

FIGHTING CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA

# Anti-corruption reforms in Armenia

4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan

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# ARMENIA

## Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan



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## **About the Istanbul Anti-Corruption Action Plan**

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## ACRONYMS

<b>ACC</b>	Anti-Corruption Council of Armenia
<b>ACN</b>	Anti-Corruption Network for Eastern Europe and Central Asia
<b>AMD</b>	Armenian Dram
<b>AML/CFT</b>	Anti-money laundering/Combating the Financing of Terrorism
<b>ANQA</b>	National Centre for Professional Education Quality Assurance Foundation
<b>ANSA</b>	Armenian National Students Association
<b>Armeps</b>	Electronic procurement platform of Armenia
<b>CBA</b>	Central Bank of Armenia
<b>CC</b>	Criminal Code of Armenia
<b>CEHRO</b>	Ethics Commission of the High-Ranking Officials of Armenia
<b>CoE</b>	Council of Europe
<b>CoST</b>	Construction Sector Transparency Initiative
<b>CPC</b>	Commission for Prevention of Corruption of Armenia
<b>CPCL</b>	Law on Commission for Prevention of Corruption of Armenia
<b>CPI</b>	Corruption Perception Index
<b>CSC</b>	Civil Service Council of Armenia
<b>CSL</b>	Civil Service Law of Armenia
<b>DC</b>	Disciplinary Commission of the General Assembly of Judges of Armenia
<b>EBRD</b>	European Bank of Reconstruction and Development
<b>ECTS</b>	European Credit Transfer and Accumulation System
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EU</b>	European Union
<b>ECHR</b>	European Court of Human Rights
<b>FIU</b>	Financial Intelligence Unit
<b>FMC</b>	Financial Monitoring Centre of Armenia
<b>FOI</b>	Freedom of information

<b>FOICA</b>	NGO Freedom of Information Center of Armenia
<b>FT</b>	Financing of terrorism
<b>GCB</b>	Global Corruption Barometer of Transparency International
<b>GIZ</b>	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Society for International Cooperation)
<b>GRECO</b>	Group of States against Corruption
<b>HEI</b>	Higher Education Institution
<b>HHK</b>	Ruling Republican Party of Armenia
<b>HR</b>	Human resources
<b>HRM</b>	Human Resources Management
<b>HRMIS</b>	Human Resources Management Information System
<b>IAP</b>	Istanbul Anti-Corruption Action Plan
<b>ICT</b>	Information and communications technology
<b>IFC</b>	International Finance Corporation
<b>IMF</b>	International Monetary Fund
<b>INTES</b>	Methodology for assessing the integrity of education systems
<b>Marz</b>	Administrative unit (province) of Armenia
<b>ML</b>	Money laundering
<b>MLA</b>	Mutual legal assistance
<b>MoES</b>	Ministry of Education and Science of Armenia
<b>MoF</b>	Ministry of Finance of Armenia
<b>MoJ</b>	Ministry of Justice of Armenia
<b>MONEYVAL</b>	The Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
<b>MoU</b>	Memorandum of understanding
<b>MP</b>	Member of Parliament of Armenia
<b>NCLR</b>	National Center for Legislative Regulation
<b>NGO</b>	Non-governmental organisation

<b>NIS</b>	National Integrity System
<b>OCS</b>	Office of Civil service of Armenia
<b>OGP</b>	Open Government Partnership
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OSCE</b>	Organisation for Security and Co-operation in Europe
<b>PAA</b>	Public Administration Academy of Armenia
<b>PPL</b>	Law on Procurement of Armenia
<b>PSL</b>	Public Service Law of Armenia
<b>QA</b>	Quality assurance
<b>RA</b>	Republic of Armenia
<b>RIA</b>	Regulatory impact assessment
<b>RTI</b>	Global Right to Information Rating
<b>SCPEC RA</b>	State Commission for the Protection of Economic Competition of Republic of Armenia
<b>SIGMA</b>	Support for Improvement in Governance and Management, OECD/EU joint initiative
<b>SIS</b>	Special Investigation Service of Armenia
<b>SJC</b>	Supreme Judicial Council of Armenia
<b>SOE</b>	State-owned enterprise
<b>SRC</b>	State Revenue Committee of Armenia
<b>TI</b>	Transparency International
<b>TIAC</b>	Transparency International Anti-Corruption Centre, Armenia
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>USAID</b>	United States Agency for International Development
<b>Venice Commission</b>	European Commission for Democracy through Law of the Council of Europe
<b>WEF</b>	World Economic Forum

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## EXECUTIVE SUMMARY

This report analyses the progress made by Armenia in carrying out anti-corruption reforms and implementing the recommendations of the Istanbul Anti-Corruption Action Plan (IAP) the Third Round of Monitoring Report on Armenia adopted in October 2014. It focuses on anti-corruption policy, prevention of corruption, enforcement of criminal responsibility for corruption and prevention and prosecution of corruption in the higher education sector.

## ANTI-CORRUPTION POLICY

### *Anti-corruption reforms*

Over the course of the past four years Armenia has further reformed its anti-corruption legislation and institutions, but a genuine resolve to address widespread corruption has been lacking. Armenia adopted a comprehensive legal framework for civil service and for public service integrity, including regulations on ethics and conflict of interests. It criminalized trading in influence and illicit enrichment, introduced the laws on whistleblower protection and the Commission for the Prevention of Corruption, as well as enhanced the legal provisions on asset declarations and public procurement. Armenia also introduced various e-governance tools and services, the system for publication and verification of asset declarations and expanded e-procurement. Some improvements of business climate and marginal decrease of the perceived level of petty corruption have been achieved as a result of simplifying regulations and introducing e-governance tools. These efforts however had only limited impact so far and corruption remained a significant problem in critical areas of public administration, such as the judiciary, tax and customs, health, education, military, and law enforcement.

The lack of practical enforcement of anti-corruption laws, in the context of the monopolized economy and widespread conflict of interest among public officials remained a serious concern. The recent revolution brought about massive hope for a democratic change and placed the trust in the new regime, creating an important momentum for change. But this trust may be lost as easily as gained, unless the Government starts showing real action against corruption. Armenia should take bold measures against conflict of interest in the Government and the parliament, ensure judicial and prosecutorial independence and integrity, and step up the efforts to detect, investigate and prosecute high-profile and complex corruption cases using diverse sources of information and analytical instruments.

### *Anti-corruption policy*

Armenia adopted the Anti-Corruption Strategy (the Strategy) and its implementation Action Plan (2015-2018) through public consultations and NGO participation. These policy documents focus on selected measures of prevention of corruption, criminalisation and law enforcement. In addition, they include four sectors: health, tax, education and service delivery by police. In view of the magnitude of the problem of corruption in Armenia and the areas bearing highest corruption risks, the choice of priority sectors has been questionable. Armenia is encouraged to ensure that the new policy documents are developed with wide stakeholder engagement, are based on needs and risk assessment and include ambitious measures targeting actual corruption risks and key areas that are vulnerable to corruption and require reform as a matter of priority.

Public opinion *surveys* are not been carried out regularly or used in anti-corruption policy development and monitoring. Surveys should be carried out systematically to measure the level of corruption, public trust and the impact of anti-corruption measures, including at sector level. The results of the surveys should be publicized and used in the anti-corruption policy development, implementation and monitoring. The *budget* for the implementation of the anti-corruption policy documents was provided by the USAID direct grant to the state budget (749 110 USD). However, only 15% of these funds have been used implying poor financial planning or the lack of proactivity to implement the policy documents. In order to make sure that anti-corruption policy documents are

realistic, affordable and enforceable, the measures of the action plan should be accompanied by calculations of necessary budget allocations, indicating the amount and the source of funding. The monitoring reports should include financial reports/budget execution reports as well.

Anti-corruption *policy coordination* was improved compared to the last monitoring round, however, systematic monitoring procedures and practices are still not in place and CSOs do not participate in the monitoring. Surveys and performance indicators are not used to evaluate impact. There are good plans and new initiatives to improve monitoring that should be pursued in the future. Systematic monitoring and evaluation procedures should be put in place and applied in practice. Regular publication of (at least) annual reports must be ensured to promote accountability. In addition, structured and systemic *awareness raising* is needed with the engagement of civil society and large public, targeted to the sectors most prone to corruption, using diverse methods and activities adapted to each target group. Necessary resources should be allocated for awareness raising, results of these activities should be evaluated and the next cycle of awareness raising planned accordingly.

### ***Corruption prevention and coordination institutions***

The Anti-Corruption Council (ACC) became more active, transparent and inclusive. Its sessions are held regularly and are open to media. The minutes are published online. Donor coordination has been added as one of its functions, however needs to be streamlined to ensure effective donor support to the implementation of the anti-corruption programmes. Main shortfalls in the performance of the ACC have been its lack of proactivity to develop and push forward the implementation of practical measures to decisively tackle corruption as well as the lack of specialized and skilled staff to analytically and administratively support its work. Armenia is encouraged to provide the ACC with the resources that are necessary for the efficient exercise of its mandate, including dedicated staff specialised in anti-corruption and ensure that its secretariat is proactive and engaged with state bodies to guide and boost their anti-corruption performance.

Armenia has shown commendable progress in cooperation with *non-governmental stakeholders*. The Ministry of Justice has been particularly active in this dialogue. Civil society participation became more systematic compared to the last round. The NGOs are now represented in the ACC as members or observers and actively participate in its sessions. Armenia has engaged with civil society for anti-corruption policy development and implementation of selected reform, such as illicit enrichment, whistleblowing and anti-corruption institutional framework. More is needed to further involve business representatives in the process.

Armenia introduced a new legislation providing for an *independent corruption prevention body* Commission for Prevention of Corruption (CPC) to be set up in the coming months. This change is in line with international anti-corruption standards and represents a welcome development. Nevertheless, the practical results of the institutional change and its impact on the level of corruption are yet to be evaluated. The objective and transparent selection of commissioners must be ensured as well as the exercise of the CPC's mandate free from undue influence. In addition, the CPC should be provided with the resource and specialised staff to carry out its functions efficiently. In the transition period, the role of multiple agencies involved in anti-corruption policy coordination should be clarified.

## **PREVENTION OF CORRUPTION**

### ***Integrity in civil service***

Armenia adopted the new laws on civil service (CSL) and public service (PSL), changing the system of civil service management, widening the scope of civil service, enhancing the merit-based recruitment and improving the integrity framework for public servants, including the regulations on conflict of interest, codes of ethics, asset declarations and ethics commissions. Although adopted with significant delay and some remaining shortcomings, these laws constitute a major step forward towards the civil service reform in Armenia in line with the European standards. Armenia should move on next with the adoption of the remaining secondary legislation and start the application of the new laws in practice. Armenia is also recommended to improve the Human Resources Management Information System (HRMIS) adapting it to the enlarged civil service and ensuring that the

disaggregated statistical data is produced and used in assessing the implementation of the new CSL and PSL. Further, Armenia should ensure that the civil service reform policy is evidence-based supported by relevant data, risk and impact assessment.

**Commission of Ethics for High Ranking Officials (CEHRO)** has been strengthened: its mandate, budget and resources have been enhanced. The CEHRO has started operation and has shown good results in the exercise of its mandate. The forthcoming institutional change envisages replacing the CEHRO with a new entity. It is important that the significant institutional memory accumulated since the creation of the CEHRO in 2011 is not lost and the transition process does not cause gaps in implementation. Another forthcoming institutional change is shifting the civil service management from an independent body Civil Service Council (CSC) to the Government entity the Office of Civil Service (OCS). This change, along with the expansion of the scope of the civil service, is a positive development in line with the solutions applied in most EU and OECD countries. The continuity of the exercise of the related functions in the transitional period as well as maintaining sufficient institutional memory after the change is an issue that need to be addressed in this case as well.

**Ethics commissions** are still in place in state bodies, however their operation has not been improved in practice. The related legal provisions have been significantly changed with some remaining inconsistencies and gaps calling for further regulation. The creation of the position of an **integrity affairs organiser** is positive, if made operational this function can efficiently work within the human resources management units to promote integrity in their individual agencies. Armenia should finalize the adoption of the necessary legislation to ensure proper operation of ethics commissions in practice and establish mechanisms for the monitoring the performance of ethics commissions as well as ensure that the ethics commissions and integrity affairs organisers have necessary capacities, guidance and tools to perform their functions in practice. At the same time, a coordination mechanism between integrity affairs organizers, anti-corruption focal points, the CPC and ethics commissions must be put in place.

The civil service recruitment procedure is now fully **merit-based** however the new provisions contain risk of politicization of the recruitments on senior managerial positions in the civil service. Armenia is recommended to remedy remaining shortcomings, limiting the influence of political officials in the process and apply the new rules on merit-based recruitment in practice. The reform did not address all the shortcomings of the **remuneration system** in Armenia. Although the law on salaries provides regulations for public service as a whole, it does not ensure fair and equal remuneration for similar positions due to the lack of the job evaluation scheme. In addition, the upper limits for additional salary and bonuses per employee are too high, or not set, thus creating a risk of too much discretion in pay-setting. Furthermore, the bylaws on performance evaluation have yet to be adopted to link the bonuses with performance in practice. Armenia is encouraged to limit the share of variable pay in total remuneration, apply new performance evaluation system in practice linking bonuses to the results of evaluation and monitor the performance evaluation. In addition, Armenia is recommended to revise the level of pay and ensure competitive remuneration in public service to attract and retain highly skilled professionals.

Armenia adopted the new provisions on **conflict of interests** addressing most of the deficiencies identified during the last monitoring round. The new regulations strengthened the oversight mechanism too, but practical implementation has not started yet. Armenia is recommended to step up the enforcement of conflict of interest rules in practice, including the operation of ethics commissions and integrity affairs organisers. Further, it should raise awareness and train public servants, as well as provide necessary guidance on the interpretation and application of these rules in practice.

A number of progressive steps have been made to enhance the system of **asset declarations**. The CEHRO was granted the powers and tools to verify declarations, including access to relevant databases and the mandate to impose administrative sanctions, or refer a case to the law enforcement in case elements of a criminal offence are identified. The electronic verification system developed with the support of the World Bank is connected to the relevant databases and is operational. In addition, a new criminal law provision on illicit enrichment enables law enforcement to pursue cases against public servants in connection with their unjustified wealth revealed through asset declarations.

It is now crucial that the verification is carried out without political interference or bias, alleged violations are followed up, proportionate and dissuasive sanctions are imposed and the results of enforcement are made public. The transition from the CEHRO to the new CPC may hinder enforcement, which Armenia is strongly encouraged to prevent.

The new legislation considerably changed the institutional and regulatory framework for promoting ethical conduct in the public service of Armenia. Substantial work will need to be carried to finalize the adoption of the secondary legislation, including the codes of conduct, set up the new responsible institutions and start running the new system. Thus, tangible results in promoting compliance with the ethics codes are yet to be seen. Separate ethics codes have been adopted for judges, customs officers and prosecutors. Armenia continued to organise ethics trainings for a number of groups of public servants however not for all parts of the public service. It would be important to systematize and coordinate the trainings among the new institutions, Armenia is recommended to adopt the codes of conduct to serve as basis for the enforcement of ethics rules and ethics training and ensure systematic and coordinated ethics trainings throughout the public service.

Armenia made commendable progress to reform the *whistleblower protection* system. A mini-survey was conducted to study the attitudes towards corruption and serve as basis of the reform. A stand-alone law on whistleblower protection was subsequently adopted, an electronic system of reporting developed and a wide-ranging awareness campaign launched to boost reporting. Armenia is encouraged to put in place clear procedures for submitting, reviewing and following up on whistleblower reports and providing protection and start their application in practice; further raise awareness on whistleblowing channels and protection mechanisms to promote and incentivize whistleblowing; ensure proper functioning of the IT system and that the anonymity is observed in practice. Consistent and continuous efforts will be required to build the public trust to the Government and change the deeply rooted culture against whistleblowing. More importantly, in order to achieve meaningful cooperation, the society must be convinced in the sincerity of the efforts of the Government to tackle widespread corruption.

### ***Integrity of political officials***

Integrity of *political officials* has been a concern in Armenia. The CEHRO has been responsible for the oversight of implementation and guidance on the applicable rules on conflict of interests and incompatibilities for public officials except for Members of Parliament (MPs), however its mandate remained limited. After acquiring the mandate in relation to the verification of asset declarations, the CEHRO has been perceived as not very proactive in applying its new powers. With regards to the MPs, the Parliamentary Committee has been extremely passive in the face of the large-scale conflict of interest and incompatibilities of the Members of Parliament. The potential conflict of interests although regulated, have not even once been declared in practice and the MPs continued to vote for the laws in the conflict of interest situations. The regulations on integrity and the oversight mechanisms have been substantially improved. The CPC that will replace CEHRO will be mandated to promote and enforce these rules in relation to the political officials, except for MPs. Armenia is recommended to adopt the code of conduct for political officials and a separate code of conduct for Members of Parliament, provide training, consultations and guidance for their practical application and ensure proactive, systematic and consistent enforcement of the existing rules in practice without undue interference.

Strengthening of independence and integrity of the *judiciary* was the alleged purpose of the judicial reform conducted through 2015 constitutional amendments, adoption of the new Judicial Code and other pieces of legislation. Noticeable improvements have been made in the system of judicial self-governance, and more powers with regard to judges' admission, career and termination of office have been given to the newly created Supreme Judicial Council. However, despite these positive developments, the new framework leaves a significant room for political influence on judges that should be addressed through further reforms. Improvement of the procedure to select non-judicial members of the Supreme Judicial Council who form a half of its composition is one of the recommended steps in this regard. The heavy workload and insufficient funding of the Armenian courts should also be addressed. In general, the judicial reform in Armenia is on the initial stage of its

practical implementation and has not yet had a significant impact on the integrity and independence of the judiciary.

The *prosecution service* in Armenia has also been the subject of reform efforts reflected in the 2015 constitutional amendments and the new Law on the Prosecutor's Office adopted in 2017. The new regulations have kept prosecutors' powers to bring an action to court with regard to protection of state interests. Despite some important limitations of these powers that are already in place, it is recommended to introduce in internal policies more specific protections from abuse of these powers. The reform does not sufficiently limit the involvement of politicians in the process of election and dismissal of the Prosecutor General; it merely increased the role of the Parliament and a diminished the role of the President. Overall, it does not adequately insulate the prosecution service from potential political pressure and influence. Therefore, Armenia is recommended to ensure broader involvement of legal professionals, including those from civil society, in the process of nominating a candidate for the Prosecutor General. Moreover, it is also recommended to consider abolishing the possibility of re-election of the Prosecutor General for the second consecutive term in the office in favour of a longer single term.

The Prosecutor's Office in Armenia remains a strictly hierarchical structure. Clear and detailed regulations on relations between superior and subordinated prosecutors as well as the rules on transferring cases from one prosecutor to another are among positive developments in the new legislation. However, all collegial bodies within the prosecution service, such as collegium or the Qualification Commission are composed of managers, senior prosecutors and those designated by the Prosecutor General. In fact, it provides for almost no possibility for input from lower level prosecutors. The Prosecutor General has considerable discretion in decision-making on the issues recommended by the representative bodies of prosecutors, and prosecutors do not have the right to object the decisions. Armenia should reduce this scope of discretion and take further steps towards ensuring internal independence of prosecutors.

#### ***Accountability and transparency in the public sector***

Efforts have been made to improve legal drafting process introducing the methodology for RIA and piloting it in practice. The portal for public feedback on draft legislation is operational and some of the important laws have been elaborated through extensive public consultations. Criteria for selecting draft laws for RIA are now being developed. Tax and customs reforms continued with positive results that will potentially have an impact on the level of corruption if implemented in practice. Armenia continued to actively participate in the OGP and recently its work on reaching compliance with EITI standards has been intensified. Armenia is encouraged to further enhance the participation and compliance with the requirements of transparency initiatives (OGP, EITI) and ensure publication of the information and datasets of the public interest in open data format.

Armenia has considerably improved *freedom of information* (FOI) legal framework by adopted the long-awaited secondary legislation. FOI officers have been appointed and underwent training. The e-requests portal has been launched with the analytical module generating statistics, but based on e-requests only. Oversight body has not been designated to ensure uniform application of the law, collection of data and guidance to the agencies. The FOI law has been analysed as recommended, however, according to the NGOs, the draft that was produced in the end significantly worsens the existing regulations. The draft is currently reviewed by the Venice Commission. Armenia has not taken measures to ensure transparency of entities using public funds in practice. Armenia is urged to abstain from the measures limiting the investigative journalism, a significant tool to uncover and fight corruption.

#### ***Integrity in public procurement***

Legal framework for public procurement has been reviewed in Armenia. The new Law on Procurement contains a number of improvements which should facilitate a wider application of more competitive and transparent procurement procedures. Tenderers are required now to reveal the beneficial owners of a company in their bids. Moreover, the electronic procurement system has been substantially enhanced and Armenia should further ensure it includes all procurement procedures. At

least statistically significant improvements in reducing single source procurement and non-competitive procedures have been made, and exceptions to open tender require special approval. It is recommended to further reduce the use of single source procurement. The publication of procurement notifications and contracts should be ensured, and further improvements should be made to provide all information in machine readable format. New law has also introduced random checks with the possibility to reject requirements that are technically insufficient or subjective, which is a welcome development. It is recommended to introduce systematic centralized monitoring procedures and facilities to ensure objective and adequate technical specifications, requirements and terms of reference for bids. According to the new legislation the Procurement Appeals Board was established which by itself was commendable, however the most recent legislative amendments replaced it by persons considering procurement complaints. It is important to ensure independence, professionalism, adequate budget and staff allocation for the new appeals mechanism. Although it appears that more economic operators provide goods, works and services for a number of essential areas, competition in quasi-monopoly/oligopoly sectors remains an issue of concern.

### ***Business integrity***

The Government has focused on improving business climate and performance on various international indexes, further simplified business regulations and enhanced public service delivery, but it has not prioritized business integrity measures, has not studied business integrity risks to identify challenges and include them in the anti-corruption strategy. The dialogue with businesses has been intensified. Armenia included business representatives as members of the Anti-Corruption Council. In addition, various platforms have been used to achieve the favourable results for business, for example in relation to tax reform. However, business seemed sceptical about promoting business integrity in the situation when the Government itself was involved in corruption. Various channels to report corruption are in place but do not seem to be used by businesses in practice. Moreover, the fundamental challenge of monopolisation and freeing the Armenian economy from the control of oligarchs is yet to be tackled. Armenia is recommended to prioritize business integrity measures in national anti-corruption and law-enforcement policy as well as promote active participation of private sector in the monitoring of anti-corruption policy documents; raise awareness of and train the representatives of state bodies and those of the companies on business integrity issues and promote reporting of corruption by business through independent bodies; promote integrity of state-owned enterprise and consider adopting a Corporate Governance Code for SOEs based on the OECD Guidelines and other international standards and ensure effective beneficial ownership disclosures.

## **ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION**

In the area of ***criminalization of corruption*** Armenia is compliant with the most of the international requirements. Within the reporting period Armenia improved its criminal law provisions on trading in influence and introduced criminal liability for illicit enrichment. The latter remained unenforced at the moment of the adoption of the report and given its novelty for the Armenian legal system it is recommended to analyse its enforcement in the future. At the same time, Armenia remains non-compliant with the international standards which require imposing corporate liability for corruption offences. In this respect the report encourages to pursue the intention of Armenia to introduce such liability in the new Criminal Code which is on the final stage of drafting. Armenia should introduce liability of legal persons for corruption offences without delay in line with international standards and start its enforcement in practice. Sanctions for corruption offences in Armenia are not dissuasive. It is essential to ensure their proportionality in practice.

As regards ***detection, investigation and prosecution of corruption***, Armenia appears to be expanding the sources of possible information about corruption offences and other financial crimes. At the same time, there are still some unreasonable limitations on the access to financial information by investigators and prosecutors dealing with corruption cases, moreover they lack direct access to state databases. Armenian law enforcement practitioners were provided with the guidelines and a number of trainings related to detection, investigation and prosecution of corruption. However, their capacity to detect corruption with more pro-active use of analytical methods and conduct financial investigations

still needs to be developed. There is also no clear coordination of investigations of money laundering offence with a predicate corruption offence. Regarding international cooperation in corruption cases the report states that Armenia could make more use of modern and direct forms of international cooperation and available mechanisms for cooperation under the umbrella of international and regional organisations.

Armenia made some efforts to improve *enforcement* of corruption cases. However, based on the analysis of provided statistics the report concludes that the law enforcement bodies in Armenia still tend to investigate petty corruption far more often than high-profile cases and there are no satisfactory changes in the performance of the law enforcement bodies since the previous monitoring round in tackling corruption offences effectively. The report, therefore, recommends to step up efforts to detect, investigate and prosecute high-profile and complex corruption cases using diverse sources of information and analytical instruments.

The report also notes improvements made in criminal statistical databases and methodologies as well as commends public availability of statistics on corruption. At the same time, the official statistics still do not include data on seizure and confiscation in corruption cases, the report recommends adding this data.

There is no single *specialised anti-corruption law enforcement agency* in Armenia. Structures of the investigative and prosecution bodies ensure some type of specialisation of investigators and prosecutors on corruption-related cases. Very often the respective investigators and prosecutors deal with other cases along with corruption. The report highlights the need to ensure real independence of law enforcement bodies dealing with corruption cases and to avoid any pressure and undue interferences with corruption investigations and prosecutions.

## **PREVENTION AND PROSECUTION OF CORRUPTION IN HIGHER EDUCATION**

Corruption is a widespread and persistent problem which potentially affects multiple areas of academic operation of higher education in Armenia. These include university management, human resource policies, academic work, student assessment, licensing and accreditation, funding and procurement. In an effort to address corruption risks, in 2018 the authorities adopted a detailed action plan (Programme on Anti-Corruption Measures in Education – Programme) which defines the anti-corruption policy in higher education and covers a wide range of corruption risks identified in close collaboration with civil society organisations. However, most measures of the action plan are generic and fail to address the systemic problems known to be conducive to corruption in the sector. The absence of budget allocations for most actions, non-mandatory nature of the measures and unrealistic, very short implementation timelines will complicate the enforcement. It is recommended to extend the deadline for the implementation of the anti-corruption plan, ensure that the anti-corruption measures are properly budgeted and address the conditions which contribute to corruption risks, raise the capacity of the Ministry of Education and Science (MoES) to coordinate and steer anti-corruption policy in education, and provide HEIs with the guidance as well as clear obligations regarding the implementation of national anti-corruption priorities in the sector.

Among the systemic weaknesses limiting the capacity of HEIs to prevent corruption are related to the employment conditions in higher education, among them are ambiguity, insecurity, and low pay. Employment conditions force most faculty members to hold multiple jobs, creating risks for conflict of interest. Armenia is recommended to address the precarious employment conditions of academic staff, ensure that conflict of interest regulations are in place in all HEIs and are applied in practice, oblige members of the ethical and disciplinary commissions of HEIs to recuse themselves in case they are concerned by a case or a complaint, and introduce a model code of ethical conduct as a mandatory standard.

With regard to the compliance control and quality assurance (QA), external quality assurance does not focus on corruption prevention and integrity, and the body in charge - the Armenian National Quality Assurance Agency (ANQA) - does not seem effective and independent enough to assume a



meaningful role in this respect. As to the internal quality assurance, Armenian HEIs still largely lack mechanisms for the evaluation of institutional and staff performance, and for the monitoring of compliance with the rules concerning integrity of professional conduct or administrative procedures. Students are also not involved in internal quality assurance processes. Further limitation in the area of prevention includes lack of transparency in HEI operations, in particular with respect to procurement and budget management. The report recommends improving the transparency of reporting by HEIs and allowing stakeholders to request information on demand.

As to the anti-corruption enforcement in higher education, this is an area marked by limitations and legal uncertainty as the administrative and disciplinary liability for violations of lesser gravity (which are the majority of violations in that sector) is ill-defined. As regards criminal responsibility, the law enforcement practice shows that most of the detected corruption related offences in the education sector in Armenia concern economic activity and abuse of authority, as well as official forgery and embezzlement or misappropriation of trusted property. In the context of widespread corruption in the sector, higher education does not seem to be among the priority areas of the law enforcement bodies. The report recommends Armenia to develop a comprehensive detection and enforcement strategy for higher education, which could include the description of sector-specific forms of violations in the areas at risk of corruption and an update of descriptions of administrative and disciplinary procedures, as appropriate. Armenia also should ensure collecting and publishing statistics on administrative and disciplinary sanctions in the sector and make them publicly available.

## SUMMARY OF COMPLIANCE RATINGS

Recommendation of the Third Round of Monitoring Report on Armenia	Compliance Rating			
	Fully	Largely	Partially	Not
1. Anti-corruption policy			*	
2. Surveys		*		
3. NGO participation and awareness raising		*		
4. Anti-corruption institutions			*	
5. Criminalisation of corruption			*	
6. Immunities	*			
7. Bank secrecy and complex financial cases			*	
8. Investigation and prosecution of corruption			*	
9. Statistics		*		
10. Ethics Commission	*			
11. Ethics commissions in public institutions			*	
12. Code of ethics			*	
13. Merit based recruitment		*		
14. Conflict of interest	*			
15. Whistleblowing		*		
16. Ethics training			*	
17. Transparency and discretion in public administration		*		
18. Public financial control and audit *	--	--	--	--
19. Public procurement		*		
20. Access to information			*	
21. Political corruption*	--	--	--	--
22. Judiciary		*		
23. Business integrity			*	

\* The topics "Public Financial Control and Audit" and "Financing of parties / political corruption" are not covered by the IAP Fourth Round of Monitoring.

## INTRODUCTION

The Istanbul Anti-Corruption Action Plan (Istanbul Action Plan, or IAP) was endorsed in 2003. It is the main sub-regional initiative in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The IAP covers Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan. Other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan involves a systematic and regular peer review of the legal and institutional framework for fighting corruption in the covered countries.

Armenia joined the Istanbul Action Plan in 2003. The initial review of legal and institutional framework for the fight against corruption and recommendations for Armenia were endorsed in 2004. The first monitoring round report, which assessed the implementation of initial recommendations and established compliance ratings of Armenia, was adopted in 2005. The second monitoring round report was adopted in 2010 and the third round of monitoring report – in 2014. The monitoring reports updated compliance ratings of Armenia with regard to previous recommendations and included new recommendations. In between of the monitoring rounds Armenia provided updates about the actions taken to implement the recommendations at all IAP monitoring meetings. Armenia has also actively participated and supported other activities of the ACN. All reports and updates are available at the ACN web-site at: [www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm](http://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm).

The Fourth Round of Monitoring under the Istanbul Action Plan was launched in 2017 according to the methodology adopted by the ACN countries.

According to the methodology of the fourth round of monitoring, the report includes an in-depth study of a sector -- higher education. The sector was selected based on a survey of non-governmental representatives and Armenian authorities. The monitoring team is thankful to the representatives of NGOs, international organisations, business and the Government who took part in the survey.

Armenian authorities submitted replies to the country-specific questionnaire in February 2018 along with other requested materials. NGO-s Transparency International Anti-corruption Center (TIAC),<sup>1</sup> Protection of Rights Without Borders, Armenian Lawyers' Association, Open Society Foundation (OSI) Armenia provided alternative answers to the questionnaire. Answers have also been submitted by an independent expert Mr. Artak Kyurumyan. Replies to the questionnaire for higher education sector were submitted by civil society coordinated by the Open Society Foundations – Armenia.<sup>2</sup>

An on-site visit to Yerevan took place on 11-16 March 2018. After the on-site visit, Armenian authorities provided additional information as requested. **Ms. Enery Quinones, Chair of the OECD/ACN IAP**, led the monitoring team. The team included:

- **Mr. Wojciech Zieliński**, Senior Policy Adviser, Civil Service and Public Administration Organisation and Functioning, OECD (Section 2.1)
- **Ms. Mary Butler**, Chief of International Unit of the Money Laundering and Asset Recovery Section, US Department of Justice (Chapter 3 and section 2.3 prosecutors)
- **Mr. Dirk Plutz**, Associate Director, Procurement Policy Adviser, Procurement Policy and Advisory Department, EBRD (Section 2.5)

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<sup>1</sup> Included inputs from: Open Society Foundation-Armenia; HETQ Investigative Journalist Association NGO; Helsinki Citizen's Assembly Vanadzor; Armenian Helsinki Committee; Journalists' Club "Asparez"; Union of Informed Citizens; Analytical Centre on Globalization and Regional Cooperation; Coalition to Stop Violence against Women; Public Journalism Club; For Equal Rights NGO; Factor Information Center NGO; independent expert Davit Khachatryan.

<sup>2</sup> Included inputs from: TIAC; Helsinki Citizen's Assembly Vanadzor; Armenian Helsinki Committee; Journalists' Club "Asparez"; Union of Informed Citizens; Equal Rights NGO; Factor Information Center NGO; Public Journalism Club, Director and Co-Founder; HETQ Investigative Journalist Association NGO; Boon Foundation; Analytical Centre on Globalization and Regional Cooperation; Women Recourse Center; Coalition to Stop Violence against Women; two independent experts: Artak Kyurumyan and Davit Khachatryan.

- **Mr. Davor Dubravica**, Judge, Chairperson of Regional Anti-Corruption Initiative, Croatia (Section 2.3 integrity in the judiciary)
- **Ms. Maja Baricevic**, Head of Sector for Anti-Corruption, Ministry of Justice, Croatia (Chapter 1)
- **Mr. Nikoloz Chinkoralshvili**, Head of the Unit of European Integration and Cooperation with International Organisations Office of the Chief Prosecutor, Ministry of Justice, Georgia (Chapter 3)
- **Mr. Mihaylo Milovanovitch**, Center for Applied Policy and Integrity (Chapter 4)
- **Ms. Rusudan Mikhelidze**, OECD/ACN Secretariat (Chapter 1, Sections 2.1; 2.2; 2.4; 2.6)
- **Mr. Andrii Kukharuk**, OECD/ACN Secretariat (Sections 2.3; 2.5 and Chapter 3).

The monitoring team would like to thank the Government of Armenia for excellent cooperation in the framework of the fourth round of monitoring. The co-ordination on behalf of Armenia was ensured by the ACN National Co-ordinator Mr. Suren Krmoyan (Deputy Minister, Ministry of Justice of Armenia) and the team of the Ministry of Justice of Armenia Ms. Mariam Galstyan, Ms. Name Harutyunyan, Ms. Arpine Sargsyan, Mr. Arsen Hovhannisyan, Mrs. Tatev Sarukhanyan, Ms. Liana Tovmasyan.

During the on-site visit, the monitoring team held 14 thematic panels with representatives of various public authorities of Armenia organised by the national co-ordinator. The OECD/ACN Secretariat arranged special sessions with the international community, representatives of business and civil society organisations. The special sessions with the international community was hosted by the EU delegation, the session with civil society organisations was organised and hosted by TIAC, a special session with CSOs on higher education was organised by OSI Armenia and the session with business representatives was co-organised by Small and Medium Business Foundation and TI Armenia.

Representatives of the following Government agencies participated in the meetings: Ministry of Justice, Anti-Corruption Council, National Assembly, President's Administration, Government staff, Ethics Commission for High Ranking Officials, Ministry of Education and Science, Prosecutor General's Office, Public Council, Financial Monitoring Centre of the Central Bank, Special Investigation Service, Investigative Committee, National Security Service, Judges, Judicial Department, police, Tax Investigators, Civil Service Council, Ministry of Finance, Ultimate Qualification Commission Agency, Education Inspectorate/National Agency for Quality Assurance, Commission on Ethics, State Commission for the Protection of Economic Competition in Armenia, Control Chamber, State Financial Inspection, State Revenue Committee, Ministry of Economic Development and Investments, Business Support Council, The Centre for Strategic Initiatives, Council of Justices, Association of Judges, Ministry of Labour and Social Affairs, Human Right's Defender's Office.

This report was prepared on the basis of the Government of Armenia's answers to the questionnaire, the monitoring team's findings from the on-site visit, additional information provided by the Government of Armenia and NGOs, and research by the monitoring team, as well as relevant information received during the plenary meeting. Work on the in-depth study of the education sector was led by Mr Mihaylo Milovanovitch (Center for Applied Policy and Integrity) with support from Ms Rusudan Mikhelidze, Mr. Andrii Kukharuk and Ms. Anette Nahapetjan, intern at the OECD/ACN

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 4 July 2018. It contains the following compliance ratings with regard to recommendations of the Third Round of Monitoring of Armenia: out of **21 previous recommendations** Armenia was found to be **partially compliant with 10 recommendations, largely compliant with 8 recommendations** and **fully compliant with 3 recommendation. There have been no instances of non-compliance.** Two recommendations of the previous round (Pubic financial control and audit, political corruption) were not evaluated, as the fourth round of monitoring does not cover these topics. The fourth round of monitoring report includes **23 new recommendations in the general part (parts of the one of the previous recommendations were recognised to be still valid)** and **5 recommendations** were issued

for the higher education sector in total **29 recommendations on which Armenia is required to report.**

The report will be made public after its adoption, including at [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn). The authorities of Armenia are invited to disseminate the report as widely as possible. To present and promote implementation of the results of the fourth round of monitoring the OECD/ACN Secretariat will organize a return mission to Armenia, which will include a meeting with representatives of the public authorities, civil society, business and international communities. The Government of Armenia will be invited to provide regular updates on measures taken to implement recommendations at the Istanbul Action Plan plenary meetings.

The Fourth Round of Monitoring within the framework of the OECD Istanbul Action Plan is implemented under the OECD ACN Work Programme for 2016-2019, which is financially supported by Latvia, Lithuania, Liechtenstein, Slovakia, United States of America, Switzerland, Sweden.

## CHAPTER 1: ANTI-CORRUPTION POLICY

### 1.1 Key anti-corruption reforms and corruption trends

#### *Anti-corruption reforms*

Corruption persisted in the public administration of Armenia for many years. Some improvements of business climate and marginal decrease of the perceived level of petty corruption have been achieved as a result of simplifying regulations and introducing e-governance tools. However, a battle against entrenched corruption has never been genuinely fought in the post-soviet Armenia. Monopolized economy, privileged businesses and widespread conflict of interest of public officials have only been met with passive acceptance, pessimism and apathy from the society.

The main positive developments since the third round of monitoring are related to aligning the laws and institutions with international standards. These include the adoption of the new laws on the Commission for the Prevention of Corruption and on whistleblowing, on Public Service and Civil Service, as well as regulations enhancing corruption prevention tools, such as asset declarations.<sup>3</sup> Other positive developments include procurement reform, measures carried out in the tax sector and launching various electronic platforms as highlighted in the report. These efforts so far however had only limited impact and corruption remained a significant problem in critical areas of public administration, such as the judiciary, tax and customs, health, education, military, and law enforcement. Moreover, the anti-corruption reforms carried out since the last monitoring round were not perceived by stakeholders as a genuine fight against corruption.

#### *Velvet Revolution*

In April 2018, tens of thousands of people came out in the streets of Yerevan to rally against the Government<sup>4</sup> after the former President of two terms and 10 years, Serzh Sargsyan was elected as a prime minister by the Parliament, following the shift from the presidential system to the parliamentary, believed to be based on the referendum results.<sup>5</sup>

Rapidly escalated massive protests have forced Sargsyan to resign. The leader of Velvet Revolution, Nikol Pashinyan, a Member of Parliament and a former journalist was elected as a prime minister after the first failed attempt to win the votes of the ruling Republican Party, followed by continued protests. Civil society of Armenia actively supported the protests referred to as “confrontation between the existing autocratic corrupt regime and the hope for democracy.”<sup>6</sup>

New Prime Minister Pashinyan has pledged that “There will be no privileged people. There will be no fraudulent elections. Bribes will not be given. There will be no artificial economic monopolies. All will be able to engage in whatever business they want. Corruption in the country will be rooted out.”<sup>7</sup>

The Government of Armenia is urged to use this momentum of massive popular support and turn the promises into consolidated actions against corruption long awaited by the people of Armenia.

#### *Corruption trends*

International rankings and corruption trends show marginal change since the last monitoring round. Armenia ranked 107 among 180 countries on Transparency International’s *Corruption Perception Index* in 2017 (score 35). Compared to 2016, there is a slight improvement, but the score is still lower than in 2014 and 2013.<sup>8</sup>

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<sup>3</sup> [US Department of State, Investment Climate Statements \(2017\).](#)

<sup>4</sup> See the Washington Post news article [here](#).

<sup>5</sup> See BBC news article [here](#).

<sup>6</sup> [Urgent appeal of the Armenian civil society to the international community.](#)

<sup>7</sup> Local media news article: [Pashinyan Promises All Equal Under the Law.](#)

<sup>8</sup> [Transparency International, Corruption Perception Index 2017.](#)

**Table 1. Corruption Perception Index, Transparency International, Europe and Central Asia**

2017 Rank	Country	2017 Score	2016 Score	2015 Score	2014 Score	2013 Score	2012 Score	Region
91	Albania	38	39	36	33	31	33	Europe and Central Asia
91	Bosnia and Herzegovina	38	39	38	39	42	42	Europe and Central Asia
107	Armenia	35	33	35	37	36	34	Europe and Central Asia
107	The FYR of Macedonia	35	37	42	45	44	43	Europe and Central Asia
122	Azerbaijan	31	30	29	29	28	27	Europe and Central Asia
122	Kazakhstan	31	29	28	29	26	28	Europe and Central Asia
122	Moldova	31	30	33	35	35	36	Europe and Central Asia
130	Ukraine	30	29	27	26	25	26	Europe and Central Asia
135	Kyrgyzstan	29	28	28	27	24	24	Europe and Central Asia

Visit [www.transparency.org/cpi](http://www.transparency.org/cpi) for more information

Source: Transparency International Corruption Perception Index, [www.transparenc.org/cpi](http://www.transparenc.org/cpi)

The Transparency International's *Global Corruption Barometer* (2016) showed that Armenians rate anti-corruption efforts of the Government, poorly: 65% of the respondents consider the steps taken by the Government against corruption as bad or fairly bad, and only 14% of the respondents assess these measures fairly well or very well. Among the institutions perceived as most corrupt are the Governmental institutions (45%), the President and his staff (44%) and tax officials (43%). Citizens of Armenia were pessimistic about their role in fighting corruption.<sup>9</sup>

In the *Nations in Transit* survey by Freedom House, in 2018 Armenia scored 5.43 out of 7 (1 most democratic and 7 least democratic). This rating is the lowest for Armenia since 2011. According to the Freedom House this decline is as a result of "solidification of systemic corruption as a consequence of the HHK's [*ruling Republican Party of Armenia*] consolidation of executive, legislative, and judicial power, and due to accumulated evidence of government unwillingness to root out high-level abuse of office."<sup>10</sup> On the World Bank's *Worldwide Governance Indicators* (2016) Armenia's score of 'control of corruption' is 33, (0 the lowest and 100 the highest) a marginal improvement by 3 points compared to 2006.<sup>11</sup>

## 1.2 Impact of anti-corruption policy implementation

### Recommendation 1 from the Third Round of Monitoring report on Armenia: Anti-Corruption Policy

- Organise meaningful consultations about the new strategy with the public authorities and the non-governmental partners, including civil society, business and international partners, to ensure that the strategy focus on the right priorities and to build the support of the society to its implementation.
- Ensure that the new strategy has a strong mechanism for its coordination and monitoring, including a set of performance indicators and the use of surveys and inputs from nongovernmental organisations.

<sup>9</sup> Transparency International, [People and Corruption: Europe and Central Asia](http://www.transparency.org/cpi) (2016). Detailed results for Armenia are available at the website of TIAC here: <https://transparency.am/en/gcb>

<sup>10</sup> Freedom House, [Nations in Transit Report](http://www.freedomhouse.org) (2018).

<sup>11</sup> World Bank, [Worldwide Governance Indicators](http://www.worldbank.org) (2016).

- Develop a budget for the implementation of the strategy including sufficient human and financial resources to ensure necessary financing from the state budget.

#### **Recommendation 2 from the Third Round of Monitoring report on Armenia: Surveys**

- In addition to general surveys, commission surveys for specific high-risk sectors to help the development and monitoring of anti-corruption policy and measures.
- Provide support to NGOs in their corruption research.
- Use the results of the surveys commissioned by the government and conducted by the NGOs for the development of the new Strategy and for the monitoring of its implementation and publish them on the site of the anti-corruption council.

#### ***Anti-corruption policy documents***

The third round of monitoring report criticised Armenia for the low level of implementation of the anti-corruption strategy and the lack of meaningful civil society participation in the development of the anti-corruption policy. The report urged the Government not to rush with the adoption of the new strategy to ensure proper stakeholder participation and policy planning, develop a budget for the action plan and build a strong mechanism for coordination and monitoring with the involvement of NGOs.

#### ***Public consultations***

***“Organise meaningful consultations about the new strategy with the public authorities and the non-governmental partners, including civil society, business and international partners, to ensure that the strategy focus on the right priorities and to build the support of the society to its implementation.”***

Armenia adopted the Anti-Corruption Strategy (the Strategy) and its implementation Action Plan (2015-2018) on 25 September 2015.<sup>12</sup> The Strategy is based on the *Concept on the Fight against Corruption in the Public Administration System*<sup>13</sup> and includes selected measures for prevention of corruption, criminalisation and law enforcement, with the focus on civil service and public administration reform, civil society engagement, transparency and accountability. In addition, it covers four specific sectors: health, tax, education and service delivery by police. Most of the activities are focused on overhauling the legislative and institutional framework for fighting corruption, conducting analysis of international good practices, drafting regulations and carrying out public consultations.

The third round of monitoring questioned the choice of the four sectors by the Government in view of the widespread corruption in the entire public administration of Armenia and especially in the high-risk areas such as judiciary, public procurement, customs or health.<sup>14</sup> The Government maintains that the selection was based on international surveys, identifying vulnerable sectors used to prioritize policy interventions in view of the limited resources. The surveys cited were the analysis conducted by the Caucasus Resources Research Center funded by USAID project, [Institute for Political and Sociological Consulting \(IPSC\) \(2013\)](#)<sup>15</sup> and TI Global Corruption Barometer (2013). According to the latter, however, equally corrupt sectors to those chosen for the Strategy are healthcare, police, judiciary, prosecutor's office,<sup>16</sup> tax and customs services.

The implementation action plan is prescribed for 2015-2018 and includes targets for each year. The most of the OECD/ACN third round of monitoring report recommendations are included as objectives or measures. The four sectorial action plans were adopted by the Government on 18 January 2018 with the time-gap of three years after the adoption of the strategy. The Government reported that they

<sup>12</sup> Decision of the Government of Armenia 1141-N (2015)

<sup>13</sup> Adopted by the Government of Armenia in April 2014, already analyzed in the last monitoring report.

<sup>14</sup> NGOs advocated to include these sectors as well.

<sup>15</sup> Available at: <http://ipsc.am/am-government-success-index-april-2013/>

<sup>16</sup> Anti-corruption measures for judiciary and Prosecutor's Office are part of the strategy for the legal and judicial reform 2012-2017.



were developed based on the corruption risk assessments conducted in each sector by the Experts Task Force (see details in 1.4), discussed with the non-governmental stakeholders and approved by the Anti-Corruption Council (ACC) prior to the adoption by the Government.<sup>17</sup> There are no dedicated policy documents for local level, however, some measures are included in the action plan (anti-corruption training of local government, transparency measures).

According to the Government, extensive public consultations have been organised on the draft anti-corruption strategy in 2014-2015: more than 50 discussions were held, including in the regions and through e-consultations. NGOs confirmed that they were involved at various stages of the development of the policy documents and some of their recommendations have been taken on board (for example on regulations of illicit enrichment, new institutional framework for prevention of corruption and NGO participation in the Anti-Corruption Council). However, NGO recommendations regarding the additional sectors have not been accepted. Civil society was also involved in elaboration of the sectoral action plans but business representatives have not yet taken part in the general strategy development (see the details in section 2.6 of the report). According to the Government, business representatives took part in the development of the sectoral action plans.

### **Budget**

***“Develop a budget for the implementation of the strategy including sufficient human and financial resources to ensure necessary financing from the state budget.”***

A separate budget for the implementation of the strategy to include human and financial resources has not been developed. However, the budget for the implementation of the anti-corruption policy documents was provided by the USAID direct grant within the framework of the *Support to Armenia’s Anti-Corruption Strategy Implementation Programme*, which according to the Government formed an integral part of the state budget and was sufficient for the implementation of the anti-corruption policy documents.<sup>18</sup> The agreement between the Government Staff of Armenia and USAID was signed in February 2016. The total cost of the program was 806 390 USD, of which 749 110 USD constituted the USAID grant. During the on-site visit, the monitoring team learned that in three years of implementation, Armenia only used about 15% of the allocated funds, which interlocutors explained either by the lack of will of the Government to implement the strategy or the lack of capacity to do so, or both.<sup>19</sup>

According to the figures submitted by the Government after the on-site visit on the budget spent for anti-corruption reforms in 2015-2017, 62% of the donor funding (115 524 USD) was spent on salaries for the Expert Task Force and the rest on software services, computers and equipment etc. In addition, the state budget expenditure in the amount of 85 741 USD was reported (not including budget of the law enforcement agencies and Ethics Commission for High Ranking Officials), of which 13% was spent on anti-corruption trainings, and the rest was spent on the rent for the office of the Monitoring Division and the salaries of the staff of the and Monitoring Division and the Ministry of Justice working on anti-corruption issues.

Armenia has not provided the detailed budget execution reports or the full report on the implementation of the Strategy to assess the level of implementation against expenditures for anti-corruption measures during the past three years, however, the provided information points to the shortcomings in the implementation or deficiencies in budget planning. Whereas the monitoring team shares the view expressed by the stakeholders met during the onsite on the lack of capacities of the Monitoring Division to steer the process and boost efficient implementation, as discussed below, it may also well be true that the budget was overestimated during the planning process: firstly, majority of the measures of the action plan are focused on elaboration of the new legislation and secondly, the action plans for the four chosen sectors have only been developed in 2018 and were not ready at the time when the budget was allocated. The final report on implementation should include financial report as well to shed light on these issues.

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<sup>17</sup> The anti-corruption action plan for the education sector is discussed in the chapter 4 of the report.

<sup>18</sup> Resources of the body coordinating implementation are discussed in section 1.4.

<sup>19</sup> The capacity of the Monitoring Division is discussed in section 1.3. of the report.

## Surveys

***“In addition to general surveys, commission surveys for specific high-risk sectors to help the development and monitoring of anti-corruption policy and measures.”***

The Government has not commissioned general or risk-specific corruption surveys, apart from one small-scale survey on awareness and attitudes on whistleblowing conducted in connection with the planned whistleblower protection reform by the Ministry of Justice (sample size of 200 respondents).<sup>20</sup> According to the Government, the four sector specific action plans have been elaborated based on the risk analysis but these did not involve conducting surveys. In addition, Armenia reported that the Government periodically commissions surveys carried out by the Institute for Political and Sociological Consulting (IPSC), however, the latest survey cited is from 2013. The NGOs confirmed that they are not aware of any such surveys used for the anti-corruption policy development or monitoring. The monitoring team did not share the Government’s view that the sector specific risk assessments could be considered as surveys for the purposes of the compliance with this part of the recommendation. It consulted the ACN Plenary on the issue. It was made clear by the plenary that the surveys and risk assessments are two distinct tools for evidence-based policy, it was also noted that the Government should be given a credit for the work it has done for assessing the risks in the four sectors. The Plenary also appreciated the survey conducted within the framework of the whistleblower protection reform.

***“Use the results of the surveys commissioned by the government and conducted by the NGOs for the development of the new Strategy and for the monitoring of its implementation and publish them on the site of the anti-corruption council.”***

According to the Government, the strategy and the action plan were developed based on the comprehensive analysis of the implementation of the previous policy documents, including the analysis of shortfalls of the strategic planning, such as wide scope of the policy documents, imprecise targets, incorrect distribution of tasks among agencies, absence of resources for implementation of the measures by the responsible agencies. In addition, the studies conducted by NGOs, for example by Transparency International Anti-Corruption Centre of Armenia (TIAC) and Armenian Lawyers’ Association, have been taken into account when developing the strategic documents and NGOs’ work has been used to support the legal changes among them on illicit enrichment, Commission for the Prevention of Corruption and whistleblowing system. Corruption related researches, studies and analysis are published on the website of the Ministry of Justice of Armenia<sup>21</sup> but there is no evidence that they have been used in the monitoring.

## Coordination and monitoring

***“Ensure that the new strategy has a strong mechanism for its coordination and monitoring, including a set of performance indicators and the use of surveys and inputs from nongovernmental organisations.”***

Anti-corruption policy coordination has been improved in Armenia compared to the last monitoring round. As discussed below, the Anti-Corruption Council sessions became more frequent and among other issues, focused on the implementation of the measures of the action plan. However, systematic coordination and monitoring procedures and practices are still not in place, CSOs do not participate in the monitoring and surveys and performance indicators are not used to evaluate impact.

The coordination, monitoring and evaluation functions were entrusted to the Anti-Corruption Programmes Monitoring Division at the Government Staff Office and the Expert Task Force,<sup>22</sup> however they have not been proactive. It took three years to finalize the adoption of the action plans

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<sup>20</sup> The details are provided in section 2.1. of the report.

<sup>21</sup> [Researches](#) published on the website of the Ministry of Justice of Armenia.

<sup>22</sup> The Government Decree N165-N of February 19, 2015 on “Establishing the Anti-Corruption Council and Expert task force, on approving the composition of the council and rules of procedure for the council, expert task force and anti-corruption programs monitoring division of the staff of the Government of the Republic of Armenia”

for the four chosen sectors, which according to the Government is due to the extensive public consultations conducted on these action plans. The annual reports on implementation (for 2015 and 2016) have been prepared and published on the Government web-site<sup>23</sup> containing brief information on selected, but not all, measures of the action plan. Likewise, the implementation report for 2017 is a description of actions in relation to selected measures of the action plan presented in a chart, without any analysis, evaluation of the effectiveness or impact.<sup>24</sup>

The Chapter 4 of the Anti-Corruption Strategy proposes innovative and participatory methods of monitoring with the use of indicators and databases, that will stimulate implementation and ensure accountability. However, these commitments have not been put in practice, apart from simple reporting by responsible agencies, which according to the Government is carried out annually.

As regards the monitoring methodology, procedures and tools, the Task Force presented a proposal to the Government Staff in 2016, but these documents have not been approved yet (action plan items 42 and 53).<sup>25</sup> The Government informed that the new methodology was developed by the business consulting company “CJSC” and posted [www.e-draft.am](http://www.e-draft.am) for comments. After the on-site visit, the Government informed about the approval of the document by the Chief of Staff.<sup>26</sup>

The document presented to the monitoring team lists various stages for monitoring and evaluation of the action plan, foresees development of a software and includes complex formulas on calculating weights for each indicator defined in the sectoral action plans. NGOs criticize the methodology due to the absence of the impact indicators and believe that it will not contribute to measuring whether the set objectives of reducing corruption have been met. The monitoring team is not convinced that his document can serve as an efficient monitoring mechanism, since it lacks defined procedures that could guide monitoring practices. Moreover, since the prescribed indicators are not impact indicators and most of them focus on the process, benefits of applying complex calculation against them are questionable.

According to the Government, the quantitative and qualitative indicators were included in the sectoral action plans approved by the Government in January 2018 and will be used for future monitoring. However, the indicators of for example education sector action plan are mainly process indicators (timeline of adoption of the laws, number of public discussions held or number of participants in the discussion etc), related every single action to be taken and there are too many indicators for just one year of implementation. In some instances, the meaning of the indicators is difficult to grasp, for example one of the indicators is the practical application of the established ethics norms and the value for this indicator is 100.<sup>27</sup>

In fact, simple and clear procedure and rules and their systematic application in practice may be more efficient with a few impact indicators, rather than a complex scientific approach to the monitoring. The monitoring tools could be used to track the progress in implementation of the measures and the studies can be conducted to measure the level of impact of the carried-out reforms. Regular meetings, interactions with the responsible agencies and support to the implementation by the Secretariat on a day to day basis could boost the performance.

At the on-site visit, the authorities informed the monitoring team about the launch of a new online platform<sup>28</sup> that according to the Government enables tracking the status of implementation of the action plan by responsible agencies. Citizens can send inquiries about the implementation of specific measures to the responsible agencies and receive answers. According to the Government, this system can also be used to calculate the implementation score for each agency, but it seems that the section on statistics is not operational yet.

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<sup>23</sup> Reports are available at: <http://www.gov.am/en/anti-corruption-reports/>

<sup>24</sup> Available at: <https://goo.gl/icwY4W>

<sup>25</sup> See information on the implementation of the Action Plan measures in 2016 [here](#).

<sup>26</sup> Order N 150-Ս March 30, 2018.

<sup>27</sup> Action plan for education is discussed in more detail in chapter 4 below.

<sup>28</sup> <https://anti-corruption.gov.am/am>.

CSOs do not take part in the monitoring contrary to the provisions of the Strategy (para 85). The Government maintains, however, that the participation in the ACC sessions amounts to civil society engagement in monitoring (participation in the ACC is discussed in the section 1.4). Authorities intend to involve NGOs in the monitoring on a regular basis, by requesting the external analysis to be submitted to the Ministry of Justice. To this effect, the Ministry of Justice invited the NGOs to regularly conduct alternative analysis of implementation of anti-corruption policy documents.

As regards the external analysis of the implementation of the Strategy, TIAC, with the support of the USAID, regularly develops the reports on the state of corruption in Armenia<sup>29</sup> which include a section on the implementation of anti-corruption strategy and action plan. TIAC plans to carry out similar exercise for the full anti-corruption action plan. The Government is encouraged to use this and similar analysis in the policy process.

The impact of implementation of the anti-corruption policy documents or the reforms has not been measured by the Government. The NGO report considers the current level of implementation of the Strategy and the Action Plan weak, largely attributed to the lack of political will and scarce resources of the ACC. However, the monitoring team notes that a large part of the action plan was focused on the legal reforms and in its last year of implementation, most of those laws have been adopted (illicit enrichment, the law on CPC, civil service law and public service law, law on whistleblower protection etc), some online tools have also been launched. However, public confidence could not be increased and the impact cannot be assessed yet.

The monitoring team was informed during the on-site that the work has been initiated on the **new anti-corruption strategy** of Armenia and the Ministry of Justice is already consulting with the NGOs to define the new priority areas for the forthcoming policy documents. The monitoring team was also informed about the new Government Programme that contains priorities related to fight against corruption. Armenia is recommended to focus its efforts on key areas that are most vulnerable to corruption and where actual or perceived level of corruption are high. As mentioned above, complex and comprehensive reforms are needed to rid the country from deep-rooted corruption.

## **Conclusion**

Armenia adopted the anti-corruption policy documents that include measures aimed at preventing and fighting corruption and reflect many recommendations of the third round of monitoring. Nevertheless, considering the magnitude of the problem of corruption and the areas bearing highest corruption risks, the choice of priority sectors and measures of the action plan raises questions. The anti-corruption efforts of the Government have yet again largely focused on the legal and institutional reforms, leaving key issues of concern unaddressed. While these new laws in most cases constitute progress towards international standards as discussed in various parts of the report, for many years now the impact of the anti-corruption reforms has remained minimal.

Armenia has actively engaged with civil society in the process of development of the anti-corruption policy documents and successfully worked with them on the selected reform areas such as illicit enrichment, whistleblowing and anti-corruption institutional framework. Business has only been included in the ACC recently but reportedly they were part of the public councils under other state institutions (on tax law, tax administration and inspections), as described in the section 2.6. on business integrity. However, the CSOs have not been engaged in the monitoring and the efficiency of the Monitoring Division throughout the reporting period has been questionable.

There are positive plans and new initiatives to improve monitoring that Armenia is encouraged to pursue. Systematic monitoring and evaluation procedures and tools need to be put in place and applied in practice, for the anti-corruption policy in general as well as the sectors to track the progress, evaluate impact and boost performance of the responsible agencies. There should be a clear division of tasks, regular meetings, interactions with the responsible agencies and guidance provided to them. Regular publication of (at least) annual reports must be ensured with the aim to boost the timely implementation.

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<sup>29</sup> The reports are published in Armenian.

There are shortfalls in budgeting anti-corruption reforms as well. For the efficient budget planning and execution, there should be a clear indication of the budget necessary for the implementation of planned activities, the amount and the sources that will fund implementation. Monitoring reports should include respective financial/budget execution reports.

Surveys are not conducted regularly or used in the monitoring and implementation of the Strategy. The Government has commissioned one survey on whistleblowing. It would be useful to conduct surveys with the aim to monitor the level of perceived or actual corruption, public trust towards institutions and impact of the reforms on the corruption situation. The Government should continue providing support to NGOs in corruption research. This would be useful also as one of the ways to externally monitor the impact.

As the preparations for the new strategy and the action plan start, Armenia is encouraged to work with civil society and the public on new priorities, focusing on the key areas that are most vulnerable to corruption in Armenia and take ambitious commitments to efficiently fight and prevent corruption in the country.

Armenia is *partially compliant* with the **recommendation 1** and *largely compliant* with the **recommendation 2** of the third round of monitoring report.

### New Recommendation 1. Anti-corruption policy documents

1. Ensure that the anti-corruption policy documents are developed with wide stakeholder engagement and are based on needs and risk assessment.
2. Include ambitious measures to target actual corruption risks, key areas vulnerable to corruption requiring reform as a matter of priority.
3. Ensure participatory implementation and regular monitoring of the strategy. Systematically publish the results of monitoring to ensure accountability.
4. Carry out public opinion surveys to measure the level of corruption, public trust and impact of anti-corruption measures, including at sector level. Publish the results of the surveys and use them in anti-corruption policy development, implementation and monitoring.
5. Promote internal integrity action plans in public bodies based on risk assessments.
6. Ensure that anti-corruption policy documents are realistic, affordable and enforceable, accompanied by necessary budget for implementation. Include financial reports in the reports on implementation.

### 1.3 Anti-corruption awareness and education

#### Recommendation 3 from the Third Round of Monitoring report on Armenia: Awareness raising

[...]

- During the launch of the new Strategy organise a public awareness campaign to send a strong message from the government to the citizens about intolerance of corruption.
- Support the implementation of the new Strategy with a regular public information campaign about practical solutions, rights and duties of citizens when facing corruption.

The third round of monitoring report assessed the lack of proactive and practical awareness raising campaign led by the Government as a significant shortcoming in the context where pessimism and passive acceptance of corruption were widespread, and trust in the Government's intention to fight corruption was low. Furthermore, the report noted that the lack of trust to the Government was the core problem that needed to be addressed with the genuine anti-corruption reforms in the corruption risk areas (independent judiciary, de-monopolization of economy and separation of business and politics).

The attitude of the citizens of Armenia to the Government's anti-corruption reforms has not improved in the reporting period. The measures carried out were largely perceived as cosmetic actions and imitated fight against corruption. The Government could not convince the society in honesty of these efforts. Thus, as shown below in section 2.1. of the report, the citizens are not ready to engage with the Government in the process by reporting corruption or saying no to corrupt practices. According to the Global Corruption Barometer (2016), 63% of the Armenian respondents (same as in 2013) think that ordinary people do not make any difference in the fight against corruption.<sup>30</sup> 77% of the Armenians think that reporting corruption is socially unacceptable in their country, which is the highest number in the region. The fear of reprisal is the most frequently stated reason (41%) for not reporting.<sup>31</sup>

When commenting on the lack of trust in the Government, the authorities met at the on-site visit concluded that the low level of trust was a result of the lack of proper communication with the public and informed the monitoring team about the plans to launch active campaigns using a communication strategy.

The anti-corruption strategy and the action plan do not include measures on awareness raising and anti-corruption education as such. However, there is a reference to building trust and confidence of citizens towards the Government efforts against corruption, raising awareness on ongoing reforms by regularly publishing the implementation reports, organising public discussions, informing about on-going and finalized criminal cases on corruption, creating platforms for cooperation with CSOs and launching e-consultations on the draft normative acts.<sup>32</sup>

The Monitoring Division of the Government Staff is to some extent responsible for awareness raising on anti-corruption (events on anti-corruption, disseminating material). In the forthcoming institutional framework, anti-corruption awareness raising will be a responsibility of the new corruption prevention body.

***“During the launch of the new Strategy organise a public awareness campaign to send a strong message from the government to the citizens about intolerance of corruption.”***

The Government reported various awareness measures carried out for general public and for the special target groups (journalists, students, civil servants and business) using different methods and means of communication (media shows, interviews, speeches of the leaders, roundtable discussions and reporting to the public on the on-going reforms). Answers to the questionnaire also refer to the public consultations and discussions held over the draft strategy and the public appearances of high-level officials, including the President, the Prime Minister and the Minister of Justice speaking about the evils of corruption and the need to fight it.

***“Support the implementation of the new Strategy with a regular public information campaign about practical solutions, rights and duties of citizens when facing corruption.”***

There has been a noticeable increase in the amount of information available to the public and communication with the public on various reforms the Government is implementing in recent years. Positive development is the increased transparency and outreach of the work of the Anti-Corruption Council. There is also some publicity on the on-going and finalized corruption cases.

In addition, the Government reported dedicated awareness raising activities organised for the specific reform projects, information campaigns on various new services and new online tools, such as e-drafts. A few trainings have been conducted for journalists, businesses and youth by international organization or local NGOs. No information campaigns have focused on informing citizens about their right and duties when facing corruption. According to the NGOs, public information campaigns have not been made practical, proactive and regular.

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<sup>30</sup> This is the second lowest figure in the region (lower rate was reported from Czech Republic – 64% and the same 63% - in Hungary).

<sup>31</sup> Transparency International, [People and Corruption: Europe and Central Asia](#) (2016). Detailed results for Armenia are available at the website of TIAC here: <https://transparency.am/en/gcb>

<sup>32</sup> See as an example measures 44, 53 and 58 of the action plan.

One important development is the targeted awareness raising campaign carried out in connection with the introduction of the new whistleblower protection law with the support of the UK embassy in Armenia to stimulate the citizens of Armenia to report corruption. The campaign included a survey, videos and billboards, TV programs and interviews.

## Conclusion

Transparency of the Anti-Corruption Council has been increased and the communication with the society of the Government actions against corruption has been improved. However, systematic and structured public awareness campaigns have been lacking in the reporting period. The Anti-Corruption Strategy includes an objective on increasing public trust, but the public communication strategy is not yet in place, neither is there a systemic approach to public awareness raising with concrete measures and targets.

