



**Eastern Partnership – Platform I
Panel against Corruption – Bridge Activity Project**

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**Reviewing processes of good governance and anti-corruption frameworks in EaP countries
(EaP-Bridge)**

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Information contained in this report has been compiled by independent Experts and Secretariat of the Council of Europe on the basis of the replies received from questionnaires and other forms of communication with EaP Partner Countries.

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1 EXECUTIVE SUMMARY

The identified needs addressed in the current report are the result of EaP Bridge Activities carried out from August-November 2010. They reflect a review and discussions and which were finalised during the 1st and 2nd EaP Expert Panel against Corruption held in Brussels and Warsaw in autumn 2010, which addressed issues and needs articulated by EaP partner countries.¹

These EaP Bridge activities were a stocktaking exercise concerning past, ongoing, and planned anti-corruption reforms in Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. This stocktaking exercise – which was led by the Platform’s 1 Task Force and the Council of Europe (Economic Crime Division) – has been part of these countries’ commitment to the European Neighbourhood Policy (ENP) process, launched in 2009, in which all countries, albeit to various extent, agreed to improve anti-corruption legislation, and good governance reforms. However, while ENP has provided a new framework to the advancement of these reforms, anti-corruption reform processes in all six participating countries have a decade-long history already.

Adherence to the international conventions has set the standards for the direction of legislative reform, and progress on modernising legislation in accordance with these standards has been impressive. However, levels of implementation of this legislation have been uneven at best, a finding that has been confirmed by reports of national and international think-tanks and NGOs. Decisive application of the legal framework - although often ascribed to the lack of human and financial resources - is evolving to become the litmus test for the political will of the ENP countries to tackle corruption in serious. It certainly is the greatest challenge ahead in establishing a functioning anti-corruption regime based on the rule of law.

Five of the six countries are implementing, or designing, their second generation of Anti-corruption Strategies. Level of detail, focus, and resources for implementation of these key policy documents vary. What is common, though, is that despite these strategies not being the first of their kind, only one country (Georgia) has been able to achieve noticeable and convincing success in some sectors that had been deeply afflicted by corruption. This, again, is less a reflection of the quality of strategies themselves, as it is of a need to more convincingly demonstrate the political will, and thus create the preconditions, for successful implementation.

¹ The proposed CoE Facility contains four components: 1) Electoral Standards; 2) Support to the Judiciary and respect for Human Rights in the delivery of Criminal Justice; 3) Support measures to fight against serious forms of Cybercrime; 4) Good governance and Fight against Corruption.

A positive development is that the monitoring of the success of anti-corruption strategies does, in all countries (with the exception of Belarus), foresee a role for civil society, though there is a noticeable lack of involvement of the private sector. However, the impact of this participation has been uneven, at least in part because of the specific arrangements in place. As a result, NGOs have criticised that they are cast to fulfil a mere symbolic role, and that their voice is not really heard during implementation.

Except for Belarus, countries' anti-corruption efforts, including their anti-corruption strategies, reflect the consensus that there has to be a mix between enforcement, prevention, and education measures to advance anti-corruption reforms.

With regards to specialised anti-corruption agencies, there is no one path that is followed by all six countries. While Belarus has no dedicated body for anti-corruption issues, Armenia, Azerbaijan, Georgia, Moldova, and Ukraine have opted for various models of anti-corruption structures/coordinating commissions, with various locations in the political structure and different reporting lines. However, the lack of a clear mandate and insufficient human and technical resources has raised concerns in most countries.

So, while substantial efforts have been invested to create the formal legislative, policy, and institutional preconditions to achieve success in decreasing the levels of corruption in the ENP countries, implementation across all three vectors remain, to date, the single biggest challenge to achieving this objective.

2 INTRODUCTION: EAP COUNTRIES AND PROCESSES

The Eastern Partnership (EaP) was launched by the EU at a Summit meeting with the Eastern European partners on 7 May 2009 in Prague. It sets out an ambitious path for deeper relations with Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine, through both bilateral and multilateral dimensions.

In its second meeting, the Eastern Partnership Platform 1 adopted its Work Programme for 2009-2011, which mainly focuses on cooperation in the following areas: Democratic Governance; Improved Functioning of the Judiciary; Public Administration; Fight against Corruption; a Flagship Initiative on Integrated Border Management; and a Flagship Initiative on Prevention, Preparedness and Response to Natural and Man-made Disasters.

The Democratic Governance area links three major components: the Judiciary, the Public Administration, and the Fight against Corruption. In view of this, and also of the on-going procedures under the recently established **Panel on the Fight against Corruption** under

EaP's Platform 1, it was agreed that it is necessary that a Panel Review² on the existing reforms and project results deployed in the region take place, initially as a stock-taking exercise and peer review through exchange of good practices in the region. Therefore, the proposed CoE Facility is to ensure technical assistance and advice through regional cooperation and multi-country activities in order to sustain current reforms and further strengthen capacities in the region with regard to good governance and measures against corruption. To this end, a set of "Bridge Activities" – aimed at initiating action in this direction, and in support of the preparatory work of the Panel against Corruption under the EaP Platform 1 – was carried out over a period of 4 months, during which, among other things, participation of EaP partner countries in designing a Workplan of activities based on priority areas was ensured.

Being a key actor in the thematic area, and in the EaP region, the Council of Europe, and more specifically the DGH (Directorate of Cooperation), is well-positioned to carry out specifically tailored activities against corruption. Co-operation with the Council of Europe is thus a key element for further progress in the relations between the EaP countries and the EU.

3 ARMENIA

3.1 Development of Anti-corruption and Good Governance Reforms

The country joined the Council of Europe's Group of States against Corruption (GRECO) in January 2004. Armenia ratified the Council's Civil Law Convention against Corruption in 2005, and the Criminal Law Convention against Corruption in 2006. Also in 2006, the country ratified the Additional Protocol to the Criminal Law Convention. Armenia has undergone the First and Second Round of Evaluations under GRECO in 2005, with the Evaluation Report being adopted in early 2006. In a Situation Report, the Armenian authorities have reported, in 2007, on their compliance with the 24 recommendations from the First and Second Round; the Compliance Report was adopted by the GRECO Plenary in June 2008. Armenia is currently undergoing the Third Round of Evaluations under GRECO. The country is member of MONEYVAL, and has undergone the First and Second Round of Evaluations in 2004, and the Third Round of Evaluations in 2009.

Armenia ratified, in 2007, the United Nations Convention against Corruption (UNCAC). The country has been participating, since 2003, in the Istanbul Action Plan of the OECD-led Anti-corruption Network for Transition Economies (ACN), including in the review mechanisms under this initiative – Armenia last reported on the status of implementation of recommendations in 2006, and is expected to undergo another review in early 2011.

² The 1st Meeting Panel on the fight against corruption took place in Brussels in September 2010, and the 2nd in November 2010 in Warsaw.

The fight against fraud and corruption has been explicitly established, in the ENP Action Plan, as part of priority area number I. However, relevant specific actions that will have an effect on combating corruption are also laid out in priority area 2 of the Plan.³

3.2 Relevant Anti-corruption Policies

3.2.1 Status

An **Anti-corruption Strategy** and an **Action Plan**, spanning from **2009** to **2012**, are currently being implemented.⁴ Both were adopted by a decision of the Government of Armenia on 8 October 2009. Both documents represent the second generation of their kind – they were preceded by an earlier Strategy and Implementation Action Plan, spanning the period from 2003 to 2007.⁵ The current Strategy and Action Plan were prepared after in-depth analysis of the results of the previous strategy and relevant reform efforts, as well as of various vectors of corruption in Armenia; the drafting process was significantly facilitated and supported by donor funding (mainly the US). While this support has made available valuable intellectual and financial resources, it has also given rise to questions of ownership of the Strategy.

The Action Plan contains a detailed list of measures across all sectors covered by the Strategy, with specific timeframes for achievement, as well as a wide range of indicators to judge the success of implementation. The range of indicators for success makes the Armenian Anti-corruption Strategy and Action Plan stand out; assessing the usefulness of the indicators for the task at hand could set an example beyond Armenia on how to capture progress on anti-corruption reforms, something that has been acknowledged to be notoriously difficult.

3.2.2 Institutional responsibilities for implementation and monitoring

The Anti-corruption Strategy and Action Plan are being **implemented** by all concerned government institutions and agencies. The relevant Ministries are the Ministry of Justice; Foreign Affairs; Territorial Administration; Economy; Finance; Health; Urban Development; Education and Science; Labour and Social Affairs; and Nature Protection. Further, the Strategy and Action Plan are implemented by the Police; the State Revenue Committee; the National Security Service; and the Real Estate Cadastre. Other State Institutions are the General Prosecutor's Office; the Judicial Department; the Central Bank; the State Commission for the Protection of Economic Competition; the Civil Service Council; the Public Administration Reform Commission; and the Anti-corruption Council.

³ See EU – Armenia Action Plan, pp. 4, at http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf.

⁴ Both documents are being available, in English, at <http://www.gov.am/en/anticorruption/>.

⁵ The 2003 to 2007 Strategy and Action Plan are available, in English, at <http://www.gov.am/en/anticorruption/>.

Civil society organisations (NGO's and independent experts) are also involved in the implementation and in the monitoring of the Strategy and the Action Plan. The involvement of civil society and the business community in the implementation and monitoring of anti-corruption efforts has been a commitment set out in the 2006 ENP Action Plan.⁶ Memoranda of Cooperation have been signed between the police and specialised civil society organisations (for example, the Republic of Armenia Automobile Federation, concerning corruption in the traffic police). A procedure on cooperation between the Prosecutor's Office and NGOs, elaborated in a joint process, was approved by the Prosecutor's Office. Draft Amendments to the Presidential Decree "On the establishment of an Anti-corruption Council" were agreed with NGOs, in order to strengthen civil society's involvement in the work of the Anti-corruption Monitoring Commission.

The **Anti-corruption Council**, headed by the Prime Minister and consisting of representatives of the Presidential Administration; legislative and executive bodies; the Central Bank; the Office of the Prosecutor General; and the State Commission for the Protection of Economic Competition **oversees the implementation** of the Strategy.

An **Anti-corruption Strategy Implementation Monitoring Commission** operates as part of ('adjunct' to) the Anti-corruption Council and is an advisory body, consisting of members of parliament, NGOs, and public bodies. It is chaired by the Assistant to the President of the Republic of Armenia.

3.2.3 Issues of concern

A number of reports have pointed out some progress made in the implementation of the Strategy and Action Plan. For example, salaries of judges have increased as a result of a separate, sector-specific strategic action plan for the judiciary. However, this appears to not have been having a decisive impact, as of yet, on strengthening the independence of the judiciary, and more efforts are needed in this respect, as has, for example, been pointed out by the EC in its 2010 Progress Report on the ENP Armenia Action Plan.⁷ These concerns have also been echoed in a report by Transparency International, which assesses that there has been no progress on the independence and transparency of the judiciary, or on access to justice, resulting in the judiciary being perceived as the most corrupt sector in Armenia.⁸ The same report also attests serious challenges to lie ahead in the areas of procurement, as

⁶ See p. 5 of the 2006 ENP Action Plan, at http://ec.europa.eu/world/enp/pdf/action_plans/armenia

⁷ See the Commission Staff Working Document Accompanying the Communication from the Commission to the European Parliament and Council 'Taking Stock of the European Neighbourhood Policy (ENP)'; Implementation of the European Neighbourhood Policy in 2009, Progress Report Armenia, May 2010, p. 4, at <http://ec.europa.eu/world/enp/pdf/progress2010>

⁸ See: European Neighbourhood Policy: Monitoring Armenia's Anti-corruption Commitments, pp. 5, Transparency International, 2010, at http://www.transparency.am/dbdata/enpti_armenia3.pdf.

well as the need of introduction of **systematic** training models for the police, judges, and prosecutors on corruption.⁹

3.3 Relevant Anti-corruption Institutions

3.3.1 Status

The **Anti-corruption Council** was established by Decree of the President of the Republic of Armenia in June 2004.

The **Monitoring Committee of the Anti-corruption Council**, too, has been established by the above mentioned decree. It is a multi-stakeholder group, involving members of parliament and representatives of civil society. Its task is to monitor the implementation of the Anti-corruption Strategy and its implementation Action Plan, as well as the implementation of sector-specific Anti-corruption Plans.

3.3.2 Institutional responsibilities for implementation and monitoring

The Anti-corruption Council has been “established for the purpose of coordinating the activities of state bodies involved in the fight against corruption, eliminating the causes of corruption and improving the state policy aimed at preventing corruption.”¹⁰ Under the current Anti-corruption Strategy, the Council is extending its composition, to also include members of the judiciary, the business community, and non-governmental organisations. According to the Strategy, the “main functions of the anticorruption council [...] will be:

- a) to coordinate the development, implementation, monitoring and evaluation of the RA anti-corruption strategy programme;
- b) to coordinate the anti-corruption activities of various authorised organisations;
- c) cooperation with regional and international organisations in the fight against corruption;
- d) to coordinate the development and implementation of sectoral anti-corruption programs in various agencies of the Republic of Armenia;
- e) to increase public’s knowledge on issues of the prevention of corruption.”¹¹

The **Monitoring Committee of the Anti-corruption Council** is a multi-stakeholder group involving members of all factions and groups of parliament, representatives of a number of

⁹ See: European Neighbourhood Policy: Monitoring Armenia’s Anti-corruption Commitments, pp. 5, Transparency International, 2010, at http://www.transparency.am/dbdata/enpti_armenia3.pdf.

¹⁰ See Republic of Armenia Anti-corruption Strategy 2009 – 2012, pp. 13 at <http://www.gov.am/files/docs/437.pdf>.

¹¹ See Republic of Armenia Anti-corruption Strategy 2009 – 2012, pp. 13 at <http://www.gov.am/files/docs/437.pdf>.

bodies of the public administration, and representatives of civil society. The Committee is chaired by the President's Assistant. The chairman and the Commission members work without remuneration. 12 Working Groups operate in the framework of the Commission, whose decisions are advisory, i.e. non-binding.

3.3.3 Issues of concern

Lack of funding, including lack of qualified human resources, in particular with regards to the Monitoring Committee, has been raised as an issue of concern, including in the Anti-corruption Strategy itself.¹² Equally, criticism has been raised as to the perceived powerlessness of the Anti-corruption Monitoring Commission, as this body's decisions are non-binding.

