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ISTANBUL ANTI-CORRUPTION ACTION PLAN

FOURTH ROUND OF MONITORING

GEORGIA

PROGRESS UPDATE

This document contains the progress update and assessment of implementation of recommendations from the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan for Georgia. This Progress Update was adopted at the ACN Plenary meeting on 13 September 2017.

Civil society is requested to provide an alternative progress update on the developments since September 2017 in relation to each recommendation by filling in the below template. The total number of pages provided as new information should not exceed 15. The information provided during the previous reporting period should not be repeated.

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About the OECD

The OECD is a forum in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD's mission is to promote policies that improve economic and social well-being of people around the world. Find out more at www.oecd.org.

About the Anti-Corruption Network for Eastern Europe and Central Asia

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor co-ordination via regional meetings and seminars, peer-learning programmes and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at www.oecd.org/corruption/acn/.

About the Istanbul Anti-Corruption Action Plan

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice. Find out more at www.oecd.org/corruption/acn/istanbulactionplan/.

PROGRESS UPDATE METHODOLOGY SUMMARY

After the adoption of the Monitoring Report, the evaluated country presents a Progress Update at each subsequent ACN Plenary meeting.

The **Progress Update** begins with a description of the methodology, followed by the summary of the assessment of implementation of recommendations, as agreed during the Plenary Meeting of September 2016. It then goes into each recommendation separately, providing the country report, as well as the ACN and expert evaluation. Each recommendation section includes all progress updates since the last monitoring report.

The Progress Update follows the following steps:

1. Progress Update reports are prepared by country representatives

These documents include information on implementation measures taken for each recommendation, and may also cover additional anti-corruption developments. Country representatives submit a written Progress Update report to the ACN Secretariat through appointed National Co-ordinators, together with supporting documents, such as laws and statistical data. Civil society also submits alternative reports on progress.

2. Preparation of preliminary assessment by ACN Secretariat and experts

The Secretariat and the experts who contributed to the Monitoring Reports (or delegates replacing the experts) study the Progress Update reports and prepare a draft progress assessment for the Plenary Meeting. Civil society is also invited to contribute to the evaluation.

3. Discussion at ACN Plenary meeting

ACN Secretariat and experts discuss the Progress Update during a bilateral preparatory meeting with country representatives. The Plenary then discusses and endorses the assessment.

4. Finalisation of Progress Update

Following the Plenary Meeting, the Secretariat adds the final assessment to the Progress Update reports, finalises and publishes them on the ACN website.

PROGRESS UPDATE SUMMARY

18th Istanbul Anti-Corruption Action Plan Monitoring Meeting 12-13 September 2017: Assessment of the Progress Update of Georgia was prepared by the following experts: Davor Dubravica, Croatia; Evgeniy Smirnov, EBRD; Mary Butler, USA; Tetyana Kovtun, Ukraine; and Dmytro Kotlyar, OECD/ACN Secretariat. The evaluation is based on the Government’s Progress Update and submissions by Georgian NGOs (Georgian Young Lawyers’ Association - GYLA, Procurement Monitoring and Training Centre, Institute for Development of Freedom of Information - IDFI, Transparency International Georgia - TI).

Recommendation	Assessment of progress		
	<i>18th ACN Plenary Meeting</i> September 2017	<i>19th ACN Plenary Meeting</i> July 2018	
	Progress / Significant progress / Lack of progress		
Recommendation 1: Anti-corruption action plans	Progress		
Recommendation 2: Anti-corruption awareness raising and education	Lack of progress		
Recommendation 3: Anti-corruption policy co-ordination institution	Lack of progress		
Recommendation 4: Policy framework for integrity in the civil service	Progress		
Recommendation 5: Legal framework for the civil service reform	Lack of progress		
Recommendation 6: Professionalism in the civil service	Lack of progress		
Recommendation 7: Merit-based recruitment and promotion	Progress		
Recommendation 8: Remuneration of civil servants	Lack of progress		
Recommendation 9: Conflict of interest, asset declarations and other anti-corruption requirements	Lack of progress		
Recommendation 10: Protection of whistle-blowers	Progress		
Recommendation 11: Integrity of political public officials	Lack of progress		

Recommendation 12: Integrity in the judiciary	Significant progress		
Recommendation 13: Integrity in the public prosecution service	Progress		
Recommendation 14: Transparency in the public administration	Lack of progress		
Recommendation 15: Integrity in the public procurement	Progress		
Recommendation 16: Business integrity	Progress		
Recommendation 17: Criminal law against corruption	Lack of progress		
Recommendation 18: Liability of legal persons	Significant progress		
Recommendation 19: Foreign bribery	Lack of progress		
Recommendation 20: Procedures for investigation and prosecution of corruption offences	Progress		
Recommendation 21: Anti-corruption criminal justice bodies	Progress		
Recommendation 22: Procurement for infrastructure projects	Progress		

Note:

Significant progress - important practical measures were taken by the country to adequately address many elements of the recommendation (more than a half). This can involve the adoption and/or enforcement of an important law.