The Government has not measured the impact of its awareness raising activities so far. However, TI GCB and a survey conducted in connection with the whistleblowing reform show that public attitudes have not changed in the reporting period. The society at large was not convinced in the will and the efforts of the Government to make progress in fighting corruption. The recent revolution brought about massive hope for a democratic change and placed the trust in the new regime, thus creating an important momentum for change. However, this trust will be lost as easily as gained, unless the Government starts showing real action against corruption.

Structured and systemic awareness raising is needed with the engagement of civil society and larger public, targeted to the sectors most prone to corruption, using diverse methods and activities adapted to each target group. Necessary resources should be allocated for awareness raising, results of these activities should be evaluated and the next cycle of awareness raising should be planned accordingly.

Armenia is *partially compliant* with the parts of the **recommendation 3** of the previous monitoring on awareness raising (bullet points 2-3).

### New Recommendation 2. Public awareness raising and education

1. Engage civil society and larger public in awareness raising against corruption.
2. Conduct awareness raising based on a comprehensive communication strategy. Target activities to the sectors most prone to corruption and use diverse methods and activities adapted to each target group.
3. Allocate sufficient resources to awareness raising measures, evaluate the results and impact and plan the next cycle of awareness raising accordingly.
4. Provide anti-corruption education at the various stages of the education process.

### 1.4 Corruption prevention and coordination institutions

#### Recommendation 3 from the Third Round of Monitoring on Armenia: NGO Participation

- Provide broader opportunities for the NGOs to participate in the Anti-Corruption Council. [...]

#### Recommendation 4 from the Third Round of Monitoring on Armenia: Anti-Corruption Institutions

- Ensure that the Anti-Corruption Council leads the coordination of the Anti-Corruption Strategy and its monitoring, regularly informs the state bodies and the public about progress and challenges in its implementation and takes measure to strengthen the implementation where necessary.
- Provide the permanent secretariat for the coordination and monitoring of the Anti-Corruption Strategy with a clear mandate for coordination and monitoring of anti-corruption policy and with the human and financial resources necessary for effective and independent work.

- Strengthen the capacity of state bodies to develop and implement sectoral anti-corruption measures, provide them with analytical and methodological support, ensure coordination between the anti-corruption focal points and ethics commissions in the state bodies and with the law-enforcement bodies.
- Establish a donor coordination mechanism to ensure effective support of the donors to the implementation of the Anti-Corruption Strategy and other anti-corruption, integrity and good governance programmes.

Anti-corruption policy coordination in Armenia is within the mandate of the Anti-Corruption Council (ACC), an interagency body composed of high-level representatives from all branches of power. Since its creation in 2004, it has been reformed and its composition was broadened. The ACC is now chaired by the Prime Minister. At the time of the third round of monitoring, the ACC was not active, functions of its secretariat were entrusted to a Government unit, which was not staffed. Anti-corruption capacity in the state bodies was limited and they did not receive any methodological or analytical guidance from the ACC. The reform envisaged increased powers and revised composition of the ACC, an Expert Task Force (funded by the USAID) and a permanent secretariat to support its work. The future reforms will change the existing institutional model, introducing an independent corruption prevention agency as described below in this report.

### ***Civil society participation***

Civil society of Armenia has been active in anti-corruption and good governance issues. Since the last monitoring round, the Government has intensified dialogue with civil society in the framework of various platforms. The NGOs are now represented in the ACC as members or observers and actively participate in its sessions. Another opportunity for the NGO participation is public councils attached to the Ministry of Justice and other state bodies. In addition, there is a civil society-Government partnership launched in September 2015 where the Government is represented by the Ministry of Justice and civil society is represented by the Freedom of Information Centre of Armenia (FOICA) and the Anti-Corruption Coalition of NGOs.<sup>33</sup> Several NGOs regularly provide shadow reports on the implementation of the IAP recommendations to the OECD/ACN as well.

### ***“Provide broader opportunities for the NGOs to participate in the Anti-Corruption Council. [...]”***

The NGOs, business and opposition parties have been included in the ACC as members. Five places are now allocated to civil society and business, among them, one to the Anti-corruption Coalition of NGOs (representing 90 NGOs), two to additional NGOs and two to business associations. The non-member NGOs can participate as observers, present their work and get involved in the working groups. A competitive procedure for the selection of members is prescribed by the Decision of the Prime Minister of Armenia.<sup>34</sup> A call for membership is posted on-line, applications are reviewed against the criteria and lots are drawn in the end, in the presence of applicants. The rotation of members is envisaged every 2 years. The same NGOs are eligible to apply but new NGOs are given priority. Notably, the procedures and criteria have been simplified after the heavy criticism of the first version for being too demanding, preventing NGOs from becoming members. As a result of three competitions organised in 2015, TIAC and Freedom of Information Center of Armenia (FOICA) are now the ACC members together with the Anti-corruption Coalition of NGOs. The Republican Union of Employers of Armenia became a member of the ACC as a business representative recently. There is one more place for business to be filled in. however, businesses have not been enthusiastic in participating, as discussed in section 2.6.

To highlight active NGO participation, the Government provided the list of issues included in the agenda for the ACC sessions on their initiative, such as anti-corruption institutional set-up, corruption risks in tax and customs, public procurement, education etc. The Government also referred to the

<sup>33</sup> The Anti-Corruption Coalition of NGOs has about 90 members, including some business associations. They are members of the ACC. Notably TIAC, FOICA, Protection of Rights Without Borders and other active NGOs are not part of it and chose to be members separate members of the ACC.

<sup>34</sup> Decision of the Prime Minister of Armenia, No 300-N of 18 April 2015.



successful cooperation with civil society in the implementation of the anti-corruption measures, for example, the working groups on illicit enrichment and whistleblowing, as well as various occasions of NGOs presenting their research findings with recommendations to the ACC followed by assignments to the line ministries to address them.

The NGOs met at the on-site visit, confirmed these positive developments. However, they felt that their participation was not always meaningful, since short deadlines were set for providing feedback on the issues. In general, they felt free to express concerns on sensitive issues at the ACC sessions, however, as noted, the follow up and the choice of priorities by the ACC have not been satisfactory, most of the time focusing only on selected legislative reforms and ignoring the issues of bigger concern. In addition, NGOs assert that available mechanisms for participation are not sufficiently institutionalized or used in practice, and often their participation, especially at the stage of the implementation of the action plan largely depends on the discretion of a responsible state body.

### ***Role of the Anti-corruption Council***

***“Ensure that the Anti-Corruption Council leads the coordination of the Anti-Corruption Strategy and its monitoring, regularly informs the state bodies and the public about progress and challenges in its implementation and takes measure to strengthen the implementation where necessary.”***

According to the Government the ACC has demonstrated its leadership role in recent years, including in development, implementation and monitoring of anti-corruption policy. Its meetings intensified (in the last 3 years the ACC had 8 sessions, 5 of which were held in 2017) and chaired by the Prime Minister personally. The ACC became more transparent, information about its work, including minutes of its sessions was placed on its website. The decisions of the Council were most often manifested in concrete instructions to the relevant state bodies. According to the Government, the recent adoption of the important legal acts in the field, such as laws on criminalizing illicit enrichment, anti-corruption institutions, whistleblower protection, asset declaration and conflict of interest regulations, were the result of the ACC’s leadership. In addition, the ACC promoted implementation of the action plan through discussions on the state of implementation at its sessions and the follow up instructions to step-up the performance by the responsible agencies.<sup>35</sup>

NGOs confirmed these positive changes in the anti-corruption policy coordination of Armenia stating that its sessions became regular, minutes were posted on the website in a timely manner, agenda and the working documents were distributed to the session participants on time and the discussions were more substantive than before. At the same time, the NGOs consider that the weak implementation of the anti-corruption strategy is due to the lack of resource available to the ACC through its secretariat and its political weight compared to the President of Armenia which was a dominant power in the system, before the constitutional change. According to the NGOs however, the real obstacle to increasing the efficiency of the ACC’s performance is the lack of political will “to implement radical and systemic economic, political and social reforms, which will trigger also serious efforts to reduce corruption.” The Government disagrees with the statement, indicating that the ACC had enough resources for coordination and monitoring of the implementation of the policy documents, to which its mandate is confined to, as the implementation of the strategy is the responsibility of state bodies, not the ACC.

### ***Secretariat***

***“Provide the permanent secretariat for the coordination and monitoring of the Anti-Corruption Strategy with a clear mandate for coordination and monitoring of anti-corruption policy and with the human and financial resources necessary for effective and independent work.”***

The Monitoring Division of the Government Staff serves as a permanent secretariat of the ACC since 2015. Its main function is the monitoring of implementation of anti-corruption action plan. Other functions include organisational and technical support to the ACC, analysis of the implementation of

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<sup>35</sup> Even though the decisions of the ACC are not obligatory unless approved by the Government or the Parliaments, the Chairman of the ACC could give the instructions to the line ministries and the Government agencies to boost the performance as needed.

international anti-corruption obligation of Armenia, carrying out assessment of draft legal acts related to anti-corruption programmes and organising activities involving various state and local government bodies (roundtables, discussions, dissemination material to contribute to the awareness raising). The Division was staffed and started its operation after the third round of monitoring. It is under the supervision of the Deputy Chief of Staff of the Government and has 5 staff members, 4 of them lawyers and one economist.

The Monitoring Division supports the work of the Expert Task Force responsible for supporting the development of the anti-corruption policy documents, including at sector level, corruption risk analysis, preparing progress reports and the monitoring and evaluation reports on implementation of anti-corruption policy.<sup>36</sup> The Expert Task Force has been operational since 2016 comprising 3 independent experts funded by the USAID grant. The third round of monitoring report expressed concerns regarding the broad powers of the Expert Task Force, (at that time existed only on paper) vis-à-vis Monitoring Division, stating that independent experts can provide technical advice, but cannot substitute the Government function of monitoring and coordinating the implementation of the anti-corruption policy.

According to the Government, the funds allocated to the secretariat and the Expert Task Force so far have been sufficient for their functioning. However, the on-site visit revealed that the Division and the Expert Task Force remained passive and could only use a small portion of the USAID direct grant issued for the support the anti-corruption strategy implementation, having produced brief descriptive annual reports on implementation of selected measures of the action plan and four sectorial action plans, adopted on the last year of the policy cycle, in three-year after the adoption of the Strategy. Thus, despite their placement in the Government office, which is empowered to supervise and coordinate the state executive bodies, their capacities and efficiency are questionable.

The monitoring team also informed during the on-site visit that the contracts of the Task Force have been expired and there are no plans to prolong them in anticipation of the forthcoming institutional reform.

In the recent years, the Ministry of Justice (MoJ) has played an instrumental role in anti-corruption policy in Armenia, leading several important reforms (reform of the anti-corruption institutions, whistleblower protection, freedom of information reform and others), actively cooperating with civil society, introducing modern tools to steer and coordinate (such as new platform for e-monitoring), and sometimes even assuming the role of the secretariat supporting the operation of the working groups of the ACC. The MoJ has been seen by the interlocutors met at the on-site as active, transparent, engaged with stakeholders and having potential for the oversight and monitoring of the strategy.

The monitoring team would like to reiterate the importance of well-staffed, skilled and proactive secretariat in driving the implementation of the anti-corruption policy which can be sometimes driven individually rather than institutionally as stated at the on-site visit. Armenia is encouraged to ensure that professional, highly skilled and proactive secretariat supports the work of the ACC.

#### ***Anti-corruption focal points***

***“Strengthen the capacity of state bodies to develop and implement sectoral anti-corruption measures, provide them with analytical and methodological support, ensure coordination between the anti-corruption focal points and ethics commissions in the state bodies and with the law-enforcement bodies.”***

The functions of the anti-corruption focal points are performed by high-level officials of state executive bodies (18 ministries 8 governmental bodies) such as deputy ministers, who are responsible for ensuring implementation of anti-corruption measures in their respective bodies and presenting these results to the ACC. Armenia reported the training of anti-corruption focal points organised by the World Bank and Italian National School of Public Administration (30 participants) as well as the Ministry of Justice. However, working level operational support and coordination of the focal points

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<sup>36</sup> Decision of the Government of Armenia No 165-N of 19 February 2015.

has been lacking. Analytical and methodological support to the state bodies has not been ensured by the ACC secretariat. Introduction of the position of *integrity affairs organisers* responsible for promoting ethical conduct, developing integrity plans and training, conducting studies and maintaining statistics of anti-corruption measures in their respective bodies is a positive step, if implemented in practice. The coordination mechanism has to be set up between the secretariat, anti-corruption focal points and integrity affairs organisers on the one hand and the CPC on the other, to achieve the desired results.

#### ***Donor coordination mechanism***

***“Establish a donor coordination mechanism to ensure effective support of the donors to the implementation of the Anti-Corruption Strategy and other anti-corruption, integrity and good governance programmes.”***

Donor coordination has been added as a separate statutory function of the ACC. It is envisaged that the donor assistance for anti-corruption will be discussed by the ACC annually. The Ministry of Justice is supporting the implementation of this function. It holds donor coordination meetings regularly. It has also created a matrix of needs and plans to launch an online platform for coordinating donor assistance. These steps encouraged further. But the core issue that should be addressed is of absorption capacity and the political will to carry out anti-corruption reforms.

#### ***Commission for Prevention of Corruption***

At the time of the previous monitoring round, discussions were ongoing about the establishment of an independent anti-corruption institution, advocated by civil society in Armenia. However, the Government decided not to pursue this idea and has focused on strengthening the existing model instead. The debates continued later within the format of the ACC and in its working group with the participation of NGOs and resulted in the adoption of the new Law on Commission for the Prevention of Corruption (CPCL) establishing an independent corruption prevention body in Armenia. The Commission for the Prevention of Corruption (CPC) will replace the Ethics Commission of the High-Ranking Officials (CEHRO) and will have broad preventive powers related to promotion of integrity, supporting development of anti-corruption policy, anti-corruption awareness raising and training. According to the Government, this change is aimed at implementing the UNCAC provisions, international standards and good practices on independent corruption prevention bodies and is a result of a consensus of a long debate on a suitable anti-corruption institutional framework for Armenia.

According to the CPCL, the CPC is an autonomous collegial body, accountable to the Parliament, comprising 5 members -- Commissioners -- appointed for 6 year-term<sup>37</sup> by the Parliament with a special competition conducted by the Competition Board set up specifically for the selection of Commissioners. Collegiality, financial independence, public accountability and transparency, cooperation and political neutrality are the underlying principles of its operation (Art. 2,3 of the CPCL). The CPC enjoys a fair degree, but not full financial independence from the Government: although a separate budget line is envisaged for it in the state budget, its budget requests are approved by the Government and may be amended before the submission to the Parliament. The Government, in addition, approves the staff list and the number of employees of the CPC, which can be seen as a limitation of the autonomy of the CPC to manage its own budget. Commissioners enjoy immunities and are protected from the interference in the exercise of their duties.

Selection competition is conducted in three stages: selection of applications, written tests and interviews. Members of the Competition Board are appointed by the representatives of the different branches of power and civil society: The Chairperson of the Constitutional Court, the Human Rights Defender, the opposition factions of the National Assembly, the Chamber of Advocates and the Public Council, the latter is responsible for appointing a civil society representative. The criteria and procedure for selection of these members are not specified in the law. The Competition Board approved criteria (including for the interview) and procedure, as well as written tests for the selection of Commissioners. The interview stage is open for civil society and media representatives. The

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<sup>37</sup> The first composition of the CPC will be appointed for 4 years (Art. 18.1 of the CPC).

Competition Board decides through an open vote by majority. The Parliament may reject the candidates selected by the Board, in which case new competition will be held. According to the CPCL, the CPC sessions are held monthly and are in general open. The required quorum for the session is 3 members. The staff of the CPC are civil servants. The transparency requirements include publication of the CPC opinions, decisions and the activity reports.

Apart from the wide enforcement mandate related to asset declarations, conflict of interests (including ad hoc) incompatibilities and ethics rules, the CPC is entrusted with the functions of promoting integrity in public service (Art. 23-24 of the CPCL).<sup>38</sup> The CPC's role in anti-corruption policy however is limited to analysing draft anti-corruption policy documents, providing recommendations and developing anti-corruption awareness raising and training programmes. Thus, it is envisaged that the ACC will maintain its mandate and will continue operation in full after the reform is finalized.

The monitoring team was told at the on-site visit that all necessary secondary legislation was ready for adoption and the selection of the CPC members was about to start with the intention to have the agency fully set up by the end of 2018. The Government informed that, the annual state budget for 2018 included funding for the CPC (155 751 EUR) and its premises were under renovation. The planned budget and the approved organigram of the CPC foresee expansion of the CPC staff from 40 in 2018 to 55 in 2019. According to the CPCL the first selection competition for the members of the CPC should have been held within 45 days after the entry into force of the law (Art. 43.3 of the CPCL) that is the end of May 2018, and the structure, number of the staff, the charter endorsed by CPC by 1 July 2018. However, following the recent political developments in Armenia, it became clear that this timeline would not be met. The selection of the Competition Board members has started but is not finalised as of June 2018. The monitoring team was troubled to learn about the controversies going on around the setting up of the agency and the process of the selection of the members of the Competition Board. A group of NGOs has expressed concerns with regard to the process of nomination and selection of the members of the Competition Board, and that the selected members are not perceived to be suitable to assess the competencies of the candidates.<sup>39</sup> Anti-Corruption Coalition of Armenia however praised the selection process as being open and transparent.<sup>40</sup>

The introduction of an independent corruption prevention institution will bring Armenia closer to international anti-corruption standards and it is a welcome development. However, results of this institutional change are yet to be seen and evaluated. The monitoring team would like to underline that the CPC will only be able to make change in practice if its establishment and exercise of its mandate are free from political interference.

An objective and transparent process of selection of the members of the Competition Board is of crucial importance. In order for the CPC to enjoy public trust, the selection of its members should be unbiased, free from political manipulations, and seen as such by the society at large. CPC should be able to carry out its mandate in practice free from undue influence. The necessary material resources and specialized staff should also be provided together with the training that such staff may require to carry out their functions.<sup>41</sup>

In addition, the monitoring team after the on-site heard about the creation of the so-called State Oversight Service under the Prime Minister of Armenia, that will be responsible, among others issues, for the oversight of the implementation of the anti-corruption measures.<sup>42</sup>

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<sup>38</sup> For the detailed analysis of the CPC's enforcement mandate and functions related to promoting integrity see the sections 2.1. and 2.2. below.

<sup>39</sup> [Announcement](#) on the selection of candidates for the position of a member of the Corruption Prevention Committee, TIAC; [Joint statement](#) of NGOs.

<sup>40</sup> CSOs Anti-Corruption Coalition of Armenia on the [Formation of Competition Board for Corruption Prevention Committee Members](#).

<sup>41</sup> Article 6 of the United Nations Convention Against Corruption.

<sup>42</sup> [David Sanasaryan appointed Armenia State Oversight Service chief](#).

## Conclusion

Since the last monitoring round the anti-corruption policy coordination has been enhanced: the ACC became more active, inclusive, transparent and efficient. Its sessions are held regularly and are open to media. The minutes are timely published. Donor coordination has been added as one of the functions of the ACC as well.

Of the two remaining weaknesses of the ACC, one has to do with the political will to tackle corruption through decisive and fundamental reforms, and the other with the analytical and administrative support rendered to the ACC. The fact that the ACC has prioritising legal and institutional reform only, may have been seen as a shift of the focus from the core areas where genuine anti-corruption reforms are needed to yet another set of legal reforms. As regards the resources of the ACC, although the secretariat has been formed in the Government Staff and supported by the Expert Task Force, it has largely failed to be proactive and meaningfully engage with the state bodies to push the implementation forward. Armenia is encouraged to address the issue of skilled, competent, proactive secretariat and provide the ACC with the resources that are necessary for the efficient exercise of its mandate.

State bodies have not been provided with the systematic support to strengthen their capacity to ensure quality implementation of the planned anti-corruption measures. It would be important that the secretariat engages with the responsible bodies and provides day-to-day support and guidance, as well as coordination to boost their performance. The coordination of the newly created positions of the integrity affairs organisers, anti-corruption focal points and the secretariat has to be ensured, also with the ethics commission of the respective bodies and the CPC.

In recent years, Armenia has shown commendable progress in intensifying cooperation with non-governmental stakeholders, which in certain cases resulting in new and progressive legislation. The Ministry of Justice has been particularly active in this dialogue. Civil society participation became more systematic compared to the last round but more is needed to further engage business representatives.

Armenia's model of corruption prevention and coordination institutions has been changed with the adoption of the new legislation. The introduction of an independent corruption prevention body will bring Armenia closer to international anti-corruption standards and is a welcome development. However, the practical results of this institutional change and impact on the level of corruption are yet to be evaluated. The objective and transparent selection of Commissioners must be ensured as well as the exercise of the CPC's mandate free from undue influence. In addition, the CPC should be provided with the resource and specialized staff to carry out its functions efficiently.

Armenia is *fully compliant* with the **recommendation 3** bullet point on NGO participation and *partially compliant* with the **recommendation 4**.

### New Recommendation 3. Anti-corruption policy co-ordination and prevention institutions

1. Define criteria for the membership to the Competition Board for the selection of Commissioners of the Commission for the Prevention of Corruption and ensure transparent selection process.
2. Ensure transparency and objectivity of the appointment of Commissioners, free from any, including political interference and that the process is seen as objective by the public at large.
3. Provide for adequate resources and permanent dedicated staff specialised in the anti-corruption work that proactively support the process of policy coordination, implementation and monitoring.
4. Strengthen capacity of public authorities in the development and implementation of sectoral anti-corruption measures, provide them with analytical and methodological support, ensure co-ordination (including CPC, anti-corruption focal points, integrity affairs organizers, ethics

commissions and law enforcement bodies).

5. Establish a donor co-ordination mechanism to ensure effective support to the implementation of anti-corruption strategy and related programmes.

## CHAPTER 2: PREVENTION OF CORRUPTION

### 2.1 Integrity in the public service

#### *Main developments since the last monitoring round*

The public service reform in Armenia started in 2015 with the support of the EU and SIGMA.<sup>43</sup> The Civil Service Reform Strategy<sup>44</sup> was adopted and an inter-agency working group chaired by the Deputy Prime Minister of Armenia<sup>45</sup> set up to lead the process. On 23 March 2018, Armenia adopted the new versions of two laws laying down novel principles and rules for civil service management and integrity in public service – the Law on Civil (CSL)<sup>46</sup> and the Law on Public Service (PSL). The new CSL substantially changed the system of the civil service management, widening its scope and enhancing merit-based recruitment. The new PSL considerably improved the integrity framework for public officials, including the regulations on conflict of interest, codes of ethics, asset declarations and ethics commissions. Although adopted with significant delay and some remaining shortcomings as shown below, these laws can be regarded as a major step forward towards the civil service reform in Armenia in line with the European standards.

Other important changes to the public service regulatory framework since the last monitoring round were the adoption of the Law on the Commission for the Prevention of Corruption (CPCL) to replace the Ethics Commission for High Ranking Officials (CEHRO),<sup>47</sup> the adoption of a standalone law on whistleblowing,<sup>48</sup> the introduction of performance evaluation in the legislation on civil service<sup>49</sup> and the abolition of so-called attestation procedure for civil servants.<sup>50</sup>

These progressive changes are commendable, however, considerable further work is needed to finalize the adoption of the secondary legislation and put the new laws in practice. Thus, regrettably this section of the report, very much like other sections, has to examine the legal and institutional reforms, instead of focusing on impact and effectiveness, which the fourth round of monitoring is all about. This section of the report thus analyses the new laws in the parts relevant to the IAP monitoring and where possible looks into the practical implementation of the public service integrity measures to assess the compliance with the recommendations of the third round of monitoring and draw new recommendations.

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<sup>43</sup> SIGMA: Support for Improvement in Governance and Management, OECD/EU joint initiative.

<sup>44</sup> RA Government Protocol Decree No 57 of the 29 December, 2015.

<sup>45</sup> Established by the Directive of the President of the Republic of Armenia of 20 December 2016, No NK-263-A

<sup>46</sup> Most of its provisions enter into force on 1 July, 2018.

<sup>47</sup> The Law on Commission for the Prevention of Corruption adopted on 9 June 2017. This Law was accompanied by the package of anti-corruption laws, including the Law HO-98-N on Amending and Supplementing the RA Law on Public Service adopted on 9.06.2017, the Law on Amending the RA Code on Administrative Offences, the Law on Amending the RA Criminal Code and others. See details on CPC in chapter 1 of the report.

<sup>48</sup> The Law of the Republic of Armenia "On Whistleblowing system" (HO-97-N) of June 9, 2017

<sup>49</sup> The relevant provisions entered into force in the reporting period (adopted by NA on June 21, 2014, entered into effect on January 1, 2015).

<sup>50</sup> The amendment to the CSL on 21.06.2014 (HO-104-N). Attestation procedure was abolished starting from January 2017.

### ***Public service integrity policy and its impact***

The relevant policy documents are the Anti-Corruption Strategy and the Action Plan containing a dedicated chapter on integrity in public service and the Civil Service Reform Strategy. The anti-corruption policy documents are discussed at length in chapter 1 of the report and this section focuses on civil service policy.

The aim of the Civil Service Reform Strategy and its Implementation Plan is to bring the civil service of Armenia closer to the EU and the OECD standards. The strategy lists the main regulatory and operational weaknesses of the civil service of Armenia, such as poor tools and capacities for human resources management and professional training (e.g.: performance appraisal, human resources planning, promotion, mobility, etc.), insufficient regulations of integrity, civil service principles, rights and duties of civil servants, and proposes to address the shortcomings in: classification in civil service, recruitment and promotion, performance appraisal, remuneration, discipline, ethics, integrity and incompatibilities, human resources (HR) management system. The positive novelties of the Civil Service Law (CSL) in some parts go beyond the measures envisaged by the Strategy, such as extension of the scope of the civil service or abolition of the Civil Service Council (CSC).

Nonetheless, the civil service policy of Armenia and anti-corruption policy in public service alike, as discussed in chapter 1, would benefit from evidence-based approach. Armenia has not conducted risk assessments or other studies to target its policy solutions to specific risks and challenges. The on-site visit has shown that, besides quite limited civil service statistics collected by the CSC, there is no comprehensive data in the human resources management information system (HRMIS) to apply in the public service policy planning and monitoring of implementation. This conclusion is confirmed by the fact that the civil service strategy did not contain any thorough, data-based analysis of the state of play. The civil service strategy provides for the development of an improved HRMIS software by the end of 2018.<sup>51</sup>

### ***Conclusion***

The civil service reform and anti-corruption policy documents of Armenia identify key weaknesses of the public service and propose progressive solutions. The newly adopted CSL has introduced positive changes even beyond the strategy. Nevertheless, the civil service policy of Armenia is not evidence or risk-based. Regular studies are not conducted to analyse integrity risks and design relevant responses. The monitoring team encourages Armenia to improve the HRMIS and adapt it to the enlarged civil service, conduct studies to ensure evidence-based policy, measure impact of the public service reform implementation as a whole and design future intervention accordingly.

### **New Recommendation 4. Civil service reform policy**

1. Assess the implementation of the new CSL and PSL and develop the civil service reform policy that is evidence-based supported by the relevant data, risk and impact assessment.
2. Introduce the new human resources management information system and start its application in practice for the entire civil service. Ensure that the disaggregated statistical data is produced and used in police development and monitoring. Ensure regular publication of the data on civil service.

### ***Institutional framework***

#### **Recommendation 10 from the Third Round of Monitoring report on Armenia: Ethics Commission**

- Provide the Ethics Commission for High-Ranking Officials with the right and the capacities to verify asset declarations [...]

<sup>51</sup> The elaboration of the HRMIS is also regulated by art. 44 of the PSL.

- Provide the Ethics Commission for High-Ranking Officials with an independent budget which will ensure necessary human, financial and technical resources.
- Designate the Ethics Commission for High-Ranking Officials - or another body - to promote and control of common public service standards and practices across the public administration.

At the time of the third round of monitoring, the Civil Service Council (CSC) and the Commission on Ethics of the High-Ranking Officials (CEHRO) were in charge of the civil service management and integrity of high-ranking officials, respectively. The CSC has been operating since 2001, however, its mandate remained narrow extending only to the civil service – which at that time constituted a small part of the public service of Armenia. Launched in 2012, the CEHRO lacked necessary regulatory framework, budget and resources to fully exercise its functions. Since the last monitoring round, the functions of the CSC have not changed significantly and it continued to operate as before. At the same time, positive developments can be seen in relation to the CEHRO as described below.

***“Provide the Ethics Commission for High-Ranking Officials with the right and the capacities to verify asset declarations [...]***

***Provide the Ethics Commission for High-Ranking Officials with an independent budget which will ensure necessary human, financial and technical resources.”***

Armenia has strengthened the mandate and resources of the CEHRO addressing the concerns of the third round of monitoring. In 2017, the CEHRO acquired new powers and tools necessary for the verification of asset declarations and imposing administrative fines for related violations,<sup>52</sup> it was granted a separate budget (art. 41.1, para 5 of the PSL) and its staff was recruited (at the time of the on-site visit it had 12 employees along with 5 Commissioners). It took three years, strong leadership and continued efforts from the CEHRO to achieve this change.

In the meantime, the CEHRO has been fairly active in applying its limited mandate in practice<sup>53</sup> and promoting common standards for public sector integrity, sometimes even beyond its statutory functions. The CEHRO has produced a guidebook on filling in asset declaration forms, a handbook on ethics in public service and a number of studies on prevention of corruption, ethics, conflict of interest and asset declarations, as well as desk research on international practices on corruption related issues. The CEHRO has also elaborated its institutional development strategy and the action plan for 2016-2018 aimed at further increasing its role in promoting public service integrity. In addition, it has played an instrumental role in developing progressive legal regulations on the CPC, asset declarations, conflict of interest enforcement and other issues, as a result of the successful cooperation with the Ministry of Justice of Armenia, other state bodies and civil society. Nevertheless, according to the NGOs, CEHRO could have been more proactive in its enforcement role after its mandate was expanded. The monitoring team would like to highlight the high level of professionalism and competences of the representatives the CEHRO met during the on-site visit and commend the dedicated work it has performed on promoting integrity in the challenging context of Armenia.

***“Designate the Ethics Commission for High-Ranking Officials - or another body - to promote and control of common public service standards and practices across the public administration”***

Armenia has embarked on yet another institutional change of the anti-corruption institutional framework. The recently adopted legal framework (CSL, PSL and CPCL) envisages creation of an independent corruption prevention agency, the Commission for the Prevention of Corruption (CPC) replacing the CEHRO as discussed in Chapter 1 of this report.<sup>54</sup> The CEHRO will continue to operate

<sup>52</sup> Amendments of PSL from June 2017 (a new article 43.1 was added), for the detailed analysis of asset declarations see below.

<sup>53</sup> On enforcement of conflict of interest regulations and asset declarations see below.

<sup>54</sup> The precise date of the full entry into force of the Law on the CPC is however not known, as it will enter into force after at least three members of the Commission are appointed by the National Assembly, the CPCL provides for holding the first competition 45 days after the entry into force of the articles on which the organisation of the selection will be based entered into force on 10 April 2018 (Art. 42, Law on CPC).



until the CPC is set up. The staff of the CEHRO will be subsequently dissolved and put on the reserve list. Thus, there is a risk that an important institutional memory will be lost, if most of the staff of the CEHRO will be replaced.

According to the CPCL, the enforcement mandate of the CPC extends to the persons covered by art. 60 para 2 of the PSL (previously called high-ranking officials), except for prosecutors, Members of Parliament and judges. The CPC examines violations of the rules on asset declarations, conflict of interests (including ad hoc) incompatibilities and other violations of the ethics rules and provides recommendations on resolving them to the respective state bodies or public officials, who are obliged to report back about the follow up on these recommendations within 15 days (Art. 33.5 of the CPCL). In addition, the CPC has a clear mandate to promote integrity in public service, provide methodological guidance and coordination to ethics commissions and serve as an appeals body for their decisions (Art. 23-24 of the CPCL).<sup>55</sup>

As discussed above, although the CPC was granted a fair degree of financial and institutional independence (art. 5 of CPC Law) its budget request, staff list and number of employees are approved by the Government upon the proposal of the CPC (Law on CPC, art. 19, para 2).

The introduction of an independent corruption prevention institution will bring Armenia closer to international anti-corruption standards which is a welcome development. However, results of this institutional change are yet to be seen and evaluated. It must be underlined that the CPC will only be able to make change in practice if its setting up and exercise of its mandate are free from political interference as pointed out in the chapter 1 of the report. At the same time, the monitoring team is concerned that this change, although positive, may adversely affect the continuity of the good work of the CEHRO that took many years to start, and will most certainly, further delay the impact in practice.

### ***Civil service management***

One of the main shortfalls of the public service management in Armenia, highlighted in the previous monitoring report, was the lack of a central body responsible for the enforcement of common civil service standards throughout the public service. Even though the CSC was in charge of promoting and controlling common standards and practices across the civil service, its mandate did not extend to the entire public administration<sup>56</sup> as the civil service constituted only a small percentage of the public service of Armenia (2.8% of public sector employees in 2014). This situation will be changed by the new CSL expanding the horizontal scope of the civil service and assigning the civil service management functions to the Office of Civil Service (OCS) accountable to the Deputy Prime Minister, thus attributing the political responsibility for the civil service to the Government.

The CSC will cease to exist within 15 days after the entry into force of the new CSL (Art. 43 of the CSL). Although the CSC has performed well in establishing a civil service system in Armenia in difficult conditions, this solution is not suitable any more when the objective is to develop a sustainable, efficient, integrated and coherent civil service system. New economic and social demands require a civil service system that, beyond its professionalism and quality, is fully aligned with the political priorities and the overall policy developments, which clearly is a government responsibility.

The CSL introduced the positions of *secretaries general*, responsible for human resources management (art. 39.2 of the CSL), however important HR decisions in relation to the leading civil service positions are still left to the head of offices of civil service bodies. The OCS has wide powers related to organising and managing civil service (Art. 38 of the CSL), extending to monitoring and advisory functions, to organising training courses (art. 19.10 of the CSL) to preparing the exam/test questions on competences (art. 10.10 of the CSL); recruiting for the position of secretary general (art. 10.13 of the CSL) or organising testing for junior civil service positions (art. 11 of the CSL). According to the CSL, the training of civil servants is decentralized and is managed by the secretary general in each body under the guidance and approval by the OCS (Art. 19 of the CSL), they are responsible for organizing subject matter trainings, whereas OCS organises trainings related to the competences of civil servants.

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<sup>55</sup> On the powers of the CPC related anti-corruption policy and awareness raising see chapter 1 of the report.

<sup>56</sup> [Civil Service Professionalisation in Armenia, Azerbaijan, Georgian, Moldova and Ukraine](#), SIGMA (2014).

## Conclusions

Armenia has strengthened the CEHRO, enhancing its mandate, budget and resources. The CEHRO has been active in promoting common public service standards and application of integrity solutions in public service even beyond its direct mandate. The monitoring team commends Armenia on the progress so far and encourages it to capitalize on these achievements, building on the institutional memory acquired in the past years. Whereas introduction of an independent corruption prevention body brings Armenia closer to international standards, it is important that the significant institutional memory accumulated since the creation of CEHRO in 2011 is not lost and the transition process does not cause gaps in implementation.

A shift of the civil service management from an independent body (CSC) to the Government (OCS), along with the expansion of the scope of civil service,<sup>57</sup> is a positive development from the point of view of a coherent management of public service,<sup>57</sup> enabling the Government to steer the reform process of the public service and make it easier to translate political priorities of the Government into the tasks of the civil servants and re-shape the public service, whenever it is necessary in the face of new challenges and is in line with the solutions, applied in most EU and OECD countries.

Armenia is *fully compliant* with the **recommendation 10** of the previous monitoring round.

### New Recommendation 5. Institutional framework

1. Take all necessary measures to set up the new institutions (Commission for the Prevention of Corruption and Office of Civil Service) as stipulated by law and make them fully operational in practice.
2. Ensure that the institutional memory is maintained after the change. Ensure continuity of the exercise of the related functions in the transitional period.

### *Ethics commissions in state bodies*

#### **Recommendation 11 from the Third Round of Monitoring report on Armenia: Ethics commissions in state bodies**

- Ensure that ethics commissions in public institutions function properly, define their competencies, rules for their creation and operation, their role regarding conflict of interests, restrictions and sanctioning of public servants, and establish their obligation to present reports about their activity to the coordination body and to the public.
- Designate a body responsible for co-ordination the activity of ethics commissions, for providing them with methodological guidance and training, monitoring and assessing effectiveness of ethics commissions.
- Establish a mechanism for co-ordination between the ethics commissions, the human resources management departments and the anti-corruption focal points in each state body.

At the time of the third round of monitoring, ethics commissions were set up in state bodies but their activities were not sufficiently regulated and they remained dysfunctional. The regulations in place for civil service agencies, did not apply to the ethics commissions in other parts of the public service.<sup>58</sup> Various state services could define the scope of competences of their ethics commissions themselves, which resulted in a fragmented system. There was no mechanism for coordination or the reporting obligation to a central body for the ethics commissions and they were left without any methodological

<sup>57</sup> There are different solutions used, sometimes the civil service management could be placed under the Prime Ministry, in other cases it is under the line minister, like minister responsible for finance or minister responsible for public administration.

<sup>58</sup> The Competences of ethics commissions were defined by the Decree of the Civil Service Council no 844N from September 2012; however this decree did not apply to ethics commissions that were established in the public bodies which were not part of the civil service system.

guidance. In addition, a uniform code of conduct for public service was not in place and the PSL provided only general provisions, making their application in practice challenging.<sup>59</sup>

***“Ensure that ethics commissions in public institutions function properly, define their competencies, rules for their creation and operation, their role regarding conflict of interests, restrictions and sanctioning of public servants, and establish their obligation to present reports about their activity to the coordination body and to the public”***

During the on-site visit, the monitoring team found that the ethics commissions were still formally in place in all state bodies<sup>60</sup> but as before, their operation was limited in practice.<sup>61</sup> Since the ethics commissions were not obliged to report to any central body, systematized data on their activities was not available,<sup>62</sup> however the on-site visit showed that some of them were not active at all. For example, the Ethics Commission of the Ministry of Education and Science has had no single proceedings in recent years and the number of proceedings of the ethics commissions in other bodies was very low: Ministry of Culture - 6 cases since 2012, the Parliament -10 cases in 2015-2017.

In the reporting period, members of the ethics commissions participated in a number of trainings organised by the CSC and the CEHRO. However, as confirmed by the authorities, the trainings alone could not improve the situation without systemic reforms. The new PSL, new CSL and CPCL provide new regulations for ethics commissions. Notably, the regulations for civil service differ from those for other parts of the public service.

The PSL foresees separate ethics commissions for each public service and local government agency, mandated to examine applications on violations of the rules of integrity, including conflict of interests, incompatibilities and other restrictions and submit recommendations to the respective state bodies for prevention and elimination of such situations (Art. 44-45 of the PSL). The PSL provisions related to the functioning of ethics commissions are not sufficiently detailed and require additional regulations to be enforceable in practice as foreseen by the PSL itself.

As regards the civil service, unlike previous regulations which foresaw individual ethics commissions for every civil service agency, the new CSL envisages an *ad hoc* Ethics Commission for Civil Servants, to be formed for each separate case in case of an alleged violation of ethics rules by a civil servant (Art. 33-34 of the CSL) upon the initiative of an integrity affairs organizer (see below) from the previously established pool of candidates. The CSL provides for regulations for the creation and functioning of an ad hoc ethics commission, however, more detailed rules are needed related to its proceedings. (Art. 34.1 of the CSL). The ad hoc commission examines a case and submits recommendations for elimination of conflict of interest and other violations to the relevant civil service body, or the civil servant. The secretary general of that given body publishes this conclusion on the website of the agency as well as the information about the actions taken to meet the recommendation (Art. 35 of the CSL). The law however, does not explicitly oblige state bodies to follow up on these recommendations.

***“Designate a body responsible for co-ordination of the activity of ethics commissions, for providing them with methodological guidance and training, monitoring and assessing effectiveness of ethics commissions.”***

The coordination of ethics commissions has been assigned to the CPC, which, on the one hand, serves as an appeals body for their decisions (Art. 24.1.10 of the CPCL; art. 35.2 of the CSL) and on the other hand provides professional consultation and methodological assistance to them (art. 24.1.7 of the CPCL). It is mandated to issue general guidelines and clarifications on specific integrity-related

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<sup>59</sup> In addition, there were more detailed codes for some categories of public servants, as described below.

<sup>60</sup> There were 47 such commissions in the bodies covered by the civil service, in addition ethics commissions operate in the judiciary and the Parliament. No information was provided about the number of ethics commissions in other bodies or local government.

<sup>61</sup> The operation of the ethics commissions for judges, prosecutors and members of parliament are discussed in respective sections of the report.

<sup>62</sup> Point 10 of the Annex to Decree N 844-N of September 26, 2012 of the Civil Service Council obliges commissions to report – on quarterly basis to the head of body.

questions. According to the CSL, the CPC also has some competences of trainings of the candidates for the membership of the ad hoc Commission for Civil Servants.

The CPC, however has not been granted explicit competences of monitoring the work and assessing the effectiveness of ethics commissions. There are no general reporting obligations for the ethics commissions set in legislation, other than reporting as a part of the appeals procedure, whereas, such reporting obligation would clearly derive from the CPC's function to maintain statistics on violations of ethics rules (Art. 24.1.11 of the CPCL). According to the Government, the CPCL was amended in March 2018 to grant CPC the powers for making recommendations on uniform interpretation and application of law by ethics commissions. Accordingly, the CPC is entitled to request information from state bodies.

***“Establish a mechanism for co-ordination between the ethics commissions, the human resources management departments and the anti-corruption focal points in each state body.”***

A coordination mechanism between the ethics commissions HR departments and anti-corruption focal points has not been established since the last monitoring round. The need for such coordination became even more important after a new element was added to the institutional framework: the position of an *integrity affairs organizer* (Art. 46 of the PSL, Art. 36 of the CSL), -- a permanent function in human resources management units of public bodies, responsible for promoting ethical conduct in their respective bodies, including provision of advice, developing integrity plans and training plans (approved by the secretaries general of state bodies), conducting studies and maintaining statistics. The functions of integrity affairs organisers are clearly delineated from those of ethics commissions, the former is in charge of counselling, advice and promotion of ethics and the latter is mandated to carry out disciplinary proceedings against public servants in case of violations. Another issue that may require further clarity in the legislation and in practice is the functions of integrity affairs organizers vis-à-vis the anti-corruption focal points of the same body and their interactions in performance of their duties, especially in relation to integrity plans as well as coordination with ethics commissions and CPC.<sup>63</sup> Such coordination would be essential for example concerning the studies integrity affairs organizers undertake upon the request of a secretary general, an ethics commission, or the CPC (the Art. 36.3 of the CSL and Art. 46.3 of the PSL).

## **Conclusion**

The ethics commissions' operation has not been improved in practice since the last round of monitoring. The legal basis for their functioning has been significantly changed meeting some elements of the third round of monitoring report recommendation. However, some of these new provisions will only enter into force in 2019, and there are inconsistencies and gaps calling for further regulations. Thus, the practical results of the reform are still to be seen. The creation of the position of an integrity affairs organiser can be assessed as a positive development. If made operational they can efficiently work within the human resources management units to promote integrity in their individual agencies. At the same time, a coordination mechanism between integrity affairs organizers, anti-corruption focal points, the CPC and ethics commissions must be put in place in order to ensure efficient work on promoting integrity in the public service of Armenia.

Armenia is *partially compliant* with the **recommendation 11** of the previous monitoring round.

### **New Recommendation 6. Institutional framework: ethics commissions in state bodies**

- 1.** Finalize adoption of the necessary legislation to ensure proper operation of ethics commissions in practice. Establish mechanisms for the monitoring the performance of ethics commissions.
- 2.** Ensure that ethics commissions and integrity affairs organisers have necessary capacities, guidance and tools to perform their functions in practice.

<sup>63</sup> As discussed in Chapter 1 of the report, such focal points are appointed in all state bodies and are in charge of ensuring coordination with the Anti-Corruption Council and implementation of the anti-corruption policy documents in their respective bodies.

3. Ensure coordination among ethics commissions, the CPC, integrity affairs organizers and anti-corruption contact points in practice, as well as methodological guidance and support on integrity issues to individual agencies.

### *Professionalism in civil service*

At the time of the third round of monitoring, the civil service legislation of Armenia fell short of ensuring professionalism in civil service. The horizontal scope of the civil service was narrow, constituting only 2.8% of the public service of Armenia.<sup>64</sup> The Civil Service Law did not apply to many state services, such as tax, customs, police or administration of local government and thus the regulations were fragmented across the public service. Crucial to ensuring professionalism, regulations on recruitment and promotion were deficient and clear delineation between political and professional public service was not ensured, even though the list of political officials was provided by law.

The civil service reform put forward the strategic objective to ensure merit-based, fair, transparent, professional and efficient civil service<sup>65</sup> and the new CSL addressed many shortcomings of the previous system. The main progressive novelties of legislation aimed at ensuring professionalism in the civil service of Armenia are:

- Wider scope of the civil service contributing to the coherent management of public servants: The CSL stipulates that in the state bodies regulated by other laws, the support positions are be civil servants.<sup>66</sup> Accordingly, the scope of the CSL was enlarged to encompass also: police, penitentiary department officials, except for criminal investigations; tax officers, customs officers, who do not carry out a law-enforcement function, judges department, except for the department staff who work directly with the judges, officers supporting those working on the judicial acts enforcement service, staff of the investigative bodies, except for the investigators as well as except for the Office of the Prosecutor's, National Assembly and the staff of the Human Rights Defender. This means however, that such important positions as tax or customs officials (except for support positions) will still not be regulated by the CSL.
- All recruitments in civil service are merit-based, the CSL clearly provides that the highest-ranked candidate selected should be appointed, all promotions are merit-based as well.
- The position of a secretary general, the highest ranking senior civil servants, responsible for human resources management in civil service bodies with clearly defined functions will replace chiefs of staff contributing to the politically neutral civil service.
- The civil service management will be shifted from an independent body to the Government.

However, the new CSL also contains some shortcomings that may adversely affect the political neutrality of the senior civil service: appointment, dismissal and application of disciplinary sanctions to senior civil servants<sup>67</sup> is the responsibility of the heads of agencies, not general secretaries. The head of an agency is also responsible for establishing recruitment commissions for these positions. This solution increases the risk of politicization of senior civil service.

Thus, in order to ensure professionalism of civil service in practice, these positive novelties need to be put into operation. Much depends also on the quality of the secondary legislation a big portion of

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<sup>64</sup> The horizontal scope of civil service was narrow limited to the staff positions in the President office, in ministries and other bodies of the executive branch of the central government and the regional offices (Marzpetarans), and in other state bodies established by law. Services such as police, tax administration, customs, foreign service and other special services were covered by separate legislation, which also covers the staff in the legislative and judicial branches as well as staff of local government.

<sup>65</sup> Protocol Decision N 57 of the Government of the Republic of Armenia, dated 29 December 2015. Civil Service Reforms Strategy and the related Action Plan (para 22-23 of the strategy)

<sup>66</sup> Art. 2.3 of the CSL.

<sup>67</sup> 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> sub-group of leading civil service positions. Since there is no job classification in place, it is not clear which specific positions are included in these categories.

which still needs to be prepared and adopted, as shown in below sections. In addition, the flaws of the laws that may increase the risk of politicization of the civil service must be addressed. Ensuring high quality of bylaws can be challenging in view of the short deadlines set by the newly adopted laws for their preparation.

#### **New Recommendation 7. Implementation of Civil Service Law and Public Service Law**

1. Adopt secondary legislation necessary for the implementation of the new Law on Public Service and the new Law on Civil Service.
2. Carry out comprehensive and large-scale awareness raising and training of civil servants on the new legal framework with the special emphasis on the state bodies that did not previously belong to the civil service.
3. Prepare manuals and guidebooks related to the main HR processes.

#### ***Merit-based recruitment***

#### **Recommendation 13 from the Third Round of Monitoring report on Armenia: Merit based recruitment**

- Develop clear rules regarding positions that are to be considered for merit-based appointments and ensure their enforcement in practice, maintain records about merit-based appointments.
- Ensure that the majority of vacant posts are filled through competition and designate a body responsible for coordination and monitoring the process of filling in vacant service posts.
- Develop guidelines on evaluating integrity and ethics competencies in the selection process.

The third round of monitoring report recommended Armenia to develop the rules for merit-based recruitment and enforce them in practice, expand the merit-based recruitment to the majority of public service positions and designate a body responsible for coordinating and monitoring of the enforcement of the merit-based recruitment rules.

***“Develop clear rules regarding positions that are to be considered for merit-based appointments and ensure their enforcement in practice, maintain records about merit-based appointments.”***

The shortcomings of the merit-based recruitment regulations included: possibility to appoint without competition on a temporary basis (for external candidates), or non-competitive promotions for existing civil servants; high discretion and lack of transparency in appointing candidates who succeeded in the testing to junior positions (as the competition was not obligatory after testing – art. 15. 3.1 of the old CSL); the possibility to appoint not the highest ranked candidate after the competition (but one of three highest-ranked candidates).<sup>68</sup>

The Government reported that the merit-based recruitment has been expanded in Armenia to cover special services, for example: probation service, medical staff of penitentiary institutions, central staff of Republic of Armenia (RA) Penitentiary Service, technical staff of Judicial Acts Compulsory Enforcement Service and teachers. According to the Government, almost all positions in public service of Armenia are subject to merit-based recruitment (exceptions are political, discretionary, military positions). Due to the number of legal acts, it was however not possible to verify to what extent these special procedures ensure merit.

The new CSL remedied many shortcomings related to recruitment and promotion, providing that the recruitment process should be fully merit-based and ensure that the highest-ranked candidate is appointed as a result of the competitive selection (art. 10.16 of the new CSL). In addition, all promotions to civil service positions are based on competitive procedures (CSL, art. 10. 19). The

<sup>68</sup> However, the analysis of the sample data of three-line ministries (Ministry of Agriculture, Ministry of Justice and Ministry of Education) suggest that this provision has not been abused in practice, only 6% of all appointees were not the highest-ranked candidates.

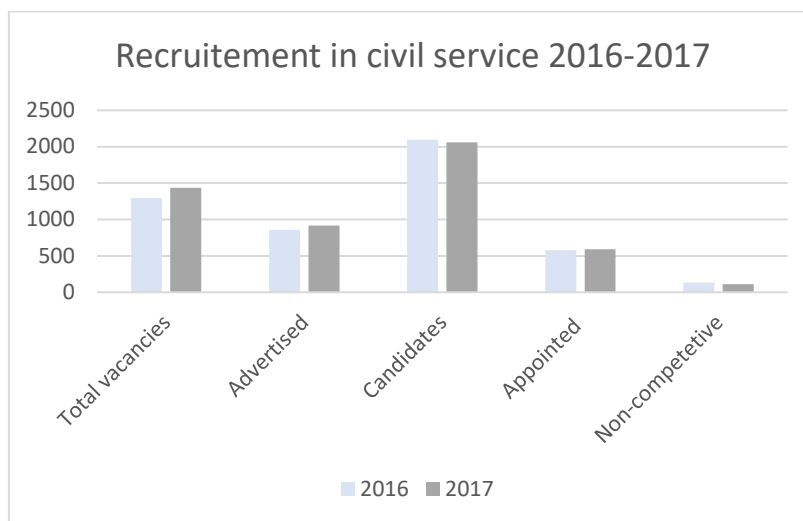
recruitment for non-junior positions is decentralised and organised by each public body (the OCS is only involved by preparing part of the assignments) except for the recruitments for the position of general secretaries which is run by the commission established by the OCS. The competition sets a threshold of maximum 5 participants who can qualify for an interview (art. 10 of the new CSL). As regards junior civil service positions (Art. 11 of the CSL), an important improvement is more detailed procedure of appointment from the pool of successful candidates and an obligatory interview stage.

As mentioned above the new provision of the CSL contain risks of politicization of the recruitment of senior civil servants (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> sub-group of leading civil service positions), since heads of offices (political positions) are in charge of appointing the members of the selection committees as well as ultimately appointing these civil servants (art. 16.3 and art. 10.13 of the CSL). Moreover, the appointing person could also be a member of the selection committee, which goes against the principle of political neutrality of the selection committees (art. 10.14 of the CSL).

***“Ensure that the majority of vacant posts are filled through competition and designate a body responsible for coordination and monitoring the process of filling in vacant service posts.”***

Armenia reported that in 2017 87.5% of the appointments of civil servants were merit-based. It is foreseen that the merit-based recruitment will be further enhanced in practice as a result of the expansion of the civil service and the removing the exceptions to competitive recruitment. The new CSL entrusts the role of the coordination and oversight of the recruitment to the OCS. As shown on the below graph, the average number of candidates per positions was rather low – below 4 candidates per position, and the efficiency of recruitments (calculated as a share of advertised vacancies that were filled after the recruitment) was also low at 64%.

**Chart 1. Recruitment in Civil Service in Armenia 2016-2017**



Source: The Government answers to the monitoring questionnaire<sup>69</sup>

Apart from 112 persons appointed through out-of-competition promotions in 2017 (Art. 12.2 para 1 of the old CSL), additional 168 persons were appointed without competition from the personnel reserve list (according to art. 12.2, para 2 of the old CSL). At the same time, each year (2015-2017) between 600 and 700 persons were appointed to positions based on a temporary basis, until the competition procedure would be finalised. Some of them may have been civil servants already (the detailed data was not provided). In 2015-2017 only 20 individuals brought complaints against the recruitment decisions, of which only one was satisfied. To sum up, it can be stated, that the non-competitive appointments continued in the civil service and the competitions that were conducted were rarely contested by participants.

<sup>69</sup> Apart from this, in 2015-2017 264 vacant positions were occupied in a non-competitive way based on article 12.2, part 2 of the CSL (appointment from personnel reserve).

## Conclusion

The newly adopted CSL improved the recruitment procedure, made it fully merit-based, and established a clear rule that all appointments and promotions should follow competition. On the other hand, the new provisions contain the risk of politicization of the recruitments of senior managerial positions in the civil service. Armenia is encouraged to remedy these shortcomings and apply merit-based recruitment in practice.

Armenia is *largely compliant* with the **recommendation 13** of the third round of monitoring report.

### New Recommendation 8. Merit-based recruitment

1. Ensure merit-based recruitment in practice implementing new regulations.
2. Limit the influence of political officials in the recruitment for senior civil service positions.

### *Disciplinary procedures and dismissals*

The new CSL improved the system of disciplinary procedures by, for example, introducing a provision about proportionality and circumstances that aggravate or extenuate disciplinary sanctions; differentiation between severe and light sanctions and more detailed regulations on appeals. The new CSL also established two different procedures – a regular disciplinary procedure (art. 21 of the new CSL) and the procedure related to violation of the rules of conduct, incompatibility requirements, other restrictions, conflict of interest and gifts and will be conducted by ethics commission. It remains to be seen how these two separate disciplinary procedures will work in practice.

Disciplinary procedures did not constitute an important reason for dismissals as in 2015-2017, only 4 civil servants were dismissed as a result of the disciplinary sanctions. Provisions on dismissals are in line with good international practices and the number of dismissed civil servants in the reporting period was low, however the data shows that the number of dismissed civil servants as a result of the optimization of civil service positions increased from 83 in 2015 to 422 in 2017.

### *Classification and performance evaluation*

The new CSL has slightly changed the system of classification. The positions in the civil service will be classified in two groups only, as opposed to four groups that existed previously, (art. 6.2 of the new CSL) – leading positions and professional positions. Each group will be divided into 5 to 8 sub-groups. The system of approval of job descriptions and staff lists will still be centralised (by the OCS). The new CSL foresees that the Deputy Prime Minister should approve the methodology for evaluation, classification, formation of names of civil service positions (Art. 5.7 of the new CSL) which was not in place previously. This constitutes a legal basis for the elaboration and implementation of the job evaluation scheme. It remains to be seen how the new system will be designed and implemented in practice.

The Government reported that the performance evaluation is practiced in civil service<sup>70</sup> however, detailed information has not been provided. The Civil Service Strategy stresses the need to improve the performance evaluation, link the performance appraisal with the promotion and mobility and include assessment of training needs, and envisages the development of the related secondary legislation.<sup>71</sup> The new CSL provides that the performance evaluation procedure should be adopted by the Government. Thus, since new CSL regulations related to performance appraisals are general, the shape of the final system will depend, to a large extent on the secondary legislation and on the training offered to the managers responsible for the application of the relevant rules in practice.

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<sup>70</sup> Performance evaluations are regulated by the CSL and by the RA. Government Decree No 1510-N of October 20, 2011.

<sup>71</sup> Civil Service Strategy, para. 33.



### ***Fair and transparent remuneration***

The salary system has not been changed in Armenia since the last monitoring. The remuneration in public service is regulated by the Law on Remuneration of State Officials (Law on Salaries) which was in place at the time of the last monitoring.<sup>72</sup> Salary of public servants comprises basic salary, additional salary and bonus. The additional salary of a public servant, cannot exceed 30% of the basic salary. Upper limits for bonuses a public servant can receive in a given period of time however is not set by the law, with the exception of the bonus for special tasks/quality works, which is limited to one month's salary – up to three times a year. The Law on Salaries provides, that the total bonus fund of a public agency should not exceed 30% of the salary budget (art. 6). This maximum limit of 30% is beyond the usual thresholds in the EU countries and is a source of risk of too much discretion in allocating bonuses. The bonuses are linked to the performance by law, however the HRMIS system does not allow to collect data on the results of the performance appraisals so it is not possible to determine how the system works in practice and how reliable the results of the performance appraisal are. In addition, the classification system does not seem to ensure that the equal pay is set for the positions with the same tasks, responsibilities, etc. and the salaries in the public sector are not sufficiently competitive with the private sector to attract and retain highly qualified candidates.<sup>73</sup>

The level of pay has not increased since the last monitoring. According to the Government, in January 2018, the average monthly salary in the public sector amounted only to 82% of the average monthly salary paid in non-public sector for smaller organisations and only to 75% in bigger organisations. Thus, further salary increase is needed to ensure competitive salary with the private sector. The Salary Law provides for the obligation for the government to conduct the comparative analysis with labour market once in three years with a view of increasing the salaries (art. 5, para 4 and 5 of the Salary Law). No detailed salary comparison of public servants and business has been conducted recently. The civil service remuneration policy is now under the remit of the OCS. The monitoring team was informed at the on-site visit that the Government plans such an analysis in the second half of 2018. The Government Programme for 2017-2022 foresees the increase of salaries by 25% by 2022.<sup>74</sup> Notably, the voluntary turnover (resignations) in the civil service slightly increased between 2015 and 2017 – from 6 to 7%, however these figures do not amount the level to raise concerns of the monitoring team.

### **Conclusion**

The public service reform did not address all shortcomings of the remuneration system in Armenia. Although the law on salaries provides regulations for public service as a whole, it does not ensure fair and equal remuneration for similar positions due to the lack of the job evaluation scheme. In addition, the upper limits for additional salary and bonuses per employee are too high (or not set), thus creating a risk of too much discretion in pay-setting. Furthermore, the bylaws on performance evaluation to ensure linking the bonuses with performance in practice have yet to be adopted, according to the new CSL. Armenia is encouraged to limit variable share of remuneration, apply new performance evaluation system in practice, linking bonuses to the results of evaluation and monitor the performance evaluation practices. In addition, Armenia is recommended to revise the level of pay and ensure competitive remuneration in public service to attract and retain highly skilled professionals.

#### **New Recommendation 9. Remuneration**

- 1.** Increase the level of competitiveness of civil service salaries. Limit the share of variable pay in total remuneration. Ensure that the bonuses are linked to the performance evaluation and based on the clear and objective criteria.
- 2.** Ensure practical implementation of the new civil service law provisions on performance

<sup>72</sup> The new CSL provides that the salaries in public service is regulated by the special law on salaries (Art.26)

<sup>73</sup> [Civil Service Professionalisation in Armenia, Azerbaijan, Georgian, Moldova and Ukraine](#), SIGMA (2014).

<sup>74</sup> Annex to [Decision](#) of the Government of the Republic of Armenia No 646-A of 19 June 2017. In addition, Government Programme approved on 1 June 2018 (Decree 581-A) aims to raise the minimum wage, but amounts are not defined.

evaluation and introduce mechanisms to monitor their implementation.

### *Conflict of interests*

#### **Recommendation 14 from the Third Round of Monitoring of Armenia: Conflict of interests**

- Develop clear legal norms regarding the procedure of conflict of interests and declaration by different categories of public servants, including high risk sectors such as public procurement procedure, and public officials who do not have superiors.
- Without delay analyse the implementation of the Law on Public Service and identify inconsistencies in different laws such as the Law on Civil Service, the Law on NA Procedures, the Law on Municipal Service, the Law on Constitutional Court, the Judicial Code, and the Law on the Prosecutor's Office, and revise legislation in order to address the identified deficiencies.

The third round of monitoring report highlighted the shortcomings in the regulations of conflict of interests provided in the PSL and the lack of enforcement of the existing rules. The following deficiencies have been identified: the rules were applicable to high-ranking officials only and not to all public servants, potential or apparent conflict of interest were not regulated, the list of persons related to public officials for the purposes of determining conflict of interest was narrow and management of conflict of interests of public servants with no supervisors was not regulated, no sanctions were provided for violations.

***“Develop clear legal norms regarding the procedure of conflict of interests and declaration by different categories of public servants, including high risk sectors such as public procurement procedure, and public officials who do not have superiors.”***

According to the Government, the CEHRO has analysed the inconsistencies of the legislation, including PSL, the CSL, the Judicial Code, the Law on the Prosecutor's Office and other legal acts (overall 24 laws) regulating the conflict of interests and other restrictions for public officials<sup>75</sup> which served as a basis for the new legislation.

The new PSL expanded the conflict of interest regulations to all public servants; considerably broadened the definition of related persons, which is not limited to the same household any more (Art. 33.8 of the PSL); introduced the notion and procedures for management of potential conflict of interest (art. 33.5) and disciplinary sanctions (new PSL, art. 33.9). Public servants are now obliged to declare conflict of interests to their superiors before performing any action that could lead to conflict of interest situation (art. 33.5 of the PSL). Political officials having no superiors, however, *may submit* written statement to the CPC (art. 33.6 of the PSL) to seek the resolution of conflict of interest, in case they need guidance on how to resolve the situation. These requirements of the PSL do not apply to the members of Parliament, judges, members of the Supreme Judicial Council, prosecutors and investigators, as well as some positions in self-government (art. 33.7 of the PSL), as they are regulated by special legal acts.

Special conflict of interest rules have been adopted for the group of public servants, especially vulnerable to conflict of interest, like those engaged in public procurements: Art. 33.6-7 and Art. 49.2 of the Public Procurement Law oblige members of tendering commission and of the appeal boards to recuse themselves in case of conflict of interest. Moreover, they are obliged to sign the declaration on the absence of the conflict of interest, that are later published online.

Conflict of interest management, oversight and enforcement has also been substantially changed. The CPCL entrusted enforcement functions to the CPC, empowered to consider applications on conflict of interests regarding public officials (except MPs, judges and prosecutors) and adopt decisions; submit the decision to the relevant state on the prevention, elimination of conflict of interest situations; advise high-ranking officials (except MPs, judges and prosecutors) on the ways of resolving such situations and maintain statistics (Art. 24 of the CPCL). The CPC can initiate proceedings on its own initiative

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<sup>75</sup> Analysis is available [here](#).

as well as based on written applications or media reports (Art. 27 of the CPCL).<sup>76</sup> The agencies in question are obliged to report back on the follow up to the recommendations within 15 days, and the high-ranking officials having no supervisors are obliged to submit public clarifications (Art.33 of the CPCL). Such proceedings in relation to civil servants are carried out by ad hoc ethics commissions for civil servants as described above and for other public servants by ethics commissions in public bodies. Integrity affairs organizers are mandated to provide advice on the issues of conflict of interest and initiate the creation of ethics commission when there are ground for disciplinary action.

As regards the practical implementation, in previous years, when the provisions on conflict of interests were much more limited, the number of actions undertaken by the CEHRO was low. In 2016 and 2017, the CEHRO received 7 related applications. In one case, facts were confirmed, but in the remaining 6 cases, it was concluded that they were out of scope of the CEHRO's mandate or could not be qualified as conflict of interests according to the legislation. Since the revised provisions are very recent, and CPC is not yet in place, no data is available on the implementation under the new framework. However, on a positive note, the Government informed the monitoring team that the CEHRO conducted the analysis of conflict of interest of high-ranking officials based on the data of asset declarations and other sources (2181 declarations analysed and 841 cases have been studied in more detail). It found 91 companies having links with high-ranking officials and their relatives, with 709 public procurement contracts concluded with these organisations, 99 of which (14%) were concluded in violation of the conflict of interest regulations, according to the CEHRO. These conclusions were discussed with the state bodies and NGOs and the recommendations were submitted to the Government.

Both, the CEHRO and the CSC have organised awareness raising activities related to conflict of interest, including workshops, lectures, trainings and social advertisements placed in online. Guidelines on preventing and resolving conflicts of interest have not been developed so far. The Government reported that the study carried out by the Ministry of Justice provides detailed information on conflict of interest definition, management and enforcement of the relevant rules. A handbook on Ethics in Civil Service developed by the CEHRO in 2016 also includes a general section on conflict of interest.<sup>77</sup> Nevertheless, these cannot serve as basis for interpretation of the new regulations. Practical tools should be developed to help enforce the newly adopted provisions. The CPC is empowered to issue guidelines on the subject and its role will be instrumental for efficient enforcement of the regulations. The CPC should work closely with the integrity affairs organizers to develop such guidelines, methodological material and practical tools, as well as raise awareness and train public officials on the new regulations and their application in practice.

### ***Other restrictions***

The third round of monitoring report noted that there is no publicly available registry of gifts. Such registry has not been created since then. As there was no reporting obligation, oversight body, or sanctions in place for the violation of the rules on gifts, no data is available to trace application of the existing restrictions in practice. The authorities met during the on-site visit were not in a position to clarify this issue further.

At the same time, new PSL changed the regulations on gifts. The definition of gifts was expanded to include immaterial benefits and hospitalities, the threshold of acceptable gifts was decreased (from 100 000 AMD (177 EUR) to 75 000 AMD (133 EUR))<sup>78</sup> and the obligation of to report, including acceptable, gifts has been introduced. The gifts (apart from received services) are reported as a part of asset declarations (Art. 41.8 of the PSL) as well. The law however does not regulate the gifts provided to the related persons. Sanctions are provided in the Code of Administrative Offences (Art. 166<sup>1</sup>), however, fines envisaged are minimal. The procedure for registering gifts and transferring gifts to the state has yet to be approved by the Government.

