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

GEORGIA

UPDATE ON ACTIONS TO IMPLEMENT RECOMMENDATIONS

*Submitted by the Government of Georgia
for the third review meeting, 13-14 December, OECD, Paris*

BACKGROUND

During the 5th Annual Meeting of the Anti-Corruption Network for Transition Economies (ACN) in Istanbul, Turkey in September 2003, Armenia, Azerbaijan, Georgia, the Russian Federation, Tajikistan and Ukraine endorsed a new regional anti-corruption Action Plan; the Kyrgyz Republic has joined in November 2003. An Advisory Group was established to oversee the implementation of the Action Plan. The ACN Secretariat, based at the OECD Anti-Corruption Division, provides support for the implementation of the Istanbul Action Plan.

In September, 2003 the Advisory Group endorsed the Terms of Reference for the analytical stage of the Istanbul Action Plan. This stage consists of a review of the existing legal and institutional frameworks for fighting corruption in the Action Plan countries. To this end, the countries agreed to submit self-assessments in the form of Status Reports for international review. To help the countries in developing their Report, the Secretariat prepared Guidelines.

Georgia, Tajikistan and Ukraine were reviewed at the first review meeting in January 2004; Armenia and Azerbaijan were reviewed at the second review meeting in June 2004; Georgia has also presented its updated report at the second meeting. The recommendations endorsed at the review meetings are available at the ACN site www.anticorruptionnet.org. The Kyrgyz Republic will be reviewed at the third review meeting in December 2004.

In June 2004, the Advisory Group agreed that the implementation of the recommendations will be formally reviewed in 2006-2007. The Group agreed that in the period before the formal review monitoring of national actions to implement the recommendations will be carried out.

The monitoring will be based at the updates of the Istanbul Action Plan countries about their national actions to implement the recommendations. The first round of national updates was organised already in June 2004; its results were summarised in a report, available at the ACN site. To further improve the monitoring procedure, the Steering Group agreed that the updates should follow a format proposed by the Secretariat. They will be presented at the Advisory Group meetings for discussion every 6 months and will be made public. Participation of civil society in the monitoring will be welcome.

INSTRUCTIONS FOR DRAFTING UPDATES

Georgia is invited to provide a brief description of national actions carried out to implement the recommendations, since their endorsement in January 2004, and taking into account the addendum endorsed in June 2004. Georgia is invited to provide information for each “specific recommendation” point by point. If no action was carried out on a specific point, it should be stated clearly as “no action”.

Information provided in the updates should be brief and concise, not more than one paragraph for each recommendation. Copies of the relevant documents demonstrating the actions should be attached to the report, when available.

Additional information about other anti-corruption actions carried out in Georgia, which are not addressed by the recommendations, but which are covered by the Guidelines for the elaboration of self-assessment Status Reports, and any other information, which Georgia considers relevant for the monitoring, should also be provided in the report.

The national update should be submitted to the ACN Secretariat in English or in Russian, by 26 November 2004. National delegations will be invited to present these updates at the joint review and Advisory Group meeting in December 2004.

Recommendation I

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 report on the new anti-corruption strategy of Georgia, which was elaborated in the Anti-Corruption Policy Coordination Department of the National Security Council of Georgia, with active participation of non-governmental organizations, is adopted by the Government of Georgia and approved at the meeting of donor countries and the World Bank, which was held in Geneva, in June.

Today, the work is underway, with the participation of representatives of non-governmental organizations and World Bank experts, for the elaboration of the anti-corruption strategy of Georgia and concrete action plan. This document is due to be ready for Spring of 2005.

Recommendation II

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.

With a view to implementing the present recommendation, by order of the Procurator General of Georgia of October 10, 2003, the Special Unit for Criminal Prosecution of Legalization of Illegal Incomes was created as a structural unit within the General Prosecutor's Office.

According to Order No 31-M (June 8, 2004) of the Procurator General of Georgia, the Investigation Services of the Ministers of Finance, Internal Affairs and State Security are to ensure the immediate submission of the cases, which are stipulated by the Regulations of the Special Unit for Criminal Prosecution of Legalization of Illegal Incomes.

