

ACN

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

Anti-Corruption Division
Directorate for Financial and Enterprise Affairs
Organisation for Economic Co-operation and Development (OECD)
2, rue André-Pascal, 75775 Paris Cedex 16, France
Phone: +33(0)1 45249106, Fax: +33(0)1 44306307,
E-mail: Anti-Corruption.Network@oecd.org,
Website: www.anticorruptionnet.org

**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**

GEORGIA

MONITORING REPORT

Adopted at the 5th Monitoring Meeting of the Istanbul Anti-Corruption Action Plan
on 13 June 2006 at the OECD Headquarters in Paris

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GLOSSARY

ACN	-	Anti-Corruption Network for Eastern Europe and Central Asia (also known as Anti-Corruption Network for Transition Economies)
CPI	-	Corruption perception Index (by Transparency International)
DFID	-	Department for International Development
GDP	-	Gross Domestic Product
HRMIS	-	Human Resources Management Information System
NGO	-	Non Governmental Organisation
OECD	-	Organisation for Economic Co-operation and Development
PSB	-	Public Service Bureau
PSC	-	Public Service Council
PSRSP	-	Public Service Reform Support Project
SIDA	-	Swedish International Development Cooperation Agency

BACKGROUND

This **report** provides information about measures taken by Georgia to implement the recommendations received in January 2004 and June 2004 under the Istanbul Anti-Corruption Action Plan. The report was prepared on the basis of the answers to the Questionnaire provided by Georgia on 22 December 2005 and the information gathered during the on-site visit in February 2006 and immediately after. The report is structured along the January/June 2004 recommendations. For each recommendation, summary of measures, analysis and rating of compliance is given in order to reflect the progress achieved by Georgia. The report is structured in three parts:

- National Anti-Corruption Policy, Institutions and Enforcement,
- Legislation and criminalisation of corruption and the related money-laundering offence,
- Transparency of the Civil Service.

The report was prepared by the team of examiners and edited by the OECD Secretariat.

The **review of Georgia** took place at the 1st Istanbul Action Plan Review meeting on 19-21 January 2004 in Paris, at the OECD headquarters. The review was based on the self-assessment report presented by Georgia. An expert team prepared an assessment and recommendations. Recommendations were discussed and endorsed by the meeting.

The **on-site visit** to Georgia was organised on 12 – 16 February 2006. Its goal was to assess the actions taken to implement the recommendations endorsed in January/June 2004. Georgia filed out a preparatory questionnaire in December 2005 and provided some requested information; after the mission Georgia provided additional information.

The **team of examiners** was led by Daniel Thelesklaf (Switzerland), Financial Integrity Network, and comprised Constantine Palicarsky, former Secretary of the Commission for Coordination of the Activities for Combating Corruption (Bulgaria), Elnur Musayev, Senior Prosecutor of the Anti-Corruption Department, Office of the Prosecutor General (Azerbaijan) and Aida Raudoniene, Head of the Corruption Prevention Department, Special Investigations Service (Lithuania). The OECD Secretariat was represented by Olga Savran, ACN manager, Anti-Corruption Division.

The team of examiners had **meetings** with several government and public institutions involved in the fight against corruption; these meetings were organised in co-operation with the Office of the State Minister for Reforms Co-ordination. Examiners also met with non-governmental organisations, business representatives and mass media with assistance of the Transparency International Georgia. Finally, examiners participated to a panel with foreign missions and representatives of international organisations and international financial institutions, which was hosted by USAID (a list of meetings is set out in the Annex I).

Box 1: The Istanbul Anti-Corruption Action Plan

The Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed in the framework of the Anti-Corruption Network (ACN) in September 2003, in Istanbul. The ACN Secretariat, based at the OECD Anti-Corruption Division, provides support for the implementation of the Action Plan. An Advisory Group provides guidance on the implementation of the Action Plan.

The implementation of the Istanbul Action Plan includes several phases: review of legal and institutional framework for fighting corruption; implementation of the recommendations endorsed during the reviews; and monitoring progress in implementing the recommendations.

In September 2003 the Advisory Group endorsed the Terms of Reference for the reviews of legal and institutional frameworks for fighting corruption in the Action Plan countries based on self-assessments reports prepared by their governments. The reviews of Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Tajikistan and Ukraine have been completed in 2004-2005. The review of the Russian Federation has not been completed yet. The recommendations are made public.

In May 2005 the Advisory Group endorsed the Terms of Reference for the monitoring of implementation of recommendations. The objective of the monitoring is to assess progress achieved by each country in implementing its recommendations. It does not aim to amend endorsed recommendations or to formulate additional ones, but to assess how the measures taken by the country comply with the recommendations. The monitoring consists of: (i) regular *progress updates* by countries; and (ii) *country examinations* by peers. In the framework of *progress updates*, countries are invited to submit their written updates about the national actions to implement the recommendations, which were taken since the previous meeting of the Istanbul Action Plan, approximately twice a year.

In the framework of *country examinations*, which are organised at least once for each country, the governments are invited to provide answers to a detailed questionnaire. A team of monitoring experts from other ACN countries visits the examined country and holds meetings with the public authorities involved in the fight against corruption, civil society and business representatives, foreign and international missions based in the countries, in order to form an objective opinion about progress made. The team of experts prepares its draft monitoring report, including ratings for each recommendation. The draft report is provided to the monitored country for comments. Next draft, which takes account of these comments, is presented to the meeting of the Istanbul Action Plan for discussion and adoption. Upon the adoptions monitoring reports are made public.

First round of *country examinations* is under way. It will examine Tajikistan, Georgia and Azerbaijan with the aim to adopt monitoring reports at the meeting of the Istanbul Action Plan in June 2006. The second round will examine Ukraine and Armenia, aiming to adopt monitoring reports for these countries in December 2006.

For more information, please consult the following websites: www.anticorruptionnet.org and www.oecd.org/daf/nocorruption.

MAIN FINDINGS

National Anti-Corruption Policy, Institutions and Enforcement

The Government of Georgia has developed a significant amount of anti-corruption analytical and policy documents prior to the so-called “Rose Revolution” of 2004. However, the political will to implement these policies was missing, and they remained only on paper. After the political change, the magnitude of the problems faced by the Georgian society called for immediate action, and not for drafting new documents. It was of utmost importance for the Government to demonstrate ability to lead and to deliver practical results. This goal was to a large extent achieved: there is a strong perception that the level of corruption was reduced in Georgia. The views of the civil society, international actors and the Georgian authorities coincide on that.

The Government chose an approach of integrating anti-corruption provisions into the overall reform process. While the Anticorruption Strategy and Action Plan were adopted, the Government does not intend to continue with the development of a stand-alone anti-corruption policy in the short-term. Instead, it is foreseen that reform strategies for various sectors should include anti-corruption provisions; such strategies are still to be developed. Reflecting this integrated approach, a separate Anti-Corruption Bureau was abandoned; the coordination of anti-corruption policy was first transferred to the National Security Council, and then it was moved to the office of the Minister for Reform Coordination, who is responsible for all sector reforms as well as anti-corruption policy implementation.