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<sup>76</sup> The provisions regulating the initiation of the proceedings, its steps, timelines of the investigation and adoption of conclusions based on the findings of the investigation are spelled out in Art. 31-33 of the law.

<sup>77</sup> [Handbook on Ethics in Public Service.](#)

<sup>78</sup> Gifts valued above this amount are considered as state property.

The regulations for the post-employment restrictions have been revised as well.<sup>79</sup> The PSL provides for disciplinary responsibility for violation of restrictions (including post-employment), however, this rule does not apply to persons holding political positions.

## Conclusion

Armenia adopted the new regulations on conflict of interests addressing most of the deficiencies identified by the last round of monitoring. The analysis of the legislation has been carried out as required by the second part of the recommendation that was used as basis for changes. Data on the application of conflict of interest regulations is limited and there is none in relation to gifts and other restrictions, which may be explained by the limited powers of the CEHRO and the limited scope of application of those regulations in the past. The new regulations strengthened the oversight mechanisms in this area, but their practical implementation has not started yet. Armenia is encouraged to make use of the newly adopted regulations, raise awareness of public officials and enforce the rules in practice.

Accordingly, Armenia is *fully compliant* with the **recommendation 14** from third round of monitoring report.

### New Recommendation 10. Conflict of interests

1. Step up the enforcement of conflict of interest rules in practice by responsible institutions, including ethics commissions in public agencies and integrity officers.
2. Raise awareness and train public servants on the new regulations to boost the implementation. Provide necessary guidance on interpretation of these rules in practice.

### Asset declarations

#### Recommendation 10 from the Third Round of Monitoring report on Armenia

[...] introduce rules in the legislation and apply sanctions for failure to submit or for submitting false or incomplete information.

The third round of monitoring report expressed concerns regarding the absence of sanctions for violating rules on asset declarations and the lack of enforcement of existing rules. Armenia has enhanced the regulations on asset declarations.<sup>80</sup> The new rules widened the scope of declarants to include larger group of public officials and their family members,<sup>81</sup> 3500 declarants as opposed to previously covered 750 high-ranking officials.<sup>82</sup> A declaration of interests has been introduced for high level public officials specified in the law<sup>83</sup> and administrative and criminal sanctions have been put in place for related violations:<sup>84</sup> late submission of declarations, submission with violations of requirements and procedures, or submission of incorrect and incomplete data by negligence constitute administrative offences (Code of Administrative Offences, Art. 169.28), subject to fine up to the amount of 400 minimum salaries.<sup>85</sup> Submission of false data, concealing information (Art. 314.3 of

<sup>79</sup> Regulated by article 32.1.7 of the new PSL.

<sup>80</sup> Amendments of the PSL of June 9, 2017 (Law HO-98-N) entered into force on July 1, 2017.

<sup>81</sup> (Spouse, under-aged child (including adopted), a person under guardianship or custody of the declarant official and anyone cohabiting with him/her.)

<sup>82</sup> 'Within the meaning of this Law, declarant officials shall mean persons holding state positions, persons holding positions of a head or deputy head of a community with a population of 15 000 or more, head or deputy head of an administrative district of the community of Yerevan, persons holding positions listed in the 1st or 2nd subgroup of managerial positions of civil service, the Secretary General of the Ministry of Foreign Affairs, persons holding the highest positions in the military service, persons holding chief positions in the police, tax, customs, penitentiary, and judicial acts compulsory enforcement services.' Art. 34.1 of the PSL.

<sup>83</sup> The regulation will enter into force in 2019.

<sup>84</sup> Law on Making Amendments to the RA Law on Administrative Offences and The Law on Amending Criminal Code.

<sup>85</sup> From 200 000 to 400 000 Armenian Drams.

the CC) or intentional failure to submit declarations constitutes a criminal offence (Art. 314.2 of the CC) entailing fine or imprisonment up to four years.

As regards the oversight and enforcement functions, till 2017 the CEHRO had the mandate only to collect declarations and ensure their publication. Verification and sanctioning powers were added to its mandate in June of 2017 (Article 36.1 of the PSL). The CEHRO is empowered to conduct administrative proceedings and impose sanctions in case of violations. If during its proceedings CEHRO finds the elements of criminal offence, it shall promptly (but not later than three days) send the materials to the Prosecutor General's Office. To perform these functions, the CEHRO was granted the access to state databases, including: State Register of Legal Entities, the State Register of Civil Status Acts, the Population State Register, the Transportation Vehicles Register and the State Committee of Real Estate Cadastre. Access to tax database was lacking at the time of the on-site visit but has been granted in April 2018. According to the Government, the electronic declaration system developed with the support of the World Bank is currently operational and connected, both legally and technically, to the mentioned databases. Thus, the information can be automatically verified.

Civil society representatives met at the on-site visit expressed concerns with regard draft PSL regulations that in the understanding of the monitoring team have been resolved by the adopted version of the law. One remaining issue is the adoption of the secondary legislation that will regulate which data should be published from asset declarations.

However, more important and certainly more problematic than perfection of legislation has been the level of enforcement. According to the stakeholders met during the onsite, declarations have uncovered the wealth of public officials and their relatives followed by media analysis of alleged violations that have not been picked up by the CEHRO or the law enforcement for further investigations of potential corruption related crimes. This lack of proactivity from the side of CEHRO can be explained with its limited mandate which did not include the powers to verify and sanction till July 2017 and the lack of enforcement from the law enforcement agencies could partly be attributed to the lack of sufficient tools to react (illicit enrichment was introduced only recently). In addition, after the expansion of the mandate of the CEHRO and putting in place the necessary tools, the new wave of asset declarations was expected to be submitted only on 30 March 2018.

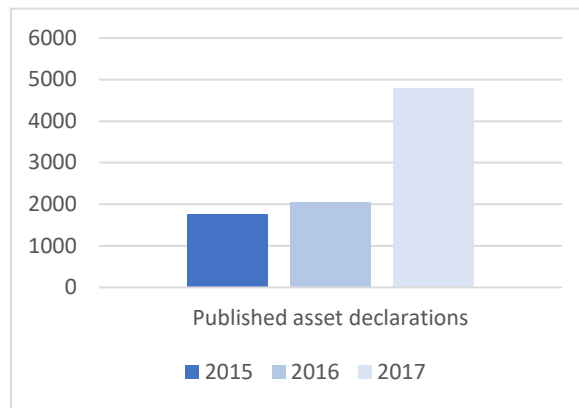
In the period between 1 July 2017 and 15 March 2018,<sup>86</sup> the CEHRO initiated 236 cases on violations of the rules of asset declarations. 3 of these cases were initiated based on the received reports and 233 on the initiative of CEHRO. Violations have been established and sanctions have been applied in 188 cases, 79 of which concern inaccurate data and the rest concern the failure to submit asset declarations. Proceedings were ongoing for 22 cases as of June 2018. CEHRO has cooperated with the law enforcement in the investigation of 3 criminal cases.

Till July 2017 the CEHRO had only checked the timely submission of data and published on their website the information on the officials that have failed to submit asset declarations. In 2015, the CEHRO reported 277 cases of late submission, this number increased to 459 in 2016. The number of non-submission of declarations declined from 80 in 2015 to 45 in 2016. The number of declarations containing wrong information remained on a comparable level – 334 cases in 2015 and 376 cases in 2016. In that period, the CEHRO has identified inconsistencies in data in 178 cases. The number of blacklisted persons for non-submission of declarations for 2016 was 14, for 2017 was 42.

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<sup>86</sup> 2017 annual declarations are not included in these data since the submission deadline is 30 March.

**Chart 2. Number of Published Asset Declarations**



Source: the information submitted by the Government <sup>87</sup>

Interestingly, after the recent ‘Velvet Revolution’ the new Prime Minister of Armenia pledged to improve the system of asset declarations, suggesting that the system at present enables to hide information. The monitoring team encourages Armenia to use asset declaration, including through proactive enforcement. It is important that the civil society continues to carry out its watchdog role and puts pressure on the state institutions to enforce the rules on asset declarations.

### **Conclusions**

Since the last monitoring round a number of progressive steps have been made to reform the system of asset declarations, addressing the third round of monitoring report recommendations. The CEHRO was granted the powers and tools to verify declarations, including access to relevant databases and the mandate to impose administrative sanctions, or refer a case to the law enforcement in case elements of criminal offences are identified. The electronic system developed with the support of the World Bank is connected to the relevant databases to ensure automatic verification and is operational. In addition, criminal law provision on illicit enrichment has been introduced, enabling law enforcement to pursue cases against public servants in connection with their unjustified wealth revealed through asset declarations (for details see chapter 3 of the report).

Thus, all the attributes necessary for the efficient enforcement of the rules on asset declarations are now in place. It is now crucial that the verification function is carried out without political interference or bias, alleged violations are followed up and proportionate and dissuasive sanctions are imposed as appropriate, as well as the results of enforcement are made public. The transition from the CEHRO to the new CPC may hinder the exercise of this function in practice, which Armenia is strongly encouraged to prevent.

### **New Recommendation 11. Asset declarations**

- 1.** Provide systematic, impartial, consistent and objective scrutiny of asset declarations and subsequent follow up as required by law with the focus on high level officials.
- 2.** Ensure follow up on alleged violations disclosed through e-declarations system.
- 3.** Ensure that the body in charge of verification has access to all information and databases held by public agencies and tools necessary for its full exercise of its mandate.

<sup>87</sup> The calculations are based on the number of declarations published during the specific year regardless of their due date of submission.

## *Ethics codes and trainings*

### **Recommendation 12 from the Third Round of Monitoring report on Armenia: Code of ethics**

- Develop codes of ethics or conduct for special categories of public servants prescribed by Law on Public Service (art.4)
- Revise and update codes of conduct for special categories of public servants in order to eliminate discordances existing in legal framework and to align them with the Law on Public Service.
- Provide practical training to public officials about the use of code of ethics in practice.

### **Recommendation 16 from the Third Round of Monitoring report on Armenia: Ethics Training**

- Provide anti-corruption and ethics training (linked to creating awareness on codes of ethics) for all/majority of public servants: different programs should be developed for different categories of public servants, such as new public officials, ethics commissions' members and internal auditors, as well as official in high risk sectors such as public procurement; and provide consultations for high-level and political officials;
- Include measurable performance indicators (quantitative and qualitative) for anti-corruption, conflict of interests and ethics training, including of the impact of training on ethical standards in public administration, in the new Anti-Corruption Strategy and designate responsible body to coordinate and monitor training activities.

The third round of monitoring report pointed out the inconsistencies between the ethics rules established by the PSL and the ethics codes and the lack of trainings, especially for high risk sectors. It concluded that the impact of the sector specific codes was limited in the state bodies and recommended developing ethics codes for special categories of civil servants, as well as providing practical training to the public officials on their application, defining measurable indicators for success of these trainings and designating a responsible body to coordinate and monitor the trainings.

## *Ethics codes*

The newly adopted legislation envisages three different codes: a code of conduct for public officials,<sup>88</sup> a code of conduct for civil servants<sup>89</sup> and a model code of conduct for public servants which should serve as basis for codes for special categories of public servants<sup>90</sup> (such as, members of Parliament, judges, prosecutors and investigators) (art. 28 of the PSL). If such special codes are not elaborated by relevant bodies, the code of conduct for the civil service will apply (Art. 28. 4-7 of the PSL).<sup>91</sup> The PSL also clearly stipulates that the violation of the rules of code of conduct may entail disciplinary sanctions.<sup>92</sup>

### ***“Develop codes of ethics or conduct for special categories of public servants prescribed by Law on Public Service (art.4)”***

In the reporting period, new ethics regulations have only been adopted for judges and prosecutors, as well as for customs officers among the special categories of public service (they would most probably need to be aligned with the new regulations of the PSL, since they were adopted before the new PSL). Despite legal obligation to issue such a code (Art. 37.2.i1 of the CSL), no general code of ethics for civil servants was developed so far. Thus, only general provisions from the PSL applied.

The draft code of conduct for high-ranking officials and the draft model code of conduct for public servants have been elaborated by the CEHRO in cooperation with the OECD/SIGMA, however have

<sup>88</sup> To be developed by the CPC and adopted by 1 October 2018 (Art. 54.5 of the PSL).

<sup>89</sup> Should be adopted by the Deputy Prime Minister by 1 November 2018 (Art. 54.5 of the PSL).

<sup>90</sup> To be developed by the CPC by November 2018 (Art. 54.5 of the PSL).

<sup>91</sup> The PSL establishes the obligation to issue new codes of conducts in the second half of 2018.

<sup>92</sup> On enforcement of ethics code see above.

not been approved, since the CEHRO did not have related powers. These documents will also require revision in order to reflect the latest changes.

In 2016, the CEHRO elaborated [a Handbook on Ethics in Public Service](#). The document focuses on: the instruments of promoting ethical behaviour, behavioural standards of ethics including related to conflict of interests as well as discusses ethics case studies, which, while containing some practical exercises, is quite general document. Awareness raising activities related to ethics have also been organised by the CEHRO, some of them funded by GIZ.

***“Revise and update codes of conduct for special categories of public servants in order to eliminate discordances existing in legal framework and to align them with the Law on Public Service.”***

The ethics codes are still in place for special categories, such as tax service, diplomats etc, however, monitoring team could not determine if they have been revised or not to eliminate discrepancies with the PSL as recommended. The adoption of the new PSL and CSL would in any case require that the existing codes are replaced by the new codes, or significantly amended to comply with the model code of conduct to be developed by the CPC.

### ***Ethics trainings***

***“Provide practical training to public officials about the use of code of ethics in practice.”***

***“Provide anti-corruption and ethics training (linked to creating awareness on codes of ethics) for all/majority of public servants: different programs should be developed for different categories of public servants, such as new public officials, ethics commissions’ members and internal auditors, as well as official in high risk sectors such as public procurement; and provide consultations for high-level and political officials.”***

Various training events have been carried out for public servants, civil servants, anti-corruption contact points and the members of ethics commissions as shown below. However, practical trainings specifically in relation to the codes of ethics have not been reported.

The Civil Service Council and the National Institute of Labour and Social Research, “The Union of Armstate Servants” and “The freedom of information center” NGO within the framework of the World Bank's “Public Sector Modernization Project” trained 466 public servants of various levels. Separate trainings have been organised for anti-corruption focal points.<sup>93</sup> The CSC and Public Administration Academy (PAA) in addition organised trainings for various groups of civil servants. In 2015-2017, a large-scale training for civil servants included the ethics component and involved 1 849 civil servants. Academy of Justice organised trainings for 466 public servants in 2015-2017. Separate trainings were organised for community servants. A large number of police officers (1389 police officers) were also trained in 2015-2017. The Academy of Justice also organised training courses on ethics for judges and candidate judges, prosecutors and candidate prosecutors and candidate investigators.

The CEHRO organised smaller-scale trainings and events for more specific groups of public servants, high level officials, members of ethics commissions (many of them funded by GIZ). However, the monitoring team was not provided with the information on other, bigger training programmes related to ethics for the groups of public servants, other than civil service, police, judges and prosecutors, high-ranking officials, ethic commissions in judiciary and prosecutorial services, judges and prosecutors, community servants.

***“Include measurable performance indicators (quantitative and qualitative) for anti-corruption, conflict of interests and ethics training, including of the impact of training on ethical standards in public administration, in the new Anti-Corruption Strategy...”***

Measurable indicators for trainings are not in place. Like in previous rounds the monitoring team could not assess the detailed contents and the methodology of the trainings and no information was provided about their impact.

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<sup>93</sup> Regulated by the Order of the Ministry of Justice, 9 August, 2017.



**“[...]designate responsible body to coordinate and monitor training activities”**

Four different bodies (CSC, CEHRO, PAA and Judicial Academy) have carried the trainings with the support of various donor organizations and the body responsible for coordinating these trainings has not been designated under the new legal framework. The CPC is given some competences related to developing programmes and giving recommendations on anticorruption trainings, (art. 24.1.16-18 of the Law on CPC). At the same time, the OCS is tasked with organisation of training courses related to competences, while trainings related to the knowledge of civil servants are organised by the relevant body (art. 19.10 of the CSL). The OCS also approves training programmes prepared by secretaries general (art. 19.8 of the CSL).

Thus, the number of the trained public servants has increased, but ethics trainings have not been made more systematic or streamlined since the last monitoring. An attempt to systematize the trainings was made by the Ministry of Justice by adopting a new anti-corruption training programme on 22 January 2018. But it only extends to anti-corruption focal points of executive bodies (60 hours course, including on integrity and conflict of interests).<sup>94</sup> These trainings are funded from the state budget.

### **Conclusion**

Armenia introduced a new mechanism for promoting ethics in the public sector with the public service reform. If put into operation, the new model will address most of the concerns of the third round of monitoring. Substantial work will need to be carried to finalize adoption of the secondary legislation, including the codes of conduct, set up the new responsible institutions and start running the new system. Thus, tangible results in promoting compliance with the ethics codes are yet to be seen.

In the reporting period ethics codes have only been adopted for judges, customs officers and prosecutors among the special categories of public service. Ethics codes are still in place for other special categories, such as tax service, diplomats etc, however, monitoring team could not determine if they have been revised to eliminate discrepancies with the PSL as recommended by the third round of monitoring. Despite legal obligation to do so, the code of ethics for civil servants was not adopted.

Armenia continued to organise ethics trainings for a number of groups of public servants and the number of trained professionals increased compared to the last round, however not for all parts of the public service. It would be important to systematize and coordinate the trainings among the new institutions, as also recommended by the previous monitoring round. The monitoring team was not provided enough information to assess the content and methodology of these trainings.

Armenia is *partially compliant* with the **recommendations 12** and *partially compliant* the **recommendation 16** of the third round of monitoring.

#### **New Recommendation 12. Ethics code and trainings**

1. Adopt the codes of conduct as provided by legislation, or revise existing codes, to serve as basis for the enforcement of ethics rules and for ethics training.
2. Ensure systematic and coordinated ethics trainings throughout the public service.

### **Whistleblowing**

#### **Recommendation 15 from the Third Round of Monitoring report on Armenia: whistleblowing**

- Create specific channels to report corruption in each public institution, out of the hierarchical chain and launch campaign to raise awareness of those measures among public servants;
- Adopt legislation and practical mechanism for the protection of whistle-blowers.

The third round of monitoring report noted that the reporting obligations and whistleblower protection did not function in Armenia because of the lack of trust of citizens in the fight against corruption, in

<sup>94</sup> Such programme was previously approved by the CSC for civil servants.

law enforcement bodies and fear that the reporter of corruption may be pursued for false reporting or defamation.<sup>95</sup> This public attitude has not been changed in the reporting period. According to the TI's 2016 Global Corruption Barometer (GCB) survey for Europe and Central Asia, 63% of the Armenian respondents (same as in 2013) think that ordinary people do not make any difference in the fight against corruption.<sup>96</sup> 67% of Armenians will not feel obliged to report corruption, even if they witness it, and 77% consider reporting socially unacceptable, which is the highest number in the region. In addition, the fear of reprisal is the most frequently stated reason (41%) for not reporting.<sup>97</sup>

The Ministry of Justice of Armenia (MoJ) reported similar results of a small-scale survey (of 200 respondents) carried out to analyse public attitudes to whistleblowing and design corresponding measures. The results showed low level of awareness of the whistleblowing system (88,5% of the respondents were not aware of it at all), large scale corruption and its passive acceptance by citizens. According to this local survey, 86% of the respondents witnessed corruption and only 4% of them took action to reveal it, 42% of the respondents are ready to give bribes and tolerate corruption and only 1,5% of them are ready to report corruption. 96,5% of the respondents would not recommend to blow a whistle to their relatives, because it is either pointless, or they are afraid that general public would not understand it. At the same time, vast majority of respondents (94,5%) would consider whistleblowing, only if anonymity was ensured.

Even though Armenia had some regulations of whistleblowing in the past,<sup>98</sup> there is no information about the practice. There is no statistics on reporting by civil servants either.

Armenia adopted a new stand-alone law on Whistleblowing System in June, 2017 (entered into force in January 2018) developed with the wide engagement of civil society and international partners.<sup>99</sup> The law provides for two channels of reporting: internal (reporting to his/her immediate supervisor or the supervisor of his/her immediate supervisor) and external (reporting to the corresponding competent state body<sup>100</sup>). The anonymous whistleblowing will be possible through the unified electronic platform.<sup>101</sup>

The Code of Administrative Violations (Art. 41.5) provides for liability for not protecting a whistleblower from "harmful" actions taken against him/her, as well as for failing to remove such actions or their consequences, if such inaction does not contain features of crime. The Criminal Code foresees sanctions fines or even imprisonment for unlawful disclosure of information on a whistleblower (art. 341.2).

The secondary legislation including on recording and processing the reports on whistleblowing, procedures necessary to provide protection to whistleblowers and procedures for functioning of the electronic platform for whistleblowing is in preparation. The monitoring team was informed during the on-site visit that, these bylaws are expected to be approved by the Government soon and the platform is planned to be operational in July 2018. The Government later reported that these bylaws

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<sup>95</sup> See p. 54 of the Third Round of Monitoring Report on Armenia.

<sup>96</sup> This is the lowest number among NIS countries and the second lowest in the region (lower rate was reported from Czech Republic – 64% and the same 63% - in Hungary).

<sup>97</sup> Transparency International, [People and Corruption: Europe and Central Asia](#) (2016). Detailed results for Armenia are available at the website of TIAC here: <https://transparency.am/en/gcb>

<sup>98</sup> The Government Decree N1816-N of December, 15, 2011 defined stipulations regarding the rules of procedure of reporting corruption in public institutions as well as on establishing protection mechanism for whistleblowers; and Article 335 of the Armenian Criminal Code provides liability for non-reporting of the crime and there is no publicly available information.

<sup>99</sup> The Law of the Republic of Armenia "On Whistleblowing system" № HO-97-N of June 9, 2017.

<sup>100</sup> According to the article 2 of the Law the competent body is a state and local self-government body, state institution and organisation, public organisation of the Republic of Armenia, which is obliged, by ensuring the guarantees prescribed by this Law, to process the whistle-blowing, for example, if an employee of the Ministry of Justice while delivering a service violates the rules of ethical conduct in relation to a citizen, the abovementioned citizen can blow a whistle to the Ministry of Justice who is considered in this case a competent state body

<sup>101</sup> By encoding the IP address of a whistle-blower. The ID number to use the system will not be required and the whistle-blower will be provided with conditional name and the password.

have been adopted.<sup>102</sup> The monitoring team did not have the opportunity to examine the secondary legislation.

Armenia, launched a large-scale campaign to raise awareness with the support of the UK Embassy about the new regulations and to incentivize reporting. The campaign was thoroughly planned and implemented based on the communication strategy. It includes inquiries and surveys, videos and billboards, as well as TV programs and interviews.

## Conclusion

The legal basis for reporting corruption and protection of whistle-blowers was established, as well as awareness raising campaign was launched. The secondary legislation was not yet ready at the time of the on-site visit and the IT portal was under-construction. The Government subsequently informed the monitoring team that the bylaws were adopted and the launch of the portal was on track.

The monitoring team commends Armenia on the evidence-based approach to the reform of the whistleblowing system which involved studying existing situation, adopting a stand-alone law in consultation with the stakeholders, developing an electronic system and starting a wide-ranging awareness campaign aimed at changing the existing culture and encourage the reporting. Armenia is encouraged to put the whistleblowing system in operation, promote whistleblowing and provide protection to whistleblowers in practice. Consistent and continues efforts will be required to build the public trust to the Government and change the deeply rooted culture against reporting. However, more importantly, in order to achieve meaningful results in terms of reporting and cooperation, the society must be convinced in sincerity of the efforts of the Government to tackle widespread corruption.

Accordingly, Armenia is *largely compliant* with **the recommendation 15** of the third round of monitoring report.

### New Recommendation 13. Whistleblowing

1. Establish clear procedures for submitting, reviewing and following up on whistleblower reports and providing protection and ensure their application in practice.
2. Further raise awareness on whistleblowing channels and protection mechanisms to promote and incentivize whistleblowing.
3. Ensure proper functioning of the related IT system and that the anonymity is observed in practice.

## 2.2 Integrity of political officials

The lack of integrity of political officials at large has been of serious concern in Armenia. Conflict of interest was believed to be widespread among high-ranking officials, including Members of Parliament (MP)<sup>103</sup> who reportedly have been engaged in business activities and sometimes corrupt practices, but remained immune from prosecution.<sup>104</sup> An illustrative example cited by Freedom House is the former chief judicial enforcer Mihran Poghosyan whose off-shore assets have been revealed in the Panama Papers but who later became a Member of Parliament.<sup>105</sup>

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<sup>102</sup> Government Decision on approving the sample form of recording and processing reports in cases of internal and external whistleblowing as well as establishing the procedure for the implementation of protection measures provided to the whistleblower” N 272-N was adopted on 15.03.2018, and the Decision on approving the technical description and procedure of running of the united electronic whistleblowing platform” N 439-N was adopted on 12.04.2018.

<sup>103</sup> [State of Corruption](#): Armenia, Azerbaijan, Georgian, Moldova and Ukraine, Transparency International (2015); GRECO [Fourth Round Evaluation Report](#) on Armenia para 43: “the GET was concerned to repeatedly hear during the interviews that some MPs tend to ignore specific legal rules such as the prohibition on engaging in entrepreneurial activities and holding a position in commercial organisations.”

<sup>104</sup> [Anti-Corruption Protests Are Rising In Armenia](#)

<sup>105</sup> Freedom House (2018), [Nations in Transit](#), Armenia.

According to the stakeholders met at the on-site, recently published asset declarations exposed unexplained wealth of political officials, and their family members, including donations and gifts from their “rich grandmothers”, however, virtually no enforcement actions has followed.

The level of trust to the authorities is minimal in Armenia (the Parliament 12%, the Government 21% and the President 18%).<sup>106</sup> The Government officials (including ministers) and the President with his staff are perceived as most corrupt (45% and 44%, respectively) followed by MPs (42%), according to the TI’s Global Corruption Barometer (2016).<sup>107</sup>

This section discusses integrity regulations applicable to political officials and their enforcement in practice separately for all political officials and for parliamentarians, since the special regulations and enforcement mechanism are envisaged for the latter.<sup>108</sup>

The old PSL provided some integrity rules, however, they were largely ignored by political officials and remained unenforced in practice. This was partly because most of the rules were general and vague, the sanctions were not in place for violations, and the enforcement mandate of the Commission on Ethics for the High-Ranking Officials was limited. But in some instances, for example, where the rules on conflict of interests and incompatibilities were clear, the lack of enforcement could also be due to the lack of proactive awareness raising and follow up on the violations by responsible agencies, including the ethics commission for parliamentarians, law enforcement and, to some extent CEHRO, which has been responsible for providing clarifications and guidance to the high-ranking officials and later in 2017 acquired the mandate to sanction violations related to asset declaration rules (see above).

According to the regulations that are still in force (till the CPC starts operation), political officials, can apply to the CEHRO to receive clarifications on the necessity to issue a statement regarding the conflict of interest situation. The CEHRO, based on the identified cases of conflict of interest and violations of ethics rules, submits recommendations to the President, the National Assembly and the Government on their elimination. As noted in the section 2.1 above the CEHRO has studied the alleged violations of rules on integrity and provided the recommendations to the relevant state bodies.

Applicable legal framework was considerably changed with the recent reform. The amendments in the substantive and procedural regulations on asset declarations, conflict of interests, incompatibilities, gifts and other restriction, as well as enhanced enforcement mechanism discussed above are applicable to the political officials as well (except for MPs) and constitute a substantial improvement.<sup>109</sup> The definition of a political official is provided in the PSL together with the list which was expanded to include deputy ministers, the chair of the National Security Council and the heads of local communities. As to the ethics rules, the PSL provides that a code of conduct for political positions (central and local government level) should be elaborated by the CPC by October 2018 (Art. 28.1 of the PSL). A special code is envisaged for MPs (Art. 28.2 of the PSL).

Asset declaration regulations is the same for the political officials as for other declarants, whereas declarations of interest are to be submitted by high level officials only (the President of the Republic, Prime Minister, Members of Parliament, Deputy Prime Ministers, Secretary of the National Security Council, ministers, and deputy ministers, heads and deputy heads of communities with a population of 15 000 or more, heads and deputy heads of administrative districts of the community of Yerevan) starting in 2019.

As regards the oversight and enforcement functions, as discussed in section 2.1, the CPC will take over the functions of the CEHRO. It will be responsible for guidance and counselling in addition to the enforcement of the integrity regulations. The CPC will consider the breaches of incompatibility and other restrictions applicable to all political officials, including MPs. As for the breaches of ad hoc

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<sup>106</sup> [Caucasus Barometer Survey for Armenia survey by Caucasus Research Resource Center](#)

<sup>107</sup> Transparency International, Global Corruption Barometer 2016.

<sup>108</sup> The PSL and CPCL provide for the integrity regulations applicable to all political officials, except for members of parliament. The rules for the latter are provided in the Rules of Procedure of the National Assembly and the Law on Guarantees. Consequently, below section discusses two sets of substantives and procedural regulations.

<sup>109</sup> See relevant parts of the section 2.1. of the report.

conflict of interest regulations and codes of conduct, the CPC shall examine the cases related to high level public officials: the President of the Republic, Prime Minister, Deputy Prime Ministers, Secretary of the National Security Council, ministers, and deputy ministers, heads and deputy heads of communities with a population of 15 000 or more, heads and deputy heads of administrative districts of the community of Yerevan and submit to the relevant state bodies or official (entitled to examine the issue of terminating powers of the political official), as well as advise them on code of ethics (Art. 24 of the CPCL).<sup>110</sup>

The CPC can initiate proceedings on its own initiative and based on written applications and media reports (Art. 27 of the CPCL).<sup>111</sup> The agencies in question will be obliged to report back on the follow up to the recommendations within 15 days, and the public officials having no supervisors will be obliged to submit public clarifications. These clarifications will be published together with the decisions of the CPC. (Art.33 of the CPCL).

One discrepancy of two laws after the reform is related to the notion of a high-ranking official, which was included in the old PSL together with the list of persons that belonged to this category but can no longer be found in the new law.<sup>112</sup> Whereas according to the CPCL, which retained the notion, the mandate of the CPC extended only to high-ranking officials. Since there is no definition or list of the subjects provided in either of the two laws, the scope of the CPC's mandate is unclear. The Government explained that as a result of the changes introduced after the on-site visit this discrepancy has been removed. The monitoring team did not have a possibility to review the changes.

The information provided to the monitoring team regarding the MPs was limited, both in the answers to the questionnaire and as a part of the on-site visit. The relevant regulations are provided in the Law on Rules of Procedure of the National Assembly and the Law on Guarantees of the Activities of Members of Parliament (Law on Guarantees). While the Law on Guarantees prescribes rules on conflict of interest and incompatibilities with some level of detail, ethics rules remain vague and insufficient to guide MPs in concrete situations.<sup>113</sup> The adoption of the code of conduct for MPs is envisaged (Art 28.7 of the PSL) and has been recommended by GRECO.<sup>114</sup> The representatives of the CEHRO shared the views of GRECO on the need to have a separate code of conduct developed for the MPs, however, they were not aware of any measures taken in this direction. The Government however later contends that the provisions of the Law on Guarantees are sufficient and met the requirement of the PSL Art. 28.7.

There is no data available on the enforcement of these rules in practice. The monitoring team was informed at the on-site visit that the Parliamentary ad hoc commission did not have any case related to conflict of interests or incompatibilities. Although the law requires an MP to declare about the potential conflict of interest and abstain from voting on the legislation (Art. 4 the Law on Guarantees), it became clear to the monitoring team during the on-site visit that this provision has never been applied in practice.

## **Conclusion**

Integrity rules continued to be abused by political officials and remained unenforced. The CEHRO has been responsible for the oversight of implementation and guidance on the applicable rules on conflict of interests and incompatibilities (except MPs), however the respective regulations were deficient, no sanctions were envisaged for violations and CEHRO's mandate remained limited.

Parliamentary committee has been extremely passive in the face of the large-scale conflict of interest and incompatibilities of the Members of Parliament. The potential conflicts of interests although regulated, have not even once been declared in practice and the MPs continued to vote for the laws in

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<sup>110</sup> Other cases will be dealt with ad hoc Ethics Commission or ethics commissions in state bodies.

<sup>111</sup> The provisions regulating the initiation of the proceedings, its steps, timelines of the investigation and adoption of conclusions based on the findings of the investigation are spelled out in Art. 31-33 of the law.

<sup>112</sup> The new PSL is confined with the classification of the state positions into political, administrative, autonomous, and discretionary as discussed above.

<sup>113</sup> GRECO Fourth Evaluation Round [Compliance Report](#) on Armenia (2017) para 41.

<sup>114</sup> Ibid, at para 17.

the conflict to of interest situations. Code of conduct for the MPs although recommended by GRECO and envisaged by the PSL has not been adopted. The MPs do not receive any training, guidance or counselling regarding the applicable rules.

CHERO acquired the mandate to verify asset declarations and sanction violations in July 2017. The Government contends that the lack of enforcement in this area is due to the previous deficient legal framework, and that the enforcement wave is expected after the deadline of submission of asset declaration for 2018. Nevertheless, it is troubling that the law enforcement failed to pick up on the allegations that were widely spread in media so far and that the CEHRO has been perceived as less proactive in applying its new powers in relation to asset declarations after July 2017.

The regulations on integrity and the oversight mechanism have been substantially improved. The CPC that will replace CEHRO will be mandated to promote and enforce these rules in relation to the political officials. Its functions include providing clarifications and advice on conflict of interest situations as well as interpretations on incompatibility requirements and other restrictions (art. 24.8 of the CPCL).

Armenia is recommended adopt remaining legal acts and start their implementing in practice, ensuring proactive enforcement and oversight.

#### **New Recommendation 14. Integrity of political officials**

1. Adopt the code of conduct for political officials and a separate code of conduct for members of parliament. Provide training, consultations and guidance for their practical application once adopted.
2. Ensure proactive, systematic and consistent enforcement of the existing rules in practice without undue interference.
3. Provide for systematic, consistent and objective scrutiny of asset declarations of political officials and subsequent follow up as required by law.

### **2.3 Integrity in judiciary and the public prosecution service**

#### *Judiciary*

#### **Recommendation 22 from the Third Round of Monitoring report on Armenia: Judiciary**

- Continue Constitutional reform and ensure its proper implementation providing better separation of powers and independence of the judiciary, including by improving the procedures for nomination of judge candidates and appointment of judges
- Ensure in practice proper financing of the judiciary.
- Establish a mechanism that will ensure equal participation of judges in self-governing bodies; clarify competences of these bodies, as well as the role of the court chairpersons.
- Ensure that automated case assignment among judges based on objective criteria and ensure that information on case assignment is open to judges, parties and the public is in place and functioning.
- Ensure that independence of the judiciary includes the independence from interference by other judges and if such practice takes place it is dealt with through disciplinary means against judges taking part in such practice.
- Modify grounds for disciplinary liability of judges by establishing clear and precise criteria in compliance with international standards and best practice and ensure that the law reflects the fact that disciplinary liability requires a disciplinary offence and a different than the disciplinary procedure should be considered in dismissing judges who are unable to fulfil their tasks.
- Ensure that the disciplinary proceedings comply with fair trial guarantees, in particular by separating investigation, prosecution and decision-making in such proceedings, and afford the

judges with adequate means to defend themselves.

The third monitoring round report did not examine the issue of judicial integrity to the same extent as required by the fourth round of monitoring. According to various international reports judicial integrity and independence has improved in Armenia over the last three years but still remains the area of concern. In the WEF Global Competitiveness Index 2017-2018 the score of judicial independence in Armenia has been slightly improved (3.3)<sup>115</sup> compared to 2015-2016 index (3.0)<sup>116</sup> but still remains below the average score. According to the latest TI Global Corruption Barometer 2015-2107, 41% of the respondents perceived all or most judges and magistrates as being involved in corruption in Armenia,<sup>117</sup> in 2013 judiciary was perceived as corrupted or extremely corrupted by 69% of the respondents.<sup>118</sup>

GRECO in its Fourth Evaluation Round Report on Armenia expressed serious concerns about the independence and integrity of the judiciary with reference to the reports of the CoE Commissioner for Human Rights and the Venice Commission as well as to interlocutors met on-site.<sup>119</sup>

The country's anti-corruption policy documents do not address problem of corruption in the judiciary directly despite the Anti-Corruption Strategy listing the judicial system among those with the highest perceived level of corruption. Nevertheless, judicial reform is foreseen in the Strategic programmes of legal and judicial reform. The Programme for 2012-2017 includes some measures substantively are related to reducing corruption in the judiciary without the explicit reference to anti-corruption in the objectives of the Programme. As the monitoring team has been informed by the civil society representatives, the Programme, initially adopted for 2012-2016, was not implemented properly and did not bring real changes in the system. Therefore, the Programme was prolonged for 2017 and the deadline for implementation of 38% of its activities was extended. In the draft Strategy for Judicial and Legal Reforms for 2018-2023 a separate chapter is devoted to anti-corruption reforms in judiciary and law enforcement bodies.

### ***Judicial system***

The legislation on the judiciary in Armenia consists of: the Constitution of Armenia, the Judicial Code, Law on Judicial Service, decisions of the General Assembly of Judges and the Council of Court Chairmen. The PSL and the Law on Salaries are applicable to judges as well.

The system of courts in Armenia is specified in the Constitution, it is a three-tier system which includes the Court of Cassation (the supreme court instance), courts of appeal (the Criminal, the Civil and the Administrative), first instance courts of general jurisdiction, as well as the Administrative Court (the Court of first instance for the cases arising from public legal relationships). The Court of Cassation has two separate Chambers – Criminal chamber and the Civil and Administrative chamber. Other specialised courts may be established in the cases provided for by law. Following this approach, the recently adopted Judicial Code envisages establishment of a new specialised Bankruptcy court which will start functioning from 1 January 2019.

The court system comprises only professional judges. As of mid-June 2018, there were 236 judicial positions, 11 of which were vacant, 138 were in the first instance courts of general jurisdiction, at least 24 in the Administrative court and 12 in the Bankruptcy court. Apart from that, the Constitutional Court, as a judicial body of a constitutional jurisdiction, is also a part of the judicial system.

### ***Judicial reform***

Reforming of the judiciary was an important part of the Constitutional reform approved at the referendum on 6 December 2015. The main novelties are the new procedure for the appointment of judges; creation of the Supreme Judicial Council (SJC) – a new state institution which has to enhance

<sup>115</sup> World Economic Forum, Global Competitiveness Index 2017-2018, [Armenia](#)

<sup>116</sup> World Economic Forum, Global Competitiveness Index 2015-2016, [Armenia](#)

<sup>117</sup> Transparency international, Global Corruption Barometer, 2015-2107, [Europe and Central Asia](#)

<sup>118</sup> Transparency International, Global Corruption Barometer, [2013](#)

<sup>119</sup> GRECO, [Fourth Evaluation Round Report on Armenia](#), pp. 27-28

the independence of judges playing the key role in appointment, promotion, dismissal of judges as well as bringing them to liability; increasing the role of the Parliament in the process of appointment of judges and the Chairperson of the Court of Cassation.

The next significant step towards the implementation of the reform has been the adoption of the new Judicial Code (a constitutional law which needs 3/5 of votes of the total number of MPs to be passed) in February 2018; the new law entered into force in April 2018.

The final constitutional arrangements regarding the status of judges, the manner of their election and dismissal and the composition and powers of the Supreme Judicial Council received in general a positive assessment of the Venice Commission. According to the Commission’s conclusion the current Constitution provides a solid legal basis for a well-functioning and independent judicial system. The Commission also provided its opinion on the draft Judicial Code. The opinion is positive in general but identifies a number of “lacunas and inconsistencies” to be addressed.<sup>120</sup>

The draft Judicial Code has been criticized to some extent by representatives of the civil society, because of the lack of NGOs’ involvement in development and discussion of the draft code<sup>121</sup> at the previous stages, as well as by then parliamentary opposition.<sup>122</sup>

The monitoring team notes that the new Judicial Code contains too many detailed provisions. At the same time, it is a constitutional law that can be amended only by a qualified majority. This can potentially create difficulties of introducing the amendments of even a technical nature.

***Institutional, operational and financial independence***

***“Continue Constitutional reform and ensure its proper implementation providing better separation of powers and independence of the judiciary, including by improving the procedures for nomination of judge candidates and appointment of judges”***

Enhancing judicial independence allegedly was at the heart of the respective constitutional and consecutive legislative amendments. The Constitution of Armenia stipulates that when administering justice, a judge shall be independent, impartial and act only in accordance with the Constitution and laws. A judge may not be held liable for the opinion expressed or judicial act rendered when administering justice, except where there are elements of a crime or disciplinary violation (Article 164, par.1 and 2), and any interference with the administration of justice shall be prohibited (Article 162, par. 2). The new Judicial Code stipulates more specific guarantees of independence and autonomy of the judiciary, such as right of judges to form and join legal professional associations, involvement of the Supreme Judicial Council in the protection of a judge from interference etc. The judicial reform has changed powers of the President and the Parliament in respect of the judiciary.

**Table 1. Key changes in the role of the President and the Parliament in the judiciary**

<b>Subject matter</b>	<b>Before the Constitutional reform of 2015</b>	<b>After the Constitutional reform of 2015</b>
Composition of the Council of Justice/SJC	2 members of the Council of Justice (legal scholars) appointed by the President, 2 members (legal scholars) – by the Parliament, and up to nine judges elected by the General Assembly of Judges	5 members of the Supreme Judicial Council (out of 10) elected by the Parliament (special majority - 3/5 of votes of the total number of MPs)
Appointment of judges and chairpersons of the	judges and chairpersons of the courts of first instance and courts of appeal	judges and chairpersons of the courts of first instance and courts of appeal

<sup>120</sup> Venice Commission, [Opinion on the Draft Judicial Code](#), 9 October 2017

<sup>121</sup> <http://hcav.am/en/events/civil-society-remarks-on-the-draft-judicial-and-criminal-codes/>

<sup>122</sup> <http://www.tert.am/en/news/2018/02/07/Parliament/2607938>



courts of first instance	appointed by the President upon recommendation of the Council of Justice	appointed by the President upon recommendation of the Supreme Judicial Council
Appointment of judges of the Court of Cassation	judges of the Court of Cassation appointed by the President upon recommendation of the Council of Justice	judges of the Court of Cassation appointed by the President upon recommendation of the Parliament. The Parliament shall elect the nominated candidate by at least three fifths of votes of the total number of MPs, from among the three candidates nominated by the Supreme Judicial Council for each seat of a judge
Appointment of the chairpersons of the chambers of the Court of Cassation	the chairpersons of the chambers of the Court of Cassation appointed by the President of the Republic upon recommendation of the Council of Justice	the chairpersons of the chambers of the Court of Cassation appointed by the President of the Republic upon recommendation of the Supreme Judicial Council
Appointment/election of the Chairperson of the Court of Cassation	the Chairperson of the Court of Cassation appointed by the President upon recommendation of the Council of Justice	the Chairperson of the Court of Cassation elected by majority of votes of the Parliament upon recommendation of the Supreme Judicial Council
Termination of powers	final decision taken by the President	final decision taken by the Supreme Judicial Council
Lifting of immunity	a judge may not be detained, involved as a defendant, or subjected to administrative liability by court procedure without the consent of the President of the Republic, given on the basis of a proposal by the Council of Justice	a judge may not be deprived of liberty, with respect to the exercise of his or her powers, without consent of the Supreme Judicial Council except where he or she has been caught at the time of or immediately after committing a criminal offence. In this case, deprivation of liberty may not last more than seventy-two hours.

*Source: texts of the Constitution and the Judicial Code of the Republic of Armenia provided by the Government*

Thus, the Parliament has been granted more powers, namely of election of SJC’s members and the Chairperson of the Court of Cassation, as well as participation in appointment of judges of the mentioned court. At the same time, the President will not be involved in the process of SJC’s composition, being stripped of the power to appoint the Chairperson of the Court of Cassation and having his discretion to appoint judges of this court significantly reduced.

Some representatives of civil society among those who provided alternative reports and met during the on-site visit expressed concerns about the involvement of the Parliament in the process of appointment of judges that, in their view, creates risks for political influence.

The monitoring team believes that the judicial reform included a number of positive developments highlighted below. However, involvement of political bodies or officials in making important decisions regarding the judiciary remains high. Moreover, implementation of the judicial reform is at quite an early stage.

Therefore, this part of recommendation is partially implemented.

***“Ensure that independence of the judiciary includes the independence from interference by other judges and if such practice takes place it is dealt with through disciplinary means against judges taking part in such practice”.***

The monitoring team did not receive any information which could signal such type of interference.

This part of recommendation is fully implemented.

### ***Judicial self-government bodies***

***“Establish a mechanism that will ensure equal participation of judges in self-governing bodies; clarify competences of these bodies, as well as the role of the court chairpersons”.***

Due to the judicial reform one of the judicial self-government bodies – the Council of Court Chairpersons – has been dissolved, and another one – the General Assembly of Judges should continue functioning. The General Assembly is composed of all judges and convened as well as presided by the Chairperson of the Court of Cassation. The Assembly meetings should be convened at least once a year.

The General Assembly competences are the following:

- discuss and submit proposals aimed at improving the operation of courts to the Supreme Judicial Council and other competent state bodies;
- establish Disciplinary (composed of eight judges from first instance and appeal courts) and Training (composed of seven judges from courts of different levels) Commissions and working groups for performing effectively the functions thereof;
- approve the procedure for operation thereof, of the commissions and also the working groups, where necessary;
- elect and propose the candidacies of judge members of the Constitutional Court;
- elect the judge members of the Supreme Judicial Council;
- approve the description of and procedure for providing the gown of judges;
- prescribe the rules of ethics of a judge;
- discuss the report of the Judicial Department on annual activities of the staffs of courts.

The General Assembly of Judges can exercise other powers provided for by law.

This part of recommendation is fully implemented.

### ***Financing of the judiciary***

***“Ensure in practice proper financing of the judiciary”.***

The new Judicial Code prescribes the detailed procedure to form budget of courts, SJC and the General Assembly of Judges that includes several stages as follows:

- the staff of each court and the General Assembly have to draft the Budget Proposal and send it to the Judicial Department;
- the Judicial Department shall prepare the courts' Medium-Term Expenditure Program and Budget Proposal, where also the budget of SJC should be included, and send it to SJC for approval;
- once approved the prepared budget or the Medium-Term Expenditure Program shall be submitted to the Government within the time limits prescribed by the decision on starting the budgeting process;
- the Government shall accept the courts' Budget Proposal and include it in the draft State Budget, and, in the case of objections, it shall be submitted to the National Assembly together with the draft State Budget. The Government shall submit a detailed substantiation of the objections concerning the Budget Proposal to the National Assembly and to the Supreme Judicial Council.

The Judicial Code also foresees the following guarantees of the proper financing of the judiciary:

- financing for the self-government bodies of courts and the judiciary shall be reflected in the State Budget by a separate line for each court and self-government body;
- a reserve fund for courts shall be envisaged to fund unforeseen expenditure needed to ensure normal court functioning, which shall be presented in a separate budget line. The size of the

reserve fund shall be equal to two per cent of the expenditure envisaged for courts by the Law on State Budget for the current year. Allocations from the reserve fund shall be made upon a Supreme Judicial Council decision, for the purpose of ensuring the functioning of the courts.

- The Supreme Judicial Council shall apply to the Government if the resources of the reserve fund for courts are insufficient. If the resources of the reserve fund for courts are insufficient to ensure the normal functioning of courts, the Government shall make up the shortfall from the Government's reserve fund.
- In the case where the Budget Proposal is not accepted, or the State Budget is not approved within the prescribed time limits, prior to the acceptance or approval thereof, the expenditure shall be incurred in same budget proportions as per the previous year.
- The Budget Proposal shall include all the expenditure required to ensure the courts function normally.
- The position of the Supreme Judicial Council on the Budget Proposal and the Medium-Term Expenditure Program shall be presented in the National Assembly by the Chairperson of the Supreme Judicial Council.

These provisions of the new Judicial Code if compared with those of the previous one increase the role of SJC in the budgetary process – now it will approve the Budget Proposal (instead of the Council of Court Chairpersons) and its Chairperson will present its position in the Parliament (before this was the role of the Head of the Judicial Department). The table below shows that in practice budget allocated for functioning of the judicial system was almost always 13-20 % less than requested.

**Table 2. Financing of judiciary, 2014-2017, AMD**

Name of the project	2014		2015		2016		2017	
	Required budget	Budget allocated in the beginning of year	Required budget	Budget allocated in the beginning of year	Required budget	Budget allocated in the beginning of year	Required budget	Budget allocated in the beginning of year
total	8,099,447.3	7,699,159.8	9,878,621.1	8,534,087.3	10,799,204.6	8,723,622.2	11,185,319.6	8,644,008.9
Maintenance of courts	7,885,634.6	7,532,695.9	9,604,040.3	8,351,152.3	10,535,455.5	8,481,070.8	10,922,999.6	8,459,018.6
Reserve fund of courts	158,812.7	150,963.9	193,580.8	167,335.0	211,749.1	171,051.4	219,320.0	169,490.3
Compensation of translators, experts and witnesses involved in the proceedings	55000	15,500.0	75,000.0	15,500.0	52,000.0	15,500.0	43,000.0	15,500.0
Renovation of administrative objects						20,000.0		
Development of judicial capacities						36,000.0		

*Source: the information submitted by the Government.*

This part of recommendation is largely implemented.

### ***The Supreme Judicial Council***

The Constitutional reform envisages establishment of a new independent state body – the Supreme Judicial Council replacing the abolished Council of Justice. SJC’s main task is to guarantee the independence of courts and judges.

SJC is composed of ten members. Five of them are elected by the General Assembly of Judges, from among judges having at least ten years of experience as a judge. Judges from all court instances must be included in the Supreme Judicial Council. A member elected by the General Assembly of Judges may not act as chairperson of a court or chairperson of a chamber of the Court of Cassation.

Five members of the Supreme Judicial Council shall be elected by the National Assembly (the Parliament of Armenia), by at least three fifths of votes of the total number of Deputies, from among academic lawyers and other prominent lawyers holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience. The member elected by the National Assembly may not be a judge.<sup>123</sup>

The Venice Commission has found the composition of SJC quite balanced. It also has pointed out that some clarification on the non-judicial members’ candidatures and status is needed.<sup>124</sup>

Members of SJC are elected for a term of five years, without the right to be re-elected. SJC shall, within the time limits and under the procedure prescribed by the Judicial Code, elect a Chairperson of the Council, successively from among the members elected by the General Assembly of Judges and the National Assembly.

According to the Constitution SJC shall:

- draw up and approve the lists of candidates for judges, including candidates subject to promotion;
- propose to the President of the Republic the candidates for judges subject to appointment, including those subject to appointment by way of promotion;
- propose to the President of the Republic the candidates for chairpersons of courts and the candidates for chairpersons of chambers of the Court of Cassation, subject to appointment;
- propose to the National Assembly the candidates for judges and for Chairperson of the Court of Cassation;
- decide on the issue of secondment of judges to another court;
- decide on giving consent for initiating criminal prosecution against a judge or depriving him or her of liberty with respect to the exercise of his or her powers;
- decide on the issue of subjecting a judge to disciplinary liability;
- decide on the issue of terminating the powers of judges;
- approve its estimate of expenditures as well as those of the courts, and submit them to the Government, in order to include them in the Draft State Budget as prescribed by law;
- form its staff in accordance with law.

In case of discussing the issue of subjecting a judge to disciplinary liability, as well as in other cases prescribed by the Judicial Code, the Supreme Judicial Council shall act as a court.<sup>125</sup> Other powers and rules of operation of the Supreme Judicial Council are prescribed by the Judicial Code. In particular, SJC exercises the powers of the founder of the “Judicial Department” - the State Administration Institution which deals with administrative support (maintenance of buildings, IT service, procurements etc.) of courts, the General Assembly of Judges and SJC. The central body of the Judicial Department shall be staffed by SJC (before the Judicial Department operated as an administrative unit of the Council of Courts’ Chairpersons). The separate subdivisions of the Judicial Department shall perform the staff functions of the courts and the General Assembly.

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<sup>123</sup> [RA Constitution](#), Article 174

<sup>124</sup> Venice Commission, [Opinion on the Draft Judicial Code](#), 9 October 2017

<sup>125</sup> [RA Constitution](#), Article 175

The Judicial Code also prescribes the judicial service as a professional activity, performed as prescribed by law and aimed at ensuring the exercise of powers and functions reserved for the courts and self-government bodies. The judicial service shall be a form of state service performed:

- 1) in the structural subdivisions of the central body of the Judicial Department;
- 2) in the separate subdivisions of the Judicial Department.

Representatives of civil society shared with the monitoring team their concerns regarding overburdening the SJC with administrative tasks which creates risks for the proper functioning of this body in the exercise of its main purpose and constitutional powers. The process of forming the SJC was completed and its Head was elected at its first meeting in March 2018.<sup>126</sup>

### ***Qualifications for judicial appointments***

The Constitution Article 165 sets out the basic qualifications for judges:

- a lawyer with higher education, having attained the age of forty, holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least ten years of professional work experience may be appointed as a judge of the Court of Cassation
- a lawyer with higher education, holding citizenship of only the Republic of Armenia, having the right of suffrage may be appointed as a judge of a court of first instance and a court of appeal
- the candidates for judges must have a command of the Armenian language.

Article 97 of the new Judicial Code contains much more specific requirements (the Constitution permits the Judicial Code to prescribe additional requirements to the candidates for judges):

- only citizens of the Republic of Armenia between the ages of 28 and 60, who have the right of suffrage; have obtained a Bachelor's and Master's Degree in Juridical Science or a qualification degree of a certified specialist of higher education in law in the Republic of Armenia or have obtained a similar degree in a foreign State, for which recognition and approval of equivalence has been carried out in the Republic of Armenia, as prescribed by law; have a command of Armenian and have language skills verified by the standardized testing systems defined by the Supreme Judicial Council, in at least two languages from among English, Russian, French and German; have at least five years of professional experience, and the restrictions pertaining to the appointment to the position of a judge envisaged by the Code do not exist, may participate in the qualification testing.

Article 112 of the Judicial Code excludes the following individuals:

- he or she has been convicted of a crime and the conviction has not been expired or cancelled;
- he or she has been convicted of an intentionally committed crime or served a custodial sentence, irrespective of whether the conviction has been expunged or cancelled;
- he or she has a physical impairment or disease hindering his or her appointment to the position of a judge;
- he has not undergone the compulsory military service or alternative service, and has not been granted an exemption from compulsory military service;
- he or she has been declared as having no active legal capacity, having limited active legal capacity or as missing, or bankrupt, and the bankruptcy proceedings have not ended, by a court judgment which has entered into legal force;
- criminal prosecution has been instituted against him or her.

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<sup>126</sup> [Gagik Harutyunyan Elected Chairman of Supreme Judicial Council of Armenia.](#)

### ***Procedure for Judicial Recruitments and Promotion***

The detailed process of judicial recruitment is prescribed by the new Judicial Code and consists of the following stages:

- SJC maintains the ***list of candidate judges*** according to criminal, civil, and administrative specializations (the latter includes bankruptcy specialization as well). SJC annually reviews and updates the list based on the number of judicial vacancies for next two years;
- when there is a need to compliment the list SJC announces a ***qualification check*** which consists of submitting applications and checking them, a written examination, and an interview:
  - applications with a number of attachments are submitted to SJC and the Judicial Department verifies their compliance with requirements defined in the Judicial Code;
  - a written examination is organised and conducted by SJC to assess theoretical legal knowledge, analytical and law enforcement capabilities of contenders. A written examination papers are checked by the Evaluation Commission (composed of five judges with relevant specialization who are selected from those ten proposed by the Training Commission of the General Assembly of Judges, and two academic lawyers from those four who are proposed by the Ministry of Justice. SJC members, chairpersons of courts or members of the Commissions of the General Assembly of Judges may not be involved in the Evaluation Commissions). The Judicial Code also prescribes existence of the Appeals Commission, but its competence is not specified. (A psychological test has been excluded as a part of the selection procedure)
  - shortlisted candidates are invited to an interview conducted by SJC which consists of two parts: related to the personal files of contenders and rules of judicial conduct; a psychologist can be also invited to attend.
- ***including of selected candidates to the list of candidate judges***
- if a judicial vacancy appears SJC has to ***propose to the President of the Republic*** a candidate from the list of candidate judges in the specific order of priority envisaged by the Judicial Code (priority is given to current, redundant or former judges)
- ***a training course at the Academy of Justice*** for the candidates except former judges should be arranged in order to develop their knowledge and skills.

Anyone who possesses documented information on contender for the candidacy of a judge, that gives rise to a reasonable doubt as to whether he/she has the skills and qualities required to effectively perform functions of a judge, may inform SJC thereon within two weeks following the day the list of contenders who passed the written exam is published. The Judicial Code establishes an obligation for state bodies and officials to provide SJC with any information of this kind they possess.

The Judicial Code prescribes rules to ensure transparency of the recruitment process including live broadcasting, audio-video recording, and participation of observers. The Judicial Code also contains specific provisions providing simplified procedure for former judges, including former judges of the Constitutional Court and of the international courts of which the Republic of Armenia is a member, and for members of the Supreme Judicial Council to be included in the list of judge candidates.

The new Judicial Code has kept the discretionary powers of the President to appoint or not to appoint a judge proposed by SJC. The objection of the President can be overcome by SJC through a majority vote and then the President has to appoint the candidate in question in three days. But the Judicial Code prescribes a situation when the President can disagree and not accept the second proposal, and if he does not return the proposal with his objections or go with the question to the Constitutional Court, the relevant person shall be deemed, by virtue of law, to be appointed to the position of a judge. If the President applies to the Constitutional Court and it decides the proposal of SJC corresponds the Constitution, the President has to appoint the candidate in three days.

Separately, SJC shall compile and approve, as well as complement and modify, the 2 lists of candidate judges qualifying for promotion (for positions in courts of appeal and the Court of Cassation).

The following persons may be included on the list of candidate judges qualifying for promotion to be appointed to the position of a judge in the courts of appeal:

- a judge with professional experience of at least three years in the position of a judge in a court of first instance with relevant specialization, upon whom no disciplinary sanction in the form of a reprimand or a severe reprimand has been imposed;
- a former judge who has worked as a judge with a relevant specialization for at least five years within the last ten years, upon whom no disciplinary sanction in the form of a reprimand or a severe reprimand has been imposed;
- persons with a degree in juridical science and with scientific experience for at least eight years out of the past ten years.

Those candidates who want to be included to the list should apply to SJC which examines the contenders' personal files and, if necessary, invites them to an interview. Then SJC should conduct a secret ballot. For each section (criminal, civil and administrative), separate ballots shall be prepared to contain the names of all the candidates that have applied to be included in the respective section.

When discussing the matter of compiling the list of candidate judges qualifying for promotion, a member of SJC shall take into consideration the following features when voting using ballot papers:

- 1) participation in the self-governance of the judiciary;
- 2) participation in the projects of law and legislation development;
- 3) other features describing the skills and qualities required to work as a judge.

Training on the development of practical skills shall be organized in the Academy of Justice for the persons included on the promotion list and who do not hold the position of a judge.

If a vacant position of a judge in a court of appeal appears, SJC offers a position to a candidate according to the order of priority envisaged in the Judicial Code, and then upon the candidate's written consent and based on the vote submits the respective proposal to the President. Before the vote to approve the candidate SJC shall examine his/her personal files and may conduct an interview.

When a vacant position for a judge in the Court of Cassation arises, or two months before a judge's term of office expires, SJC shall compile, approve, and submit to the National Assembly the list of three candidate judges qualifying for promotion to be appointed to the position of a judge in the Court of Cassation.

The following persons, who have reached the age of forty, have held the citizenship of the Republic of Armenia only, and have the right of suffrage, may be included in the corresponding section of the list of candidate judges qualifying for promotion to be appointed to the position of a judge in the Court of Cassation:

- judges with at least ten years of professional work experience, from which at least 5 years-experience of a judge
- a former judge who has at least ten years of professional work experience, who has worked as a judge with a relevant specialization for at least five years within the last ten years
- persons with a doctorate degree in law and with scientific experience for at least ten years.

SJC shall approve the list of candidate judges qualifying for promotion, compiled as a result of the vote on the candidates who applied, and submit it to the National Assembly which has to elect one nominated candidate by 3/5<sup>th</sup> of majority. The list of judges qualifying for promotion in the Court of Cassation shall be repealed upon appointment by the President of the Republic of Armenia of a judge in the Court of Cassation. The procedure of candidates' approval by the Parliament should be described in its Rules and Procedures which was not provided.

**Table 3. Appointment and promotion of judges, statistics for 2014-2107**

<b>Year</b>	<b>Appointment of judges</b>	<b>Promotion of judges</b>
<b>2014</b>	18	6
<b>2015</b>	5	4
<b>2016</b>	14	5
<b>2017</b>	8	4

*Source: the information submitted by the Government.*

### ***Performance evaluation***

Armenia introduced the system of performance evaluation of judges in 2014 kept, with some changes, in the new Judicial Code. The performance evaluation has several purposes: improvement of the judges' and courts' work efficiency, selection of trainings for judges, selection of the best candidates for promotion, encouraging judges' self-development. The results of the evaluation are shared with the Training Commission of the General Assembly of Judges, the evaluated judge, and depersonalized data is also provided to the chairman of the respective court.

The performance evaluation is carried by SJC based on the following three sets of criteria:

- 1) the judge's quality of work and effectiveness - the judge's ability to justify judicial acts and ability to administer court sessions;
- 2) the effectiveness of a judge - the administrative abilities and organizational skills of a judge;
- 3) the judge's integrity - compliance with the integrity rules, contribution to public trust and confidence in the courts, the attitude demonstrated towards other judges and the court staff

According to Article 138, part 3, of the Judicial Code the criteria of the effectiveness of the judges' work are the following:

- 1) workload and quantitative performance of a judge;
- 2) duration of examination of cases, according to different types of cases;
- 3) time limits for performing individual procedural actions;
- 4) ability to ensure an efficient working environment.

Thus, the performance evaluation combines both quantitative and qualitative criteria.

Judges' performance shall be subject to a regular evaluation once every 5 years, and upon the judge's initiative on an extraordinary basis. An extraordinary evaluation shall be carried out in the manner and within the terms defined by SJC. An extraordinary evaluation shall not be carried out where, as part of the regular evaluation, a judge's performance has already been evaluated within the past 2 years.

SJC should define the procedure, the methodology of evaluating judges' performance, and the other details necessary for evaluating judges' performance.

The performance evaluation results are part of the judge's personal file which should be examined when taking decision regarding promotion.

The evaluation is not a novelty in the Armenian legislation, the previous version of the Judicial Code envisaged this mechanism too. However, it has never been applied; the performance evaluation under the new Code will be carried not earlier than in 2019.



### ***Judicial tenure, grounds for termination of powers***

All judges in Armenia are appointed for permanent tenure, i.e. until retirement. According to the general rule a judge shall hold office until the retirement age of 65. The powers of a judge shall discontinue upon expiry of the term of powers thereof, in cases of loss of citizenship of the Republic of Armenia or acquisition of citizenship of another State, entry into force of a criminal judgment of conviction rendered against him or her, termination of criminal prosecution on non-acquitting grounds, entry into force of a civil judgment on declaring him or her as having no active legal capacity, as missing or dead, and also in case of his or her resignation or death. Moreover, the powers of a judge shall be terminated in cases of violation of incompatibility requirements, engaging in political activities, inability to perform duties for health reasons, failure due to temporary incapacity for work to perform his or her official duties for more than four consecutive months. The powers of a judge are discontinued or terminated upon a decision of SJC.

If a decision is taken to reduce the number of judges in the specific court, the preference for continuing their service in the office in the said court shall be given to the elder judges. Where the elder judges are of the same age, preference shall be given to the person with the longest experience of service in the position of a judge. The powers of redundant judges shall not terminate, and they shall continue to serve in office, unless the Judicial Code provides otherwise. The status of such judges, including the right to receive salary and increments and the right to become or remain included on the list of candidate judges qualifying for promotion, shall be preserved until they reach the age limit prescribed by the Constitution for judges to serve in office, unless the Judicial Code provides otherwise. Redundant and reserve judges shall be seconded in the order of priority, without any restriction on maximum term for secondment. In the case of refusal to be seconded, the redundant or reserve status of a judge shall discontinue.

**Table 4. Grounds of termination of judge's power**

	<b>The judge has reached 65 (retirement age)</b>	<b>After appointment, he/she acquired a physical handicap or illness that hinders appointment to a judge position</b>	<b>The judge files his resignation</b>	<b>A judgment convicting him/her has become final</b>
<b>2014</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>0</b>
<b>2015</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>0</b>
<b>2016</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>2017</b>	<b>6</b>	<b>0</b>	<b>1</b>	<b>1</b>

*Source: the information submitted by the Government.*

### ***Complaints against judges, disciplinary proceedings***

***“Modify grounds for disciplinary liability of judges by establishing clear and precise criteria in compliance with international standards and best practice and ensure that the law reflects the fact that disciplinary liability requires a disciplinary offence and a different than the disciplinary procedure should be considered in dismissing judges who are unable to fulfil their tasks.***

***Ensure that the disciplinary proceedings comply with fair trial guarantees, in particular by separating investigation, prosecution and decision-making in such proceedings, and afford the judges with adequate means to defend themselves”.***

According to the Judicial Code the grounds for bringing a judge to disciplinary liability are the following:

- obvious and gross violation of provisions of substantive or procedural law while administering justice or exercising — as a court — other powers provided for by law;
- gross violation of the rules of judicial conduct prescribed by the Judicial Code, committed with intent or gross negligence;
- failure to fulfil duty to participate in mandatory trainings provided for by law;
- failure to inform SJC about interference in relation to administering justice and exercising — as a court — other powers provided for by law, as well as rights arising from the status of a judge.