3.4 Relevant Anti-corruption Legislation

3.4.1 Status

A number of laws and legal acts have been passed that are considered, by the Armenian authorities, to be relevant to reducing opportunities for corruption. These are:

- The Law "On Freedom of Information" of 23 September 2003;
- The Criminal Code of Armenia of 18 April 2003;
- The Law "On the Prosecutor's Office" of 22 February 2007;
- The Law "On the Criminal-Executive Service" of 8 July 2005;
- The Decree "On the Approval of Job Descriptions of the Territorial Tax Inspections" of 3 March 2010;
- The Electoral Code of 8 July 2010;
- The Decree "On Approval of the Procedure for Appealing against Tax Service Operations and Officials" (date not available);
- The Decision of the government to introduce a system of performance evaluation for customs officers of 24 December 2009;
- The Decision of the government to introduce procedures for the professional advancement and rotation of customs officers of 27 May 2010; and
- The Decision of the government to reduce the amount of compulsory documentation to be submitted to customs officials, of 29 May 2009.
- A number of specific government decisions provide the legal basis for the implementation of anti-corruption measures in the respective institutions/sectors:
- The Order of the Head of the Police of the Republic of Armenia "On the implementation of the activities foreseen by the Anti-corruption Strategy for 2009-2012 approved by the

¹²See Republic of Armenia Anti-corruption Strategy 2009 – 2012, pp. 13 at <http://www.gov.am/files/docs/437.pdf>.

decision N1272 of 8 October 2009 of the Government of the Republic of Armenia” of 22 December 2009;

- The Order of the Head of the Police of the Republic of Armenia “On the Action Plan addressed to the reduction of corruption risks in the Police of the RA” of 9 December 2009;
- The Order of the President of the Republic of Armenia “On the Approval of the 2009-2011 strategic Action Plan and the list of its implementation plan for judicial-legal reforms, as well as the establishment of a Working Group” (special provisions on the reduction of corruption risks) of 21 April 2010;
- The Decision of the Government of the Republic of Armenia “On the approval of the reform Concept Paper for 2010-2011 in the area of activities of the Police” (special provisions on combating corruption) of 1 April 2010;
- The Decision of the Government of the Republic of Armenia “On the approval of the 2008-2011 administration strategy programme of the State Revenue Committee (tax and customs) of the Republic of Armenia” (special provisions on reduction of corruption) of 7 July 2007;
- The Decision of the Council of Courts’ Chairmen of the Republic of Armenia “On the approval of the draft anti-corruption strategy of the court system of the Republic of Armenia” of 21 February 2006;
- The Decree of the General Prosecutor of the Republic of Armenia “On corruption crimes” of 19 November 2008.

3.4.2 Institutional responsibilities for implementation and monitoring

The main institutions in charge of implementation of the relevant anti-corruption legislation are as follows:

- The Government of the Republic of Armenia;
- The Police;
- The State Revenue Committee (tax and customs);
- The Prosecutor’s Office;
- The Anti-corruption Council;
- The Special Investigative Service;
- The Courts of General Jurisdiction, Appellate Courts, the Cassation Court.

3.4.3 Issues of concern

The analysis of the first Anti-corruption Strategy (2003 – 2007) pointed out that it had been mainly concerned with legislative reforms; in turn, the 2009 – 2012 Strategy’s focus would, inter alia, be on implementation of legislation. However, a number of reports, including the

2010 ENP Progress Report by the European Commission, point out that more needs to be done to enforce anti-corruption legislation.¹³ The ENP Monitoring Report by Transparency International Armenia echoes this finding, and recommends the elaboration of a number of implementation guidelines, notably for tax inspectors and on issues such as conflict of interest. The same report also points out that the existing legal framework needs further improvement, for example in the area of public procurement.¹⁴

3.5 Current Processes: Trends

3.5.1 Issues to be addressed

There is a need to step up the overall level of enforcement of relevant anti-corruption legislation. Also, more decisive measures are necessary to effectively address conflicts of interest, and asset and income declarations for high-ranking public officials. Training for law enforcement officials needs to be systematised. Corruption in the judiciary, as well as across the public service, needs to be more decisively addressed.

3.5.2 Way forward

Targeted activities should aim to improve the enforcement of existing legislation through, inter alia, the elaboration of systematic guidance on specific issues, in particular on conflict of interest, as well as on asset and income declarations for high-ranking officials. Activities should also seek to assist in systematising training efforts for law enforcement staff.

¹³ See the Commission Staff Working Document Accompanying the Communication from the Commission to the European Parliament and Council 'Taking Stock of the European Neighbourhood Policy (ENP)'; Implementation of the European Neighbourhood Policy in 2009, Progress Report Armenia, May 2010, p. 4, at http://ec.europa.eu/world/enp/pdf/progress2010/sec10_516_en.pdf.

¹⁴ See: European Neighbourhood Policy: Monitoring Armenia's Anti-corruption Commitments, p. 6, Transparency International, 2010, at http://www.transparency.am/dbdata/enpti_armenia3.pdf.

4 AZERBAIJAN

4.1 Development of Anti-corruption and Good Governance Reforms

Azerbaijan has undertaken a number of important steps in the fight against corruption in recent years. The country has ratified the Council of Europe (CoE) Criminal¹⁵ and Civil Law Conventions against Corruption in 2004, and the United Nations Convention against Corruption (UNCAC) in 2005. Azerbaijan has also been a member of the CoE's Group of States against Corruption (GRECO) since June 2004, and has undergone 3 evaluations that have produced respective compliance reports.¹⁶ Azerbaijan is also a member of MONEYVAL, and has ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in June 2003.

Nationally, the first State Programme on Combating Corruption (covering the period 2004-2006) was adopted in 2004, and the Law on Combating Corruption was passed in the same year. The Commission on Combating Corruption (CCC) was established in 2005.

An updated National Strategy for Increasing Transparency and Combating Corruption and its Action Plan covering the period 2007-2011 was adopted in 2007, and a number of other relevant legislation attests to the anti-corruption developments in Azerbaijan. These will be dealt with in more detail in the subsequent sections.

The examples of anti-corruption efforts highlighted by the Azerbaijani authorities stand as follows:

Starting in January 2008, the registration of legal persons is performed according to the "one stop shop" principle with a unified procedure centralised and implemented under the responsibility of the Ministry of Taxes. Under the new system, the time needed for the registration of business entities was reduced to 3 days after the required documents have been submitted. The same principle has been applied in customs registration, beginning from January 2009. As a result of these and other initiatives to improve transparency and efficiency of business registration and tax declaration efforts, Azerbaijan was ranked as the top reformer in the 2009 Doing Business Report.

Efforts have also been made to improve civil society participation in the fight against corruption. For instance, the Commission on Combating Corruption prepares reports on the implementation of the National Strategy for Increasing Transparency and Combating

¹⁵ But not the Additional Protocol to the Criminal Law Convention on Corruption.

¹⁶ Having joined GRECO after the close of the 1st Evaluation Round (31 December 2002), Azerbaijan was subject to a Joint 1st and 2nd Round Evaluation and reports; the 3rd Evaluation Round report is expected by the close of 2010 or early 2011, with the evaluation visit having taken place 26-30 April 2010.

Corruption with the inputs from NGOs, and a Working Group on Improvement of Legislation (established adjacent to the Commission) includes civil society representatives.

In 2008, several leading NGOs conducted alternative monitoring of the implementation of the National Strategy for Increasing Transparency and Combating Corruption. Not only was the initiative conducted in cooperation with the Commission throughout the monitoring period, but the monitoring report and relevant recommendations were used by the Commission in its own evaluations of the National Strategy.

Other forms of civil society cooperation include commissioning of civil society organisations in the Commission's work, for instance, in the 2007 and 2009 surveys of corruption, carried out for the Commission by the Information and Cooperation Network of NGOs (the Network comprises more than 20 NGOs specialised in combating corruption, including Transparency Azerbaijan, the Fund for Struggle against Corruption, Young Lawyers Association of Azerbaijan etc.). The Commission is also an invited member of the Network, and regularly participates in its meetings.¹⁷

The May 2010 European Commission annual European Neighbourhood Policy (ENP) Progress Report¹⁸ notes that some progress had been made in the fight against corruption, particularly in terms of the authorities becoming increasingly aware of the need and benefits to address corruption; a series of anti-corruption measures in the field of provision of energy and water; inter-institutional cooperation and awareness-raising; efforts to strengthen the capacity of authorities to deal with corruption cases; civil servant training on prevention of corruption; and the introduction of direct reporting of corruption cases.

The same document also notes progress in the fight against money laundering with the adoption of a new Anti-Money Laundering Law in February 2009, and the establishment of a Financial Intelligence Unit under the Central Bank.

4.2 Relevant Anti-corruption Policies

The key policy documents are the National Strategy for Increasing Transparency and Combating Corruption and its Action Plan.¹⁹ The Strategy covers a wide range of fields (administrative, social, and economic areas) and includes both preventive and repressive measures.

¹⁷ It may also be noted that in December 2007, the Council of State Support to Non-Governmental Organisations under the President of the Republic of Azerbaijan was established. The Council allocates grants to national NGOs, with one of the priority areas being anti-corruption and good governance issues.

¹⁸ European Commission, Implementation of the European Neighbourhood Policy in 2009: *Progress Report Azerbaijan*, SEC(2010) 519, Brussels, 12/05/2010. Available at <http://ec.europa.eu/world/enp/pdf/progress2010>.

¹⁹ Text of both documents is available at www.antikorrupsiya.gov.az.

4.2.1 Status

The National Strategy for Increasing Transparency and Combating Corruption (hereinafter National Strategy), which covers the period 2007-2011, was adopted by Presidential Decree on 27 July 2007. It was drafted by the Commission for Combating Corruption (hereinafter Commission), based on the assessment of the implementation of the previous State Programme on Combating Corruption (2004-2006).

4.2.2 Institutional responsibilities for implementation and monitoring

Implementation of the National Strategy is the responsibility of central executive authorities, including ministries and public agencies, each of whom report on the implementation to the Cabinet, and the Commission for Combating Corruption.²⁰ All the central executive bodies approve their annual action plans for the implementation of the National Strategy, and submit them to the Commission as well. The Prosecutor's Office submits its periodic report only to the Commission, while the other law enforcement bodies also report to the Cabinet of Ministers. The Commission collects and analyses this information, and, twice a year, compiles an implementation report to the President.

4.2.3 Issues of concern

In the previous State Programme on Combating Corruption (2004-2006), some measures were considered as unsatisfactorily implemented and thus, were reintroduced in the new National Strategy. One of main reasons of the unsatisfactory implementation of the measures was a shortage of resources and capacity of the institutions responsible for implementation. It is unclear to what extent these challenges have been addressed in the current period.

The 2010 ACN Second Round Monitoring Report²¹ also notes that, while the second National Strategy did take into account several studies on the levels and trends of corruption, the results of the analysis were insufficiently disclosed, and were the results of the actual studies have not been made public.

In addition, there are no developed tools or structures for state institutions to report on the implementation of obligations arising from the new National Anti-corruption Strategy. Further, the Commission for Combating Corruption lacks the authority to compel state institutions to

²⁰ www.commission-anticorruption.gov.az

²¹ OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round Monitoring Azerbaijan: Monitoring Report, Paris, 31 March 2010. Available at <http://www.oecd.org/>

either report on progress or implement the required measures. As a result, there is little information available on the progress in implementation.²²

4.3 Relevant Anti-corruption Institutions

There are two specialised anti-corruption institutions in Azerbaijan:

- The Commission for Combating Corruption of the Republic of Azerbaijan, a specialised corruption-prevention body; and
- The Anti-Corruption Department (ACD) within the General Prosecutor of the Republic of Azerbaijan, a specialised entity for the prosecution of corruption/economic crime offences.

4.3.1 Status

The **Commission for Combating Corruption (CCC) of the Republic of Azerbaijan** was created by the Law on Combating Corruption in January 2004; and its statute was approved by law in May 2005. It consists of 15 members, five appointed by the President, five by the Parliament, and five by the Constitutional Court. It has a permanent Secretariat consisting of 9 employees, who are based at the Executive Office of the President.

The **General Prosecutor's Anti-Corruption Department (ACD)** is a specialised structure within the prosecution service established by Presidential Decree of 28 October 2004. It is an autonomous department with a special status, reporting directly to the Prosecutor General. The department has a staff of 60 employees; 40 of which are prosecutors and investigators, some with experience in tax fraud and corruption.

4.3.2 Institutional responsibilities for implementation and monitoring

The Commission for Combating Corruption of the Republic of Azerbaijan: the Commission's mission is to participate in the formation of the state policy on corruption, and to coordinate the activity of public institutions in this area. Among other specific tasks, it analyses the state and efficiency of the fight against corruption, and supervises the implementation of the National Strategy for Increasing Transparency and Combating Corruption (per section 4.2.2 above). The Commission also collects, analyses, and summarises corruption reports from citizens. If the information received contains constitutive elements of the corruption offences, the Commission forwards the data to the prosecution office (Anti-Corruption Department) for the initiation of criminal investigations.

²² Observations repeatedly made in, for instance, by the Information and Cooperation Network of NGO working against corruption in the *Final Report* of their Alternative Monitoring of the Implementation of the National Strategy and Action Plan for Combating Corruption.

The General Prosecutor's Anti-Corruption Department (ACD) has the mandate to detect and investigate instances of corruption and submit the cases to the courts. According to the 2005 GRECO Evaluation Report,²³ ACD prosecutors are entitled to receive all information related to corruption cases from all law enforcement agencies, and are empowered to conduct investigations of these cases. However, the 2010 ACN Second Round Monitoring Report notes that the ACD is not empowered to use special investigative means, and relies on the appropriate law enforcement agency for these tasks, which could compromise the integrity and confidentiality of investigations.

The Security Division of the ACD also carries out inspections of prosecution system officials in cooperation with the Organisational-Analytical Department, which has the primary responsibility for investigations of possible internal corruption cases. The statute establishing the ACD also provides for it to be involved with raising public awareness and educational efforts, and initiating preventive measures in the fight against corruption.

The ACD reports annually on its activities to the President of the Republic and the Commission on Combating Corruption.

4.3.3 Issues of concern

The government of Azerbaijan reports no issues of concern. The 2010 ACN Second Round Monitoring Report recommends, among others, the following:

- Strengthening the role of the Commission for Combating Corruption in public awareness-raising in anti-corruption;
- Training for public administration, and in corruption research;
- Strengthening the capacity of CCC' Secretariat to verify asset declarations of public officials; (the Azerbaijani authorities reported in September 2010 that the number of employees of the Council Secretariat has increased to 9, but additional capacities continue to be required.)
- With regard to the General Prosecutor's Anti-Corruption Department, the same report recommends strengthening the ACD's capacities, in particular empowering it with full-scale detection functions.

4.4 Relevant Anti-corruption Legislation

The Azerbaijani authorities cite three key anti-corruption laws, as follows:

- Law on Combating Corruption (January 13, 2004).

²³ GRECO, Joint First and Second Evaluation Rounds *Evaluation Report on Azerbaijan*, Greco Eval I-II Rep (2005) 5E, available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2\(2005\)5_Azerbaijan_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2005)5_Azerbaijan_EN.pdf)

The Law aims to prevent and detect corruption offences and remove consequences thereof, protect social justice, human rights and freedoms, and to create favorable conditions for the development of the economy, and ensure transparency and effectiveness of activities of State and municipal bodies and public officials.

- Law on Rules of Ethical Conduct of Civil Servants (31 May, 2007).
- Law “On Prevention of Legalisation of Criminally Obtained Funds or Other Property and Financing of Terrorism” (AML/CFT Law) (10 February 2009).

The Law on the “Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism” (AML/CFT Law), which was enacted in February 2009 and amended in June 2009 and March 2010, covers financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as measured against the Financial Action Task Force (FATF) 40+9 Recommendations; it includes provisions on customer due diligence (including ongoing and enhanced due diligence), record-keeping, reporting, internal control systems, regulation of, and supervision over financial institutions and DNFBPs, international cooperation, etc.