The Government successfully started a law enforcement campaign. Reform of the traffic police helped to reduce corruption and improved the public image of the Police service in general. The Prosecutor General’s office was reformed; the Main Investigation Department, which includes investigators and prosecutors, was established as the main body for investigating and prosecuting corruption cases. The number of such cases is growing. In the system of centralised Prosecution, the Criminal Procedure Code provides for effective coordination of law-enforcement bodies at the pre-trial stage of the criminal procedure; all relevant bodies provide their information to the Main Investigation Department at the detection stage. However, practical and detailed guidelines for increased cooperation and exchange of information and resources between various agencies responsible for fighting corruption is still to be developed in order to improve inter-agency cooperation at all stages of their activities.

In general, little attention was paid to ensure the sustainability of the reforms by embodying the ideas of the new leadership into written procedures and guidelines. While the main factor for the sustainability of anti-corruption reforms is the maintained political will, it is also important to reinforce sound analytical and monitoring work to demonstrate that the current anti-corruption provisions are fully implemented and to ensure that the planned measures are effective and enjoy continued public support.

Criminalisation of Corruption

With the emphasis made on the practical measures to curb corruption, the Georgian Government has also drafted several new legal acts. However, Georgia has not amended yet its criminal legislation on corruption. In particular, under the current Criminal Code, offer or promise of a bribe and solicitation of a bribe are only considered as attempt, aiding or abetting; bribery of third persons is not covered; sanctions for active bribery do not appear sufficiently dissuasive; the statute of limitation remains low; the definition

of public servant in the Criminal Code is not reformed and does not cover foreign and international public officials. Georgia is still to introduce the liability of legal persons for corruption. It appears that the draft changes to the Criminal Code, which have already been subjected to the first reading in the Parliament, address the mentioned deficiencies.

The confiscation regime in Georgia is marked by the constitutional prohibition to confiscate property as a type of punishment. The existing legislation though allows for confiscation of object, means and proceeds of crime. Provisions of the Criminal Code dealing with the confiscation were amended in 2005, and provide for mandatory confiscation of proceeds of crime. It is possible to take provisional measures for identification and seizure of corruption proceeds in the criminal investigation. Georgian legislation provides for confiscation not only within a criminal procedure; the Administrative Code empowers the prosecutor to claim the illegal property and unexplained wealth; the Criminal Procedure Code provide for civil claims in relation to the criminal offence. With these necessary measures in place, considerable results are demonstrated.

The Government has made substantial changes in the legislation to reduce the number of categories of officials immune from criminal prosecutions: elected officials, prosecutors and investigators do not enjoy immunity anymore. Criminal Procedure Code explicitly states that the immunities cannot be used as a shield against criminal liability. However, the procedure for lifting immunity for Members of Parliament appears to include an element of excessive scrutiny of the judicial decision by a political body: the Prosecutor's Office cannot appeal to the Parliament in an open plenary session; instead it must submit it to the Parliamentary Committee, which may pass the case further to the Bureau, subject to its discretion.

While some progress has been made in reforming criminal offences for corruption, more attention should be given to assessing and revising of the current system of disciplinary and administrative provisions for corrupt behaviour, and harmonising it with the criminal offences.

Review of sector specific legislation from the point of view of corruption prevention has started. The aim of the review is to ensure that the legislation in action and the newly drafted legal acts do not provide loopholes for corrupt behaviour. This process should be continued.

Legal reforms coupled with the reforms of the law-enforcement agencies provided grounds for successful prosecutions of corruption. To make this process sustainable and to ensure continued public confidence in the Georgian authorities, it is important to demonstrate that the laws are enforced in full conformity with the equal treatment principle, and exclude any political interference and arbitrariness. The legal reform should also ensure that the legislation is sufficiently clear, well structured and organized, and that the citizens know exactly which acts are penalized.

Further development of statistics on the enforcement of anti-corruption criminal and other legal provisions should be encouraged. Such statistics should be sufficiently detailed in order to provide ground for the analysis of the effectiveness of anti-corruption legislation and its enforcement.

Integrity of the Civil Service and Reducing Opportunities for Corruption

In the last two years Georgia has made important steps for reforming its public administration. Central government underwent a radical restructuring; the number of civil servants was drastically reduced. Newly employed civil servants were admitted through open competitions based on the results of tests, organised by respective institutions. These measures allowed for a major increase in salaries to the new, reduced and better qualified staff. Internal controls were developed in individual institutions though the establishment of General Inspections. They also increased the prestige of the civil service, provided powerful incentives for integrity among civil servants and improved the image of the new public service.

However, there is no clear strategy of civil service reform yet in Georgia. The current Public Service Law contains loopholes which pose corruption risk. The Government does not yet have a vision of the measures, which need to be introduced in order ensure that the started reforms are sustained over time. In the future, the anti-corruption prevention policy should be strengthened, to avoid manifestations of corruption in the new civil service. Such preventive measures may focus on the development of a clear and transparent criteria for merit-based appointments and promotions; elaboration of codes of conduct and development of capacity for internal control bodies to apply disciplinary actions; strengthening monitoring of conflict of interest management, including improvement of the system of assets declaration submitted by the senior civil servants; and development of whistleblower protection. The analysis of the risk of corruption in various public institutions would be another important approach. Public education and information on corruption should be continued.

Georgia has had significant steps to liberalise its business environment. Most of the implemented measures focused at reduction of taxes, licensing regimes, permits and registrations; introduction of one-stop shops, abolishment of customs duties; at some cases disbanding whole structures, perceived as corrupt. The administrative burden on businesses and economic incentives for corruption were effectively reduced.

INTRODUCTION



Economic and social situation¹

Georgia covers an area of 70,000 square kilometres; 20% of its territory is not under government control. The population is 4.6 million. Georgia has a GDP of \$5.1 billion (2004; per capita: \$2914). The national resources include forests, hydropower, metals, fruits, tea and wine. The main trade partners are Russia, Turkey, Azerbaijan, Armenia, Germany, Ukraine, United Kingdom, Turkmenistan and the United States.

Georgia's electricity sector is in critical condition, although new government policies and increased collections may be the starting point to reform the energy sector. However, the rate for non-payment for electricity and gas outside the capital remains high. Recently the government has launched comprehensive reforms to address this situation.

Privatization is a potential source to generate the capital needed to rehabilitate the economic sector, and there are plans to move aggressively in this regard. The programme envisages the sale or liquidation of more than 1800 state-owned enterprises over 18 months. However, privatisation is also regarded as an area of increased risk; therefore the privatization process needs to be closely monitored.

Reforms of trade and customs regulations are under way. The authorities have simplified and will continue to simplify the tariff structure and customs procedures which are widely seen as a source of abuse and corruption. Progress has also been made in improving the business climate. Changes to the tax code introduced in 2005 reduced the number of taxes and broadened the tax base. The new licensing regime reduced the number of permits drastically and also provides for a "one-stop-shop"-concept and a "silence is consent"-principle for issuing licences. These activities are essential elements of the Government's strategy to reduce corruption.