Progress - some practical measures were taken towards the implementation of the recommendation. For example, drafts of laws that have been at least approved by the government and submitted to the parliament would constitute "progress" for the **Assessment of progress** Updates.

Lack of progress - no such actions were taken.

Recommendations that appear to be fully addressed can be closed for the progress update procedure and further evaluated only as a part of the monitoring procedure.

**PROGRESS UPDATE WITH ASSESSMENT
CHAPTER 1: ANTI-CORRUPTION POLICY**

Recommendation 1: Anti-corruption action plans

1. Prepare a full budget estimate for the anti-corruption action plan and secure its allocation.
2. Develop anti-corruption actions in sectoral ministries and agencies based on the corruption risk assessment and ensure their implementation.
3. Promote the development and implementation of an anti-corruption action plan for the local self-government level.
4. Develop impact indicators for the monitoring of the next anti-corruption action plan.
5. Conduct, subject to the availability of funding, regular surveys based on impact indicators to demonstrate progress over time.
6. Provide adequate time for feedback from non-governmental stakeholders during the development and monitoring of the anti-corruption action plan.

18th ACN Monitoring Meeting, September 2017

1.1. Prepare a full budget estimate for the anti-corruption action plan and secure its allocation.

Government report

New Anti-Corruption Action Plan was adopted by the Anti-Corruption Council (ACC) on April 24, 2017. Each activity in the Action Plan except of implementation of those which do not require additional expenses (as they are foreseen by the state budget by the means of remuneration for the staff) has its own budget. Budget allocation is secured as activities are also reflected in the State Budget for 2017 and are part of BDD (Basic Data Direction document) for the next year. Additionally, some of the activities are financed by the donors such as USAID, EaP, UNDP, World Bank, UNICEF, UNFPA, PROLoG, etc. Thus, the budget for the implementation of the Action Plan is allocated.

NGO report

According to NGOs, draft Anti-Corruption Action Plan for 2017-2018 was elaborated through a number of working group meetings and was presented to the Council on April 24, 2017. The action plan presented to The Council and approved includes the attachment of budget estimate for the activities. However, new action plan is not yet approved by the Government and is not publicly available on the webpage.

1.2. Develop anti-corruption actions in sectoral ministries and agencies based on the corruption risk assessment and ensure their implementation

Government report

Revised Anti-Corruption Strategy and Action Plan for 2017-2018 are based on 16 strategic Priorities of Corruption Prevention. Additionally, a number of Anti-Corruption activities are included in the separate chapter for the Criminalisation of Corruption. Sectoral ministries and other state agencies are responsible for the implementation of the planned activities foreseen in the Action Plan.

Planning process of the Anti-Corruption Strategic documents includes analysing different sources of information, recommendations and standards of international and local organizations, international surveys and assessments, thematic publications of local and international organisations and public entities, state policy documents, performance evaluation of the action plans of previous years, the analysis of existing corruption risks and recommendations of international and non-governmental organizations, national legislation and existing practice. Furthermore, the meetings of the expert level working group operating under the (Anti-Corruption Council of Georgia (ACC) are organised and the existing challenges and corruption vulnerabilities are discussed.

One of the key goals of the planning process is the taking responsibility over implementation of corruption prevention based, actual, achievable and effective activities and respective indicators.

NGOs report

Sectoral Anti-Corruption action was elaborated only for Increasing the Transparency and Integrity of the Ministry of Regional Development and Infrastructure of Georgia (MRDI) (2017-2018). Throughout 2016, IDFI has been actively supporting the Ministry in the process of developing the sectoral integrity strategy and action plan. IDFI recommended the elaboration of transparency and accountability strategy and action plan for the security sector was based in the framework of Anti-Corruption Action Plan. This recommendation was not reflected in the action plan. In addition, IDFI considers that the resources of the secretariat will not be sufficient to work with other ministries/agencies independently outside the framework of the action plan on the elaboration of sectoral actions. Moreover, no information is provided by the Secretariat on the agenda to initiate work on the sectoral actions.

TI Georgia is not aware of any anti-corruption actions developed in sectoral ministries and agencies.

1.3. Promote the development and implementation of an anti-corruption action plan for the local self-government level.

Government report

For increasing transparency and accountability of representative and executive bodies of municipalities, the National Anti-Corruption Council accommodated a new strategic priority - "prevention of corruption in the activities of self-government bodies" into the policy documents in 2015. Number and the scope of activities applicable to the corruption prevention in municipalities were increased in the new Anti-Corruption Action Plan for 2017-2018.