In addition to the aforesaid, the Commissions of the Parliament of Georgia, Chamber of Control of Georgia and Financial Monitoring Service, created under the National Bank on the basis of the Law of Georgia "On Prevention of Legalization of Illegal Incomes" submit information and relevant materials to the Unit.

The Special Unit itself, with the help of specialists or through assigning tasks to relevant services, elicits the criminal facts, responds to the notifications received from the mass

media, citizens and other sources, collects the relevant criminal cases from the investigative agencies and launches criminal investigation.

The competence of the aforesaid Unit is stipulated by Article 2 and includes the appropriate response and actions towards the facts of legalization of illegal incomes and crimes – bribery, receiving of gifts prohibited by the law, appropriation and embezzlement of another’s property, abuse and exceeding the limits of official powers, illegal production activities, commercial bribery, non-payment of taxes, concealment of incomes and other deliberately committed crimes - committed by the present or former public officials.

Prosecutors of this Unit within the last 6 months took part in instituting proceedings and investigating different criminal cases committed by number of officials. Among those are criminal proceedings instituted against the former Head of the Georgian Railways, the former Director General of the National Energy Regulatory Commission of Georgia, the former Head of Tax Department, the former Head of Inspection of Large Tax Payers, Director of Customs Department and Director-General of one of the largest telecommunication company.

The cases investigated by the aforesaid Special Unit and submitted to the Court are considered by specially appointed judges; their appointment was carried out by the Chairman of the Supreme Court. At the same time, according to relevant indications the consideration of cases will be implemented within the shortest possible time.

The Special Unit also took part in the process of reforms, carried out in the prosecutor’s office; in particular, they participated in elaboration of changes to be introduced to the Organic Law of Georgia on Prosecutor’s Office, Criminal Procedural Code of Georgia and other normative acts.

The Special Unit consists of 16 officials, where 11 are investigators and 5 technical (including 2 specialists – a financier and a programmer) staff.

Recommendation III

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.

Every six months each Law Enforcement Body provides statistical data concerning criminal offences to the State Department of Statistics, which publishes this data on a monthly basis in the Statistics Bulletin as well as on its web-site (www.statistics.ge). Besides mentioned, each case of high-rank officials revealed in a corruption-related criminal activity is widely covered by all types of media.

Recommendation IV

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;

There is no further information on these recommendations.

Recommendation V

Ensure the fulfilment of recommendations endorsed for Georgia under the first evaluation round by Council of Europe's Group of States against Corruption (GRECO);

Georgian authorities, in close co-operation with NGO-s, have fulfilled great part of GRECO recommendations. This was confirmed at its 21st Plenary Meeting in Strasbourg.

Recommendation VI

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 newly established confiscation regime is implemented by the special unit of General Prosecutor's office of Georgia. Unit is under supervision of the Prosecutor General itself. All cases related confiscation heard in courts are covered by the media. Defendants have all rights provided by legislation to prove legal origin of their property at the trial personally or throughout their representatives (attorneys).

Recommendation VII

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

I.

According to the Georgian legislation, admittance to the public service is regulated by the Law of Georgia on Public Service. In compliance with Article 29 of this Law, appointment on the post is carried out with due regard to contest results. The decision on announcing a contest is made by the head of the respective government body or a local self-governing body. Contests should be announced publicly and its terms and conditions should be published in a newspaper. Applicants can submit an application two weeks after the announcement is published.

In accordance with Article 33 of this Law, the contest-attestation commission is in charge of the evaluation of applicants and whether each candidate meets the standards required for the specific vacant position. This commission consists of members of the trade unions and independent experts. According to the same law, the commission is entitled to propose or refuse to propose a candidate for a vacant position. In case of selecting a candidate, the head of the contest-attestation commission or in case of his absence, other authorized member of the commission, shall inform each candidate, in writing, about the decision no later than 2 days from the adoption of this decision.