¹ Sources: EBRD Transition Report 2005 and US Department of State Background Notes 09/2005

The Government is reforming the social assistance programme. Relief to all households living below the extreme poverty line will be enhanced. The official unemployment rate is over 10%.

Political structure

In April 1991, the Republic of Georgia declared independence from the Soviet Union. Georgia began to stabilize in 1995 after an ethnic and civil strife from independence in 1991. Peace remains fragile in the separatist areas of Abkhazia and South Ossetia.

The Georgian state is centralized, except for the autonomous regions of Abkhazia and Ajara. Those regions were subjects of special autonomies during Soviet rule, and the legacy of that influence remains.

Georgia is a democratic presidential republic. In January 2004 Mikhail Saakashvili was elected to a 5-year term following the November 2, 2003 parliamentary elections which were marred by irregularities and fraud. As a result of popular demonstrations, known as the „Rose Revolution“, former President Shevardnadze resigned on November 23, 2003. President Saakashvili was inaugurated on January 25, 2004. Constitutional changes of February 2004 skewed the balance of power in favour of the presidency and weakened the parliament.

The last parliamentary elections held 28 March 2004 were considered generally free and fair. There are a number of political parties in Georgia, only two of them are represented in the Parliament: National Movement-Democratic Front received 67.6% of votes during the last elections and has 135 seats, “Rightist Opposition” - 7.6% of votes and 15 seats.

Judiciary branch includes the Supreme Court (judges elected by the Supreme Council on the president's or chairman of the Supreme Court's recommendation); Constitutional Court; first and second instance courts. The Georgian Constitution provides for important safeguard for the independence of the judiciary.

Civil society in Georgia is vibrant and politically influential. Legislation provides for easy registration procedure and freedom of operations. However the visibility of NGOs has somewhat diminished since 2004 when many leading activists joined the government. NGOs are mainly dependent on foreign funding.

Georgian media has been traditionally free and active. The 2004 Law on Freedom of Speech and Expression took libel off the criminal code and relieved journalists of legal criminal responsibility for revealing state secrets. However, reportedly in 2004 independent TV stations became less daring in criticizing the government.

Trends in corruption

Corruption in Georgia has been a significant obstacle to economic development since the country gained independence. Its pervasive nature and high visibility have seriously undermined the credibility of the government. However, the new Georgian government in 2004 committed to tackle corruption at the highest levels, as visibly displayed by arresting and prosecuting several former government officials. After creating the Anti-Corruption Commission in 2000, an Anti-Corruption Coordinating Council (ACCC) was built up in summer 2001 to implement recommendations of the Anti-Corruption Commission. In 2004, the ACCC was eliminated, and the National Security Council became responsible for the government anti-corruption strategy. Later on, this function was again shifted, this time to the office of the State Minister for Reform Coordination.

Georgia's Transparency International CPI score increased from 2.0 in 2004 to 2.3 in 2005; Georgian is on the 130th rank of 159 countries. This figure however does not yet reflect the changes in perception

that were widely reported during the mission. In the past year, major reductions in corruption increased public trust in the Police force. The Ministry of Internal Affairs (MIA) reduced the police force to 14,000 from 40,000, paying much higher salaries and demanding higher standards. Other areas of civil service, such as Ministries of Education or Economy, have also drastically reduced their staff numbers, and increased the salaries, at least at management level. During 2004-2005, about 40000 jobs in the public sector were cut, allowing for a substantial increase in the remuneration of the remaining civil servants.

IMPLEMENTATION OF RECOMMENDATIONS

I) National Anti-Corruption Policy, Institutions and Enforcement

Recommendation 1 and Additional Recommendation 1

Review and update existing anti-corruption policies; in order to demonstrate political will, mobilize civil society and all actors to participate; prioritise and focus on implementation measures. It is very important to review existing anti-corruption laws.

Recognising that the magnitude of challenges calls for active and rapid actions, Georgia should ensure that policy reforms are carried out in a fully transparent and participatory manner, are based on sound analysis and consistent with the overall reform objectives. In particular, the elaboration of the new Anti-Corruption strategy by the National Security Council should be open for public participation, pursuant to January recommendations 1 and 2.

The Government of Georgia applied a number of effective anticorruption measures. Substantial changes in the legislation were adopted. Concrete actions were taken to change the organizational structure of most of the ministries; along with substantial staff reductions and replacements. The salary of the public servants was raised; drastic reductions of the redundant staff and resolute prosecution of corrupt officials took place. These actions were a clear demonstration of political will and helped regain public trust. The change in the levels of trust for the police service is obvious. After the old Traffic Police force was disbanded and number of reforms took place, the Police improved its standing among the public service agencies in Georgia with 9 places. Similarly effective measures were taken in the public education area, where a new state exam replaced the old system that was perceived as corrupt.

Civil society has always been active in Georgia; the efforts of the Government were and to a large extent continue to be supported by the civic organizations. Some criticism exists, directed mainly at the lack of coordinated approach by the Government when implementing the reforms. There are limited concerns about the independence of the judiciary – it should not be threatened by the effort to clean the judicial system. At the same time no corrupt official should be allowed to hide behind the shield of accusations of “politically motivated” dismissal. With this respect the due process is of paramount importance.

The need for corruption prevention is fully appreciated. Most of the implemented measures aim at reducing the administrative burden over the businesses², including reduction of taxes, licensing regimes, permits and registrations; introduction of one-stop shops, abolishment of customs duties; at some cases disbanding whole structures, perceived as corrupt. Thus the economic incentives for corruption disappear, effectively eliminating the very need to corrupt.

² The number of the licensing procedures was reduced with 84 per cent, from approximately 950 down to 150 in the last year

However, no review of the existing anticorruption policies was carried out; a review of the anti-corruption legislation was carried out through review of the sector specific legislation; the focus of the process in on the legislation in the pipeline. The specific implementation measures could have benefited from a more structured approach and more uniform implementation in the different Government agencies. For example, one of the main Government measures, namely filling the open positions in the new ministries and agencies through open and transparent competition was implemented through different procedures.

The National Anti-corruption strategy and the Action plan for its implementation were adopted in 2005 / 2006. The strategy was drafted with some input from civil society; and in cooperation with some of the international actors in Georgia. At least four meetings were held with civil society organizations and a final conference to present the Strategy was organised. Many of the civic sector ideas were reflected in the final version of the document.

The process of elaboration and adoption of the anticorruption strategy could hardly be described as “structured”. It has been the wish of the Georgian Government to lead the process and to be the one to draft the Strategy. The strategic documents were drafted with a delay of 5 months.

The strategy is not based on a sound analysis, consistent with the reform objectives. The existing analyses (World Bank Governance Matters 2004; TI CPI and the Global Corruption Barometer; different NGO reports) give a broad idea of the magnitude of the problem faced by the Georgian Government; they could not be regarded though as sufficiently detailed review of the procedures, practices and legislation to become the basis for a focused reform.

Georgia is largely compliant with this recommendation.