NGOs report

In the action plan presented to the Council priority 14 is related on the prevention of corruption in the local self-governing bodies. This part includes 6 different activities of Rustavi Municipality City Hall and Council, Telavi Municipality Council and Tbilisi Municipality City Hall. Although involving the above-mentioned municipalities is a positive step, IDFI considers that including selected municipalities in the action plan does not adequately reflect the challenges identified within Recommendation 1(3). The Secretariat of the Council has not devoted a separate meeting to the issue of a separate action plan for the local level. In addition, the actions given in the 2017-2018 action plan only include several municipalities, which does not offer a unified policy solution for all municipalities. IDFI recommends to adopt measures/legislative amendment proposals that will have a collective effect. It is also vital to include the Ministry of Regional Development and Infrastructure in the elaboration of a separate action plan, since MRDI is a central government institutions that serves as a liaison between the central government and municipalities.

1.4. Develop impact indicators for the monitoring of the next anti-corruption action plan.

Government report

Indicators for the Anti-Corruption Action Plan are developed to measure the targets/results. During the monitoring process for every 6 month the targets for implementation of each measure are monitored, whereas at the end of action plan (2-year period) the monitoring and evaluation of achieved results are analysed based on the SMART indicators.

NGOs report

New Anti-Corruption Action Plan is not yet approved by the Government of Georgia and is not publicly available. Updated monitoring framework is also not presented to the members of the Council. Despite the fact that the action plan approved by Council includes both outcome indicators, it does not include indicators that measure impact.

1.5. Conduct, subject to the availability of funding, regular surveys based on impact indicators to demonstrate progress over time.

Government report

No further action has been taken at this stage.

NGOs report

The plan to conduct survey based on the impact indicators is not presented by the Secretariat. Activity 4.6. of new Action Plan (not approved by the Government yet) envisages elaboration of analytical and legal research in the anti-corruption direction. The same activity indicates that at least one research should have been elaborated and published on the MoJ's or ACC's webpage in the first half of 2017. However, no document was published by the Secretariat. Also, the Action Plan does not include activities related to launching of separate webpage of the ACC.

1.6. Provide adequate time for feedback from non-governmental stakeholders during the development and monitoring of the anti-corruption action plan.

Government report

As required by the recommendation and as ensured by the internal monitoring and evaluation mechanism, the ACC Secretariat implemented the practice of giving the time of minimum two weeks for the feedback from the non-governmental sector during elaboration and monitoring and evaluation processes of the anticorruption strategic documents.

NGOs report

During the elaboration of new Action Plan sufficient time for feedback and recommendations (2 weeks) was provided to CSOs.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 1.

NGOs conclusions

Elaboration of Anti-Corruption Action Plan for 2017-2018 started in December 2016. It was approved by the Council in April 2017. The action plan has not yet been approved by the Government and is not publicly available. The Secretariat stated that elaboration and implementation of sectoral action plans should not be part of the Anti-Corruption Action Plan. Activities of the 3 municipalities are reflected in the action plan approved by the Council. Impact indicators are not developed for new action plan and monitoring framework is not updated for the new action plan. Surveys to demonstrate progress have not been conducted, nor planned by the Secretariat. Adequate time was given to the CSOs to present their feedback in the process of elaboration of new action plan. On the basis of described developments IDFI considers that there has been lack of progress for the implementation of Recommendation 1.

Assessment of progress

As described above, the Government achieved progress under recommendations 1.1., 1.3. and 1.6. Overall, assessment could be that the Georgia made Progress under Recommendation 1.

19th ACN Monitoring Meeting, July 2018

NGO report

1.1) The Anti- Corruption Action Plan 2017-2018 was adopted through Government Decree № 443, on September 27, 2017. IDFI considers that the time of adoption of the action plan represents a problem, since the two year action plan was adopted at the last quarter of 2017. Although the draft version included a budget estimate as a separate attachment, the document adopted by the Government does not have a full budget estimate, as it was stipulated in Recommendation 1.1 of the OECD ACN 4th Monitoring Round Report. Furthermore, the action plan form elaborated by the Secretariat of the Anti-Corruption Council does not even include a field for providing budget estimate according to each activity. IDFI considers that there is **lack of progress for Recommendation 1.1.**

1.2) In order to assess individual risks related to corruption, IDFI considers it critically important to elaborate corruption risk assessments in separate ministries and public agencies. Moreover, it is important for the Secretariat of the ACC to elaborate a uniform methodology and guidelines for measuring corruption risks and safeguards. Although, such assessment have not been prepared, there are certain examples of anticorruption measures adopted by the sectoral ministries - for example, the Transparency and Integrity Action Plan of the Ministry of Regional Development and Infrastructure. Altogether, the practice of elaborating specific anticorruption actions has not been established by Ministries; therefore, IDFI considers that there is **lack of progress for Recommendation 1.2.**

1.3) Since the last reporting period, no significant actions were taken to promote development of anticorruption action plans for the municipalities of Georgia; therefore, IDFI considers that there **is lack of progress for Recommendation 1.3**. Furthermore, lack of integrity and anticorruption mechanisms on the local level is becoming a growing problem for the local authorities of Georgia, which have limited resources and experience in the area of preventing corruption. The 2017-2018 Anti-Corruption Action Plan only includes commitments from 3 municipalities (Rustavi, Tbilisi and Telavi), which cannot be regarded as effective involvement of municipalities in the national anticorruption efforts. Moreover, those three municipalities were selected for the previous AP as pilot municipalities (for initial stage) and it was anticipated and promised by the ACC Secretariat to involve other municipalities in the anticorruption actions on the later stage. However, latest AP also includes only those above-mentioned municipalities.

