



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

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

Tajikistan

MONITORING REPORT

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

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

UPDATE ON NATIONAL IMPLEMENTATION ACTIONS

Pillar 1. NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

Recommendation 1. Elaborate and adopt a comprehensive Anti-Corruption Programme (or Strategy), which will build on and further develop the Presidential Decree and the Law on the Fight against Corruption aiming to strengthen the implementation of anti-corruption measures. The Anti-Corruption Programme should build on an analysis of the patterns of corruption in the country and be developed in a participatory process. It should propose focused anti-corruption measures or plans for selected institutions. The Programme should also envisage effective monitoring and reporting mechanisms.

National implementation actions. The Government has set up a commission for the study of corruption-related problems and development of long-term anti-corruption measures. The final document of this commission will be a Governmental Anti-Corruption Programme.

Recommendation 2. Establish a national multi-stakeholder Anti-Corruption Council to facilitate the development and implementation of the Anti-Corruption Programme (Strategy). Stakeholders of the body should include the representatives of the Presidency and the Government, the Parliament and Civil Society as equal partners.

National implementation actions. The functions of the Anti-Corruption Council are performed by the Coordinating Council of Law-Enforcement Agencies headed by the Prosecutor General of the Republic of Tajikistan. In accordance with article 10 of the Constitutional Law on Prosecution Bodies of the Republic of Tajikistan, decisions of the Coordinating Council shall be binding.

Recommendation 3. Consider establishing a Special Anti-corruption Department, which would be empowered to detect, investigate and prosecute corruption offences, as an autonomous Department with a special status integrated in the Prosecutor's Office with officers seconded from the main law enforcement agencies. This Department should have investigative, prosecutorial, administrative and analytical tasks. It is important that such a Department would include specialised prosecutors. Apart from working on actual corruption cases, one of the main tasks of this Department would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.); and to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonised methodology, which would enable comparisons among institutions.

National implementation actions. Presidential Decree of the Republic of Tajikistan No.1340 of 2 June 2004 set up an Anti-Corruption Department within the system of the Prosecutor General's Office, responsible for detecting, investigating, and prosecution (supporting public prosecution in court) of corruption offences.

In order to enhance inter-agency cooperation between law-enforcement and controlling bodies, a Provision "On Procedure for Referral to Law-Enforcement Agencies and their Acceptance for Prosecution Materials of Audits and Inspections" has been elaborated and submitted for approval of the President of the Republic of Tajikistan.

On proposal of the Prosecutor General of the Republic of Tajikistan, the issue of development of a harmonised methodology of qualifying crimes as corruptive offences and statistical monitoring of corruption offences was included in the agenda of the session of the Coordinating Council of CIS Prosecutors General scheduled for late November 2004.

Recommendation 4. Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and trans-border trafficking, including drug trafficking on the one hand, and agencies responsible for the fight against corruption on the other hand.

National implementation actions. An instruction has been issued to elaborate and submit such guidelines for adoption.

Recommendation 5. Organize corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation; ensure the possibility of effective search and seizure of financial records.

National implementation actions. The Prosecutor General's Office and UNDP office have scheduled two-monthly corruption-specific training seminars for judges, prosecutors, police, tax, and customs officers to be held in November-December 2004. The trainings have already started, and they are expected to cover over 300 officers of law-enforcement agencies.

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

National implementation actions. The two-monthly training seminars under UNDP and the Prosecutor General's Office auspices will be devoted to the sources and impact of corruption, the tools to prevent it, citizens' rights, and journalistic investigations of corruption offences. Special trainings will be organised for journalists and university students.

Pillar 2. LEGISLATION AND CRIMINALISATION OF CORRUPTION

Recommendation 7. Harmonise and clarify relationships between violations of the Criminal Code and the Law on the Fight against Corruption.

National implementation actions. This consideration has been taken into account during the development of the new edition of the Law on the Fight against Corruption, currently being examined by the Government. The new Draft Law specifies the notions "corruption" and "official" in accordance with all international requirements.

There are plans to introduce the said innovations in the Criminal Code as well.

Recommendation 8. Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards and criminalise trading in influence.