The following is understood under a gross disciplinary violation:

- 1) violation of substantive or procedural provisions or of the rule of judicial conduct by a judge during administration of justice, which dishonours the judiciary; or
- 2) violation of substantive or procedural provisions or of the rule of judicial conduct periodically committed by a judge during administration of justice, which, separately, may not be considered as such, but dishonours the judiciary when committed periodically.<sup>127</sup>

SJC should conduct disciplinary proceedings and decide on bringing a judge to disciplinary liability. Disciplinary proceeding can be started on the initiative of either the Disciplinary Commission (DC) of the General Assembly of Judges or the Minister of Justice. Such role of DC and the Minister of Justice creates additional concerns according to representatives of civil society. The Venice Commission pointed out that the Ministry of Justice serves as a counterbalance vis-à-vis DC and such a model is not objectionable.<sup>128</sup>

A disciplinary proceeding may include several stages:

- institution of the procedure by MoJ or DC - both bodies are authorized to conduct their own examination before reaching to SJC and close a case if they find there are no grounds for disciplinary liability
- filing a motion with JSC to subject a judge to disciplinary liability
- examination of the case and making the decision by SJC which acts as a court when hearing a case.

The reasons for instituting disciplinary proceedings shall be the following:

- 1) communication from State and local self-government body or official;
- 2) mass media publications about the disciplinary violation;
- 3) independent discovery, by the person instituting the proceedings, during the exercise of his or her powers, of an act containing prima facie elements of disciplinary violation<sup>129</sup>.

The Judicial Code also obliges chairpersons of courts to submit a relevant report to DC, when detecting a violation of the rules of conduct by a judge, but no special status of such reports is prescribed.

There are following disciplinary sanctions which can be imposed on a judge:

- 1) warning;
- 2) reprimand;

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<sup>127</sup> Judicial Code of the Republic of Armenia, Art. 142

<sup>128</sup> Venice Commission (2017), [Opinion on the Draft Judicial Code](#), para. 135-136

<sup>129</sup> Judicial Code of the Republic of Armenia, Article 146

3) severe reprimand<sup>130</sup>.

Committing a gross disciplinary violation is a ground for termination of powers of a judge as a disciplinary sanction. The latter is overlapping with the grounds for termination of powers of a judge as a stand-alone procedure. Violations by a judge of the incompatibility requirements or his/her engagement in political activities are among the grounds for imposed termination of a judge's powers. At the same time, potentially, breach of a political neutrality rule can be assessed as gross disciplinary violation for which termination of powers as a disciplinary sanction can be imposed.

One more area of concern is a right to appeal against the decisions of SJC. The Judicial Code does not provide for such a right, the only option is a constitutional complaint before the Constitutional Court. The problem of absence of an appeal system has been highlighted by the Venice Commission<sup>131</sup> and civil society.

The relevant parts of the recommendation in question are largely and partially compliant respectively.

***Administrative positions***

The role of the courts' leadership has been significantly reduced in the framework of the judicial reform. The amendments also limited the term of the court chairpersons' office - three years for chairpersons of courts of first instance and courts of appeal without the right to be re-appointed within the next three years, and six years for the Chairperson of the Court of Cassation and chairpersons of its chambers. The same person may be elected as chairperson of a chamber or Chairperson of the Court of Cassation only once.<sup>132</sup>

Chairpersons of courts of first instance are appointed by the President based on a proposal of SJC which selects a candidate from among all the judges of the court concerned, who have no less than 3 years' experience of holding office as a judge, upon whom no disciplinary sanction has been imposed, and who have not been appointed as a chairperson of that court of first instance during the last three years. The similar rules are applied to the procedure of appointment of appeal courts' chairpersons.<sup>133</sup>

The Chairperson of the Court of Cassation is elected by majority of votes of the Parliament upon recommendation of SJC and the chairperson of the chambers of this court – appointed by the President upon recommendation of SJC.<sup>134</sup> Candidates for the Chairperson of the Court of Cassation and chairpersons of its chambers have to be selected from among the judges of the Court (for chairperson of the chamber – among judges in the chamber concerned), who have no less than three years' experience of holding the office of a judge in said court, upon whom no disciplinary sanction has been imposed, who have not held office as a chairperson of the said court or chamber respectively and are not members of SJC.

A member of SJC shall, when discussing the matter of making a proposal related to appointing chairpersons of courts, take into consideration the characteristics which demonstrate the skills and qualities required to effectively perform the position of chairperson of a court, including:

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<sup>130</sup> Judicial Code of the Republic of Armenia, Article 149

<sup>131</sup> Venice Commission (2017), [Opinion on the Draft Judicial Code](#), para. 143-151

<sup>132</sup> [RA Constitution](#), Article 166, Parts 4,5

<sup>133</sup> [RA Constitution](#), Article 166, Part 7

<sup>134</sup> [RA Constitution](#), Article 166, Parts 4,5

- the judge's professional reputation;
- the judge's attitude towards his or her colleagues while performing the duties of a judge;
- the judge's organizational and managerial skills and, in the case of managerial experience, other characteristics which demonstrate the judge's skills and qualities in that type of work.<sup>135</sup>

While making appointments to the administrative positions in courts the President has the same level of discretion as with appointment of judges. The Parliament also has discretion and may reject the candidate nominated by SJC while considering election of the Chairperson of the Court of Cassation.

In addition to the competencies of a judge, the chairperson of a court shall:

- ensure the normal functioning of a court, as well as supervise the staff of a court;
- grant a leave of absence to judges as prescribed by law;
- represent the court in relations with other bodies;
- apply to SJC, the General Assembly of Judges and its commissions on matters related to ensuring the normal functioning of a court;
- submit a relevant report to DC when detecting a prima facie violation of the rules of conduct by a judge;
- exercise other powers reserved to him or her by law.<sup>136</sup>

In addition to the competencies of a judge, chairperson of the chamber of the Court of Cassation shall:

- organize the activities of the Chamber;
- chair the sessions of the Chamber;
- submit a relevant report DC when detecting a prima facie violation of the rules of conduct by a judge in the respective chamber<sup>137</sup>.

### ***Fair and transparent remuneration***

According to the Constitution of Armenia the remuneration of a judge shall be determined in compliance with his or her high status and responsibility. The amount of remuneration of a judge shall be prescribed by law.<sup>138</sup> A judge's salary and increments added thereon, the amount of pension may not be reduced, except for cases when an equal reduction is made for all high-ranking officials. The rules on calculation of judge's salaries are set up by the Law on Salaries. According to this Law the amount of the base salary of persons holding state positions shall be fixed by the Law of the Republic of Armenia "On State Budget" for each year. The official pays to persons holding state positions are calculated through coefficients of multiplying the base salary, these coefficients for different positions are indicated in the annexes to the mentioned law.

**Table 5. Basic salaries of judges, AMD**

<b>Name of the Court</b>	<b>Index</b>	<b>Base rate</b>	<b>Determined post rate</b>
<b>1. Court of Cassation</b>			
Chairman of Court	15	66,140.0	992,100.0 (≈1650 EUR)
Chairman of Chamber	12	66,140.0	793,680.0 (≈1320 EUR)

<sup>135</sup> Judicial Code of the Republic of Armenia, Articles 121, part 4, 134, part 4, 135, part 4

<sup>136</sup> Judicial Code of the Republic of Armenia, Articles 32,33

<sup>137</sup> Judicial Code of the Republic of Armenia, Articles 34

<sup>138</sup> [RA Constitution](#), Article 166, Part 10

Judge	11.5	66,140.0	760,610.0 (≈1260 EUR)
<b>2.Courts of Appeal</b>			
including			
Chairman of Court	11.5	66,140.0	760,610.0 (≈1260 EUR)
Judge	11	66,140.0	727,540.0 (≈1210 EUR)
<b>3.General Jurisdiction Courts</b>			
including			
Chairman of Court	11	66,140.0	727,540.0 (≈1210 EUR)
Judge	10	66,140.0	661,400.0 (≈1100 EUR)

Source: the information submitted by the Government.

Salary of persons holding state positions shall comprise the basic salary, additional salary and bonuses prescribed by the mentioned Law. Additional salary shall include additional payments and increments. Increment shall be paid to judges for the record of work in the position of a judge in the amount of 2 percent for each year. There is a general rule that additional salary of persons holding state positions may not exceed 30 percent of the basic salary.

When appointing the judge to a lower court judge position, in case of reducing the number of judges in court or abolishing a court or a Chamber of the Court of Cassation as envisaged by law, the salary received in his or her previous position, including increments shall be retained until the amount of the salary provided for the given position equals to the amount of the salary received in his or her previous position.<sup>139</sup>

**Table 6. Average monthly judiciary remuneration**

Court's name	AMD			
	2014	2015	2016	2017
<b>1. Court of cassation</b>				
including				
chairman of the court	1,580,982	1,736,697	1,736,697	1,736,697
chairman of the chamber	1,531,464	1,573,734	1,573,734	1,325,535
judge	1,264,197	1,289,932	1,249,982	1,210,480
<b>2. Courts of appeal</b>				
including				
chairman of the court	1,308,017	1,364,513	1,104,532	1,109,604
judge	1,071,329	1,128,174	1,070,561	1,043,245
<b>3. Courts of general jurisdiction</b>				
including				
chairman of the court	1,049,311	1,166,528	1,071,741	1,073,628
judge	742,103	831,517	800,661	803,383

Source: the information submitted by the Government.

<sup>139</sup> Law on Salaries, Article 13.

### ***Case assignment and workload***

***“Ensure that automated case assignment among judges based on objective criteria and ensure that information on case assignment is open to judges, parties and the public is in place and functioning”.***

The Judicial Code prescribes random case distribution of cases among judges. According to Article 40 of the Code, cases among judges are distributed based on the principles of specialization and random selection by the computer system. The distribution of cases is done through a special computer software decided by the SJC. SJC is responsible for the elaboration, development, implementation and security insurance of the software. The electronic copy of the court case also includes an inscription sheet, the paper version of which is attached to the case.

According to civil society representatives the automatic case assignment between judges aimed the decrease of case-overload. However, the practice shows that the case-load of judges has not been changed in a positive way.

The monitoring team was also informed by civil society that the automatic case distribution system has failed to decrease the overload of judges. The court chairpersons enjoy in this regard some privileges and receive 25 % less cases than distributed to other judges. At the same time, according to civil society representatives a court chairperson specialized in civil matters may have only 35 cases, whereas another judge in the same court may have more than 1 thousand cases. They also informed the monitoring team that this problem resulted from complicated and confusing calculation system and existing exceptions which overall lead to manipulation in practice.<sup>140</sup>

According to the official information provided by the Government the heaviest workload of judges is in civil cases (average annual workload of one judge of a province court in 2016 was 1501 cases, and in criminal cases – 76, in administrative - 613).

Representatives of the judiciary met during the on-site visit also expressed their concerns about heavy workload of judges. The Government informed about plans to address the problem of judges' workload by introduction of alternative instruments of disputes' solution and simplified trial procedures.

In this regard the monitoring team also notes that the problem of judges' overload is not new for Armenia (for instance, GRECO in its 2015 report highlights the heavy workload of the Armenian judges and refers to the plans of the Government to increase number of judges<sup>141</sup>) and is yet to be addressed.

This part of recommendation is largely implemented.

### ***Transparency of the judiciary***

The RA Government on March 19, 2015 adopted the decision No 306 “Classification of judicial cases, list of statistical data for mandatory publishing and publication procedure, description of statistical accountability content”. RA Council of Court Chairmen on January 29, 2016 adopted No 05L decision “Procedure of judicial statistic and judicial case statistical card filling, procedure and timeframe of submission to the RA council of court chairmen approval the reports regarding courts semi-annual activities and annual statistical data”. The reports regarding statistical data of courts annual and semi-annual activities as well as court's budget including financial costs comparison with previous reporting period` according to courts, average salary of judges, its comparison with previous reporting period, total amount of paid state duty, information regarding judges disciplinary liability are published in the official webpage of the judicial authority ([www.court.am](http://www.court.am)). Moreover, by financing of USAID a program on establishment of electronic courts was launched. The court hearings are open for public, except when the law prescribes, and a court decides to conduct a close hearing. The schedules of hearings, final judicial acts, and all other information are available at

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<sup>140</sup> Relies to the questionnaire provided by representatives of the civil society.

<sup>141</sup> GRECO, [Fourth Evaluation Round Report on Armenia](#), p. 29

[datalex.am](http://datalex.am) website of judiciary. Representatives of civil society reported that the recent tendency is not to publish the decisions related to military cases.

### ***Ethics rules***

The rules of judicial conduct are prescribed under Chapter 12 of the Judicial Code. These include two sets of rules: general rules of judicial conduct (for instance, to refrain from expressing public opinion on any ongoing case examined or anticipated in any court) and judicial conduct during the official activities (for instance, to refrain from sponsorship when participating in the appointment of judicial servants). Article 66 of the Code stipulates that DC may provide advisory opinions on the rules of conduct upon the request made by a judge. Failure to comply with the rules of judicial conduct may entail the imposition of a disciplinary penalty on the judge.

According to the statistical data provided by the Government 1 judge was brought to disciplinary liability for breaching rules of conduct during 2014-2017, a warning was imposed as a sanction.

Separately, the Judicial Code prescribes the rules of judicial ethics to be adopted by the General Assembly of Judges and included in the training courses for judges. The rules of judicial integrity shall be the personal and conduct restrictions which a judge shall accept, consciously and willingly, aimed at upholding the high reputation of a judge and the judiciary, ensuring the public perception of him or her as a gentle, fair, and well-balanced person. Violation of the rules of ethics may not serve as a ground for imposing disciplinary action against a judge.

In parallel, there is a decision of 2016 N 01-Ն of the General Assembly of Judges on the Rules of Conduct of judges. The rules of conduct are divided into 2 groups: rules of conduct for the behaviour in official capacity and rules of conduct when acting in non-official capacity.

### ***Conflict of interests and other restrictions***

The new Judicial Code enshrines rules to prevent conflict of interest and some other anti-corruption preventive restrictions. Among other things, these rules list circumstances for self-recusal of a judge, for instance, when his economic interest is present in a case providing an explanation what is meant under such economic interest. The law also provides restrictions regarding payments derived from non-judicial activities of a judge and receiving gifts. Apart from that, the Law on Public Service stipulates the incompatibility requirements and other restrictions to be followed by the persons holding public positions including judges.

### ***Asset declarations and declarations of interests***

The asset declaration system is centralized and legal regulations on asset declaration are general for all the declarant public officials including judges. As for the interest declarations all the judges are obliged to submit them as well and this regulation will be enacted in 2019.

### ***Trainings and guidelines***

The RA Justice Academy has delivered an anti-corruption training course on “The Key Issues of Fight against Corruption” for the judges, prosecutors and investigator candidates, as well as for judge candidates.

CEHRO in cooperation with the International Governance and Risk Institute of the U.K., within the project supporting anti-corruption efforts in Armenia with financial assistance provided by the British Embassy in Armenia, has organized a seminar-training on “International Systems for Conflict of Interest Management in Public Sector” for the representatives of CSOs, media, judiciary and law enforcement agencies in early November of 2017.

Together with GIZ, CEHRO has also organized “The Enforcement Characteristics of the Public Ethics Norms in Prosecutorial and Judicial Systems” workshop aimed to discuss both the issues of the

enforcement of public ethics rules applicable to those judges and prosecutors who are high-ranking officials.

The annual programmes for professional training of persons included in the list of judge candidates for the judges contain the following trainings: “Current Issues in the field of Anti-Corruption Fight in Public Service”, “Professional ethics of a judge” and “Current issues of RA criminal law”.

Within the framework of the anti-corruption trainings the following manuals are being studied:

- “How to struggle against corruption” handbook developed by the OSCE, Office for Economic and Environmental Affairs
- “Investigation features of money laundering crimes” methodological guideline developed by RA Prosecutor’s Office.
- “Interpretation of RA judges’ code of conduct” handbook
- Handbook on scientific-practical interpretations of qualification and examination methods of office crimes.

## Conclusions

Over the past four years Armenia made serious efforts to strengthen the independence of judges and the separation of powers by amending the Constitution and recent enactment of the new Judicial Code. The monitoring team is of a position that further reforming in this direction should be continued to reduce the role of political bodies and officials and increase the role of judges in the judiciary. For instance, there is still a need to configure the procedure of judicial appointments in such a way that the principal decision is adopted by the Supreme Judicial Council. In this respect the monitoring team also recalls the conclusion of the Venice Commission that “appointments of judges of ordinary (non-constitutional) courts are not an appropriate subject for a vote by Parliament because the danger that political considerations prevail over the objective merits of a candidate cannot be excluded.”<sup>142</sup>

The monitoring team urges that the rules of composition if the Supreme Judicial Council be also improved with that its non-judicial members are elected after open selection process based on objective criteria. Improvements made in the judicial self-governance system with reduced role of court chairpersons are among the positive developments of the judicial reform. Another important development is making the automated case allocation system operational. The monitoring team encourages Armenia to ensure the operation of the system in practice. It is also crucial to prevent abuse and ensure that information on case assignments is open to judges, parties and the public.

According to the received information, budget allocated for functioning of the judicial system in practice was almost always 13-20 % less than requested. The monitoring team would like to emphasize the importance of proper financing of the judiciary and encourage Armenia to improve situation in this area.

One of the challenging issues for Armenian courts is their increasing workload. The monitoring team believes that this would open space for corruption risks if not addressed properly.

Finally, the monitoring team urges Armenia to address the problem of restricted possibilities to appeal against decisions of SJC in disciplinary cases and the overlapping between disciplinary liability of judges and termination of their powers as a stand-alone procedure.

Armenia is *largely compliant* with **recommendation 22** of the third round of monitoring report.

## New Recommendation 15: Integrity in the judiciary

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<sup>142</sup> [Judicial Appointments - Report adopted by the Venice Commission at its 70th Plenary Session \(Venice, 16-17 March 2007\)](#)



1. Consider continuing the reform of the judiciary to ensure its independence in law and practice.
2. Establish open, transparent and competitive procedure of election of non-judicial members of the Supreme Judicial Council and specify criteria for elections as its member by the National Assembly.
3. Ensure reducing courts' workload in practice, i.e. by considering increasing the number of judges and court staff.
4. Ensure that judicial servants, including judges' assistants and secretaries, are recruited through an open, merit-based selection.
5. Ensure in practice proper financing of the judiciary.
6. Distinguish grounds and procedures of disciplinary liability and imposed termination of powers of judges in cases of involvement in political activity or violation of the political neutrality requirement.

## *Prosecutors*

### *General information*

The Prosecutor's Office of Armenia is a separate unified system which formally does not belong to any branches of power. The Constitution and Law on the Prosecutor's Office are the main legal acts forming a legal basis for its functioning. The Prosecutor's office in Armenia has also been the subject of the reform efforts. The new Law on the Prosecutor's Office was adopted in November 2017 and entered into force in April 2018 once the newly-elected President of the Republic took office.

The Constitution requires that the Prosecutor's Office of Armenia be a unified system, headed by the Prosecutor General. The Prosecutor's Office of Armenia consists of a Central Office (including 9 divisions and the Central Administrative Office), 18 regional prosecutor's offices and the Military Prosecutor's Office (with its own central office and 9 garrison prosecutor's offices).<sup>143</sup>

The Constitution also defines the powers of the Prosecutor's Office and provides that the rules of operation of the office shall be prescribed by law. Under Article 176, the Prosecutor's Office shall:

- instigate criminal prosecution;
- exercise oversight over the lawfulness of pre-trial criminal proceedings;
- pursue a charge at court;
- appeal against the civil judgments, criminal judgments and decisions of courts;
- exercise oversight over the lawfulness of applying punishments and other coercive measures.

The Constitution further provides that the Prosecutor's Office shall, in exclusive cases and under the procedure prescribed by law, bring an action to court with regard to protection of state interests.<sup>144</sup> Investigator positions within the Prosecutor General's office were eliminated in 2007.

### *Appointment and removal of Prosecutor General*

One of the goals of the reform was to further insulate the prosecution service from political influence concerning the appointment and removal process, including for the chief prosecutor, the Prosecutor General. Under the new Constitutional provisions effective from 2018, the Prosecutor General "shall be elected by the National Assembly, upon the recommendation of the competent standing committee of the National Assembly, by at least three fifths of votes of the total number of Deputies, for a term

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<sup>143</sup> [Structure of the Prosecutor General's Office, website of the Prosecutor General's Office of Armenia.](#)

<sup>144</sup> [RA Constitution](#), Art.176.

of six years. The same person may not be elected as Prosecutor General for more than two consecutive terms.”<sup>145</sup>

This is in contrast to the previous law which provided that only the President of the Republic could nominate a candidate for Prosecutor General to the National Assembly for approval by a vote of the National Assembly.

The qualifications of a candidate are fairly standard. To be eligible for the position of the Prosecutor General, the candidate must be at least 35 years old, have a higher education in Law, be a citizen only of the Republic of Armenia, with the right to vote and with a high level of professional experience over at least ten years. The law may also prescribe additional requirements for the Prosecutor General.<sup>146</sup>

Regarding the process for removal of the Prosecutor General, the Constitution provides that the National Assembly may, in the cases prescribed by law, remove the Prosecutor General from office by at least three fifths of votes of the total number of MPs.<sup>147</sup>

According to the constitutional law "Rules of Procedure of the National Assembly" the right to submit a draft on dismissal of the Prosecutor General is reserved to factions of the National Assembly. The unconditional bases for which early termination of the powers of the Prosecutor General may be sought shall be:

- attaining the age of 65 — the maximum age for occupying a position of a prosecutor;
- loss of citizenship of the Republic of Armenia;
- being declared missing or dead based on a court’s civil judgment entered into force;
- his or her death;
- emergence of any of the restrictions prescribed by the Law on the Prosecutor’s Office for holding the position;
- existence of a criminal judgment of conviction delivered against him or her, having entered into force;
- termination of the criminal prosecution instituted against him or her or failure to carry out the criminal prosecution on a non-acquittal ground;
- submission of a letter of resignation to the National Assembly. In the case of resignation, the powers of the Prosecutor General shall terminate where a second letter of resignation is submitted not later than within a week upon the submission of the first letter of resignation by the Prosecutor General.<sup>148</sup>

Moreover, the powers of the Prosecutor General may be terminated early by the Parliament (qualified majority – 3/5 of the total number of MPs) in the following cases:

- a serious illness which hinders or will hinder the performance of his or her duties for a long period of time;
- the commission of a violation of the law or the rules of conduct of prosecutors, which has impaired the reputation of the Prosecutor’s Office;
- the violation of restrictions and incompatibility requirements prescribed by the Law on the Prosecutor’s Office;
- other insurmountable obstacles to the exercise of his or her powers.<sup>149</sup>

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<sup>145</sup> [RA Constitution](#), Art.177, Part 1.

<sup>146</sup> [RA Constitution](#), Art.177, Part 2.

<sup>147</sup> [RA Constitution](#), Art.177, Part 3.

<sup>148</sup> Law on the Prosecutor’s Office, Article 63, Part 2.

<sup>149</sup> Law on the Prosecutor’s Office, Article 63, Parts 3,5.

### ***Internal independence of prosecutors***

Balancing against the risk of improper political interference in the appointment and removal of the Prosecutor General, the Law on the Prosecutor's Office provides guarantees for the autonomy of the prosecutors and prescribes prohibitions to the interference with a prosecutor's activities.

The new provisions governing mutual relations between superior prosecutors and those subordinated to them, as well as grounds for transferring cases from one prosecutor to another are among the positive developments in ensuring the independence of prosecutors. The Law also provides that an inferior prosecutor can object against assignments and instructions of a superior prosecutor when he or she finds them illegal or unjustified. However, this rule, for some reason, is not applied to assignments or instructions that have been given by the Prosecutor General.

### ***Budget***

The monitoring team was informed by the Government that in general the Prosecutor's Office gets proper state funding. In 2014 budget request of the RA Prosecutor's office was 2,992,573.0 thousand. AMD ( $\approx$  5,3 million EUR), in 2015 3,236,185.0 thousand. AMD ( $\approx$  5,7 million EUR), in 2016 3,625,861.9 thousand. AMD ( $\approx$  6,4 million EUR) and in 2017 3,614,511.61 thousand. AMD ( $\approx$  6,4 million EUR). The allocated budget corresponds with the requested figures. Moreover, in 2017 the Government provided the Prosecutor's Office with additional funding equivalent to 150.000.0 thousand AMD ( $\approx$  266 thousand EUR).

### ***Recruitment, promotion and dismissal of prosecutors***

The central body dealing with recruitment, promotion and dismissal of prosecutors other than the Prosecutor General is the Qualification Commission which operates within the Prosecutor's Office. The Qualification Commission is composed of the 9 following members:

- The Head of the Justice Academy;
- 1 Deputy Prosecutor General;
- 4 prosecutors;
- 3 academic lawyers.

All the members of the Qualification Commission apart from the Head of the Justice Academy are designated by the Prosecutor General. The Deputy Prosecutor General serves as the head of the Commission.<sup>150</sup>

In contrast with the regulations on the appointment of the Prosecutor General which does not provide for a non-political process for selection of candidates, the law provides that the Deputy Prosecutor General shall be appointed by the Prosecutor General drawn from the candidates selected by the decision of at least 6 votes of the members of the Qualification Commission as a result of the competition. While this is an improvement, if the candidate of the Deputy Prosecutor General already occupies a position as a prosecutor, then he can be appointed as the Deputy Prosecutor General without competition by the General Prosecutor after consultation with the collegium of the Prosecutor's Office.

Other prosecutors within the Prosecutors Office are to be appointed by the Prosecutor General, from prosecutors' candidate or official promotions lists. The general requirements for the recruitment and appointment of prosecutors are prescribed in Article 33 of the Law on the Prosecutor's Office which provides in pertinent part that a citizen of the Republic of Armenia from 25 to 65 years old may be appointed as a prosecutor if he/she:

- has obtained a bachelor's degree or a "specialist with diploma" degree in higher legal education in the Republic of Armenia, or has obtained a similar degree in a foreign state, which has been recognized and confirmed in terms of adequacy in the Republic of Armenia in accordance with the procedure stipulated by law;

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<sup>150</sup> Law on the Prosecutor's Office, Article 23, Part 3.

- masters the Armenian language;
- the restrictions on appointment (such as being convicted for an intentional crime etc.) are not applicable to him/her
- has obtained the study in Justice Academy, if in cases prescribed by law has not been freed from that obligation
- has at least 2 years of experience in the capacity of lawyer.<sup>151</sup>

Generally, prosecutors are appointed by the Prosecutor General from the promotion list or list of candidates for prosecutors respectively upon the positive opinion of the Qualification Commission. Managerial positions lower than the Deputy Prosecutor General are filled by candidates from the promotion list. However, as explained below, the Prosecutor General can refer certain candidates not on the list of candidates for prosecutors developed by the Qualification Commission, and can appoint them if the Commission agrees to include them on the list. The Prosecutor General must render a reasoned decision on not including the applicant in the list, which may be appealed by the applicant through a judicial procedure.

The list of candidates for prosecutors shall be completed through open and closed competition. The open competition shall be held by the Qualification Commission once a year, as a rule in January of each year. For the purpose of supplementing the list of candidates for prosecutors, a closed competition may be held during the year, upon the assignment of the Prosecutor General. The procedure for organising open and closed competitions shall be established upon the Order of the Prosecutor General.<sup>152</sup> The Government advised that the so-called closed competition does not mean it is a secret competition but that it allows for hiring of certain people who it has been decided do not need to meet the other training and qualification requirements. Examples were given of investigators or advocates with practice experience who may wish to become prosecutors. Regulations governing this exception to the open competition were developed after the on-site visit and the monitoring team was not in a position to assess them.

The law also provides for the stages of the recruitment process which are as follows:

- announcement in media;
- application;
- checking by the Qualification Commission of the applicant's level of professionalism, professional skills, awareness of the requirements of the fundamental legal acts related to his or her status, personal qualities and merits (self-control, conduct, listening skills, communication skills, analytical abilities, etc.), as well as the compliance of the submitted documents with the requirements provided for by law;
- submission of the candidature to the Prosecutor General;
- including a candidate to the list of candidates for prosecutors by the Prosecutor General;
- training course at the Academy of Justice (except those who have professional experience or scientific degree);
- appointment by the Prosecutor General.

Regarding promotion of prosecutors, according to Article 39 of the Law on Prosecutor's Office, the official promotion lists of prosecutors shall be drawn up by the Qualification Commission upon the order of the Prosecutor General:

- in the course of regular competency evaluation of prosecutors;

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<sup>151</sup> Law on the Prosecutor's Office, Article 33.

<sup>152</sup> Law on the Prosecutor's Office, Article 38, Part 1.

- on an extraordinary basis, when the Prosecutor General submits to the Qualification Commission a proposal on including a prosecutor in the promotion list by submitting relevant appraisal issued by the Prosecutor General or the Deputy Prosecutor General coordinating the respective field. The prosecutor shall be included in the official promotion list upon the positive conclusion of the Qualification Commission;
- with simultaneous including the person, exempt from studies at the Academy of Justice, in the lists of candidates for prosecutors and of official promotion.

The Government informed that the situations intended to be covered by the Prosecutor General's power to include in the promotion list someone not otherwise qualified in the ordinary process could be when no one with the needed special skills is on the list. For example, if there is a vacancy in the Department which provides opinions for the office about normative acts or opinions on draft legislation, but there is no one on the promotions list with those skills, it may be necessary to promote someone not already on the list to fill such a vacancy.

The grounds for dismissing a prosecutor from office shall be:

- A personal application;
- Attaining the age of 65 — the maximum age for occupying a position of a prosecutor;
- Death of the prosecutor;
- Termination of the citizenship of the Republic of Armenia;
- Reduction in force;
- Refusal to be transferred to another structural subdivision of the prosecutor's office or to another prosecutor's office in the case of dissolution or reorganisation of the subdivision where he or she used to hold office;
- Being declared dead or missing based on a court's civil judgment entered into force;
- Emergence of the restrictions prescribed the Law on the Prosecutor's Office (except termination of a criminal prosecution for an intentional crime on non-acquittal grounds);
- Imposition of dismissal as a disciplinary penalty;
- A court's act entered into force, establishing that he or she has been appointed to the position in violating of the requirements of the law;
- Endorsement by the Prosecutor General a motion of the Qualification Commission on dismissal of the prosecutor who was found non-competent;
- Existence of a criminal judgment of conviction delivered against him or her, having entered into force;
- Termination of the criminal prosecution instituted against him or her or failure to carry out the criminal prosecution on a non-acquittal ground.

Failure to attend work for more than six consecutive months within one year due to temporary incapacity for work may also serve as a ground for dismissing a prosecutor from office<sup>153</sup>.

Prosecutors are dismissed from office by decision of the Prosecutor General.

Armenia has advised the monitoring team that the total number of prosecutors for each year from 2014 – 2017 is as follows:

- 2014– 337 positions, 22 vacant
- 2015– 337 positions, 25 vacant

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<sup>153</sup> Law on the Prosecutor's Office, Parts 1,2.

- 2016– 337 positions, 12 vacant
- 2017– 337 positions, 6 vacant

Armenia further advised that the following number of persons were appointed to the position of a prosecutor or were promoted in their positions as prosecutors for the period 2014-2017 is as follows:

- 2014- 64 appointments and 27 promotions
- 2015- 25 appointments and 28 promotion
- 2016- 32 appointments and 57 promotions
- 2017- 45 appointments and 55 promotion

### ***Ethics rules and prevention of conflict of interests***

Unlike previous practice in which the prosecutors' Code of Conduct was established by the Prosecutor General, the new law has a separate chapter to the regulation of the prosecutor's conduct. The law includes a number of the pre-existing general rules of conduct (including those related to preserving prosecutors' integrity, political neutrality etc.), rules related to official roles (like performing duties in good faith, taking measures for professional development etc.) and extra-official relations (avoid using prosecutor's position for private benefit, refrain from undue communications etc.)

The law also provides for the establishment of the Ethics Commission in the Prosecutor General's Office to assist in enforcement of the ethics rules and disciplinary actions as provided by law. The Ethics Commission shall be comprised of 7 of the following members:

- 1 Deputy Prosecutor General;
- 3 prosecutors;
- 3 academic lawyers.

The academic lawyers and the Deputy Prosecutor General are designated by the Prosecutor General, and 3 prosecutors are elected by majority of votes by the most senior officials in the office, including the Prosecutor General, Deputy Prosecutors General who are not members of the Ethics Commission, heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, prosecutors of marzes, prosecutors of administrative districts of the city of Yerevan and military prosecutors of garrisons. The Ethics Commission shall be headed by the Deputy Prosecutor General<sup>154</sup>.

In addition to its role in identifying and sanctioning violations, the Commission can provide advice to prosecutors faced with ethics issues.

### ***Complaint and disciplinary proceedings***

The Law on the Prosecutor's Office provides for the following grounds for bringing a prosecutor to disciplinary liability:

- failure to perform or improper performance of his or her duties;
- violation of the rules of conduct of a prosecutor;
- regular violation of the internal rules of labour discipline;
- failure to observe the restrictions and incompatibility requirements prescribed by the law<sup>155</sup>.

The following disciplinary penalties may be imposed on prosecutors found to have violated the applicable rules and standards:

- reprimand;

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<sup>154</sup> Law on the Prosecutor's Office, Article 23, Part 2.

<sup>155</sup> Law on the Prosecutor's Office, Article 53.

- severe reprimand;
- demotion in class rank - by one degree;
- demotion of a position by one level;
- dismissal from office.<sup>156</sup>

The disciplinary penalties are imposed by the Prosecutor General only if a violation is found by the Ethics Commission except demotion in class rank imposed on prosecutors holding highest class rank. In this case, the decision is taken by the President upon the submission of the Prosecutor General. In certain circumstances, the Prosecutor General can impose disciplinary sanctions based on the conclusion of the Commission for Corruption Prevention.

As far as limits on the Prosecutor General’s discretion to impose the most serious sanction, removal of a prosecutor can only be considered by the Prosecutor General if the Ethics Commission recommends this sanction. The Prosecutor General has no authority to ignore a recommendation of the Ethics Commission and to impose no sanction.

The disciplinary procedures against prosecutors can be divided into the following stages:

- initiating the disciplinary procedure by the Prosecutor General (on his own initiative, based on communications from natural or legal persons, state and local self-government bodies or officials, mass media publications; based on a court sanction on submitting an application with the Prosecutor General for imposing disciplinary action; or based on motions by the senior prosecutors) or by the Ethics Commission;
- establishment of a task group of prosecutors or designation one prosecutor for carrying out the disciplinary proceedings;
- informing a prosecutor about a disciplinary proceeding against him;
- examination of the files;
- submission of the issue of imposing disciplinary action by the Prosecutor General to the Ethics Commission;
- submission by the Ethical Commission of its opinion to the Prosecutor General;
- final decision by the Prosecutor General.

In total, 24 disciplinary proceedings against 25 prosecutors were initiated in 2014-2017. One of the disciplinary proceedings has been transferred from 2013.

**Table 7. Statistics on disciplinary sanctions imposed on prosecutors in 2014-2017**

Grounds for disciplinary liability	Number of prosecutors under disciplinary proceedings	Admonition type of penalty applied	Reprimand type of penalty applied	Number of suspended proceedings
<b>Improper performance of official duties</b>	18	4	6	6
<b>Gross or regular violation of law in the course of exercising his/her powers</b>	3	-	3	-

<sup>156</sup> Law on the Prosecutor’s Office, Article 54, Part 1.

<b>Essential violations of requirements of the Code of Conduct</b>	4	2	2	-
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Source: the information submitted by the Government

### ***Criminal misconduct by prosecutors***

The Government advised the monitors that regarding corruption offences, during the period 2014-2017, no prosecutors were convicted of such offences. Only 3 prosecutors were accused of such offences which were the subject of three separate investigations.

### ***Collegium of Prosecutors***

Armenia does not have a Council of Prosecutors as a body of prosecutorial self-government. Instead, there is the prosecutors' collegium. The law provides that the latter shall function in order to discuss fundamental issues related to the organisation of the Prosecution activities and decide the implementation of constitutional powers chaired by the Prosecutor General.

The collegium is composed of the Prosecutor General, Deputies of the Prosecutor General, heads of divisions within the prosecution service and the prosecutor of Yerevan. This is a formal body for discussion of different issues related to prosecutors' activities between leadership of the institution.

For instance, this body advises the Prosecutor General on how to determine the directions of exercising the powers of the Prosecutor's Office. Decisions of the Collegium of the Prosecutor's Office shall be implemented upon the orders of the Prosecutor General.

### ***Asset declarations and declarations of interests***

In the past, only the Prosecutor General, his/her deputies, prosecutors of the marzes, the prosecutor of Yerevan and the military prosecutors of the garrison presented asset declarations. By the 09.06.2017 amendment of the Law on Public Service all prosecutors obliged to submit a declaration on property, income and related persons, and in accordance with the new law on Public Service adopted in 2018, all prosecutors are required to declare their property, income and interests

### ***Other restrictions***

According to Article 49 of the Law on the Prosecutor's Office, a prosecutor may not hold any position not related to his or her status in other state or local self-government bodies, any position in commercial organisations, or engage in entrepreneurial activities or perform any other paid work, except for academic, educational and creative work.

A prosecutor may not work jointly with a person with whom he or she has a close kinship or in-law relationship (parent, spouse, child, brother, sister, spouse's parent, spouse's child, spouse's brother and spouse's sister), where their service in office is related to immediate subordination to one another.

A prosecutor shall not have the right to be a participant of an economic entity or a depositor of a limited partnership, where in addition to participating in the general meeting of the company in question a prosecutor is also engaged in the fulfilment of other instructive or managerial functions within the organisation.

A prosecutor shall not have the right to:

- Be a representative of third parties, except for the cases when he or she represents his or her family members or persons under his or her guardianship (curatorship);
- Use his or her official position in the interests of political parties, non-governmental, including religious, associations, or advocate certain attitude towards them, as well as carry out other political or religious activities in the course of fulfilling his or her official duties;
- Organise or participate in strikes;



- Receive royalties for the publications or speeches deriving from the fulfilment of his or her official duties, except for publications or speeches deriving from academic, educational and creative work;
- Use logistical, financial and communications means, state property and official information for non-official purposes;
- Receive gifts, money or services from other persons for the fulfilment of official duties, except for the cases provided for by legislation.

Academic, educational and creative work carried out by the prosecutor must not hinder the fulfilment of his or her duties.

### ***Training and guidelines***

Within the framework of “Professional training of candidates of prosecutors” and “Annual training of Prosecutors” programs, “Current issues in the field of anti-corruption in public service sphere” and “Professional ethics of prosecutor” courses were established. During 2014-2017, 42 candidates for prosecutor passed the course “Professional ethics of a prosecutor” and 67 prosecutors completed the training.

Apart from that, the monitoring team was informed about a number of other anti-corruption training activities for prosecutors conducted mostly with support of international partners.

### ***Remuneration***

The remuneration of prosecutors is determined by the Law “On Remuneration of Persons Holding State Positions”. The amounts of average gross salaries are provided below. The Government advised that these salaries are above average salaries and are considered to be adequate compensation by the Prosecutor General’s management.

**Table 8. Statistics on average gross salaries of prosecutors**

	<b>Position</b>	<b>Average AMD</b>
1	Prosecutor General of the RA	1,289,730 (≈2150 EUR)
2	Deputy prosecutor general of the RA, Military prosecutor of the RA	916,701 (≈1520 EUR)
3	Deputy military prosecutor of the RA, head of department	755161 (≈1250 EUR)
4	Prosecutor of district, prosecutor of marz, military prosecutor of garrison	693,455 (≈1150 EUR)
5	Senior prosecutor of the RA prosecutor general's office, deputy head of department	593,195 (≈980 EUR)
6	Deputy prosecutor of the Yerevan, deputy prosecutor of the district, deputy prosecutor of the marz, senior prosecutor of the department, deputy military prosecutor of garrison, head of the RA central military prosecutor's office division	610,861 (≈1010 UER)

7	Prosecutor of the department, senior prosecutor of the RA central military prosecutor's office division	579,897 (≈960 EUR)
8	Senior prosecutor of the RA central military prosecutor's office division, senior prosecutor of the district prosecutor's office	540,168 (≈900 EUR)
9	Prosecutor of the district prosecutor's office, senior prosecutor of the garrison military prosecutor's office, prosecutor of the RA central military prosecutor's office division	498,369 (≈830 EUR)
10	Prosecutor	470,797 (≈784 EUR)

*Source: the information submitted by the Government*

Armenia reported that prosecutors may also receive bonuses in amounts not to exceed one third of their basic salaries. The Prosecutor General determines the amount, but the timing and the range of payments are set in the combination of the Law on State Remuneration and the Law on the Prosecutor's Office, including based on, among other factors, rank and grade.

### ***Performance evaluation***

The assessment of the prosecutors' performance is carried out through the attestation system.

According to Article 50 of the Law on the Prosecutor's Office the competency of prosecutors is evaluated once every three years, with a possibility of an extraordinary evaluation on the order of the Prosecutor General, supported by a reasoned decision, or when the prosecutor so wished, at least one year following the regular evaluation. The prosecutor has to participate in the evaluation in person. The procedure for competency evaluation of prosecutors shall be established by the Prosecutor General.

The Prosecutor General and his deputies, the heads of structural subdivisions of the General Prosecutor's Office, Prosecutor of the city of Yerevan, Deputy Military Prosecutors, prosecutors of administrative districts of the city of Yerevan, prosecutors of marzes, military prosecutors of garrisons, senior prosecutors of the General Prosecutor's Office and prosecutors that are on maternity leave or parental leave for a child under the age of three years, unless they have expressed a wish to participate in the competency evaluation are not subject to such evaluation.

An appraisal of the prosecutor is submitted by the immediate superior prosecutor at least two weeks before the evaluation. The appraisal must contain data on the prosecutor, on his or her practical and personal features and a justified evaluation of the results of his or her official activities. The prosecutor must have a chance to get familiarised with the appraisal at least one week before the evaluation takes place. In case the prosecutor disagrees with the appraised, he/she can express this in writing to the immediate superior prosecutor, higher superior prosecutor or the Qualification Commission. Failure to submit an appraisal cannot have a negative impact on the final decision of the evaluation.

The final decision of the evaluation can declare that the prosecutor is:

- competent for the position held;
- competent for the position held, being included in the relevant list of official promotion of prosecutors, as prescribed by this Law;
- competent for the position held, under the condition of undergoing additional training;

- competent for the position held, by filing a motion to grant a class rank on extraordinary basis;
- not competent for the position held, by filing a motion to transfer to a lower position;
- not competent for the position held, by filing a motion to dismiss from the position<sup>157</sup>.

The prosecutor has to be informed about the decision on the day of the evaluation and has the possibility to appeal to the Prosecutor General within three days. In case of appeal, the Prosecutor general will decide on upholding or rejecting the appeal within five days from receiving the appeal. In case of upholding the appeal, the prosecutor must undergo another evaluation within three days from taking the decision. In case of rejecting the appeal, the prosecutor can appeal further through a judicial procedure.

In 2014, 90 prosecutors passed attestations, in 2015 - 61, in 2016- 60 and in 2017 -104 prosecutors, from which 12 were required to and successfully completed the condition of passing the training, and 2 were dismissed from their positions because of incompetence.

### **Conclusion**

The Constitution provides prosecutors with powers that need to be limited to some extent. These powers include 1) to bring cases to protect the state's interest (when the state or local government declines or fails to do this within a reasonable time period or when no state or local government body is authorized by law to do this); 2) to appeal against judicial acts in civil or administrative cases related to the state's interest wherein the Prosecutor's Office did not participate (when the state or local government is not going to appeal). Although Armenia's Constitution and laws provide some important limitations, generally these powers have been criticized as inconsistent with the powers of the prosecutor in a democracy and creating corruption risks. Rules of conduct and ethical codes discussed can provide some protection against abuse.

Unfortunately, the Constitutional reform does not sufficiently remove the involvement of politicians from the process of election and dismissal of the Prosecutor General; it merely shifts to an increased role of the Parliament and a diminished role of the President. Overall, it does not adequately insulate the prosecution service from potential political pressure and influence. The monitoring team is of the opinion that broader involvement of legal professionals, including those from civil society, could reduce a danger of politicisation of the election.

Moreover, the existing possibility of re-election of the Prosecutor General for the second consecutive term can pose a risk in terms of his/her independence from political forces present in the Parliament. According to the conclusion of the Venice Commission "there is a potential risk that a prosecutor who is seeking re-appointment by a political body will behave in such a manner as to obtain the favour of that body or at least to be perceived as doing so. A Prosecutor General should be appointed permanently or for a relatively long period without the possibility of renewal at the end of that period. The period of office should not coincide with Parliament's term in office."<sup>158</sup>

Making more of the features of self-governance within the Prosecutor's General office part of the law rather than policy is a welcome addition in line with international standards. However, the system provides for almost no input from independent or lower level prosecutors, only managers and senior prosecutors or others selected by the Prosecutor General. For example, the monitoring team notes that the Qualifications Commission is composed entirely of persons appointed by the Prosecutor General which may stifle healthy independent recommendations and deflate morale. The collegium is also composed of managers. Additionally, there are still some features of the law which are to be implemented by internal regulations, such as the use of closed competition for hiring and stipulating when the prosecutor may add persons to the promotions list on an extraordinary basis.

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<sup>157</sup> Law on the Prosecutor's Office, Article 50, Part 14.

<sup>158</sup> The Venice Commission, [Report on European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service](#), p. 8

Obviously, important limitations must be contained in the criteria for appointing applicants outside of public competition to avoid undermining the whole process.

#### **New Recommendation 16: Integrity in the service of public prosecution**

1. Consider further narrowing the powers of the Prosecutor's Office to participate in non-criminal protection of the state's interest by elaborating more specific criteria through internal policies for initiating or intervening in a case.
2. Introduce mandatory involvement of independent experts to the process of selection of a candidate for the Prosecutor General by the Standing Committee.
3. Consider abolishing the possibility of re-election of the Prosecutor General for the second consecutive term in office in favour of longer single term.
4. Provide prosecutors with the right to object to a body within the Prosecutor's Office against assignments and instructions of the Prosecutor General when they find them illegal or unjustified.
5. Ensure that the closed competition to hire prosecutors is applied in exceptional cases and based on clearly defined criteria.
6. Change the rules of composition of the Qualification Commission so that a simple majority of its members should be appointed in a process that does not include the Prosecutor General. Increase representation of non-senior prosecutors in the representative bodies of prosecutors.
7. Consider limitation of the Prosecutor General's discretion in decision-making on the issues recommended by the representative bodies of prosecutors.

#### **2.4 Transparency and accountability in public administration**

##### **Recommendation 17 from the Third Round of Monitoring on Armenia: Transparency and discretion in public administration**

- Ensure proper regulatory impact assessment before adopting legislation and stability of legislation as much as possible to the benefit of businesses in Armenia;
- Continue introducing e-governance tools aimed at decreasing the customer contact with the Government bureaucracy and reducing the risks of corruption;
- Make the OGP national platform operational and efficient forum for discussing policy initiatives and monitoring of implementation of e-governance, transparency and accountability initiatives;
- Finalise inspections reforms with the involvement of the relevant stakeholders;
- Complete Tax and Customs Reform and ensure their implementation in practice.

*“Ensure proper regulatory impact assessment before adopting legislation and stability of legislation as much as possible to the benefit of businesses in Armenia;”*

The third round of monitoring report pointed out that the legal drafting process in Armenia was chaotic, private sector was not consulted on draft regulations affecting their business, and frequent changes of legislation adversely affected the business environment.

Armenia reported progress in introducing regulatory impact assessment with the support of international and donor organisations (OSCE/ODIHR, World Bank). The National Center for Legislative Regulation (NCLR) was established that developed and tested the regulatory impact assessment (RIA) methodology and conducted trainings on its application for line ministries and state bodies (49 participants in total). In 2016, pilot RIA of 12 legal acts and in 2017, 23 legal acts were carried out by NCLR. In addition, the Government reported high numbers in relation to the

application of RIA by the Ministry of Economy (conducted based on the old regulations providing for mandatory RIA for all legal acts), raising questions as to the quality of the process and the results of these assessments, which however, the monitoring team was not in a position to assess.<sup>159</sup>

2017 amendments limited the application of RIA to legal acts selected by the decision of the Prime Minister, or the Government, but with no selection criteria provided.<sup>160</sup> According to the NGOs, this limitation may lead to subjectivity in determining which laws should go through RIA, leaving important pieces of legislation without impact assessment. While restricting the application of RIA in the interest of quality and better use of resources would be a reasonable step, the monitoring team believes, that setting criteria for selecting laws subject to assessment would help ensure objectivity and avoid the need to have the decision by the Government on a case by case basis. The Government informed that such criteria are being developed.

In January 2017 Armenia introduced an electronic portal [www.e-draft.am](http://www.e-draft.am) for receiving public feedback on draft legal acts. According to the Government, the portal is operational, all legal acts are posted on it<sup>161</sup> and comments are received from civil society and business representatives. As discussed in the section 2.6 of the report, business representatives have been involved in elaboration of the tax and inspections reform, among them through e-drafts platform.

The website is interactive and seems to enjoy high level of public interest, with around 17 500 registered users and considerable number of visits, as shown below. It seems that the back office in the Ministry of Justice responsible for monitoring the process of reviewing drafts and providing feedback to the citizens by responsible agencies is working well too.

**Chart 3. Statistics of visits of e-drafts website**



Source: statistics available on [www.e-draft.am](http://www.e-draft.am)

However, reportedly, the rule on publication of drafts for comments is not always followed. At the time of the monitoring visit, the NGOs issued a press release stating that they did not have an opportunity to comment on the draft laws on civil service and public service, before they were submitted to the Parliament. The Government contends that the draft law was placed on the website, the concerns of the NGOs were addressed during the parliamentary procedure and have been reflected in the adopted versions of the laws.

<sup>159</sup> 1501 regulatory impact assessment, including the legal acts related to SME, competition.

<sup>160</sup> The Law on Normative Legal Acts, adopted on 21 March 2018, Chapter 3, Article 5.

<sup>161</sup> This is a requirement of the law on normative legal acts.

As for the predictable legal environment, NGOs reported frequent changes of legislation, for example the Tax Code and customs regulations, both changed many times after the adoption even before their entry into force. Armenia has held discussions and workshops on the ways to further improve legal drafting process.

***“Continue introducing e-governance tools aimed at decreasing the customer contact with the Government bureaucracy and reducing the risks of corruption;”***

Armenia reported numerous e-portals introduced since the last monitoring round, including: e-civil system;<sup>162</sup> e-petition; e-bankruptcy; [www.azdarar.am](http://www.azdarar.am); e-court; e-hotline; [www.e-license.am](http://www.e-license.am); e-penitentiary; e-visa; e-consul; e-request.am; e-drafts and others. Most of these websites are linked to e-government website e-gov.am. In addition, as discussed below, most of the tax services have been digitalized and the same process is ongoing for customs.

Electronic services can be good tools for minimizing corruption risks in service delivery, especially if they are addressed to identified corruption risks. It must be ensured however that the citizens are satisfied with the provided services and are using them. Armenia did not provide information on impact assessments or customer satisfaction surveys to evaluate success of these tools. In addition, it was not possible for the monitoring team to determine, whether these on-line tools ensure electronic service delivery in full or, only partially (so as only applications for services could be accepted online but actual service delivery happening by visiting relevant service centres). In any case, business representatives, as well as CSOs met at the on-site, were satisfied with e-services in Armenia. Reportedly, the citizens are using the services and are satisfied with their quality. At the same time, the discussions noted that the introduction of e-governance tools can only have limited positive effect on the actual or perceived corruption in the absence of genuine political will to fight it. The monitoring team commends Armenia on using modern solutions to public service delivery and encouraged to further continue its efforts in this direction.

***“Finalise inspections reforms with the involvement of the relevant stakeholders;”***

The third round of monitoring report welcomed the launch of the inspections’ reform and encouraged Armenia to implement the planned measures. In September 2014, the Government adopted the new Concept on Optimization of the Inspection system to increase the effectiveness and transparency of inspections, as well as the Law on Inspection Bodies aimed at reduction of inspection bodies.<sup>163</sup> The reform is implemented under the auspices of the Inspection Reform Coordination Council with the involvement of the stakeholders. As a part of the reform, the first Inspection Body (Market Surveillance) was established in 2015.<sup>164</sup> More inspection bodies followed in urban development, healthcare, education and environment. According to the Government, the reform has been finalised, inspection bodies are formed and operational, new electronic tools and dispute resolution mechanism were introduced. However, stakeholders met at the on-site informed the monitoring team that the inspections reform was started with a bigger ambition and plans, than materialised, the reform has been slow and one positive measure in this process was the moratorium on inspections of SMEs described in the previous monitoring round as well.

***“Complete Tax and Customs Reform and ensure their implementation in practice.”***

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<sup>162</sup> Connected to State Register of National Statistics Service, State Register of Population, to the Electronic Consular system, electronic systems of the Ministry of Health, Ministry of Labour and Social Issues, Notary and credit bureau systems.

<sup>163</sup> The Government reported again that the new governance system was designed according to the OECD Regulatory Enforcement and Inspections principles.

<sup>164</sup> The Market and Consumer Protection State Inspectorate implements public control activities in the field of standardization, measurement uniformity, conformity assessment and market surveillance state, as well as in the area of consumer protection acting on behalf of the Republic of Armenia.

The third round of monitoring report noted that, despite the measures taken by the Government to reform tax and customs, further reforms were needed to root out corruption in these high-risk areas. At the time of the fourth round of monitoring, in spite of the reforms carried out in these spheres and some incremental improvements, the overall picture remained largely unchanged. The Government disagrees with this finding. However, the companies surveyed in the Global Competitiveness Report 2017-2018 still identify tax regulations and inefficient government bureaucracy among the most problematic factors for doing business in Armenia alongside corruption.<sup>165</sup> According to the Investment Climate Statement 2017 “Tax and customs procedures, while having recently improved, still lack transparency. Although the use of reference prices during customs clearance has reduced, it is still not uncommon to see manipulation of the classification of goods that increases costs for economic operators.”<sup>166</sup> Whereas according to the GCB 2016 tax officials are perceived as the third most corrupt authorities in Armenia (43%).<sup>167</sup>

Tax and customs reforms have continued since the last monitoring round. Tax sector has been included as a priority in the anti-corruption strategy adopted in 2015 as discussed in chapter 1 of the report. The sectoral action plan was however adopted with the considerable delay, only in 2018 and the monitoring team did not have an opportunity to examine the document. According to the World Bank, Armenia’s tax reform brings more public revenues and fairer a tax code. In 2016, 96% of tax services and documents were provided and filed electronically.<sup>168</sup> Among the implemented reforms, several progressive measures may have anti-corruption effect in the view of the monitoring team. These are:

- E-filing of tax returns decreased the interactions with the tax officers and related corruption risks.<sup>169</sup>
- Automated risk-based tax audit methodology and new risk criteria (approved in January 2018) will also decrease corruption risk related in tax audit. The Monitoring Centre was set up under the SRC to improve analytical processes of risk detection and ensure electronic oversight.<sup>170</sup> The targeted monitoring will allow the SRC to conduct fewer inspections and minimize interaction of tax officers with taxpayers. According to the Government, 73.5% of surveyed taxpayers positively assessed the work of the Centre.
- The number of tax inspections reduced by 2.5 times.<sup>171</sup>
- Customs control procedures have been improved. E-system for customs declaration was made operational.
- The Government has engaged with the non-government stakeholders on tax matters through tax administration and tax policy public councils. Awareness raising activities have been carried out and the transparency of tax and custom’s authorities increased.

The new Tax Code adopted in 2016 will enter into force in 2019 and is believed to simplify tax administration procedures. NGOs reported, however that after the adoption, the Code has been changed several times and, in some cases, its provisions have been worsened. Although business representatives participated in the development of the Tax Code and their concerns have been partly

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<sup>165</sup> World Economic Forum, Global Competitiveness Index 2017-2018, [Armenia](#)

<sup>166</sup> [US Department of State, Investment Climate Statements \(2017\)](#).

<sup>167</sup> Transparency International, [People and Corruption: Europe and Central Asia](#) (2016).

<sup>168</sup> World Bank (2016) [Armenia’s Tax Reform Brings More Public Revenues and a Fairer Tax Code](#).

<sup>169</sup> 97 % of tax returns filed to Armenia’s tax authorities in 2017 is done through e-filing.

<sup>170</sup> As of December 1, 2017, 3780 notifications have been sent to taxpayers through the Monitoring Centre, as a result of transaction monitoring with CRs, furthermore 804 taxpayers have been notified more than once. 476 taxpayers have submitted objection or clarification. From July 1, 2017 to December 1, 1586 notifications have been sent through the monitoring results of accounting documents, furthermore 133 taxpayers have been notified more than once. Objection or clarification has risen by 318 taxpayers.

<sup>171</sup> In October 2016-March 2017, SRC carried out 3588 inspections compared to 9090 of last year.

addressed. Overall, business representatives met at the on-site visit positively assessed the tax reform as well but stated that more is needed to be done and the next phase of the reform is envisaged for the future.

One of the apparent corruption risks in Armenia have been custom's brokers, who allegedly have been extorting bribes in exchange of resolve the issues of business with the authorities. An Armenian entrepreneur and prominent civic activities claimed that he was unable to go through customs clearance procedure because he refused to pay a bribe through a custom's broker: "you ask them a written question, they give you a private phone number and tell you to go to talk to them in person".<sup>172</sup> According to the Government, individuals will no longer have to pay customs brokers for filling out goods declarations, since customs processing is carried out by customs body free of additional charge.

### **Transparency initiatives**

***"Make the OGP national platform operational and efficient forum for discussing policy initiatives and monitoring of implementation of e-governance, transparency and accountability initiatives;"***

Armenia is a member of the OGP since 2012 and is in the process of implementing its third national action plan.<sup>173</sup> Its participation in the OGP so far has been active and successful.<sup>174</sup> The coordination of the process at the national level is ensured by the Government Staff Office through a working group, leading public consultations on the draft action plans. At the time of the monitoring visit, Armenia was developing its fourth action plan, and the upcoming commitments were not known yet. The stakeholders met at the on-site visit positively assessed the work carried out under the OGP so far. The NGOs advocate for increasing their role not only as co-creators, but also as co-implementers and more support from donor community to intensify OGP work at the national level.

Armenia is a candidate member of EITI since March 2017. EITI Work-plan for 2017-2018 includes a number of activities to ensure Armenia's compliance with the EITI Standards, among them are the development of a beneficial ownership roadmap and reviewing legislation to identify gaps in relation to the EITI standards. Armenia's first report will be prepared in July and launched in October 2018. EITI Work-plan for 2017-2018 is mostly concentrated on the metal mining based in the decision of the Multi-stakeholder Group.

Armenia is encouraged to continue its active work under the OGP, make and implement ambitious commitments and work further on advancing various transparency initiatives.

### **Conclusions**

Armenia has made steps to improve the legal drafting process introducing the methodology for RIA and piloting it in practice. In addition, the portal for public feedback on draft legislation is operational. Some of the important laws adopted since the last monitoring round have been elaborated through extensive public consultations. Criteria for selecting draft laws for RIA are now being developed. The quality of the assessments could not be evaluated by the monitoring team. The stability of legislation could not be ensured, as an example, the Tax Code has been changed several times after its adoption before its entry into force. Tax and customs reforms continued with positive results that will potentially have a positive impact on the level of corruption if implemented in practice. Armenia continued to actively participate in the OGP and recently its work on reaching compliance with EITI standards has been intensified.

Armenia is ***largely compliant*** with the **recommendation 17** of the third round of monitoring report.

### **New Recommendation 17. Transparency and accountability in public administration**

- 1.** Further enhance the participation and compliance with the requirements of transparency initiatives (OGP, EITI).

<sup>172</sup> [Armenian Entrepreneur Demands Authorities Do Not Make Him Resort to Corruption.](#)

<sup>173</sup> OGP, Armenia's Third [National Action Plan 2016-2018.](#)

<sup>174</sup> Armenia is one of the winners of the first place in 2015 Global summit held in Mexico.



2. Ensure publication of the information and datasets of the public interest in open data format.

### *Access to information*

#### **Recommendation 20 from the Third Round of Monitoring report on Armenia: Access to information**

- Analyse and subsequently review the FOI Law to bring it in line with international standards, in order to ensure clarity of existing regulations and eliminate existing shortcomings, among other issues reflect the public interest test and e-requests; adopt necessary secondary legislation for implementation of FOI.
- Ensure proactive publication of information by state bodies, clarify records management and classification system and introduce the registries of public information in state bodies; consider establishing a unified portal for proactive publication of information.
- Ensure efficient supervision and oversight of enforcement of the right of access to information as well as adequate powers and resources to issue binding decisions and ensure designation of FOI officers in each agency as required by article 13 of the Law.
- Raise awareness of public officials to foster the culture of openness and transparency in Government and carry out systematic training of information officers and of other public officials dealing with access to information issues.
- Ensure implementation in practice of the provisions related to transparency of the entities using public resources (article 1.2 of the Law).

### *New draft law on FOI*

***“Analyse and subsequently review the FOI Law to bring it in line with international standards, in order to ensure clarity of existing regulations and eliminate existing shortcomings, among other issues reflect the public interest test and e-requests; adopt necessary secondary legislation for implementation of FOI.”***

One of the main achievements in the area of freedom of information (FOI) since the last monitoring round has been the adoption of the long-awaited secondary legislation, the Government Decision regulating e-requests, clarifying the role of FOI officers and providing for progressive regulations related to proactive publication of information.<sup>175</sup> The adoption of this Decision has been followed by appointing FOI officers in state bodies and updating their web-sites.<sup>176</sup>

As regards the review of the FOI law of 2003 to bring it closer to international standards, the Government reported that the draft law was prepared by the working group in consultation with civil society, however, eventually due to civil society objections, the decision was made not to pursue it. According to the Government, civil society considers that the abovementioned Decision fills in existing gaps and there is no need to adopt a new law. However, NGOs reported that they stopped lobbying the new law after they saw the draft prepared by the Ministry of Justice without consultations containing regressive provisions that could have undermined fairly good existing regulation and their implementation in practice. The authorities met at the on-site informed that the draft law has been sent for international expertise, however, NGOs consider that the work should be started anew and not on the basis of the flawed draft. The monitoring team is not in a position to assess the draft law and its compliance with international standards.

### *Proactive publication and open data*

***“Ensure proactive publication of information by state bodies, clarify records management and classification system and introduce the registries of public information in state bodies; consider establishing a unified portal for proactive publication of information.”***

<sup>175</sup> Decision N 1204-N adopted on 15 October 2015 13 years after the adoption of the FOI Law. Entered into force on 1 July 2016.

<sup>176</sup> Updated list of all FOI officers in central Government with their contact information is available at the website of FOICA [www.toi.am/en](http://www.toi.am/en)

According to the Government, proactive publication of public information is practiced throughout the public sector. FOICA, having monitored proactive publication practices in the state bodies,<sup>177</sup> pointed to the failure by state bodies to comply with the requirements of law, for example of the one of the categories of information mandatory for publication has been published by 8 out of 17 ministries. In addition, the web-sites are not user-friendly to allow easy access to information. The procedure on registration, classification and storage of information has been adopted (as required by Art. 5 of the FOI Law). Registries for public information still do not exist in Armenia.

### ***Oversight and enforcement***

***“Ensure efficient supervision and oversight of enforcement of the right of access to information as well as adequate powers and resources to issue binding decisions, and ensure designation of FOI officers in each agency as required by article 13 of the Law.”***

As regards the practical application, positive development reported by the Government is the launch and operation of the e-requests portal [www.e-request.am](http://www.e-request.am) allowing for electronic request of public information as provided by legislation and generating detailed statistics<sup>178</sup> based on the requests received electronically.

FOI officers have been designated across the board in public sector of Armenia,<sup>179</sup> however, efficient supervision and oversight over the enforcement of the right to access have still been lacking. As mentioned during the last monitoring round, the functions of the Ombudsman are limited to complaints related to violations of the right to access to information. The overall number of complaints related to access to information within the period between 2015 and 2017 was 17, with 4 complaints received in 2015, 6 – in 2016, and 7 – in 2017.

The authorities noted that 98% of all requests have been granted. However, according to FOICA, the percentage of satisfied requests was 34% in 2017, 57% in 2016 and 61% in 2015, which is a considerable decrease.<sup>180</sup>

FOICA developed the freedom of information index to annually assess state bodies compliance with the FOI regulations.<sup>181</sup> In addition, with the support of the OSCE and USAID, a web-site GiveMeInfo.am was created to monitor implementation of the FOI law and enhance public oversight.

Thus, although FOI officers have been designated in public agencies, other aspects of the recommendation have not been addressed.

### ***Awareness raising, trainings***

***“Raise awareness of public officials to foster the culture of openness and transparency in Government and carry out systematic training of information officers and of other public officials dealing with access to information issues.”***

The Government reported various trainings held on the freedom of information issues in the last three years, supported by donors. According to the Government “the trainings in the field of freedom of information are numerous and differ in their thematic diversity as well as format.” For example, trainings have been conducted on definitions, the nature of the right, the order of information provision and the grounds for refusal and newly adopted secondary legislation. In 2016 with the assistance of OSCE 3 rounds of training sessions have been organized for all freedom of information protection officials. Representatives of public relation, legal and other departments have also participated in those sessions (80 participants). The trainings extended to the local level as well. In the absence of the training programme, uniform standards/guidelines and practices and systematic approach, the efficiency of these trainings cannot be assessed. Nevertheless, the reported information does not suggest that the training of FOI officers and public officials is systematic.

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<sup>177</sup> The report for 2016-2017 is available in Armenian only [http://www.foi.am/u\\_files/file/E-FOI\\_monitoring.pdf](http://www.foi.am/u_files/file/E-FOI_monitoring.pdf)

<sup>178</sup> <https://www.e-request.am/en/statistics>.

<sup>179</sup> The authorities met at the on-site visit provided the list of all FOI officers.

<sup>180</sup> <http://www.givemeinfo.am/en/>

<sup>181</sup> <http://www.foi.am/rating/>

***“Ensure implementation in practice of the provisions related to transparency of the entities using public resources”***

Armenia has not taken measures to ensure transparency of entities using public funds. Art. 3.6 of the FOI law makes such entities subject to the disclosure requirements, however, no information is available regarding the practice. The authorities informed that the Ministry of Justice has started to work on the issue.

***Budget transparency***

Armenia provided detailed explanation of the budget planning process and the elements of transparency, including placing the draft budget on the e-drafts web-page and later at the stage of parliamentary discussion on the Parliament’s web-page. Budget execution reports are also published systematically. [Interactive state budget](#) is available on [www.e-gov.am](#) and includes both the budget of ongoing 2018 and the state budgets of 2016 and 2017 years. It seems that the budgetary transparency is ensured, however, it remains unclear whether the citizens are using these tools on the one hand and if the Government uses the received feedback, on the other.