Additionally, the following other laws are of relevance:

- Law on Procedures on Declaration of Finance-related Information by Public Officials, of 24 June 2005: this law determines the forms of submitting declarations of assets; the authorities responsible for submitting these declarations; the bodies receiving this information; and rules for controlling it;
- Law on Access to Information, of 30 September 2005;
- Presidential Decree on Strengthening the Fight against Corruption-Related Law Violations in the Area of Management of State and Municipal Property and Resources, of 22 June 2009;
- Code of Ethical Conduct for Prosecutors of the Republic of Azerbaijan (approved by the Decision of the Collegia of the General Prosecutor’s Office on 8 February 2008);
- “Code of Judicial Ethics, approved by the decision of the Judicial-Legal Council and the Plenum of the Supreme Court on 12 December 2002;

and

- Draft Law on Prevention of Conflict of Interests in the Work of Public Officials;
- Draft Law on Criminal Liability of Legal Persons.

Further, the National Commission on Combating Corruption considers that the following other laws are also of relevance for their work in preventing and combating corruption in Azerbaijan:

- Law on Normative Legal Acts
- Law on Changes and Amendments to Some Legislative Acts of the Republic of Azerbaijan in Connection with Combating Corruption;
- Law on Amendments to the Law on Combating Corruption;
- Law on Rules of Reviewing Citizens’ Applications;
- Law on Public Procurement;
- Law on State Protection of Persons Participating in Criminal Proceedings;
- Law on the Human Rights Commissioner (Ombudsman);
- Law on the Civil Service;
- Judicial-Legal Council Act, 2004;
- Law on State Registration and State Registry of Legal Entities;

- Courts and Judges Act, 1997;
- Presidential Decree On the Application of the Anti-corruption Law, October 2004.

Finally, the following laws have a bearing on a country's fight against corruption, and have furthermore been reviewed for their approximation with the established international standards and when implementing GRECO recommendations through the Council of Europe AZPAC²⁴ project.

- The Criminal Code;
- The Criminal Procedure Code;
- The Law on Political Parties;
- The Law on the State Budget;
- The Law on Accounting;
- The Law on Internal Audits;
- The Law on Administrative Violations; and
- The Law on Internal Audit.

4.4.1 Status

While a comprehensive analysis of all the above laws is not feasible in the framework of this report, some selected issues can be addressed.

One, the national legal framework is partially in compliance with international standards, namely the Council of Europe Criminal and Civil Law Conventions against Corruption and the United Nations Convention against Corruption. The 2009 Council of Europe AZPAC project compliance matrix²⁵ provides an overview.

Two, the Azerbaijani authorities report the following legislative developments:

The Law on Combating Corruption is the main framework law. Numerous other laws were amended to enable its full implementation, among them the Criminal Code (amended in 2006) concerning the active and passive bribery offences; confiscation and seizure of criminally obtained assets; trading in influence; and introducing money laundering as a crime. More than 20 other laws were amended to bring them into conformity with the Law on Combating Corruption.

²⁴ A technical assistance programme—"Project against corruption in Azerbaijan" (AZPAC), implemented by Council of Europe during 2006-2009, funded by USAID in Azerbaijan. For further information visit: www.coe.int/azpac

²⁵ Available at <http://www.coe.int/azpac>.

In terms of ethical conduct, following the adoption of the Law on Rules of Ethical Conduct of Civil Servants, ethics requirements became part of statutory obligations of all civil servants. A wide range of public awareness programmes was carried out, as well as ethics trainings and seminars for nearly all concerned state bodies.

The Civil Service Commission is the body responsible for the implementation of the Rules of Ethical Conduct of Civil Servants. At the beginning of each year - starting from 2008 - the Commission sends relevant instructions to all central and local executive power bodies, with recommendations to create rules requiring the conduct of regular and long-term trainings on anti-corruption, ethics, issues of integrity, as well as of prevention of corruption, regulation, and prevention of conflicts of interest, impartiality, and other ethical rules and principles.

In terms of anti-money laundering, progress can be reported in two key areas:

- Establishment of regulators: Regulators of all financial institutions and DNFBPs defined by the AML/CFT Law were granted with supervisory functions. The Statutes of the relevant supervisory authorities were amended by the Decree of the President of the Republic of Azerbaijan in July 2009, to provide them with adequate powers.
- Establishment of Financial Monitoring Services (FMS): The FMS was established based on the Decree of the President of the Republic of Azerbaijan of 23 February 2009. Policy-making procedures of the FMS are established in its Statute, and in the AML/CFT Law. The FMS directly implements its competences envisaged in the above guided legislative acts, and is subordinated only to the President of the Republic of Azerbaijan; this procedure ensures freedom from undue influence and interference. In respect of the staff of the FMS, an Ethics Code has been approved by the Order of Director of the FMS of 1 June 2010.

4.4.2 Institutional responsibilities for implementation and monitoring

The various components of the preventive and repressive anti-corruption regulatory framework are found across the public sector. The key agencies are:

- The Commission for Combating Corruption, responsible for implementing parts of the 2004 Law on Combating Corruption, as detailed in section 4.3.2 above;
- The law enforcement and judiciary, responsible for the implementation of the Criminal Code and the Criminal Procedure Code;
- The Civil Service Commission, responsible for a wide range of rules related to the civil service, including ethics rules.

4.4.3 Issues of concern

The Azerbaijani authorities report the following issues of concern:

The introduction of the new legislation related to prevention and combating of corruption brought up the need for intensive trainings and capacity building for the law enforcement, the prosecution/judiciary, and the public administration. Amendments introduced new criminal offences and other violations, such as money laundering, trading in influence, and asset confiscation etc. The prosecution, the judiciary, and the law enforcement continue to need a further increase in their capacities and resources, in order to develop their inter-state and international cooperation to be able to properly implement the new legislation.

The Rules of Ethical Conduct of Civil Servants cover a wide range of civil servants. They also require specific categories of public sector services to adopt their rules of ethics. Training of civil servants has been the main issue in the implementation of this new instrument.

Inculcation of the values and standards contained in the Rules of Ethical Conduct of Civil Servants is the first element of successful implementation of the rules themselves. Therefore, it is necessary to increase the resources of the Civil Service Commission – the authority responsible for the coordination of the implementation of the Rules – in order to be able to hold regular trainings on ethics. A wide range of public awareness events is also needed, so that the public knows its rights provided by the ethics framework.

Similar capacity issues concern other bodies, e.g. the Commission for Combating Corruption has only limited resources to review asset declarations of public officials.

In terms of further legislative changes, the ACN Second Round Monitoring Report recommendations include the following:

- Adoption and implementation of the draft Law on Prevention of Conflict of Interest;
- Providing a clearer definition of civil servant vs. public official, in particular, delineating between professional and political officials;
- Instituting whistleblower protection;
- Amending the Criminal Code for additional harmonisation with international standards, particularly on:
 - criminalising illicit enrichment;
 - criminalising “promising” or “offering” a bribe;
 - introducing the concept of criminal liability of legal persons in corruption-related offences;
 - criminalising bribery of foreign and international public officials;
 - extending the period of limitation for corruption cases;
 - increasing punishment for active bribery;
 - reducing the scope of exemption from criminal prosecution for persons who report paying a bribe;
 - reducing the scope of immunities for public officials and judges;
 - introducing confiscation of proceeds of corruption-related offences in line with international standards.

The ACN Second Round monitoring report further recommends:

- Strengthening the public procurement system, including the capacity of the State Procurement Agency;
- Improving access to information regime, including by establishing a specialised body to monitor its implementation;
- Establishing a system to monitor and enforce rules on political party and campaign finance.

4.5 Current Processes: Trends

4.5.1 Issues to be addressed

In its 2009 Progress Report, the European Commission notes a number of areas for improvements, despite the progress made to date. The emphasis is on more effective enforcement of the relevant legislation more generally, and on strengthening of whistleblower protection in particular.

In terms of money laundering, the same report emphasises that the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism have yet to be signed and ratified.

Additional specific recommendations are outlined in the 2010 ACN Second Round Monitoring Report, many of which have been noted in section 4.4.3 above.

4.5.2 Way forward

The Azerbaijani authorities report the following priorities for the next period:

- Adoption of remaining relevant Council of Europe instruments (Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism - CETS 198) and relevant national legislative compliance;
- Supporting further reforms of anti-corruption domestic legislation, including those through adoption of the draft Law on Prevention of Conflict of Interest;
- Implementation of GRECO 3rd Round Evaluation Recommendations on Incriminations and Transparency in Party Financing;
- Strengthening further enforcement of the codes of ethics;
- Implementation of the National Strategy (through strengthening of institutional capacities of those involved and relevant institutions);
- Enhancing ethics capacities and trainings for the prevention of corruption; and
- Enhancing capacities of e-government from the perspective of prevention of corruption (facilitating services through electronic means and reducing direct contacts between individuals and officials).

5 BELARUS

5.1 Development of Anti-corruption and Good Governance Reforms

Relevant international legal instruments are as follows:

- Council of Europe Criminal Law Convention on Corruption, ratified in May 2007
- United Nations Convention against Corruption, ratified in November 2004
- Council of Europe Civil Law Convention against Corruption, ratified in December 2005

Support to Good governance is one of the two priority areas of the EC/EU cooperation with Belarus.²⁶ The country participates, to a limited extent, in the European Neighbourhood and Partnership Instrument, but has no specific Action Plan under the ENP.

There is a scarcity – due partly to the restrictions on the activity of civil society – of independent reports, including background reports or detailed data analysis, on corruption in Belarus. In the 2010 Corruption Perception Index, Belarus scored 2.5 on a scale where 0 means highly corrupt, and 10 highly clean. This score represents only a marginal improvement to previous years.²⁷ The independent international think tank Freedom House, in its annual “Nations in Transit” report assesses that, on a scale of 1 to 7, where 1 is the best, and 7 the worst possible score, Belarus’ score on corruption is 6.²⁸

5.2 Relevant Anti-corruption Policies

5.2.1 Status

Currently, a new State Programme on the Fight against Crime and Corruption is being elaborated, which will span the period from 2010 to 2012. It will follow up on the State Programme on the Fight against Corruption 2007-2010.

5.2.2 Institutional responsibilities for implementation and monitoring

The **State Programme on the Fight against Corruption 2007-2010**, based on Presidential Decree No. 220 of 7 May 2007 is the key policy document guiding the fight against corruption. It was informed by, and followed up on, the State Programme on Strengthening

²⁶ See: European Neighbourhood and Partnership Instrument, Belarus, Country Strategy Paper 2007 and National Indicative Programme 2007 – 2013, p. 4, http://ec.europa.eu/world/enp/pdf/country/enpi_csp_nip_belarus_en.pdf.

²⁷ The score was 2.4 in 2009; 2.0 in 2008; 2.1 in 2007 and 2006. See Transparency International Corruption Perception Indices at http://www.transparency.org/policy_research/surveys_indices/cpi/2010.

²⁸ See: Nations in Transit, Country Report 2010 Belarus, at <http://www.freedomhouse.org>.

the Fight against Corruption, which had been implemented from 2002 to 2006. The implementation of the State Programme is with the **General Prosecutor's Office** (GPO).

The activities foreseen in the current State Programme have been determined based on an analysis of the situation in Belarus, including an analysis of how much at risk from corruption the different sectors are. The analysis further included a processing of available scientific research. The following tasks were identified:

- Decrease of the level of corruption-related crime;
- Increase of the effectiveness of those state organs that deal with the fight against corruption with regards to prevention, uncovering, and prosecution of corruption offences;
- Introduction of objective criteria for the assessment of the effectiveness and efficiency of the work of the state organs in this area;
- Strengthening of the GPO oversight and state control over the appropriate fulfilling of the measures by all responsible state organs and other organisations;
- Further reform of legislation, based on international standards;
- Deepening of scientific research with view to developing operational-level recommendations;
- Creating of a public attitude of non-acceptance of corruption.

5.2.3 Issues of concern

Some progress is reported to have been made with regards to decreasing the levels of petty corruption. However, corruption seems to be widespread in the civil service, and among law enforcement structures.²⁹ The anti-corruption policy measures are heavily slanted towards repressive measures.

5.3 Relevant Anti-corruption Institutions

5.3.1 Status

The **General Prosecutor's Office** is, according to the Law "On the Fight against Corruption" of 20 July 2006 the **main** institution in charge of organising the fight against corruption. To this end, the GPO has wide-ranging authorities.

²⁹ See: Nations in Transit, Country Report 2010 Belarus, at: <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Belarus-proof-II.pdf>.

5.3.2 Institutional responsibilities for implementation and monitoring

The General Prosecutor's Office:

- Analyses the effectiveness of existing anti-corruption measures;
- It coordinates the work of other state institutions with respect to the fight against corruption;
- Introduces suggestions for changes to corruption-related legislation
- Fulfils other functions in the fight against corruption, in accordance with the legal framework of the Republic of Belarus.

In addition to the GPO, the institutions of internal affairs, and the institutions responsible for state security. Based on Presidential decree No. 330 of 16 July 2007 "On Special Sub-units for the Fight against Corruption and Organised Crime", special sub-units have been created inside the GPO, the **organs of internal affairs**, and the **state security organs**.

The main institution for the fight against organised crime and corruption of the **Ministry of Internal Affairs** is a structurally subordinate unit in charge of organising the work of the organs of the Ministry of Internal affairs with respect to the fight against corruption. Preventive and operational-investigative measures with regards to corruption are also carried out by the **Main Office of the Fight against Economic Crime** and the **Pre-trial Investigation** structures.

Other institutions stipulated by law to participate in the fight against corruption within their respective competencies are the **Committee of State Control** and its different organs; the **State Customs Committee** and the **Customs**; the **State Committee of the Border Guards** and the **Border Guards**; and others. The institutions are obliged to report on corruption cases to the relevant state organs.

In order to address the trans-national nature of corruption, Presidential Decree No. 644 "On the Confirmation of the Status of the Group on the Coordination of the Fight against Crime and Corruption" of 17 December 2007" created **Coordinating Groups** including at national and oblast as well as capital level, as well as at rayon and rayon level inside towns, in towns, in the Armed Forces, other forces and force-like formations, in state organs in which military service is foreseen, and in the transport sector. The prime objective of these Coordinating Groups is to carry out, based on the analysis of cases, prevention, investigation and prosecution activities in the field of corruption.

5.3.3 Issues of concern

None reported. No alternative sources are available to contrast the authorities' views with independent views.

5.4 Relevant Anti-corruption Legislation

5.4.1 Status

The main focus of the state policy against corruption is geared towards decreasing the levels of corruption and the influence corruption has on business activity, the functioning of the state institutions, the daily life of citizens, ensuring the protection of the rights and legal interests of the citizens, society and the state from threats posed by corruption.

The following laws provide the legal basis for this:

- Law on the Fight against Corruption of 20 July 2006 (amending laws of 1993 and 1997); currently, the law is being currently being amended to provide a definition of "corruption

crime”, “conflict of interest”, and to define the regulation of conflicts of interest of state servants;

- Law on the State Service in the Republic of Belarus” of 14 June 2003;
- “Law on the Declaration, by Physical Persons, of Income, Assets and Sources of Financial Means” of 4 January 2003.