National implementation actions. No actions.

Recommendation 9. Harmonise the concept of “official” from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials elected or nominated to a representative body, as well as persons representing the state interests in commercial joint ventures of on board of companies.

National implementation actions. This consideration has been taken into account during the development of the new edition of the Law on the Fight against Corruption, currently being examined by the Government.

Recommendation 10. Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.

National implementation actions. The new Draft Law on the Fight against Corruption has incorporated the requirements concerning the criminalisation of bribery of foreign or international public officials.

There are plans to introduce the said innovations in the Criminal Code as well.

Recommendation 11. Consider changing the existing confiscation regime to allow for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.

National implementation actions. This consideration has been taken into account during the development of the new edition of the Law "On the Fight against Corruption," currently being examined by the Government. Amendments should be introduced to the Criminal Code.

Recommendation 12. Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent in the investigation and prosecution of acts of bribery.

National implementation actions. Ensured. There are no cases of prevention of criminal prosecution of acts of bribery by immunity granted by the Constitution to certain categories of public officials.

Recommendation 13. With respect to money-laundering, continue efforts towards the establishment of a Financial Intelligence Unit; review the money-laundering offence in the Criminal Code to ensure that it is broad enough to capture all forms of concealing of the proceeds of corruption.

National implementation actions. The elaboration of the Draft Law of the Republic of Tajikistan on Prevention of the Financing of International Terrorism, envisaging the establishment of a Financial Intelligence Unit, is nearing completion.

Recommendation 14. Ensure effective measures for the provision of international mutual legal assistance.

National implementation actions. Measures are being implemented to extend international cooperation in the fight against corruption, and conclude new agreements on mutual legal assistance.

Pillar 3. TRANSPARENCY OF CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

Recommendation 15. Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Strengthen the capacities of the tax and custom authorities by instituting regular basic in-service training for its officials.

National implementation actions. No actions have been taken so far. Possibilities are being explored to finance the development of such practical guides.

Recommendation 16. Strengthen the School of Public Administration, which should conduct in-service training for public officials and the curriculum of which would include topics related to ethics and anti-corruption measures.

National implementation actions. No actions have been taken so far. There are plans to develop the curriculum and attract specialists in this area, but this will take time and funding.

Recommendation 17. Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting (basic) regulations on the protection of “whistleblowers”, and launch an internal campaign to raise awareness about those measures among civil servants. Additionally, study the application of the offences of defamation and insult in the Criminal Code to ensure that they do not present an obstacle to the reporting of offences.

National implementation actions. No actions have been taken so far, but there are plans to launch work in this area.

Recommendation 18. Ensure an effective enforcement of the provisions of the Law on the Fight against Corruption that concern the declaration of assets and prevention of conflict of interest, by assigning an independent institution (possibly the Anti-corruption Council) and empowering it to monitor the implementation of the mentioned regulations. At the same time, make enforcement of these provisions manageable - obligations for asset declarations should be limited only to high-level officials and officials working in corruption exposed institutions.

National implementation actions. The republican Government has prepared the form of Declaration of Incomes and Assets of Public Officials and a Draft Provision on the order of filing and validation of those declarations.

Recommendation 19. Review the public procurement law to enhance the transparency of the procurement procedures, raise their efficiency, and limit the discretion of procurement officials in the selection process. To the extent possible, enhance the capacity of the procurement agency so that it is able to carry out supervisory functions. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of the legal protection of fair competition, consider establishing

and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.

National implementation actions. Work is underway to develop a new edition of the Law on Public Procurement of Goods (Jobs and Services) which will take into consideration the aforementioned proposals. The project is financed by international financial institutions.

Recommendation 20. Strengthen the capacity, resources and independence of the Committee of State Financial Control and enhance its reporting obligations to the Parliament and to the public in general.

National implementation actions. The task will be fulfilled depending on the funding opportunities.

Recommendation 21. Consider creating an independent office of an Information Commissioner to receive appeals under the Law on Access to Information, conduct investigations, and make reports and recommendations. Revise the Access to Information legislation, to limit discretion on the part of the public officials in charge, and to limit the scope of information that could be withheld.