Good practices of proactive publication of information at the local level has been reported on the example of the Yerevan municipality that regularly publishes financial information, information about the staff and their salaries (but not actual expenses on the salaries per budget year). According to the Government, the development and launch of the "Yerevan Interactive Budget" electronic program has been one of the significant achievements in ensuring the publicity and transparency of the financial activities.

However, by contrast, according to the NGOs the Armenian Ministry of Finance posted on its official web-site the *Citizens’ Budget for 2018*, however it is presented in a way that is difficult to understand for ordinary citizens.

***New developments***

Other developments reported by NGOs that constitute a step back from the existing transparency and freedom of information regulations are closing Government sessions for media<sup>182</sup> and the new obligation for journalists to obtain consent in order to be able to collect personal data of officials,<sup>183</sup> unreasonably restricting investigative journalism in Armenia. According to the NGOs, these regulations were adopted without public consultations and the journalists were only informed two months after the entry into force of the new provisions restricting their activities. The new Government however has ensured that its sessions are open to media and is planning to abolish the adopted regulations. In relation to the investigative journalism, Armenia reported that the Personal Data Protection Agency made a clarification that these provisions do not apply to the journalist activities.

The monitoring team would like to reiterate the importance of ensuring free and unimpeded investigative journalism for uncovering and fighting corruption and urges Armenia to take measures to address the concerns of the civil society and international community in this regard.

**Conclusions**

Armenia has considerably improved existing legal framework of FOI by adopted the secondary legislation awaited for many years. FOI officers have been appointed and some trainings have been provided to them. The e-requests portal has been launched with the analytical module generating statistics based on the e-requests. However, oversight body has not been designated to ensure uniform application of the law, collection of data and guidance to the agencies. The FOI law has been analysed as recommended by the third round of monitoring, however, according to the NGOs, the draft that was produced in the end significantly worsens the existing regulations. Armenia has not taken

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<sup>182</sup> [Statement](#) on the draft law “On the Structure and Activities of the Government” adopted by a number of journalistic organizations on 1 March 2018.

<sup>183</sup> Amendments to the Personal Data Protection Law of 9 January 2017 (Art. 3.1). Failure to comply with the obligation may result in administrative penalty and fines of about 1000 EUR.

measures to ensure transparency of entities using public funds in practice. Armenia is urged to abstain from the measures limiting the investigative journalism, a significant tool to uncover and fight corruption.

Armenia is *partially compliant* with the **recommendation 20** of the last monitoring round and its parts bullet points 2-5 remain valid as **new recommendation 18**.

### **Recommendation 18 (parts of the previous recommendation that remained valid) Access to information**

1. Ensure proactive publication of information by state bodies, clarify records management and classification system and introduce the registries of public information in state bodies; consider establishing a unified portal for proactive publication of information.
2. Ensure efficient supervision and oversight of enforcement of the right of access to information as well as adequate powers and resources to issue binding decisions.
3. Raise awareness of public officials to foster the culture of openness and transparency in Government and carry out systematic training of information officers and of other public officials dealing with access to information issues.
4. Ensure implementation in practice of the provisions related to transparency of the entities using public resources.

## **2.5 Integrity in public procurement**

### **Recommendation 19 from the Third Round of Monitoring: Public procurement**

- Complete the revision and enhancement of the e-procurement system, ensuring that it reflects international best practice, including the electronic processing of every step of the procurement process up to contract award, and extend the mandatory use of the e-procurement system to all public procurement entities;
- Ensure the timely publication of all relevant procurement notifications, data and statistics on the dedicated government procurement website in Armenian and English languages;
- Ensure that procurement co-ordinators and any other procurement staff and procurement consultants receive adequate training (including the practical application of the procurement rules and procedures);
- Introduce additional safeguards (e.g. selective review of tender documents by PSC engineers and/or procurement specialists) to ensure that technical specifications and tender requirements are not biased;
- Introduce formal and mandatory declarations of conflicts of interest for all members of the PSC, the Procurement Complaint Review Board, the evaluators of tenders, the heads of procuring entities and any other individuals who are involved in public sector procurement processes. Ensure verification and publication of these declarations, introduce sanctions for violations of conflict of interest declarations;
- Reinforce competition in quasi-monopoly/oligopoly sectors;
- Significantly reduce the use of single source procurement and of negotiated procedure without notification.

### *Procurement context*

Since the third round of monitoring, one of the main developments in Armenia in the area of procurement was the adoption of the Law on Procurement (PPL) by the National Assembly of the Republic of Armenia (RA) in December 2016. The PPL is based on the UNCITRAL model law and had been drafted with the support of EU SIGMA and the European Bank for Reconstruction and Development (EBRD). According to the Government of Armenia and civil society representatives, NGOs (including Transparency International) were consulted during the drafting process and their comments were reflected in the PPL. Some important features of the PPL include the following:

- Simplification and clarification of the procurement procedures and conditions for their application;
- Creation of an independent and effective extrajudicial appeals system;
- Exclusion of the possibility of rejecting applications and tenders due to non-compliance with formal requirements;
- Exclusion of affiliated persons in the same procurement process;
- Exclusion of persons affiliated with officials involved in the procurement processes. Tenderers are required to reveal the beneficial owners of a company in their bid. The information provided by the successful tenderer will be published on the RA official procurement website ([www.procurement.am](http://www.procurement.am));
- Mandatory publication of statements of individuals participating in procurement processes who have up to second degree blood relationship with officials involved in the procurement processes, as well as the publication of statements on the absence of conflicts of interests;
- Inclusion of provisions that facilitate the use of electronic procurement systems.

Whilst the PPL distinguishes between four principle procurement procedures (Article 18 of the PPL), i.e. electronic auction, tender, price quotations and single source procurement, the preferable form of procurement is open tender, unless the goods to be procured are included in an approved list of goods for which electronic auction must be applied.

Notably, the negotiated procedure as well as the procedure to periodically award framework contracts for certain goods have been removed, which should facilitate a wider application of more competitive and transparent procurement procedures, such as open tendering and electronic auctions (where permitted).

Generally, the PPL applies to the procurement of all types of goods, works and services, with only explicit exemptions defined by the PPL. Exemptions include employment contracts, acquisitions of services rendered by certain persons provided for by the decisions of officials carrying out criminal, administrative or judicial proceedings in cases provided for by the PPL, transactions related to trust management activities. In general, according to civil society reports, the scope of exemption has been narrowed in the new PPL<sup>184</sup>.

As part of the restructuring of the public procurement system in RA, the Procurement Support Centre (PSC) was dissolved. The responsibility for overseeing procurement activities in RA has now been allocated to a specialised department in the Ministry of Finance (MoF).

Amongst its duties related to procurement, the MoF is responsible for reporting on procurement activities in RA, allocation of resources for the operation of the electronic procurement system (armeps), operation of a Hotline for procurement related queries, acting as secretariat for the Procurement Appeals Board.

It can be observed that the aggregate value of public procurement in RA has shrunk gradually from 6% of GDP in 2014 to 3.2% in 2017. The Government explained that this was due to the fact that the

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<sup>184</sup> [Report on Implementation Assessment of the Public Procurement Legislation of Armenia](#), FOICA, p.4

Government grants awarded to the operators of education facilities (e.g. colleges) have now been excluded from the general procurement statistics.

As can be seen in the table below, which has been provided by the Government, the award of non-competitive procurement processes was approximately halved. According to the Government, this is based on the fact that single source procurement on the basis of urgency has been substantially reduced over the last four years.

**Table 9. Share of public contracts awarded via non-competitive process**

(bln AMD)

Year	2014	2015	2016	2017
Total value of procurement transactions	288.2	295.3	179.9	174.9
Procurement transactions implemented by non-competitive procedures and registered by the RA Ministry of Finance	198.3	188.5	96.2	95.2

Source: the information submitted by the Government

The following table, provided by the Government, further demonstrates the trend that the use of non-competitive procedures (in particular the negotiating procedure without prior publishing of procurement announcement) has decreased over the reporting period. The figures for 2017 include legacy procurement procedures under the previous procurement law as well as those of the new PPL.

**Table 10. Procurement transactions of the funds allocated from the 2014-2017 RA State Budget**

2014				
	Procurement Procedure		Amount /mln AMD/	Quantity
<b>1</b>	Total procurement transactions, of which		288,160.1	19778
	<b>1.1</b>	Negotiating procedure without prior publishing of procurement announcement	198,338.3	15115
	<b>1.2</b>	Bidding dialogue	4.9	1
	<b>1.3</b>	Negotiating procedure with announcement	8,223.6	150
	<b>1.4</b>	Open procedure	17,194.6	168
	<b>1.5</b>	Through framework agreements	63,565.1	4145
	<b>1.6</b>	Simplified procedure	833.6	199
2015				
<b>2</b>	Total procurement transactions, of which		295,314.9	18644
	<b>2.1</b>	Negotiating procedure without prior publishing of procurement announcement	202,938.5	14553
	<b>2.2</b>	Bidding dialogue	618.3	3

	<b>2.3</b>	Negotiating procedure with announcement	13,770.1	158
	<b>2.4</b>	Open procedure	18,314.6	162
	<b>2.5</b>	Through framework agreements	59,030.9	3614
	<b>2.6</b>	Simplified procedure	642.4	154
<b>2016</b>				
<b>3</b>	Total procurement transactions, of which		179,854.5	13281
	<b>3.1</b>	Negotiating procedure without prior publishing of procurement announcement	102,529.8	9321
	<b>3.2</b>	Bidding dialogue	2,371.5	39
	<b>3.3</b>	Negotiating procedure with announcement	4,299.1	105
	<b>3.4</b>	Open procedure	13,672.4	344
	<b>3.5</b>	Through framework agreements	56,098.1	3274
	<b>3.6</b>	Simplified procedure	883.6	198
<b>2017</b>				
<b>4</b>	Total procurement transactions, of which		174,828.8	12070
	<b>4.1</b>	Bidding dialogue	1,133.4	4
	<b>4.2</b>	Negotiating procedure with announcement	8,484.4	276
	<b>4.3</b>	Negotiating procedure without prior publishing of procurement announcement	96,574.3	7254
	<b>4.4</b>	Open procedure	7,750.8	126
	<b>4.5</b>	Through framework agreements	49,916.0	2907
	<b>4.6</b>	Simplified procedure	814.8	182
	<b>4.7</b>	Single source	1,324.1	552
	<b>4.8</b>	Single source conditioned by urgency	666.9	18
	<b>4.9</b>	Open bidding	1,097.4	9
	<b>4.10</b>	Quotation Request	3,892.6	703
	<b>4.11</b>	Open bidding conditioned by urgency	3,174.1	39

*Source: the information submitted by the Government*

### ***Procurement coordinating body – Ministry of Finance***

For the purpose of regulating and co-ordinating the procurement process, the authorised body (i.e. the MoF) shall:

- co-ordinate the elaboration of draft legal acts on procurement and shall adopt or submit them to the Government for approval;
- provide methodical assistance to the contracting authorities in arranging the procurement activities;
- ensure the qualification certification of procurement co-ordinators and the existence of a system for continuous professional training thereof;

- arrange the publication of the procurement bulletin, which includes the public procurement opportunities;
- co-ordinate procurement related co-operation between international organisations, foreign states, as well as state and local self-government bodies of the Republic of Armenia;
- register procurement transactions entailing obligations for the state;
- publish:
  - the annual public procurement report;
  - the list of qualified procurement specialists (persons);
- approve the standard forms of documents used during the procurement process, including those of the invitation to prequalification/tender and the contract;
- approve the standard forms of documents to be submitted to the authorised body according to this Law, including those of the reports, and the deadlines for submission thereof;
- approve the form of the register and the procedure for the keeping thereof;
- maintain and co-ordinate the e-procurement system;
- ensure the availability of a procurement support service (hotline) for the purpose of responding to alerts and quickly responding to questions on procurement.

### ***E-procurement***

An electronic procurement system was first introduced in RA in 2011. Due to major enhancements of the RA e-procurement system since the last reporting period, electronically available information on procurement as well as the e-procurement platform (armeps) can now be accessed through [www.procurement.am](http://www.procurement.am).

As outlined by the Government, in 2015-2017, as a result of functional and structural changes, the range of stakeholders using the e-procurement system and the volume of procurement via the e-procurement system has been expanded. At the time of the monitoring visit, 301 public entities of the RA were using armeps for their procurement activities. According to the Government, these include all public administration bodies, urban communities, commercial organisations established by the state and foundations. It is planned that by 2020 all public entities of RA, including rural communities and small scale institutions, will undertake their procurement through armeps.

It is also important to note that armeps now covers all procurement processes permitted by the PPL, with the exception of the two-stage open tender procedure. The latter is not yet included due to technical issues, which require further enhancements of the e-procurement platform. One of the important developments here is that single source procurement is now recorded in the electronic procurement system, which facilitates a higher degree of transparency concerning the scope and the reasons for awarding contracts directly.

Furthermore, as a result of software changes in the electronic procurement system in 2017, it has become possible to:

- carry out electronically the transfer and acceptance of contract results;
- automatically make available in the online environment all the documents submitted by participants after opening of the respective document in the electronic platform;
- procurement processes financed by the World Bank, including those under National Competitive Bidding, may also be carried out via the e-procurement system.

According to the civil society representatives, the e-procurement system is still lacking a certificate on compliance to information security compliance standards. Moreover, in practice, procurement of rural communities, state non-commercial organisations and organisations established by communities are still not covered by the e-procurement system.

The following table provides some statistics on the use of e-procurement in RA in the period 2014-2017:



**Table 11. Procurement transactions from the funds allocated of the 2014-2017 State Budget implemented electronically and registered by the RA Ministry of Finance**

2014		Amount /mln AMD/
1	Organised electronic procurement transactions, of which	80,759.7
	1.1 Through Framework Agreements	63,565.1
	1.2 Open procedure	17,194.6
2015		
2	Organised electronic procurement transactions, of which	91,758.0
	2.1 Negotiation procedure announcement*	13,770.1
	2.2 Open procedure	18,314.6
	2.3 Through Framework Agreements	59,030.9
	2.4 Simplified procedure *	642.4
2016		
3	Organised electronic procurement transactions, of which	81,261.0
	3.1 Negotiation procedure announcement*	4,299.1
	3.3 Open procedure	13,672.4
	3.4 Through Framework Agreements	56,098.1
	3.5 Simplified procedure *	883.6
	3.6 Purchase transactions made on the basis of single source, based on urgency	6,307.8
2017		
4	Organised electronic procurement transactions, of which	79,627.4
	4.1 Negotiation procedure with announcement*	8,484.4
	4.2 Open procedure	7,750.8
	4.3 Through Framework Agreements	49,916.0
	4.4 Simplified procedure *	814.8
	4.5 Open bidding	1,097.4
	4.6 Quotation Request	3,892.6
	4.7 Urgent open bidding	3,174.1
	4.8 Purchase transactions made on the basis of single source, based on urgency	748.8

\* The simplified (since 1 April 2005) negotiation procedure with announcement (since 12 June 2015) negotiation procedure without announcement (since 1 May 2016) procurement transactions have been made electronically, for which the RA Ministry of Finance has not carried out a separate registration (only summarised information is presented here).

The provided figures do not show any increase in the use of the e-procurement system during the reporting period. This may be explained by the fact that the compulsory use of the electronic procurement system by most public entities was only rolled out in 2017. Reliable statistics in this respect can only be expected from 2018 onwards.

### ***Procurement by State Owned Enterprises (SOEs)***

The PPL applies to all state organisations or state-owned non-commercial organisations, organisations with more than 50% of state or community shares, foundations established or associations (unions) formed by the state or community. These organisations are obliged to carry out the procurement of goods, works or services in accordance with the procedures prescribed by the PPL. Consequently, procurement obligations of SOEs do not differ from other public sector organisations.

### ***Transparency of public procurement***

The publication of procurement notifications is ensured on the website of the State Procurement Authority and/or on the website of the State-owned companies' management body in accordance with the requirements of the Articles 24, 26-27. The respective evaluation committee approves the texts of the notice (pre-qualification announcement) and the invitation to tender, which are published on the procurement official bulletin ([www.procurement.am](http://www.procurement.am) website) in Armenian, Russian and English.

The procurement contracts are also published on the website [www.armeps.am/ppcm](http://www.armeps.am/ppcm). The publication of public sector contracts was gradually rolled out as follows: contracts awarded by state government bodies have been published since 1 July 2016, contracts awarded by urban communities since September 2016, and contracts awarded by organisations with more than 50% of state or community share and foundations have been published since 1 April 2017. At the same time, contracts awarded as a result of applying the single source procedure are now also published in the internet website [www.procurement.am](http://www.procurement.am).

Although the Government stated that all information is published in machine-readable format, according to the civil society representatives this is not the case. As they pointed out in their reports, in practice the abovementioned documents are published in different formats. For example, whilst announcements about complaints are available in an electronic, machine-readable and free of charge format (in "word" format), annual public procurement plans or decisions of the Procurement Complaint Review Board are published in "pdf" format (decisions of the Board are scanned), thus, these documents are not machine-readable. Consequently, there is no single approach on formats of publication of the abovementioned documents and information both in legislation and in practice<sup>185</sup>.

A new procurement website ([www.procurement.am](http://www.procurement.am)) was launched on 1 October 2017, with a more simplified and regulated structure. The website is also integrated in the "armeps" system for e-procurement, providing the contracting authority with an opportunity to ensure the publication of procurement notices and invitations, respective amendments as well as clarifications provided on the referred invitations via one action, thus making the procurement process more transparent and more controllable for the public and the media.

### ***Effective review procedure, oversight body***

The establishment of the new review mechanism was one of the central issues of the recent reform of public procurement in RA. The PPL prescribed the establishment of the Procurement Appeals Board which had to conduct impartial and independent investigations of procurement complaints.

The Board had to be comprised of up to three members. The members of the Board had to be appointed for a term of five years by the President upon the recommendation of the RA Prime Minister. The terms for appointment of members of the first composition of the Board were as follows:

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<sup>185</sup> [Report on Implementation Assessment of the Public Procurement Legislation of Armenia](#), FOICA, p.12

- for one member — three years;
- for one member — four years;
- for one member — five years.

In accordance with the previous version of the Article 48 of the PPL, a citizen of the Republic of Armenia having higher education with specialisation in Economy and Management or Law, service record of at least five years in the field of public administration, or professional service record of at least seven years and having command of Armenian, might be appointed as a member of the Board. The maximum age for exercising the powers of a member of the Board was 65.

A member of the Board may not be a person who:

- has been deprived, as prescribed by law of the Republic of Armenia, of the right to hold state positions;
- has been recognised by the court as lacking or having limited legal capacity;
- has been convicted of a crime, except where the conviction is cancelled or has expired.

The establishment of the Procurement Appeals Board is commendable. The members had to match the above professional criteria to be eligible for appointment. A potential weak point was the nomination process. The members were appointed and dismissed by the President of RA, upon the recommendation by the Prime Minister, and not through a more independent merit-based process. At the time of the monitoring mission, only two members had been appointed, which could lead to delays in the procurement complaints review process due to understaffing. The decisions of the Procurement Appeals Board were publicly available on [www.procurement.am](http://www.procurement.am).

The civil society representatives also raised concerns regarding the independence of the Board since according to the PPL the member's salaries were to be paid by the Ministry of Finance which also had to ensure the necessary working conditions for carrying out the activities of the Board. Another issue that was raised is that the status of the Board was not entirely clear. The civil society doubts that the Board's decisions can be appealed through the judicial procedure (despite the PPL prescribing such possibility).

The examination of an appeal was open to the public, except for procurement containing state secrets. Within one working day upon the date of receipt of an appeal, the Board had to publish a notice of receipt of the complaint in the bulletin.

The procedure of appeal to the Board was prescribed by Article 50 of the PPL.

The Procurement Appeals Board was established in April 2017 and its annual report is not yet available (the deadline for the publication of the report is 1 April).

After the on-site visit the monitoring team was informed about amendments to the PPL adopted in March 2018 which replaced the Procurement Appeals Board by persons considering procurement complaints. These persons have the status of a body subordinated to the Ministry of Finance and are appointed for a term of 5 years by the Prime Minister upon proposal by the Minister of Finance. The number of persons considering procurement complaints is defined by the RA Government (by the Government decree 567-N, dated 17.05.18, which determines that there must be two persons considering procurement complaints).

According to the information additionally provided by the RA Government, the persons considering procurement complaints should meet the same requirements as the members of the Procurement Appeals Board.

Given that the new information was provided quite late in the monitoring process, the monitoring team is not in a position to provide a comprehensive assessment of these recent developments.

**Table 12. Statistics on the work of the previous complaints review body for 2014-2017.**

Year	Complaints	Decisions made by the Procurement Appeals Board	Satisfied complaints	Declined complaints	Without Consideration Complaints	Ongoing Complaints
2014	46	46	20	24	2	
2015	54	54	24	27	3	
2016	125	125	59	57	9	
2017	170	149	83	47	19	21
Total	395	374	186	155	33	21

Source: the information submitted by the Government

The average duration of the examination of a complaint was 30 calendar days.

***Debarment – grounds, duration, appeal, transparency***

Article 6 of the PPL

*Article 6. Eligibility for participation in procurement and qualification criteria*

*1. Except for the cases of carrying out procurement under the procedure provided for by points 1, 3, 4 and 5 of part 1 of Article 23 of this Law, the following persons shall not be eligible to participate in procurement:*

- *those who have been declared bankrupt through judicial procedure as of the day of submitting the bid;*
- *those who have overdue liabilities amounting up to one percent of the price proposal submitted thereby for the part of incomes controlled by the tax authority as of the day of submitting the bid, but in the amount not exceeding fifty thousand drams of the Republic of Armenia;*
- *those who have been convicted or a representative of the executive body whereof has been convicted — within three years prior to submission of the bid — for financing of terrorism, child exploitation or a crime involving human trafficking, creation of a criminal association or participation therein, receiving a bribe, giving a bribe or mediation in bribery and crimes against economic activity provided for by law, except for cases when the conviction is cancelled or expired as prescribed by law;*
- *an unappeasable administrative act for anti-competitive agreement or abuse of dominant position in the field of procurement has been adapted in relation there to as prescribed by law, within one year prior to the day of submitting the bid;*
- *those who have been included in the list of bidders ineligible to participate in the procurement process, published according to the legislation of member states of the Eurasian Economic Union on procurement, as of the day of submitting the bid;*
- *those that have been included in the list of bidders ineligible to participate in the procurement process as of the day of submitting the bid. The bidders shall be included in the indicated list, where:*
  - *they have violated the obligation provided for by a contract or assumed within the procurement process, which resulted in unilateral rescission of the contract by the contracting authority or termination of further participation of the bidder concerned in the procurement process;*

- they have refused to conclude a contract as a selected bidder;
- they have refused further participation in the procurement process after the opening of bids.

2. The authorised body shall publish, including in Russian, the list referred to in point 6 of part 1 of this Article. The authorised body shall initiate a formal procedure — without fee — by the person considering the procurement complaints based on the information available on a bidder having been deprived of the right to participate in the procurement process. Upon hearing the opinion of the given bidder, the person considering the procurement complaints shall deliver a decision on including the bidder in the list provided for by this Article. A person shall be included in the indicated list for a time limit of two years.

3. The bidder must meet the qualification criteria defined by the invitation. For fulfilment of obligations provided for by the contract, the bidder must have the following criteria as required by the invitation:

- compliance of professional activities with activities provided for by the contract;
- professional experience;
- technical resources;
- financial resources;
- labour resources.

4. No criteria related to eligibility and qualification of the bidder for participation in the procurement may be prescribed, where such criteria:

- are not provided for by this Article;
- are discriminatory and restrict competition — unduly complicate or simplify possible participation in the procurement process;
- are inadequate, i.e. do not directly derive from the necessity to fulfil the obligations provided for by the contract.

5. The bidders may, within the scope of ensuring compliance of their data with the qualification criteria provided for by the invitation, rely on the financial and technical resources of other persons, where necessary, based on legal relation prescribed by the corresponding contract.

6. The criteria, procedure for evaluating the eligibility and qualification of the bidder for the participation in the procurement and the requirements set for the documents (information) required for this purpose shall be defined by the invitation.

**Table 13. Statistics on debarment procedures**

Year	No. of organisations debarred	Total number of complaints	In Process	Reversed Court decisions
2014	0	Not available	Not available	Not available
2015	5	Not available	Not available	Not available
2016	23	Not available	Not available	Not available
2017	52	8	7	1

Source: the information submitted by the Government

The provided statistics are not exhaustive. In the future, more detailed data should be provided that includes the main categories and respective numbers of the decisions taken by the persons considering the procurement complaints.

According to information provided by the Government, debarment decisions are initiated by the respective procuring entity. The person considering the procurement complaints only debars entities on procurement related grounds. Debarment on the basis of prohibited practices (e.g. fraud, corruption) is dealt with by the judicial system under the Criminal Code.

### ***Competition in quasi-monopoly/oligopoly sectors***

According to the Government, in 2014-2017 the State Commission for the Protection of Economic Competition of Republic of Armenia (the SCPEC RA) conducted various researches in different product markets involving also representatives of the business community and consumer protection NGOs to review the existing problems in the field of economic competition.

In the period of 2014-2017 the SCPEC RA constantly focused its attention on the product markets with high level of concentration and imposed liability measures in cases of abuse of dominant positions by economic entities operating in these markets. The SCPEC RA has also continued its activities of revealing undeclared concentrations prohibited by the law and on studying concentrations of different economic entities acting in the same or affiliated product markets, which may strengthen their dominant positions. From 2014-2016 the SCPEC RA has imposed sanctions on 123 economic entities for failure to declare the concentration as stipulated by the law.

Assigning a high priority to equal opportunities for all interested economic entities for market entry, the SCPEC RA carried out a study on a wide number of consumer goods to identify trends in competitive environment changes in these markets. The outcome of the study showed that for 19 commodity lines, 940 economic entities provided their products in 2014. In 2016, the number of economic entities providing their products for the same commodity lines had increased to 1,534. This would suggest that the competitive environment in many product markets has essentially improved.

According to civil society representatives, the widespread perception among the population of RA is that there are still monopoly providers in most areas of economic activity, especially related to imports.

Unfortunately, statistics were not provided for the period 2014-2017 on how many proposals were received per tender process and the names of the 30 most successful companies in terms of numbers and volume that were awarded public sector contracts. Without these statistics, conclusions cannot be drawn as to whether there is a trend towards a wider diversification of economic players and thereby a more competitive environment.

The Government presented its opinion that the studies conducted by the SCPEC RA showed that the monopoly markets in the Republic of Armenia were connected with natural monopolies and the areas transferred to concession management by the state.

### ***Prevention of corruption and conflict of interests***

The PPL introduced the requirement that persons involved in a procurement process who have up to second degree blood relationship with officials involved in the same procurement process need to declare such affiliation and the declaration of absence of conflicts of interest on the RA procurement website.

The protocols of the evaluation commission session as well as the announcements on the awarded contracts, including information on all participants that have submitted bids have to be published on the website.

As a result, all stakeholders, including other participants of the given procurement procedure, civil society representatives as well as interested state bodies have an opportunity to disclose any case of participation of affiliated persons and to initiate remedial or mitigating measures.

The new PPL also introduced the announcement of beneficial ownership in procurement processes. According to Article 28 of the PPL the bid shall contain:

- a statement certified thereby on the absence of abuse of the dominant position and an anti-competitive agreement;

- the data on the natural person (persons) directly or indirectly holding more than 10 percent of the voting shares in a statutory capital of the legal person participating in the procurement process, including bearer shares, or the person (persons) entitled to appoint to or dismiss from office the members of executive body of the participating legal person, or receiving more than 15 percent of profit generated from entrepreneurial activities or other activities implemented by that legal person, and in case of absence thereof — the data on the head and members of the executive body. Moreover, where the bidder is declared a selected bidder, the information provided for by this sub-point shall be published in the bulletin together with the notice regarding the decision on conclusion of a contract.

According to the Article 28 of the Law, the bidder submits in the bid a statement certified thereby on the absence of abuse of the dominant position and an anti-competitive agreement.

Resulting from the public disclosure of the required information of participants in procurement processes, all stakeholders, including other participants of the procurement procedure, civil society representatives as well as interested state bodies have the opportunity to assess any unlawful affiliations of these participants.

The legislation envisages that if the data submitted by a participant is factually inconsistent, the relevant bid is rejected; the participant is included in the Debarment List and is deprived of the opportunity to participate in procurement procedures for 2 years. In parallel, the SCPEC RA also implements appropriate proceedings as prescribed by the legislation.

If the contract was already signed with the participant and in the implementation stage it is revealed that the data submitted by the participant is factually inconsistent, the legislation envisages that the contract is terminated; the participant is included in the Debarment List and is deprived of the opportunity to participate in procurement procedures for 2 years. In parallel, the SCPEC RA also implements appropriate proceedings as prescribed by the legislation.

If the participant has not been selected as a winner and after the end of the procurement process it is revealed that the data submitted by the latter is factually inconsistent, the person considering the procurement complaints implements appropriate proceedings and based on its relevant decision the participant is deprived of the opportunity to participate in procurement procedures for 2 years.

#### ***Technical specifications and tender requirements***

After the new PPL entered into force, a new Order on “Assessment of random evaluation of descriptions of subjects of procurement and qualification criteria for bidders approved by the contracting authorities” was approved by the RA Government Decree N 1454-N dated 16 November 2017 (effective since 01.01.2018).

According to the abovementioned Order, in terms of observing the requirements for ensuring competition and non-discrimination provided for by the Law, the procurement invitations selected under random evaluation are assessed by the authorized body, based on which the latter publishes its positive or negative conclusion on [www.procurement.am](http://www.procurement.am) website.

In case of negative conclusion, the contracting authority presents to the authorized body written clarifications on the detected inconsistencies. These are then assessed by the authorized body and are either accepted or rejected.

In order to ensure the publicity and transparency of the assessment results, the clarifications of the contracting authority as well as the conclusion of the authorized body are published on the [www.procurement.am](http://www.procurement.am) website.

#### **Brief synopsis of achievements against the respective Recommendations on Procurement from the third round of monitoring**

***Complete the revision and enhancement of the e-procurement system, ensuring that it reflects international best practice, including the electronic processing of every step of the procurement process up to contract award, and extend the mandatory use of the e-procurement system to all public procurement entities;***

The electronic procurement system “armeps” has been substantially enhanced since the last monitoring round. It now includes all procurement procedures prescribed by the PPL, except one (two-stage open tendering) and the majority of entities that are subject to the PPL. The Government expects that all procurement procedures and all entities subject to the PPL will be using “armeps” by the year 2020.

The efforts and results of the Government in substantially enhancing the electronic procurement system and thus facilitating a more transparent and efficient procurement system are commendable. The recommended measures can therefore be considered largely achieved.

***Ensure the timely publication of all relevant procurement notifications, data and statistics on the dedicated government procurement website in Armenian and English languages;***

Resulting from the enhancement of the electronic procurement system, procurement notifications and data now appear to be published on time and to a large extent in Armenian, Russian and English languages. Further improvements should be made to provide all information in machine readable format.

***Ensure that procurement co-ordinators and any other procurement staff and procurement consultants receive adequate training (including the practical application of the procurement rules and procedures);***

The Government reported that regular trainings based on annual training plans have been provided to procurement officers and other persons involved in public procurement and that an official certification process has been introduced. Every procurement officer has to attend official training sessions at least every three years and is required to obtain a procurement certificate based on an official test. In case the test is failed, the certificate is revoked and the respective person is no longer entitled to act as a procurement officer.

Unfortunately, statistics on how many procurement officers were trained in the period 2014-2017 and the contents of the curricula have not been provided.

***Introduce additional safeguards (e.g. selective review of tender documents by PSC engineers and/or procurement specialists) to ensure that technical specifications and tender requirements are not biased;***

The new PPL provides for random checks by the public procurement authority, with the possibility to reject technical requirements that are technically insufficient or biased. This is a welcome development.

***Introduce formal and mandatory declarations of conflicts of interest for all members of the PSC, the Procurement Complaint Review Board, the evaluators of tenders, the heads of procuring entities and any other individuals who are involved in public sector procurement processes. Ensure verification and publication of these declarations; introduce sanctions for violations of conflict of interest declarations;***

The new PPL has introduced the requirement to divulge affiliations between public procurement officials and economic operators involved in a given procurement process. Any such affiliation and potential or actual conflicts of interest need to be published on the relevant procurement website. This enables all stakeholders to assess any potentially undue affiliations or conflicts of interest issues and to instigate adequate reviews of the issues.

***Reinforce competition in quasi-monopoly/oligopoly sectors;***

Although it appears that more economic operators provide goods, works and services for a number of essential areas, this remains an issue of concern. Statistics are not or were not made available to gauge whether improvements in the direction of a less monopolistic market environment, in particular concerning the import of goods, have been made.

***Significantly reduce the use of single source procurement and of negotiated procedure without notification.***



At least statistically, significant improvements in reducing single source procurement and non-competitive procedures have been made. Exceptions to open tender require approval by the authorized authority for every case and in accordance with the new PPL. It will be important to continue monitoring the developments in this area.

In summary, it can be concluded that Armenia *is largely compliant* with the **previous Recommendation 19**.

#### **New Recommendation 19: Public procurement**

1. Systematically monitor contract award patterns both in competitive and single source procurement procedures
2. Further enhance the electronic procurement platform to include all procurement procedures and comprehensive and machine-readable reporting facilities.
3. Continue to introduce systematic centralized monitoring procedures and facilities to ensure impartial and technically adequate technical specifications, requirements and terms of reference.
4. Ensure the publication of names of debarred entities and the reasons and duration of their debarment.
5. Ensure that contract amendments and change orders are recorded, made publicly available, and any unusual patterns in this respect are investigated.
6. Further reduce the use of single source procurement.
7. Ensure independence, adequate professionalism and adequate budget and staff allocation for the Procurement Complaints Appeals Body.

#### **2.6 Business integrity**

##### **Recommendation 23 from the Third Round of Monitoring: Business integrity**

- Conduct assessment of corruption risks involving the private sector.
- In co-operation with business representatives identify business integrity measures and include them in the anti-corruption strategy or another relevant policy document, ensure the monitoring of implementation of these measures.
- Include business representatives in the anti-corruption bodies foreseen under the new Anti-Corruption Strategy.

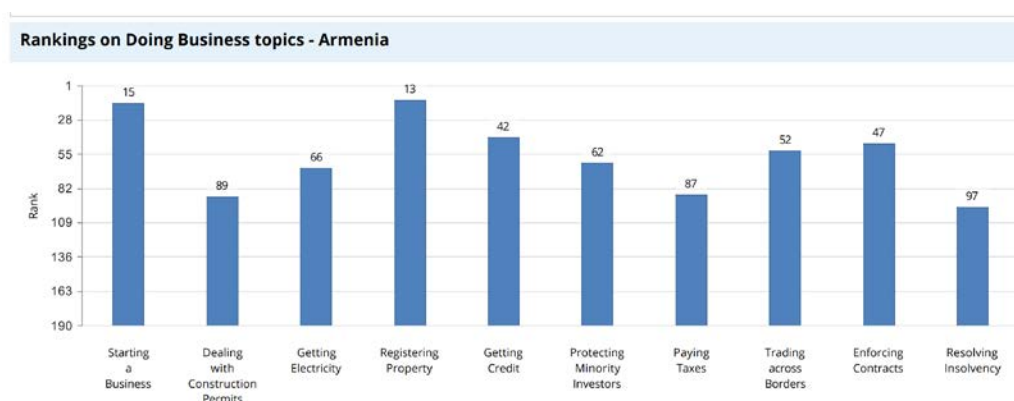
Since the last monitoring round, Armenia has made efforts to improve its business environment by simplifying regulations and introducing e-governance tools and services. However, business integrity measures have been still missing from the Government's agenda. This section gives a snapshot of Armenia's standing in economic and doing business ratings, analyses the state of implementation of the third round of monitoring recommendation on business integrity, and discusses other business integrity issues within the scope of the fourth round of monitoring to draw new findings and recommendations.

##### ***Improving business climate***

The Government has prioritized improving its standing in international rankings, believed to encourage companies to do business in Armenia and has taken measures to ensure better investment

climate. State programmes are annually approved for this purpose.<sup>186</sup> As an example, the most recent such programme adopted in 2018 is focused on simplification of tax and customs regulation, improving bankruptcy process, protection of interests of small shareholders, simplification of company registration process and reducing time for judicial proceedings. As explained by the authorities met at the on-site visit, these measures are designed to address, among other issues, the decrease in the World Bank’s Doing Business ranking: Armenia’s scores in Doing Business 2018 report are fairly high for property registration and starting business, however, its overall rating for 2018 (47<sup>th</sup> place) worsened compared to 2014 (37<sup>th</sup> place). At the same time, there is a gradual but marginal improvement in distance to frontier (DFT) indicator of the same index over the years since 2014 (from 67.8 in 2014 to 72.51 in 2018. 0 represents lowest score and 100 – the highest).

**Chart 4. Doing Business 2018 Indicators for Armenia**



Source: World Bank Doing Business Report 2018 <http://www.doingbusiness.org/>

Despite these efforts, the relevant rankings do not show much of a positive change.

**Chart 5. Armenia in Governance and Doing Business Ratings (change over 2013-2018)**

Index	Rank/Number of Countries in the Index		
	2013	2016	2018
<b>Doing Business</b>	<b>32</b>	<b>35</b>	<b>47/190</b>
<b>Economic Freedom Index</b>	<b>38</b>	<b>52</b>	<b>44/180</b>
<b>Global Competitiveness Report (2017-2018)</b>	<b>82/144</b>	<b>82/144</b>	<b>73/137</b>
- <i>Burden of government regulations</i>	41	56	43
- <i>Property rights</i>	64	94	66
- <i>Transparency of government policy making</i>	16	51	52
- <i>Irregular payments and bribes</i>	82	73	61
- <i>Judicial independence</i>	110	106	96

<sup>186</sup> Four such programmes have been approved since 2014 (Government decrees: No. 258-A in 2014; No. 265-N in 2015; No. 110-A in 2016; No. 24 in 2017).

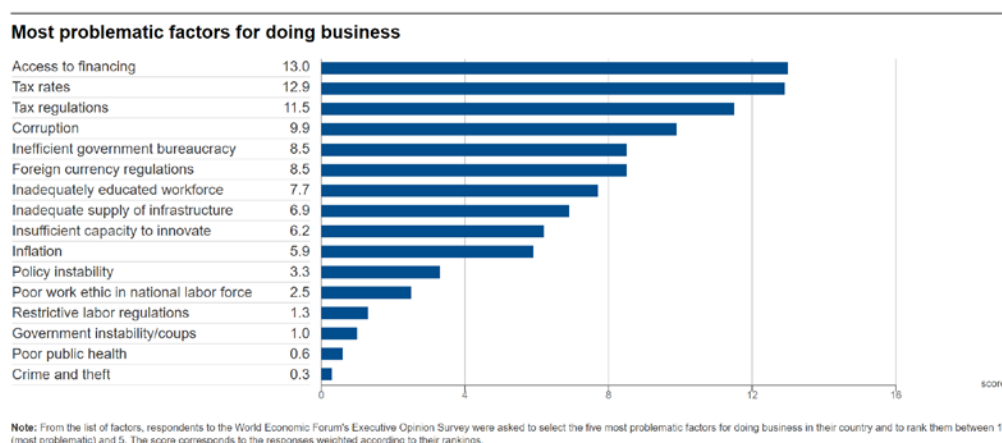
- <i>Favouritism in decisions of government officials</i>	75	71	53
- <i>Burden of customs procedures</i>	127	105	91
- <i>Ethical behaviour of firms</i>	91	97	73

Source: web-sites of the relevant indexes.

Monopolies continued to dominate Armenia’s economy in the reporting period, despite Government’s declared intention to diversify business and promote competition. Private sector has to deal with the entrenched corruption when doing business in Armenia. According to the Heritage Foundation “many economic sectors are controlled by businessmen with government connections whose loyalty is rewarded with market dominance.”<sup>187</sup> Moreover, high-ranking officials, including members of parliament have substantial interests in important businesses.<sup>188</sup>

According to the Global Competitiveness Report (2017-2018) by World Economic Forum, corruption is the 4<sup>th</sup> most problematic factor for doing business in Armenia.<sup>189</sup>

Chart 6. Global Competitiveness Report (2017-2018)



Source: World Economic Forum, available at: <https://goo.gl/JXTs73>

The newly appointed Prime Minister promised that there will be no artificial monopolies and everyone will be able to engage in whatever business they want.

**“Conduct assessment of corruption risks involving the private sector”**

The Government has not carried out corruption risk assessments involving private sector. Armenia reported a workshop conducted in cooperation with TIAC to discuss corruption risks in business sector. An NGO Armenian Lawyers’ Association published the report “Corruption Risks in the Business Sector of Armenia” with the support of the Delegation of the European Union (EU) to Armenia and the OSCE Office in Armenia and presented the recommendations to the ACC session as well as several workshops dedicated to the subject. The Government reported that these recommendations are being implemented by state bodies (out of 107 recommendations, 34 have been implemented, 12 were not acceptable and the work is ongoing on the rest). However, the recommendations are related to prevention of corruption in public administration, including tax,

<sup>187</sup> Heritage Foundation, Economic Freedom (2018), [Armenia](#).

<sup>188</sup> [State of Corruption](#): Armenia, Azerbaijan, Georgian, Moldova and Ukraine, Transparency International (2015)

<sup>189</sup> World Economic Forum, Global Competitiveness Index 2017-2018, [Armenia](#)

customs, competition, licenses and permits, public procurement and privatization of state property, and do not concern business integrity issues.<sup>190</sup>

***“In co-operation with business representatives identify business integrity measures and include them in the anti-corruption strategy or another relevant policy document, ensure the monitoring of implementation of these measures.”***

The Anti-corruption Strategy and the Action Plan of Armenia do not include business integrity measures. As confirmed at the on-site, companies or business associations have not taken part in developing the Anti-Corruption Strategy. In general, business representatives met at the on-site visit were sceptical of the Government’s efforts against corruption and did not see the point in engaging with the authorities on anti-corruption issues.

At the same time, the business associations met at the on-site visit spoke about several occasions, mainly in the tax area, where they have worked with the Government and have achieved concrete results favourable for businesses. The Government, in addition, reported about the cooperation with the telecommunication company VivaCell MTS and the Transparency International Centre in Armenia in connection with its whistleblower protection reform and a workshop conducted in cooperation with the TIAC to discuss National Integrity System Assessment Report (2015) which has a section about private sector.<sup>191</sup>

***“Include business representatives in the anti-corruption bodies foreseen under the new Anti-Corruption Strategy.”***

Two places have been allocated to business associations in the Anti-Corruption Council (ACC) and one of them has been recently filled by the Union of Employers. One business association informed at the on-site visit, that they are part of the Anti-corruption Coalition of NGOs which is a member of the ACC and are thus indirectly represented in the Council.<sup>192</sup> In addition, business associations are engaged with the Government in public councils of various public agencies, including the State Revenue Committee (SRC). These platforms were in place at the time of the third round of monitoring and continue to operate having established good working formats for involving companies in discussions of legislative and policy initiatives affecting business, such as inspections reform and tax reform.<sup>193</sup>

### ***Business integrity measures in corporate governance policies***

The Corporate Governance Code (2010)<sup>194</sup> developed with the support of the EBRD and IFC is in place, however it seems that since its adoption it has been forgotten by the authorities and the private sector alike. The Code provides voluntary provisions for the listed companies, banks and state-owned enterprises for improving their corporate governance practices and encourages them to prepare annual Corporate Governance Statements in line with the “comply or explain” principle. The Code includes guidance notes and implementation templates, such as the Annual Corporate Governance Statement, drafts of terms of reference for directors and for various board committees.

The monitoring team did not receive satisfactory answers on the questions around the application of the Code from the authorities met at the on-site visit. Business representatives were not aware of it and the CSO representatives pointed out that the Code needs revisions as well as functional monitoring mechanism. Similarly, the business representatives met at the on-site were unaware of privileged tax and customs treatment and incentives in the process of public procurement for the companies using the Code. On a similar note, the Government informed the monitoring team of a monitoring programme of the SRC, that allows lifting fines of companies that voluntarily engage in

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<sup>190</sup> One recommendation concerns introduction of the liability of legal persons.

<sup>191</sup> News article available at: <https://transparency.am/en/news/view/1040>

<sup>192</sup> The same is true for other business associations that are part of the Anti-Corruption Coalition.

<sup>193</sup> However, overall business was critical of both inspection and tax reform as discussed in the section 2.3 of the report.

<sup>194</sup> The code was developed by working groups with the participation of Armenia’s Stock Exchange operator NASDAQ OMX Armenia, the Central Bank of Armenia, the State Property Management Department and other stakeholders from both public and private sectors.

the programme. However, this programme was also not known to the private sector representatives met at the on-site and the Government could not provide the details of its practical application.

The Government has not provided any information on anti-corruption measures in SOEs. The answers to the questionnaire did not include the relevant information and the authorities present at the on-site sessions could not answer the questions of the monitoring team.

### ***Beneficial ownership***

Armenia does not have a general requirement to disclose beneficial ownership, but there are some regulations in connection with the public procurement and money laundering/terrorism financing. Specifically, PPL provides that the notification on the beneficiary ownership of a winning tenderer shall be posted on the government procurement web-site, together with the publication of the announcement on signing the contract (Art. 28.2.2b of the PPL). In the assessment of the NGOs, this requirement is observed in practice. However, no mechanisms of verification exist in law or in practice. In addition, the law on state registration of legal entities regulates disclosure of beneficial owners (Art. 66) for the purposes of combating money laundering and terrorism financing companies are required to declare the information on beneficial ownership to the state registration agency on certain transactions. A copy is provided to the Central Bank. In the context of the forthcoming membership to the EITI, it is planned to introduce the requirement to disclose beneficial ownership in the mining sector. The Government informed that the respective package of draft laws is being prepared by the working group.

### ***Channels to report corruption***

There are various means of reporting corruption in Armenia, but no specific channels for the private sector to report corruption. According to the Government, various state bodies including SRC and MoJ are operating hotlines and the future whistleblowing system would be applicable as well. The information received through the SRC hotline results in automatic opening of a case and can serve as basis for conducting audits and initiating disciplinary or criminal proceedings. SRC informed that 35 disciplinary and 5 criminal cases have been initiated based on the hotline information, the latter included a case of bribery by an official in the tax administration. Detailed statistics have not been provided.

Armenian Lawyers' Association has launched a separate whistle-blowing website for business sector,<sup>195</sup> which reportedly has received some 40 reports, most of them related to the activities of the SRC. The information on the follow up has not been provided and the business representatives were unaware of this mechanism either.

In addition, the Human Rights Defender has a specialized department in charge of receiving complaints from business sector. In 2017, these complaints mostly concerned improper administration of taxes, however details of the complaints and statistics have not been provided to the monitoring team, thus, it is impossible to assess how efficient has this mechanism been in practice.

Notably, when asked about the channels for reporting corruption, business representatives met at the on-site did not refer to any of these existing or forthcoming mechanisms, maintaining that the most efficient and the easiest way of doing business in Armenia, is the private contacts and phone-calls to those in power -- a privilege that is afforded only to the selected businesses in Armenia.

Armenia has considered introducing a business ombudsman but decided that it is not in line with their legal system, as only one ombudsman (Human Rights Defender) is envisaged by the Constitution. However, deliberations are ongoing on placing related function under the Government.

### ***Awareness raising***

Armenia has not yet engaged with the companies or business associations with the aim of raising awareness and promoting business integrity. Awareness of business integrity issues in Armenia is

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<sup>195</sup> <https://bizprotect.am/en>

generally low in the public administration and the private sector alike. Therefore, most of the discussions at the sessions dedicated to business integrity had to focus on corruption prevention measures in the public administration and creating favourable tax and customs environment for business instead.

Moreover, most of the business representatives met at the on-site were not convinced that promoting business integrity in Armenia was feasible or needed. They reiterated the point made in the third round of monitoring report that promotion of business integrity by the Government should be preconditioned by genuine political will to fight and prevent entrenched corruption in the country.

Armenia is encouraged to start working on business integrity awareness within the government agencies responsible for dealing with business, as well as with companies and business associations with the aim of promoting business integrity in Armenia.<sup>196</sup>

## Conclusion

The Government puts much emphasis on improving business climate and performance on various international indexes. It has made efforts to further simplify business regulations and enhance public service delivery. Such measures, highlighted in the third round of monitoring report as well, are commendable and may have positive collateral effect on reducing corruption risks in private sector.<sup>197</sup> However, Armenia has not prioritized business integrity measures, has not studied business integrity risks to identify challenges or included such measures in its anti-corruption strategy.

Further, the Government's efforts to promote awareness of, and adherence to, the Corporate Governance Code have not been proactive and it has not made effective use of this important governance standard for businesses. The Government has not encouraged companies to develop codes of conduct, internal control and compliance programmes either. Subsidiaries of multi-national enterprises in Armenia seem to have compliance programmes that are required by their mother companies, however this practice is exclusive to those companies and is not the current practice among local companies.

The dialogue with businesses has been intensified since the last round. In line with the third round of monitoring report recommendation, Armenia included representatives of business as members of the Anti-Corruption Council. In addition, various platforms have been used to achieve the favourable results for business, for example in relation to tax reform. However, business seems sceptical about promoting business integrity in the situation when the Government is itself involved in corruption and, plays with the existing rules of game instead.

Various channels to report corruption are in place but do not seem to be used by business in practice. Moreover, the fundamental challenge of monopolisation and freeing the Armenian economy from the control of oligarchs is yet to be tackled.

Armenia is *partially compliant* with **recommendation 23** of the third round of monitoring report.

### New Recommendation 20: Business integrity

1. Prioritise business integrity measures in national anti-corruption and law-enforcement policy.
2. Develop business integrity section of the anti-corruption policy documents based on risk analysis, in consultation with companies and business associations. Promote active participation of private sector in the monitoring of anti-corruption policy documents.
3. Ensure that business has a possibility to report corruption without fear of prosecution or other unfavourable consequences, for example through independent bodies. Promote such

<sup>196</sup> The OECD/ACN publication [Business Integrity in Eastern Europe and Central Asia \(2016\)](#) provides useful insights in the good practices and regional recommendation that can help countries promote business integrity measures.

<sup>197</sup> Simplification of regulations is discussed in section 2.3 above.

reporting.

- 4.** Promote integrity of state-owned enterprises through their systemic reform, by introducing effective anti-corruption programmes and increasing their transparency, including setting the requirement for proactive publication of information. Develop, implement and monitor anti-corruption measures in state-owned enterprises.
- 5.** Consider adopting a Corporate Governance Code for SOEs based on the OECD Guidelines and other international standards.
- 6.** Promote the role of business associations for business integrity, such as studying corruption risks, disseminating good integrity practices; support awareness raising and training.
- 7.** Ensure gradual and effective beneficial ownership disclosures: a) require disclosure of beneficial ownership of legal persons; b) create a central register of beneficial owners; c) publish the information on-line in open data format in line with local and internationally recognised guarantees of data and privacy protection; d) ensure dissuasive sanctions for nondisclosure in law and in practice.
- 8.** Raise awareness of and train the representatives of state bodies and those of the companies on business integrity issues.

## CHAPTER 3: ENFORCEMENT OF CRIMINAL LIABILITY FOR CORRUPTION

### 3.1 Criminal law against corruption

#### **Recommendation 5 of the Third Round of Monitoring Report on Armenia: Criminal law**

- Without further delay introduce liability of legal persons for corruption offences (criminal, administrative or civil) in line with international standards and enable law enforcement to effectively pursue corruption cases that involve legal persons.
- Bring provisions on the offence of the trading in influence in full compliance with international standards.

[...]

#### **Recommendation 6 of the Third Round of Monitoring Report on Armenia: Immunities**

- Ensure that immunity procedures do not impede successful investigations and prosecutions of corruption cases.

#### **General information**

According to the Armenian authorities within the reporting period Armenia introduced a number of anti-corruption developments in its Criminal Code, which are as follows:

- Criminalization of illicit enrichment (Article 310-1);
- Amending of the *corpus delicti* of trading in influence to bring it in line with international standards (Article 311-2);
- Introducing criminal sanctions for:
  - threatening or damaging property of a whistle-blower (Article 341-1);
  - illegal publication of whistle-blower's data (Article 341-2);
  - intentional failure to submit asset declaration (Article 314-2);
  - submitting false data or intentionally concealing the data subject to declaration (Article 314-3);
- Establishing as an aggravating circumstance of a murder, when the person is murdered for reporting corruption or violation of other anti-corruption restrictions (Article 104 §2 (1.1));
- Introducing effective regret regulations for active bribery in private and public sectors (Articles 200 § 5, 312 § 4 and 312-1 §4).

In parallel, the working group of the Ministry of Justice has drafted the new Criminal Code. The main purpose of the new Code is to ensure consistency of legal practice, among other things it suggests introducing liability of legal persons and reform the confiscation regime (further details are provided below). The draft Code was under expert discussion at the moment of adoption of this report.

#### **Corruption offences**

The Criminal Code of Armenia includes the following corruption and corruption-related offences:

- Article 154-2 (Obstruction of free realisation of elector's will (voter bribery));
- Article 178 - Fraud §2 ((1.1) by use of official position);
- Article 179 - Embezzlement or Peculation §2 (1) by use of official position;
- Article 190 - Legalisation of proceeds of crime (Money laundering);
- Article 200 - Commercial bribery;
- Article 201 - Bribing of participants and organisers of professional sporting events and commercial competitions;



- Article 214 - Abuse of powers by officers of commercial or other organisations;
- Article 308 - Abuse of office;
- Article 309 - Excess of official powers;
- Article 310-1 - Illicit enrichment;
- Article 311 - Receiving a bribe;
- Article 311-1 - Receiving unlawful remuneration by a public servant not considered as an official;
- Article 311-2 - Use of real or alleged influence for mercenary purposes;
- Article 312 - Giving a bribe;
- Article 312-1 - Giving unlawful remuneration to a public servant not considered as an official;
- Article 312-2 - Giving unlawful remuneration for using real or alleged influence;
- Article 313 - Mediation in bribery;
- Article 314 - Official forgery;
- Article 352 - Delivering an obviously unjust criminal or civil judgment or another judicial act;
- Article 375 - Abuse of power, excess of power, or inaction of authorities;
- Article 314-2 - Intentional failure to submit asset declaration;
- Article 314-3 - Submitting false data or intentional concealing the data subject to declaration.

At the same time, on 19 January 2017 the Prosecutor General of the Republic of Armenia issued the Order redefining the list of corruption crimes for the purpose of specialisation of prosecutors, improving the quality of prosecutorial oversight over the investigations and prosecutions in relation to the offences included in the list.

There are 70 crimes in total in the mentioned Order of the Prosecutor General, out of which 21 are the above-mentioned corruption and corruption-related offences. The remaining 49 offences are 38 crimes if committed by the use of official position (for instance, human trafficking, illegal hunting, smuggling of narcotic drugs) and 11 other crimes (for instance unlawful arrest or detention, obstructing lawful entrepreneurial and other economic activities) (the complete list is provided in the Annex to this report).

The monitoring team reiterates the point of the second round of monitoring report on Armenia<sup>198</sup> regarding usefulness of narrowing down the list for the benefit of further specialisation of the law enforcement bodies and for the purposes of criminal statistics.

During the on-site visit the government officials informed about the plans to introduce a separate chapter on corruption offences in the new Criminal Code, which would bring greater certainty, but the provided text of the draft Code does not reflect this approach.

### ***Bribery offences***

The Criminal Code of Armenia includes three types of bribery offences:

- Active and passive bribery in public sector:
  - officials as bribe-takers – Articles 311 and 312;
  - public servants, who are not officials, as bribe takers – Articles 311-1 and 312-1
  - trading in influence – Articles 311-2 and 312-2

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<sup>198</sup> [OECD IAP Second Round Monitoring Report on Armenia](#), p. 39

- Active and passive bribery in private sector:
  - commercial bribery – Article 200;
  - bribing of participants and organisers of professional sporting events and commercial competitions – Article 201
- Mediation in bribery – Article 313

The bribery offences include the elements provided by the relevant international standards, i.e. offer or promise of a bribe, the request or acceptance of an offer or promise of a bribe, the use of intermediaries, third party beneficiaries and undue advantage in intangible and non-pecuniary form.

At the same time, there is some sort of inconsistency in the terminology used in the Criminal Code. The term ‘bribe’ is used for the bribery offences in public sector where officials are bribe-takers and the bribery offences in private sector, and the term ‘illegal remuneration’ is used for the bribery offences where bribe-takers are public servants who are not officials. While the wording of the Criminal Code is entirely clear and both terms seem to cover the same scope of undue advantages including non-material ones, the consistency in terminology would help avoid any potential misinterpretations. Apart from that, current wording of passive bribery in sports does not include the purposive element of the offence, but the draft Criminal Code addresses this loophole.

The provisions of the draft Criminal Code on bribery in private sector do not provide for the definition of persons implied under “officers and administrators of international or joint trade or other organization”. It seems that the terms “officers and administrators” does not cover “person who works, in any capacity, for private sector entity” as it is stipulated in Article 21 of UNCAC. Moreover, the definition of “person serving to commercial or other organization” envisaged by the draft Code covers only those who perform administrative, managerial or supervisory functions in a commercial organization or are authorised to act on behalf of that organization. Therefore, the wording with regard to private sector entities is quite vague as it is not entirely clear if it covers persons who work for a commercial organisation in any capacity and if it relates to all organisations or to international and joint ones only. The monitoring team was informed that the working group on the draft Criminal Code continues to improve its text.

No examples were provided by the authorities regarding the bribery offences, when a bribe was promised or offered, promise or an offer of a bribe was accepted, bribe was for third party beneficiaries or a bribe/undue advantage was in intangible and non-pecuniary form.

### ***Trading in influence***

***“Bring provisions on the offence of the trading in influence in full compliance with international standards”.***

Armenia criminalised passive trading in influence under Article 311-2 (Use of real or supposed influence for mercenary purposes) of the CC in 2008 and introduced Article 312-2 to CC criminalising active trading in influence in 2012. The current versions of both articles cover situations when an undue advantage is given (promised, offered) to anyone who asserts or confirms that he is able to exert an improper influence over the decision-making of a public official, as well as when such advantage was received (its offer or promise accepted) in consideration of that influence – whether or not the influence is actually exerted and whether or not the supposed influence leads to the intended result.

The IAP third round of monitoring report on Armenia noted deficiencies in the criminalisation of passive trading in influence, namely, the limitation of its scope to acts committed for “mercenary purposes” only and absence of a reference to third party beneficiaries. By the amendments made to the Criminal Code in 2017, the above-mentioned shortcoming regarding “mercenary purposes” was rectified. It should be noted, that active forms of bribery in public sector also cover trading in influence in cases when the influence peddler is an official or a public servant, the draft Criminal Code keeps this approach as well.

According to the official statistics provided by the Government, during 2014-2017 there was 1 case on passive form of trading in influence investigated and sent to the court with an indictment in 2016,

the case was in the process of trial at the moment of drafting this report. One more case in 2016 was terminated. One case on active form of trading in influence was opened in 2017.

The draft Criminal Code suggests criminalizing trading in influence in the private sector.

This part of the recommendation is fully implemented.

### ***Illicit enrichment***

Armenia made an important step by criminalising illicit enrichment in 2016, the respective legislative amendments entered into effect on 1 July 2017.

The text of the Article is as follows:

*“Article 310.1. Illicit enrichment*

*1. Illicit enrichment – increase in property and/or reduction in liabilities — during the reporting period — substantially exceeding the lawful income of a person having the obligation to submit a declaration prescribed by the Law of the Republic of Armenia "On public service" and which are not reasonably justified thereby and where there are no other elements of crime serving as a ground for illicit enrichment —*

*shall be punished by imprisonment for a term of three to six years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum three years, with confiscation of property.*

*2. In this Article, the amount (cost) exceeding five-thousand-fold of the minimum salary as set at the time of the crime shall be deemed as substantial”.*

In general, the wording of the offence reflects the concept promoted by the UNCAC. The Government explained the term “reporting period” refers to the entire time when the person is public official or a public servant. The RA Criminal Code also envisages that for illicit enrichment offence legal and real incomes should differ substantially, namely not less than five-thousand-fold of the minimum salary as set at the time of the crime (about 9 000 EUR).

No cases of illicit enrichment had been submitted to the court until now, and two cases had been initiated and were in the process of investigation at the moment of adoption of this report. During the on-site visit, the monitoring team was assured that the burden of proof is put on the prosecuting authorities to ascertain the existence of certain assets and the absence of lawful sources of income, so the presumption of innocence and guarantee against self-incrimination will not be violated. It is critically important that this principle is applied consistently in practice.

In this context it is worth mentioning that the new draft Criminal Code also prescribes criminal liability for illicit enrichment suggesting to add a significant difference between legal incomes and real expenses as an element of crime. CoE experts pointed out in their opinion that there is “no longer any ambiguity about what is understood by a “significant growth” in someone’s income. Secondly, because such an offence needs to respect the presumption of innocence under Article 6(2) of the ECHR it is to be welcomed that this has been addressed by establishing a defence to demonstrate that the income or assets came from another lawful source. Consideration could also be given to following other countries in adopting legislation that would allow the confiscation of assets as a civil matter where the source of those assets cannot be adequately explained”.<sup>199</sup>

### ***Embezzlement, abuse of office/exceeding of powers***

Embezzlement and misappropriation of entrusted property committed by use of official position is criminalised under Article 179 of the RA CC. However, it establishes the above-mentioned conduct as a criminal offence only in case of involving the property in a significant scale. The latter term is

<sup>199</sup> [CoE Expert Opinion on the draft Criminal Code of Armenia](#), p.35

defined by Article 175 of the RA Criminal Code as property exceeding from five times to five hundred times the amount of a minimum salary. This threshold-based limitation of criminalization is not in line with the requirements of Article 17 of UNCAC. Notably, in the corresponding Article of the draft RA CC there is no more reference to the significant scale of property.

The draft Criminal Code envisages liability for embezzlement committed by use of authority or official powers or influence conditioned thereof. At the same time, it does not contain provisions to criminalise misappropriation and other diversion of entrusted property.

The offence of abuse of official power under Article 308 of the RA CC provides that the use of official position against the interests of service or failure to fulfil official duties by an official for mercenary, other personal motives or collective interests, which has caused essential damage to the rights and lawful interests of persons, organisations, and to the lawful interests of the public or the State (in case of property damage — the amount or the value thereof exceeding three-hundred-fold of the minimum salary set at the time of crime) is a criminal offence.

The offence of exceeding official powers under Article 309 of the RA CC criminalises carrying out actions intentionally by an official which are obviously beyond the scope of his/her powers and have caused essential damage to the rights and lawful interests of persons, organisations, to the lawful interests of the public and the State (in case of property damage — the amount or the value thereof exceeding five-hundred-fold of the minimum salary set at the time of crime).

Article 375 of the RA CC (Abuse of power, excess of power, or inaction of authorities) belongs to the crimes against military crimes and criminalises the abuse of power or official position, excess of power or official authority by a superior (commander) or official, as well as inaction of authorities, when those acts have been committed out of mercenary, other personal motives or group interests and when they have caused essential damage.

Abuse of powers by officers of commercial or other organisations under Article 214 of the RA CC criminalises the use of instructive or other powers by officers of commercial or other organisations against the interests of these organisations and to the benefit thereof or other persons, or for obtaining advantages or for causing harm to other persons, where essential harm has been caused to the rights and lawful interests of persons, organisations or the State.

The law provides no further definition of what constitutes “essential damage” and “essential harm” mentioned in Articles 308, 309, 375 and 214 of the RA Criminal Code, except in relation to pecuniary damages under Articles 308 and 309.

The monitoring team raised the issue of legal certainty regarding the vague terms of “essential damage” and “essential harm” used in these Articles. The authorities responded that there was relevant case law in place, establishing the criteria for the interpretation of these terms. Later, the Government provided the extracts of the RA Court of Cassation Decision LD/0207/01/12 adopted on 18 October 2013 and Constitutional Court Decision SDO-1174 adopted on 4 November, 2014.

Pursuant to the above-mentioned Decision of the RA Constitutional Court, the applicant was challenging the constitutionality of the term “significant damage” mentioned in Article 315 § 1 (Negligence in service) of the RA Criminal Code as lacking the legal certainty. The most relevant findings of the Constitutional Court regarding the matter were as follows:

- The nature of significant damage is not the same in different situations. It must be assessed by the relevant body considering the specific circumstances of the case;
- The scope of the significant non-pecuniary damage is not outlined in the legislation;
- Characteristic features of the separate concepts used in the laws adjusted not only as a result of law-making activities, but also in judicial practice;
- The judicial practice is called to identify the criteria for determining whether the damage is significant or not;

- In this respect the case law of the RA Court of Cassation (the decision N LD/0207/01/12 adopted on 18 October, 2013) is available;
- On the above-mentioned grounds, the RA Constitutional Court established that the applicants claim regarding the issue of legal uncertainty was not reasonable.

According to the case law of the RA Court of Cassation, the assessment of whether non-pecuniary damage is substantial or not must be made by the relevant body in each case taking into account the circumstances of the case (including amount of moral damage caused to people, organisations, society or state, number of victims, nature of the violated rights and freedoms and the degree of violation, the degree of disruption in institutions' or enterprises' normal functioning etc).

The provided case law indicates that there are some criteria regarding the matter; however, concerns for the need to ensure more clarity remain, especially when the Constitutional Court still calls for the case law to develop the criteria and mentions the applicability and availability of the already developed judicial practice, without providing additional details about its sufficiency.

Another important point in this regard is that the definition of abuse of power offence under Articles 308, 309 and 375 of the RA CC, due to the inclusion of the additional element of “essential damage”, might limit the scope of abuse of functions offence envisaged by Article 19 of UNCAC.

Notably, in the draft Criminal Code of RA, the terms: “essential damage” and “essential harm” are removed from the criminalisation of the abuse of power crimes.

### ***Money laundering***

Armenia has criminalised the laundering of proceeds from criminal activity under Article 190 of the RA Criminal Code. There is no list of predicate offences, instead an all-crime regime is applied which means that all bribery and corruption-related offences belong to predicate offences.

