experience in the area of anti-corruption, as well as representatives of the private sector / business community in the work of the existing Commission for Fight against Corruption at the Civil Service Executive Board.

National implementation actions. In order to ensure the widest possible participation of civil society in the fight against corruption, active dialogue is underway with representatives of nongovernmental organisations, the private sector, international and human rights organisations. A vivid example is the submission of the State Program for Fighting Corruption for a round table discussion in April and June this year. Representatives of the governmental staff, parliament, and law enforcement bodies make regular appearances in the press and other mass media.

Recommendation 3. Speed-up activities to implement the President's Decree "On Application of Anti-corruption Law" of 3 March 2004 and support the work of the Special Anti-corruption Department within the Prosecution Service with adequate resources for its proper functioning. This Department should be empowered to detect, investigate and prosecute corruption offences, as an autonomous Department with a special status integrated in the Prosecutor's Office with officers seconded from the main law enforcement agencies. This Department should have investigative, prosecutorial, administrative and analytical tasks. It is important that it includes specialized prosecutors. Apart from working on actual corruption cases, one of the main tasks of this Department would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.); and to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions.

National implementation actions. In pursuance of the Presidential Decree "On Application of Anti-Corruption Law" of 3 March 2004, the Statute of the Special Anti-corruption Department within the Prosecution Service was developed and approved by Presidential Decree of 28 October 2004. As an agency specialising in preliminary investigation of corruption-related crimes, the Department is vested with broad powers in the area of detection, investigation, and criminal persecution of offences. In addition to other issues, the Department is also responsible for monitoring the fight against corruption, gathering, analysing and summarising data on corruptive offences and working out proposals on improvement of anti-corruption activities. According to the Statute, the Department shall be staffed with prosecutors who have considerable experience and knowledge in investigation and prosecution of financial offences, and work in close cooperation with law enforcement agencies, mass media, and nongovernmental organisations.

The Cabinet of Ministers of the Azerbaijani Republic is working on a set of specific measures of logistic support of the said Department, which is planned to launch its activity starting January 2005.

Recommendation 4. Continue with corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation.

National implementation actions. The State Anti-Corruption Program (2.11, 3.9, 3.10) envisages concrete measures aimed at training and specialisation of the officers of public agencies engaged in the fight against corruption, studying international experience and coordinating the effort of judges, prosecutors, police officers and other law enforcement authorities in tackling common problems in this field. In pursuance of these measures, the training centres at the Justice Ministry and the Prosecutor General's Office have included in their training curricula specialised courses dealing with concrete means and methods of detecting and investigating corruption-related offences. Corruption-specific obligatory training is envisaged for officers of the Special Anti-corruption Department within the Prosecution Service with support of the United States government and relevant departments of the Council of Europe. In September 2004, a group of Azeri judges, prosecutors, police officers, and lawyers have undergone special training and familiarisation with the anti-corruption experience in the United States.

Special training is scheduled in early 2005 jointly with the Council of Europe on issues of interaction of the Special Anti-corruption Department within the Prosecution Service with other law enforcement agencies engaged in the fight against corruption.

Recommendation 5. Conduct further surveys and relevant research, based on transparent, internationally comparable methodology, to obtain more precise information about the scale of corruption in the country, and in order to ascertain the true extent to which this phenomenon affects

specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.

National implementation actions. The State Program for Fighting Corruption envisages the implementation of measures to ensure the conducting of surveys of corruption in the private and public sectors (see item 2.8). In addition, conducting surveys in this sphere is included as one of the tasks of the analytical division of the Anti-Corruption Department. Conducting such surveys is also planned within the context of cooperation between prosecutor general's offices of the CIS countries, which has been agreed at the session of the Coordinating Council of Prosecutors General of CIS Member States in Almaty in November 2004.

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

National implementation actions. The State Program (section 5) makes a particular emphasis on awareness raising among the population, specifically, with respect of the objectives and essence of the State Program and measures for its implementation. Conferences, seminars, trainings, mass media appearances, and specialised courses are being planned within this context.

In order to raise the population's awareness both in the sphere of national legislation and the measures being taken in the fight against corruption, and with respect of international instruments, active cooperation is underway with nongovernmental organisations. An example is cooperation within the frames of the joint project of NGO Organisation of Young Lawyers of Azerbaijan and OCSE, envisaging the implementation of measures aimed at raising the population's activeness, forming public opinion against corruption, including a series of roundtables (two of which have already been held).