National implementation actions. No actions have been taken yet. Implementation depends on the funding opportunities.

ADDITIONAL INFORMATION

In addition to the aforementioned measures, other work aimed at improvement of the legal framework for the fight against corruption has been carried out in the Republic of Tajikistan in the period after adoption of OECD Recommendations.

Presidential Decree of the Republic of Tajikistan No.1343 of 14 June 2004 has approved the Public Servant's Ethics Code directed at preventing corruption, ensuring probity and impartiality of public service.

The Government of the Republic of Tajikistan prepared the following draft decrees:

On Approval of the Form of Declaration of Incomes and Assets of a Public Official and Instruction on the Order of Filing that Declaration;

On Approval of Procedures for the Placement of Public Officials' Assets in Trust Management;

On Approval of a Model Provision on the Personnel of a Public Institution.

These laws and regulations are aimed at regulating the procedures of declaring public officials' incomes and assets, overcoming the potential conflict of interests and preventing corruption in the sphere of public service.

On 24 March 2004, the National Coordinator of the Anti-Corruption Action Plane, Prosecutor General of the Republic of Tajikistan B.K. Bobokhonov discussed the status and development prospects of the legal framework and practices of the fight against corruption in the Republic with representatives of international organisations, foreign ambassadors, and donor organisations.

In July 2004, representatives of the Republican Government headed by Deputy Prime Minister Mr. S. Zukhurov and the National Coordinator of the Action Plan Mr. B.K. Bobokhonov met with representatives of international organisations and ambassadors of the anticorruption programme donor countries to discuss the new version of the Law on the Fight against Corruption and problems of fighting corruption in the Republic.

On 19 November 2004, a national conference was held in the republican capital city on the subject "Strengthening of the Legal and Institutional Framework for the Fight against Corruption in the Republic of Tajikistan." The conference was attended by representatives of Majlisi Oli (the parliament), the Presidential Executive Staff, the Republican Government, ministries, agencies, nongovernmental organisations, all mass media without exception, representatives of OECD Anticorruption Network, international legal advocacy and donor organisations, as well as representatives of the governments of CIS countries.

The conference discussed in detail the National Status Report of the Republic of Tajikistan, Recommendations of the Anticorruption Network, newly adopted international legal acts on the fight against corruption, as well as world experience of fighting corruption. Representatives of the Government, donors, international organisations, and mass media exchanged opinions not only on the main issue under discussion, but also on the entire spectrum of problems related to the fight against corruption in Tajikistan.

The conference adopted a Resolution envisaging the measures aimed at implementing the OECD Recommendations.

According to the Corruption Perception Index for 2004, based on the methodology of the international public organisation Transparency International, Tajikistan was 133rd out of 145 countries with a 2-point CPI, which means it took the 12th place in the world according to the corruption perception level.

It should be mentioned that in 2003 Tajikistan had only 1.8 points CPI and was 128th out of 133 countries, and took the 6th place in the world according to the corruption perception level. This provides the evidence of a steady trend towards the improvement of the corruption situation in the country.

As already mentioned, in pursuance of the Recommendations, Presidential Decree of the Republic of Tajikistan No.1340 of 2 June 2004 set up an Anti-Corruption Department within the system of the Prosecutor General's Office.

The Department is directly accountable to the Prosecutor General of the Republic of Tajikistan who is the National Coordinator of the Action Plan for the Fight against Corruption.

The capacity of the Anti-Corruption Department is formed by resources of the Prosecutor General's Office. Through internal restructuring procedures, 8 staffs were allocated for the central office of the Department, 3 staffs each for anticorruption units within the Chief Military Prosecutor's Office, regional prosecutor's offices, and the prosecutor's office of the city of Dushanbe, and one staff each for the prosecutor's office of Gorno-Badakhshan Autonomous Region and the Tajik Transport Prosecutor's Office. In regional and municipal prosecutor's offices this mission is assigned to one of the prosecutor's assistants.

The Anti-Corruption Department and its units are authorised with the functions of detecting, investigating and monitoring the prosecution of corruption offences. However, because of personnel shortages the Anti-Corruption Department and its units are currently engaged only in detection of corruptive offences.