The law “On the Fight against Corruption” stipulated a range of limitations for state servants and their dependants. For example, state servants are not allowed to engage in business activities either themselves, or through dependants, or to assist close relatives in business matters; they are also not allowed to have foreign bank accounts etc. Before entry into service, a state servant, or a state servant-to-be has to oblige himself/herself to accept the above mentioned limitations, as well as those stipulated in the law “On the State Service”. Failure to do so will result in the refusal to assume the position, or in a dismissal from the office. Article 18 of the law “On the Fight against Corruption” stipulates that close relatives or dependants cannot be in the state service if their function is in a relation of immediate subordination or control of one over another. Article 19 of the law “On the Fight against Corruption” strengthens the financial control over the income of state servants through income declaration, declaration of assets and financial means. The provisions in this article are also reflected in Article 23 of the law “On the State Service in the Republic of Belarus”. The law “On the Fight against Corruption” provide a detailed list of corrupt acts (Article 21); it also introduces the notion of corruption crime, a detailed list of which is provided in Article 20. A special chapter of the law “On the Fight against Corruption” deals with confiscation of the proceeds of a corruption crime, specifically where it concerns the fate of the illegal acquired material goods (money, assets, cost of services received).

Related laws/legal acts are the following:

- Presidential Decree No. 17 on Licensing of Various Forms of Activity of 14 July 2003;
- Presidential Decree No. 300 about Delivering and Using of Sponsorship [?] of 1 July 2005
- Decision No. 1471 of the Council of Ministers on the Confirmation of the Action Plan on the Prevention of Corruption in the State Organs of 5 November 2003;
- Presidential Decree No. 577 about some Measures to Improve the Work with Human Resources in the System of State Organs;
- Law on the Introduction of Changes and Amendments to the Criminal Code of the Republic of Belarus with regards to the Question of Strengthening the Responsibility for Crimes related to Corruption.

Also, there have been relevant changes and amendments to the Criminal Code, and the Criminal Procedure Code. For example, the Law “On Amendments and Changes to the Criminal and the Criminal Procedure Code of the Republic of Belarus” of 22 July 2003 strengthened the provisions for bribery and other corruption-related crimes; this was a direct result of the state policy against corruption, as well as a necessity in order to bring legislation in line with the requirements of the Council of Europe Criminal Law Convention on Corruption which has been ratified by Belarus on 26 May 2003.

All draft legislation is undergoing “corruption-proofing”, i.e. expertise in order to prevent new legislation to offer loopholes for corruption. This expertise is laid out in the Law On Normative-Legislative Acts of the Republic of Belarus of 1 November 2004. The procedure to carry out criminological expertise of draft legal acts was stipulated in the Presidential Decree No 244 “On Criminological Expertise of Draft Laws of the Republic of Belarus” of 29 May 2007. Currently, it is being considered to extend this type of criminological expertise to other than draft laws.

5.4.2 Institutional responsibilities for implementation and monitoring

The Prosecutor-General's Office is in charge of overseeing the implementation of the respective legislation as far as concerns criminal offences related to corruption and economic crime.

5.4.3 Issues of concern

Due to the scarcity of independent reports, it is difficult pinpoint with an absolute degree of certainty the core issues of concern with regards to the implementation of anti-corruption legislation in Belarus. However, the politicised nature of the civil service, combined with a lack of transparency and accountability due to the absence of civil society and parliamentary oversight, have been highlighted by some.³⁰

5.5 Current Processes: Trends

5.5.1 Issues to be addressed

According to the information provided by its authorities, the Republic of Belarus continues to work on:

- Improving the Criminal Law;
- Defining the structures best suited to lead the fight against corruption;
- Elaborating "auxiliary" legal acts to make the fight against corruption more active.

5.5.2 Way forward

Belarus should consider participating, in the regional framework of ENP, in activities that complement repressive anti-corruption measures with preventive ones. Ultimately, progress on anti-corruption will depend on effective reforms in the civil service and the judiciary, in line with European and wider international standards.

³⁰ See: Nations in Transit, Country Report 2010 Belarus, at <http://www.freedomhouse.org/images/File/nit/2010/NIT-2010-Belarus-proof-II.pdf>.

6 GEORGIA

6.1 Development of Anti-corruption and Good Governance Reforms

Georgia has been a member of the Council of Europe Group of States against Corruption (GRECO) since 1999. Georgia also signed both the Council of Europe Civil and Criminal³¹ Law Conventions against Corruption in the same year, and ratified them in 2003 and 2008, respectively. It acceded to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 2004, and ratified the United Nations Convention against Corruption (UNCAC) in 2009.³² Despite the early formal steps, the fight against corruption cannot be viewed to have started in earnest before the 2003 Rose Revolution. Since 2004, Georgia has seen tremendous progress in clamping-down on corruption. Impressive gains have been made to counter administrative corruption, in particular.

Georgia adopted a new National Anti-Corruption Strategy by the Decree of the President of Georgia No. 550, in June 2005. An Action Plan for the Anti-Corruption Strategy (2005-2006) was adopted by the Decree of the President of Georgia No. 155, in March 2006. In the meantime, Georgia continued on specific legislative and sectoral reforms to address GRECO recommendations, and launched into a next cycle of anti-corruption strategy development in 2007. The new policy document was adopted in June 2010, and its action plan approved in September 2010. A new anti-corruption coordination body was established in 2008. These recent developments are addressed in more detail in sections 6.3.2 and 6.3.3 below.

In its most recent ENP Progress Report,³³ the European Commission notes that “Georgia made significant efforts to comply with Council of Europe’s GRECO recommendations, through legislative changes and reforms. The amendments to the Criminal Code included the criminal liability of legal persons; the law on the Chamber of Control was adopted in January 2009; and the Law on Conflicts of Interest and Corruption in Public Service was amended.”

6.2 Relevant Anti-corruption Policies

The key policy document is the **National Anti-corruption Strategy**, adopted on 3 June 3 2010 by Presidential Decree No. 376. The National Anticorruption Strategy outlines priority

³¹ But not the Additional Protocol to the Criminal Law Convention on Corruption.

³² Georgia has neither signed nor ratified the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, however.

³³ European Commission, Implementation of the European Neighbourhood Policy in 2009: *Progress Report Georgia*, SEC(2010) 518, Brussels, 12/05/2010. Available at http://ec.europa.eu/world/enp/pdf/progress2010/sec10_518_en.pdf.

areas in the fight against corruption, provides a situation analysis in areas concerned, and sets specific objectives to be achieved.³⁴

6.2.1 Status

The new National Action Plan for implementation of the Anti-Corruption Strategy drafted with the participation of experts, NGOs, and international organisations, and endorsed by the Anti-Corruption Interagency Coordination Council, was approved by the Decree No. 735 of the President of Georgia, dated 14 September 2010. The time period for implementation of the Action Plan is 2010-2013.

The Action Plan comprises the following elements:

- Purpose;
- Result;
- Activity;
- Responsible institution;
- Implementation period;
- Indicators;
- Risks and assumptions.

It is planned to elaborate detailed Monitoring Tools with the specific targets and indicators for effective monitoring of the implementation of the Action Plan.

6.2.2 Institutional responsibilities for implementation and monitoring

The **Anti-Corruption Interagency Coordination Council** is the institution responsible for monitoring the implementation of the National Anti-Corruption Strategy, among other tasks. More detail on this body is provided in section 6.3 below. It is foreseen in the National Anti-Corruption Strategy that a report on its implementation (as set in the Action Plan) will be presented to the President of Georgia annually, and that this report will be public.

6.2.3 Issues of concern

The development of a new national strategy and its implementation plan has taken about 3 years. Among the reasons for the delay, the Georgian authorities cite: for 2007, the existence

³⁴ An unofficial English translation of approved anti-corruption strategy was enclosed as an annex with other policy documents.

of an emergency situation; for 2008, presidential and parliamentary elections; the summer 2008 conflict; the economic crisis; the occupation of Georgian territories by the Russian Federation; for 2009 - internal political instability paralysing the functioning of some state institutions (Parliament). Nevertheless, the Georgian Government did, throughout the interim period, continue implementing the recommendations of GRECO and the OECD Anti-Corruption Network (ACN).

While one would need to see the exact details of the implementation plan in order to be able to fully determine the quality of the documents, the progress in their development is certainly a positive development.

6.3 Relevant Anti-corruption Institutions

Georgia has:

(a) One specialised preventive anti-corruption body – the Anti-Corruption Inter-Agency Coordination Council;

(b) One specialised law-enforcement body – the Anti-Corruption Department of the Chief Prosecutor's Office; and

(c) Other relevant bodies:

- The Department of Constitutional Security of the Ministry of Internal Affairs of Georgia
- The Investigative Service of the Ministry of Finance of Georgia
- The Inspectorates General of the Ministry of Justice and Ministry of Interior of Georgia
- The Internal Audit Departments of all executive bodies.

6.3.1 Status

The Anti-Corruption Interagency Coordination Council (hereinafter the Council) was established in 2008 by Presidential Decree No. 622, but its legal basis has since been reaffirmed through the 2010 amendments to the Law of Georgia on Conflicts of Interest and Corruption in the Public Service. The Council also has its own Regulations, which detail its membership and functions. The Council is chaired by the Minister of Justice of Georgia, and its membership comprises state institutions with a key role in corruption prevention and law enforcement. Its membership includes representatives of non-governmental organisations. The Council has a permanent secretariat – the Analytical Department of the Ministry of Justice of Georgia.

Law enforcement bodies: The investigative organs are part of relevant Ministries and thus, belong to the executive branch of the government. Under Article 81 of the Constitution of Georgia, Ministries are created on the basis of legislation in order to ensure the state governance and state policy in a particular field of state and public life. A similar provision is provided under Article 14 of the Law of Georgia on Structure, Authority and Activity of the Government.

6.3.2 Institutional responsibilities for implementation and monitoring

The Anti-Corruption Interagency Coordination Council is responsible for the prevention of corruption. Its major objective is to contribute to the prevention of corruption by setting effective anti-corruption policies. Its mandate is to:

- Define the policies for the fight against corruption;

- Design, approve, and revise national anti-corruption strategies and respective action plans;
- Monitor the activities of state agencies related to implementation of recommendations of international organisations in terms of the fight against corruption;
- Coordinate efforts aimed at the implementation of the Strategy and Action Plan; and
- Monitor their implementation.

Article 4 of the Council Regulation stipulates that the Council is accountable to the Government and the President of Georgia. It is obliged to submit an annual report on its activities to the mentioned bodies. Its member state agencies are required to report to the Council regarding the progress made on the implementation of the Strategy and the Action Plan. The interagency character of the Council obviously implies close inter-institutional coordination in matters related to the fight against corruption.

Anti-Corruption Council is a preventive structure which sets the anti-corruption policy and monitors its implementation. In 2010 it adopted the anti-corruption policy documents of Georgia – the Strategy and the Action Plan. These documents are focused on the prevention of corruption targeting corruption sensitive areas. The Council is composed of high level decision-makers which adopted the 2010 report on the implementation of the Action Plan. In addition, an expert level group of representatives of all relevant institutions has been created under the Council, which works on corruption preventive measures. This group of experts in cooperation with the Secretariat, elaborates policy documents as well as reports on the implementation of Action Plan, that are submitted to the Council for approval.

The work of the Council is supported by the Analytical Department of the Ministry of Justice – the Council's Permanent Secretariat. Established through the Regulations of the Ministry of Justice and the Analytical Department of Ministry of Justice, this secretariat performs administrative and analytical work: it organises the meetings of the Council, prepares and revises working materials and documents, conducts the final drafting of the Strategies and Action Plans to be submitted to the Council for approval, carries out research and analysis on the issues related to fight against corruption. In addition, the department participates in drafting reports to various international organisations (such as GRECO, OECD and etc.). In order to address the need of additional human resources, a new Strategic Policy Development Unit was created in September 2010 and new staff was recruited in the Secretariat of the Anti-Corruption Council (Analytical Department of the Ministry of Justice).

With regards to law enforcement bodies, the **Anti-Corruption Department of the Chief Prosecutor's Office** is the agency responsible for investigating and prosecuting corruption crimes, and has an exclusive jurisdiction to investigate corruption offences committed in the public service. In addition, the Prosecution Service is responsible for supervising all investigations within the jurisdiction of the country and oversees, *inter alia*, investigations outside its exclusive jurisdiction.

There are other agencies complementing the investigative jurisdiction of the Investigative Division of the Prosecution Service in relation to corruption offences. In accordance with the New Code of Criminal Procedure (CPC), which entered into force on 1 October 2010, the investigative jurisdiction is divided among different agencies noted below under the Decree of the Minister of Justice No. 178, adopted on 29 September 2010.

The Criminal Procedure Code provides that irrespective of the investigative jurisdiction, the Chief Prosecutor is authorised to assign the investigation to a particular investigative division. In cases where the agencies listed below reveal the corruption offence, they are entitled to pursue the investigation upon the decision of the Chief Prosecutor.

The **Department of Constitutional Security** is a sub-agency of the Ministry of Internal Affairs of Georgia. According to paragraph “k” of Article 21 of the Statute of the Ministry of Internal Affairs, the main functions of the Department include detection and suppression of corruption offences.

The **Investigative Service of the Ministry of Finance of Georgia** is a special law-enforcement entity with the status of a state sub-agency. The purpose of this agency is to fight against crime in financial and economic spheres, to conduct pre-trial investigation of criminal cases within its competence, and to fulfil other functions prescribed by the legislation of Georgia. The entity is accountable to the President of Georgia and the Ministry of Finance of Georgia, which manages and coordinates its activities.

Inspectorates General (IGs) of the Ministry of Justice, and Ministry of Interior of Georgia have the power to conduct criminal investigations. In addition, IGs mainly carry out *ex post* inspection to verify legal compliance, detect fraud and corruption, as well as unethical behaviour as described in Codes of Conduct. IGs of the ministries conduct inspections and administrative/disciplinary inquiries, with detected allegations of misconduct being referred to law enforcement bodies. These are the bodies that receive information from whistleblowers on alleged corruption cases. They also perform internal audits (e.g. Financial Revision Unit of the IG of Prosecution Service of Georgia).

Internal Audit Departments within all executive agencies are internal control bodies. Administratively, IGs and Internal Audit Departments are subordinated directly to the relevant minister, who appoints/dismisses the head of the unit, and who is also entitled to order the termination of any inquiry/inspection carried out by the IG. IGs and Internal Audit Departments play a vital role in ensuring compliance with legislation and in uncovering fraudulent/corrupt acts.

The above-noted law enforcement bodies cooperate intensively through an exchange of information. Along with the overall coordination, there is a practice of creating *ad hoc joint investigative* teams of different law enforcement bodies based on respective provisions of criminal procedural legislation. In addition, several agencies have developed a good practice of adopting cooperation memoranda between each other.