1.4) Indicators included in the 2017-2018 ACAP are vague and do not enable effective measurement of impact of the activities. Monitoring conducted by the Secretariat of the ACC only measures factual implementation of the action and does not analyse what impact the implementation of the action has had. Therefore, IDFI considers that there is **progress** with regard to the implementation of Recommendation 1.4 but indicators need to be reviewed and improved.

1.5) IDFI is not aware of any surveys that have been conducted to measure the impact of anticorruption measures implemented by stakeholders of the ACC. In addition, if such surveys have been conducted, they should have taken place in close cooperation with civil society organizations; however, IDFI has not been involved in such processes and considers that the progress cannot be assessed.

1.6) During the last reporting period, adequate time was provided to CSOs to provide responses during the process. IDFI considers that there is **progress with regard to the implementation of Recommendation 1.6**.

Altogether, IDFI considers that there is lack of progress in the implementation of the entire recommendation.

Assessment of progress

Recommendation 2: Anti-corruption awareness raising and education

1. Speed up the development of the public relations strategy and ensure sufficient funds for its implementation.
2. Continue and expand anti-corruption educational activities for the general public and special target groups, focus them on systemic, high-level and complex corruption issues.

18th ACN Monitoring Meeting, September 2017

2.1. Speed up the development of the public relations strategy and ensure sufficient funds for its implementation.

Government report

The ACC Secretariat with the support of the USAID Good Governance Initiative and CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF) “Project on Fight against corruption and fostering good governance; fight against money laundering” has finalised the drafting process of the public relations strategy. Strategy will soon be submitted to the Council for approval and then the Secretariat will start working on its implementation.

NGOs report

According to the IDFI, the strategy was supposed to be finalized by the end of 2016. No further development is shown with regard to the strategy. In the new Anti-Corruption Action Plan approval of public relations strategy is envisaged in the second half of 2017 (from July till December), and 30% of activities of the strategy should be planned and implemented in the same period. However, no progress is shown yet. TI Georgia is not aware of any activities toward developing a public relations strategy.

2.2. Continue and expand anti-corruption educational activities for the general public and special target groups, focus them on systemic, high-level and complex corruption issues.

Government report

The Anti-Corruption Action plan for 2017-2018 has the separate strategic priority for “Education and Public Awareness Raising with the Corruption prevention purpose”. Planned activities are unified under the following outcomes: “General public is informed on results and challenges in fighting against corruption” and “Public is informed about the Anti-Corruption Council and Anti-Corruption news” and involve holding informational meetings to raise public awareness on Anti-Corruption policies, organizing round tables, seminars, competitions and other events on anticorruption issues, ensuring accessibility of the information on the activities of the ACC, elaboration of the materials on activities of the Anti-Corruption Council and anticorruption topics, availability of the analytical and legal studies on Anti-Corruption issues for the public etc.

NGOs report

IDFI is not aware of any educational activities conducted by the Secretariat for the public, especially with regard to the high-level and complex corruption issues that are becoming

alarmingly challenging issues for the Government of Georgia. Nor has the Secretariat informed members of the Council/working group about planned educational activities. According to the 2017-2018 Action Plan, the Secretariat had an obligation to conduct at least 5 small working meetings about the new action plan an anticorruption policy; however, IDFI is not informed where and if those meetings have taken place. It is also important to have a pre-defined target audience (reflected in the action plan) that will be engaged during those meetings. TI noted that no significant and tangible progress has been made toward this goal.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 2.

NGOs conclusions

The draft strategy was prepared by the time of the OECD-ACN expert visits in Georgia, August 2016. Until today, no development is shown for the finalization of the document. IDFI is not aware of any educational activities conducted by the Secretariat within the reporting period. Hence, no progress was shown to implement Recommendation 2.

Assessment of progress

From the provided information, it appears that No progress was made to implement Recommendation 2. Draft PR strategy has not been presented to the public and the Council and was not approved. While public education activities have been included in the new action plan, none of them have been conducted as yet.

19th ACN Monitoring Meeting, July 2018

NGO report

2.1) It is important to point out that the significant part for the implementation of the 2017-2018 AC AP has passed (the ACC secretariat noted in several occasions that the communication strategy will be finalized immediately after adoption of AC AP and OGP AP, both of them are adopted long time now); however, no drafts of the communications strategy have been shared with IDFI. Taking into account that there is limited public awareness with regard to the action plan and the work of the ACC, it is of critical importance to elaborate specific measures that would increase public awareness about the work of ACC. Based on the above-mentioned facts, IDFI considers that there is **lack of progress with regard to implementing Recommendation 2.1.**

2.2) Since the last reporting period, IDFI is still not aware of any educational or public awareness activities conducted by relevant public institutions. Progress cannot be assessed.