Nevertheless, these units have demonstrated great efficiency. During the three months of their operation they have detected over 56 offences involving bribery, abuse, and theft on a large scale. In 2003, only 29 criminal cases were initiated on the evidence of bribery, whereas during the current year 51 such cases have already been initiated, which is 2.3 times than in 2003.

The Department started its activities with inspections in the spheres of education and public health, where corruption has been historically widespread.

Numerous facts of extortion and embezzlement have been detected in educational and medical institutions. Criminal cases were initiated versus more than 10 executive officials of educational and medical institutions.

Similar official crimes involving subsequent embezzlement of public funds and bribe-taking have been detected in the sphere of social security, law-enforcement agencies, tax and customs services, the judiciary, and 26 criminal cases have been initiated and are currently being prosecuted on the facts of abuse, tax evasions and theft on a particularly large scale within the system of the State Unitary Enterprise Tochikgaz alone.

All measures taken by the Anti-Corruption Department to identify and detain bribe-takers and embezzlers of state and public property are covered by the republican television.

These indicators could be much higher if the Department had at its disposal adequate material and technical capacities, communication means, computer appliances, transport, special equipment, proper financing of its special operations, as well as a decent level of compensation of its staff, as worthy of such service.

The Republic of Tajikistan relies on support of international organisation in the implementation of anti-corruption measures and strengthening the capacities of the special anti-corruption units.

ANNEXES

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

1. Draft Anti-Corruption Law
2. Draft Regulation on Audit
3. Draft Regulation on Declaration of Assets
4. Draft Declaration on Delegated Management
5. Code of Ethics of Public Servants
6. Draft Resolution on the Staff of Public Bodies
7. Materials of the National Anti-Corruption Conference

SUMMARY OF DISCUSSION

Tajikistan has demonstrated overall willingness to implement the recommendations through national actions. Given the magnitude of tasks and short time frame not all the recommendations have been addressed yet, but a number of positive actions can be noted.

Under Pillar 1, and in compliance with the recommendations, an Anti-Corruption Council of law-enforcement agencies was established; its decisions are mandatory for all involved agencies. In addition, a specialised anti-corruption department was established at the Office of the Prosecutor General. However, the capacity of the department clearly requires strengthening.

At the same time, no actions were reported for the establishment of a Multi-stakeholder anti-corruption council. While certain efforts were made to involve civil society in the anti-corruption debate and policy formulation (meetings with NGOs, recent national anti-corruption conference) a more institutionalized arrangement is will be needed to ensure both effective and sustainable public participation.

No outcome has been presented yet for the development of a comprehensive anti-corruption strategy, and this should become the main priority for the future. The Multi-stakeholder council mentioned earlier should be an important framework for the elaboration of such programme because this document should build to a considerable degree upon the knowledge and experience found in the civil society.

Under Pillar 2, the elaboration of the new draft Anti-Corruption Law has been noted as the main achievement. The draft Law appears to be of a comprehensive nature and represents a major step forward in Tajikistan's efforts to improve its legal framework against corruption; nevertheless, further analysis of its compliance with the recommendations and of possibilities to adapt best international practices will be needed. Besides, the provisions of the Anti-Corruption Law will need to be harmonised with the Criminal Code, Administrative Procedure Code and other legal acts to ensure that violations, which are provided in the Anti-Corruption law, can be punished accordingly. In particular, it appears that the recommendation to introduce trading of influence as an element of corruption-related offences has not been addressed during the ongoing changes of the Criminal Code.

The implementation of recommendations under Pillar 3 is overall most limited compared to the previous two pillars. One reason for this lack of progress is apparently insufficient resources. The areas where no actions are reported include the recommendations concerning the elaboration and dissemination of practical anti-corruption guides, the strengthening of the School of Public Administration, the introduction of measures to protect "whistleblowers", etc.

A number of measures have been developed to implement the Conflict of Interest legislation and to ensure effective declaration of assets by public officials. It will be important to ensure that the new regulation on declaration of assets requires all necessary information and that there is an effective mechanism to control information provided in the declarations.