Recommendation 2

Strengthen the existing Anti-corruption Coordination Council, which should consist of persons with high moral and ethical standing, including representatives of the general public and from relevant executive bodies (administrative, financial, law enforcement, prosecution) as well as from the Parliament and civil society (e.g. NGOs, academia, respected professionals).

The State Minister on Reforms Coordination is now responsible for the development and coordination of the Anti-corruption strategy. The former Anti-corruption Coordination Council is disbanded. Two of the current Minister’ staff members are former National Security Council staff and participated in the previous anti-corruption efforts. They are responsible for the co-ordination of the strategy.

The Action Plan for the implementation of the Anti-corruption strategy is drafted by the State Minister for Reform Coordination; assistance was provided by the Council of Europe. The Action Plan was adopted in the end of March 2006. The existing staff seems sufficient to coordinate the activities of the Government agencies. It is not sufficient though to deliver the analytical capacity needed to design, monitor, evaluate and implement anti-corruption policies. Representatives of the Parliament and line agencies are involved in the anti-corruption policy formulation. Little information was provided about the involvement of the local self-government bodies in the process; there seem to be a lot of opportunities in this area.

The goal of this recommendation is to ensure that the anti-corruption reforms in the country are led by leaders that enjoy public trust. Apparently the Georgian Government is supported by the people with

regard to the implemented anti-corruption policy; therefore the broad goal of this recommendation has been largely met.

Georgia is largely compliant with this recommendation.

Recommendation 3 and Additional Recommendations 2 and 3

Establish a Specialised Anti-corruption Agency with a mandate to detect, investigate and prosecute corruption offences, including those committed by high-level officials. Such an agency could be structurally linked to the Anti-Corruption Bureau or to the General Prosecutor's Office, but should be given proper independence in both cases. It is important that the Agency would combine law enforcement/investigative (e.g. the best officers from the existing police Department on Economic Crime and Corruption could be seconded to work in such an agency) and prosecution departments and be headed by a person with the powers of a Prosecutor. Apart from working on actual high-level corruption cases, one of the main tasks of such an Agency 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).

The establishment of the special anti-corruption division in the Prosecution is related to the January recommendation 3 concerning the establishment of a specialised anti-corruption agency. At this early stage the recommendation 3 can be reiterated to encourage further efforts ensuring proper independence of such a body, its mandate for law-enforcement and prosecution, and its role of coordinating various law-enforcement, security and financial control bodies.

Significant achievements of the law-enforcement activities were noted during the discussion. Such efforts should continue to promote the implementation of the anti-corruption policy, fully based on objective data and in accordance with the law. Statistics on anti-corruption cases should be carefully maintained and made public.

The reforms in the Criminal Procedure of Georgia relieved the Prosecutors office from the responsibility to investigate crime; except of the corruption-related crimes, thus effectively turning the Main Investigative Department with the General Prosecutors Office into an Anti-corruption Agency.

. The Department has jurisdiction over all corruption offences, committed on the territory of Georgia. It is autonomous structure within the General Prosecutor's office. The Department is headed by a Deputy Prosecutor General. Along with the Central Department, 9 Regional Units are functioning.

The staff selection procedures are thorough and include interview with a panel, which includes representatives of NGOs, governmental bodies and respected people, as well as special measures to ensure integrity, such as polygraph testing.

The Department is fully supported by the other law enforcement and information gathering agencies.

In particular it enjoys good cooperation with the Ministry of Interior, the Financial Monitoring Service, the Assets Declaration Bureau within the Ministry of Justice and the Chamber of Control.

More than 1000 criminal cases are investigated during 2004-2005 by the Department under passive and active bribery, abuse of power and exceeding the limits of official authority offences. Some examples of indicted high-level officials include the Head of Railway Department, the Director General of the Power Engineering Regulatory Commission of Georgia, the former Head of the Tax Department, the former Head

of the Large Tax Payers Inspection, the Director of Customs Department and Director-General of one of the large telecommunication companies.

The Department has exclusive jurisdiction over the corruption offences, committed at the territory of Georgia. It is an issue of slight concern; if the perceptions of widespread corruption are even to a small extent reality, it would be difficult for a small number of prosecutors and investigators (even together with the nine regional sub-units) to effectively investigate and prosecute all the detected corruption crimes³. So far the situation does not seem to be out of control; further strengthening of the Department will help prevent such a danger.

Clear and available statistics exist on the corruption prosecution in Georgia. It could not be used as a monitoring mechanism, insofar as there are too many factors that may influence the number of cases – to name just three, better corruption detection; more cooperation from the citizens; actual increase of the corruption in the country. But it certainly demonstrates a sustained effort to reduce corruption in Georgia through criminal prosecution. Every case of detected corruption is widely publicised through the media to raise awareness of the public at large on the dangers of corruption and of its consequences.

A substantial part of recommendation 3 is to ensure that the Anti-corruption Agency in question has as its main task the enhancement of the inter-agency cooperation between the law enforcement, security and financial control bodies in corruption investigations. An example of how such a function would be exercised is the adoption of clear guidelines for exchange of information and team work. Though no such guidelines are adopted, satisfactory level of coordination seems to exist, with teams of detectives, investigators and prosecutors being formed and with regular exchange of information.

The Prosecutors are functionally independent when making their decisions. They may receive instructions from the superior prosecutor; in the case of the Department – from the Deputy Prosecutor General or from the Prosecutor General. In this case the superior prosecutor takes responsibility for the recommended action. The structure of the Department though does not allow for conclusion to be made that it enjoys full independence. Being an integral part of the General Prosecutor's Office has apparent advantages; however it falls short of the recommendation requirements. The necessary level of financial, human resources and policy formulation and implementation autonomy could not be observed in the current setting.

Georgia is largely compliant with this recommendation

Recommendation 4

Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and those agencies responsible for the fight against corruption.

Technically, there are no guidelines for increased cooperation, exchange of information and resources between the agencies, responsible for the fight of the organized crime and the anti-corruption agencies. The cooperation between them is a fact, insofar as the prosecutor is the master of the pre-trial stage of the criminal proceedings. The Main Investigative Department is part of the prosecution service of the country;

³ Plans exist to form a special unit within the Interior Ministry to focus on the high-level corruption only. It should also investigate the tax and assets declarations of high-level officials.

it enjoys full control over the investigation phase of the proceedings. As far as the detection phase is concerned; all the agencies in Georgia support the activity of the Department and have to submit the relevant information in a timely fashion. It must be noted that there is shared vision among the high level officials of the Georgian Government regarding the need to address the problem of corruption – and on the way to address it. As a result there is common understanding of the need to fully support the efforts of the Department.

Nevertheless it must be noted that the existence of the guidelines in question is a substantial element of the sustainability of the Georgia's anti-corruption efforts. More work has to be done in this area. The organizational culture; existence of established procedures and trained staff are equally important in term of ensuring continuity of the anti-corruption efforts. To sustain the good practices, to ensure that they will be followed by every government, written procedures and protocols must exist. They need not be in the shape of a law; in fact it may even be counterproductive. They must be as practical and detailed as possible; easy to access, including by the public at large; could be shaped as a set of synchronized legal documents adopted by different agencies; and all the staff must be aware of their existence and content.