In an attempt to upgrade public agencies' work with citizens, the State Program envisages (items 2.2 and 2.4) the improvement of procedures and establishment of concrete rules of considering appeals, development and launching of websites of public services, reflecting the details of their activities. An efficient method of preventing corruption among public officials – reducing their possible contact with the population – is reflected in the State Program in the form of providing citizens with the possibility of filing electronic appeals (item 2.4).

Recommendation 7. Ratify the UN Convention against Corruption.

National implementation actions. Ratification of the UN Convention against Corruption is one of the numerous measures planned by the State Program for Fighting Corruption aimed at the elevation of legal regulation of the fight against corruption in Azerbaijan on the international level. Work is underway for ratifying this convention, as well as streamlining criminal law and the law on criminal procedure with requirements of other conventions.

Pillar 2. LEGISLATION AND CRIMINALISATION OF CORRUPTION

Recommendation 8. Speed up the adoption and implementation of the draft legislation which should harmonize the criminal legislation in the area of corruption with the relevant international standards (such as the United Nation's Convention on Corruption, the Council of Europe's Criminal Law Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

National implementation actions. The State Program envisages working out proposals for harmonising the legislation with relevant international conventions, including the extension of the

notion of "official" within the context of corruptive offences. This task is scheduled for January 2005. The body responsibly for the implementation of this measure is the Cabinet of Ministers, which instructed relevant ministries (instruction of 4 November 2004) to prepare concrete draft laws.

Recommendation 9. Amend the incriminations of corruption offences to meet international standards. In particular ensure that undue benefits include material as well as non-material benefits, and that bribery through intermediaries is fully covered.

National implementation actions. Among measures to upgrade the legislation to meet international standards, the State Program envisages working out proposals to extend incriminations of corruptive offences by including non-material benefits and interests.

Recommendation 10. Take steps to make the actual period of limitation for corruption cases longer and consider increasing the punishment for active bribery.

National implementation actions. The State Program envisages the tightening of sanctions for corruptive offences, which entails automatic increase of the period of limitation in cases of corruption.

Recommendation 11. 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. Item 5.11 of the State Program envisages measures for implementing the recommendations endorsed within the framework of the OECD Anti-Corruption Action Plan, including the responsibility of officials of foreign countries and international organisations.

Recommendation 12. Introduce procedures and clear criteria for lifting immunities enjoyed by judges.

National implementation actions. The draft laws of the Azerbaijani Republic "On Legal Council" and "On Introduction of Amendments to the Law 'On Courts and Judges'," elaborated jointly with the Council of Europe, stipulate clear procedures and criteria for imposing disciplinary responsibility on judges, suspending their official duties for the period of criminal investigation, and lifting their immunities. At present, these draft laws are being reviewed by the Council of Europe.

Recommendation 13. Amend the legislation on confiscation of proceeds from crime to comply with international standards (such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime). Introduce a proposal to amend the Criminal Code ensuring that the 'confiscation of proceeds' measure applies mandatory to all corruption and corruption-related offences. Ensure that confiscation regime allows for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. 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. Item 1.3 of the State Program for Fighting Corruption envisages amendment of the legislation to incorporate such measures as arrest and confiscation of property for corruption-related offences. This task is scheduled for January 2005.

Recommendation 14. Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption Azerbaijan should, with the assistance of 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. The legislation of the Azerbaijani Republic envisages civil and administrative responsibility of legal persons. Moreover, item 1.3 of the State Program for Fighting Corruption envisages a number of measures for introducing other forms of responsibility of legal persons in accordance with international standards in this sphere.

Recommendation 15. Recognising that a strong nexus can exist between organised crime and corruption, with the possible assistance of organisations that have experience in fighting against these forms of criminal activity, study the interrelations between the two.

National implementation actions. The Statute of the Special Anti-corruption Department within the Prosecution Service of the Azerbaijani Republic envisages close cooperation with the Department for Fighting Organised Crime within the Ministry of Internal Affairs. This interrelation will be studied also in the process of investigation of concrete criminal cases. Moreover, the State Program envisages the study of interrelations between corruptive offences and organised crime on the level of scientific research organisations.

Pillar 3. TRANSPARENCY OF CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

Recommendation 16. Strengthen recruitment and promotion process to the civil service by enhancing the significance of objectively verifiable and merit-related criteria and limiting to the extent possible opportunities for discretionary decisions.