Altogether, IDFI considers that there is lack of progress in the implementation of the entire recommendation.

Assessment of progress

Recommendation 3: Anti-corruption policy co-ordination institution

1. Review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues.
2. Ensure that sufficient resources are allocated to the ACC Secretariat to enable it implement its tasks under the Anti-Corruption Strategy and Action Plan.
3. Create a dedicated anti-corruption web-site of the Anti-Corruption Council.
4. Institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work and to increase the Council's visibility.
5. Consider establishing a dedicated anti-corruption unit in the Analytical Department of the Ministry of Justice as a visible Secretariat to the Council.

18th ACN Monitoring Meeting, September 2017

3.1. Review the practice of the Anti-Corruption Council to identify ways to address emerging high-level corruption instances and enforcement issues.

Government report

No further action has been taken at this stage.

NGOs report

Emerging high-level corruption instances are becoming increasingly alarming in Georgia. IDFI recently published a policy paper on the inefficiency of the institutions performing the corruption prevention and investigation functions. ACC Council obviously does not have power to fight high-level corruption crimes, it has only recommendatory and policy making character and does not exercise any hard law enforcement power. The challenge emerging of high-level corruption instances was mentioned by IDFI several times on the working group and other thematic meetings. However, no specific steps were planned to review the practice of ACC. Neither did the Secretariat expressed its readiness to tackle this challenge. The State Security Service, Office of the Prosecutor and the Investigation Service of the Ministry of Finance are the main public agencies tasked with enforcement of anticorruption legislation; however, no specific plans/solutions have been presented by either of these institutions. In addition, several alarming corruption allegations have been made by media and CSOs with regard to present and former high ranking officials of the law enforcement agencies. Nevertheless, the agencies in question have failed to provide policy solutions and arguments to the contrary.

3.2. Ensure that sufficient resources are allocated to the ACC Secretariat to enable it implement its tasks under the Anti-Corruption Strategy and Action Plan.

Government report

Currently there are 11 employees working in the ACC Secretariat. Job descriptions of nine employees comprise mostly anticorruption activities/tasks, including the facilitation of implementation of the Anti-Corruption Strategy and Action Plan.

NGOs report

No additional resources are provided to the ACC Secretariat. Neither is there a known intention to allocate additional resources to the Secretariat. TI Georgia noted that the failure to implement a number of important OECD/ACN recommendations and, more broadly, to develop effective measures to tackle the problem of high-level corruption may indicate that the ACC Secretariat does not have sufficient resources.

3.3. Create a dedicated anti-corruption web-site of the Anti-Corruption Council.

Government report

No further action has been taken at this stage.

NGOs report

The website of the Anti-Corruption Council is not created and the Secretariat expressed its position that creation of specialised website is not on the agenda. Only a banner on the webpage of MoJ was added. At the same time, activity 4.6. of the Action Plan states that the documents should be published on either MoJ's or ACC's webpage; however, no other activity in the Action Plan states that the Secretariat will work on launching of separate webpage for the ACC. The webpage of MOJ is not regularly updated; anticorruption documents, including minutes of the Council/working group meetings and reports are not updated. The Secretariat made a clarification on one of the working group meetings (6 months ago), that the webpage is under construction and after the process is finished they will provide updated information. Until today, nothing has changed with regard to the webpage.

3.4. Institute regular reporting to the Parliament in order to engage MPs in the anti-corruption work and to increase the Council's visibility.

Government report

No further action has been taken at this stage.

NGOs report

The agenda to start cooperation with the Parliament through regular reporting was not communicated with the ACC members. IDFI considers that no steps had been taken to fulfil this recommendation. Since the civil society works actively with the parliament (also within the scope of the Interfactual Parliamentary Openness Working Group), it is also important to involve CSOs in the process of establishing a link between ACC and the parliament. Unfortunately, representatives of the parliament do not participate in the work of the Council and the legislative body does not have any commitments/actions in the draft 2017-2018 action plan.

3.5. Consider establishing a dedicated anti-corruption unit in the Analytical Department of the Ministry of Justice as a visible Secretariat to the Council.

Government report

The ACC Secretariat discussed the necessity of establishing a separate Anti-Corruption unit in the Analytical Department with the management of the Ministry of Justice and it was decided that, taking into consideration the information provided above in respect of question 2 of this recommendation, there is no need to establish such unit so far.

NGOs report

IDFI and TI were not aware of any steps/measures to establish a dedicated anticorruption unit in the Analytical Department of MoJ.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress (minor, but still) has been made in implementing the recommendation 3.

NGOs conclusions

No actions had been taken to fulfil either part of the recommendation. The practice of ACC is not revised, neither has there been any movement in this direction. Allocation of further resources to ACC has not yet been discussed and the fighting against high-level corruption is becoming insufficient in relation to the challenges that exist today. A specialised website for the ACC is not created and it is not planned to create one in the nearest future. No steps had been taken to start cooperation with the Parliament. No effort has been undertaken to establish a dedicated anticorruption unit in the MoJ. IDFI and TI concluded that no progress has been made to fulfill recommendation 3.

