

## EXECUTIVE SUMMARY

### Corruption in Eastern Europe and Central Asia

Eastern Europe and Central Asia are among the most corrupt regions in the world. Corruption is particularly high in the former Soviet states. Many politicians admit that corruption has become endemic, and have declared their will to fight it. Too often, however, these declarations are not followed by action. Even when actions are taken, they rarely bring immediate and visible results.

Eradicating corruption is a long-term challenge. There is no single solution; anti-corruption measures should always combine various incentives, including preventive and punitive measures. As anti-corruption programmes advance, it is important to identify what works and what does not, and to share best practices.

This report assesses progress in the countries of the Istanbul Anti-Corruption Action Plan, an OECD programme for eight ex-Soviet states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Ukraine. The report studies anti-corruption policies and institutions, criminalisation of corruption, and measures to prevent corruption. It aims to identify main achievements and challenges, and to provide a basis for the future activities.

This report is based on country reviews and monitoring reports for the Istanbul Action Plan countries and draws on publicly available reports by NGOs, international organisations and press. The report covers the period of 2003-2007.

### Anti-corruption policies and institutions

In countries where levels of corruption are high, it is necessary to develop **special public policy against corruption**. Such policies – in the form of a strategy or programme – can give a clear message about government priorities, and ensure disciplined implementation. The majority of Istanbul Action Plan

countries adopted national anti-corruption strategies. Several countries also developed action plans. Moving forward, it will be crucial to ensure that the strategies – and particularly the action plans – provide effective and concrete implementation measures.

More efforts are needed to strengthen the analytical basis for anti-corruption work. This should include **research and surveys about the extent and patterns of corruption** in individual countries, sectors and institutions, collection and analysis of statistical data about anti-corruption law-enforcement activities.

Efforts in the area of **public participation in anti-corruption policy** are underway in most Istanbul Action Plan countries. But to move from formalised participation to meaningful dialogue, NGOs should be involved in more practical and result-oriented work. Special focus should be given to public participation in monitoring implementation of anti-corruption policies. Finally, it is important to ensure open and competitive participation by all NGOs in eligible government-funded projects.

**Awareness-raising** efforts by the Istanbul Action Plan country governments often consist of fragmented and incidental activities, mostly media appearances and conferences. Well-designed, practical and regular campaigns are urgently needed. If the governments really aim to change the deeply rooted tradition of bribery in their countries, they must develop and lead such campaigns. NGOs will continue to play an important role in awareness-raising, and governments could develop partnerships with them.

Some progress was recorded in the area of **institutional support for anti-corruption reforms**. A number of countries have established corruption prevention institutions or consultative councils. Specialised anti-corruption prosecution units were established or strengthened in several countries. However, low numbers of convictions for corruption, especially involving high-level officials, may indicate that law enforcement and the political will to fight corruption need to be strengthened. It is necessary to ensure independence of anti-corruption bodies from undue interference, to strengthen their specialisation and provide them with adequate resources. Training and co-ordination are among the main priorities for anti-corruption bodies.

**Ratification of the UN and Council of Europe anti-corruption conventions** by the Istanbul Action Plan countries is well advanced. But transformation of these international standards into national legislation is slow, and implementation of legislation requires major effort.

## Criminalisation of corruption

Several Istanbul Action Plan countries introduced substantial changes in their criminal legislation in order to bring it into compliance with international anti-corruption standards established by the OECD, Council of Europe and UN anti-corruption conventions. Most others prepared amendments, but they have not yet been adopted by parliaments. This is a significant achievement, especially as criminal law reform is a slow process. In many cases changes were introduced immediately before the monitoring programme, confirming the effectiveness of the peer-pressure mechanism. However, many gaps remain and further efforts are still needed to achieve full compliance with international standards.

While international instruments require criminalisation of corruption, in many Istanbul Action Plan countries there are **parallel systems of administrative and criminal liability for corruption-related offences** which overlap and result in general weakening of measures to fight corruption. Furthermore, general laws against corruption adopted in many countries create an impression of a strong legal base – but they are often inactive, as their provisions are not supported by criminal or administrative laws. Istanbul Action Plan countries need to clarify and harmonise their anti-corruption legislation.

All Istanbul Action Plan countries have criminalised giving and taking bribes, but many have not established **offering, promising, requesting and soliciting bribes as separate offences**. Instead, they rely on “attempt” and “preparing” to commit active or passive bribery to cover such acts, which are insufficient for compliance with international instruments.

The majority of other corruption-related offences which are mandatory under the UN Convention against Corruption (UNCAC) exist in the Istanbul Action Plan countries, including **money laundering, accounting offences and embezzlement**. Optional offences are treated as follows: **abuse of office** is criminalised across the region; **trading in influence** has been criminalised by two countries so far; **illicit enrichment** has not been criminalised in the region.

There is a general lack of specific and explicit inclusion of **non-material benefits** in the definition of undue advantage as the subject of bribery. The **definition of public officials** requires streamlining and clarification in all Istanbul Action Plan countries.

There is some progress in the region regarding **criminalisation of bribery of foreign public officials**: Armenia, Azerbaijan, Georgia and Kazakhstan have recently criminalised this form of corruption. Although the new legislation

shows progress, a number of shortcomings persist, *e.g.* provisions are limited to the officials of international organisations of which these countries are members, or they refer back to the definition of a public official as established in a foreign country or international organisation.

In 2006 Georgia amended its legislation to introduce criminal liability of legal persons for corruption offences. All other Istanbul Action Plan countries have yet to introduce **criminal, administrative or civil liability of legal persons for corruption offences**.

**Mandatory value-based confiscation** of tools and proceeds of corruption is not universal in the region. Several countries have introduced confiscation of the proceeds of serious corruption offences, including value-based confiscation.