6.3.3 Issues of concern

The OECD ACN Second Monitoring Report³⁵ noted a number of concerns with regard to the Anti-Corruption Interagency Coordination Council, and, among other, with regard to the

³⁵ OECD Anti-Corruption Network for Eastern Europe and Central Asia, Second Round Monitoring Georgia: Monitoring Report, Paris, 31 March 2010. Available at <http://www.oecd.org/dataoecd/8/6/44997416.pdf>

existing system of appointment of Council members: as they are appointed by the president of Georgia, they can also be recalled by the President on any occasion.

Further, the OECD ACN Second Monitoring Report also expressed concerns with regards to the 2008 restructuring of the Prosecution Service of Georgia under the Ministry of Justice, resulting in the Chief Prosecutor being formally subordinated to the Minister of Justice. While such an institutional arrangement is deemed acceptable, the report emphasises that it is important to ensure that public prosecutors be able to perform their professional duties and responsibilities without unjustified interference. Georgian authorities point out that the Chief Prosecutor is appointed and dismissed by the President of Georgia, hence there is no direct subordination to the Minister of Justice, and that the Minister of Justice is only authorised to abolish illegal orders, instructions or guidelines of subordinate prosecutors. Further, Georgian authorities point out that practice does not show even a single case where the Minister exercised this power. In addition, during the parliamentary discussions of the draft law itself it was made clear that the Minister should not be involved in individual cases, except for those explicitly under his/her jurisdiction (high-level public officials). It appears that additional reviews may nevertheless be considered in order to ensure that the optimal balance of oversight and operational independence of the prosecution is ensured.

6.4 Relevant Anti-corruption Legislation

The Georgian authorities describe the national anti-corruption regulatory framework as follows:

Primary legislation:

- Constitution of Georgia, of 24 August 1995;
- Criminal Code of Georgia of 22 July 1999;
- Election Code of Georgia of 2 August 2001;
- Law on Public Procurement of 20 April, 2005;
- Law on Conflicts of Interest and Corruption in the Public Service of 17 October 1997;
- Law on the Public Service of 31 October 1997;
- Law on the Chamber of Control of 26 December 2008;
- Law on the State Internal Audit and Inspection of 26 March 2010);
- Organic Law on the Prosecution Services of Georgia of 21 October 2008.

Secondary legislation:

- Decree No. 376 of the President of Georgia on the Approval of the Georgian National Anticorruption Strategy of 3 June 2010;
- Decree No 735 of President of Georgia on Approval of the Action Plan for the Implementation of Georgian National Anticorruption Strategy of 14 September 2010;
- The Regulation of the Anti-Corruption Interagency Coordination Council;
- The Regulation of the Analytical Department of Ministry of Justice
- The Regulations of the Inspectorates General and etc.

6.4.1 Status

In addition to acceding to all major relevant international treaties noted in the introductory section, the Georgian authorities note a recent development: namely, that Georgia was among the first signatories of the Council of Europe Convention on Access to Official Documents in June 2009.

The major benchmarks on national legislation are as follows:

- Constitutional changes aimed at strengthening the independence of the judiciary;
- Amendments to the Criminal Code with regard to criminal liability of legal persons, corruption as a predicate offence for money laundering, criminalisation of trading in influence, abuse/excess of function, illicit enrichment, incorrect and incomplete accounting;
- Adoption of the new Law on the Chamber of Control; the law explicitly empowers the Chamber to carry out financial and effective audits of budgetary expenditure of local authorities and of state enterprises;
- A new Law on Public Procurement was enacted on 1 September 2010; from this date, Georgia moved to an e-procurement system, giving up any paper-based procedures and conducting all tenders from now on electronically;
- Amendments to the Public Service Law, introducing a new chapter (VI1, General Code of Conduct for Public Servants) based on the Council of Europe's Model Code of Conduct for Public Officials;³⁶
- Amendments to the Law on Conflicts of Interest and Corruption in the Public Service, introducing protection measures for public officials who report suspicions of corruption in good faith ("whistleblowers") etc.

Overall, Georgia has achieved a very high level of compliance with international instruments. The 2010 ACN Second Progress Report finds Georgia fully compliant with previous recommendations on bringing domestic legislation that criminalises bribery and corruption-related offences in line with international standards, although some further adjustments are recommended.

6.4.2 Institutional responsibilities for implementation and monitoring

Different state institutions are responsible for implementation and monitoring of different anti-corruption laws.

The law enforcement agencies are obviously responsible for the enforcement of the Criminal Code, while the courts oversee the proper application of the Criminal Procedure Code.

The Public Service Bureau is the central authority in charge of collection and disclosure of asset declarations submitted by high-level officials.

There is no central body responsible for enforcement of conflict of interest rules.

³⁶ Recommendation No. R(2000) of the Committee of Ministers of the Council of Europe to its member states including a Model Code.

The Chamber of Control is responsible for external audit, while the main internal audit bodies and internal audit departments/units are in all ministries and some public institutions.

Public procurement is under the State Procurement Agency as the coordinating and monitoring body. The State procurement system has been reformed substantially in 2010 and a unified electronic system of state procurement has been launched. The e-procurement is intended, among other, to minimize tender participation costs; to ensure fair and unbiased decisions and to provide easy access to all procurement related information.

As a consequence, the reform tender fee decreased from GEL 200 to GEL 50; and the tender threshold decreased 20 times. Non-competitive procurement procedures are now reportedly rarely used. In addition, the ***Dispute Settlement Council*** was created within the State Procurement Agency dealing with all disputes related to the procurement issues and intended to ensure an independent and effective complaint procedure. Governmental agencies and non-governmental organisations are represented in the Council on the basis of parity (equal footing).

There is no appropriate central institution for enforcing the political parties funding rules, as the Central Electoral Commission lacks the mandate and resources to do so effectively.

6.4.3 Issues of concern

Georgia has made tremendous progress in bringing its criminal legislation in line with international standards. Remaining recommendations (by the OECD's ACN) concern a disproportionate (excessive) prison term for the offence of passive bribery (an issue currently being addressed³⁷), as well as improved enforcement of new provisions on the criminal liability of legal persons for corruption crimes (among others) and seizure and confiscation of proceeds of corruption-related crimes. Additional efforts to ensure effective international mutual legal assistance are also recommended.

Government representatives note that all these and related concerns, as well as most of the recent recommendations, are addressed and properly reflected to be carried out as foreseen under the Action Plan approved in September 2010.

6.5 Current Processes: Trends

³⁷ Draft legislation on liberalisation of sanctions for certain offences, which is already sent to parliament, provides for the decrease of the prison term for the offence of simple as well as aggravated passive bribery. The minimum prison term is determined at 3 years, as opposed to the 6-year-term provided by the legislation currently in force.

6.5.1 Issues to be addressed

The 2009 European Commission Progress Report has not singled out any specific measures that need to be undertaken – other than continued effective implementation of existing laws.

Both the Council of Europe' GEPAC project and the ACN Second Round Monitoring report noted a number of sectors/issues that have yet to be addressed at the next stage.

In addition to the issues outlined throughout the report above, an additional area of further reform is the civil service. On this issue, the ACN recommends in particular to:

Decide on the conceptual direction of the public service reform and review the legal and institutional framework accordingly as soon as possible, while ensuring that impartiality, legality and political neutrality are integral principles of the reform;

Further strengthen the system of merit-based employment and promotion, build capacity of the Public Service Bureau and individual institutions in the application of merit-based rules;

Ensure that remuneration of public officials is transparent and predictable;

Ensure that the rules on conflicts of interest are enforced in practice and clarify the roles of different institutions; raise awareness and provide regular training on conflict of interest to civil servants and managers of individual institutions; consider verifying the information provided in the asset declarations of public officials.

6.5.2 Way forward

The National Strategy points out the way forward for anti-corruption efforts in Georgia for the next period. First priorities for reform stand as follows:

- Modernisation of the public sector, with the focus on developing clear and precise public policy, introduction of a competitive and merit-based recruitment;
- Improvement and establishment of “on-line” services provided by state agencies;
- Further improvements of the public procurement system, including implementation of e-procurement;
- Reforming the public financing system;
- Improvements of tax and customs regimes;
- Increasing competition in the private sector;
- Improving the whistle-blower protection regime;
- Improving of the political party finance system; and
- Other measures aimed at preventing corruption.

7 MOLDOVA

7.1 Development of Anti-corruption and good governance reforms

Following the adoption of the National Strategy on Preventing and Combating Corruption (NSPCC) in 2004 and 2 rounds of GRECO evaluations (2003 and 2006), Moldova pursued anti-corruption, judiciary and administrative reforms.

Within the framework of Moldova's National Strategy and relevant Action Plans on fighting corruption, important anti-corruption laws entered into force, such as the Laws on Political Parties, on Conflict of Interest, on Preventing and Combating Corruption, on the Protection of Witnesses and Process Participants; the Code of Ethics for Civil Servants; changes to the Law on Officials' Income and Asset Declaration. In its December 2008 Compliance Report, GRECO concluded that significant progress had been achieved on its recommendations to Moldova. While contributing to improve Moldova's position in international studies on corruption perception, these developments have yet to be accompanied by an adequate allocation of resources and appropriate secondary legislation in order to ensure their efficient implementation. In a few areas, measures remain insufficient or have not been finalised or adopted; for instance, as regards legislation on special investigative techniques, the inclusion, to a broader extent, of corruption in the anti-money laundering mechanisms, effective controls over conflicts of interest and asset declarations, the reporting of suspicions of corruption and whistleblower protection, or the incrimination of certain accounting offences or manipulations. There is therefore scope for further adjustment of the legislative framework. Anti-corruption awareness-raising and education campaigns were carried out, addressing some of the concerns raised in the previous years.

In November 2008, a Coordinating Council for Preventing and Combating Crime was set up with a view to coordinating action aimed at preventing and counteracting crime and corruption, human trafficking, and illegal migration. The Centre for Combating Economic Crimes and Corruption (CCECC) is operational, and, during 2009, provided corruption-proofing expertise for 228 draft laws and secondary normative acts. Overall, GRECO considers that Moldova has made significant progress in implementing its recommendations. However, two major deficiencies have still to be addressed: delays in adopting and implementing international instruments, and the lack of effective enforcement of the anti-corruption legal framework. In July 2008, the Government requested all central public institutions to launch corruption risk assessments and design integrity plans, with the support of the Centre for Combating Economic Crimes and Corruption.

The analysis of the cases dealt with by the CCECC points to the need to extend this request also to local public institutions. The monitoring mechanism of the National Anti-corruption Strategy requires further strengthening of its capacity and the wider involvement of relevant stakeholders from Government and civil society.

The reform of its judicial system is based on a strategy adopted in 2006. The Code of Ethics for Judges (2007) was largely disseminated; however, its effective implementation remains to be assessed. Legislation adopted in December 2008 reformed the Public Prosecutor's Office, although initially it did not fully take into consideration the Council of Europe's advice on the independence of the prosecution and amended the status of judges as well as the composition of the Supreme Council of Magistracy. Relevant amendments to the Law on the Superior Council of Magistrates, the Law on the Status of Judges and the Law on the Public Prosecution Service (PPS) became effective in the first quarter of 2009. However, the amendments to the Law on the Superior Council of Magistrates still do not comply with Council of Europe recommendations, and were considered as a significant step backwards in the judiciary reform process.

An Action Plan for implementing judicial reform was approved in October 2009 with immediate effect. The plan, which will require in-depth revision of the Constitution and certain organic laws, addresses the Superior Council of Magistrates, the selection of judges, the elimination of economic and military courts, the administration of courts of justice, the judicial enforcement system, and the bar administration. The National Institute of Justice continued to enjoy international support and stepped up its training activities. A Superior Council of Public Prosecutors was set up in December 2009. A modern judicial information system is being implemented. The main challenge for Moldova in implementing the reform of the judiciary remains the limited resources available. As the Law on Legal Assistance was being put in place, a number of shortcomings continued to be reported, notably as regards allocation of resources and the functioning of the National Legal Assistance Council.

In the last few years, progress was made in the area of administrative reform with the adoption of two new laws: a Law on the Civil Service in July 2008 - which provides for a delimitation of political and non-political functions in the public administration – and a Law on Transparency in the Public Decision-Making Process, adopted in November 2008.

7.2 Relevant Anti-corruption Policies

7.2.1 Status

The National Strategy on Preventing and Combating Corruption (NSPCC)³⁸ was approved by Parliament Decision of 16 December 2004 No 421 – XV, and has foresees annual Action Plans for its implementation. The NSPCC does not have an implementation deadline. Until now, there were 4 Action Plans for short (1 year) or medium (3 years) realisation terms. The Action Plan for 2010 was approved by Parliament Decision of 4 May 2010 No 79.

The National Development Strategy 2008 – 2011³⁹ is approved by the Law of 21 December 2007 No 295 – XVI (including a chapter on “Preventing and Combating Corruption”) and an Action Plan on implementation of the above-mentioned Strategy, approved by Government Decision No. 191 of 25 February 2008.

The Strategy on Central Public Administration Reform, approved by Government Decision No 402 of 30 December 2005. Initially, it covered the period from 2006 to 2008, but as it was not fully implemented, some of its provisions are still valid.

The Stability and Economic Recovery Plan, approved by Government Decision No 790 of 1 December 2009.

³⁸ Text exists in Moldovan and Russian <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=309017>

³⁹ Text exists in Moldovan and Russian at

The Government Activity Plan for 2010, approved by Government Decision No 194 of 18 March 2010.

Activity Programme of the Government European Integration: Freedom, Democracy, Welfare (including chapter on “Building a State of Law”, point c. “Strengthening the National Integrity System and Fighting Corruption”) for 2009 – 2013.

7.2.2 Institutional responsibilities for implementation and monitoring

- Centre for Combating Economic Crimes and Corruption (CCECC), in cooperation with the other central public authorities, and civil society are responsible for the development and review of the anti-corruption policy;
- The Parliament of Republic of Moldova adopts relevant legislative acts;
- The Monitoring Group, including representatives of the law enforcement agencies and other central public authorities, prosecutors, the judicial system, Parliament, and civil society are in charge of monitoring of the implementation of anti-corruption policy. The composition of the Monitoring Group is provided by Presidential Decree No 408 of 8 July 2010. The reports on implementation of the NSPCC and the corresponding Action Plans are submitted to the CCECC, which acts as the Secretariat of the Monitoring Group;
- The Monitoring Group, assisted by the CCECC, through the development of the National Anticorruption Report and specialised NGOs through the development of various thematic studies evaluates the implementation of the anti-corruption policy;
- The Policy, Strategic Planning and External Aid Division within the State Chancellery is in charge of general implementation and oversight.

7.2.3 Issues of concern

The Moldovan National Anti-corruption Report of 2009 concludes that:

- According to national and foreign experts, the Republic of Moldova is characterised as a state which registers only modest successes in the anti-corruption process, and public opinion perception does not show a positive result of the actions undertaken in this field;
- The anti-corruption legal framework contains some gaps and does not fully meet the standards set by international instruments; also, efficient applying mechanisms are missing;
- NGO’s reports revealed an unsatisfactory implementation of the legislation on conflict of interests, the civil servant’s code of conduct, declarations of income and assets, access to public information and transparency of the decision-making process;
- Extensive awareness campaigns were carried out, during which passiveness of the public, civil society, and business representatives was observed;
- The current methods on monitoring the implementation of anti-corruption policies in the Republic of Moldova is imperfect.