Assessment of progress

From the provided information, it appears that No progress was made to implement Recommendation 3.

19th ACN Monitoring Meeting, July 2018

NGO report

3.1) No specific measures were taken by the Secretariat of the ACC to address the problem of high-level and complex corruption. For the OGP 2018-2020 National Action Plan, IDFI and other civil society organizations have provided [recommendations](#) to the Government of Georgia to establish an independent anticorruption agency; however, there has been no official feedback on this proposal. Moreover, IDFI is not aware of any measures taken by the Secretariat of the ACC to fulfil the requirements of recommendation. Therefore, **IDFI considers that there is lack of progress** with regard to implementing Recommendation 3.1.

3.2) IDFI is not aware of any additional efforts undertaken with regard to Recommendation 3.2.

3.3) Although IDFI has pointed out during the meetings of the Working Group of the ACC that it is necessary to create a separate webpage for the council, there is still **lack of progress with regard to Recommendation 3.3.**

3.4) **There is lack of progress with regard to Recommendation 3.4.** In order to increase parliamentary oversight on implementation of the national anticorruption policy, it is of critical importance to establish a parliamentary reporting mechanism, which in itself will draw greater public attention towards to work of the ACC. Throughout the last reporting period, IDFI is also not aware of any parliamentary discussions/deliberations addressed at

the work of ACC or the national anticorruption policy.

3.5) IDFI is not aware of any progress related to the implementation of recommendation 3.5; therefore, progress cannot be assessed.

Assessment of progress

CHAPTER 2: PREVENTION OF CORRUPTION

Recommendation 4: Policy framework for integrity in the civil service

1. **Develop corruption risk assessment methodology that will be used by line ministries, state agencies and local governments in developing their internal anti-corruption action plans.**
2. **Promote the role of heads of institutions in ensuring integrity. Assign the coordination of integrity and anti-corruption work in each public institution to specific persons or units.**
3. **Develop educational programmes for public officials about integrity and corruption targeting special groups selected on the basis of corruption risk assessment.**
4. **Develop impact indicators and conduct regular surveys to measure progress in promoting integrity in the civil service as a whole and in selected institutions in particular.**

18th ACN Monitoring Meeting, September 2017

4.1. Develop corruption risk assessment methodology that will be used by line ministries, state agencies and local governments in developing their internal anti-corruption action plans.

Government report

Development of the corruption risk assessment methodology is part of the Anti-Corruption Action Plan for 2017-2018. The ACC Secretariat has already started elaboration of the first draft of the methodology that will be used by separate sectorial ministries and other state agencies for carrying out risk assessments. Additionally, in the framework of CoE/EU Eastern Partnership Programmatic Co-operation Framework (PCF) "Project on Fight against corruption and fostering good governance; fight against money laundering" and IACA Academy two trainings on corruption risk assessment have been held for the staff members of the ACC Secretariat and members of the ACC Working Group.

NGOs report

Elaboration of corruption risk assessment methodology is envisaged in the new Anti-Corruption Action Plan for 2017-2018 approved by the ACC. According to the action plan this activity should be implemented in 2018.

4.2. Promote the role of heads of institutions in ensuring integrity. Assign the coordination of integrity and anti-corruption work in each public institution to specific persons or units.

Government report

Coordination mechanism operated by the ACC Secretariat requires that each of the ACC member agency names the focal point to the Secretariat. The named person is an expert of anticorruption aspects in the sectorial field he or she is occupied. He or she represents the naming agency at the AC working group. The same process was followed during the elaboration of new anticorruption policy documents.

NGOs report

IDFI is not informed of any steps undertaken to assign specific persons or units for coordination of integrity and anticorruption work. TI Georgia is not aware of any progress made toward this objective.

4.3. Develop educational programmes for public officials about integrity and corruption targeting special groups selected on the basis of corruption risk assessment.

Government report

The ACC Secretariat in cooperation with the Civil Service Bureau (CSB) and the Training Centre of Justice has developed the curricula for civil and state servants on Anti-Corruption Policy and Legislative Framework. The sessions in the curricula *inter alia* involve training on: the system of asset declarations of public officials, ethics, conflict of interests and incompatibility in civil service, protection of whistle-blowers etc. The curricula is designed for all civil and state servants, however, the special training module is developed for the special target groups, such as staff members of: HR Units in line Ministries, the CSB, State Security Service, Ministry of Internal Affairs, Prosecution Service General Inspections of the line Ministries and Freedom of Information Officers.

NGOs report

During the ACC session on April 24, 2017, the Secretariat presented the Concept on Training Program for Public and Civils Servants on Anti-Corruption Policy and Legal Framework. However, since corruption risk assessment has not yet been conducted, the document was not based on any practical experiences. It is regrettable that CSOs have not been involved in the process of elaborating the assessment and have only been given an opportunity to provide comments on the draft document.