In accordance with Article 30 of the Law of Georgia on Public Service, the following positions can be filled through direct appointments:

1. Officials to be appointed or elected by the President or Parliament of Georgia;
2. Deputy ministers, minister's assistants and advisers;
3. Temporary substitutes for positions;
4. Acting officials for the vacant positions to be filled by contest;
5. In case of promotion;
6. Reserve employees.

As per paragraph 2 of Article 11 of the same Law, the Georgian Law on Public Service does not apply to judges, prosecutors and police officers. Their selection and appointment to vacant positions is subject to the special laws.

The rule for appointing or electing a judge is regulated by the Georgian Constitution, the Georgian Organic Law on General Courts and the Georgian Organic Law on the Supreme Court of Georgia. An applicant to a judge's position has to meet the following requirements:

1. Citizenship of Georgia
2. Capacity to act
3. Age of 30 years
4. High legal education
5. 5 years of working experience in the field
6. Knowledge of the state language
7. Passing of a qualification exam (the present as well as former members of the Constitutional Court are exempt from the duty of taking judges' qualification exams. The President of Georgia can propose to the Parliament a candidate for the position of Supreme Court judge, who has not passed judges' qualification exams but is considered to be a prominent specialist of law).

Persons with previous convictions, as well as those dismissed from judge's position due to disciplinary breach, assumption of the position or implementation of the activity incompatible with a judge's status, shall not be appointed to the position of Judge. In district (city), regional and high courts of Abkhazia and Ajara, failure to undergo a special training course within the fixed terms is also the reason not to appoint a person to a judge's position.

Judge's positions in the district (city), regional and high courts of Abkhazia and Ajara may be filled in by the rule of contest. The contest is held by the High Council of Justice of Georgia.

A candidate for judge's position shall be selected on the basis of his/her qualification exam results, business and moral reputation, professional background and physical state.

The High Council of Justice of Georgia shall submit the selected candidate to the President of Georgia, who shall issue a decree on the appointment of judge. A candidate appointed to a judge's position can commence to the job only upon the completion of a special training course.

The nomination of judges of the district (city) courts functioning on the territories of the Autonomous Republics of Abkhazia and Ajara shall be subject to a written consent of the representative bodies of these autonomous republics.

The Chair and members of the Supreme Court are elected by the Parliament of Georgia upon the nomination of the President of Georgia for a period of 10 years.

The rule for appointing a prosecutor or an investigator of the Prosecutor's Office is prescribed by the Constitution of Georgia and the Organic Law on the Prosecutor's Office. In accordance with this law, applicants to the positions of prosecutor or investigator of the Prosecutor's Office have to meet the following requirements:

1. Georgian Citizenship
2. High legal education
3. Knowledge of the state language
4. Training in the Prosecutor's Office for a period of six months up to a year.

Applicants meeting one of the following criteria shall be exempt from the duty to take training in the Prosecutor's Office:

- a) *to have at least one year's experience of working as judge, investigator or lawyer;*
 - b) *to have a scientific degree in the field of law;*
 - c) *to have judge's qualification exams passed;*
 - d) *to have at least 3 years of working record in the field.*
5. Passing the qualification exam. General Prosecutor of Georgia, prosecutors of the Autonomous Republics of Abkhazia and Ajara, as well as persons having passed qualification exam for judges or holding scientific degrees in the field of law are exempt from the duty to pass the qualification exam.
 6. The oath of an officer of the Prosecutor's Office implies that he/she with his/her business and moral qualities as well as the health state can fulfill the duties imposed on him/her.

Admittance to the Prosecutor's Office shall be denied to:

- a) Persons with previous convictions;
- b) Persons suffering from addiction to alcohol, drugs, toxic substances, psychiatric or other grave chronic diseases;
- c) Persons declared by the court to have no capacity or to have limited capacity;
- d) Persons dismissed from other work-places on discrediting basis.

II.

New Tax Code is being heard by the Georgian Parliament. This code will simplify procedures, is understandable and decreases taxes as well as limits the discretionary authorities of tax service official's.

Recommendation VIII.

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

Adoption of a new Tax Code can be considered as a significant step in liberalization of business environment.