7.3 Relevant Anti-corruption Institutions

7.3.1 Status

The **Centre for Combating Economic Crimes and Corruption (CCECC)**⁴⁰ is a specialised governmental body vested with powers to prevent and combat corruption acts or corruptive behaviour deeds. The CCECC Established by the Law on Preventing and Combating Corruption of 25 April 2008, and the Law on the Centre for Combating Economic Crimes and Corruption of 6 June 2001.⁴¹

The **Anti-Corruption Prosecutor's Office** is a subordinate division of the Prosecutor General's Office, specialised in combating corruption crimes, in activities of prevention and investigation of cases of corruption, and in elaboration of draft legislation in this area. Established by the Law on the General Prosecution Office of 25 December 2008, the Law on Preventing and Combating Corruption of 25 April 2008, Parliament Decision of 16 December 2004 approving the National Strategy on Preventing and Combating Corruption and the Action Plan for the Implementation of the National Strategy on Preventing and Combating Corruption and the General Prosecutor's Order of 28 June 2006 on Interaction of the Anti-corruption Prosecutor's Office with Territorial and Specialised Prosecutor's Offices regarding the conduct of the activities on preventing and combating corruption.

The **General Prosecutor's Office** is an autonomous institution in the framework of the judiciary, which, within its powers and jurisdiction, defends the general interests of society, the rule of law, rights and freedoms, conducts criminal investigations, and by law represents the prosecution in the courts.

The **Policy, Strategic Planning and External Aid Division within the State Chancellery** (The regulation of the State Chancellery is approved by a Government decision of 6 November 2009 and the regulations of its divisions are approved by a Decree of the State Minister.)

The **Personnel Policy Division within the State Chancellery** (The regulation of the State Chancellery is approved by Government decision of 6 November 2009 and the regulation of its divisions are approved by a Decree of the State Minister. .

The following bodies exercise powers of preventing and combating corruption through implementation of the policies and practices in the field, within the competence established by law: **Parliament; the President of the Republic of Moldova; the Government; the Prosecutor's Office; the Intelligence and Security Service; the Court of Accounts; other central public administration bodies and local public administration authorities; civil society.** (Law on Preventing and Combating Corruption of 24 April 2008.)

⁴⁰ Official web-site <http://en.cccec.md/>.

⁴¹ Texts of the Laws published in Moldovan and Russian at: <http://ru.cccec.md/Sites/cccec> .

7.3.2 Institutional responsibilities for implementation and monitoring

The **Centre for Combating Economic Crimes and Corruption (CCECC)** is a law enforcement body, specialised in counteracting corruption and economic, financial and tax crimes, a single centralised body, composed of a central apparatus and territorial subdivisions. CCECC represents a central specialised public administration body (in accordance with Art.24 of the Law of 31 May 1990 on the Government); a law-enforcement body, specialised in counteracting economic, financial and tax crimes, as well as corruption (in accordance with Art.1 of the Law on the CCECC of 6 June 2002); a body that conducts criminal prosecution under law provisions (according to the Criminal Code, and the Criminal Procedure Code) and a body that is carrying out operative investigation activity under the provisions of the Law of 12 April 1994.

The CCECC's competences are: prevention, detection, investigation and suppression of contraventions, and stopping of economic, financial and tax crimes; counteracting corruption and protectionism; prevention and fighting of money laundering and terrorist financing; providing anti-corruption expertise on the draft legislative and normative acts of the Government for their compliance with state policy to prevent and combat corruption.

The CCECC is subordinated, and is reporting, to the Government. At the same time, it annually reports to the Parliament.

The **General Prosecutor's Office** reports on anti-corruption measures carried out by the prosecutor's offices in the framework of the NSPCC are presented, on a quarterly basis, to the CCECC, which acts as the Secretariat of the Monitoring Group. The General Prosecutor presents an annual report on the prosecutor offices' activities at the meeting of the Board of the General Prosecutor's Office and at the plenary session of the Parliament.

The **Policy, Strategic Planning and External Aid Division within the State Chancellery** coordinates the decision-making and strategic planning process at the level of the Government, the central public administration reform and the process of programming and monitoring, at the national level, the foreign aid of international organisations and donors. The Division deals with policy analysis and planning, and with the monitoring of the activity of the corresponding subdivisions of the central administration authorities.

The **Personnel Policy Division within the State Chancellery** deals with the modernisation of the public administration by means of elaborating/adjusting and promoting efficient public policies regarding personnel in the public administration. The division cooperates with personnel subdivisions of the central administration authorities.

Parliament; the President of the Republic of Moldova; the Government; the Prosecutor's Office; the Intelligence and Security Service; the Court of Accounts; other central public administration bodies and local public administration authorities; civil society according to their responsibilities prepare reports on implementation of the NSPCC and the corresponding Action Plans, which are submitted to the CCECC, which acts as the Secretariat of the Monitoring Group. The Monitoring Group, assisted by the CCECC, annually develops a National Anti-corruption Report, which is submitted to the Parliament for information. It is also published and disseminated during the regularly held national anticorruption conferences.

7.3.3 Issues of concern

According to the research report "Evolution of the corruption phenomenon perception in RM", developed in the framework of the MOLICO Project, the CCECC is seen as an institution with a low level of corruption, and it enjoys a higher degree of confidence than any other law

enforcement or judicial body. However, the quality and working capacity gave reasons for some concerns. The EU was interested in the actions undertaken to consolidate and strengthen the administrative capacities of the CCECC, and reiterated the fact that the CCECC will act efficiently, independent from political influence, and in strict accordance with international standards.

7.4 Relevant Anti-corruption Legislation

7.4.1 Status

The Republic of Moldova's national legislation on preventing and fighting corruption provides a range of legislative and policy documents connected to international standards and recommendations, the most relevant being:

- The Criminal Code of the Republic of Moldova of 18 April 2002;
- The Criminal Procedure Code of the Republic of Moldova of 24 October 2008;
- The Offences Code of the Republic of Moldova of 24 October 2008;
- The Law on Preventing and Fighting against Corruption of 25 April 2008;
- The Law on the Code of Conduct for Public Servants of 22 February 2008;
- The Law on Conflict of Interest of 15 February 2008;
- The Law on the Civil Service and the Status of Civil Servants of 4 July 2008;
- The Law on Declaring and Monitoring the Income and Assets of State Dignitaries, Judges, Prosecutors, Civil Servants and Certain Persons Holding Leading Positions of 19 July 2002;
- The Law -on the Control of Public Office Holders and Candidates to Public Vacancies of 18 December 2008;
- Law on Public Procurement of 13 April 2007;
- Law on Transparency in the Decision-Making Process of 13 November 2008;
- Law on the Centre for Combating Economic Crimes and Corruption of 6 June 2002;
- Law on the Prosecutor's Office of 25 December 2008;
- Law on the Court of Accounts of 5 December 2008;
- Law on Access to Information of 28 July 2000;
- Parliament Decision No. 421-XV on the Adoption of the National Strategy for Preventing and Fighting against Corruption of 16 December 2004;
- Presidential Decree No. 2231-III on the Establishment of a Monitoring Group for the implementation of the National Strategy on Preventing and Fighting against Corruption and the Action Plan for the Strategy's implementation of 17 February 2005;
- Government Decision No. 997 on Anti-corruption Expertise of Draft Legislative and

Normative Acts of 23 August 2008;

- Government Decision No. 615 on Measures for Preventing Corruption and Protectionism within Public Institutions of 28 June 2005;
- Government Decision No. 1210 on the Civil Council Monitoring the Center for Combating Economic Crimes and Corruption of 29 October 2008;
- Government Decision No. 906 on the Approval of the Methodology for Assessing Corruption Risks in Public Institutions, of 28 July 2008;
- Government Decision No. 1461 approving the Regulation on the Mechanism of Alert and Monitoring the Level of Corruption in Public Authorities of 19 December 2008.

7.4.2 Institutional responsibilities for implementation and monitoring

Specific anti-corruption legislation is represented by a series of primary (e.g. Law on Preventing and Combating Corruption of 25 April 2008) and secondary (e.g. Regulation on the Organisation of the Process of Making the Anti-corruption Expertise, approved by Government Decision No. 977 of 23 August 2006) legislative acts aimed at preventing and combating corruption.

Among the main achievements of the recent period is the adoption of the anti-corruption expertise of the draft laws and governmental normative acts (Government Decision no. 997 of 23 August 2006) and of the Law on Transparency in the Decision-Making Process of 13 November 2008. As a result, the majority of normative acts are consulted with the interested stakeholders before being approved. The focal points responsible at institutional level for transparency in the decision-making process were nominated in each line ministry.

A certain progress was achieved in the implementation of the Law on Public Function and the Status of Civil Servants of 04 July 2008. A series of normative acts on standardisation of the contest procedures for occupying vacancies in public offices, drawing-up type-structures and a methodology for developing, coordination and approval of the job description for public function were approved. Also, a methodology for assessing professional performances of the public servant was developed.

At the same time, several legal regulations proved to be challenging and difficult to implement. Among such legal acts are: the Law on Conflict of Interest of 15 February 2008; the Law on the Code of Conduct of the Civil Servant of 22 February 2008 and the Law on Declaring and Monitoring the Income and Assets of State Dignitaries, Judges, Prosecutors, Civil Servants and Certain Persons Holding Leading Positions of 19 July 2002.

7.4.3 Issues of concern

The anti-corruption legislation of the Republic of Moldova comprehensively covers most of the areas of anti-corruption activities and provides sufficient instruments for the enforcement of anti-corruption policy. At the same time, some laws and legal acts require stricter enforcement mechanisms. There are certain indicators that the Law on Conflict of Interest and the Law on Declaring and Monitoring the Income and Assets of State Dignitaries, Judges, Prosecutors, Civil Servants and Certain Persons Holding Leading Positions are not sufficiently enforced, and sanctions for violations of these laws are not strict enough.

The national anticorruption legal framework in force still contains some gaps, and does not fully meet the standards required by international instruments; and the lack of effective enforcement mechanisms minimises their effect.

7.5 Current Processes: Trends

7.5.1 Issues to be addressed

The Republic of Moldova continues to strengthen the legislative background for anti-corruption policy reforms. There is comprehensive legislation to be adopted in 2010-2011, aimed at adjusting the national anti-corruption legislation to the requirements set out in the UN Convention against Corruption, the Criminal Law Convention on Corruption, the Additional Protocol to this Convention, and GRECO recommendations submitted to Moldova during the 2nd Round of Evaluation:

- A Draft Law (submitted to the Parliament on 13 May 2010) proposes that the violation of the Code of Conduct would not just be a disciplinary offence, but, if necessary, take the form of crime; it proposes supplementing the Criminal Code, by establishing liability of legal persons for corruption, criminalisation of the offence of “false information in accounting documents”
- A Draft Law (submitted to the Government on 11 June 2010) suggests amendments to the Criminal Code by introducing the concepts of “public person”, “public person of a high rank” and a description of their defining signs, so that the above-mentioned persons would be punishable by criminal penalty for committing acts of corruption; by additionally introducing the concept “foreign public person”, which will be similar to the concepts, used by the UN Convention against Corruption, of “foreign public official” and “international public organisation official”; proposes criminalising the offence of corruption of voters; suggests to amend the Criminal Procedure Code by taking compulsory measures of assuring the confiscation of crimes product.
- A Draft Law (submitted to the Government on 08 June 2010) proposes toughening the sanction for the crime of tax evasion;
- A Draft Law (submitted to the Government on 2 May 2010) which refers to changes and additions to the Criminal Code and the Criminal Procedure Code, the Law on Declaring and Monitoring the Income and Assets of State Dignitaries, Judges, Prosecutors, Civil Servants and Certain Persons Holding Leading Positions, the Law on Conflict of Interest, the Offences Code of the Republic of Moldova;
- A Draft Law on the Protection of Whistleblowers (submitted for the Government’s approval on 2 June 2010);
- A Draft Law on the Main Ethics Commission, its Structure and Functioning;
- A Draft Law on Amending and Supplementing Certain Legislative Acts, which sets out changes and additions on the state registration of legal persons and individual entrepreneurs, by including the “single window” concept as the principle for the state registration procedure, and a range of amendments to improve the legal framework in the field;
- A Draft Law on supplementing the Law on Preventing and Combating Corruption (including provisions on corruption in the private sector) of 25 April 2008.

7.5.2 Way forward

In terms of the way forward, the following could be considered as intervention areas:

- Adoption of the necessary anti-corruption laws aimed to meet recommendations of international anti-corruption institutions and organisations;
- Development and support of the capacity of the CCCEC through a clearer provision of responsibilities on communication, monitoring, and enforcement of anti-corruption regulations.
- Strengthening mechanisms of monitoring of the implementation and enforcement of the National Strategy and the Annual Action Plan; adopting comprehensive mechanisms of parallel internal and public control and monitoring;
- Linking findings of yearly National Anti-corruption Reports with activities of the Annual Action Plans under the National Strategy on Preventing and Combating Corruption (NSPCC). Adopting findings of the Report to benchmark achievements in implementation of the Strategy and Action Plan for its implementation for the years 2011-2013;
- Support of successful practices, such as anti-corruption expertise of draft laws and governmental normative acts, carried out by the CCECC;
- Continuation of the assessment of institutional corruption risks; mapping risks and adjusting legal regulations accordingly;
- Strengthening the system of anti-corruption hotlines and public legal advising, etc.; providing relevant financial support for a public anti-corruption advice system;
- Development of a comprehensive plan to strengthen the enforcement of the Law on Conflict of Interest, and the Law on Declaring and Monitoring the Income and Assets of State Dignitaries, Judges, Prosecutors, Civil Servants and Certain Persons Holding Leading Positions;
- Refining the system of anti-corruption educational campaigns taking into account specifics of the national mentality and traditions; adjusting strategies of the campaigns to the findings of the National Anti-corruption Report;
- Continuation of the judiciary reform with an accent on the assessment of the implementation of the Code of Ethics for Judges.

8 UKRAINE

8.1 Development of Anti-corruption and Good Governance Reforms

Ukraine has been developing of the anti-corruption policies and legislation for a considerable period of time. Anti-corruption reforms started in the mid-1990s, with adoption of the National Law on Combating against Corruption and the Anti-corruption Concept for 1998-2005. Between 1995 and 2005, a significant amount of laws and regulations was adopted. Yet, the efficiency of implementation of anti-corruption reforms was seriously undermined by political instability, which resulted, inter alia, in a frequent change of the bodies in charge of these reforms. And while Ukraine introduced a rich array of legal instruments and broad strategic documents, actual coordination, implementation, and enforcement remained insufficient. Evaluations and assessments by GRECO, OECD ACN, the EC and UPAC reports state that very limited progress had been achieved by 2009-2010 in the implementation of key elements of good governance policy reforms, including administrative and judicial reforms.

In June 2009, a comprehensive package of anti-corruption legislation was adopted, and work on a new national anti-corruption strategy started. The new laws (scheduled to be fully enforced in January 2011) introduced a more systematic approach to the fight against corruption, including basic elements of prevention, prosecution and anti-corruption education. The concept of a centralised coordination anti-corruption body was developed and adopted.