Georgia is partially compliant with this recommendation

II) Legislation and criminalisation of corruption and the related money-laundering offence

Recommendation 5 and additional recommendation 4

Review the current system of disciplinary, administrative and criminal corruption offences, harmonise and clarify relationships between violations of the Criminal Code and other relevant legislation.

Ensure the implementation of outstanding January recommendations, in particular recommendations 6, 7, 8 and 10, which relate to bringing up criminalisation of bribery and corruption related offences in line with international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) and to responsibility of legal persons for corruption offences.

Georgia introduced several laws to harmonize its anticorruption legislation with the international standards. Examples of this legislation are the Law of Georgia on "Conflict of Interests and Corruption in the Public Sector" and the "Law on Public service". Nevertheless the necessary changes in the field of criminal legislation are still to come. Current definitions of corruption offences fall short of the international standards: offer or promise of a bribe and solicitation of a bribe is only considered as 'attempt', 'aiding' or 'abetting'; bribery for the benefit of third persons is not covered by the provisions of the Criminal Code.

It appears that the draft changes to the Criminal Code, which have already been subjected to the first reading in the Parliament, address the mentioned deficiencies. More attention should be given to reviewing and assessing of the current system of disciplinary, administrative and criminal corruption offences.

Georgia is non-compliant with this recommendation.

Recommendation 6

Amend the incriminations of active and passive bribery in the Criminal Code to meet international standards. In particular, clarify the relationship between the offence of passive bribery (Art. 339), and the offence of accepting prohibited presents (Art. 340). Consider increasing the punishments for active bribery and the statute of limitations for all corruption offences.

No changes are introduced to the Criminal code in respect to active and passive bribery. The definition of these acts does not meet the international standard. The relevant articles of the Criminal Code describe the basic form of active bribery and provide for a sanction that could not be regarded as sufficiently dissuasive: a fine or an imprisonment for up to two years. The statute of limitation is low, which may be regarded as inadequate.

To a great extent, the draft provisions mentioned in the previous section on the recommendation 5 meet the international standards.

The concern on Art. 340 - which criminalizes the accepting of illegal presents (a form of passive bribery) - by providing very low sanctions (fines) has not been addressed. This provision could be used to shield officials in certain cases of passive bribery. The argument that accepting an illegal present unlike

accepting a bribe does not relate directly to the official status and duty of the public servant is rather confusing.

Georgia is non-compliant with this recommendation.

Recommendation 7

Ensure that the definition of “official” in the Criminal Code 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 servant in the Law on Public Service has not been changed since the review in 2004. It is still narrow: it includes Georgian nationals and only as far as they perform “paid work”.

The definition in the Criminal code refers to the existing definitions in other pieces of legislation. The law of Georgia on “Conflict of Interests and Corruption in Public Sector” and the “Law on Public service” define notions of ‘official’, ‘public official’ and ‘civil servant’.

There is a need for a clear definition of a public servant that would be compliant with the international standards. However, the number of investigations and prosecutions suggest that in practice so far the definition never shielded public servants from prosecution.

The draft law referred to in the section on the Recommendation 5 addresses this issue.

Georgia is partially compliant with this recommendation

Recommendation 8

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

Criminalisation of the bribery of foreign and international public officials is essential and is a part of a number of important international instruments. The current legislation with its narrow definition of an “official” as a citizen of Georgia only, can not effectively play this role. Therefore, bribery of foreign or international public officials can not be considered criminalized. The draft law referred to in the section on the Recommendation 5 addresses this issue.

Georgia is non-compliant with this recommendation.

Recommendation 9 and additional recommendation 6

Consider amending the Criminal Code to 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. Explore the possibilities to check and, if necessary, to seize unexplained wealth.

Monitor the newly established confiscation of proceeds regime and the confiscation of unexplained wealth and invest special attention that they are implemented in a non-discriminatory and non-arbitrary manner through proper checks and balances and safeguards.

The assets confiscation and forfeiture regime in Georgia is marked by the prohibition of confiscation of property as a type of punishment, as decided by the Constitutional Court. The existing legislation though allows for confiscation of proceeds of criminal activity, object and means of crime, as well as the profit incurred from these proceeds. The legislation of Georgia is compatible with the appropriate requirements of the international legislation, in particular with the relevant Council of Europe Convention, in providing for confiscation not only within a criminal procedure, but also through other means. Thus the Georgian Administrative Code empowers the prosecutor to claim the illegal property and unexplained wealth, the notion of which is described in the Law on Conflict of Interests. There are measures provided by the Criminal Procedure Code, such as the power to make civil claims in relation to the criminal offence. Georgia also supplied information regarding the application of these norms that substantiate the claims for effectiveness. It seems that the procedure for identification and seizure of proceeds of corruption exist and it is efficient and operational.

Provisions dealing with the issue of the proceeds of crime were amended in the CC in December 2005. Forfeiture of property shall be ordered by the court for all premeditated crime under the CC including the corruption related crimes, To monitor the application of the new provisions, Georgia has started in January 2006 the gathering of statistics under Article 52 of the Criminal Code. Continued attention should be paid to this process.

Georgia is largely compliant with this recommendation.

Recommendation 10

Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, Georgia should, with the assistance of organisations that have experience in implementing the 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.

The current legislation of Georgia does not provide for liability of legal persons for corruption offences. The draft amendment of the Criminal Code mentioned in the section of Recommendation 5 addresses this issue, but is not adopted yet.

Georgia is partially compliant with this recommendation.

Recommendation 11

Adopt clear, simple and transparent rules for the lifting of immunity and limit the number of categories of persons benefiting from immunity (e.g. candidates for the Parliament) or the scope of immunity for some categories (e.g. judiciary) to ensure that it is restricted in applications to acts committed in the performance of official duties.

The Government has made substantial changes to its legislation to cut down the number of categories, immune from criminal prosecution. The category of elected officials, prosecutors and investigators do not enjoy immunity any more. Article 9.3 of the Criminal Procedural Code of Georgia explicitly states that the immunities can not be used as a shield against criminal liability. On April 24, 2004 paragraph 2 of Article

52 of the Constitution of Georgia was amended, allowing the arrest of a Member of Parliament if he/she is caught in the process of committing a crime.

The immunity of two Members of Parliament was lifted after a request from the Prosecutor's Office. However, the procedure for lifting the MPs immunity seems to include an element of excessive scrutiny of the judicial decision by a political body. The Prosecutor's Office can not appeal to the Parliament in an open plenary session; instead it must submit it to a Parliamentary Committee, which may pass the case further to the Bureau, subject to its discretion.

Georgia is largely compliant with this recommendation.

Recommendation 12

Ensure effective international mutual legal assistance in the investigation and prosecution of corruption cases.