National implementation actions. In order to ensure the improvement of the legislation regulating recruitment and promotion, the State Program for Fighting Corruption plans the elaboration of relevant legal acts in this sphere. Specifically, it envisages comprehensive introduction of a competition-based civil service employment system, implementation of measures aimed at raising the prestige of civil service, introduction of a system of objective assessment of performance of civil servants, and introduction of the system of rotations (see items 2.11 – 2.16). An example is the employment of prosecutors by written exams and verbal tests for the third time starting 2002.

Recommendation 17. Screen the system for the control of assets of public officials to detect any possible loopholes and develop proposals to eliminate such loopholes. Consider increasing responsibility (not just disciplinary) for public officials for failure to comply with requirement to declare income, assets and liabilities. Consider disclosing publicly the declarations of certain groups of public officials.

National implementation actions. In keeping with the State Program for Fighting Corruption, a draft law has been elaborated and submitted to the national parliament for discussion and approval, concerning the presentation of financial information. Effective law envisages the imposition of administrative and disciplinary measures for untimely presentation of relevant information.

Recommendation 18. 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, prosecutors, tax officials, lawyers, accountants, etc. In addition, prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflict of interests, ethical standards, sanctions and reporting of corruption.

National implementation actions. One of the priority areas of improvement of the legislation on the fight against corruption is the adoption of relevant legal acts on elimination of a conflict of interests (see item 2.18); preparing a code of ethics of public servants and stipulating responsibility for its violation (see item 2.10). The Code of Ethics of Public Servants has presently been elaborated and is undergoing expert evaluation. An effective method of ensuring the imposition of responsibility on public servants is the elaboration of clear provisions, e.g. *On Service at the Customs Authorities* and *On Service at the Tax Authorities*. The efficiency of the adopted measures is illustrated by statistic data on responsibility imposed on the officers of the said authorities. In the period starting 2000, responsibility was imposed on 1,081 customs officers and 363 officers were dismissed. Corresponding figures for the tax authorities are: 707 cases of imposing disciplinary responsibility and 157 officers dismissed.

According to item 4.59 of the State Program, envisaging the adoption of ethics codes for public servants, a Code of Ethics of the Customs Officers has been adopted.

Recommendation 19. Set up a state authority body to supervise the implementation of laws and regulations in the civil service and, particularly, control the observance of conflict of interest regulations. Where needed, introduce legally binding regulations to directly address conflicts of interest in the civil service.

National implementation actions. The Commission for the Fight against Corruption at the Civil Service Executive Board is such an authoritative body, including 12 members of representative, executive, and judicial authority.

A draft law on this Commission has been elaborated and referred to the republican parliament for consideration and adoption.

Moreover, according to article 4 of the Law "On the Fight against Corruption," public agencies shall take the necessary steps to tackle the conflict of interests.

Within the frames of implementing the State Program in this area, internal security departments have been set up at the Ministry of Internal Affairs and the Ministry of taxes, whose responsibility includes the detection of facts of corruption within those bodies.

Recommendation 20. Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants. Adopt regulations on the protection of “whistleblowers”.

National implementation actions. The adoption of measures for the protection of whistleblowers is envisaged by item 2.16 of the National Program for Fighting Corruption. In addition, the mechanisms for protection of this category of persons is envisaged by effective law – the Law "On Protection of Victims, Witnesses, and other Participants in Criminal Proceedings" of 1999 and relevant provisions of the Code of Criminal Procedure of the Azerbaijani Republic – which authorises law enforcement bodies with the duty to adopt measures aimed at protection of the interests of parties to criminal proceedings.

Recommendation 21. Enact and implement clear rules on disclosure (making information accessible) and transparency of public expenditure. Consider possibilities to increase transparency in public procurement and with regard to credit agreements with international financial institutions.

National implementation actions. The State Program for Fighting Corruption also envisages the improvement and systemisation of the national legislation on public procurement, improvement of the work of the State Agency for Procurement, increasing transparency, submitting regular reports and disseminating them to the public, working out proposals for eliminating corruption in the public procurement process, establishing financial control over the fulfilment of contracts in this sphere, and clear regulation of evaluation methods and conditions (items 4.23 – 4.28).

Recommendation 22. Introduce legislation that fully covers the international standard as to combating money laundering, namely, as to criminalize the laundering of proceeds of all serious crimes (including corruption). Establish a financial intelligence unit.