Actual implementation of the new wave of anti-corruption reforms started in 2010, with the creation of the National Anti-corruption Committee and the appointment of the Governmental Agent on Anti-corruption Policy. A wide range of anti-corruption instruments was adopted through legislation of different types. A special anti-corruption portal for communication with society was developed, and plans to introduce more mechanisms to tackle corruption in the country were announced. Given the fact that a new version of the National Anti-corruption Strategy is under discussion and is planned to be adopted by the end of 2010, when can cautiously conclude that the country starts its anti-corruption reforms anew, with a very limited number of approaches relevant for the previous period to stay in place. While the Ukrainian authorities in charge of anti-corruption policy implementation continue their efforts to audit existing anti-corruption mechanisms, and to improve them through the introduction of new instruments, the trend to follow in this work the recommendations of international anti-corruption institutions and organisations is visible and plausible.

8.2 Relevant Anti-corruption Policies

8.2.1 Status

Ukraine enjoys comprehensive legislation outlining the basic principles and substance of anti-corruption policy. As for November 2010, the basic documents defining anti-corruption policy in Ukraine are:

- The Law of Ukraine on the Fight against Corruption of 5 October 1995 (enforced). The Decree of the President of Ukraine of on the Concept of Corruption Elimination in Ukraine «On the way to honesty»⁴² of 11 September 2006;
- The Resolution of the Cabinet of Ministers of Ukraine Some Issues of the State Anti-Corruption Policy Implementation of 4 June 2008;
- The Ordinance of the Cabinet of Ministers of Ukraine on the Approval of the Action Plan on the Implementation of the Concept of Corruption Elimination in Ukraine “On the way to honesty” and the State Anti-Corruption Policy until 2011 (the period of its enactment is until January 2011), of 15 August 2007.
- The Ordinance of the Cabinet of Ministers of Ukraine on the Approval of Principles for Anti-Corruption Policy, of 8 December 2009.

8.2.2 Institutional responsibilities for implementation and monitoring

General responsibility:

- The President of Ukraine as the Head of the State, the Head of the National Anti-Corruption Committee issues decrees and ordinances, including those in the sphere of anti-corruption policy, which are mandatory within the territory of Ukraine;
 - The Verkhovna Rada of Ukraine is the legislative power body; it enacts legislation and controls the activity of the Cabinet of Ministers of Ukraine according to the Constitution and the law;
 - The Cabinet of Ministers of Ukraine is the superior executive power body; it performs coordination and control over the activity of executive power bodies concerning prevention and counteraction of corruption;
 - The Ministry of Justice of Ukraine is the central executive power body in charge of forming and implementing state judicial policy and the adaptation of the legislation of Ukraine to EU legislation;
 - The Main Department of the Civil Service of Ukraine is the central executive power body
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⁴² A new National Anti-corruption Strategy for Ukraine is under development. The public discussion of the Draft Strategy took place on 20 October 2010. A decision was announced by the President of Ukraine to adopt the new National Anti-corruption Strategy by the end of 2010.

responsible for implementing the state policy in sphere of civil service;

- The Ministry of Internal Affairs of Ukraine is the central executive power body, its activity is directed and coordinated by the Cabinet of Ministers of Ukraine; it is the main body in the system of central executive power bodies in charge of forming and implementing the state policy in sphere of protection of human rights and freedoms, the protection of public order, the provision of public security, the protection of property rights and interests of society and the state from illegal encroachment, road safety, citizenship, registration of natural persons, immigration and counteraction to illegal migration;
- The Security Service of Ukraine is a special law enforcement state body ensuring the state security of Ukraine; also, it is a specially empowered public authority in the sphere of counterintelligence activity and guarding state secrets; it is the main body in the sphere of combat against terrorism, and takes measures on counteraction to corruption.

Specific anti-corruption responsibility:

- The National Anti-Corruption Committee is an advisory body under the President of Ukraine on issues of prevention and counteraction of corruption. Established by the Decree of the President of Ukraine of on the Establishment of the National Anti-Corruption Committee⁴³ of 26 February 2010 and the Decree of the President of Ukraine of on The Issues of the National Anti-Corruption Committee⁴⁴ of 26 March 2010. The Committee oversees of the development and implementation of the anti-corruption strategy and anti-corruption policies of Ukraine.
- The Governmental Agent on Anti-Corruption Policy is a specially empowered official within the Secretariat of the Cabinet of Ministers of Ukraine. The Governmental Agent makes proposals to the Cabinet of Ministers of Ukraine on the formation of the state policy. Established by the Resolution of the Cabinet of Ministers of Ukraine on the Approval of Regulations of the Governmental Agent on Anti-Corruption Policy⁴⁵ of 24 April 2009 and the Resolution of the Cabinet of Ministers of Ukraine on Some Issues of the State Anti-Corruption Policy Implementation⁴⁶ of 16 September 2009.
- The Bureau for the Anti-corruption Policy⁴⁷ is an executive body serving as a secretariat for the Governmental Agent on the Anti-corruption Policy. It was established by the Resolution of the Cabinet of Ministers of Ukraine of 7 June 2010.⁴⁸

⁴³ The text of the Decree exists in English at:

http://acrc.org.ua/file_collection/Presidential_Decree_No.275_2010_26_Feb_2010_e.doc

⁴⁴ The text of the Decree exists in Ukrainian only. http://acrc.org.ua/file_collection/424.doc

⁴⁵ The text of Resolution exists in Ukrainian only. http://acrc.org.ua/file_collection/410.doc

⁴⁶ Official web-site <http://acrc.org.ua/index.php?lang=ua&page=projectp&id=89>

⁴⁷ Official web-site <http://acrc.org.ua/index.php?page=pconsil>

⁴⁸ The text of Resolution exists in Ukrainian only: <http://acrc.org.ua/index.php?page=pconsil>

8.2.3 Issues of concern

- The process of adoption and implementation of anti-corruption policy in Ukraine is closely linked to the political process in the country. The implementation of the policy lacks sustainability and continuity.
- The issue of continuity of anti-corruption policy remains the most serious obstacle for the successful implementation of anti-corruption reforms in Ukraine. Every new administration adopts a new set of anti-corruption legislation without clear connection to previous legal acts.
- Documents governing anti-corruption policy are being adopted not by the legislative body (Verkhovna Rada) in the format of national law, but by the executive authorities in the format of Presidential Decrees or Resolutions of the Cabinet of Ministers.
- Implementation of the national anti-corruption policy of Ukraine lacks publicity and substantive participation of civil society. The general public and civil society of the country are not fully informed about the process of the implementation of the policy and are not sufficiently engaged in the discussion of anti-corruption policy and its implementation.

8.3 Relevant Anti-corruption Institutions

8.3.1 Status

Special anti-corruption institutions:

The **National Anti-Corruption Committee** is a consultative and advisory body on prevention and counteraction of corruption under the President of Ukraine. National Anti-Corruption Committee is a collegial body headed by the President of Ukraine, and comprises the Prime Minister of Ukraine, some members of the government, heads of other executive power bodies, the Head of the Verkhovna Rada of Ukraine, some people's deputies of Ukraine, the Chairman of the Supreme Court of Ukraine, the Secretary of the Council for National Security and Defence of Ukraine, the Head and other representative of the Administration of the President of Ukraine, the Chairman of the High Council of Justice, the Head of the Audit Chamber, heads of law enforcement bodies, representatives of the academia and the public.

The **Governmental Agent on Anti-Corruption Policy** is a specially empowered official within the Secretariat of the Cabinet of Ministers of Ukraine. The Governmental Agent on Anti-Corruption policy is subordinated to the Cabinet of Ministers of Ukraine and acts in cooperation with the President of Ukraine, the Verkhovna Rada of Ukraine and the Ministry of Justice of Ukraine. The Governmental Agent is involved in governmental committees and may participate in the meetings of the Cabinet of Ministers of Ukraine. According to the legal provisions, there should be a Public Council⁴⁹ and a Coordination Council⁵⁰ established under the Governmental Agent on Anti-corruption Policy.

The **Bureau for Anti-corruption Policy** has been established as a separate structure within the Secretariat of the Cabinet of Ministers of Ukraine.

Special Units of the executive bodies on issues of prevention and counteraction to corruption are subordinate to the Governmental Agent on Anti-corruption Policy and to the heads of the executive bodies.

Other institutions involved in anti-corruption activities:

- The **General Prosecutor's Office of Ukraine** is a law enforcement body empowered to combat against corruption (uncovering corruption offenses), to supervise the compliance with anti-corruption legislation, as well as to investigate criminal cases related to service crimes. Bodies of the prosecutor's office of Ukraine, which are headed by the General Prosecutor, constitute a unified, independent and centralised system; they are law enforcement bodies in terms of their legal nature. Public authorities and local self-government bodies are prohibited to intervene into the activities of the bodies of the prosecutor's office. At the same time, the General Prosecutor and his subordinate prosecutors are entitled to participate in the meetings of public authorities and local self-government bodies. The General Prosecutor of Ukraine and his subordinate prosecutors coordinate activities on crime combating of the internal affairs bodies, bodies of the security service, the tax militia, customs bodies, the military service as well as some other law enforcement bodies. Such coordination is implemented through convening coordination meetings, the creation of working groups, requesting statistical data and other information. The General Prosecutor of Ukraine is a member of the National Anti-Corruption Committee.
- The **Security Service of Ukraine** is a law enforcement body empowered to reveal corruption offences, to carry out operational investigative activities and to investigate certain categories of criminal cases. The Security Service of Ukraine is accountable to the President of Ukraine and the Verkhovna Rada of Ukraine. The Security Service

⁴⁹ <http://acrc.org.ua/index.php?page=pconsil>

⁵⁰ <http://acrc.org.ua/index.php?page=panticorup>

interacts with the Department of the Senior Officials Guard of Ukraine, the law enforcement and custom authorities of Ukraine. The Head of Security Service of Ukraine is a member of the National Anti-Corruption Committee.

- The **Ministry of Internal Affairs of Ukraine** is a central executive power body having law enforcement functions, including the detection of corruption offences, the implementation of operational activities, and the investigation of certain categories of criminal cases. Activities of the Ministry of Internal Affairs of Ukraine are directed and coordinated by the Cabinet of Ministers of Ukraine. The Minister of Internal Affairs of Ukraine is a member of the National Anti-Corruption Committee.
- The **Tax Militia**, which operates within the State Tax Administration of Ukraine, is a law enforcement authority that exercises control over the compliance with tax legislation, performs operational investigative functions, and is empowered to investigate certain criminal cases in the sphere of economic activities. The Head of the State Tax Administration of Ukraine is a member of the National Anti-Corruption Committee.
- The **Military Service of Law and Order in the Armed Forces of Ukraine** is a special law-enforcement unit at the Armed Forces of Ukraine assigned to ensure law and order and military discipline among military personnel, empowered to reveal corruption offences among military personnel, as well as to carry out inquiries into cases of crimes committed by military personnel. The general management of the Military Service of Law and Order is exercised by the Minister of Defence of Ukraine through the Chief of General Staff - Commander-in-Chief of the Armed Forces of Ukraine. The Military Service of Law and Order is empowered to interact with military formations formed under the laws of Ukraine, with internal affairs bodies, and other law enforcement bodies, as well as to share information with them for prompt and full investigation of crimes and revealing the offences.
- The **Main Department of the Civil Service of Ukraine** is a central executive body responsible for implementing the state policy in the sphere of civil service. It exercises the functional management of the civil service, participates in the implementation of administrative reform, and ensures the compliance with uniform requirements to the competence of candidates to positions of civil servants. The activities of the Main Department of the Civil Service of Ukraine are directed and coordinated by the Cabinet of Ministers of Ukraine. The Head of the Main Department of Civil Service of Ukraine is a member of the National Anti-Corruption Committee.

8.3.2 Institutional responsibilities for implementation and monitoring

Special anti-corruption institutions

- The **National Anti-Corruption Committee** is a newly established structure which comprises a number of officials involved in the implementation of the state anti-corruption policy, as well as law enforcement activities. It allows to ensure a comprehensive consideration and discussion of issues related to corruption prevention and counteraction on the state level, as well as to take coordinated decisions on the mentioned issues. It analyses the corruption levels in Ukraine, develops anti-corruption measures by means of decisions, including measures for the introduction of amendments in the legislation on prevention and counteraction to corruption.
- The **Governmental Agent on Anti-Corruption Policy** coordinates the activities of executive power bodies in the field of prevention and counteraction to corruption. The Agent makes proposals to the Cabinet of Ministers of Ukraine on the formation of the

state anti-corruption policy, analyses the executive power bodies' activities on issues of prevention and counteraction to corruption, and informs the public on the measures on corruption prevention. The Governmental Agent is seen to be the central body for the anti-corruption decision making in the country.

- The Public Council under the Governmental Agent is an elected body, and is planned to serve as a permanent advisory body to the Governmental Agent on anti-corruption policy to ensure the participation of citizens and their associations in public affairs, public control over activities of executive bodies, establishing effective interaction of these with the public, incorporation of public opinion during the realisation of anticorruption policy. Nationwide and international organisations (civic and charitable foundations, associations, unions, etc.) that are registered by the Ministry of Justice of Ukraine, have legal status and lead the activities in the field of preventing and combating corruption are invited to participate in the Public Council. Organisations and individuals that do not meet these requirements may be included in the Public Council on the recommendation of the Public Council members and Governmental Agent's submission. The term of membership in the Public Council is 1 year.
- The Coordination Council under the Governmental Agent is formed of international organisations, dealing with the prevention and combating of corruption. The task of the Coordination Council is to coordinate and harmonise the activities of international anti-corruption organisations in Ukraine, and to increase the effectiveness of foreign assistance during the implementation of government anti-corruption measures. 13 international organisations, namely: the Council of Europe, the European Commission, the Organisation for Economic Cooperation and Development, the NATO Liaison Office in Ukraine and others were invited to participate in the Council and agreed to do so.
- The **Bureau for the Anti-corruption Policy** provides administrative, expert, analytical and informational support activities of the Governmental Agent on Anti-corruption Policy and to prepare proposals on the development and implementation of the anti-corruption policy. Major tasks of the Bureau include: design of decisions related to the implementation of the anti-corruption policy, formulation of the state anti-corruption policy, coordination of the work of the executive bodies related to the implementation of the anti-corruption policy, anti-corruption expertise of legal acts and legislative drafts, systematic analysis of the implementation of the anti-corruption policy, preparation of materials related to participation of Ukraine in GRECO and other international organisations, research of corruption, anti-corruption education and informational support of anti-corruption activities. The Bureau is also in charge of providing society with information on the implementation of the anti-corruption policy.
- **Special Units of the executive bodies on issues of prevention and counteraction to corruption** oversee the implementation of anti-corruption policy in the executive bodies and control the implementation of anti-corruption legislation as well as organising anti-corruption education.