During the on-site visit the monitoring team was informed by the Armenian authorities that in practice the laundering of criminal proceeds can be a stand-alone crime that is not dependent on a prior conviction for the predicate offence. A Methodological Guide on Peculiarities of Investigating Money Laundering Crimes developed by the working group of the Interagency Committee on Combating Money Laundering, Terrorism Financing and Proliferation Financing in the Republic of Armenia (Interagency Committee), supports this approach with a reference to the case law. In particular, the Guide states that “within the framework of the investigation of money laundering cases, a criminal case may be sent to the court whereby the predicate offence cannot be unequivocally proven, but the court may come to the conclusion about the existence of the predicate offence on the basis of presented facts and circumstances”

The monitoring team welcomes this positive development and expects that this approach will be successfully applied in practice.

### ***Liability of legal persons***

***“Without further delay introduce liability of legal persons for corruption offences (criminal, administrative or civil) in line with international standards and enable law enforcement to effectively pursue corruption cases that involve legal persons”.***

Corporate liability for corruption is not present in the current Armenian legal system but it is planned to introduce it in the new Criminal Code, which is under preparation.

In terms of grounds for corporate liability the draft law envisages the identification model with some elements of the extended identification model - for instance, it states that legal entity shall be subject to liability if the crime was committed by its official due to lack of supervision and prevention mechanisms. In this respect it is important that introduction of such liability is accompanied by the state policy which would motivate companies to develop proper compliance programmes.

All major corruption offences in public and private sectors are listed by the draft Code among those which can trigger corporate liability.

According to the draft Criminal Code, the liability of natural person does not exclude the possibility to impose criminal sanctions for the same offence towards a legal entity. But what is more important is that even if it is not possible to find or identify the perpetrator natural person, the liability of legal persons shall not be excluded.

The Government also informed that respective amendments to the Criminal Procedure Code will be introduced after there is a clarity regarding the Criminal Code provisions.

The following sanctions would be applicable to legal entities: fine, temporary suspension of the right to conduct certain activities, mandatory liquidation and ban to operate in the territory of the Republic of Armenia. The draft Code also prescribes that the amount of fine depends on the gravity of the offence and is calculated in proportion to the entity's income.

The monitoring team welcomes the intention to introduce corporate liability and reminds that it is of critical importance that the future regime covers offences of money laundering, active bribery and trading in influence, and other corruption offences according to international standards. Despite the fact that the concepts of the draft Criminal Code are subject matter at the training activities for investigators and prosecutors, it looks like corporate liability is not addressed through these activities in a sufficient manner.

This part of the recommendation is not implemented.

### ***Foreign bribery***

The criminalisation of foreign bribery is provided by the general legislative provisions on bribery in public sector; however, there have been no investigations of foreign bribery in 2014-2017.

However, it looks like the definition of public officials provided by Article 308 of the RA Criminal Code does not cover “any person exercising a public function for a foreign country, including for a public agency or public enterprise” as it is requested by UNCAC.

### ***Forfeiture and confiscation***

Armenia has 2 regimes of confiscation: first one is the forfeiture, which is an enforcement tool according to the Criminal Code of RA, and the second one is the confiscation, which is a sanction to be applied according Criminal Code of RA. In Armenia, any property directly or indirectly obtained as a result of commission of a crime, income or other types of benefits derived from that property, tools and means used or intended to be used for commission of a crime.

Extended and non-conviction-based confiscation are not envisaged by the Armenian legislation.

At the same time, some crimes still include confiscation as a sanction (for instance, Article 190 “Legalisation of proceeds of crime (money laundering), Article 311 “Receiving bribe” (paragraphs 3 and 4). In accordance with paragraph 3 of Article 55 of the Criminal Code of Armenia, the scope of property subject to confiscation (as a sanction) is determined by the court taking into account the extent of material harm caused by the offence, as well as the scope of property acquired through criminal activity. The amount of confiscation may not exceed the amount of material damage caused by the offence or the amount of proceeds acquired through criminal activity. The draft Criminal Code prescribes abolishing confiscation as a sanction.

The MONEYVAL 5<sup>th</sup> Round Mutual Evaluation Report on Armenia noted the degree of uncertainty among practitioners appeared to be inclined to interpret Article 103.1 of the CC as extending to the laundered property regardless of the presence or absence of a conviction for the predicate offence that generated the proceeds<sup>200</sup>.

The Government does not maintain statistics on confiscation.

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<sup>200</sup> MONEYVAL. [Anti-money laundering and counter-terrorist financing measures, Armenia. Fifth Round Mutual Evaluation Report](#), p. 61

### *Statute of limitations*

According to Article 75 of the RA Criminal Code, the period of limitation depends on the gravity of the offence. A person shall be released from criminal liability where the following terms have elapsed from the day when the criminal offence is regarded as completed:

- 2 years from the day when a criminal offence of minor gravity is regarded as completed;
- 5 years from the day when a criminal offence of medium gravity is regarded as completed;
- 10 years from the day when a grave criminal offence is regarded as completed;
- 15 years from the day when a particularly grave criminal offence is regarded as completed.

**Table 14. Limitation periods applied to the major corruption crimes**

Limitation period	Corruption crimes
5 years	<p>Article 179, para 2. point 1. Embezzlement or peculation committed by use of official position</p> <p>Article 200. Commercial bribe</p> <p>Article 201. Bribing of participants and organisers of professional sporting events and commercial competitions</p> <p>Article 308, para1. Abuse of office</p> <p>Article 311, para1. Receiving a bribe by an official</p> <p>Article 311<sup>1</sup>, para 1 and 2. Receiving unlawful remuneration from a public servant not considered as an official</p> <p>Article 311<sup>2</sup>, para 1 and 2. Passive trading in influence</p> <p>Article 312, para 1 and 2. Giving a bribe to an official</p> <p>Article 312<sup>1</sup>. Giving unlawful remuneration to a public servant not considered as an official</p> <p>Article 312<sup>2</sup>. Giving unlawful remuneration for using real or alleged influence</p> <p>Article 313. Mediation in bribery</p>
10 years	<p>Article 308, para 2. Abuse of office</p> <p>Article 311, para 2 and 3. Receiving a bribe by an official</p> <p>Article 311<sup>1</sup>, para 3 and 4. Receiving unlawful remuneration from a public servant not considered as an official</p> <p>Article 311<sup>2</sup>, para 3 and 4. Passive trading in influence</p> <p>Article 312, para 3. Giving a bribe to an official</p>
15 years	<p>Article 311, para 2. Receiving a bribe by an official (committed by an organised group, a judge or a particularly large-scale)</p>

Source: *The Criminal Code of Armenia*

**Table 15. Statistics on corruption cases dismissed as a result of statutory limitation expiry**

Year	Number on cases dismissed	Article of the RA Criminal Code
2017	7	
	1	Article 179. Embezzlement or misappropriation

	1	Article 184. Causing property damage by deception or abuse of confidence by use of official position
	2	Article 214. Abuse of powers by officers of commercial or other organisations
	1	Article 308. Abuse of office
	2	Article 314. Official forgery
2016	15	
	3	Article 179. Embezzlement or misappropriation
	2	Article 205. Evasion from taxes, duties or other mandatory payments.
	2	Article 214. Abuse of authority by the employees of commercial or other organizations
	2	Article 308. Abuse of office
	3	Article 314. Official forgery
	2	Article 315 <sup>2</sup> . Unlawful seizure of state or community-owned land plots, as well as non-enforcement of measures to prevent and stop the unauthorized construction of buildings and structures
	1	Article 353. Failure to carry out a court act
2015	13	
	2	Article 179. Embezzlement or misappropriation
	2	Article 214. Abuse of authority by the employees of commercial or other organizations
	6	Article 308. Abuse of office
	1	Article 309. Exceeding official authorities
	1	Article 315 <sup>2</sup> . Unlawful seizure of state or community-owned land plots, as well as non-enforcement of measures to prevent and stop the unauthorized construction of buildings and structures
	1	Article 353. Failure to carry out a court act
2014	16	
	7	Article 179. Embezzlement or misappropriation
	2	Article 214. Abuse of authority by the employees of commercial or other organizations
	3	Article 308. Abuse of office
	1	Article 309. Exceeding official authorities
	3	Article 314. Official forgery

Source: information submitted by the Government



The draft Criminal Code envisages increased limitation periods as follows:

- 5 years, in case of not grave crime,
- 10 years, in case of medium gravity crime,
- 15 years, in case of grave crime,
- 20 years, in case of particularly grave crime.

### ***Effective regret***

In 2014 Armenia introduced effective regret provisions for an active bribery in private and public sectors (Articles 200 §5, 312 §4 and 312-1 §4). Later, Armenia further amended these provisions for addressing the remaining shortcomings. Currently, there are no specific deficiencies in this area.

According to these amendments the mandatory conditions for application of the effective regret defence to a person who gave an undue advantage are the following:

- undue advantage was extorted;
- criminal prosecution bodies should not be aware of the committed offence;
- reporting should take place within a three-day period after committing the criminal offence;
- reporting should be done voluntarily.

The effective regret is subject to mandatory application when all of the mentioned conditions are in place.

In 2014, one person was released from criminal liability on the basis of Article 312 para 4 of the RA Criminal Code (Active bribery in public sector) and one person on the basis of Article 200 para 5 of the RA Criminal Code (Commercial bribery). In 2015, 3 persons were released from criminal liability on the basis of Article 312 para 4. During 2016-2017, no such cases were recorded.

### ***Immunities***

#### ***“Ensure that immunity procedures do not impede successful investigations and prosecutions of corruption cases”***

The list of public officials enjoying immunities as well as related basic rules and procedures are provided in the Constitution, the Criminal Code and the Criminal Procedure Code of Armenia. The immunity from prosecution is granted to the Members of Parliament and judges.

As it is pointed out in the answers of the Government, due to the adoption of the amendments to the Constitution in 2015 the provisions in regard immunity enjoyed by different officials were changed and the scope of immunity has been narrowed.

**Table 16. Regulations on immunities of MPs and judges before and after the Constitutional amendments of 2015**

<b>Members of Parliament</b>	
<b>Before 2015</b>	<b>After the amendments of 2015</b>
Deputies (Parliamentarians) may not - during the term of their powers and thereafter — be prosecuted and subjected to liability for actions deriving from their status of deputy, including for any opinion expressed in the National Assembly, unless it contains defamation or insult.	During and after the term of his powers, a parliamentarian may not be prosecuted and held liable for the voting or opinions expressed in the framework of parliamentarian activities.
Deputies may not be involved as an accused,	Criminal prosecution of a parliamentarian may be

<p>detained, nor may a matter on subjecting them to administrative liability through judicial procedure be initiated without the consent of the National Assembly. Deputies may not be arrested without the consent of the National Assembly, except for cases when the arrest is affected at the moment of committing a crime. In this case, the Chairperson of the National Assembly shall be informed promptly.</p>	<p>initiated only with the consent of the National Assembly. Without the consent of the National Assembly, a parliamentarian may not be deprived of liberty, unless caught at the time of or immediately after committing a crime. In this case, the deprivation of liberty may not last longer than 72 hours. The Chairman of the National Assembly shall be notified immediately of the parliamentarian's deprivation of liberty.</p>
<p><b>Judges</b></p>	
<p>A judge and the member of the Constitutional Court may not be detained, involved as an accused or subjected to administrative liability through the judicial process except with the consent of the Council of Justice or the Constitutional Court respectively. The Judge and the member of the Constitutional Court shall not be arrested save for cases when caught in the act or immediately after that. In this case the President of the Republic and the Chairman of the Cassation Court or Constitutional Court, respectively, shall be notified immediately about the arrest.</p>	<p>A judge may not be held liable for opinions expressed or judicial acts rendered in the course of administering justice, unless features of a crime or disciplinary offence are present.</p> <p>With respect to performance of his duties a judge of the Constitutional Court may be criminally prosecuted only with the consent of the Constitutional Court. With respect to performance of his duties a judge of the Constitutional Court may not be deprived of liberty without the consent of the Constitutional Court, except when caught at the time of or immediately after the commission of a crime. In this case, deprivation of liberty may not last longer than 72 hours. The President of the Constitutional Court shall be immediately informed when a judge of the Constitutional Court has been deprived of liberty.</p> <p>With respect to the performance of his duties, a judge may be criminally prosecuted only with the consent of the Supreme Judicial Council. With respect to the performance of his duties, a judge may not be deprived of liberty without the consent of the Supreme Judicial Council, except when caught at the time of or immediately after the commission of a crime. In this case, deprivation of liberty may not last longer than 72 hours. The President of the Supreme Judicial Council shall be immediately informed when a judge has been deprived of liberty.</p>

*Source: information submitted by the Government*

During 2014-2107 in criminal cases investigated at the RA Special Investigation Service, the immunity of 5 judges was lifted and there were no cases of rejecting petitions to lift immunity. The monitoring team was also informed that usually the decision to lift immunity is taken in a short timeframe.

According to the Government, although the legislation provides some officials with immunity, it does not impede the full and objective investigation of criminal cases as it also provides relevant procedures which enable investigation bodies to overcome the obstacles connected with the immunity by way of getting consent from bodies demanded by law. After doing this, they can easily apply all the necessary measures to ensure comprehensive, full and objective investigation.

This part of the recommendation is fully implemented.

***Sanctions***

The following types of sanctions are provided for bribery and corruption-related offences in the CC of Armenia: fine, deprivation of the right to hold certain positions or to engage in certain activities, short-term imprisonment, and imprisonment. The ranges of sanctions are as follows:

**Table 17. Sanctions for basic (non-aggravated) offences in Armenia**

	Criminal Code	Draft Criminal Code
Active bribery of public official	fine in the amount of 100-fold to 200-fold of the minimum salary or short-term imprisonment for a term of 1 to 3 months, or imprisonment for a term of maximum 3 years	fine up to 20-fold of the minimum salary or public works up to 200 hours, or short-term imprisonment up to 2 months or imprisonment up to 3 years.
Passive bribery of public official	fine in the amount of 300-fold to 500-fold of the minimum salary or imprisonment for a term of maximum 5 years, with deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years	fine from 10- to 20-fold of the minimum salary or public works up to 270 hours deprivation of the right to exercise certain activity or occupy certain positions from 3 to 7 years, or short-term imprisonment up to 2 months, or imprisonment up to 5 years
Active bribery of public servant not considered as an official	fine in the amount of 200-fold to 400-fold of the minimum salary, or imprisonment for a term of maximum 3 years, with deprivation of the right to engage in certain activities for a term of maximum 3 years	Will be covered by active bribery of a public official
Passive bribery of public servant not considered as an official	fine in the amount of 200-fold to 400-fold of the minimum salary or imprisonment for a term of maximum 3 years, with deprivation to engage in certain activities for a term of maximum 3 years	Will be covered by passive bribery of a public official
Active trading in influence	fine in the amount of 200-fold to 400-fold of the minimum salary or imprisonment for a term of maximum 3 years	fine up to 10-fold of the minimum salary or public works up to 170 hours or short-term imprisonment up to 2 months, or imprisonment up to 2 years
Passive trading in influence	fine in the amount of 200-fold to 400-fold of the minimum salary or imprisonment for a term of maximum 3 years	fine up to 15-fold of the minimum salary or public works up to 200 hours or short-term imprisonment up to 2 months, or imprisonment up to 3 years
Active commercial bribery	fine in the amount of 200-fold to 400-fold of the minimum salary or deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years,	fine up to 15-fold of the minimum salary or public works up to 200 hours or short-term imprisonment up to 2 months,

	or imprisonment for a term of maximum 3 years	or imprisonment up to 2 years
Passive commercial bribery	fine in the amount of 200-fold to 400-fold of the minimum salary or deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years or imprisonment for a term of maximum 3 years	fine up to 15-fold of the minimum salary or public works up to 270 hours or imprisonment up to 3 years
Active bribery in sports	fine in the amount of 300-fold to 500-fold of the minimum salary or deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years or short-term imprisonment for a term of 2 to 3 months or imprisonment for a term of maximum 3 years	fine from 10- to 20-fold of the minimum salary or public works up to 270 hours or short-term imprisonment up to 2 months, or imprisonment up to 2 years
Passive bribery in sports	fine in the amount of three-hundred-fold to five-hundred-fold of the minimum salary deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years or short-term imprisonment for a term of 2 to 3 months or imprisonment for a term of maximum 3 years	fine from 10- to 20-fold of the minimum salary or public works up to 270 hours or short-term imprisonment up to 2 months or imprisonment up to 4 years
Embezzlement <i>(committed by use of official position)</i>	fine in the amount of 500-fold to 1000-fold of the minimum salary imprisonment for a term of 2 to 5 years, with or without deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 3 years	fine from 30- to 50-fold of the minimum salary or public works from 150 to 250 hours or deprivation of the right to hold certain positions or to engage in certain activities for a term from 4 to 7 years or restriction of freedom from 2 to 3 years or imprisonment for from 2 to 4 years
Abuse of powers	fine in the amount of 200-fold to 300-fold of the minimum salary or deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum 5 years or short-term imprisonment for a term of 2 to 3 months or imprisonment for a term of maximum 4 years	fine from 10- to 20-fold of the minimum salary or deprivation of the right to hold certain positions or to engage in certain activities for up to 5 years or restriction of freedom up to 2 years or short-term imprisonment for a term up to 2 months or imprisonment for up to 3 years

According to the official statistics for 2014-2017 provided by the Armenian authorities, only fines (124 cases or  $\approx 55\%$ ) and imprisonment (103 cases or  $\approx 45\%$ ) are applied for major bribery and corruption related offences<sup>201</sup>. Conditional release from serving the sentence was applied in 37 or  $\approx 16\%$  of cases; release from serving the punishment due to amnesty was applied in 39 or  $\approx 17\%$  of cases. Thus, in the vast majority of corruption cases imprisonment is not enforced and only very few of those result in a conviction with “real” imprisonment terms. This leads to the conclusion that sanctions for corruption offences are not dissuasive in practice. The Government explained that this was because of many bribery cases with very low amount of bribe. The average percentage of conditional release in relation to other crimes is 10 % higher than in relation to corruption cases.

Against this background, the monitoring team expresses its concerns over legislative initiatives aimed at introducing public works as a sanction for corruption offences.

### Conclusion

Armenia has made progress with respect to the criminalisation of corruption offences in line with international standards, *inter alia*, by criminalising illicit enrichment and amending the trading in influence offence.

The monitoring team welcomes these important legislative developments. As to the abuse of office offence, despite the provided case law regarding the criteria for assessing the essential damage in these offences, the monitoring team still sees a need for defining them further. This position is supported by the wording adopted in the Decision of the RA Constitutional Court calling on the judicial practise to develop the criteria. In the meantime, the elements of essential damage and essential harm provided in Articles 308 and 375 of the RA Criminal Code might narrow the definition of abuse of functions provided in Article 19 of UNCAC. The legislative provisions on embezzlement and misappropriation of entrusted property should also be further brought in full compliance with anti-corruption international standards.

The monitoring team supports the specialisation of prosecutors as this was also recommended during the previous monitoring round. At the same time, it is of the opinion that such a broad definition of corruption crimes as it is provided in the Order of the General Prosecutor, around 75% of which are not considered as corruption offences by international standards, may jeopardise the idea of specialisation of prosecutors in prosecution of corruption crimes.

The monitoring team welcomes Armenia’s intention to introduce criminal liability of legal persons and expects the respective legislative amendments to be adopted soon. The reforming of the confiscation regime is one more important part of the planned review of the Armenian criminal legislation.

At the same time, the monitoring team is of the opinion that sanctions for corruption offences are not dissuasive in practice.

Armenia is *partially compliant* with the previous **recommendation 5** (taking into account conclusions of the section 3.2.) and *fully compliant* with **recommendation 6** of the third round of monitoring report.

#### New Recommendation 21: Criminal law

1. Without further delay introduce liability of legal persons for corruption offences in line with international standards.

<sup>201</sup> Active and passive forms of bribery of public official/public servant not considered as an official, trading in influence, commercial bribery and bribery in sports, abuse of powers, embezzlement (committed by use of official position).

2. Enable law enforcement to effectively pursue corruption cases that involve legal persons.
3. Ensure that “essential damage” and “essential harm” as element of abuse of power offences are compliant with legal certainty requirements.
4. Analyse practice of application of the new provisions on illicit enrichment and, based on the results of such analysis, introduce amendments to address deficiencies detected, if needed.
5. Ensure the proportionality of sanctions in corruption cases.

### 3.2 Procedures for investigation and prosecution of corruption offences

#### **Recommendation 5 of the Third Round of Monitoring Report on Armenia: Trainings, detection and investigation of corruption**

[...]

- Develop training curricula and organize training sessions for investigators and prosecutors with regard to detecting, investigating and prosecuting of bribery offences, when the bribe was merely offered or promised, as well as cases of trading in influence, and develop guidelines for investigators, prosecutors and judges on application of these offences.
- Facilitate the detection and investigation of newly introduced provisions and new elements of the previously existing corruption offences by:
  - (i) increasing pro-activeness of the law enforcement and prosecution authorities notably through an increased use of analytical tools;
  - (ii) using more actively other detection tools in addition to intelligence information gathered by law enforcement, such as media reports, information received from other jurisdictions, referrals from tax inspectors, auditors and FIUs, complaints received via government websites and hotlines, as well as information from other complaint mechanisms, as a basis for launching investigations.

#### **Recommendation 7 of the Third Round of Monitoring Report on Armenia: Access to financial information**

- Examine the rules applicable to the lifting of bank secrecy and access to financial and commercial records in the course of financial investigations and the manner in which they are currently applied, to ensure that the process is simple and consistently implemented and that it does not impede investigators’ and prosecutors’ ability to pursue complex corruption crimes.
- Train investigators and prosecutors on investigations and prosecutions of complex financial cases and take steps to ensure that such investigations are conducted whenever appropriate and that adequate human and financial resources are allocated, including the availability of expertise in forensic accounting and information technology.

#### **Recommendation 8 from the Third Round of Monitoring report on Armenia: Enforcement**

[...]

- Foster cooperation between law enforcement bodies and control bodies in detecting, investigating and prosecuting corruption-related offences.
- Encourage the criminal investigation and prosecution bodies to approach the corruption phenomenon in a more targeted and proactive manner, aiming at persons among high level officials, main risk areas in public administration and economy.

*Effective/proactive detection: sources of information, use of FIU reports, statistics*

***“Facilitate the detection and investigation of newly introduced provisions and new elements of the previously existing corruption offences by:***

***(i) increasing pro-activeness of the law enforcement and prosecution authorities notably through an increased use of analytical tools;***

***(ii) using more actively other detection tools in addition to intelligence information gathered by law enforcement, such as media reports, information received from other jurisdictions, referrals from tax inspectors, auditors and FIUs, complaints received via government websites and hotlines, as well as information from other complaint mechanisms, as a basis for launching investigations”.***

***“Foster cooperation between law enforcement bodies and control bodies in detecting, investigating and prosecuting corruption-related offences.***

***Encourage the criminal investigation and prosecution bodies to approach the corruption phenomenon in a more targeted and proactive manner, aiming at persons among high level officials, main risk areas in public administration and economy.”***

Armenia did not maintain statistics on the sources of detection of corruption offences in the past; collection of these statistics has been introduced only from the beginning of 2018. At the same time, Armenia reported that in 2017 investigations into allegations of corruption were initiated from a number of sources which were mainly reports by individuals and legal entities, including anonymous reports. Eight were opened based on media reports and 123 were based on the investigation of material traces and consequences of crime. No data was reported for 2014-2016.

The Criminal Procedure Code prohibits opening a criminal case based on anonymous complaints or complaints with false signatures, but investigators can conduct intelligence investigations to determine if the complaint warrants further investigation so long as it contains information about a specific individual or a crime. If information relating to an offence can be confirmed through an intelligence investigation, then a criminal investigation can be opened. The Prosecutors General’s office reported that although statistics for earlier years are not readily available, they believe the number of reports from individuals has been steadily increasing. They expect that with the implementation of the new legislation on whistleblowers protection anticipated soon, these will increase.

Regarding the role of the Financial Monitoring Centre of Armenia (FMC), the Government informed that pursuant to Article 13 of the AML/CFT Law the FMC may provide information to law enforcement authorities on its own motion or upon request. Besides, law enforcement bodies may submit requests to the FMC if there is a sufficient substantiation of a suspicion or a case of money laundering or terrorism financing. The FMC receives transaction reports and suspicious activity reports from which they develop a database and conduct analysis.

Along with the notification, the FMC may on its own initiative submit to criminal prosecution authorities further data related to the circumstances described in the notification. The notification or the additionally submitted data may contain classified information as defined by law.

The FMC is obligated to provide law enforcement bodies information on request within a 10-day period, unless a different timeframe is specified in the request or, in the reasonable judgment of the FMC, a longer period is necessary for responding to the request. Criminal investigation authorities shall notify the FMC about the decisions taken as a result of considering the information provided on their request, as well as about the decisions taken as a result of preliminary investigation whenever a criminal case is initiated, within a 10-day period after taking such decisions. The evidence provided may be used for intelligence purposes and as basis to apply for other investigative techniques, but it is not considered as evidence.

In the period from 2014-2017, the FMC sent 130 notifications to law enforcement agencies. These notifications often included both suspicious transaction reports, and analysis by the FMC. Notification is usually not a report of a crime. Based on notifications sent by the FMC, as well as the additional information obtained by law enforcement agencies, 27 criminal cases were initiated, out of which 5

cases of ML (including two stand-alone ML cases, two cases of theft and ML, one case of tax evasion and ML), 22 cases of predicate offences (fraud, embezzlement committed with the use of computer equipment, deception of consumers, tax evasion, illegal entrepreneurial activity, fake entrepreneurship, falsification of documents). Two of the mentioned 5 ML criminal cases have been suspended; the preliminary investigations of other three were ongoing at the moment of adoption of the report. No corruption cases were initiated based on this information.

Armenia also advised that in the period of 2014-2017, the FMC received 34 notifications from foreign FIUs about suspicions transactions. After the analysis of notifications, 5 disclosures were made to law enforcement authorities. The FMC did not have statistics on whether the information lead to criminal cases being opened. The FMC also reported seeking information from foreign FIUs in 26 instances in 2016 and 27 in 2017.

Taking into account the need for cooperation in the sphere of combating money laundering and terrorism financing, in 2008 memorandums of understanding were signed between all law enforcement bodies and FMC with the aim of contribution of effective mechanisms for prevention and disclosure of money laundering and terrorism financing possible cases. These memorandums were renewed in 2016 and expanded to include the fight against the proliferation of weapons of mass destruction.

In the 2016 Memorandum, the following additional areas of cooperation were envisaged:

- exchange of information regarding combating money laundering and terrorism financing;
- mutual assistance in the sphere of fight against the financing, proliferation of weapons of mass destruction;
- conducting joint discussions on possible cases of money laundering and terrorism financing or hypotheses, as well as legal acts and documents connected with combating money laundering and terrorism financing;
- mutual assistance in the development of combating money laundering and terrorism financing regulations, guidelines and other methodological materials, as well as strategic analyses and policies;
- joint activities on money laundering and terrorism financing statistics and typologies;
- implementation of study, professional training, counselling joint programs in the sphere on combating money laundering and terrorism financing.

Another area of potential proactive investigative work involves the use of information provided by whistleblowers. According to Article 8, part 1 of the RA law on the Whistleblowing System through the unified electronic platform for whistleblowing (hereinafter referred to as “the unified electronic platform”), the whistleblower may anonymously submit information about a crime. The unified electronic platform shall ensure accessibility to the Prosecutor General's Office of the Republic of Armenia.

According to Article 9 of the RA law on the Whistleblowing System a whistleblower shall submit an anonymous report by entering it into the unified electronic platform. The Prosecutor General's Office of the Republic of Armenia shall, within the scope of its competence, ensure record-keeping, consideration of each report having entered into the unified electronic system, undertaking of measures within the scope of its competences and adoption of a relevant act, if necessary. The report, which contains information about elements of a crime and is submitted through the unified electronic platform, shall be subject to verification as prescribed by the Law of the Republic of Armenia “On operational intelligence activity”, where the information submitted with the report is sufficiently substantiated, relates to a specific official or a body and contains data which can be reasonably verified. For the purpose of verifying the report, the Prosecutor General's Office of the Republic of Armenia shall re-address it to the body carrying out operational intelligence activity.



No statistics or examples on investigations started on the basis of such report were provided because the law has only recently come into effect. Moreover, the provision on creation of unified electronic platform has not come into effect yet.

The Government informed that there were many cases started because of the reports received from tax authorities or auditors, but it was not possible to provide any figures since no statistics were available.

Armenia reported that there were many requests by investigators for access to email communications which were available to investigators without a showing that the account owner was a suspect or accused. However, Armenia does not have statistics on how often this information is requested in corruption investigations or if it has been a significant source of evidence in their corruption investigations.

Armenian investigators, apart from those in the Investigative Committee and the State Revenue Committee who deal with economic crimes, do not have direct access to tax and customs databases, no measures to get such access are reported. However, Armenia reported that tax authorities may make referrals for criminal investigation and prosecution. The monitoring team received information from the Government that there were a number of cases instigated on the basis of reports on fraud and other corruption-related cases received by law enforcement agencies from tax inspectors and auditors. But no concrete statistics or examples have been provided. Tax and customs inspectors also have direct access to other databases, but corruption investigators and prosecutors do not.

Armenia reported that neither investigators nor prosecutors have direct access to asset disclosures. Instead, they must request the reports from the agency which maintains them. While portions are available on a publicly available website, some portions are not publicly available.

During the on-site visit the monitoring team discussed with law enforcement practitioners the use of asset declarations as a source of detection of corruption-related offences, especially illicit enrichment, submission of false data, concealing information and intentional failure to submit declarations. In this regard the monitoring team was informed that two methods of cooperation with CEHRO were being discussed:

- investigative bodies will request from CEHRO data on results of declarations verification;
- investigative bodies will conduct their own verification using access to different data within their investigations.

The monitoring team was also informed that the Corruption Prevention Committee will send the violations found on the basis of independent analysis to the RA General Prosecutor's Office.

Moreover, the Government advised that illicit enrichment is a subject to compulsory examination within investigation of each corruption-related offence.

This part of recommendation is partially implemented.

#### ***Prosecutorial discretion, time limits, joint investigative teams***

For most of the information solicited, specific statistical information was generally provided only by the RA Special Investigation Service which is only one of the investigative agencies authorised to investigate corruption matters. During the preliminary investigation of large-scale criminal cases on crimes of corruption investigated by the RA Special Investigation Service, investigative groups were formed in which investigators from other investigative bodies were involved, as well:

- In 2015-8 investigative groups (25 investigators (9 from other investigative bodies);
- In 2016-8 investigative groups (27 investigators (8 from other investigative bodies);
- In 2017-21 investigative groups (98 investigators (6 from other investigative bodies).

According to the provided information the Prosecutor General does not have wide discretion regarding transferring investigations between investigative bodies. The one exception to this comes from to Article 190 of the Criminal Procedure Code which says that he/she may transfer a criminal case from other investigators to the investigators of the Special Investigation Service that deals with crimes that have been committed by high-level officials.

The only statistical information provided about the rate of transfers was by the Special Investigations Service which stated that during 2014 – 2017 11 corruption related investigations were transferred to different departments of the Investigative Committee. Two were transferred from the Investigative Committee to the National Security and 17 corruption related cases were transferred from the Investigative Committee to the Special Investigations Service.

The RA Criminal Procedure Code does not define the maximum time limit for preliminary investigation. Accordingly, Armenia does not view that the preliminary investigation periods can be an obstacle to any crime, including the investigation of corruption crimes. Armenia also reported that no investigations were closed due to the expiration of the statute of limitations.

Armenia reported that it did not have legislation allowing for guilty plea agreements to resolve cases but the Criminal Procedure Code does allow for “accelerated procedures” in certain cases. In these proceedings the accused accepts responsibility for the charges and the prosecutor does not object. The court then focuses on the sentence to be imposed. The procedure is available if the maximum sentence does not exceed 10 years’ imprisonment. There is no examination of the evidence of the offence by the court except to the extent that it bears on the sentence. There are certain procedural due process guarantees including that the defendant must be represented by counsel. Armenia reported no guidelines or regulations governing when the prosecutor may propose such treatment or consent to it or how often it is used. At the same time, there was no information provided about any clear benefit to the defendant to participating in this process like terms of sentencing leniency for accepting responsibility other than more expeditious resolution of the prosecution phase.

#### ***Bank secrecy and complex financial cases***

***“Examine the rules applicable to the lifting of bank secrecy and access to financial and commercial records in the course of financial investigations and the manner in which they are currently applied, to ensure that the process is simple and consistently implemented and that it does not impede investigators’ and prosecutors’ ability to pursue complex corruption crimes”.***

According to the RA Criminal Procedure Code, information containing bank secrecy information may be obtained only on the suspect or accused and only with the appropriate court authorisation. This includes account ownership and activity records and wire transfer records.

Article 10 of the Republic of Armenia Law on Bank Secrecy specifies that banks shall provide the criminal prosecution authorities with confidential information concerning criminally charged persons only in case of a court decision. Upon receiving the decision, banks must provide within two bank days information and documentation indicated and required by the court decision in a closed and sealed envelope to the criminal prosecution authorities or an authorised person thereof.

However, Armenia reported that access to information considered bank secrecy information from financial institutions as operative intelligence may only be accessed involving particularly grave or grave crimes and then only upon showing that there is substantial evidence that the information cannot be obtained in any other way. These appear to include most corruption offences but not embezzlement, money laundering or unlawful remuneration to a public servant who is not considered an official. By contrast, if the subject of the investigation is later considered a suspect or accused at the prosecution level, then the restriction of access to cases involving grave or especially grave crimes does not apply.

According to Article 13.1 of the Republic of Armenia Law on Bank Secrecy, when the information specified under the AML/CFT Law is analysed by the Central Bank (CBA) and leads to reasonable ML/FT suspicions, then the CBA directly disseminates that information to law enforcement authorities. The same Article also regulates the provision of banking secrecy information to law enforcement authorities in addition to a dissemination previously made by the CBA or when a query is received by the CBA from criminal prosecution bodies.

The provision of banking secrecy to law enforcement authorities is also specified under Article 13 of the AML/CFT Law where, in accordance with Part 4 of that Article, the FMC is responsible for providing available information, including classified information as defined by the law, upon

receiving a query from criminal prosecution authorities, provided that the query contains sufficient substantiation of a suspicion or a case of money laundering or terrorism financing.

The Bank is prohibited to notify its customers of the fact of the court decision or the judgment passed in the manner prescribed by the Criminal Procedure Code of the Republic of Armenia and the fact that they provide bank secrecy information to the court or the court's authorized person.

Recently in a decision of August 2014, the RA Court of Cassation dated August 15<sup>th</sup> by the EKD/0223/07/14 held that in a criminal case, prosecutors and investigators may now get access to financial information for legal entities. After analysing the concept “on involving a person in the criminal case as a suspect or accused” found in the Article 172 part 3.2 of the RA Criminal Procedure Code, the Court held that bank secrecy records regarding legal entities may be obtained if the legal entity is directly involved in a criminal offence(s) a natural person is charged with and if there is a reasonable assumption that the actions of the legal entity were partly or completely controlled, governed or by any other means were actually guided by the suspect or accused.

Bodies conducting criminal prosecution may receive information constituting a notarial secret based on a court decision. Criminal prosecution bodies may obtain information containing a bank secret with regard to persons involved as a suspect or an accused in the criminal case and official information on transactions in securities by the Central Depository prescribed by the Law of the Republic of Armenia "On securities market" based on a court warrant on search or seizure.

Bodies conducting criminal prosecution may receive credit information or credit record from a credit bureau based on a court decision. A state servant testifying on information entrusted to him or her and containing official, commercial and other secrets protected by law and, irrespective of the form of ownership, an employee of an enterprise, institution, and organisation shall inform the relevant head thereon in writing unless it is directly forbidden by the body conducting proceedings.

Evidence concerning information containing official, commercial and other secrets protected by law may be examined in a closed court hearing upon request of these persons, who are threatened by disclosure of the mentioned information.

Criminal prosecution authorities may also submit the relevant court decision to the CBA which functions as an intermediary via collecting all necessary data from banks and providing corresponding information to prosecution authorities.

Upon receipt of the court decision, banks shall be bound to provide, within two bank days, information and documentation indicated and required by the court decision in a closed and sealed envelope to the criminal prosecution authorities or an authorized person thereof.

The provided CBA data shows that in 2017 it received 360 requests, from which 18 were refused, primarily conditioned by the absence of a judicial decision or the subject’s identification information.

Investigators of the RA Special Investigation Service received judicial sanctions to obtain bank and notary secrecy:

- In 2014-35;
- In 2015-52;
- In 2016-68;
- In 2017-34.

No information was provided as to whether any of the other over 200 requests involved corruption investigations.

There is no central register of bank accounts in Armenia. At the same time, there is a Credit Bureau which is responsible for collection, processing, registration, maintenance and use of credit information. However, criminal prosecution authorities can only obtain from the Credit Bureau information on credits or credit histories on the basis of a court decision.

### ***Training on conducting financial investigations***

*“Develop training curricula and organize training sessions for investigators and prosecutors with regard to detecting, investigating and prosecuting of bribery offences, when the bribe was merely offered or promised, as well as cases of trading in influence, and develop guidelines for investigators, prosecutors and judges on application of these offences.”*

*“Train investigators and prosecutors on investigations and prosecutions of complex financial cases, and take steps to ensure that such investigations are conducted whenever appropriate and that adequate human and financial resources are allocated, including the availability of expertise in forensic accounting and information technology”.*

By the annual training programs of prosecutors, professional training of persons included in the list of prosecutors candidates and annual training of RA investigative committee investigators, professional training of persons included in the list of investigative candidates for the Investigative Committee of the RA within the framework of the “Current issues of RA criminal law” course are envisaged crimes against economic activities, its criminal-legal character, specifications of qualification and current issues of law enforcement practice.

During 2014-2017 within the framework of “Current issues of RA criminal law” course 50 candidates of prosecutor, 113 candidates of investigator, 887 prosecutors and 853 investigators have passed professional training. The trainings were conducted in the Justice Academy in the format of lectures and discussions by presenting legislative and law enforcement experience.

Training on "Economic crimes investigation" conducted within the framework of the "Anti-Corruption and support for effective management, combating money laundering" project, implemented by the Council of Europe and the EU Eastern Partnership program, took place on 24-27 April 2016 in Kyiv, attended by the prosecutor of the Department for Crimes Against Corruption and Economic Activities of the RA Prosecutor General's Office.

A Methodological Guide on Peculiarities of Investigating Money Laundering Crimes was developed by the working group of the Interagency Committee on Combating Money Laundering, Terrorism Financing and Proliferation Financing in the Republic of Armenia, elaborating on peculiarities of ML investigations within the framework of the national anti-money laundering policy.

The Justice Academy already started using this guideline in 2018 as a training material for prosecutors, investigators and police officers.

However, guidelines for investigators, prosecutors and judges on application of bribery, trading in influence and illicit enrichment offences are still in the process of development.

The respective parts of recommendations 5 and 7 are partially implemented.

### ***International cooperation***

Armenia is a party to many international multilateral and bilateral treaties related to international cooperation in criminal cases including those on corruption offences. For instance, Armenia is a party to UNCAC, the European Convention on Mutual Assistance in Criminal Matters, the European Convention on Extradition (except the Third and Fourth Protocols). Apart from that, Chapter 54 of Armenia's Criminal Procedure Code provides further guidance on cooperation under international treaties such as UNCAC. Chapter 54.1 of the Code governs international cooperation in the absence of a treaty.

Although Armenian law does not expressly require dual criminality as a precondition to MLA (except in cases of extradition), Armenia has made a reservation to the CoE MLA Convention that maintains the right to refuse assistance “if the offence, in respect of which legal assistance is requested, is not qualified as a ‘crime’ and is not punishable under legislation of the Republic of Armenia.”<sup>202</sup>

Armenian authorities look to provisions of international treaties or reciprocity rules to determine the timeframe for executing requests. In practice, requests relating to pre-trial proceedings are generally

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<sup>202</sup> [OECD, International Cooperation in Corruption Cases](#), p. 43-44

executed within one to two months, unless the content of the request asks for a shorter period of time<sup>203</sup>.

Armenia’s law allows for rejection if fulfilling a request “can damage independence, constitutional order, government or security of the Republic of Armenia or conflicts with legislation of the Republic of Armenia.”<sup>204</sup>

The MoJ has adopted a sort of management system for outgoing requests, which includes information on the country making the request, the content of the request, the crime involved, the legal basis for implementing the request (including the international treaty), the executing authorities, and an execution timeframe.

There are two central authorities in Armenia in international judicial cooperation matters. The General Prosecutor’s Office is a central authority on a pre-trial stage, while the Ministry of Justice – on a trial stage, including the execution of judgements.

The Unit of the General Prosecutor’s Office responsible for international cooperation is composed of 4 prosecutors and 3 other public officials. The Ministry of Justice has a specialised department dedicated to international cooperation, consisting of MLA and Extradition units. Each unit is staffed with 3 persons (to RA authorities: please check the accuracy of information on the number of staff and provide the correct information in case of inaccuracy).

**Table 18. Statistics on MLA and extradition requests on the cases at pre-trial stage, including corruption-related offences**

	2014	2015	2016	2017
Incoming MLA requests				
Total number of sent MLA requests	121	224	216	185
Of those requests executed	94	113	139	119
of those requests pending in the respective year	28	107	69	59
Of those requests rejected	0	4	8	7
Outgoing MLA requests				
Total number of MLA requests sent	271	383	366	453
Of those requests executed	88	87	91	129
of those requests pending in the respective year	162	275	266	313
Of those requests rejected	21	21	9	11
Outgoing Extradition requests				
Total number of extradition requests received	22	18	11	412
Of those requests granted	7	5	3	47

<sup>203</sup> [OECD, International Cooperation in Corruption Cases](#), p. 85

<sup>204</sup> Armenia Criminal Procedure Code, Article 484

Incoming extradition requests				
Total number of extradition requests sent	91	72	76	66
Of those requests granted	36	21	27	27

*Source: information submitted by the Government*

The database on statistics for MLA and extradition requests on corruption related cases at pre-trial stage was created on 2018. This is why the PGO is not able to provide detailed information thereon for the years of 2014-2017.

The monitoring team was not provided with the evidence of use of modern (joint investigative teams, special investigative measures, tele-, and videoconferencing) and informal direct forms of international cooperation in corruption cases. As an example, can be mentioned the case of Armenia's former Chief Compulsory Enforcement Officer Mihran Poghosyan whose link to offshore companies had been reviled in Panama Papers<sup>205</sup>. The investigation in Armenia was terminated due to lack of evidence which investigative bodies could not receive from Switzerland<sup>206</sup>. According to the information received by the monitoring team only official means of cooperation were used in this case. Without any prejudice regarding efforts of the Armenian side to ensure proper collection of evidence in this case, the monitoring team admits that this process could benefit from use of other instruments of international cooperation.

The monitoring team was informed that there were no corruption cases with assets allocated abroad.

### **Conclusion**

The third monitoring round report recommended that Armenia take a more proactive approach to the investigation and detection of corruption offences in light of some of the newly introduced laws governing investigative techniques and new elements of offences. Specific recommendations were made about the increased use of analytical tools and reliance on other sources of investigative evidence.

Although the statistics concerning results of investigations and prosecutions involving significant corruption offences are relatively low, Armenia appears to be expanding the sources of possible information about corruption offences and other financial crimes which should be helpful in more proactively addressing corruption and other crimes. The implementation of the new whistleblower protection law and the analysis of asset declarations, though slow in coming, are important steps and the impact on successful and effective corruption investigations should be more robust, effective and result in successful corruption investigations.

Public and confidential financial information is central to the effective investigation of most complex crimes, including corruption crimes, but access by investigators and prosecutors appears to be unreasonably limited. Records of the receipt of unexplained assets and income or expenditures could be the principal evidence of certain crimes; it is almost always key circumstantial evidence and corroboration of witness testimony that the crimes occurred.

Moreover, access to credit information, asset declarations, tax information and property records all requires disclosure of the existence of the investigation to third parties which could compromise on-going investigative activity. These impediments to direct access by corruption crime investigators appear to be unreasonable limitations for investigations.

<sup>205</sup> <https://www.occrp.org/en/panamapapers/armenian-master-of-offshores/>

<sup>206</sup> <https://www.occrp.org/en/daily/6012-armenia-ends-probe-into-mihran-poghosan-s-panama-papers-scandal-for-lack-of-evidence>

While the FMC appears to have grown significantly in its role in analysing suspicious transactions reports and conducting related financial analysis in combating money laundering, the process for obtaining financial information from financial institutions for use as evidence in criminal investigations is still limited to some extent, especially on early stages of investigations. Bank information about legal entities is also limited to situations where the legal entity was directly controlled and used by a suspect or accused.

In practice, from the perspective of the monitoring team, these burdensome criteria for access to financial information would make it very difficult for corruption investigations to advance beyond the stage of mere receipt of allegations. No information was provided about the use of financial analytical software to aid investigators.

No corruption cases were reported where assets were located abroad and no joint investigations with foreign governments' investigators were reported in corruption cases. There is also no clear coordination of investigations into money laundering where the predicate conduct is a corruption offence. Given the common scenarios for high level corruption, more would be anticipated.

The ability to transfer cases which develop into corruption related cases involving public officials or to move cases which appeared to be corruption cases but after some initial investigation are not, could be exercised selectively, especially to limit effective investigations. There do not appear to have been very many transfers to date but the information about the nature of the cases transferred was not provided.

In the absence of greater limitations on the involvement of Members of Parliament in outside business activities, it appears that this is an under-addressed area of investigation and one ripe for coordinated investigative action. Additionally, the cooperation of insiders in complex crime schemes is often critical to successful investigation and prosecution.

Armenia does not have plea agreements and it does not appear to have an alternative which permits effective cooperation other than the use of effective regret where the person must come forward quickly and explain the circumstances of the bribery and extortion to obtain leniency. While this could be one effective tool, plea agreements which allow for leniency based on cooperation from insiders in the criminal scheme either in the charges brought or in sentencing is one of the most effective tools to investigate and prosecute corruption and complex crime offences, which nevertheless allows for a sanction to be imposed even for cooperating persons.

The monitoring team is of the opinion that Armenia could make more use of modern and direct forms of international cooperation and available mechanisms for cooperation under the umbrella of regional and global organisations.

Accordingly, Armenia is *partially compliant* with respective parts of the **recommendations 5 and 8**, as well as **recommendation 7** of the third round of monitoring report.

#### New Recommendation 22: Detection and investigation of corruption

1. Continue to expand the use of various sources of reliable information and analytical tools to consider opening investigations into corruption. Introduce statistics on sources of detection of corruption offences.
2. Remove existent limitations on access to financial information from financial institutions for the purposes of investigations and prosecutions of corruption offences and other financial crimes in line with the international standards.
3. Ensure that law enforcement agencies have effective electronic access to the asset declarations, tax, customs, marriage, birth, travel, and other state databases.
4. Establish a centralised register of bank accounts, including information about beneficial owners

of accounts, and make it accessible for investigative agencies with appropriate safeguards.

5. Consider developing criteria that provides some limitations on the Prosecutor General's absolute power to transfer cases.
6. Enhance the cooperation and coordination between the law enforcement authorities and competent state bodies in charge of prevention, detection, investigation and prosecution of corruption offences.
7. Ensure that investigations of money laundering involving public officials or where the predicate offences are corruption are adequately coordinated with investigators and prosecutors who deal with corruption cases.
8. Build the capacity of investigators and prosecutors to conduct financial investigations and use circumstantial evidence; encourage use of in-house or outsourced specialised expertise; use IT systems to compile and analyse data for detection and investigation of corruption offences, identify areas prone to corruption.
9. Develop guidelines on detection, investigation and prosecution of bribery offences, when the bribe was merely offered or promised, as well as cases of trading in influence, and illicit enrichment.
10. Consider developing and adopting plea agreement legislation, policies and guidelines on its implementation.
11. Encourage various modern and informal forms of international cooperation and make good use of the available mechanisms for cooperation under the umbrella of regional and global organisations.
12. Collect and analyse data about the practical application of available international cooperation mechanisms during the investigation and prosecution of corruption cases, identify relevant challenges to cooperation and take necessary measures for their remedy.

### 3.3 Enforcement of corruption offences

#### **Recommendation 9 from the Third Round of Monitoring report on Armenia: Statistics**

To ensure comprehensive criminal statistics on corruption-related offences, the government should make available the data that allows to determine the following:

- position/rank/occupation of the suspect/indicted/convicted person,
- number of investigations, prosecutions and convictions for each type of offence,
- sanctions applied,
- the amount of the bribe and/or the damage caused by the offender, and
- value of properties seized and confiscated.

The Government of Armenia provided the following statistics regarding the investigation, prosecution and adjudication of corruption offences for the period from 2014 through 2017.



**Table 19. Investigation, prosecution, adjudication and sanctioning of corruption criminal offences (2014-2017)**

Article Of CC <sup>207</sup>	Investigation (Number of cases)				Prosecution (Number of persons)				Submitted with accusatory conclusion (Number of persons)				Convictions (Number of persons)			
	2014	2015	2016	2017	2014	2015	2016	2017	2014	2015	2016	2017	2014	2015	2016	2017
178 §2 (1.1)	10	2	6	6	14	4	5	1	6	4	5	1	11	2	3	6
179 §2 (1)	37	32	54	42	32	35	37	33	27	21	18	24	20	22	12	9
190	0	0	0	0	0	1	0		0	1	0	0	0	0	0	0
200	13	9	6	5	11	8	21	7	10	4	21	4	4	3	1	1
201	0	0	0	2	0	0	0	5	0	0	0	5	0	0	0	0
214	44	40	92	28	9	9	17	14	2	3	4	7	2	0	2	2
308	111	177	126	82	32	29	42	32	21	15	28	27	12	21	9	18
309	97	151	125	48	11	17	15	0	4	13	13	0	1	1	4	0
310-1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
311	62	43	46	24	54	59	37	40	40	52	26	10	11	12	25	4
311-1	9	1	9	1	5	2	11	3	3	3	10	1	3	1	16	1
311-2	0	0	1	0	0	0	1	0	0	0	1	0	0	0	0	0
312	8	10	19	11	10	7	27	14	9	5	26	8	1	3	8	11
312-1	1	0	9	0	1	0	9	0	1	0	0	0	0	1	0	0
312-2	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	3

<sup>207</sup> Statistical data is provided for the following articles of the RA Criminal Code: Article 178 - Fraud §2 ((1.1) by use of official position); Article - 179 Embezzlement or Peculation §2 ((1) by use of official position (1)); Article 190 - Money laundering; Article 200 - Commercial bribery; Article 201 - Bribing of participants and organisers of professional sporting events and commercial competitions; Article 214 - Abuse of powers by officers of commercial or other organisations; Article 308 - Abuse of office; Article 309 - Excess of official powers; Article 310-1 - Illicit enrichment; Article 311 - Receiving a bribe; Article 311-1 - Receiving unlawful remuneration by a public servant not considered as an official; Article 311-2 - Use of real or alleged influence for mercenary purposes; Article 312 - Giving a bribe; Article 312-1 - Giving unlawful remuneration to a public servant not considered as an official; Article 312-2 - Giving unlawful remuneration for using real or alleged influence; Article 313 - Mediation in bribery; Article 314 - Official forgery; Article - 352 Delivering an obviously unjust criminal or civil judgment or another judicial act; Article 375 - Abuse of power, excess of power, or inaction of authorities; Article 314-2 - deliberately non submission of declarations to the Ethics Committee of High-Ranking Officials; Article 314-3 - falsification of declarations or concealment of data subject to declaration.

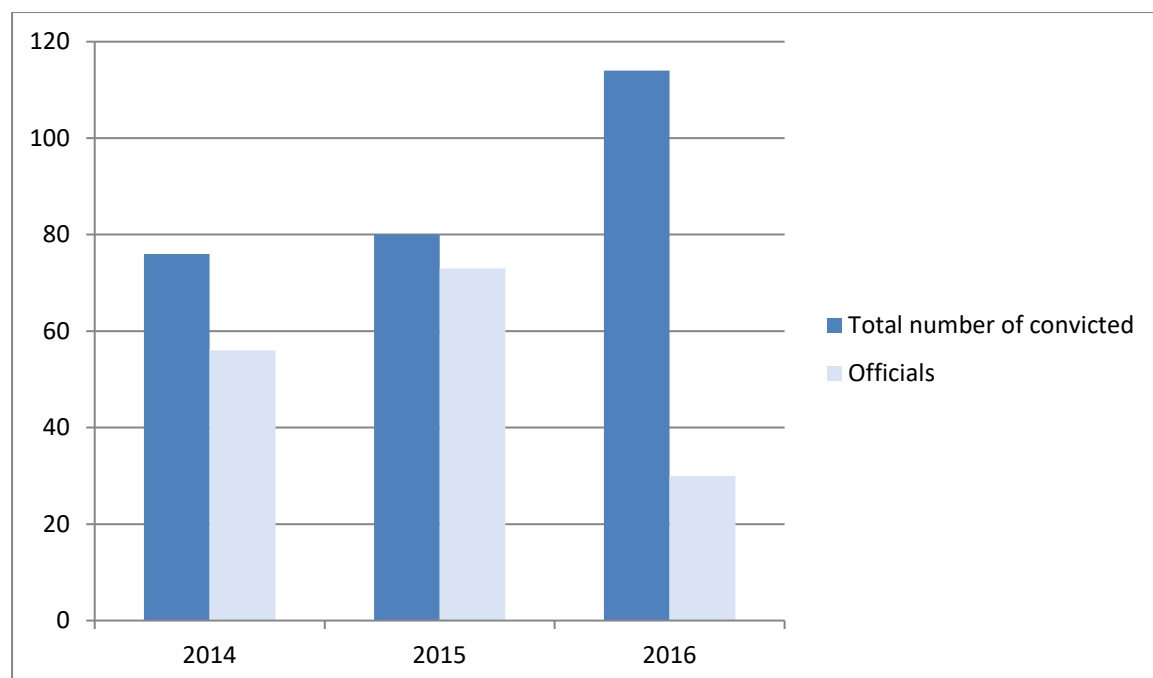
313	1	0	0	1	3	0	4	2	3	0	4	0	0	0	3	0
314	59	105	88	38	27	56	59	24	24	31	49	14	6	6	22	11
352	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
375	10	22	20	39	8	13	11	16	8	13	6	13	5	8	9	2
314-2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
314-3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	462	592	601	328	217	240	296	191	158	165	211	114	76	80	114	68

Source: information submitted by the Government

### ***Statistics on criminal sanctions for corruption, including in specific sectors/areas and on high-level officials***

The Government reported that the statistics on enforcement of corruption offences by sectors were not available. Statistics on position/rank/occupation of the suspect/indicted/convicted person was not maintained either, so from this data the monitoring team was not in a position to assess how high-level or political corruption is addressed. The only specification available in this regard is a number of sentenced officials from the total number of sentenced persons. After the on-site visit the monitoring team was informed that statistics on position/rank/occupation of the suspect/indicted/convicted person has been introduced from the beginning of 2018.

**Chart 7. Number of convicted officials from the total number of convicted persons, 2014-2016**



Source: information provided by the Government.

For some reason statistics for 2017 does not indicate the number of convicted officials. At the same time, according to the information provided by the Government for 2017 out of 292 persons from 599 prosecuted for corruption cases were officials.

Statistics on application of sanctions is provided in the section 3.1.

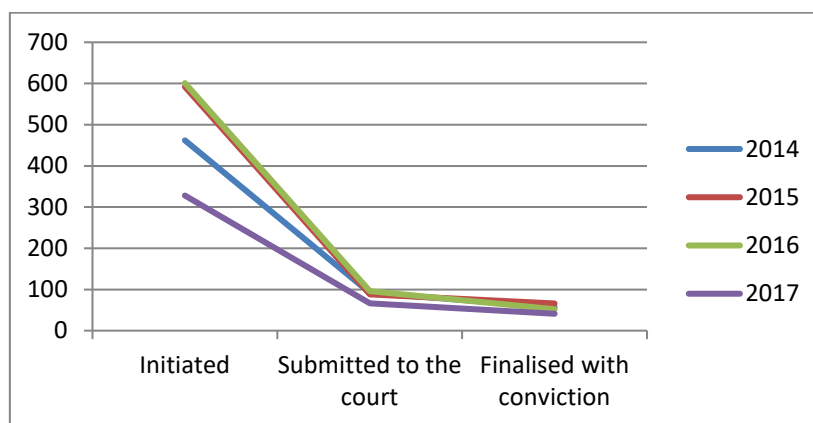
Another tendency of law enforcement anti-corruption practice is a discrepancy in numbers of initiated cases and those submitted to the court or those where trial finalised with sentence. The Government informed that this circumstance is conditioned by the cessation of the criminal cases initiated and transfer them to the next statistical reporting year in order to continue the investigation taking into account that often the investigation of cases of corruption crimes is a distinct complexity. The monitoring team notes that moving cases to another reporting year does not lead to increase of cases submitted to the court or finalised with a sentence, and encourages Armenia to analyse the situation in terms of efficiency of use of investigative resources.

**Table 20. Statistics on cases initiated, submitted to the court and finalised with conviction**

	Initiated	Submitted to the court	Finalised with conviction
<b>2017</b>	328	66	41
<b>2016</b>	601	96	52
<b>2015</b>	592	88	66
<b>2014</b>	462	92	57

Source: information submitted by the Government

**Chart 8. Discrepancy in numbers of initiated cases and those submitted to the court or those where trial finalised with sentence, 2014-2017**



Source: information submitted by the Government

### **Public access to criminal statistics**

According to the information provided by the Government, the Police and the National Statistical Service publish statistical data on registered crimes on a monthly and semi-annual basis. The Investigative Committee has a report form on the results of the investigation of corruption offences. Some summary report based on this form is submitted to the public relations unit for further communication. It seems that such kind of report is very generic and does not include overall and concrete statistical data.

The Government also reported that relevant statistical data was published on the official website of the RA Prosecutor's Office (prosecutor.am), where a separate section for corruption crimes statistics is provided.

To ensure comprehensive criminal statistics on corruption related crimes, the Ministry of Justice developed a law on amendments to RA Law on the Prosecutor’s Office. The law states that: Prior to 1 April of each year, the Prosecutor General’s Office of the Republic of Armenia shall publish a report on investigation of crimes on the website of the Prosecutor General’s Office of the Republic of Armenia. In accordance with investigative jurisdiction, the report must contain information on the results of investigation of crimes committed during the previous year, statistical data, comparative analysis and conclusions thereon. For the purpose of drawing up the report investigative bodies shall, in accordance with investigative jurisdiction, prior to 1 February of each year, submit information and statistical data on the results of investigation of crimes committed during the previous year to the Prosecutor General’s Office of the Republic of Armenia. The Law was included in the institutional anti-corruption package and was adopted on 9 June 2017 by the Parliament. It entered into force on 1 July 2017.

The RA Prosecutor General's Office elaborated a methodological guideline on providing statistical data of the corruption crimes investigation process by all the bodies of the preliminary investigation for the placement on the RA Prosecutor's Office website.

### Conclusion

Apart from several examples about corruption among mid-level officials and judges, no other information was provided demonstrating the effectiveness of investigation of complex and high-level corruption. Therefore, the monitoring team concludes that law enforcement authorities in Armenia still tend to investigate petty corruption far more often than high-profile cases. According to the Government there was some improvement in 2017.

Based on the analyses of the provided information, including the quality and quantity of the detected, investigated and prosecuted cases of corruption, as well as the existence of the high risk of corruption in Armenia, the monitoring team is of the opinion that there are no satisfactory changes since the previous monitoring round regarding the performance of the RA law enforcement bodies for tackling the corruption offences effectively.

The monitoring team also notes that Armenia has improved its statistical databases and methodologies. At the same time, the official statistics still do not include data on seizure and confiscation in corruption cases which would allow to conduct proper analysis of effectiveness of these instruments. The monitoring team is not in the position to assess the quality of the recent improvements regarding including data on position/rank/occupation of the suspect/indicted/convicted person in the official statistics given the respective data is being collected since 2018.

Finally, the monitoring team welcomes that the official statistics on corruption offences is available in public domain.

Armenia is *largely compliant* with **recommendation 9** of the Third Round Monitoring Report.

### New Recommendation 23: Enforcement

1. Step up efforts to detect, investigate and prosecute high-profile and complex corruption cases, especially by using financial intelligence, anonymous tips, whistleblower information, and other law enforcement tools in a targeted and proactive manner, aimed at persons among high level officials, main risk areas in public administration and economy.
2. Collect and analyse data on corruption cases to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled, including how new types of corruption offences are being investigated and prosecuted.
3. Complement criminal statistics on corruption-related offences with data on the seized and confiscated property.

### 3.4 Anti-corruption criminal justice bodies (police, prosecution and judges, anti-corruption bodies)

#### **Recommendation 8 from the Third Round of Monitoring report on Armenia: Anti-corruption law-enforcement bodies**

[...]

- Strengthen anti-corruption specialization within law enforcement and prosecutorial bodies.

#### *System of investigative agencies, status and autonomy of investigators*

The investigative bodies responsible for investigation or prosecution of corruption offences have been the same since 2014. The point 4 of the Government Program adopted in June 8 refers to the necessity of establishing a specialized, independent anti-corruption body which will perform monitoring, control and research, as well as will have a mandate to conduct operative-intelligence activities, inquest and investigation actions.

The investigative agencies of Armenia that are currently authorised to conduct investigations of corruption offences or officials engaged in corruption related conduct are as follows:

- the Investigation Committee;
- the Special Investigation Service;
- the Investigation Department of the State Revenue Committee;
- the Investigation Department of the National Security Service.

The investigative competence of the abovementioned agencies is determined by the Criminal Procedure Code. More details are provided below.

#### *Special Investigation Service*

The Special Investigation Service was created in 2008 as the only investigative body authorised to conduct preliminary investigations of offences committed by managers of all three branches of power. Specifically:

- 1) managing officials of legislative, executive and judicial bodies of the Republic of Armenia;
- 2) persons performing special state service in relation to their official positions pursuant to RA Criminal Procedure Code.

The Law on the Special Investigation Service further specifies those who belong to both groups. In particular, the first group includes the President, the Prime Minister and his deputies, Chairperson and members of the Constitutional Court, judges, the Chief of Staff of the President, the Chief of Staff of the National Assembly, the Chief of Staff of the Government, ministers and their deputies, heads of state bodies under the Government, their deputies, governors and their deputies, the mayor of Yerevan and his deputies, the Chairman and members of Council of Control Chamber, the Chairman and members of Council of the Central Bank, heads and members of the commissions on regulation of the Republic of Armenia, the Chairman and members of Central Election Commission, Chairman of National Statistical Service of the Republic of Armenia and his deputy.

The group of persons performing special state service are prosecutors, investigators of the state authorised body in the field of defence, officials of police (except for troops of police), homeland security (except for border troops and the armed divisions), tax, customs authorities, bodies providing forced execution of court resolutions, criminal executive and rescue authorities<sup>208</sup>.

In addition, the Special Investigation Service exclusively investigates some offences regardless the subject to be investigated. These include corruption related offences, such as illicit enrichment

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<sup>208</sup> Law on Special Investigation Service, Art. 4

(Article 310-1 of the Criminal Code), deliberate failure to file declarations to the Ethics Committee by High-Ranking officials (Article 314-2 of the Criminal Code), and falsification of declarations or concealment of data subject to declaration (Article 314-3 of the Criminal Code). Armenia reports that there are currently 24 investigators working at the SIS, seven of whom are assigned to the Investigation of Corruption, Organized Crime, and Official Crimes. The work of this department is supervised by the head of the department who reports to the deputy head of the SIS who in turn reports to the head of SIS. All investigators are based in Yerevan, and they have more experience compared to investigators generally. SIS representatives estimated they have cases involving about 230 judges and many other officials. About four of the cases involve election crimes. SIS representatives estimated that they handled about 1,000 allegations last year.

At the Special Investigation Service special divisions of the Service were formed in 2014, one of which is the Investigation Department for Corruption, Organized and Official Crimes. The investigators of this Department have been particularly trained in the investigation of corruption-related crimes and constant work is being carried out to improve their professionalism. All the investigators of the Department participate in trainings and discussions on the development of professional skills. The Service reported that it believes specialisation leads to the improvement of the quality and effectiveness of the investigation of corruption offences.

#### *Investigative Committee*

The Investigative Committee investigates all corruption-related offences, including bribery, trading in influence, abuse of office, commercial bribery, etc., committed by anyone not specifically assigned for investigation to the SIS. This is a large agency with approximately 680 investigators in offices in Yerevan, and throughout other cities and regions, as well as units devoted to Military Investigations.

Currently, within the Investigative Committee there are 4 investigators specialised in investigations of corruption-related crimes who investigate corruption as specified within the Prosecutor General's Order of 19 January 1017. These investigators are in the Office of Investigations of Especially Important Cases and are supervised by the Deputy head of the Office.

The Government advised that to expand and reorganise corruption investigations by the Committee the new Department for Investigation of Corruption Crimes, Crimes against Property and Cybercrimes was created at the General Department for Investigation of Special Important Cases of the RA Investigative Committee, with 12 staff members. There is no specialization on corruption-related case in the local divisions of the Investigative Committee.

#### *National Security Service*

The Investigation Department of the National Security Service investigates offences committed by employees of SIS. The Government reported that the Investigation Department is composed of 20 investigators and there is currently one vacancy. No information was provided about whom the investigators report to or the number of managers.

#### *Investigation Department of the State Revenue Committee*

The information provided indicates that there are 29 investigators assigned to three investigative departments. There is no indication that any of the investigators specialise in offences involving public officials or persons performing state services. All investigators are based in Yerevan but are responsible for investigations over the entire country and its borders.

#### *Police of the Republic of Armenia*

The Police Department within its Organised Crime Department has a Department on Combating Corruption and Economic Crimes which conducts pre-investigation inquiries in relation to corruption offences. There are 43 staff members assigned. No information was provided about how the office is managed.

The Government reported that sources for initiating inquests may include applications or complaints from citizens as well as "operative" information. No statistics were provided about the specific number of inquests or how they were initiated. The inquest power includes investigations at scenes of

crimes in the corruption crimes assigned. Customs investigators may have similar power.