According to TI Georgia, the Civil Service Bureau has been conducting regular training sessions for civil servants (rather than "public officials") on integrity, ethics, and corruption. It is not clear, however, whether the participants were selected based on corruption risk assessment. Also, the training content has so far been identical for all civil servants and does not reflect the specific risks of different institutions/offices.

4.4. Develop impact indicators and conduct regular surveys to measure progress in promoting integrity in the civil service as a whole and in selected institutions in particular.

Government report

No further action has been taken at this stage.

NGOs report

Impact indicators that measure progress for the entire action plan have not been developed. Regular surveys that promote integrity have also not been conducted neither as a whole nor for selected institutions.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 4.

NGOs conclusions

The new Anti-Corruption Action Plan approved by the ACC envisages elaboration of corruption risk assessment methodology in 2018. No work has been done nor has there been a plan presented to promote the role of the heads of institutions in ensuring integrity and assigning persons or units to coordinate integrity and anticorruption work in each public institution. Concept on training program for civil servants was presented on the ACC session and was approved. Impact indicators are not developed and regular surveys are not conducted, neither

is there a plan presented to conduct those activities. There is lack of progress in implementing recommendation 4.

Assessment of progress

There was lack of progress on most of the parts of Recommendation 4, except for the development of the Concept on Training Program for Public and Civils Servants on Anti-Corruption Policy and Legal Framework. Overall, Georgia made Progress under Recommendation 4.

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NGO report

4.1) IDFI is not aware of any progress made to develop anti-corruption risk assessment methodology for line ministries. In addition, IDFI considers it necessary to advance sectoral efforts in the fight against corruption. So far, limited efforts have been made by the ACC secretariat to increase sectoral focus in the area of anticorruption.

4.2) IDFI is not aware of any efforts undertaken by the ACC Secretariat to increase to role of the heads of institution in the fight against corruption. Although the statute of ACC outlines involvement of high-level representatives in the work of the council, generally mid-level civil servants participate in the work of ACC and its secretariat. In order to ensure effective and informed decision-making in the process of implementing the national anticorruption policy, IDFI considers it necessary plan specific awareness activities for high-level representatives of public institutions.

4.3) Progress cannot be assessed with regard to the implementation of Recommendation of 4.3, since IDFI is not aware of any educational programmes developed for public officials.

4.4) The Civil Service Bureau (CSB) of Georgia has developed the Code of Conduct in Public Institutions, which was adopted through Government Decree № 200 on April 20, 2017. In addition, CSB has conducted several trainings with regard to new ethics regulations and has also published Comments of the Code of Conduct in May, 2018. Nevertheless, the recommendation outlines a necessity of developing impact indicators and conducting regular surveys to measure progress in promoting integrity in the civil service, which according to the information possessed by IDFI has not taken place during the reporting period. Therefore, **IDFI considers that there has been lack of progress with regard to Recommendation 4.4.**

Assessment of progress

Recommendation 5: Legal framework for the civil service reform

1. Finalise the legislative framework for the civil service reform by adopting remuneration and [job] classification legislation without delay.
2. Ensure that all positions that perform core functions of the state fall under the civil service legislation.

18th ACN Monitoring Meeting, September 2017

5.1. Finalise the legislative framework for the civil service reform by adopting remuneration and [job] classification legislation without delay.

Government report

New Law on Civil Service (CSL), adopted on October 27, 2015 entered into force on July 1, 2017 and set the general framework for the new Civil Service System. As part of this reform, the CSB elaborated the first draft Law on Remuneration aimed at developing the general framework of the remuneration system, the scope of regulations and legal grounds of determining the labor remuneration for civil servants. The main calculations regarding the definition of coefficients, “monetary worth of work”, ceilings of supplements, etc. were developed by the Ministry of Finance of Georgia (MoF). With international experts’ support, the MoF studied the best practices on defining the salary schemes in civil service. Prior to finalizing the text, the CSB has introduced the draft law to the Government and the Parliament of Georgia at a working meeting format. In July 2017, public discussions with donors, local NGOs, legal and financial units of public institutions were held. The CSB has also hosted the SIGMA working mission to further improve the draft law in accordance to the experts’ assessment. Feedback received from public discussions and working meetings with SIGMA has been considered in the final draft law that was submitted to the Government of Georgia for approval.

NGOs report

Remuneration legislation, namely the law of Georgia on “Remuneration in Public Institutions” has not yet been presented to the parliament, even though the Government of Georgia, according to the new law on Public Service, should have submitted it to the parliament on 1 September 2016. The effect of the new Law on Civil Service has also been postponed to 1 July 2017. Although there were several public discussions on the new draft law on remuneration (only one discussion has taken place for CSOs) it has not yet been adopted by the Government and has not been submitted to the parliament. Furthermore, an ordinance of the Government of Georgia on the Procedure and Conditions for Assigning Officer Classes to Qualified Public Officials is in force since April 2017. According to GYLA, the new law on civil service entered into force on 1 July 2017 without the new remuneration system and old provisions regulate it during the transition period (01.07.2017 – 01.01.2018), which are highly decentralized and does not create a uniform and fair remuneration system in Georgian civil service. As a result, the Georgian Government failed to fulfil this obligation under the civil service reform without delay.