Georgia is party to several multilateral treaties in the area of mutual legal assistance. The Government of Georgia has supplied a list of agreements in the field of mutual legal assistance, which cover the entire spectrum of criminal justice. After the mission, the Georgian authorities have submitted statistics on international mutual legal assistance requests in the investigation and prosecution of corruption cases. However, it is difficult to assess the effectiveness of these requests. In the area of asset recovery, there is no specific rule in CPC dealing with execution of foreign requests to freeze, seize and confiscate. However such actions are possible on the basis of a court order obtained directly on the basis of a foreign request.

Georgia is largely compliant with this recommendation.

III) Transparency of the Civil Service

Recommendation 13

Introduction of a system of merit-based appointment and promotion in the civil service is needed.

One of the priorities of the new Government of Georgia was the introduction of a system of merit-based appointment, promotion and demotion of civil servants. Salaries were increased and the working conditions improved. Specific measures had been carried out to harmonize wage levels across the Public service organizations. Since January 2005 the minimal salary in the public sector became equal to the existence minimum, as promised by the Government at the beginning of 2004. The prestige of the public service was raised.

The new Government introduced active reforms in the area of public administration since it gained power in late 2003. The reforms dealt with difficult institutional issues of central government restructuring and massive re-staffing, as well as streamlining administrative management practices in operation.

Georgia undertook a number of institutional steps to re-organize the civil service, to ensure transparency and openness. In 2004 the existing Public Service Law was amended and a Public Service Council (PSC) and Public Service Bureau (PSB) have been established. The PSC is a high level policy advisory body chaired by the President of Georgia, while the PSB is an operational unit. It is responsible for the elaboration and implementation of a state public administration/civil service policy (to be approved by the Council)⁴.

DFID, the Netherlands, SIDA and the World Bank currently fund a Public Sector Reform Support Project (PSRSP). The development objective of the PSRSP is: to promote good governance through strengthening the institutional capacity of key agencies; to support the effectively and efficient use of the public resources; to support the Government's development priorities through improving the accountability of public finance. One of the outcomes of the project is the Human Resources Management Information System (HRMIS).

The current Public Service Law has some shortcomings that may pose corruption risk and allow for favouritism or nepotism, such as lack of clearly specified procedures for merit-based appointment of public servants; lack of additional requirements referring to additional qualifications; Lack of specification with regard to the certification committees' status and main rules of work and evaluation; lack of special regulatory system for written and oral exams during the competition;

Although the Law of Georgia on Public Service distinctly states that recruitment in public service shall be carried out through a selection procedure, the procedures should be described by the generally applicable legal act including the mechanism for provision of information about a person applying for a position in the state or municipal agency.

This means the provision of objective information about a person applying or holding a position in the state or municipal agency, which has been legally collected and held by law enforcement and control institutions. Information should be provided to the head of the agency or a state politician, who has appointed or is appointing the civil servant in question, which shall be carried out in compliance with the

⁴ According to the Law on "Public Service", the PSC directs and coordinates the implementation of the stated complex and long term activities and drafts decisions, analyses information and administers decisions of the President as well as coordinates activities related to public sector management.

procedure prescribed by law on the request of the head of the agency concerned or a state politician or on the initiative of the law enforcement or control institutions.

The development of criteria for the selection and recruitment is under the responsibility of heads of institutions, and differs from one institution to another. The current legislation does not effectively regulate the HR management to ensure impartiality and transparency in the recruitment process.

Georgia is largely compliant with this recommendation.

Recommendation 14

Prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Consider elaborating specific Codes of Conduct for public officials and work on their dissemination.

As the legislative basis for civil service stands today, the ethical norms for civil servants are scattered throughout laws concerning “Conflict of Interests and Corruption in Civil Service” and “Public Service Law”. There are specific ethical norms for officials in some institutions, which set additional requirements according to the specific fields of service: “Judicial Ethics Code”, Code of Ethics for the Servants of the Prosecutors Office “Ethics and Behaviour Code for Georgian Judicial Branch Officials”, Rules for officials of the Ministry of Finance and codes for customs officials. Violating these rules necessitates disciplinary punishment or opening of an administrative or criminal case.

Currently, there is no general code of conduct for the public service, obligatory for all the public servants, with a clear system of sanctions for its violations.

Georgia is partially compliant with this recommendation.

Recommendation 15

Strengthen the Public Service Bureau to improve the observance of legal requirements in the civil service at large. Provided that the Public Service Bureau is strongly committed to upholding professional and legal standards in the civil service, it should be vested with powers to enforce legislation, in particular with the help of disciplinary actions.

The functions of the Public Service Bureau are stipulated by Article 130 of the Law on Public Service. Pursuant to Paragraph 1 of this Article “PSB shall study and analyse the field of public service and submit reports to the President on the enforcement of respective normative acts; coordinates all the activities, related to the HR management of the Georgia government bodies; supports methodologically and coordinates the training of the public servants.

The Law on “Public Service” establishes the PSB. This status of the PSB provides sufficient ground for institutional strengthening and capacity enhancement of the PSB.

The PSB has no authority to initiate disciplinary actions if professional and legal standards in the civil service have been violated. The Georgian authorities should increase capacities of internal control bodies, such as General Inspections.

Georgia is partially compliant with this recommendation.

Recommendation 16

Ensure a more effective enforcement of the Law on Conflict of Interest and Corruption. Consider strengthening the existing institution that monitors its implementation and provide the institution with the authority to verify the accuracy of submitted asset declarations. All asset declarations have to be available to the public.

There is currently no structure in Georgia to monitor effectively the conflict of interest legislation. The function that receives and maintains the official's property and financial declarations is the Information Bureau of Public Officials Property and Financial Status under the Ministry of Justice. The bureau is responsible for the timely submission of asset declarations by public officials and their storage. Under the current legislation, in order to correctly fill in the declarations, this bureau is authorized to check declaration data and to act upon the information possessed in accordance with the legislation.

The Bureau maintains statistics on the number of officials that submitted declarations and the number of persons that violated these requirements. The declarations are submitted between April 1st and June 1st. 1571 senior officials submitted their declarations in 2005.

There is no mechanism for studying, analysing, monitoring and advising. The legislation does not require or empower the relevant agencies to analyse if the information submitted in the property declaration. Non material benefits, such as intellectual property rights, and beneficial ownership do not have to be declared.

The forms for the declarations are quite complicated. The current institutional capacities are not sufficient to fully implement its duties.

Georgia is partially compliant with this recommendation.

Recommendation 17

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 (basic) regulations on the protection of "whistleblowers".

Development and introduction of special witness protection program is foreseen by the Article 4.3 of the National Anti-Corruption Strategy. Article 5.6 of the draft Anti-corruption Strategy Action Plan calls for a witness protection system by 1 May 2006, which should ensure security of the witnesses and their families, real guarantees should be given to the individual persons as well as to their family members who provide law enforcement bodies with significant information and testimonies. A Parliamentary Committee jointly with other governmental structures and NGOs are in process of creation of special legislation in this area. The Operational Department of the Ministry of Internal Affairs reported to have a witness protection system in place. This service should provide protection to persons, co-operating the law enforcement.

Although the intention to build up a witness protection system is welcomed, it does not cover the recommendation to 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. There was no internal campaign to raise awareness of those measures among civil servants. There are no regulations on the protection of "whistleblowers".