#### *Overlapping Jurisdiction for Certain Corruption Offences*

In addition to the assignment of investigative responsibility in Article 190 of the Criminal Procedure Code, it also prescribes that for a number of crimes an alternative jurisdictions rule is applied. This provision specifies that when an investigative body during its investigation detects a new crime within a certain category, it should investigate this crime. The corruption-related offences that are included are commercial bribery (Article 200 of the Criminal Code), Abuse of office (Article 308), Excess of official powers (Article 309), Unlawful participation in business (Article 310), and Official forgery (Article 314).

Additionally, CEHRO initiates investigations into false asset declarations and makes referrals to criminal investigators apparently after it determines that there are grounds to consider opening a criminal case, not earlier when investigators could employ covert investigative tools under the law on operative and detective activities.

The Government reported very few instances where the Prosecutor General transferred cases to **specialised corruption investigators from other investigators under his power.**

#### *Office of the Prosecutor General*

There are no specialised anti-corruption judges or any body of specialised anti-corruption prosecutors, but there is some specialisation of prosecutors within the Prosecutor General's Office.

The RA Prosecutor General's Office has a specialised anti-corruption unit, the Department for Crimes against Corruption and Economic Activities (Specialized Subdivision) with 10 prosecutors. In the case of corruption offences where an official is the subject, the supervision is carried out by the Department for Investigation of Especially Important Cases of the RA Prosecutor General's Office, in which there are 15 prosecutors.

Each subdivision of the Prosecutor's Office is chaired by the superior prosecutor of Yerevan city or administrative district, regional prosecutor or head of the relevant department, who supervises the activities of the subdivision, including the work of specialised prosecutors supervising the investigation of corruption crimes and the supervision over the activities of the prosecutor's office subdivisions in cases involving corruption crimes is carried out by the specialised Corruption and Economic Crimes Department. However, all corruption cases investigated by the Special Investigation Service are supervised by the Department for Investigation of Especially Important Cases in the Prosecutor General's Office headquarters in Yerevan

Prosecutors of Yerevan and marzes were instructed while distributing work duties, as a rule, to ensure the specialization of the prosecutors in separate criminal offences, including corruption offences. The Government estimated that overall 20 to 25 percent of prosecutor resources are devoted to supervising and prosecuting corruption cases. These prosecutors supervise investigation and prosecute cases approximately 97 percent of their time.

#### *Internal investigative units*

Internal investigative units exist in the Police, Prosecutor's Office, National Security Service, and State Revenue Committee. The main tasks of the internal investigative units is mainly internal audit, official examination, and internal investigation of employees of the office.

#### **Conclusion**

Under present laws and practices, the structures of the investigative and prosecution bodies ensure some sort of specialisation of investigators and prosecutors on corruption-related cases. Very often the respective investigators and prosecutors deal with other cases along with corruption.

It is critically important to ensure further real independence of all law enforcement institutions dealing with fight against corruption.

The monitoring team received no reports from the Government that additional resources were needed to investigate or prosecute corruption offences. The monitoring team received reports that the SIS is

perceived of as a highly competent organization. However, there do seem to be very few investigators in relation to the scope of their responsibilities, especially if major crimes with multiple suspects were detected.

Armenia is *partially compliant* with respective part of **recommendation 8** of the third round of monitoring report.

#### **New Recommendation 24: Anti-corruption law-enforcement bodies**

1. Continue to strengthen capacity for fighting corruption by ensuring and guaranteeing institutional, functional and financial independence of law enforcement bodies dealing with fight against corruption.
2. Put in place effective mechanisms to prevent various forms of hierarchical pressure and undue interferences with corruption investigations and prosecutions.
3. Introduce competitive and transparent merit-based selection of heads of specialised anti-corruption agencies.
4. Equip law enforcement institutions responsible for fight against corruption with adequate resources and provide their staff with consistent, needs-tailored training, especially on issues related to whistleblowers and asset declarations.



## CHAPTER 4: PREVENTION AND PROSECUTION OF CORRUPTION IN HIGHER EDUCATION

### 4.1 Introduction

#### *Background and scope*

The analysis in this chapter relies on the monitoring methodology of the fourth round of the IAP monitoring and on insights gained from assessments of integrity of education systems (INTES), carried out in other countries-members of the ACN since 2010 with the help of a methodology developed in the context of ACN with the OECD Directorate for Education and Skills and the Center for Applied Policy and Integrity (Bulgaria).

The scope of this chapter has two noteworthy features which stem from its focus on higher education. First, the chapter refers mostly to public higher education institutions (HEIs), which in Armenia cater for the academic needs of most students. Private universities are covered as well, but only in discussions about licensing and accreditation – two areas in which private HEIs must comply with requirements by the Ministry of Education and Science (MoES) that are identical for all HEIs irrespective of their form of ownership. For transgressions and corruption risks in other areas of operation of private universities, the findings and recommendations in the chapter on business integrity might be more relevant.

The second feature is that this chapter covers also conduct which may not qualify as corrupt by international standards. The Anti-Corruption Strategy of Armenia as well as third party reports describe actions in higher education which, without doubt, put the integrity of the sector at risk, but they are “soft” and sector-specific. Examples include cheating, favouritism in staffing decisions, fraudulent admission to graduate programmes, etc. These are not corruption offences *stricto sensu*, but integrity-related violations (integrity violations) which may call for administrative or disciplinary sanctions. They are still covered in this chapter because they were considered significant enough to be included in the anti-corruption agenda of Armenia. For simplicity, the text may occasionally refer to them with the word “corruption” as well.

The **first section** of this chapter provides an overview of higher education in Armenia and discusses the prevalence of corruption and corruption risks in the sector. The **second section** reflects on the anti-corruption priorities for higher education – on their focus and implementation, as well as on the participation of civil society and other stakeholders in shaping the way ahead. The **third section** highlights issues of significance for effective prevention of corruption, such as integrity of staff in higher education, the effectiveness of mechanisms for compliance and quality assurance, the transparency and accountability of academic operations, and the availability and focus of measures to raise awareness and educate the public. The **fourth section** of this chapter looks into matters of enforcement. It discusses the applicability of anti-corruption legislation to higher education and provides an overview of criminal, administrative, and disciplinary liability for corruption and integrity-related violations in the sector, and the effectiveness of enforcement. The **fifth and final section** formulates recommendations for improvement.

#### *Overview of the higher education system in Armenia*

##### *Size of the sector and financing*

The system of higher education in Armenia comprises universities, institutes, academies, conservatories, as well military and police higher education institutions (HEIs).<sup>209</sup> As of 2018, Armenia had 27 public and 26 private higher education institutions.<sup>210</sup>

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<sup>209</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 12. The HEIs of the military and the police are not in focus of this chapter.

<sup>210</sup> <http://edu.am/index.php/am/documents/view/552> and <http://edu.am/index.php/am/documents/view/1852>.

The legal status of HEIs in Armenia can be quite diverse – a fact that has been criticised as contributing to an environment which is complex and burdensome for higher education institutions.<sup>211</sup> HEIs can be non-profit state organisations; state foundations; inter-governmental higher education institutions of joint governance, inter-state foundations, for-profit private companies with limited liability, cooperatives, not-for-profit private foundations, and branches of foreign universities.

Higher education in Armenia follows a three-tier degree system, in which universities<sup>212</sup> provide Bachelor's, Master's, and Candidate of Sciences (post-graduate, PhD equivalent) programmes and qualifications. According to the Government responses to the monitoring questionnaire, in the academic year 2015-2016 there were some 105 522 students enrolled in these programmes, a vast majority (94 099) of which in public higher education institutions, pursuing undergraduate (Bachelor) degrees.

A census from 2011 established that an impressive 44% of the Armenian population aged 34 years and younger had a tertiary education degree. This is high in international comparison,<sup>213</sup> especially considering that Armenia is a lower middle-income country which spends just 2.5% of its GDP in education, and in which the state subsidises only a fraction of the study places in public universities. In 2017, the public budget paid for only 4 280 places in the form of full or partial tuition fee waivers for students who meet certain eligibility criteria, such as academic excellence or financial need.<sup>214</sup> Private HEIs do not receive public funding.

The state disburses its subvention to higher education institutions in the form of annual, input-based block-grants, which include subsidies for supporting programmes and study places. The size of grants depends on the number of students enrolled and the number of state-funded places the university has been allocated in each specialty. The subvention typically amounts to about a fifth of a university budget, on average. To cover the remaining 80% of their annual expenses, public HEIs in Armenia rely on private sources of income, mostly tuition fees.<sup>215</sup> Planned cuts in the budget for education over the next years are likely to increase the already heavy reliance of public HEIs on private sources of revenue even further.<sup>216</sup>

#### *Steering and governance arrangements*

The Ministry of Education and Science (MoES) has regulatory responsibility for all HEIs under its jurisdiction and exercises oversight and control in key areas of university operation, including in those at risk of corruption as described later in this chapter. Among other things, the MoES develops and approves the educational standards which universities, public and private, must meet as well as the qualifications they may deliver. The MoES, specifically the Higher and Postgraduate Professional Education Department, also approves their admission, and resource allocation procedures and is responsible for the final approval of accreditation of HEIs and their programmes. As to staff in HEIs, MoES develops hiring and promotion criteria for managerial and academic staff. For public universities, the Ministry also approves their internal quality assurance arrangements and can audit their financial operations.<sup>217</sup>

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<sup>211</sup> World Bank, 2013. Addressing Governance at the Center of Higher Education Reforms in Armenia, Washington DC: World Bank. Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia.

<sup>212</sup> Further in this chapter, “HEIs” and “universities” are used interchangeably.

<sup>213</sup> In 2016, the OECD average for the age group 25-34 was 43%. Source: <https://data.oecd.org/eduatt/population-with-tertiary-education.htm>.

<sup>214</sup> Government answers to questionnaire.

<sup>215</sup> Strengthening integrity and fighting corruption in education: Armenia. Open Society Foundations – Armenia p 100.

<sup>216</sup> <http://oc-media.org/armenias-higher-education-in-crisis/>

<sup>217</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 21.

Some of the MoES responsibilities are delegated to subsidiary bodies, among which the State Committee of Science, the Supreme Certifying Committee,<sup>218</sup> and the State Licensing Agency. The State Committee proposes and implements policies in the field of science and research, including the training of scientists, the Certification Commission is charged with accreditation and certification and delivers doctoral degrees, and the State Licensing Agency grants licenses to HEIs to operate. In addition, the work of the MoES is supported by various national councils, notably the National Centre for Professional Education Quality Assurance Foundation (ANQA) which oversees quality assurance in higher education and provides institutional and programme accreditation. Finally, the education authorities cooperate with a number of consultative bodies, among which the Armenian National Academy of Sciences, the Council of Rectors, which supports the Government in developing systematic approaches towards education policy, and the Armenian National Students Association (ANSA). Overall, the landscape in which higher education policy in Armenia is made and implemented appears highly fragmented. In this setting, the communication between authorities, providers, and stakeholders around priorities, strategic decisions and their implementation is ad-hoc and often enough informal.<sup>219</sup>

Within the limits of these steering and accountability arrangements, universities in Armenia have a degree autonomy to take administrative decisions concerning resource allocations, the use of university property purchased from university revenues,<sup>220</sup> the provision of fee-based services (albeit only upon approval by the MoES), staffing and remuneration, and decisions in other areas of their day-to-day operation. Armenian HEIs also enjoy reassurances of academic freedom, which is described as a key principle of state policy in higher education.<sup>221</sup> Some reports suggest, however, that excessive government control over academic affairs limits this freedom considerably.<sup>222</sup>

As a precondition for their relative independence, universities in Armenia are expected to comply with minimum requirements regarding their governance structure, which must feature collegial and executive management bodies. The collegial bodies are the University Board and the Academic (Scientific) Council. The executive powers are with the Rector, who is supported by a Rectorate and deans of faculties.<sup>223</sup> The University Board has a 5-year mandate, which comprises academic staff, students, representatives of the founder (the Government in the of public universities), as well as the MoES. The Board approves the budget of the HEI and its annual report, decides on the strategic orientation, and elects the Rector. The Scientific Council has advisory functions and covers teaching and methodology, research and development, and the scientific work of the HEI. The Rector is responsible for the administrative and academic management of the HEI.

#### *Staff in higher education*

Armenian HEIs have four groups (ranks) of professional staff: professors, docents, assistants, and lecturers.<sup>224</sup> Public universities are bigger employers than private ones and in 2015 had 7 913 academics on their payroll (Chart 9). In the same year, private universities had 1 173.

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<sup>218</sup> Previously called Higher Certification Commission. See the Amendment to the Law on Scientific Activity in Armenia (23.03.2018), Article 2.

<sup>219</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory.

<sup>220</sup> Most of the real estate of public HEIs in Armenia is owned by the State and can be sold or leased only after prior authorization by the Government EACEA, 2017. Overview of the higher education system: Armenia, Brussels: European Union.

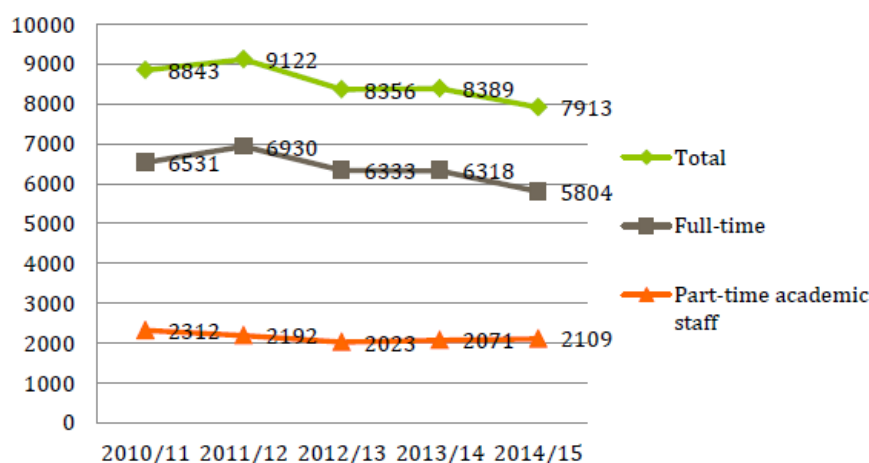
<sup>221</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 4.

<sup>222</sup> World Bank, 2013. Addressing Governance at the Center of Higher Education Reforms in Armenia, Washington DC: World Bank.

<sup>223</sup> Ibid., Article 15.

<sup>224</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 19.

Chart 9. Academic staff in public HEIs by employment status, 2010-2015



Source: National Statistical Service of Armenia and (Klemencic, 2016).

The minimum qualification requirement for entering the academic profession is a master's degree, which qualifies for the position of lecturer. The position of assistant requires a postgraduate degree (candidate of sciences), while the vacancies for docents can be filled by professionals with at least three years of research and teaching experience, a track record of scientific publications, and a candidate of science degree. To apply for the position of professor, candidates must be holder of a Doctor of Sciences degree with at least five years of experience and publications in peer reviewed journals.<sup>225</sup> For HEIs to qualify as universities, at least 50% of their staff must have a minimum of candidate of sciences degree.<sup>226</sup>

#### *Reform-related changes and their impact on integrity in higher education*

Reforms are an inherent part of the higher education landscape in Armenia for more than a decade now. At the time of the monitoring visit, the latest reform activities included consultations for a new Law on Higher Education and deliberations on a new Strategy for the sector until 2025 (*Higher Education Strategy 2016-2025*), which would introduce changes in governance and policy, the structure of HEIs, funding and access to higher education as well as staff policies, and address academic integrity (more on this later).<sup>227</sup> Remarkably, neither the newly proposed Strategy nor an otherwise well-informed and comprehensive feasibility study<sup>228</sup> commissioned by the Government in preparation of the Strategy, consider the corruption risks identified in other, similarly central strategic documents, such as the Anti-Corruption Strategy and its Action Plan.

Two of the ongoing reform interventions deserve special attention because of their tentative impact on higher education integrity. The first is the process of changing the legal status of public universities from state non-commercial organisations to foundations. The change commenced in 2013 to simplify the conditions of higher education governance by bringing public HEIs closer to what the feasibility study called a "single legal status",<sup>229</sup> and give them freedom and flexibility to create legal entities on their own and engage in commercial activities without seeking prior permission by the MoES.<sup>230</sup> However, this new status also limits the possibilities of the MoES to exercise oversight and control,

<sup>225</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 19;

<sup>226</sup> Ohanyan, A., 2012. The Academic Career in a Transition Economy: Case Study of the Republic Armenia. In: P. G. Altbach, et al. eds. *Paying the professoriate: A Global Comparison of Compensation and Contracts*. s.l.:s.n.

<sup>227</sup> Terms of Reference for a Higher Education Strategy 2016-2025. Republic of Armenia (Draft submitted for approval by the MoES).

<sup>228</sup> See Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia.

<sup>229</sup> Ibid., p. 67.

<sup>230</sup> EACEA, 2017. Overview of the higher education system: Armenia, Brussels: European Union.

most notably its competency to audit higher education institutions on demand (see the section on internal quality assurance).

The second policy intervention with tentative integrity ramifications are reforms associated with the Bologna process.<sup>231</sup> Armenia joined the process in 2005 and committed to wide-ranging changes to align its higher education sector with the requirements of membership in the European Higher Education Area. This included the gradual transition to a three-tier structure between 2006 and 2010, the introduction of academic credits (ECTS) and changes in student assessment, the establishment of a quality assurance agency (ANQA), etc. Although these and other interventions reshaped rules and expectations in some high-stake areas, the capacity of HEIs to monitor and assure the quality and integrity of administrative and academic processes in this new setting, has remained underdeveloped.<sup>232</sup> The lack of progress in this area is in stark contrast to the observation<sup>233</sup> that most Bologna-inspired reforms and related resource allocations in Armenia today focus on quality assurance. Some reports suggest that this might be due to political interests and proactive resistance to change by parts of the academic community.<sup>234</sup> Whatever the reason, the weak monitoring and supervision mechanisms (see discussion on quality assurance) seem to contribute to an environment which is conducive to corruption, as discussed next.

### ***Prevalence of corruption in higher education***

The evidence reviewed by the monitoring team in preparation of this chapter – perception surveys, third party reports, and official documents – confirms that corruption is a widespread problem in Armenian (higher) education. It is a problem which persists despite being the target of anti-corruption strategies since at least 2009. In a survey conducted in 2010, almost 40% of student respondents saw corruption as a systemic problem in their universities, and only 5.5% did not think that education is corrupt. 60% of believed that the state authorities do not do enough to fight corruption in higher education, while 20% thought that the measures against it do not lead to tangible results.<sup>235</sup> In 2012, the the ombudsman of Armenia on human rights reported that its office continues to receive signals of numerous corruption practices, especially in higher education.<sup>236</sup> Reports by non-profit and research organisations released between 2013 and 2016, and also the monitoring questionnaires by civil society and Government all conclude that corruption in Armenian higher education remains a pervasive problem which affects higher education institutions in a multitude of ways.<sup>237</sup>

### ***Corruption and corruption risks in higher education***

As noted in the first chapter of this report, in 2015 in preparation of the latest Anti-Corruption Strategy (2015-2018), Armenia established an Anti-Corruption Council and a permanent Task Force

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<sup>231</sup> The Bologna Process is a collective effort of 48 countries and their universities to build a European Higher Education Area by reforming their higher education on the basis of common values and priorities. The goal is to make national higher education systems more compatible while strengthening quality assurance mechanisms and promoting mobility. For more information see <http://www.ehea.info/>.

<sup>232</sup> Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia; Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid., OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

<sup>235</sup> OSCE, 2010. Student Perception on Corruption in the Armenian Higher Education System, Yerevan: Organisation for Security and Co-operation in Europe - Office in Yerevan.

<sup>236</sup> Annual report on the activities of the Human Rights Defender of the Republic of Armenia 2012, available at [http://www.ombuds.am/en/publications/annual\\_reports.html?page=2](http://www.ombuds.am/en/publications/annual_reports.html?page=2), accessed on 12 May 2018.

<sup>237</sup> See Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory; Policy Forum Armenia, 2013. State of the Nation: Corruption in Armenia, Yerevan: Policy Forum Armenia; OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

of independent experts to support its work.<sup>238</sup> The Task Force had also an education expert who was charged with an assessment of corruption risks in education and the elaboration of a plan for action.

After a considering the risks and after extensive consultations with civil society and research organisations active in this field,<sup>239</sup> in 2017 the Task Force presented the Council with the so-called Programme on Anti-Corruption Measures in Education (further called Programme).<sup>240</sup> The Programme identified multiple corruption risks, a third of which was in higher education. The vulnerable areas included university management, which was found to be at risk of undue political influence; human resource policies, which the Programme notes are susceptible to favouritism; academic work, where cheating and plagiarism are a major challenge; student assessment, which can be abused for undue recognition of academic performance during exam sessions and for the awarding of diplomas, certificates and degrees; licensing and accreditation, where decisions are at risk of manipulation and even fraud; financial management and procurement, which lack transparency and accountability; professional conduct in higher education, which is at risk because of the absence of formal ethical rules; decision-making in HEIs, which is at risk because of the lack of transparency and accountability; and post-graduate education, where gaps in legislation and the institutional set-up may facilitate abuse.<sup>241</sup>

This is a long and important list and the fact that authorities, civil society, and practitioners in Armenia have reached an agreement on what measures the Programme should include, is an achievement in itself. Although all points on that list are important, the success of planned improvements may depend also on an ability to prioritise by deciding on what to start with, and what comes next.

As a form of implicit recommendation in this respect, this chapter singles out a selection of areas at risk which the monitoring team considers could be addressed first. The selection is based on a review of background materials and availability of evidence, and concurs with statements by authorities, higher education practitioners and civil society made during the monitoring visit, as well as with the findings of external corruption and integrity assessment reports prepared prior to the drafting of the Programme.

#### *Politicisation of university governance*

During the monitoring visit, probably most frequent concern raised by civil society representatives (many of whom were also university lecturers) was the risk of undue political influence on the governance of their higher education institutions. The Government acknowledges this risk as well. For several years already, it is also a recurrent subject in the reports of external observers, such as the World Bank, the Higher Education Observatory of the Central European University, the Center for Applied Policy and Integrity, and others.

Despite this consensus and attempts to address the risks of politicisation,<sup>242</sup> the governance of universities at the time of the monitoring visit could still be described with the words of a report from 2013, which called it a “mechanism of political control”.<sup>243</sup> The Governing Boards of HEIs were still chaired by members of Government or public figures on their behalf; half of the seats on these Boards were still reserved for government nominees; the board of the independent quality assurance body (ANQA) was still occupied by political appointees; and the Prime Minister was still in charge of

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<sup>238</sup> Decision of the Government of the Republic of Armenia No. 165-N of 19 February 2015.

<sup>239</sup> See Government Decree No. 1141-N of 25 September 2015,

<sup>240</sup> The full title of the Plan is “Corruption Risks in Education sector and their Neutralization and (or) Reduction”.

<sup>241</sup> Summary based on answers to the monitoring questionnaire by civil society and the Government

<sup>242</sup> The most prominent measure is the preparation of a draft Law on Higher Education, which proposes restructuring of the university boards to limit political influence.

<sup>243</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory.

approving all members of all Boards.<sup>244</sup> The Government is also reported to have a strong influence on the selection of rectors and vice-rectors of public universities.<sup>245</sup>

Anecdotal evidence suggests that politicisation may lead to interference in the focus and manipulation of findings of research, to curbing of dissent by means of political and administrative pressure, as well as to top-down interventions in decision-making concerning budget allocations, procurement, and staff.<sup>246</sup> Unlike in school education, where politicisation is a problem as well and can be clearly traced to violations such as abuse of staff as administrative resource in political campaigns,<sup>247</sup> the impact in higher education seems less straightforward, or at least it is less well documented. The planning of measures against it may benefit from systematic research of the impact of politicisation on the integrity of HEIs in Armenia.

In response to the risks in this area, the sectoral anti-corruption strategy for higher education commits to revising the rules determining the composition of university Boards. The draft Law on Higher Education contains provisions to the end.

#### *Undue recognition of student achievement*

According to the information provided by the MoES, the assessment of academic performance (achievement) of students is an area plagued by “serious problems”.<sup>248</sup> The Programme to the Anti-Corruption Strategy too acknowledges that exams and the awarding of academic credentials are areas which are exposed to “considerable corruption risk”.

Some of the reports used in preparation of this monitoring chapter describe practices of withholding grades from students who deserve them, or unduly granting them to students who do not. There are also survey results according to which more than two thirds of respondents knew of corruption in their higher education institution, and more than half indicated that they paid to receive a satisfactory grade and expect to bribe their way through the graduation exams.<sup>249</sup> The bribes can come in different forms: cash payments, personal favours, or the purchase of readers/books in which the examining professor has a financial stake.<sup>250</sup>

To address this risk, the Anti-Corruption Strategy envisages the introduction of an obligation for HEIs to set lists with subjects for written exams and ensure that confidentiality of evaluation, appeal and review processes is guaranteed.

#### *Plagiarism and other forms of cheating*

The Programme describes plagiarism as a corruption risk and a widespread problem among students and lecturers, on all levels of higher education.<sup>251</sup> In an older survey of five major Armenian

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<sup>244</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia. Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia. See also answer to the monitoring questionnaire by civil society, in particular question 21.

<sup>245</sup> World Bank, 2013. Addressing Governance at the Center of Higher Education Reforms in Armenia, Washington DC: World Bank.

<sup>246</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory; OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia, as well as answers to the monitoring questionnaire by civil society.

<sup>247</sup> OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

<sup>248</sup> Background document No. 133 provided by the MoES.

<sup>249</sup> Aleksanyan, H., 2012. Cases of Corruption and its Prevention in Armenia's Educational System, s.l.: Norwegian Institute of International Affairs (NUPI); OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

<sup>250</sup> OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

<sup>251</sup> Anti-Corruption Strategy 2015-2018: Programme on Anti-Corruption Measures in Education.

universities, two-thirds of the student respondents said that they copy on a regular basis up to a third of their written works, and that they do so without attributing authorship.<sup>252</sup> Other widespread forms of cheating beyond plagiarism include the use of crib notes, cell phones and other communication technologies, purchase of papers, impersonation of exam-takers, and resubmission of one and the same paper in different written assignments.<sup>253</sup>

The background documentation collected for this chapter suggests that the academic environment in which these practices are thriving, is veritably unfit to prevent them. Most HEIs do not have policies in place to address these and other forms of academic dishonesty and they seem to have never been provided guidance on how to regulate against such violations, despite a clear commitment to the contrary in quality assurance and AC documents and declarations.<sup>254</sup> The current iteration of the AC strategy defines an objective to create an electronic database of PhD dissertations, Masters' theses and diploma graduation works, and also of rules for its management. Universities will be obliged to define procedures for the defence of theses and dissertations which exclude direct contact with candidates.

#### *Favouritism in staffing decisions*

In the monitoring questionnaire, civil society organisations note that the human resource management of HEIs in Armenia lacks transparency and is susceptible to abuse at the point of entry to the academic profession and in matters concerning staff promotion and dismissal. Their views concur with those of authorities, which acknowledge that the procedures of hiring, dismissal, and promotion of staff are vulnerable, and that staffing decisions are indeed influenced by various forms of favouritism.<sup>255</sup> A recent assessment of integrity in higher education in Armenia notes that appointments are commonly based on personal and political connections, the extension of short-term contracts is known to reward loyalty over professionalism, and the termination of employment can be arbitrary. Political influence is commonplace in all these processes, especially when they concern appointments of senior staff, such as rectors, vice-rectors, and deans of faculties.<sup>256</sup>

As discussed later in the section on prevention of corruption and integrity of staff, such practices are facilitated by lack of transparency, accountability,<sup>257</sup> and often also by inadequate regulations. HEIs are not obliged to define clear criteria regarding the extension of employment contracts and staff management and the contractual aspects of staff management appear to be largely discretionary.<sup>258</sup> While HEIs as autonomous institutions are free to set and change their recruitment requirements,<sup>259</sup> counterparts from civil society as well as higher education practitioners shared a conviction that these are held vague on purpose to allow for arbitrary decisions.

The Anti-Corruption Strategy aims at addressing these issues by revising the processes of hiring, promoting and dismissing academic staff, but it does not provide further detail on how exactly this will be done.

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<sup>252</sup> Hovakimyan, D., 2012. Plagiarism as an Academic Dishonesty, Yerevan: American University of Armenia.

<sup>253</sup> Antonyan, K. A., 3/2013. Academic Dishonesty and Quality Assurance in Armenia. *Journal of the European Higher Education Area*, pp. 113 - 138.; OSF-Armenia, 2016. *Strengthening Integrity and Fighting Corruption in Education: Armenia*, Yerevan: Open Society Foundations - Armenia.

<sup>254</sup> Goroyan, K. et al., 2015. *Unethical Purchase of Academic Papers in the Public Universities of Armenia*, Yerevan: Open Society Foundations – Armenia; OSF-Armenia, 2016. *Strengthening Integrity and Fighting Corruption in Education: Armenia*, Yerevan: Open Society Foundations - Armenia.

<sup>255</sup> Answers to the monitoring questionnaire by civil society. *Anti-Corruption Strategy 2015-2018: Programme on Anti-Corruption Measures in Education*.

<sup>256</sup> OSF-Armenia, 2016. *Strengthening Integrity and Fighting Corruption in Education: Armenia*, Yerevan: Open Society Foundations - Armenia.

<sup>257</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. *Higher Education in Armenia Today: a focused review*, Budapest: CEU Higher Education Observatory, also confirmed in interviews during the monitoring visit.

<sup>258</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. *Higher Education in Armenia Today: a focused review*, Budapest: CEU Higher Education Observatory.

<sup>259</sup> EACEA, 2017. *Overview of the higher education system: Armenia*, Brussels: European Union.



## 4.2 Anti-corruption policy

At the time of preparation of this chapter, the Anti-Corruption Strategy 2015-2018 with its Action Plan and Programme<sup>260</sup> were the only official frame of reference for anti-corruption policy in Armenian higher education. The Strategy and Action Plan were adopted in 2015, the Programme followed considerably later, in January 2018.<sup>261</sup>

Education is in focus of Armenia's anti-corruption efforts for over a decade now, and there were some important achievements on the way, such as the introduction of the unified graduation exam in secondary education which rectifies a number of vulnerabilities in admission to higher education. Yet, it seems never before have the plans been built on such a degree of consensus among higher education and participants and stakeholders as is the case now with the current Strategy. Despite some weaknesses, the current action programme is based on evidence and informed decisions and addresses key areas in higher education which are known for their vulnerability to corruption. Provided there is a structured and continuous involvement of HEIs in the implementation of this plans, and that the plans can be adjusted to incorporate the lessons learned, Armenia might indeed make further headway with its long-standing anti-corruption agenda for higher education.

Certainly, there is some scope for improvement as well, as discussed in this section. For instance, the section on education in the Strategy is comprehensive, but the monitoring team finds it also unusually retrospective for a forward-looking document. For the most part it describes the achievements of the previous Strategy, before briefly acknowledging that corruption in education continues to be an issue and postponing the formulation of anti-corruption priorities for later, for a time after a "comprehensive study of corruption risks" in education is carried out.<sup>262</sup> The Action Plan of the Strategy envisages the commissioning of the study for 2015 and the elaboration of a Programme on Anti-Corruption measures in education in the course of 2016-2018.

According to civil society organisations, the authorities have abandoned their intention to carry out a new study, turning for guidance to the multitude of independent reports on corruption in education instead that were carried out by civil society and research organisations between 2010 and 2016.<sup>263</sup> Following extensive consultations in 2017 between the Government, civil society representatives, international organisations and members of the Anti-Corruption Council on the basis of these studies, all sides agreed on a Programme for Anti-Corruption Measures in Education (Programme).<sup>264</sup>

The Programme is the first and, so far, only substantive policy document which addresses corruption in education in the current period of strategic planning. It describes specific risks and commits to informed, inclusive measures to prevent them, as discussed next. Despite criticism from civil society representatives, the problem with the Programme is not so much its content (more on this below), but its late arrival, less than 12 months before the Anti-Corruption Strategy expires at the end of 2018. This is too short a time for meaningful implementation and it is unlikely that any of the measures – most of which target areas known for their institutional inertia and vested interests – will gain traction within only few months. Instead of trying to complete the plans within the short timeframe and develop new plans afterwards, it might be better to revise the timing of implementation and extend it into the next strategic period.

### *Priorities*

The anti-corruption priorities in higher education are included in the larger plan of actions in the education sector, as described in the Programme to the AC Strategy. The Programme features a total of 28 anti-corruption risks and measures, of which 12 refer to undergraduate and graduate higher education, as summarised in Table 21.

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<sup>260</sup> Annexes No. 1 and No. 2 to the Decision of the Government of the Republic of Armenia of 2015 N-N, as well as Programme on Anti-Corruption Measures in Education.

<sup>261</sup> Government responses to the monitoring questionnaire.

<sup>262</sup> Ibid., as well as Anti-Corruption Strategy of the Republic of Armenia, para. 66.

<sup>263</sup> Civil society responses to the monitoring questionnaire.

<sup>264</sup> Government responses to the monitoring questionnaire.

**Table 21. Anti-corruption policy in higher education: risks, measures and priorities (2018)**

No.	Corruption risk	Anti-corruption measures and priorities
17	Politicisation of university Boards	Revise the rules determining the composition of university Boards to reduce the risk of government influence
18	Favouritism in staffing decisions	Revise the process of hiring, promotion and dismissal of academic staff
19	Absence of rules of ethical conduct	Introduce ethical norms for higher education in the Law on Higher Education
20	Deficient or absent reporting about academic and financial activities of universities	Introduce annual monitoring of universities and an obligation for them to report annually on activities, implementation of programmes, and finances
21	Lack of mechanism for public accountability and transparency, in particular concerning the activities of student councils	Introduce an obligation for financial management transparency in the Law on Higher Education. Introduce a provision in the Law on Higher Education which obliges student councils to disclose their financial activities.
22	Absence of anti-corruption education	Awareness raising and anti-corruption training in universities
23	Cheating and plagiarism	Create an electronic database of PhD dissertations, Masters' theses and diploma graduation works, create rules for its management and make its use obligatory. Oblige universities to define procedures for the defence of theses and dissertations which exclude direct contact with candidates.
24	Undue recognition of academic achievement at exams	Universities will be obliged to set lists with subjects for written exams and ensure that confidentiality of evaluation, appeal and review processes is guaranteed.
25	Fraudulent granting of diplomas and certificates	A system will be put in place which allows for verification of whether diplomas are genuine. Sanctions will be defined.
26	Risk of double standards in the awarding of graduate degrees due to ambiguous criteria.	Improvement in the criteria of awarding of academic-pedagogical degrees to avoid double standards.
27	Fraudulent admission to PhD programmes to avoid conscription	Revise the legislation to specify clearer than now which groups of individuals are entitled to deferment of their military duty because of being enrolled in post-graduate education
28	Biased in decisions about awarding state funding for PhD programmes	Revise and improve the criteria for the allocation of PhD places to universities so that they correspond to their capacity to provide quality education.

*Source: Summary prepared by the monitoring team based on the AC Strategy and Programme*

In discussions during the monitoring visit and in responses to the monitoring questionnaire, civil society representatives expressed appreciation that the Strategy and its Programme address higher education in such detail, and that many of the issues raised in their advocacy campaigns and in external reports, have been considered. Indeed, the choice of priorities in the Programme is comprehensive and includes risks which concern both the administrative and academic aspects of university operation.

Some civil society organisations were also critical of the quality of plans for action, expressing concern that the priorities, if implemented, are too generic to make a difference, in the sense that they fail to address the shortcomings in education policy and practice which lead to the risks and integrity violations.<sup>265</sup> The monitoring team concurs with this judgement, at least with regards to some of the policy measures described in the Programme. Entries No. 17 and No. 18, for instance, address corruption risks in university governance and staff policy. These are sensitive and complex areas in which universities can have considerable autonomy. If HEIs were to endorse and implement changes

<sup>265</sup> Civil society responses to the monitoring questionnaire.

in these areas, the authorities will have to disclose (or develop) their plans for improvement in more detail, for instance by explaining how the rules will be amended (risk No. 17), how staff policies should change and what impact this might have on licensing and accreditation requirements (risk No. 18), and possibly think of offering incentives for change. In these and other areas there is ample amount of external analysis on what factors contribute to corruption risk (see for instance the discussion on integrity of academic staff in the section on prevention and their precarious employment conditions), but these measures do not seem address any of them.

Another challenge with the proposed anti-corruption measures is that most are limited to legislative and regulatory amendments which introduce an additional layer of obligations and accountability for higher education providers, without however addressing the conditions in which HEIs operate and in which corruption is thriving. Prominent examples include priorities No. 20 (monitoring), No. 21 (financial reporting), but also No. 19 (codes of conduct) and No. 24 (disclosure of exam details and safeguarding of confidentiality). Without a deeper engagement with the conditions in which higher education in Armenia takes place by developing targeted measures to improve these conditions in ways that have been extensively described and analysed in numerous and widely disseminated reports – such measures will have little chance of challenging and changing the ways of those who engage in corrupt conduct.

## **Implementation**

### *Responsibilities and capacities for AC policy implementation*

Anti-corruption policy coordination is entrusted to the Anti-Corruption Council.<sup>266</sup> The MoES is one of the members of the ACC responsible for implementation of the anti-corruption policy measures in the (higher) education sector.<sup>267</sup> The responsibility for the implementation of anti-corruption policies in higher education is shared between the Ministry of Education and Science (MoES) and the higher education providers.

#### Ministry of Education and Science

Like other line Ministries, the MoES has a designated anti-corruption focal point (a deputy Minister), who is responsible for coordination and implementation of anti-corruption priorities in all segments of education in the country, and for reporting to the ACC.<sup>268</sup> Despite its pivotal role for the realisation of AC policies in higher education,<sup>269</sup> the Ministry depends on the involvement and collaboration of HEIs for most of its work on preventing corruption in that sector. In an interview during the monitoring visit, one representative of the donor community confirmed that the MoES is experiencing serious capacity issues with the units in charge of the AC strategy, particularly with the one responsible for its monitoring. As chapter 1 shows, they do not receive any methodological guidance or support from the Monitoring Division of the ACC either.

The limited implementation capacity of the MoES may be one of the reasons why selected tasks in its anti-corruption portfolio have been informally doubled (“shadowed”) by civil society organisations and international partners, for instance the Open Society Foundations – Armenia, which supported and coordinated the research and formulation of anti-corruption priorities and legislative proposals on behalf of independent researchers and civil society,<sup>270</sup> by USAID, which supported similar work by

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<sup>266</sup> For more detail on the coordination of anti-corruption policy, see Section 1.4.

<sup>267</sup> Government and civil society responses to the background questionnaire.

<sup>268</sup> Information by the Government provided in background document No. 30.

<sup>269</sup> According to Government responses to the monitoring questionnaire, the MoES ensures the conformity of university-related processes to state principles of transparency, accountability and academic honesty.

<sup>270</sup> Examples include Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory. Goroyan, K. et al., 2015. Unethical Purchase of Academic Papers in the Public Universities of Armenia, Yerevan: Open Society Foundations – Armenia; OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

the state authorities (without involving the MoES),<sup>271</sup> or by the Council of Europe, as discussed in the next section.

#### Higher education institutions

At the time of preparation of this monitoring report, universities appeared to be the weakest link in the AC policy implementation set-up. The late arrival of the Programme has apparently left little time to agree on their responsibilities and the modality of reporting on progress with implementation. In discussions during the monitoring visit, MoES representatives stated that the HEIs have been extensively informed about all current AC priorities and briefed on developments in the context of the AC Strategy, but also that the Ministry is yet to send further guidance on what HEIs are expected to do. Consequently, even after a careful scan of background documentation and extensive discussions, the modality of participation of HEIs in the realisation of anti-corruption commitments and their responsibilities in this respect, remain unclear to the monitoring team.

Experience with past AC strategies may hold some clues as to the challenges that could emerge in connection with the participation of HEIs in the realisation of anti-corruption policy. The Government reassures that the AC Strategies are “an integral part” of the strategic programme of each university, and that HEIs routinely incorporate AC priorities in their planning and annual reporting.<sup>272</sup> However, already in 2013 a comprehensive assessment of the AC strategy 2009 – 2012 observed that key targets in the sectoral strategies were missed because of insufficient preparation, lack of funding, and weak capacity (and apparently commitment) on sector level, including in education.<sup>273</sup> The representatives of civil society noted that weakness like those identified in 2013 are still very much in place today in the HEIs.<sup>274</sup>

Still, the background documentation refers also to structures in universities which have a mandate to ensure compliance and might be well-positioned to take on responsibility for the implementation of AC priorities. Examples include disciplinary committees and ethical commissions,<sup>275</sup> but also university boards and rectors’ offices, all of which are entrusted with wide-ranging administrative powers and commonly have numerous structural subdivisions covering a variety of agendas.

It is peculiar that the MoES has not yet named and mobilised such structures in the HEIs for the purposes of the anti-corruption agenda. Perhaps the reluctance has to do with the institutional autonomy of HEIs, but in a system characterised by tight government control<sup>276</sup> where top-down decisions are common, this may not be the most likely explanation. Another way to interpret it is as a sign of missing political will – a critical factor in settings in which, like in Armenian higher education, corruption is systemic, and improvement calls for the diligent implementation of comprehensive and complex actions.<sup>277</sup> It is up to the Armenian authorities and stakeholders to agree whether this is the case, but if yes, then the successful participation of HEIs in the realisation of AC policies is not so much a matter of institutional capacity, but of genuine commitment to change.

#### *Quality of plans for implementation*

The previous section discussed capacity at various levels of policy competence to implement anti-corruption priorities in higher education. This section takes a brief look at the actual plans for action: how they address funding and distribute responsibilities, and whether the actions they envisage are binding or not. There are reasons for concern in each of these dimensions of planning.

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<sup>271</sup> Civil society responses to the monitoring questionnaire.

<sup>272</sup> Government responses to the monitoring questionnaire.

<sup>273</sup> Assessment of the Anti-Corruption Strategy and Action Plan of the Republic of Armenia 2009-2012. See for example points 2, 3, and 6.

<sup>274</sup> Discussions during the monitoring visit and responses to the monitoring questionnaire (e.g. question No. 37).

<sup>275</sup> Government responses to the monitoring questionnaire.

<sup>276</sup> Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia.

<sup>277</sup> OECD, 2016. Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2013 - 2015, Paris: OECD Publishing, p. 29.

The first potential problem is the absence of financial commitments for the implementation of most anti-corruption priorities. Table 22 shows that the authorities envisage to fund the measures against only 3 of the 12 corruption risks in higher education: the creation of an electronic database for PhD dissertations and Masters' theses (risk 23), the creation of exam lists in HEIs (risk 24), and a system for the verification of authenticity of diplomas (risk 25). It is highly unlikely that the remaining measures can be implemented at no cost, but perhaps here the MoES counts on donor support. In any case, the absence of budget allocations is not new – it is a common feature of anti-corruption programming in Armenia and it has been a reason for poor implementation of policy plans in the past.<sup>278</sup>

**Table 22. Overview of financing of anti-corruption measures in higher education, 2018**

Corruption risk No.	Anti-corruption measure	Funding (Y/N)
17	Revise the rules determining the composition of university Boards to reduce the risk of government influence	N
18	Revise the process of hiring, promoting and dismissing academic staff	N
19	Introduce ethical norms for higher education in the Law on Higher Education	N
20	Introduce annual monitoring of universities and an obligation for them to report annually on activities, implementation of programmes, and finances	N
21	Introduce an obligation for financial management transparency in the Law on Higher Education. Introduce a provision in the Law on Higher Education which obliges student councils to disclose their financial activities.	N
22	Awareness raising and anti-corruption training in universities	N
23	Create an electronic database for PhD dissertations, Masters' theses and diploma graduation works, create rules for its management and make its use obligatory. Oblige universities to define procedures for the defence of theses and dissertations which exclude direct contact with candidates.	Y
24	Universities will be obliged to set lists with subjects for written exams and ensure that confidentiality of evaluation, appeal and review processes is guaranteed.	Y
25	A system will be put in place which allows for verification of whether diplomas are genuine. Sanctions will be defined.	Y
26	Improvement in the criteria of awarding of academic-pedagogical degrees to avoid double standards.	N
27	Revise the legislation to specify clearer than now which groups of individuals are entitled to deferment of their military duty because of being enrolled in post-graduate education	N
28	Revise and improve the criteria for the allocation of PhD places to universities so that they correspond to their capacity to provide quality education.	N

*Source: Summary prepared by the monitoring team based on the AC Strategy and Programme*

Another potential problem is that 7 out of the 12 anti-corruption measures in higher education are voluntary (see Table 23). It is understandable that anti-corruption actions which involve civil society and international partners (No. 19 and No. 22) cannot be mandatory, because they rely on the interest and goodwill of independent organisations. However, it is less clear why all measures involving universities are voluntary as well. They all target sensitive and vulnerable areas (*e.g.* financial accountability, favouritism in staffing, assessment of academic achievement), in which higher education participants and institutions have vested interests and little incentive to change. If actions in these areas are not mandatory, it is doubtful that they will take place on a scale large enough to make a difference for reducing corruption in the sector.

<sup>278</sup> OECD, 2016. *Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2013 - 2015*, Paris: OECD Publishing,

**Table 23. Obligations for the implementation of AC measures in higher education, 2018**

No.	Corruption risk	Measures are voluntary	Measures are obligatory	Entity in charge of implementation
17	Politicisation of university Boards		x	MoES
18	Favouritism in staffing decisions	x		MoES & HEIs
19	Absence of rules of ethical conduct	x		MoES & NGOs/IOs
20	Deficient or absent reporting about academic and financial activities of universities	x		MoES & HEIs
21	Lack of mechanism for public accountability and transparency, specifically of student councils	x		MoES & HEIs
22	No education on anti-corruption	x		MoES & NGOs/IOs
23	Cheating and plagiarism	x		HEIs
24	Undue recognition of academic achievement at exams	x		MoES & HEIs
25	Fraudulent granting of diplomas and certificates		x	MoES
26	Risk of double standards in the awarding of graduate degrees due to ambiguous criteria.		x	MoES
27	Fraudulent admission to PhD programmes to avoid conscription		x	MoES & MoD
28	Biased in decisions about awarding state funding for PhD programmes		x	MoES

*Note: MoES - Ministry of Education and Science; HEIs - Higher Education Institutions; IO - international organisation; MoD - Ministry of Defence*

*Source: Summary prepared by the monitoring team based on information from the AC Strategy and Programme*

Civil society representatives shared a concern also regarding the substance of anti-corruption actions described in the Programme, claiming that they are not thorough and specific enough to achieve the goals of the anti-corruption Strategy.<sup>279</sup> It is difficult to comment on this claim because at the time of monitoring, only two of the anti-corruption measures were implemented or were at the stage of implementation. These were a model Code of ethical conduct developed with the Council of Europe (see the section on staff integrity for a discussion on this), and a draft of a Law on Higher Education.

It is true that with both measures there are shortcomings which prevent them from gaining traction “on the ground”. The Code is quite ambitious and was never adopted by the authorities as mandatory for HEIs,<sup>280</sup> while the draft Law in the version communicated to the monitoring team was missing the mark on some of the very priorities it was designed to address. For instance, according to the draft the Prime Minister still has the final say on the composition of university boards of all public HEIs in Armenia.<sup>281</sup> Also, up to two thirds of the boards of HEIs can be composed of government officials and of civil servants on their behalf who can fill the slots reserved for representatives of employers.<sup>282</sup>

Such shortfalls are technical in nature and are avoidable, provided there is a political will. It can only be hoped that other actions in the Programme will be not be affected by similar weaknesses in substance and/or implementation.

#### *Monitoring of progress and quality of implementation*

The Armenian authorities provided a diversity of information to describe the arrangements for monitoring the implementation of AC policies in higher education. Some of this information referred to the monitoring which was in place for the previous AC Strategy, other statements described a framework for the current one, and some concerned the future. It is not evident which of the “old”

<sup>279</sup> Civil society responses to the monitoring questionnaire.

<sup>280</sup> Ibid. According to information provided by the authorities, at the time of preparation of this chapter only four HEIs have adopted codes of ethics on the basis of the Code.

<sup>281</sup> Draft Law on Higher Education, version of February 2018, Article 18.3

<sup>282</sup> Ibid., Article 18.5. According to the National Statistical Service, the state administration is the biggest single employer of graduate labour in Armenia.

arrangements are still operational in the current period, how they fit into the monitoring set-up for the current Strategy, and what of these two groups of descriptions – old and new – will stay in place post-2018 when the current Strategy for higher education comes to an end and the Government initiates a new AC policy cycle.

Another source of ambiguity is the monitoring of AC policy implementation on the level of HEIs. The background materials describe that this takes place through the regular annual reporting of universities on their academic and administrative activities. HEIs are accountable to the public and state and they are obliged to publish information on progress with their institutional strategy on their official website.<sup>283</sup> Here too, it is not evident whether anti-corruption is a separate, obligatory element in the reporting of HEIs, or a supplementary aspect of reporting which HEIs can cover if and as they deem fit.

None of this comes to say that the Government did not invest diligence in preparing a comprehensive monitoring framework for the current AC Strategy. According to the monitoring questionnaire, in 2017 the MoES recruited external consultants to develop detailed progress indicators for the education sector and a methodology which, as indicated by the MoES during the monitoring discussions, is already available online for comments by stakeholders. The MoJ further noted that the monitoring framework mirrors the AC Strategy in the way in which all actions are complemented by objectives, statements about financial implications, specific progress measures, as well as by an obligation for line Ministries such as the MoES to report on progress to the Anti-Corruption Council. The Task Force of the Council is responsible for preparing reports and reviews on progress with implementation, and for recommending improvements.<sup>284</sup>

The monitoring team could not verify whether such reports exist for education post 2014,<sup>285</sup> what their focus is, and whether they are publicly available. In fairness, the activities in support of the current strategy were decided very late, which might explain the absence of information on implementation. According to an online source,<sup>286</sup> until 2014 the MoES and HEIs were bound by a Governmental order to ensure implementation of the AC programs and at the end of each year to submit an evaluation report to a Board adjunct to the Minister of Education and Science. The monitoring team did not find evidence, however, that this arrangement is still functional.

As to the progress indicators and the monitoring framework for the current AC Strategy,<sup>287</sup> it is outlined in a comprehensive document which describes the process of selecting progress indicators, the format of presenting them, the mechanisms of information collection and the weight function to be used when compiling cumulative scores on progress, etc. The document is not specific to education but describes a universal methodology for several sectors (education, police, healthcare and state revenue collection). The methodology was applied for the preparation of an Annex to the Programme of the AC Strategy, which describes all activities and assigns a weighted indicator to each. As already noted, it seems that in the current strategic period this framework and the underlying methodology were not used yet for reporting on progress.

### ***Public participation***

In 2013, an external report on the state of higher education in Armenia which this chapter has frequently quoted, observed that there is a deficit of “open public debate about higher education and the reform process” in the country. The report goes that there are no public fora for academics and that students lack “proper discussion platforms to express their views”.<sup>288</sup>

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<sup>283</sup> Government responses to the monitoring questionnaire.

<sup>284</sup> Decision of the Government of Republic of Armenia No. 165-N of 19 February 2015.

<sup>285</sup> See <http://edu.am/index.php/am/about/view/95>

<sup>286</sup> Can be found at: [http://tert.nla.am/archive/NLA%20AMSAGIR/TexekagirKGN2002/2013/2013\(6\).pdf](http://tert.nla.am/archive/NLA%20AMSAGIR/TexekagirKGN2002/2013/2013(6).pdf)

<sup>287</sup> Background document provided by the Government titled “Methodology for monitoring and evaluating the process of implementation of anti-corruption actions in the spheres of education, healthcare, state revenue collection and police (with regard to provision of services to citizens)”.

<sup>288</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory pp. 14-15.

As noted also in Chapter 1, both authorities and civil society in Armenia tell of improvement since then, at least with respect to consultations for the last round of anti-corruption policy. Civil society representatives noted that in preparation of the higher education component of the AC Strategy 2015 – 2018, the authorities initiated wide-reaching consultations with non-governmental organisations.<sup>289</sup> An OECD report from 2016 confirms that this process included more than 50 discussions and consultations with a wide array of organisations, among which the Open Society Foundations – Armenia, Transparency International Armenia, the Armenian Lawyers’ Association, Protection of Rights Without Borders and Freedom of Information.<sup>290</sup> This repeated in 2017 for discussions on the choice of priorities for action to be included in the AC Programme, when these and other organisations were also invited to participate in sessions of the Anti-Corruption Council.<sup>291</sup> However, some organisations also stated that, after an initial acceptance, their proposals were ignored.<sup>292</sup>

Most of these are positive developments, but they are also incidental. As far as higher education is concerned, the cooperation with stakeholders, civil society and the public took place ad-hoc and with a hiatus of two years. Apart from that, there is no indication that strategic exchanges on anti-corruption in higher education between civil society and government were taking place on a regular basis.

It must be acknowledged that, as recommended by the Istanbul Action Plan on another occasion, civil society organisations have been invited to a membership in the Council and have an opportunity to participate in the working groups of the ACC. However, as noted during the discussions with civil society organisations during the monitoring visit, membership is restricted to organisations which fulfil certain requirements, some of which vague and quite restrictive, such as the submission of a “positive opinion by a partner organisation on the effectiveness of programmes (of the organisation) implemented with international institutions”.<sup>293</sup> Also, the background information by civil society representatives clarifies that the anti-corruption plans do not envisage proactive engagement in the implementation of anti-corruption activities, and that they feel how their only channel of involvement remains shadow monitoring and the preparation of alternative implementation reports.<sup>294</sup>

In addition to participation in the work of specialised anti-corruption bodies such as the ACC, representatives of the public (media, civil society organisations, education practitioners, etc.) can also participate in the work of the Public Council established under the Minister of Education and Science. The sessions of the Council are chaired by the Minister and can cover any theme of significance for education. According to materials provided by the authorities, in 2017 the Council met four times and in 2018 it met once. The protocol of the last session (23 March 2018) records discussions on a wide range of issues and proposals for actions concerning different levels of education. The protocols of all sessions are publicly available,<sup>295</sup> but it is not evident whether and if yes, how often the Council discusses corruption in education and in higher education specifically, and whether its conclusions may have, or have had, any influence on the anti-corruption priorities and their implementation.

The monitoring questionnaire by the Government mentions a “situational working team”, which was established by Ministerial order<sup>296</sup> and comprises MoES employees and civil society representatives. It is not known whether this team is still functional and if yes, whether it discusses anti-corruption and the implementation of priorities in the AC Strategy.

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<sup>289</sup> Civil society responses to the monitoring questionnaire.

<sup>290</sup> OECD, 2016. *Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges*, 2013 - 2015, Paris: OECD Publishing.

<sup>291</sup> Government responses to the monitoring questionnaire.

<sup>292</sup> Civil society responses to the monitoring questionnaire.

<sup>293</sup> OECD, 2016. *Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges*, 2013 - 2015, Paris: OECD Publishing, and Decision of the Government of Armenia No. 1383-N of 29 December 2016. According to the comments by the Government, the requirements for NGOs were simplified in an amendment to Government Decision N 165-N.

<sup>294</sup> Civil society responses to the monitoring questionnaire.

<sup>295</sup> <http://edu.am/index.php/am/documents/index/130>

<sup>296</sup> Order of the Minister of Education and Science No. 254-A/2 of 14 March 2017.



### 4.3 Prevention measures

#### *Integrity of staff in higher education*<sup>297</sup>

Evidence from discussions during the monitoring visit as well as from third party reports suggests that the employment conditions in Armenian HEIs are not as conducive to integrity as they could and should be. The employment status of most of the junior and mid-career academic staff is characterised by ambiguity and uncertainty as to the duration of their employment, which puts them in a vulnerable position vis-à-vis more senior colleagues and the university administration. The second problem is the low level of pay of all faculty, lower than for professions which require similar or even lower level of qualifications. Volatile employment and low wages are features commonly associated with precarious employment<sup>298</sup> and can (and do) have a deep impact on the integrity of conduct in Armenian higher education. The next sections discuss selected aspects of these problems.

#### *Vulnerability due to staff and employment policies*

HEIs in Armenia are free to define their own staff policies, but within certain limits, such as the formal faculty ranking and the minimum qualification requirements for each rank which are mandatory for all academic institutions, public and private. According to the Law on Higher education, HEI shall independently determine the staff list for the employees of all categories, carry out the selection and distribution of employees, including the recruitment of scientific and pedagogical staff, the procedures for holding positions of academic and teaching staff and those of the heads of scientific and academic subdivisions.<sup>299</sup>

Academic staff can have several types of contracts. They can be employed on an hourly basis, which is a contract offering the least job security and is commonly used when the number of teaching hours is small; they can have a joint appointment, which allows the faculty member to teach in several institutions or perform administrative tasks in addition to teaching; they might have a full-time non-competitive contract, which can be for up to one year; or, staff can have a full-time competitive contract, which is signed for a duration of up to five years.<sup>300</sup>

Only some of these employment contracts require open competitions and properly defined recruitment procedures and, judging by the background documentation, these competitive contracts are not the preferred forms of contracting in Armenian HEIs. Shorter term, non-competitive appointments are much more common as they allow institutions to avoid burdensome recruitment procedures and take decisions faster and in favour of a preferred candidate, without the limitations of administrative accountability and the risk of appeals. According to civil society, most of the teaching staff in Armenian HEIs are appointed in that way.<sup>301</sup>

There is evidence that in these conditions, staffing decisions are frequently marked by arbitrariness and by a subjective uncertainty of academic staff about their career and employment prospects. A frequently quoted report of 2013 described the situation as one in which administrators have “a frightening level of control over who and how is hired and fired.”<sup>302</sup>

In their responses to the monitoring questionnaire, civil society representatives (many of whom are also lecturers, as already noted) indicated that the university management commonly uses its

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<sup>297</sup> The discussion of staff in this chapter is limited to the integrity context of academic staff working in HEIs. Staff working in the Ministry of Education is covered in Chapter 2, in the section on integrity in the public service.

<sup>298</sup> See ILO, 2012. From Precarious Work to Decent Work, Geneva: International Labour Organisation. From Precarious Work to Decent Work, Geneva: International Labour Organisation p. 27.

<sup>299</sup> See also Government responses to the monitoring questionnaire.

<sup>300</sup> Ohanyan, A., 2012. The Academic Career in a Transition Economy: Case Study of the Republic Armenia. In: P. G. Altbach, et al. eds. Paying the professoriate: A Global Comparison of Compensation and Contracts. s.l.:s.n. and Law of Armenia on Higher and Postgraduate Professional Education of 2014.

<sup>301</sup> Civil society responses to the monitoring questionnaire.

<sup>302</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory.

discretion to hire on the basis of personal connections rather than on merit, and that usually vacancies for long-term competitive contracts are not announced. Staff learns about recruitment decisions when the competitions are over, and the results are already known.<sup>303</sup> This matches the findings in other reports, one of which even notes that the extension of contracts is based on obedience and loyalty more than on professionalism and merit.<sup>304</sup>

There is no hard evidence yet of the ways in which this uncertainty and vulnerability plays out in practice, but the overview of risks in the beginning of this chapter suggests that the precarious employment situation of staff is a channel of undue influence on their professional decisions as faculty tends to follow informal directives in exchange for job security. Examples include decisions concerning the recognition of student achievement, such as giving a better grade to students who are protected by rectors and/or deans or looking away when such students cheat at exams, engaging in political activism in public education institutions in response to requests by university management, admission to graduate programmes of students who are ill-prepared, but well-connected, etc.<sup>305</sup>

### Wages

According to the monitoring questionnaire, HEIs decide independently on the form and system of salary payment, the bonuses, extra payments, financial incentives and other kinds of promotions and rewards, as well as the salary rates.

Remuneration of academics typically comprises two components: institutional salary and supplementary remuneration for degrees.<sup>306</sup> The level of income can fluctuate across institutions and disciplines and between public and private HEIs, but even for high-earners the wages are lower than the income of professionals in other sectors of the economy which require comparable qualifications. In 2017, the net monthly wage of a full-time lecturer with PhD in a major public university was AMD 120 000 (EUR 216),<sup>307</sup> more than a third less than the average wage for the country in that year (AMD 195 074 or EUR 351).<sup>308</sup> In one of the background sources used in preparation of this chapter, a lecturer who was teaching eight subjects in his university was quoted saying that his official salary ensures his survival for about three days. In the same year, civil servants had an average monthly income of AMD 217 960 (EUR 392), while public employees earned AMD 149 417 (EUR 269) per month.<sup>309</sup>

As a form of remedy for insufficient income, academic staff in Armenia, like academics elsewhere in Eastern Europe, have developed a “culture of moonlighting” in which it is quite common to hold numerous jobs simultaneously.<sup>310</sup> In Armenia this comes in the form of employment in several HEIs, for instance in a public and several private ones, through a participation in research projects for a fee, through the provision of consultancy services, ownership of private businesses or NGOs, the provision of private tutoring, etc.<sup>311</sup>

The practice of supplementary employment is among the more significant, integrity-related consequences of low wages in Armenian higher education.<sup>312</sup> The multiple external affiliations create a latent risk of conflict of interest and can complicate compliance with conflict of interest

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<sup>303</sup> Civil society responses to the monitoring questionnaire.

<sup>304</sup> OSF-Armenia, 2016. *Strengthening Integrity and Fighting Corruption in Education: Armenia*, Yerevan: Open Society Foundations - Armenia.

<sup>305</sup> See OSF-Armenia, 2016. *Strengthening Integrity and Fighting Corruption in Education: Armenia*, Yerevan: Open Society Foundations – Armenia for further examples.

<sup>306</sup> EACEA, 2017. *Overview of the higher education system: Armenia*, Brussels: European Union.

<sup>307</sup> All conversions based on annual average exchange rate for 2017.

<sup>308</sup> Civil society responses to the monitoring questionnaire and <http://armstat.am/en/?nid=12&id=08001>

<sup>309</sup> Information by the Government provided in background document No. 44.

<sup>310</sup> OECD, 2008. *Tertiary Education for the Knowledge Society: Volumes 1 and 2*. Paris: OECD Publishing.

<sup>311</sup> Ohanyan, A., 2012. *The Academic Career in a Transition Economy: Case Study of the Republic Armenia*. In: P. G. Altbach, et al. eds. *Paying the professoriate: A Global Comparison of Compensation and Contracts*. s.l.:s.n.

<sup>312</sup> Liviu, M., Iwinska, J. & Geven, K., 2013. *Higher Education in Armenia Today: a focused review*, Budapest: CEU Higher Education Observatory.

regulations.<sup>313</sup> Discussions during the monitoring visit suggest that the disclosure of external affiliations for academic staff is neither regulated nor particularly common. Examples from countries<sup>314</sup> where the academia is in a similar situation show that this can also have an adverse impact on the capacity and willingness of academic staff to monitor and support the quality and integrity of student work, mostly because of shortage of time for proper preparation and work with students.

At the current level of funding for education and considering the decline in student numbers, it is unlikely that an increase in the wages of academic staff or salary is a feasible solution to this problem. A cheaper and faster option would be to consider the revision of conflict of interest regulations and mechanisms of disclosure for professional staff and ensure that they are binding for all universities.

In the same vein, it is concerning to note that the elements of precarious employment in Armenian HEIs which were discussed so far are not in focus of the official corruption prevention efforts. Priority No. 18 of the AC Programme commits the education authorities to a revision of recruitment, promotion and dismissal procedures in universities, but this is an optional measure for HEIs and even if it is implemented, it can be bypassed by switching to an employment contract which does not require a competitive procedure. Also, none of the anti-corruption priorities targets the risk of conflict of interest that comes with the widespread practice of multiple jobholding. The monitoring team is convinced that these two features of employment in Armenian higher education require immediate attention.

#### *Codes of conduct*

Low salaries and uncertainty are not the only problematic factors in the working environment of academic staff in Armenia. Their professional conduct is susceptible to corruption also because of the absence of formal staff appraisal mechanisms. Most analytical reports reviewed in preparation of this chapter indicate that Armenian HEIs still have no established ways of recognising quality of teaching and research and no promotion possibilities within faculty ranks for faculty who is more active and successful.<sup>315</sup> An academic environment which is ill-equipped to recognise the achievements of its faculty offers little in terms of incentives “to do things right”, because being professional and “doing the right thing” (which includes resisting corruption), is no insurance against mistreatment or dismissal. On the contrary, some stakeholders during the monitoring visits suggested that it might invite a reprisal.

The authorities have nevertheless invested in the development of guidance for faculty on how to act with integrity despite all circumstances, and for universities on how to enforce compliance with such guidance. In the context of AC Strategy implementation, in 2015 the MoES partnered with the Council of Europe and the European Union<sup>316</sup> in a multi-year project for raising awareness about corruption risks in higher education and the development of toolkits in support of good governance in Armenian HEIs.<sup>317</sup>

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<sup>313</sup> Milovanovitch, M. & Anapiosyan, A., 2018. Academic Affiliations and Conflict of Interest of Public Officials: Initial Evidence from Eastern Europe and Central Asia. *Journal of the European Higher Education Area*, Issue 1, pp. 97-112.

<sup>314</sup> See for instance OECD, 2017. *Review of Integrity in Education: Ukraine*. Paris: OECD Publishing and OECD-ACN, 2017. *4th Round of Monitoring of the Istanbul Action Plan - Kazakhstan*, Paris: OECD Publishing.

<sup>315</sup> Ohanyan, A., 2012. *The Academic Career in a Transition Economy: Case Study of the Republic Armenia*. In: P. G. Altbach, et al. eds. *Paying the professoriate: A Global Comparison of Compensation and Contracts*. s.l.:s.n.; Klemencic, M., 2016. *Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia*, Yerevan: Ministry of Education and Science of the Republic of Armenia.

<sup>316</sup> EU Partnership for Good Governance for Eastern Partnership Countries.

<sup>317</sup> For a copy of the Code and more information on the project see <https://www.coe.int/en/web/yerevan/strengthening-integrity-and-combatting-corruption-in-higher-education-in-armenia> (last accessed on 25 May 2018).

A prominent deliverable of the project is a “Code of Practice for Ethical Conduct in Higher Education Institutions”, the preparation of which the Government has pointed out as a major anti-corruption achievement within the AC Strategy 2015-2018.<sup>318</sup> The Code recommends a set of principles and responsibilities for university administrators, academic staff and students, and provides theoretical guidance on how to prepare codes of ethics. Unfortunately, the document has an advisory character and none of its sections is compulsory for universities. The MoES has not adopted it, for instance as a model Code on which the HEIs must base their own Codes. Despite an apparently wide dissemination, the setting up of a website for universities to report on governance arrangements,<sup>319</sup> such as recruitment of members for their boards, types of decisions and documentation, frequency of meetings, etc, as well as several trainings attended by staff from most HEIs, the monitoring team found no evidence of public HEIs updating their internal regulations in line with the Code. There is also no information on how private universities might be using the Code if they are using it at all.