While legislation generally establishes sufficiently strong maximum sanctions for passive bribery, in practice courts apply much lower and weaker sanctions (like small fines). Giving a bribe is considered by many countries a less serious crime, and **sanctions for active bribery are not proportionate and dissuasive**.

While legislation in many countries provides a number of intermediary measures to identify, trace, freeze and seize the proceeds and instrumentalities of corruption, they are rarely used as investigative tools.

**Broad immunities for public officials and lack of precise procedures to lift them** remain an obstacle for effective investigation, prosecution and adjudication of corruption offences in the Istanbul Action Plan countries. Reforms should therefore move towards only functional and temporary immunities and provide for clear procedures to lift them.

Although some countries have improved their **extradition and mutual legal assistance** (MLA) legislation, further analysis is necessary to identify problems and solutions in this area. In particular, it may be useful to examine whether countries have an adequate treaty and legislative framework for co-operation, or whether international co-operation may be hindered by dual criminality requirements. The absence of legislation to deal with MLA relating to proceeds of corruption is a concern.

It is difficult to assess the effectiveness of criminal anti-corruption legislation in the Istanbul Action Plan countries. Little analysis is available about **how it is applied in practice**; the available **law-enforcement statistics** on corruption are fragmented and unclear. Istanbul Action Plan countries need to strengthen analysis of practical implementation of anti-corruption legislation.

## Prevention of corruption

Basic elements of **merit-based and competitive recruitment** of public officials are in place in most countries in the region. However, more needs to be done to strengthen these new systems, and to extend merit-based and competitive principles to jobs in all categories, as well as to the promotion systems. Recruitment and promotion systems must be harmonised and unified across all public administrations. Systematic anti-corruption training for staff should become an integral part of personnel policy.

**Conflicts of interest** are a serious problem in the Istanbul Action Plan countries. Basic restrictions for employment in public service exist; however, legal provisions to prevent and manage conflicts of officials' private and public interests need to be strengthened. Particular focus should be on the development of practical guides and training, and on the strengthening of institutional mechanisms to support implementation.

General **codes of ethics**, as well as codes for specific public institutions, should include clear anti-corruption principles and non-compliance sanctions. The main focus should be disseminating these codes of ethics, and ensuring high-quality ethics training programmes as a part of both academic curricula and in-service training for public officials.

The majority of the Istanbul Action Plan countries have established systems for **declaration of assets for public officials**. If these systems are to play a role in preventing corruption, they must have a mechanism to verify and control the data declared by the public officials by a specially assigned institution and/or through public disclosure and scrutiny. It is also important to ensure that law-enforcement bodies have access to the declarations when they investigate alleged crimes committed by public officials.

**Internal investigation** units exist in many law-enforcement and other agencies in the Istanbul Action Plan countries. They can play an important role in uncovering violations by public officials and in applying disciplinary sanctions. It is necessary to study how these units can be used better to prevent corruption, and ensure that corruption offences are reported to law-enforcement bodies for criminal proceedings.

Improved **reporting of corruption-related crimes and other misconduct** by public officials and ordinary citizens will increase the chances of detecting these offences. Stronger legal obligations to report is one approach; however, this should be supported by other measures, such as the protection of whistleblowers, and removal of overly strict provisions against defamation.

**Liberalisation and administrative simplification of the business environment** is probably the strongest instrument to limit opportunities for corruption, and should be actively promoted. Efforts could include removal of unnecessary certification, permitting and licensing regulations, screening new legislation to limit discretionary powers and increasing officials' accountability. These measures should be implemented as a part of comprehensive sectoral reforms. It may be useful to implement **targeted anti-corruption measures in sectors with high risk of corruption** to produce rapid and visible results.

**Public procurement** is one sector with a high risk of corruption. There is, however, little information about cases of corrupt officials prosecuted for abuse of public procurement rules. This area requires particular attention, including: making legal improvements; strengthening control mechanisms over procurement operations; providing anti-corruption training for procurement bodies; and ensuring that anti-corruption law-enforcement bodies focus on procurement.

There is progress in the region in the area of **financial control**, which can prevent various forms of corruption – accounting offences, abuse of office, and embezzlement in particular. However, further efforts are required to strengthen financial control bodies, to clarify roles of various bodies to avoid overlaps, and to improve exchange of information between them. Exchange of information with law-enforcement bodies is particularly important for fighting corruption, and should be improved.

Fundamental legal provisions to ensure **public access to official information** are in place in all Istanbul Action Plan countries. But access to information continues to present a serious problem: officials abuse discretion in determining what constitutes confidential information, or do not follow the rules. There are delays in the provision of information, or such information is not precise or is incomplete. Enforcement of access to information laws should be strengthened, especially at the local level. Complaint mechanisms should be improved to allow quick and simple access to justice.

**Political corruption** is an increasingly topical issue in the region. Laws which regulate political parties and election campaigns exist, but there is a variety of gaps and parties in power have been known to re-write laws to fit their needs and to misuse administrative resources. Financial controls and transparency of parties' activities must be strengthened. Additionally, countries need to ensure that anti-corruption criminalisation and prevention measures apply wholly to the high-level officials and politicians (*e.g.*, effective prosecution for corruption-related offences, control of conflict of interests). Finally, freedom of the press is a fundamental pre-condition for transparency and fighting political corruption.

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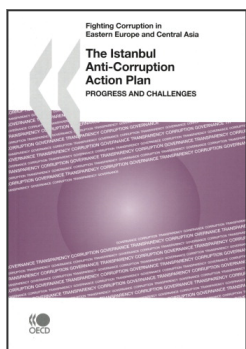
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