National implementation actions. In keeping with the State Program for Fighting Corruption, UN and the Council of Europe Conventions, as well as FATF recommendations, the working group of the Cabinet of Ministers consisting of qualified experts has worked out a draft law on prevention of the laundering of crime proceeds. It is also planned to work out and enforce the action program in this sphere, introduce amendments to the Criminal Code concerning the criminalisation of legalisation of proceeds of crime involving corruption, as well as intensifying control over the funds whose sources are known, improvement of the mechanisms of registration, accounting, and storing financial records, etc.

Recommendation 23. Encourage non-governmental participation in the solving of policy issues and continue efforts to prevent obstacles for NGO registration and activities in practice.

National implementation actions. The State Program envisages concrete measures for the participation of civil society organisations, including nongovernmental organisations, in the activity aimed at studying the corruption status and the fight against it (items 5.4 – 5.6). At present, more than five national NGOs specialise in the fight against corruption.

Recommendation 24. Revise the access to information legislation to determine more precisely procedures and mechanisms for access to information and ensure that in practice the discretion of public officials is reasonably limited.

National implementation actions. A draft law "On Freedom of Information" has been elaborated jointly with the experts of the Council of Europe on the basis of international standards and has undergone the first round of discussion in the republican parliament and it pending adoption.

ADDITIONAL INFORMATION

In addition to the above update, the government of Azerbaijan has provided the following documents for the monitoring:

1. Anti-Corruption Programme of Azerbaijan
2. Plan of Actions for the Implementation of the Anti-Corruption Programme (Matrix)
3. Annex on TI corruption perception index for Azerbaijan
4. Annex on recommendation 24 concerning Azerbaijan's participation in GRECO and in the Extractive Industries Transparency Initiative

SUMMARY OF DISCUSSION

The adoption of the Anti-Corruption Programme appears the main achievement in Azerbaijan since the endorsement of recommendations in June 2004. The development of an action plan for the implementation of the Programme (matrix) is another important measure, addressing recommendations under Pillar 1. The matrix contains a list of implementation actions, proposes timeframe and responsible agencies. However, it appears that the matrix will benefit from further clarification and of proposed deadlines and distribution of responsibilities.

According the update, two bodies have been given the task of monitoring the implementation of the Programme, including the Cabinet of Ministers and the Commission for the Fight against Corruption at the Civil Service Executive Board. The Istanbul Action Plan meeting has raised an issue of the effectiveness of such double monitoring. According to the Azeri delegation, the Cabinet has the overall responsibility for the implementation of the Programme and for the monitoring of its implementation, while the Commission is responsible for the monitoring. Line ministries report both to the Cabinet and to the Commission.

The Commission will be composed of 12 members; it is foreseen that in the future it will be supported by a permanent Secretariat and working groups. In this context, it would be important to strengthen the capacity of the Commission to implement its tasks, especially related to the review the regulatory framework, and to ensure its independence.

While discussing the issue of monitoring of implementation of the Programme, the meeting agreed that this was a challenging task for all the countries of the Istanbul Action Plan and other regions. Azerbaijan and other counties will benefit from exchange of experience on methodologies for “measuring corruption”.

The meeting welcomed the efforts of Azeri authorities to promote public participation and to disseminate the Anti-Corruption Programme to the civil society. The meeting invited Azerbaijan to make further steps to ensure that the participation of the civil society acquires a permanent nature. The government could consider establishing a budget line for NGOs support to promote their capacity and independence. It was further suggested that the reports of the Cabinet and of the Commission for the Fight against Corruption to the Parliament on the implementation of the Programme should also be made available to the broad public.

Concerning the recommendations under Pillar 2 on criminalisation of corruption, it appears that the new Programme proposes to introduce a large number of changes. However, it is too early to assess their compliance with the recommendations, and will need to be studied when the implementation takes place. Azerbaijan was also invited to provide statistical data on corruption related cases for future monitoring.

Under Pillar 3 a number of legislative measures were noted. In particular, development of the draft law on financial disclosure aims to address recommendation 17; further information on the adoption of this law and on its implementation will be required for monitoring.

Elaboration of the Code of Ethics of Public Servants, which was suggested under recommendation 18, was welcomed by the meeting. It will be important to ensure effective introduction of the Code, and to insure further follow-up and monitoring in this area.