The Government lists a number of spin-off documents, such as the “Basics of Human Resource Management Policy”, “The Academic Honesty Policy”, "Internal discipline rules of students and employees", "The order of educational procedure",<sup>320</sup> but these seem to be non-binding recommendations as well.

Finally, the Law on Higher Education stipulates that the rights and obligations of staff in higher education shall be defined by the Law itself, the labour legislation of the RA, as well as in the Charter of HEIs and in its internal disciplinary rules.<sup>321</sup> The monitoring team did not have a possibility to examine the internal rules of all HEIs, but the MoES reports that they all have provisions on responsibilities of staff and students and refer to professional conduct.<sup>322</sup>

A scan of the websites of Armenian HEIs undertaken in preparation of this chapter confirms that such references exist, at least in central documents such as the charters (statutes) of universities. In discussions during the monitoring visit, however, HEIs noted that most of these documents draw from staff obligations defined in the Labour Code, and that they are not specific to anti-corruption. There is also little to suggest that any of those charters has been recently amended in response to the coordinated push by state authorities and civil society for more integrity in the higher education sector. Where they are available and publicly accessible, the references of HEIs to integral conduct of academic staff are declarative and lack detail.

#### *Applicability of anti-corruption legislation*

The integrity obligations of civil and state servants in Armenia, and the liability for non-compliance are clearly described in legislation such as the Law on Public Service and the Criminal Code. The extent to which such provisions are applicable to staff in public HEIs depends on whether the notion of “public service” and “public official” includes or could include the employees of public universities.

The question of whether HEIs and their staff can be seen as part of the public sector can have more than one answer, depending on the criteria used. If the criterion is the employment status of academic staff, then HEIs in Armenia cannot be part of the public sector because their employees are neither civil nor public servants. If the point of reference is the type of contract instead – public or private sector contract - it could be argued that the anti-corruption legislation which applies to public officials/servants is applicable to staff in HEIs by extension. Unlike private sector contracts, to which the Labour Code applies, the employment of staff in HEIs is guided by the Law on Higher Education which describes the sector as one which provides services in the public interest.

A similar argument could be developed if the criterion is the “employer’s identity”, which could be that of a public-sector entity even if the entity itself operates as a private sector employer. A good example of such entity is ANQA. It provides services on behalf of the state and is fully accountable to

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<sup>318</sup> See responses to question No. 8.

<sup>319</sup> <https://etags.emis.am/>

<sup>320</sup> Background document No. 137 provided by the MoES.

<sup>321</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 19

<sup>322</sup> Background document No. 141 provided by the MoES.

it, but it employs its staff with private sector contracts. Finally, the source of financing (state budget, revenues from commercial activity, etc.) could also be used as a point of reference. If financing is the criterion, public HEIs in Armenia will not qualify as public-sector employers, because most of their income comes from private sources, as noted in the introduction.

It is beyond the scope of this chapter to develop an argument in favour of any of these criteria and interpretations. The intention is only to underline the importance and necessity for national authorities in Armenia to take a decision on how to interpret the status of staff in higher education with respect to the applicability of anti-corruption legislation.

### *Compliance and quality assurance*

The purpose of quality assurance is to verify whether teaching, learning and internal processes in higher education institutions comply with requirements and can be improved.<sup>323</sup> By looking at these and other key areas of academic operation, quality assurance can play a central role in addressing integrity risks and preventing corrupt conduct.<sup>324</sup> This is especially true in countries like Armenia, where various administrative, teaching and learning processes are known to be affected by corruption.

Quality assurance (QA) procedures usually involve a mixture of licensing/accreditation (evaluation of whether a HEI and/or its programmes comply with requirements), assessment (graded judgements about individual and institutional performance) and audit, which are commonly carried out by external agencies and internally by the HEIs themselves.<sup>325</sup> This section looks into these elements of higher education QA in Armenia, specifically into the effectiveness and integrity of internal and external QA mechanisms, whether their focus is in any way aligned with areas at corruption risk in higher education, and whether they can contribute to compliance with rules and regulations in these areas in line with the anti-corruption commitments of the sector.

#### *External quality assurance*

##### Set-up

According to the Law on Higher Education, licensing and accreditation of HEIs and programmes are the cornerstones of external quality assurance and state control. These are complemented with regular assessments of institutional performance, the criteria and results of which must be made public. The declared purpose of external QA is to ensure better education and the effective use of public and other resources.<sup>326</sup>

Licensing is the first-time permission for HEIs to commence with their educational activities, and the granting of licenses is the sole responsibility of the MoES through its licensing Department.<sup>327</sup> After they are licensed, HEIs are subject to accreditation, the purpose of which is to confirm that the quality of their teaching is in line with the state educational standards and that they perform satisfactory against the goals set in their institutional development plans.<sup>328</sup> The accreditation can be institutional, which is a recurrent mandatory process for all HEIs, and programme accreditation, which is voluntary and requires institutional accreditation first. To become accredited, Armenian HEIs can select any of the international quality assurance agencies registered in the European Quality Assurance Register for Higher Education (EQAR), but in practice HEIs in Armenia opt for their national agency – the National Centre for Professional Education Quality Assurance (ANQA). The final decision about

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<sup>323</sup> For a description of these and other basic features of quality assurance, see Kis, V., 2005. Quality Assurance in Higher Education: [Current Practices in OECD Countries and a Literature Review on Potential Effects](#).

<sup>324</sup> See the recent call by UNESCO IIEP and the Council for Higher Education Accreditation at [https://eadtu.eu/images/publicaties/Advisory\\_Statement\\_Corruption-Eng.pdf](https://eadtu.eu/images/publicaties/Advisory_Statement_Corruption-Eng.pdf)

<sup>325</sup> For a description of these and other basic features of quality assurance, see Kis, V., 2005. Quality Assurance in Higher Education: [Current Practices in OECD Countries and a Literature Review on Potential Effects](#).

<sup>326</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 22.

<sup>327</sup> For a description of licensing and the licensing procedures see Law of the Republic of Armenia “On Licensing” and Government Decree № 808-N of June 9, 2009.

<sup>328</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 22 and EACEA, 2017. Overview of the higher education system: Armenia, Brussels: European Union.

accreditations is taken by the board of ANQA and then approved by the Government which issues the accreditation certificate.<sup>329</sup>

In addition to carrying out accreditation, ANQA also develops criteria and procedures for the external assessment of quality of HEIs and academic programmes, and it can provide advice to HEIs on the development of criteria and mechanisms for internal quality assurance, including student assessment.<sup>330</sup>

#### Effectiveness and corruption prevention: licensing

At the time of the preparation of this monitoring report, none of the elements of external quality assurance in Armenia had a focus on integrity risks and corruption prevention, and there was no verifiable connection to the AC policies and activities as described in the preceding section of this chapter. It is also questionable whether at present the external QA system is effective and independent enough to assume such an important task, as discussed below.

The reforms in Armenian higher education are dominated by the ambition of full integration in the European Higher Education Area. Although quality assurance has been the centrepiece of those reforms for nearly a decade, numerous stakeholders and some of the frequently quoted external research reports conclude that the impact of QA on teaching, learning, study programmes and university administration and governance remains unsatisfactory, and that much remains to be done.<sup>331</sup> This conclusion matters for integrity because the potential of the external QA system to contribute to corruption prevention depends on how well the authorities will address some of the persisting structural problems which prevent it from being more effective. Some of these problems have to do with integrity, others concern governance and the issues in focus of external QA which the legislation prescribes.

The regulations on licensing, for example, include sanctions for transgressions of various severity, ranging from procedural omissions (*e.g.* missing of deadlines) to offences such as forgery of documentation which may lead to a revocation of a license.<sup>332</sup> Between these extremes, the Law describes forms of non-compliance which seem to refer to some of the corrupt conduct in focus of the AC Strategy and its Programme. Yet, the provisions are too vague to allow for enforcement with legal certainty. For instance, “violations committed on the basis of educational and production practice”<sup>333</sup> could be interpreted as a reference to undue recognition of achievement, fraudulent admission to study programmes, plagiarism, or to other forms of problematic conduct.

The effectiveness of measures in this area could benefit from a clearer stance on whether sector-specific forms of corrupt conduct should be in focus of quality assurance at the stage of licensing, or whether it is more effective to deal with them in the course of accreditation and performance assessment, as carried out by ANQA. For instance, the outcomes of accreditation and assessment could include a recommendation to re-examine or revoke the license of a HEIs which is affected by corruption to an extent where its ability to operate is at stake.

#### Effectiveness and corruption prevention: accreditation

The background research and interviews for this chapter left no doubt in the professionalism and expertise of work at ANQA, and in its constructive and close cooperation with HEIs. Still, an extensive report from 2016<sup>334</sup> noted weaknesses which could limit the effectiveness of its work,

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<sup>329</sup> *Ibid.*, Article 14.

<sup>330</sup> Charter of the “National Centre for Professional Education Quality Assurance”, Article 6.

<sup>331</sup> Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia; Liviu, M., Iwinska, J. & Geven, K., 2013. Higher Education in Armenia Today: a focused review, Budapest: CEU Higher Education Observatory.

<sup>332</sup> See Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 13.

<sup>333</sup> *Ibid.*, Article 13.3.e.

<sup>334</sup> OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

including its capacity to tackle integrity risks. These weaknesses were still in place at the time of the monitoring visit.

The first weakness stems from a latent risk of conflict of interest due to the composition of the Board of the Agency. It comprises a representative of the Government, one from the department of Standing Committee on Science, Education, Culture, Youth and Sport of the National Parliament, one from the MoES, four members from HEIs, a student, three representatives of employers (who could also be from the state administration), and one member from the national competitiveness council. The members of the Board must be approved by the Government.

This composition has been long subject to criticism by civil society and external observers, who described various problematic scenarios of how the problem plays out in practice: from ANQA sharing board members with the universities it is responsible for, to situations in which members on its board have a professional or personal stake in the HEIs that they accredit.<sup>335</sup> Such concerns might have merit. To the best of knowledge of the monitoring team, no public HEIs has ever failed its institutional accreditation since the creation of the Agency in 2008.

The vulnerability of ANQA to external influence is well-known fact among higher education practitioners and leads to another problem. It weakens the standing of the Agency vis-à-vis the HEIs with which it cooperates. A sign of this is the reportedly<sup>336</sup> uncritical stance of ANQA towards the findings of institutional self-evaluations which universities are obliged to perform as part of the accreditation process. Unfortunately, the reluctance to engage critically is not limited only to the control functions of the Agency, it also includes its formative role of helping HEIs develop their internal QA mechanisms. The monitoring team had the impression that despite its expertise and possibilities, ANQA is not developing the quality of academic operations and internal QA mechanisms in HEIs to the extent it could. The feasibility study for the next Strategy on higher education in Armenia too recommends that ANQA focuses on helping HEIs improve their procedures for internal quality control.<sup>337</sup>

This recommendation and the insight on which it rests are significant because they are meant to secure support for internal structures of Armenian HEIs which are usually neglected despite the prominent role that they can (and should play) in the prevention of corruption, *e.g.* such as the ethical and disciplinary commissions, appellate bodies, etc. These structures not only have a befitting mandate but are also close to areas of academic operation which are at risk, such as assessment, graduate admissions, human resource management, etc., and commonly have direct exposure to instances of corrupt conduct in those areas.

Unfortunately, none of this is quite in the focus of formative support provided by ANQA to HEIs. Perhaps this is an underdeveloped area in the HEIs in general. Many of the background questions about the prevention mechanisms in universities were left unanswered by both civil society and the Government and where answers were provided, they did not refer to any processes or structures in HEIs but described deliverables of the project by the Council of Europe instead.

#### *Internal quality assurance*

This section discusses the availability and use of internal compliance and quality assurance mechanisms for the identification of integrity risks and addressing corruption. It focuses on the HEIs, their faculty members, students, and internal procedures and concludes that internal QA is still underdeveloped and that there is no evidence that HEIs are using it for corruption prevention.

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<sup>335</sup> Ibid, and information sharing by civil society during the monitoring visit.

<sup>336</sup> Ibid.

<sup>337</sup> Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia.

#### Focus on institutions: self-assessment

Like some OECD countries, *e.g.* Australia, Norway, and the UK,<sup>338</sup> Armenia has committed to quality assurance procedures which involve an internal evaluation and an external verification of its results. The first phase involves a self-evaluation in the form of a written report summarising the results of the internal review of the HEI. In the second phase a group of independent experts carries out a site visits, and in the third phase the Accreditation Commission takes a decision based on the results of the preceding two phases.<sup>339</sup>

Unfortunately, this procedure is limited to accreditation only. At the time of preparation of this monitoring report there were no other system-wide mechanisms for internal review.

External reports confirm too that the strategic management capacity of Armenian HEIs is low and that there is need to strengthen the formal mechanisms and internal QA procedures.<sup>340</sup> The monitoring questionnaire indicates that ANQA has developed and published a guideline for HEIs on how to establish an internal system of QA and control, and that universities can applying it according to their needs.

The monitoring team could not verify the degree to which structural units in HEIs which are in charge of compliance, in particular integrity of professional conduct and administrative procedures, such as ethical and disciplinary commissions, are involved in the evaluation of institutional performance and have a say in its final outcomes and follow-up, and the guidelines do not seem to refer to them. Universities are also obliged to publish annual reports about their activities, but they have no obligation to cover integrity and corruption and here too, the extent to which units in charge of compliance are involved and provide inputs, is unclear.

#### Focus on staff: compliance and appraisal

Appraisal of academic staff can serve institutional and career-related purposes, commonly to guide decisions about career promotions. In most OECD countries HEIs would keep track of and regularly evaluate various characteristics of their staff, such as seniority, qualifications, achievements and teaching skills in view of career advancement or employment decisions.<sup>341</sup> This also includes, implicitly or explicitly, information about integrity and professional conduct, for which task HEIs usually have units, commissions and/or individuals in charge of compliance and following-up in case of violations.

The preceding section established that HEIs in Armenia do not have formal appraisal mechanism and that career progression depends on staff features which do not need evaluation and judgement, such as academic degree, rank, and record of publications and research.<sup>342</sup> According to responses by the authorities to the monitoring questionnaire, HEIs also have an ethics commission which consists of 5 members – four administrators and teachers and one student representative, who are responsible for handling cases of suspected abuse before forwarding them for decision to the faculty or university leadership. In the background documentation, the MoES indicates that violations of rules by university employees and students are discussed at faculties and at the Rectorate sessions and corresponding measures are undertaken. The document also clarifies that the ethical commissions deal with violations of ethical rules and that the commissions carry out regular monitoring of compliance.<sup>343</sup>

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<sup>338</sup> OECD, 2008. *Tertiary Education for the Knowledge Society: Volumes 1 and 2*. Paris: OECD Publishing.

<sup>339</sup> Government responses to the monitoring questionnaire.

<sup>340</sup> <http://www.lamanche-tempus.eu>, quoted in Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia.

<sup>341</sup> OECD, 2008. *Tertiary Education for the Knowledge Society: Volumes 1 and 2*. Paris: OECD Publishing.

<sup>342</sup> Ohanyan, A., 2012. *The Academic Career in a Transition Economy: Case Study of the Republic Armenia*. In: P. G. Altbach, et al. eds. *Paying the professoriate: A Global Comparison of Compensation and Contracts*. s.l.:s.n.

<sup>343</sup> Background document No. 141.



Some universities also have disciplinary commissions, but the mandate of these seems limited to conduct that violates provisions of the labour code. Both commissions appear to work in detachment from the remaining structures for quality assurance and the regular channels of reporting to the public.

#### Focus on students: student views and student performance

Like their teachers, students play a role in most forms of corrupt conduct in higher education and can be an invaluable source of information on risks and problematic conduct. They can participate in QA proceedings and provide information in different ways, which may include responses to internal evaluation questionnaires, interviews with external experts, participation in external reviews of HEIs or even, as is the case with ANQA, they can be on the board of an external QA agency.<sup>344</sup>

At the time of preparation of this report, students were not involved in QA processes on regular basis (apart from a seat on the board of ANQA). Information from student evaluations of teaching performance has not yet started to make its way into promotion and extension decisions and is not established as a formal source of information for QA purposes. Also, as far as information is available, none of the questions in these evaluations refers to corruption or integrity risks.

The academic performance of students can be another important indicator of institutional performance and context and reveal information about integrity problems in the area of academic assessment. Civil society representatives noted that in recognition of the significance of this area, one of the four toolkits developed with the help of the Council of Europe was on accountability and transparency in curriculum development and student assessment. Unfortunately, despite their reportedly good quality, the toolkits were not introduced as mandatory for use in the HEIs.<sup>345</sup>

The student assessments may include mid-term and final examinations during each academic semester in the form of written assignments, test, and oral exams. There are also final attestation exams at the end of each study cycle. A known weakness of the system is that many HEIs still resort to oral exams, in particular at the end of Bachelor level.<sup>346</sup> These are high stake exams which are at high risk of abuse as their results can be decisive for admission graduate studies and there is a plan for their substitution with a graduation papers as part of a multi-factor assessment system.

According to several reports, the introduction of the Bologna process has had many advantages, but also a disruptive effect on quality assurance, specifically on the integrity of assessment of academic achievement. The process led to the modularisation of study programmes and the introduction of the European Credit Transfer System (ECTS) so that learners can switch between modules or combine them.<sup>347</sup> However, the introduction was poorly communicated and what the concept and scope of modules should be, was up to HEIs to interpret on their own. This has left the higher education sector without a unified approach to the assessment of learning outcomes in modularised programmes, and has opened the door to double standards in assessment. In the responses to the monitoring questionnaire, civil society identified this situation as a major source of integrity risk. The feasibility study of 2016 recommends closing these gaps by developing well-equipped QA systems on institutional and system levels.<sup>348</sup>

#### Focus on internal procedures: audit and financial control

Public HEIs in Armenia must submit to the MoES quarterly and yearly reports on their financial activities involving public funding. The universities do not have their own internal audit and financial control units. Before the change of status of public universities from state non-commercial organisations to foundations (see the section on reform-related changes of this chapter),<sup>349</sup> this

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<sup>344</sup> OECD, 2008. Tertiary Education for the Knowledge Society: Volumes 1 and 2. Paris: OECD Publishing.

<sup>345</sup> Civil society responses to the monitoring questionnaire.

<sup>346</sup> Government responses to the monitoring questionnaire.

<sup>347</sup> OSF-Armenia, 2016. Strengthening Integrity and Fighting Corruption in Education: Armenia, Yerevan: Open Society Foundations - Armenia.

<sup>348</sup> Klemencic, M., 2016. Feasibility Study: Towards a New Higher Education Strategy 2016 - 2025 of the Republic of Armenia, Yerevan: Ministry of Education and Science of the Republic of Armenia.

<sup>349</sup> At the time of monitoring, only four HEIs in Armenia have not yet transitioned to the status of foundations.

function was performed by the internal audit department of the MoES, which could subject them to regular and extraordinary internal audits.

In the Law on Internal Audit,<sup>350</sup> these audits are described as activities which look into compliance with accounting regulations but also into the strategic and annual plans of HEIs, into the purposeful use of resources for the advancement of those plans, and into ways to improve by means of support and advice. The examples of audits provided during the monitoring visit combined risk assessment, improvement plans, and financial auditing. They led to the occasional opening of criminal cases, or if the transgressions were administrative, to a submission of an audit report to the Minister of Education for remedial action.

Because they go beyond the strictly financial and into the substance of academic operations of HEIs, the internal audits of the MoES appear capable of detecting a broader selection of corruption risks and violations than if they were limited to financial aspects. In discussions during the monitoring visit, MoES representatives gave examples of corrective, audit-based action plans for individual HEIs, which were used to design corruption prevention measures.

Public universities which have changed their status into foundations cannot be subjected to internal audits by the MoES anymore. Their status and obligations are described in the Law on Foundations, that treats them as private entities, which must undergo regular external audits only if their assets exceed AMD 10 000 000 as well as, irrespective of their organizational-legal form, for HEIs the profits of which in the reporting year have exceeded one billion AMD, or whose assets at the end of the reporting year exceed one billion AMD.

The transformation of HEIs into foundations has removed a layer of accountability and administrative burden from universities, but it has also removed the internal audit as an instrument of critical insight into their academic and financial operations. Judging by numerous examples provided to the monitoring team, this instrument was capable of delivering early warnings about corruption and corruption risks. The external audit to which universities are subject as foundations is only about “financial statements” and “documents which contain such statements.”<sup>351</sup>

In the monitoring questionnaire, the authorities inform that a new state system of internal financial control is currently in the process of development in view of introduction a new legislative package. The monitoring team recommends that the authorities consider how to combine the administrative and substantive aspects of internal audit in one process which is binding for all foundations, instead of focusing the checks and controls only to compliance with accounting requirements.

### ***Transparency and accountability***

Two of the 12 corruption risks in higher education describe administrative and academic processes in HEIs which lack transparency.<sup>352</sup> The Anti-Corruption Programme notes that the areas affected by this problem are procurement and financial management and that the problem itself is fuelled by a persistent failure of academic institutions to publish their annual programmes, financial reports, and ethical commitments regularly online. Apart from the MoES, which has other channels of information about the internal workings of its HEIs, the rest of interested university stakeholders – external partners, civil society watchdogs, and most of all students and the teaching staff – have no alternative but to rely on what their higher education institutions decide to release to them and the wider public.

The lack of information does not necessarily imply wrongdoing on the side of HEIs, but it most certainly fuels speculation and distrust in the integrity of their intentions. The questionnaire by civil society organisations is a case in point. It notes that the transparency of HEI operations is among the weakest points in higher education in terms of prevention and integrity, points out how procurement and budget management stand out as particularly opaque, and adds internal staff and assessment policies to the list. There is a certain tendency to conflate the lack of information with wrongdoing, with a certainty that HEIs are hiding something, *i.e.* corrupt conduct. The responses by the

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<sup>350</sup> Law on Internal Audit of the Republic of Armenia, Articles 2 and 6.

<sup>351</sup> Law on Audit of the Republic of Armenia, Article 6.

<sup>352</sup> AC Strategy and Programme, corruption risks No. 21 and 22.

Government reproduce the points raised in the AC Programme and thus arrive at a similar conclusion – that the financial management and procurement of HEIs lack transparency and accountability, which implies systemic transgressions.

It is not possible to determine whether the widely reported lack of information on the side of HEIs is intentional, or maybe simply the result of confusing regulations. In some of the areas affected by lack of transparency there is indeed evidence of corrupt conduct, for instance in assessment of student performance or human resource management. In other areas, most notably procurement and financial management, such evidence is available to a much lesser extent, and this is where assumptions and speculations of wrongdoing and its magnitude tend to be widespread. It is as if the reports of problems in these areas are more of an indication of a striking level of public distrust in the institutional integrity of HEIs, than a reliable reflection of corruption prevalence. Still, some of the data provided by the Government on procurement in higher education suggest that there is indeed certain risk. Between 2015 and 2017 there was a substantial rise in the average value of single source procurement campaigns: from AMD 2.9 million in 2015 to AMD 4.1 million in 2017, all the while the overall share of single source procurement did not exceed 30% of all procurement in that period.<sup>353</sup>

Prevention of corruption is also about restoring trust.<sup>354</sup> It is in the interest most of all HEIs to find immediate remedies to the situation described in this section by ensuring that they meet their legal obligations to be transparent,<sup>355</sup> and share information of good quality and sufficient detail about their administrative and academic work to all those who need it. The MoES should also start to enforce this obligation and make sure that the information and the timeliness of its release corresponds to what is expected and required, for instance that it covers areas at risk and in focus of the public discourse, such as procurement and financial management.

One way to do this could be with the help of obligatory reporting templates similar to those developed in the course of the project of the Council of Europe on academic integrity.<sup>356</sup> In addition, the monitoring team recommends the authorities to introduce a legal right for participants in higher education to demand information on various aspects of operation of their higher education institutions.

### *Awareness-raising and education*

On multiple occasions during the monitoring visit, the Government reported of project-based activities and campaigns to raise awareness about corruption in (higher) education. Some of those activities were technical and targeting higher education practitioners, others aimed at informing the public.

Of the activities aimed at practitioners, the most prominently quoted one was the project by the Council of Europe and the European Union,<sup>357</sup> which this chapter already discussed in the context of another section (integrity of staff). One of the declared goals of this project was to inform of corruption risks and strategies for enhancing integrity in higher education. The thematic focus on governance, accountability and transparency, human resource management, and curriculum development.

According to the background information, the project provided an overview of solutions on how to improve legislation and the professional environment of participants in higher education. In the words of authorities, the preparation and dissemination of the components of this project included meetings, discussions, conferences, as well as coordination with the Anti-Corruption Council and the

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<sup>353</sup> Government responses to the background questionnaire.

<sup>354</sup> See <http://www.oecd.org/forum/oecdyearbook/tackle-corruption-to-restore-trust.htm> and references.

<sup>355</sup> See for instance the Code on Administrative Offences, Article 169.18

<sup>356</sup> For a sample of such templates collecting information on HEI governance, see here <https://etag.emis.am/>

<sup>357</sup> Strengthening Integrity and Combatting Corruption in Education. For more information see <https://www.coe.int/en/web/yerevan/strengthening-integrity-and-combatting-corruption-in-higher-education-in-armenia>

Government. Some project components required training for higher education staff as well.<sup>358</sup> The impact of the project was not evaluated at the time of preparation of this monitoring report.

The monitoring team did not find evidence of education on anti-corruption. The Anti-Corruption Programme even notes that the shortage of trainings is a corruption risk.<sup>359</sup>

#### 4.4 Enforcement and results

This section discusses the extent to which higher education participants and institutions are liable for corruption and integrity-related violations in areas of academic operation which are at risk, as identified in the current anti-corruption strategy of Armenia and third-party reports. The section looks into the effectiveness of measures to enforce criminal, administrative, and disciplinary liability in these areas and, to the extent evidence is available, into whether such liability has been defined.

##### *Key findings on enforcement*

The Criminal Code and the Code of Administrative Offences describe the liability of natural persons for offences in different areas, but they do not include offences specifically related to the education sector. This is not an impediment to enforcement for offences such as embezzlement, abuse of power or bribery, as they fall under the realm of criminal law in any context, including in higher education. However, it is concerning that integrity-related offences of lesser gravity do not seem to have been properly regulated – a problem which applies some violations and risks in focus of the current anti-corruption policy in higher education (i.e. favouritism in staffing decisions, manipulation of grades, conflict of interest and undue political influence on decisions, cheating and plagiarism, etc.). Such less grave violations should imply administrative or disciplinary liability which seems ill-defined, both in terms of substance and procedures, as discussed in the next sections. Table 24 provides information about the availability of definitions of violations and sanctions in areas of academic operation which are at risk of corruption.

**Table 24. Availability of definitions of violations and sanctions, by area at risk of corruption**

Corruption risk	Area of academic operation	Violations and sanctions defined
Politicisation of university Boards	Governance and steering of HEIs: university leadership	Not applicable
Favouritism in staffing decisions	Staff policies	No
Absence of rules of ethical conduct	Staff policies	Not applicable
Deficient or absent reporting about academic and financial activities of universities	University administration: financial management	No
Lack of mechanism for public accountability and transparency, in particular of student councils	Academic integrity; financial management	not applicable
Absence of anti-corruption education	not applicable	not applicable
Cheating and plagiarism	Internal quality assurance	Yes (1)
Undue recognition of academic achievement at exams	Internal quality assurance	No
Fraudulent granting of diplomas and certificates	External and internal quality assurance	Yes (2)
Risk of double standards in the awarding of graduate degrees due to ambiguous criteria.	External and internal quality assurance	Not applicable
Fraudulent admission to PhD programmes to avoid conscription	University administration: admissions	No
Biased in decisions about awarding state funding for PhD programmes	Governance and steering of HEIs: state funding	No
Tampering with accreditation procedures and decisions	External quality assurance	Yes (3)

<sup>358</sup> Government responses to the monitoring questionnaire.

<sup>359</sup> Programme on Anti-Corruption Measures in Education, risk No. 22.

*Notes: 1. Defined by each HEIs and also as accreditation criteria in Decision of the Government of Armenia No. 959 3. Only in case of forgery as described in Article 314 of the Criminal Code. Other forms of fraud are not defined. 2. Decision of the Government of Armenia No. 978 on accreditation procedures.*

*Source of risk overview: Anti-Corruption Programme; Taxonomy of areas of academic operation: monitoring team*

A possible remedy would be to describe sector-specific forms of violations as appropriate, which may be in the Code of Administrative Offences, the Law on Higher Education, a mandatory model code of conduct for HEIs, or else, and to update the descriptions of administrative and disciplinary penal procedures, as appropriate. Some ACN countries have already taken this path. Ukraine, for instance, in its Law on Higher education refers to violations of academic integrity and, following an INTES assessment in 2016, is working on introducing similar references in other segments of its education system. Kazakhstan describes several sector-specific violations in its secondary legislation on education.<sup>360</sup> According to information by civil society, Armenia too was working on the inclusion of a definition of academic integrity in its new Law on Higher Education and on describing conduct that might put it at risk. It is not clear whether future revisions of the Law will retain this reference.

As it is now, administrative and disciplinary liability for integrity violations in the sector is an area marked by limitations and legal uncertainty, which reduces the effectiveness of corruption prevention measures, impedes enforcement, and promotes a culture of impunity that is detrimental to the integrity of academic operations. This state of affairs is also in stark contrast with the ambitious scope of the anti-corruption Programme in higher education.

### ***Criminal liability for corruption in higher education***

#### *Description*

Articles 308 - 315 of the Criminal Code prescribe liability for corruption offences in public sector committed by or in relation to public officials as well as civil servants who are not officials. The definition of a public official provided by Article 308 of CC covers persons performing the functions of a representative of the power and persons performing organisational-managerial, administrative and economic functions in state authorities, local self-government authorities, organizations thereof. This definition in conjunction with other respective provisions of the respective articles of CC leads to conclusion that public officials and civil servants in the higher education sector, as well as managerial staff of state-owned HEIs, are covered by the Criminal Code. At the same time, it is not entirely clear from the mentioned definition if representatives of state or municipal HEIs like members of faculty who have no administrative and managerial responsibilities, can be held liable for corruption offences in public sector. The provided examples of cases suggest that this is not a problem and teachers and lecturers were brought to liability for corruption related offences. As the overview of enforcement measures below suggests, the criminal prosecution proceedings were indeed aimed at university administrators, mostly for abuses in the domain of financial management.

Provisions of the Criminal Code on corruption in private sector also do not have special provisions on higher education. Indeed, Article 179 on embezzlement applies to anyone who misappropriates in “significant amount” the property he or she has been entrusted with. HEI participants are also covered by provisions regulating money laundering (Article 190), fraudulent entrepreneurial activity (Article 189), commercial bribing (Article 200), abuse of authority by employees of commercial and other organisations (Article 214).

In respect to the fraudulent granting education credentials it also worth mentioning that apart from liability for official forgery the Criminal Code of Armenia also prescribes liability for illegal acquisition or sale of official documents (Article 326).

Finally, the Articles in Chapter 24 of the Code describe crimes against computer security, such as unauthorised access and alteration of information in computer systems. ICT plays a pivotal role in the

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<sup>360</sup> See instance OECD, 2017. Review of Integrity in Education: Ukraine. Paris: OECD Publishing and OECD-ACN, 2017 4<sup>th</sup> Round of Monitoring of the Istanbul Action Plan - Kazakhstan, Paris: OECD Publishing.

management of high-stake academic, attendance and accounting records in most HEIs and could be subject to abuse with a corrupt intent.

#### *Effectiveness of enforcement*

According to statistics provided by the authorities, in the period 2015-2017 there were 127 criminal investigations for corruption in education, 94 of which led to sentencing. Of these, 61 were initiated by the prosecution itself, 22 followed inspections by the education authorities, and 44 were the result of reporting by individuals.<sup>361</sup> According to information provided by the Prosecutor's Office during the monitoring visit, most of these offences concerned economic activity and abuse of authority. The provided statistics shows that official forgery and embezzlement or misappropriation of trusted property were the most frequently committed corruption related offences in the education sector with the reporting period.

In the responses to the monitoring questionnaire, the Government assesses the period since 2015 as successful in terms of criminal enforcement, and attributes the success to the impact of awareness-raising campaigns. They indicated that in 2015 there were no reports on corruption by the public, in 2016 there were 12 reports from students, a teacher, a rector, pupils, parents and school employees who decided to "blow the whistle", and in 2017 the number of such reports climbed to 32.<sup>362</sup>

Although there is no evidence of the impact of such enforcement successes on the overall level of corruption in higher education, these are encouraging developments.

The monitoring team learned from the Armenian media about 3 non-state owned HEIs issuing fake diplomas to students who did not attend classes or even the final exams.<sup>363</sup> After the on-site visit the Government provided information that by court verdicts rectors of all three HEIs were found guilty and sentenced under Articles 200 (Commercial bribery) and 214 (Abuse of authority by employees of commercial and other organisations). In order to exclude similar cases in the future an electronic system of state graduation documents will be introduced in the system of management of the MoES.

#### ***Administrative liability for integrity-related violations in higher education***

##### *Description*

In its second section, the Code on Administrative Offences makes a distinction between offences of significance for the general public, such as offences against public health, the property or the electoral rights of citizens, etc., and offences specific to sectors, e.g. environment, land, industry, energy, agriculture, transport and communications, housing and urban development, the use of land, etc. However, education is not included in the list.

Some of the provisions of the Code which describe sanctions and offences against administrative procedure may be applicable to integrity-related violations in higher education. These include the omission of data, the delay of submission of data, and the submission of false data to state bodies,<sup>364</sup> which possibly apply to conduct pertaining to corruption risks No. 20, 21, 24-27 as identified in the AC Strategy, and may imply administrative liability for violations of licensing requirements as described in the Law on Higher Education. The Law on Higher Education too describes sanctions for HEIs which violate licensing requirements, which may result in administrative sanctions, including a reprimand, a fine, or as last resort a revocation of the license to operate.<sup>365</sup>

#### *Effectiveness of enforcement*

In Section III, the Code on Administrative offences describes bodies authorised to initiate and carry out administrative-penal proceedings in the sectors in which it described administrative violations. Among these bodies there are line Ministries (e.g. Ministry of Transport, Ministry of Justice) and

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<sup>361</sup> Government responses to the monitoring questionnaire.

<sup>362</sup> Ibid.

<sup>363</sup> [The scandal with false diplomas of Armenian universities is in progress - a statement was made due to this fact by the National Security Service, and appropriate criminal cases have been raised against some of rectors.](#)

<sup>364</sup> Code on Administrative Offences, Article 189.10.

<sup>365</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Article 13.1.

agencies in charge of regulation and monitoring of compliance, for instance labour inspectorate, inspectorate for communications, and others.<sup>366</sup>

Here too, the list does not reference to entities in charge of (higher) education, neither to those responsible for steering the sector nor to those with supervisory functions. It is presumably the MoES which has overall responsibility for dealing with administrative offences in HEIs. The monitoring team was informed that there is no statistics on administrative enforcement in higher education.<sup>367</sup>

### ***Disciplinary liability for integrity-related violations in higher education***

#### *Description*

The conduct which makes academic staff and students liable to disciplinary action can be described in the charter of the HEIs, in their internal disciplinary rules, and/or in codes of professional and ethical conduct.<sup>368</sup> The responses of Government and civil society to the monitoring questionnaire seemed to imply that in the past few years, codes of conduct have become a priority measure in the introduction of liability for breach of integrity on the level of HEIs. Unfortunately, at the time of preparation of this monitoring report the documented efforts in this respect were incomplete, and their impact on the effectiveness of disciplinary enforcement was limited.

Codes of conduct are of limited impact if they are not reflected in regulations and procedures which define staff policies and their application. Some of the values they would normally describe may relate to the higher education institution and the profession, such as being professional, apolitical, accountable, honest and ethical, responsive to needs, etc. Others may relate to the employment itself, such as that staffing decisions should be based on merit, non-discrimination, fairness, etc. A Code would “translate” these values into obligations for staff (and students as members of academia), such as integrity, avoidance of conflict of interest, collegiality and diligence, etc., the breach of which makes staff liable to disciplinary sanctions, including dismissal.<sup>369</sup>

After careful review of regulations and available background documentation, the monitoring team determined that there is no conclusive evidence to suggest that any of the following is available: a) an obligation for HEIs to have a Code of Conduct; b) a model Code of conduct which would be mandatory for HEIs to follow and guidance/directives that the MoES might have provided to HEIs on how to translate it into obligations and procedures, including such pertaining to integrity; c) Codes of Conduct in HEIs and/or internal disciplinary rules which are comprehensive in the ways described here. It also seems that at the time of the monitoring visit the MoES did not have an overview of how and for what conduct HEIs have defined disciplinary liability for their staff.

The Code of ethical conduct which the Council of Europe developed on behalf of the MoES has many of the required features and could help to address some of these shortcomings, but there is no indication that it has been adopted by the Ministry as a model Code for HEIs. The draft Law on Higher education stipulates that HEIs are obliged to introduce a Code of Conduct, but at the time of preparation of this monitoring chapter, this was not the case.

Some of the (major public) HEIs with which were invited to attend the monitoring interviews reported on their own efforts to establish a culture of resistance to corruption and told of measures such as defining strategic objectives, plans of action, awareness raising, and ensuring university-wide participation. It is not clear how these measures relate to the internal disciplinary rules of the institutions, for instance whether they complement, expand or replace them. It seemed though that none of them was about changes in the formal obligations of staff, or about forms of corrupt conduct mentioned in the anti-corruption strategy for education, or the introduction of procedures for dealing with it.

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<sup>366</sup> See Code of the Republic of Armenia on Administrative Offences of 1985, Sections II and III.

<sup>367</sup> Government responses to the monitoring questionnaire.

<sup>368</sup> Law of Armenia on Higher and Postgraduate Professional Education of 2014, Articles 17 and 19.

<sup>369</sup> See (Weeks, 2007) for more detail on this logic of codes of conduct and their application on the example of employment in the Australian Public Service.

### *Effectiveness of enforcement*

The monitoring team did not have information on the number of disciplinary proceedings and sanctions imposed on staff in higher education for involvement in integrity-related violations.

According to official information, the hotline of the MoES has received 118 signals for irregularities in 2017. Only four of these were related to higher education but none concerned corruption or integrity-related violations. In addition, following media reports the MoES carried out audits in two HEIs and discussed the established irregularities at the university board meetings, which were attended by the Minister of Education.

## **4.5 Recommendations**

### **Recommendation 1: anti-corruption policy**

1. Ensure that the sector strategy and action plan are implemented, and that progress is monitored and analysed in view of adjusting the priorities. Consider extending the timeline for implementation into the next strategic period.
2. Clearly indicate the budget necessary for the implementation of anti-corruption measures (amount and the resource that will fund implementation) and ensure that the measures address the conditions in the sector which contribute to corruption risk.
3. Ensure that the Ministry of Education and Science has sufficient capacity to coordinate, monitor, and steer the implementation of the sectoral anti-corruption strategy and report on progress.
4. Ensure that higher education institutions are provided with guidance and clearly defined obligations regarding the inclusion of anti-corruption priorities in their annual plans, the implementation of those priorities, and the monitoring and reporting on progress.

### **Recommendation 2: prevention - staff policies**

1. Address the precarious employment of staff in higher education by reducing and eventually eliminating the practice of short-term, non-competitive appointments to increase employment security and predictability.
2. Ensure that conflict of interest regulations and mechanisms of disclosure for university staff are in place in all higher education institutions and are applied in practice. This should include the de-politicisation of governing structures in HEIs.
3. Introduce an obligation for members of the ethical and disciplinary commissions of higher education institutions to recuse themselves in case they are concerned by a case or complaint which the commissions are dealing with.

Provide that appointment and appraisals of the HEI staff are merit-based.

### **Recommendation 3: prevention - compliance and quality assurance procedures**

1. Introduce a model code of ethical conduct as a mandatory standard in the development of internal regulations of higher education institutions.
2. Introduce compliance, integrity risks and corruption prevention in the accreditation and reaccreditation criteria for higher education providers. Ensure that the support to higher education institutions provided as part of the external quality assurance, for instance through



ANQA, includes the development of HEI capacity to meet these criteria.

3. Ensure that the entities in charge of licensing and accreditation are free from undue influence and conflict of interest.
4. Step up the development of internal quality assurance mechanisms, focusing specifically on the ability of HEIs to ensure compliance and involve students in QA processes on institutional level.
5. Consider combining the administrative and substantive aspects of internal audit in one process which is binding for all higher education institutions, irrespective of their legal status.

#### **Recommendation 4: prevention - transparency and accountability**

5. Improve the transparency of reporting by higher education institutions on the financial and procurement aspects of their operation by introducing a mandatory common reporting template developed in consultation with higher education practitioners, stakeholders, and civil society.
6. Introduce mechanisms for participants in higher education (*e.g.* students) to request access to information on the use of resources by their higher education institution for the fulfilment of its educational mandate, or any other aspect of university operation.

#### **Recommendation 5: effectiveness of enforcement**

1. Involve all relevant stakeholders in the development of a comprehensive detection and enforcement strategy in the higher education sector. This could include the description of sector-specific forms of violations in areas at risk of corruption and an update of descriptions of administrative and disciplinary penal procedures, as appropriate.
2. Collect statistics on administrative and disciplinary sanctions in higher education and make them publicly available.

**ANNEX 1. LIST OF CORRUPTION CRIMES ACCORDING TO THE ORDER OF THE  
PROSECUTOR GENERAL OF THE REPUBLIC OF ARMENIA ON 19 JANUARY 2017 № 3**  
*(with reference to the respective Articles of the RA Criminal Code)*

- (1) point 3 of part 2 of Article 132 (Human trafficking or exploitation, committed by use of official position);
- (2) point 3 of part 2 of Article 132<sup>2</sup> (Trafficking or exploitation of a child or a person deprived of the possibility of realising the nature and significance of his or her act or to control it as a result of mental disorder, committed by use of official position);
- (3) point 2 of part 2 of Article 134 (Illegal placing or keeping in a psychiatric hospital, committed by use of official position);
- (4) part 2 of Article 143 (Violation of legal equality of a human being and a citizen, committed by use of official position);
- (5) part 2 of Article 146 (Breach of secrecy of correspondence, telephone conversations, postal, telegram or other communications, committed by use of official position);
- (6) part 3 of Article 147 (Violating the inviolability of residence, committed by use of official position);
- (7) point 4 of part 2 of Article 149 (Obstructing the exercise of the right of suffrage, the activities of electoral commissions or the exercise of powers of persons taking part in an election, committed by use of official position);
- (8) part 2 of Article 164 (Obstructing a journalist's lawful professional activities, committed by use of official position);
- (9) point 3 of part 2 of Article 167 (Unlawfully separating a child from parents, or replacing a child, committed by use of official position);
- (10) point 1 of part 2 of Article 168 (Purchase of a child for fostering or sale of a child for the purpose of placing the child under the care of the caretaker, committed by use of official position);
- (11) point 1.1 of part 2 of Article 178 (Fraud, committed by use of official position);
- (12) point 1 of part 2 of Article 179 (Embezzlement or peculation, committed by use of official position);
- (13) point 3 of part 2 of Article 184 (Causing property damage by deception or abuse of confidence, committed by use of official position);
- (14) Article 187 (Obstructing lawful entrepreneurial and other economic activities);
- (15) point 3 of part 2 of Article 189.1 (Creating, organising or managing a financial pyramid, committed by use of official position);
- (16) Article 190 (Legalisation of proceeds of crime (money laundering));
- (17) point 3 of part 3 of Article 190.1 (Mala fide use of in-house information, committed by use of official position);
- (18) point 3 of part 3 of Article 190.2 (Property abuse, committed by use of official position);
- (19) point 3 of part 2 of Article 195 (Anti-competitive practices, committed by use of official position);
- (20) part 2 of Article 199.1 (Illegally acquiring, using or disclosing credit history and credit information);
- (21) Article 200 (Commercial bribe);

- (22) Article 201 (Bribing of participants and organisers of professional sporting events and commercial competition shows);
- (23) Article 214 (Abuse of powers by officers of commercial or other organisations);
- (24) point 3 of part 2 of Article 215.1 (Smuggling of cash monetary funds and/or payment instruments, committed by use of official position);
- (25) part 3 of Article 223 (Formation of or participation in a criminal organisation, committed by use of official position);
- (26) part 3 of Article 224 (Formation of and participation in armed units not provided for by law, committed by use of official position);
- (27) Article 226 (Incitement of national, racial or religious hostility, committed by use of official position);
- (28) point 2 of part 2 of Article 234 (Unlawful taking or extortion of radioactive substances, committed by use of official position);
- (29) point 2 of part 2 of Article 235.1 (Smuggling of drastic, toxic, explosive, radioactive substances, radiation sources, nuclear substances, firearm or components thereof, except for smooth-bore hunting gun and its cartridges, explosive devices, ammunition, weapon of mass destruction, transportation means thereof, other armament, military equipment, weapon of mass destruction or other substances or equipment used for the creation of missile systems for carriage thereof, nuclear, chemical, biological or other weapons of mass destruction, or dual-use goods, raw goods of strategic significance or cultural values, committed by use of official position);
- (30) point 2 of part 3 of Article 238 (Unlawful taking or extortion of a weapon, ammunition, explosive substances or explosive devices, committed by use of official position);
- (31) point 1 of part 2 of Article 251 (Accessing (penetrating into) a computer information system without an authorisation, committed by use of official position);
- (32) point 2 of part 2 of Article 252 (Modification of computer information, committed by use of official position);
- (33) point 2 of part 2 of Article 261 (Engaging another person in prostitution for mercenary purposes, committed by use of official position);
- (34) point 2 of part 2 of Article 262 (Promoting prostitution, committed by use of official position);
- (35) point 2 of part 3 of Article 267.1 (Smuggling of narcotic drugs, psychotropic substances and/or precursors thereof, committed by use of official position);
- (36) point 2 of part 2 of Article 269 (Unlawful taking or extortion of narcotic drugs or psychotropic substances, committed by use of official position);
- (37) Article 270 (Illegal issue of prescriptions or other documents conferring the right to obtain narcotic drugs or psychotropic substances);
- (38) point 2 of part 2 of Article 274 (Organising or keeping dens for the use of narcotic drugs or psychotropic substances, committed by use of official position);
- (39) point 1 of part 2 of Article 278 (Concealing information on circumstances dangerous to life or health of people, committed by use of official position);
- (40) point 1 of part 2 of Article 292 (Illegal harvesting of water animals and plants, committed by use of official position);
- (41) point 1 of part 2 of Article 294 (Illegal hunting, committed by use of official position);
- (42) point 1 of part 2 of Article 296 (Illegal cutting of trees, bushes and vegetation cover,

- committed by use of official position);
- (43) Article 308 (Abuse of official powers);
  - (44) Article 309 (Excess of official powers);
  - (45) Article 310 (Unlawful participation in entrepreneurial activity);
  - (46) Article 311 (Receiving a bribe);
  - (47) Article 311<sup>1</sup> (Receiving unlawful remuneration by a public servant not considered as an official);
  - (48) Article 311<sup>2</sup> (Use of real or alleged influence for mercenary purposes);
  - (49) Article 312 (Giving bribe);
  - (50) Article 312<sup>1</sup> (Giving unlawful remuneration to a public servant not considered as an official);
  - (51) Article 312<sup>2</sup> (Giving unlawful remuneration for use of real or alleged influence);
  - (52) Article 313 (Mediation in bribery);
  - (53) Article 314 (Official forgery);
  - (54) Article 315<sup>2</sup> (Failure to undertake measures prescribed by law targeted at suspension, prevention of unauthorised seizure of lands falling under the ownership of the State or a community, as well as unauthorised construction of buildings and premises);
  - (55) point 4 of part 3 of Article 329.1 (Organising of illegal migration, committed by use of official position);
  - (56) part 3 of Article 332 (Obstructing administration of justice and investigation, committed by a person using his or her official position);
  - (57) part 3 of Article 332<sup>4</sup> (Breach of secrecy of issues concerning qualification examination or vocational training examinations of judges, committed by use of official position);
  - (58) Article 336 (Subjecting an obviously innocent person to criminal liability);
  - (59) Article 341 (Compelling — by a judge, prosecutor, investigator or inquest body — to testify or give explanations or to issue a false opinion or to provide incorrect translation);
  - (60) point 2 of part 2 of Article 342.1 (Unlawful interference in the process of distribution of cases among judges performed through computer software, committed by an official by use of official position);
  - (61) Article 348 (Unlawful arrest or detention);
  - (62) parts 2 and 3 of Article 349 (Falsification of evidence);
  - (63) Article 351 (Unlawful release from criminal liability);
  - (64) Article 352 (Delivering an obviously unjust criminal judgment, civil judgment or another judicial act);
  - (65) parts 1 and 2 of Article 353 (Intentional non-execution of a judicial act);
  - (66) Article 375 (Abuse of power, excess of power or inaction of power);
  - (67) point 1 of part 2 of Article 395 (Mercenaryism, committed by use of official position);
  - (68) Article 310.1 of the RA Criminal Code (Illegal Enrichment),
  - (69) Article 314.2 (Deliberately not submitting declarations to the Ethics Committee of High-Ranking Officials)
  - (70) Article 314.3 (Incorporating Fraudulent data in declarations or concealing data subject to

declaration)

Besides the crimes listed above, their aggravated forms committed by use of official position, shall be deemed to be corruption crimes as well.

## ANNEX 2. LIST OF FOURTH MONITORING ROUND RECOMMENDATIONS TO ARMENIA

### Chapter 1: Anti-Corruption Policy

#### New Recommendation 1. Anti-corruption policy documents

1. Ensure that the anti-corruption policy documents are developed with wide stakeholder engagement and are based on needs and risk assessment.
2. Include ambitious measures to target actual corruption risks, key areas vulnerable to corruption requiring reform as a matter of priority.
3. Ensure participatory implementation and regular monitoring of the strategy. Systematically publish the results of monitoring to ensure accountability.
4. Carry out public opinion surveys to measure the level of corruption, public trust and impact of anti-corruption measures, including at sector level. Publish the results of the surveys and use them in anti-corruption policy development, implementation and monitoring.
5. Promote internal integrity action plans in public bodies based on risk assessments.
6. Ensure that anti-corruption policy documents are realistic, affordable and enforceable, accompanied by necessary budget for implementation. Include financial reports in the reports on implementation.

#### New Recommendation 2. Public awareness raising and education

1. Engage civil society and larger public in awareness raising against corruption.
2. Conduct awareness raising based on a comprehensive communication strategy. Target activities to the sectors most prone to corruption and use diverse methods and activities adapted to each target group.
3. Allocate sufficient resources to awareness raising measures, evaluate the results and impact and plan the next cycle of awareness raising accordingly.
4. Provide anti-corruption education at the various stages of the education process.

#### New Recommendation 3. Anti-corruption policy co-ordination and prevention institutions

1. Define criteria for the membership to the Competition Board for the selection of Commissioners of the Commission for the Prevention of Corruption and ensure transparent selection process.
2. Ensure transparency and objectivity of the appointment of Commissioners, free from any, including political interference and that the process is seen as objective by the public at large.
3. Provide for adequate resources and permanent dedicated staff specialised in the anti-corruption work that proactively support the process of policy coordination, implementation and monitoring.
4. Strengthen capacity of public authorities in the development and implementation of sectoral anti-corruption measures, provide them with analytical and methodological support, ensure co-ordination (including CPC, anti-corruption focal points, integrity affairs organizers, ethics

commissions and law enforcement bodies).

5. Establish a donor co-ordination mechanism to ensure effective support to the implementation of anti-corruption strategy and related programmes.

## **Chapter 2: Prevention of Corruption**

### **New Recommendation 4. Civil service reform policy**

1. Assess the implementation of the new CSL and PSL and develop the civil service reform policy that is evidence-based supported by the relevant data, risk and impact assessment.
2. Introduce the new human resources management information system and start its application in practice for the entire civil service. Ensure that the disaggregated statistical data is produced and used in police development and monitoring. Ensure regular publication of the data on civil service.

### **New Recommendation 5. Institutional framework**

1. Take all necessary measures to set up the new institutions (Commission for the Prevention of Corruption and Office of Civil Service) as stipulated by law and make them fully operational in practice.
2. Ensure that the institutional memory is maintained after the change. Ensure continuity of the exercise of the related functions in the transitional period.

### **New Recommendation 6. Institutional framework: ethics commissions in state bodies**

1. Finalize adoption of the necessary legislation to ensure proper operation of ethics commissions in practice. Establish mechanisms for the monitoring the performance of ethics commissions.
2. Ensure that ethics commissions and integrity affairs organisers have necessary capacities, guidance and tools to perform their functions in practice.
3. Ensure coordination among ethics commissions, the CPC, integrity affairs organizers and anti-corruption contact points in practice, as well as methodological guidance and support on integrity issues to individual agencies.

### **New Recommendation 7. Implementation of Civil Service Law and Public Service Law**

1. Adopt secondary legislation necessary for the implementation of the new Law on Public Service and the new Law on Civil Service.
2. Carry out comprehensive and large-scale awareness raising and training of civil servants on the new legal framework with the special emphasis on the state bodies that did not previously belong to the civil service.
3. Prepare manuals and guidebooks related to the main HR processes.

#### **New Recommendation 8. Merit-based recruitment**

1. Ensure merit-based recruitment in practice implementing new regulations.
2. Limit the influence of political officials in the recruitment for senior civil service positions.

#### **New Recommendation 9. Remuneration**

1. Increase the level of competitiveness of civil service salaries. Limit the share of variable pay in total remuneration. Ensure that the bonuses are linked to the performance evaluation and based on the clear and objective criteria.
2. Ensure practical implementation of the new civil service law provisions on performance evaluation and introduce mechanisms to monitor their implementation.

#### **New Recommendation 10. Conflict of interests**

1. Step up the enforcement of conflict of interest rules in practice by responsible institutions, including ethics commissions in public agencies and integrity officers.
2. Raise awareness and train public servants on the new regulations to boost the implementation. Provide necessary guidance on interpretation of these rules in practice.

#### **New Recommendation 11. Asset declarations**

1. Provide systematic, impartial, consistent and objective scrutiny of asset declarations and subsequent follow up as required by law with the focus on high level officials.
2. Ensure follow up on alleged violations disclosed through e-declarations system.
3. Ensure that the body in charge of verification has access to all information and databases held by public agencies and tools necessary for its full exercise of its mandate.

#### **New Recommendation 12. Ethics code and trainings**

1. Adopt the codes of conduct as provided by legislation, or revise existing codes, to serve as basis for the enforcement of ethics rules and for ethics training.
2. Ensure systematic and coordinated ethics trainings throughout the public service.

#### **New Recommendation 13. Whistleblowing**

1. Establish clear procedures for submitting, reviewing and following up on whistleblower reports and providing protection and ensure their application in practice.
2. Further raise awareness on whistleblowing channels and protection mechanisms to promote and incentivize whistleblowing.
3. Ensure proper functioning of the related IT system and that the anonymity is observed in



practice.

#### **New Recommendation 14. Integrity of political officials**

1. Adopt the code of conduct for political officials and a separate code of conduct for members of parliament. Provide training, consultations and guidance for their practical application once adopted.
2. Ensure proactive, systematic and consistent enforcement of the existing rules in practice without undue interference.
3. Provide for systematic, consistent and objective scrutiny of asset declarations of political officials and subsequent follow up as required by law.

#### **New Recommendation 15: Integrity in the judiciary**

1. Consider continuing the reform of the judiciary to ensure its independence in law and practice.
2. Establish open, transparent and competitive procedure of election of non-judicial members of the Supreme Judicial Council and specify criteria for elections as its member by the National Assembly.
3. Ensure reducing courts' workload in practice, i.e. by considering increasing the number of judges and court staff.
4. Ensure that judicial servants, including judges' assistants and secretaries, are recruited through an open, merit-based selection.
5. Ensure in practice proper financing of the judiciary.
6. Distinguish grounds and procedures of disciplinary liability and imposed termination of powers of judges in cases of involvement in political activity or violation of the political neutrality requirement.

#### **New Recommendation 16: Integrity in the service of public prosecution**

1. Consider further narrowing the powers of the Prosecutor's Office to participate in non-criminal protection of the state's interest by elaborating more specific criteria through internal policies for initiating or intervening in a case.
2. Introduce mandatory involvement of independent experts to the process of selection of a candidate for the Prosecutor General by the Standing Committee.
3. Consider abolishing the possibility of re-election of the Prosecutor General for the second consecutive term in office in favour of longer single term.
4. Provide prosecutors with the right to object to a body within the Prosecutor's Office against assignments and instructions of the Prosecutor General when they find them illegal or unjustified.
5. Ensure that the closed competition to hire prosecutors is applied in exceptional cases and based on clearly defined criteria.
6. Change the rules of composition of the Qualification Commission so that a simple majority of

its members should be appointed in a process that does not include the Prosecutor General. Increase representation of non-senior prosecutors in the representative bodies of prosecutors.

7. Consider limitation of the Prosecutor General's discretion in decision-making on the issues recommended by the representative bodies of prosecutors.

#### **New Recommendation 17. Transparency and accountability in public administration**

1. Further enhance the participation and compliance with the requirements of transparency initiatives (OGP, EITI).
2. Ensure publication of the information and datasets of the public interest in open data format.

#### **Recommendation 18 (parts of the previous recommendation that remained valid) Access to information**

1. Ensure proactive publication of information by state bodies, clarify records management and classification system and introduce the registries of public information in state bodies; consider establishing a unified portal for proactive publication of information.
2. Ensure efficient supervision and oversight of enforcement of the right of access to information as well as adequate powers and resources to issue binding decisions.
3. Raise awareness of public officials to foster the culture of openness and transparency in Government and carry out systematic training of information officers and of other public officials dealing with access to information issues.
4. Ensure implementation in practice of the provisions related to transparency of the entities using public resources.

#### **New Recommendation 19: Public procurement**

1. Systematically monitor contract award patterns both in competitive and single source procurement procedures
2. Further enhance the electronic procurement platform to include all procurement procedures and comprehensive and machine-readable reporting facilities.
3. Continue to introduce systematic centralized monitoring procedures and facilities to ensure impartial and technically adequate technical specifications, requirements and terms of reference.
4. Ensure the publication of names of debarred entities and the reasons and duration of their debarment.
5. Ensure that contract amendments and change orders are recorded, made publicly available, and any unusual patterns in this respect are investigated.
6. Further reduce the use of single source procurement.
7. Ensure independence, adequate professionalism and adequate budget and staff allocation for the

#### **New Recommendation 20: Business integrity**

1. Prioritise business integrity measures in national anti-corruption and law-enforcement policy.
2. Develop business integrity section of the anti-corruption policy documents based on risk analysis, in consultation with companies and business associations. Promote active participation of private sector in the monitoring of anti-corruption policy documents.
3. Ensure that business has a possibility to report corruption without fear of prosecution or other unfavourable consequences, for example through independent bodies. Promote such reporting.
4. Promote integrity of state-owned enterprises through their systemic reform, by introducing effective anti-corruption programmes and increasing their transparency, including setting the requirement for proactive publication of information. Develop, implement and monitor anti-corruption measures in state-owned enterprises.
5. Consider adopting a Corporate Governance Code for SOEs based on the OECD Guidelines and other international standards.
6. Promote the role of business associations for business integrity, such as studying corruption risks, disseminating good integrity practices; support awareness raising and training.
7. Ensure gradual and effective beneficial ownership disclosures: a) require disclosure of beneficial ownership of legal persons; b) create a central register of beneficial owners; c) publish the information on-line in open data format in line with local and internationally recognised guarantees of data and privacy protection; d) ensure dissuasive sanctions for nondisclosure in law and in practice.
8. Raise awareness of and train the representatives of state bodies and those of the companies on business integrity issues.

### **Chapter 3: Enforcement for Criminal Liability for Corruption**

#### **New Recommendation 21: Criminal law**

1. Without further delay introduce liability of legal persons for corruption offences in line with international standards.
2. Enable law enforcement to effectively pursue corruption cases that involve legal persons.
3. Ensure that “essential damage” and “essential harm” as element of abuse of power offences are compliant with legal certainty requirements.
4. Analyse practice of application of the new provisions on illicit enrichment and, based on the results of such analysis, introduce amendments to address deficiencies detected, if needed.
5. Ensure the proportionality of sanctions in corruption cases.

#### **New Recommendation 22: Detection and investigation of corruption**

1. Continue to expand the use of various sources of reliable information and analytical tools to consider opening investigations into corruption. Introduce statistics on sources of detection of corruption offences.
2. Remove existent limitations on access to financial information from financial institutions for the purposes of investigations and prosecutions of corruption offences and other financial crimes in line with the international standards.
3. Ensure that law enforcement agencies have effective electronic access to the asset declarations, tax, customs, marriage, birth, travel, and other state databases.
4. Establish a centralised register of bank accounts, including information about beneficial owners of accounts, and make it accessible for investigative agencies with appropriate safeguards.
5. Consider developing criteria that provides some limitations on the Prosecutor General's absolute power to transfer cases.
6. Enhance the cooperation and coordination between the law enforcement authorities and competent state bodies in charge of prevention, detection, investigation and prosecution of corruption offences.
7. Ensure that investigations of money laundering involving public officials or where the predicate offences are corruption are adequately coordinated with investigators and prosecutors who deal with corruption cases.
8. Build the capacity of investigators and prosecutors to conduct financial investigations and use circumstantial evidence; encourage use of in-house or outsourced specialised expertise; use IT systems to compile and analyse data for detection and investigation of corruption offences, identify areas prone to corruption.
9. Develop guidelines on detection, investigation and prosecution of bribery offences, when the bribe was merely offered or promised, as well as cases of trading in influence, and illicit enrichment.
10. Consider developing and adopting plea agreement legislation, policies and guidelines on its implementation.
11. Encourage various modern and informal forms of international cooperation and make good use of the available mechanisms for cooperation under the umbrella of regional and global organisations.
12. Collect and analyse data about the practical application of available international cooperation mechanisms during the investigation and prosecution of corruption cases, identify relevant challenges to cooperation and take necessary measures for their remedy.

### **New Recommendation 23: Enforcement**

1. Step up efforts to detect, investigate and prosecute high-profile and complex corruption cases, especially by using financial intelligence, anonymous tips, whistleblower information, and other law enforcement tools in a targeted and proactive manner, aimed at persons among high level officials, main risk areas in public administration and economy.
2. Collect and analyse data on corruption cases to identify trends in types of corruption detected, investigated and prosecuted, to determine what practical challenges arise and how they can be tackled, including how new types of corruption offences are being investigated and prosecuted.
3. Complement criminal statistics on corruption-related offences with data on the seized and confiscated property.

#### **New Recommendation 24: Anti-corruption law-enforcement bodies**

1. Continue to strengthen capacity for fighting corruption by ensuring and guaranteeing institutional, functional and financial independence of law enforcement bodies dealing with fight against corruption.
2. Put in place effective mechanisms to prevent various forms of hierarchical pressure and undue interferences with corruption investigations and prosecutions.
3. Introduce competitive and transparent merit-based selection of heads of specialised anti-corruption agencies.
4. Equip law enforcement institutions responsible for fight against corruption with adequate resources and provide their staff with consistent, needs-tailored training, especially on issues related to whistleblowers and asset declarations.

### **Chapter 4: Prevention and Prosecution of Corruption in Higher Education**

#### **Recommendation 1: anti-corruption policy**

1. Ensure that the sector strategy and action plan are implemented, and that progress is monitored and analysed in view of adjusting the priorities. Consider extending the timeline for implementation into the next strategic period.
2. Clearly indicate the budget necessary for the implementation of anti-corruption measures (amount and the resource that will fund implementation) and ensure that the measures address the conditions in the sector which contribute to corruption risk.
3. Ensure that the Ministry of Education and Science has sufficient capacity to coordinate, monitor, and steer the implementation of the sectoral anti-corruption strategy and report on progress.
4. Ensure that higher education institutions are provided with guidance and clearly defined obligations regarding the inclusion of anti-corruption priorities in their annual plans, the implementation of those priorities, and the monitoring and reporting on progress.

#### **Recommendation 2: prevention - staff policies**

1. Address the precarious employment of staff in higher education by reducing and eventually eliminating the practice of short-term, non-competitive appointments to increase employment security and predictability.
2. Ensure that conflict of interest regulations and mechanisms of disclosure for university staff are in place in all higher education institutions and are applied in practice. This should include the de-politicisation of governing structures in HEIs.
3. Introduce an obligation for members of the ethical and disciplinary commissions of higher education institutions to recuse themselves in case they are concerned by a case or complaint which the commissions are dealing with.

Provide that appointment and appraisals of the HEI staff are merit-based.

### **Recommendation 3: prevention - compliance and quality assurance procedures**

- 1.** Introduce a model code of ethical conduct as a mandatory standard in the development of internal regulations of higher education institutions.
- 2.** Introduce compliance, integrity risks and corruption prevention in the accreditation and reaccreditation criteria for higher education providers. Ensure that the support to higher education institutions provided as part of the external quality assurance, for instance through ANQA, includes the development of HEI capacity to meet these criteria.
- 3.** Ensure that the entities in charge of licensing and accreditation are free from undue influence and conflict of interest.
- 4.** Step up the development of internal quality assurance mechanisms, focusing specifically on the ability of HEIs to ensure compliance and involve students in QA processes on institutional level.
- 5.** Consider combining the administrative and substantive aspects of internal audit in one process which is binding for all higher education institutions, irrespective of their legal status.

### **Recommendation 4: prevention - transparency and accountability**

- 1.** Improve the transparency of reporting by higher education institutions on the financial and procurement aspects of their operation by introducing a mandatory common reporting template developed in consultation with higher education practitioners, stakeholders, and civil society.
- 2.** Introduce mechanisms for participants in higher education (*e.g.* students) to request access to information on the use of resources by their higher education institution for the fulfilment of its educational mandate, or any other aspect of university operation.

### **Recommendation 5: effectiveness of enforcement**

- 1.** Involve all relevant stakeholders in the development of a comprehensive detection and enforcement strategy in the higher education sector. This could include the description of sector-specific forms of violations in areas at risk of corruption and an update of descriptions of administrative and disciplinary penal procedures, as appropriate.
- 2.** Collect statistics on administrative and disciplinary sanctions in higher education and make them publicly available.

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