Georgia is not compliant with this recommendation.

Recommendation 18

Review the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of the legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.

On April 20, 2005 the Parliament of Georgia adopted the new Law #1388 “On Public Procurements” which entered into force on January 1st of 2006. The open tender principle has been adopted as a basic method for public procurement and the closed tender method has been abolished. Procurement agencies gained rights to establish their own qualification requirements and provisions regarding the conflict of interests. According to this legislation, the new “Order on Implementation of Public Procurements” should be prepared by the State Procurement Agency under the Ministry of Economy within one month. This Agency was established as a result of reorganization of State Procurement Department of the Ministry of Economy of Georgia. According to the Article 4 of the new Law, the main functions of the Agency are coordination, monitoring, analysis of public procurements, developing legal basis, establishing databases, collecting information of potential suppliers, etc. Georgian Chamber of Control supervises the use of public funds and other state property. The Chamber of Control is independent in its activities and is accountable to the Parliament of Georgia.

This new piece of legislation is welcomed; however, there is room for improvement in the areas of blacklisting of the bidders/companies that had been sanctioned for corruptive practices; additionally:

- Suppliers may be demanded to issue a declaration that he did not give and has no intention to give an undue advantage to win the bidding (“Honest Declaration of the Supplier”):
- The officials participating in the process of the preparing the tender documents may be distinct from the officials evaluating the suppliers on the bidding process;
- There are no provisions in the Law regulating the requirement to assess the set evaluation criteria and other conditions in the procurement documents on the anticorruption point of view.

Georgia is largely compliant with this recommendation.

Recommendation 19 and Additional Recommendation 7

Ensure that the access to information legislation limits discretion on the part of the public officials in charge as to whether the requested information should be disclosed, and to limit the scope of information that could be withheld. Consider steps to reach out to both, public officials as well as citizens to raise awareness about their responsibilities and rights under the access to information regulations.

Ensure the implementation of outstanding January recommendations in the area of transparency of civil service and financial control issues.

Georgian legislation includes specific regulation concerning provision of public information. Freedom of Information Chapter of the General Administrative Code (adopted on June 25 1999) provides definitions on public information, commercial, personal, professional, and state secret, as well as procedures as to how and within which time period should the public information be provided, and what the grounds are for

refusing public information. Moreover, it also includes provisions as to how the decision on refusal of public information can be appealed by an administrative procedure as well as in courts proceedings.

Furthermore, officials responsible for provision of public information failing to implement their official obligations, are liable to disciplinary sanctions according to the Law on Public Service. In addition, Article 153 of the Criminal Code of Georgia provides that “Unlawful interference with the right to receive and impart information, which resulted in significant damage or using powers of public office, is punished by the fine or correctional labour during one year, or deprivation of liberty of up to two years, with the right of removing the right of occupying office or undertaking professional work for up to three years or without”. The failure to provide public information, resulting in severe damage, is a crime punishable by Georgian law.

Advertising campaigns informed citizens of their rights to get information from civil service. Some important issues are covered by the National Anticorruption Strategy to increase transparency of activities of the public service, as well developing the electronic system of dissemination of public information.

The existing problems in the implementation of the Freedom of Information legislation are described as follows.⁵

Failure of public agencies to provide public information in due time limits: The law provides that public information should be provided immediately, unless the information requires processing or should be accumulated from different agencies, in which case information should be supplied within 10 days after the request of information. When the immediate provision of information is not possible, the agency should inform the requesting person within 3 days after receiving the request. However, there are reports that this information is rarely given. Only in rare exceptional circumstances, information is provided immediately, upon request and usually, in cases where the requesting person uses personal contacts or influence.

Failure of public information to provide public information: There are a number of agencies that decline to provide information not by an official refusal, but through failing to provide any response to the request. In such cases, the requesting person does not receive any kind of explanation on his request upon passage of any time limit.

Refusal to register request of public information: Certain public agencies decline to provide public information not through a direct refusal, but through refusing or avoiding registering the request of public information. In certain cases, technical reasons are brought as an excuse, e. g such as lack of copying equipment, absence of technical personnel who are tasked with registering such applications etc.

Refusal to provide public information: The General Administrative Code contains an exhaustive list of grounds when provision of public information can be refused, such as when information contains personal, commercial, professional and state secret. In cases when the State agency provides an official letter declining to provide public information, it contains an official justification, based on regulations established in the law. The questions whether such refusals are in fact conforming to the requirements of the legislation have to be decided by the courts, where such refusals can be appealed. Such instances, when public agency officially refuses to provide public information, substantiating reasons, are comparatively scarce.

Georgia is largely compliant with this recommendation.

⁵ Systematic problems in implementation of Freedom of Information legislation in Georgia in 2004/2005 and suggestion for improvement, Ana Dolidze, (OSCE publications, November 2005).

Recommendation 20 and Additional Recommendation 8

Review the Tax Code to make compliance with its provisions simpler, and to reasonably limit the discretion of tax officials.

Further steps towards liberalisation of business environment should be promoted. Such steps could include, for instance, a diagnostic of administrative barriers for business activities.

Significant achievements have been made in Georgia to simplify the tax regime and to limit the discretion of tax officials. The new Tax Code entered in force in December 2004 and stipulated the reform of the tax legislation aimed at improving tax administration and promoting business development.

Other important pieces of legislation include the laws on “Certification of Production and Services”, “Ensuring Common Standards of Measuring” and “Standardization”, “Privatization of state-owned agricultural lands”, “Free Trade and Competition”. In order to simplify the licensing and permission system and to reduce administrative barriers the new “Law on Licensing and Permissions” has been adopted. Most of the measures are aimed at reducing the administrative burden on businesses, including reduction of taxes, licensing regimes, permits and registrations; introduction of one-stop shops, abolishment of the customs duties; at some cases disbanding whole structures, perceived as corrupt. Thus the economic incentives for corruption disappear, effectively eliminating the very need to corrupt.

The new Tax Code reduces the types of taxes to 7 (social, profit, property, income, VAT, excise and gambling tax). The majority of tax rates has been reduced, for example the social tax from 33% to 20% or the VAT from 20% to 18%. The income tax has been reduced to 12%. Decreased quantity and rates of taxes as well as simplified tax administration will diminish motivation and probability for hiding taxes and corrupt deals.

Georgia is fully compliant with this recommendation.

Recommendation 21

Ensure necessary conditions for the effective functioning of the Georgian Financial Intelligence Unit (FIU) and adequate resources and training of the FIU staff.

The Financial Monitoring Service of Georgia (FMS) is Georgia’s Financial Intelligence Unit (FIU). It was established at the National Bank of Georgia by the Decree of the President of Georgia and became fully operational on 1 January, 2004. The FMS of Georgia consists of four departments: Legal Department, Methodology and International Cooperation Department, Data Collecting and Processing Department and Department of Information Analyses. The National Bank of Georgia provides office space and other infrastructure support. The IT department of the National Bank of Georgia provides important project management and integration support to the FMS for the purposes of creating an effective information system.