Other Institutions involved in anti-corruption activities:

- The activity of the **Ministry of Justice of Ukraine** is aimed at improving new anti-corruption legislation. In this relation, there is a number of laws drafted, such as the draft Laws on Amendments to Some Laws of Ukraine on Improvement of the Principles of Prevention and Counteraction to Corruption, and on Amendments to the Criminal and the Criminal-Procedural Codes of Ukraine (concerning the improvement of procedures for carrying out confiscation) and on Amendments to Some Laws of Ukraine in Connection with the Adoption of the Law of Ukraine On the Principles of Prevention and Counteraction to Corruption. These draft laws have been drawn up with the aim to

eliminate some inconsistencies in the existing anti-corruption legislation, as well as with the aim of bringing this legislation into conformity with international standards for corruption counteraction. Presently, these draft laws have been sent to the President of Ukraine for their further submission to the Verkhovna Rada of Ukraine. In order to minimise the risk of corruption caused by gaps in the legislation, there has been established an expertise of the legal acts for the presence of corruptogenic rules. The Ministry of Justice provides legal support to the National Anti-Corruption Committee. In the process of developing of legal acts, it considers proposals to the relevant draft from other public authorities, leading scientific institutions and the public. In addition, the Ministry of Justice conducts legal expertise of the legal acts drafted by other public authorities. The Ministry of Justice prepares proposals on each draft law registered in the Verkhovna Rada of Ukraine, which are then sent to the Cabinet of Ministers of Ukraine. In case of receipt of the information on corruption offences, this information is forwarded to one of the law enforcement bodies concerned, which are empowered to take anti-corruption measures.

- According to the Law of Ukraine on the Principles of Prevention and Counteraction to Corruption, unlike the legislation in force, bodies of the **prosecutor's office** do not belong to the specially empowered bodies in the field of counteraction to corruption, however, they have the authority to exercise control over the compliance with anti-corruption legislation.
- The **Main Department of Civil Service of Ukraine** takes an active part in the state anti-corruption policy realisation. It is authorised to implement measures in the sphere of administrative reform, in particular, on the development of the new draft Law of Ukraine on Civil Service.

8.3.3 Issues of concern

- Despite the existence of numerous bodies and institutions in charge of different aspects of implementation of anti-corruption policy and instruments, Ukraine lacks a clearly identified centre of anti-corruption decision making and oversight. It is not clear which body is in charge of general monitoring of the implementation of anti-corruption policy and instruments in general, and concrete legislative acts in particular.
- The newly established National Anti-corruption Committee, the Governmental Agent on Anti-corruption Policy and the Bureau for Anti-corruption Policy have a lot of potential but require serious support and assistance from institutions which were in charge of implementation of anti-corruption policy till date.
- The mandate of the Governmental Agent of Anti-corruption Policy and the Bureau for Anti-corruption Policy is established not by a legislative body (Verkhovna Rada) but by the decisions of the Cabinet of Ministers, thus making them vulnerable to the influence of executive authorities.
- There is a collision of responsibilities of the Governmental Agent on Anti-corruption Policy and Director of the Bureau for Anti-corruption Policy.
- Significant efforts and resources (including financial) are needed to develop and support institutional capacities and the independence of the Governmental Agent and Bureau.
- There is a need to support the independence and institutional capacity of the special units of the executive bodies on issues of prevention and counteraction to corruption and

to establish a clear communication strategy for exchange of information between special units and other anti-corruption bodies.

- The Public Council under the Governmental Agent on Anti-corruption Policy is not yet formed.

8.4 Relevant Anti-corruption Legislation

8.4.1 Status

Legislative acts are the basis of the regulatory framework for prevention and counteraction to corruption in Ukraine. The status of the majority of public bodies involved in formation and implementation of state anti-corruption policy is defined by legislation. The specific issues aimed at implementation of the provisions defined by legislation are regulated by decrees of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine and agencies documents. Major legal acts regulating anti-corruption activities in Ukraine are:

- The Law of Ukraine on Public Service (enforced), of 16 December 1993;
- The Law of Ukraine on the Ratification of the Civil Law Convention on Corruption (enforced), of 16 March 2005;
- The Law of Ukraine on Entering Changes to Some Laws of Ukraine Concerning Prevention of and Counteraction to Corruption (enforced) of 10 March 2010;
- The Law of Ukraine on ratification of the United Nations Convention against Corruption (enters into force on 1 January 2011) of 18 October 2006;
- The Law of Ukraine on ratification of Criminal Law Convention on Corruption (enters into force on 1 January 2011), of 18 October 2006;
- The Law of Ukraine on Ratification of the Additional Protocol to the Criminal Law Convention on Corruption (enforced) of 18 October 2006;
- The Law of Ukraine on Principles of Prevention and Counteraction to Corruption (enters into force on 1 January 2011);
- The Law of Ukraine on Principles of Prevention and Counteraction to Corruption provides for engagement of the public in measures on prevention and counteraction to corruption by engaging in activities on revealing the facts of corruption offenses, reporting such facts, realisation of the right to obtain information concerning the efforts aimed at preventing and counteraction to corruption from government and local self-government bodies, introduction of public anti-corruption evaluation, participation in open parliamentary hearings of issues on prevention and counteraction to corruption, submitting of proposals concerning improvement of the anti-corruption legislation to the parties exercising the right of legislative initiative etc. The establishment, within the public authorities, of relevant public councils as consultative and advisory agencies is now widely practiced.
- The Law of Ukraine of on the Liability of Legal Persons for Committing Corruption Offences (enters into force on 1 January 2011) of 11 June 2009;
- The Law of Ukraine on Amendments to Some Legislative Acts of Ukraine Concerning the Liability for Corruption Offences (comes into force on 1 January 2011) of 11 June 2009;

- The Law of Ukraine on the State Programme for Economic and Social Development of Ukraine for 2010 (valid until January 2011), of 20 May 2010;
- The Decree of the President of Ukraine on the Decision of the Council of National Security and Defence of Ukraine on the Level of Crime in the State and on Coordination of the Public Authorities Activities in Counteraction to Criminal Manifestations of Corruption (enforced) of 11 September 2009;
- The Resolution of the Cabinet of Ministers of Ukraine on the Progress Achieved by the Local Executive Power Bodies in the Implementation of Legal Acts on Civil Service and Combat against Corruption (enforced) of 3 August 1998;
- The Resolution of the Cabinet of Ministers of Ukraine on Submitting Analytical Information on the Obeying of Requirements of the Law of Ukraine on the Fight against Corruption by Executive Power Bodies (enforced) of 27 September 1999;
- The Resolution of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Conducting Official Investigation in respect of Persons Empowered to the Perform the Functions of the State or Local Self- Government Bodies (enforced) of 13 June 2000;
- The Resolution of the Cabinet of Ministers of Ukraine on Measures Concerning Improving the Qualification of the Employees of Public Authorities and Local Self-Government Bodies in Issues of Combat against Corruption (enforced) of 2 June 2003;
- The Resolution of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Carrying out a Special Check of Information Provided by the Candidate to the Position (enforced) of 15 November 2006;
- The Resolution of the Cabinet of Ministers of Ukraine on Progress Achieved in Fiscal and Budget Discipline, Measures on Strengthening the Combat against Corruption and Control over the Use of State Property and Financial Resources (enforced) of 29 November 2006;
- The Resolution of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Collection and Publication of Information Concerning Legal Persons Brought to Responsibility for Committing Corruption Offences (enforced) of 8 December 2009;
- The Resolution of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Informing the Public on the Results of Work in the Sphere of Counteraction to Corruption (enforced) of 8 December 2009;
- The Resolution of the Cabinet of Ministers of Ukraine on Some Issues of the State Anti-Corruption Policy Implementation (enforced) of 4 June 2008;
- The Resolution of the Cabinet of Ministers of Ukraine on Approval of the Procedure for Transferring the Gifts Accepted during Official Events (enforced) of 8 December 2009;
- The Resolution of the Cabinet of Ministers of Ukraine on Measures concerning Strengthening the Counteraction to Corruption» (enforced) of 8 December 2009;
- The Resolution of the Cabinet of Ministers of Ukraine on Approval of Methodology for Conducting Anti-Corruption Expertise of Legal Acts (enforced) of 8 December 2009;
- The Resolution of the Cabinet of Ministers of Ukraine on Issues of Informing on the Results of Work in the Sphere of Prevention and Counteraction to Corruption (enforced)

of 8 December 2009;

- The Resolution of the Cabinet of Ministers of Ukraine on issues of Prevention and Counteraction to Corruption in the executive power bodies» (enforced) of 8 December 2009;
- The Instruction on the Procedure of Information exchange organisation between structural units of the Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, State Tax Administration of Ukraine, State Border Service of Ukraine, State Customs Service of Ukraine in the detection and elimination of corruption in law enforcement bodies, approved by the Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, State Tax Administration of Ukraine, Administration of the State Border Service of Ukraine, State Customs Service of Ukraine (enforced) of 23 March 2009;
- On 7 July 2010, the Verkhovna Rada of Ukraine adopted the Law of Ukraine on the Judicial System and the Status of Judges.

8.4.2 Issues of concern

- The existing anti-corruption documents outlining Ukraine's anti-corruption policy do not provide any clear plan for development and improvement of the anti-corruption legislation in Ukraine.
- The anti-corruption legislation of Ukraine is already prolific and covers major areas of anti-corruption activities. At the same time, the legislation requires harmonisation and unification.
- Anti-corruption legislation does not fully cover zones of increased corruption risk such as medical, educational, tax and customs spheres, as well as activity of the State Motor Vehicle Inspectorate bodies.
- Several laws fundamental for the implementation of the anti-corruption policy such as Law on the Access to the Public Information, Law on the Code of Conduct for Public Officials, Law of the Disclosure of Financial Information for Public Officials, Law of the National Bureau for Anti-corruption Investigations, Law on the Conflict of Interests are not yet adopted. Drafts of these laws are developed and presented to the legislative body (Verkhovna Rada).

8.5 Current Processes: Trends

Among measures of prevention and counteraction to corruption recently provided for in legislation are prevention and conciliation of conflicts of interest, as well as establishing financial control over expenditures of civil servants.

It is also planned to launch administrative reform in the state. Basic directions of this reform are: structuring the system of central executive power bodies; establishment of up-to-date legal base for civil service; delimitation of political and administrative positions; increasing legal liability of civil servants; regulation of conditions for remuneration of their labour; guaranteeing equal access of citizens to civil service; increase in professional capacity of civil servants; development of the top rank of the civil service; introduction of electronic government. Administrative reform is aimed at structuring transparent system of state power, accountable to society, and a system of rendering public services, limitation of quantity of state machine and expenditures on it, increase in internal and external investments due to

predictable system of public administration, existence of a powerful anti-corruption mechanism.

The major issue for the implementation of the anti-corruption policy in Ukraine is the enforcement of the already existing laws and regulations and there is obvious trend to define priorities for such enforcement. The Governmental Agent and Bureau follow recommendation of international anti-corruption bodies and organisations and in the same time make an effort to adopt domestic approach and rely on domestic expert resources.

8.5.1 Issues to be addressed

- To strengthen the role of the National Ant-corruption Committee and to ensure transparency of its activities;
- Development, support and protection of activities of the Governmental Agent on Anti-corruption Policy; to consider the possibility to establish the mandate of the Governmental Agent by the national law providing a clear administrative position and sources of financing;
- To define the role and position of the Bureau for Anti-corruption Policy; to consider the possibility to clarify its status and administrative position independent from the executive authorities;
- To define mechanisms and instruments of co-ordination of anti-corruption activities between the National Anti-corruption Committee, the Governmental Agent, the Bureau and special units and responsibilities for monitoring of these activities;
- To establish mechanisms of monitoring of actual enforcement and enactment of existing anti-corruption laws and instruments through the adoption of a clear division of responsibilities between state bodies and procedures of internal and external monitoring and evaluation;
- To harmonise and unify legal acts governing implementation of anti-corruption policy; to develop a clear plan of legislative support of anti-corruption policy;
- To adopt the Law on Access to the Public Information, the Law on the Code of Conduct for Public Officials, the Law on the Disclosure of Financial Information for Public Officials, the Law of the National Bureau for Anti-corruption Investigations, the Law on Conflict of Interests;
- To form the Public Council under the Governmental Agent and to support its activities;
- To support activities of the Coordination Council under the Governmental Agent;
- To develop, discuss, and adopt clear concept of administrative and judicial reform.

8.5.2 Way forward

There are three major tasks ahead of the actual implementation of the anti-corruption policy in Ukraine:

- To adopt a clear vision of the short and long term goals to be achieved;
- To adopt clear and public indicators of success;

- To rigorously enforce existing mechanisms and instruments under strict control of specialised bodies and public control.

9 COMMON TRENDS IN THE EAP REGION AND THE WAY FORWARD

The stocktaking exercise through the “Bridge Activities”⁵¹ - which consisted of information provided by countries to a questionnaire and two meetings, in September 2010 in Brussels, and in November 2010 in Warsaw, respectively - highlighted a number of issues that have emerged as key to all EaP countries. These are:

9.1 Area: Policy and Prevention

- Capacity-building of structures in charge of policy and prevention measures;
- Introduction of tools to monitor and ascertain indicators of progress/success in implementing anti-corruption reforms and strategies;
- Streamlining Anti-corruption Strategy design processes;
- Policy adoption and mechanism designs for monitoring and controlling;
- Declaration of Assets and Conflict of Interests; and
- Introduction of Risk Assessment Methodologies in identifying the underlying causes of corruption in different sectors.

9.2 Area: Law Enforcement and implementation of legal frameworks

- Enhance capacities of Specialised Investigative Means (SIMs) while safeguarding human right aspects;
- Provision of Specialise Training of Economic and Financial Crimes (AML/CTF) and Fraud in Tax and Customs;
- Standard Codes on Judicial Ethics;
- Confiscation of Crime Proceeds and Asset Recovery;
- Public Administration and Civil Service Reforms;

⁵¹ See, Country Profile Report “Bridge Activities” with relevance to the status of reforms and issues and needs as identified by EaP member states.

- Political Party and Electoral Campaign Financing;
- Criminal and Civil Liability of Legal Persons.

9.3 Area: Education and Public Awareness

- Identify Tools and methodology of involving Civil Society in designing and monitoring anti-corruption reforms.
- EaP countries expressed their interest to work, on a regional basis, to advance the above- mentioned issues. It is planned that, through this project, the Council of Europe will mobilise the technical expertise to facilitate targeted interventions on these topics. Interventions are planned to be both country-specific and regional: this will allow to work on topics in-depth and with the specificities of the respective countries in mind, but also to extrapolate solutions that might be commonly applicable. Further, the regional mode of working is also hoped to mobilise peer pressure among participating countries.

10 CONCLUSIONS

Overall, in order to address the issues identified in this report, a regional project is expected and foreseen to act as a complement to existing monitoring and evaluation efforts, and to offer hands-on assistance to countries in order to advance progress on some of the key areas where reforms need to take place or further strengthened. A logical framework and proposed expected results through implementation of proposed activities was initially discussed and reviewed by indicating priorities at the Panel against Corruption in November 2010 in order to address the identified needs and cooperation venues through the exercise of the “Bridge Activities” that took place during August-November 2010, but for 2011 to be fully supported by the CoE Facility Project: Good Governance and Fight against Corruption in EaP countries.