During 2004 and 2005, the number of staff was increased from 7 to 32. Since its establishment in 2004, the FMS received over 32000 threshold transaction and suspicious transaction reports.

The FMS staff have been trained thoroughly, on the national and international level and with the engagement of a number of donors. It enjoys a high standing in the community of FIUs and has become a member of the Egmont Group in June 2004. It exchanges regularly information with its foreign counterparts. Domestically, 30 cases of suspected money laundering transactions have been disseminated to the Prosecutor General’s Office. Many of these cases were related to predicate offences in the area of

corruption. The Prosecutor General's Office highly appreciated the co-operation with the FMS. All agencies acknowledged their strong support for the FIU within the existing framework.

The FMS has, within the Central Bank, all necessary conditions for an effective functioning of an FIU. It has adequate resources and a highly motivated, qualified and trained staff. It is important the current location and framework is maintained to ensure a continuation of this successful progress.

Georgia is fully compliant with this recommendation.

CONCLUSIONS

Recommendation	Compliant (fulfilled)	Largely compliant (minor shortcomings, large majority fulfilled)	Partially compliant (some substantive action)	Non- compliant (major shortcomings)
National Anti-Corruption Policy, Institutions and Enforcement				
1. Review and update of anti-corruption policy		+		
2. Coordination of anti-corruption policy		+		
3. Anti-corruption prosecution department		+		
4. Guidelines for exchange of information and cooperation between law-enforcement bodies			+	
Legislation and criminalisation of corruption and the related money-laundering offence				
5. Harmonisation of system of criminal, administrative and disciplinary corruption offences				+
6. International standards for active and passive bribery, accepting prohibited gifts, sanctions for active bribery and statute of limitation				+
7. Definition of an official			+	
8. Bribery of international and foreign officials				+
9. Confiscation of proceeds, provisional measures and unexplained wealth		+		
10. Responsibility of legal persons for corruption			+	
11. Categories protected by immunities, functional immunity, rules for lifting immunity		+		
12. Mutual legal assistance		+		
Transparency of Civil Service				
13. Merit based appointments and promotion		+		
14. Practical guides on corruption, Codes of Conduct			+	
15. Civil service regulations and standards, disciplinary actions			+	
16. Control of assets declarations			+	
17. Protection of whistleblowers				+
18. Public procurement		+		
19. Access to information legislation		+		
20. Liberalisation of business environment	+			
21. Financial intelligence unit	+			

ANNEX I: LIST OF PARTICIPANTS TO THE ON-SITE VISIT

On-site visit to Georgia, 12 – 16 February 2006

Leader of the team of examiners:

- Daniel Thelesklaf (Switzerland)

Team of examiners:

- Constantine Palicarsky (Bulgaria)
- Aida Raudoniene (Lithuania)
- Elnur Mussaev (Azerbaijan)

Secretariat:

- Olga Savran, OECD

Government bodies, other public bodies:

- State Minister on Reforms Coordination
- General Prosecutor's Office
- Ministry of Internal Affairs
- Ministry of Finance: Financial Police, Tax and Customs
- Central Bank: Financial Monitoring Service
- Ministry of Economic Development:
- Procurement Agency
- Chamber of Control
- Ministry of Justice
- Bureau for Information on Assets and Finances of Public Officials
- Ministry of Education and Science, joint with:
- Ministry of Labour Health and Social Affairs
- Ministry of Environment Protection and Natural Resources
- Ministry of Energy
- Public Service Bureau

- Parliament

Non-governmental organisations:

- Transitional Crime and Corruption Center (TRACCC)
- American Bar Association, Central Eastern European Legal Initiative (ABA CEELI)
- Georgian Young Lawyers Association (GYLA)
- Open Society Georgia Foundation (OSGF)
- Association of Young Economists of Georgia (AYEG)
- Liberty Institute
- Business Ethics Association
- Transparency International Georgia

International and foreign organisations:

- USA
- UNDP
- World Bank
- EBRD
- EU
- OSCE
- SDC
- GTZ
- The Netherlands
- DFID

ANNEX II: EXCERPTS FROM RELEVANT LEGISLATION

List of Annexes – will be included in the publication, available on request

1. Article 52 of the Constitution on Immunities
2. Code of Administrative Procedure
3. Law on State Secrets
4. The Constitution
5. Law on Public Procurement (Russian)
6. Law on Public Service (Russian)
7. General Administrative Code
8. Statistics on cases
9. Criminal Procedure Code, articles 37 and 44
10. National Anti-Corruption Strategy
11. National Anti-Corruption Strategy – Action Plan
12. Medium-term action plan of the government
13. Alternative NGO report
14. Law of on Conflict of Interests and Corruption in Public Sector
15. Law of on Public Service
16. Criminal Code
17. Other submissions

ANNEX III: CONVENTIONS AND TREATIES ON MUTUAL LEGAL ASSISTANCE AND EXTRADITION TO WHICH GEORGIA IS PARTY

1. Treaty between Georgia and Bulgaria on the Cooperation in Criminal Matters
2. Treaty between Georgia and Kazakhstan on Legal Assistance in Civil and Criminal Matters
3. Treaty between Georgia and Russian Federation on Legal Assistance in Civil, Family and Criminal Matters
4. Agreement between Government of Georgia and Government of the Russian Federation on the Cooperation and Mutual Legal Assistance in Cases Involving Illegal Financial Operations. Legalization of Illicit Incomes, and Financial Operations Related to it
5. Agreement between Georgia and Azerbaijan on Legal Assistance in Civil, Family and Criminal Matters
6. Agreement between Government of Georgia and Government of Armenia on Exchange of Information in Criminal Matters
7. Agreement between Government of Georgia and Government of Turkmenistan on Exchange of Legal Information
8. Agreement between Government of Georgia and Government of Turkmenistan on Legal Assistance in Civil and Criminal Matters
9. Agreement between Government of Georgia and Government of Arab Republic of Egypt on Cooperation in Fights against Crime.
10. Agreement between Government of Georgia and Government of Latvia on Fight against Terrorism, Drug Trafficking and other Organized Crimes
11. Agreement between Georgia and Ukraine on Mutual Legal Assistance in Civil and Criminal Matters
12. Agreement between Government of Georgia and Government of Uzbekistan on Cooperation in Fights against Crime
13. Agreement between Georgia and Bulgaria on Mutual Legal Assistance in Criminal Matters
14. Agreement between Government of Georgia and Government of the United States on Cooperation in Promotion and Strengthening of Rule of Law
15. Agreement between Georgia and Greece on Legal Assistance in Civil and Criminal Matters
16. Memorandum of Understanding between Ministry of Security, Ministry of Interior, Ministry of Incomes and Revenues of Georgia and Police of United Kingdom of Great Britain and Northern Ireland, Royal Prosecutor's Office of England and Wales, Financial and Economic Crimes Office, Her Majesty's Tax Office, National Unit of Crime, National Criminal Investigative Unit, on Fight against Serious Crimes, Organized Crimes, Illegal Drug Trafficking and. Legal Assistance in other Similar Crimes of Mutual Interest.