5.2. Ensure that all positions that perform core functions of the state fall under the civil service legislation.

Government report

On 1 July 2017, the new CSL and classification system entered into force. All public institutions, including the local self-government, rearranged the staff according to the new classification system defined by the CSL. For this purpose, the functions were categorized into core and support functions. All positions (contract-based and in-staff) performing the core functions were transformed to the professional civil servant position, which fall under the scope of the Civil Service legislation. It is planned to apply the new classification system to the Legal Entities of Public Law (agencies) in 2017-2018. To do so, the legislation on Legal Entities of Public Law (LEPL) will be amended by the end of 2017. The new law on LEPLs will categorize and systematize the agencies and identify those which will fall under the scope of the new CSL. Currently, only the regulations on competition are applicable to the LEPLs.

NGOs report

Law on Civil Service covers almost all state institutions. However, in the transitional period (from 1 July until 31 December 2017) the law does not extend to Legal Entities of Public Law. In addition, the amendments to the law on Civil Service and the law on National Regulatory Bodies, entered into force on 30 June 2017, one day before entering new law on Civil Service in force, exempted the staff of the regulatory bodies from the law on Civil Service. This amendment was criticized by the IDFI and GYLA. Regulatory bodies are the ones that are engaged in the public administration and extension of the law on Civil Service to regulatory bodies was based on the Civil Service Reform Concept that stated that a civil servant is any person, who is engaged in public administration. One more alarming development should be mentioned here with regard to the National Bank of Georgia. IDFI published an article on the risks of corruption and unequal treatment that possibly will derive from the amendments to the law on Conflict of Interest in Public Service, if entered into force. Namely, the amendments registered in the Parliament exclude the board members of the National Bank of Georgia from the law on Conflict of Interest in Public Service, giving only exception from the rule that “any other person elected, appointed or approved under the Constitution of Georgia” should be considered as official. The board of National Bank obviously performs governing functions and the Bank itself is one of the core institution in the state, while the law on Conflict of Interest in Public Service is one of the core legislative acts in the civil service system.

Besides, as reported by GYLA, according to the latest amendments in the Law on Civil Service (June 2017), civil servants working in the Ministry of Corrections of Georgia will be covered by the Law on Civil Service if the special legislation does not regulate differently. Before the amendments, this exception included the civil servants working only in penitentiary system under the Ministry, which was justified by their special function. However, the latest amendments excluded the whole administration of the Ministry, which has no additional justification.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 5.

NGOs conclusions

The Decree of the Government on the Rules and Conditions of Assigning Classes to Professional Civil Servants was adopted on 28 April 2017. The enactment of the law on remuneration is delayed and its timely enactment is crucial for the successful

implementation of the civil service reform. Law on Civil Service covers almost all state institutions. However, national regulatory bodies were excluded from the law. At the same time, there are negative developments with regard to the board of National Bank of Georgia and Ministry of Correction. Overall, IDFI believes that progress was shown in the implementation of recommendation 5, while GYLA think no such progress can be acknowledged.

Assessment of progress

The draft Law on Remuneration has been developed, but has yet to be submitted in the parliament and, therefore, cannot be counted as progress. The Law on Legal Entities of Public Law has not been amended and, therefore, not all core function positions have been covered by the Civil Service Law. Besides, the staff of the national regulatory authorities and Ministry of Corrections were declassified as civil servants, which is a negative development. It is also regrettable that the enactment of the new Civil Service Law had to be postponed till July 2017. Overall, the steps taken have not been enough to acknowledge progress under Recommendation 5 (conclusion: Lack of progress).

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NGO report

5.1) The Law on Remuneration in Public Institutions was adopted by the Parliament of Georgia on December 22, 2017. Despite the fact that the scope of the law does not cover a significant part of public employees (representatives of law enforcement agencies with a special or military rank, representatives of independent regulatory bodies, prosecutors etc.) it sets limitations on bonuses and salary supplements for civil servants as well as public officials, which can be regarded as a positive development. Nevertheless, the law entrusts heads of public institutions with a large discretion to determine remuneration of their employees as they deem appropriate, which creates a basis for arbitrariness, favouritism and discrimination. IDFI has published extensive [recommendations](#) on the draft law; however, only a small portion of suggestions was considered by the Government and the Parliament. Currently, there is a pending amendment proposal in the Parliament (initiated in the Parliament on June 7, 2018) , which suggests excluding Members of the Parliament from the scope of the law, which IDFI considers as a negative development, since it might abolish the limitation of bonuses and salary supplements for MPs. Moreover, excluding MPs from the law would further reduce the uniformity of the law, which IDFI also considers as a negative development. Altogether, **IDFI considers that there has been significant progress with regard to implementing Recommendation 5.1.**

5.2) Since the last reporting period, the scope and coverage of the national civil service regulations has not expanded. Provisionally, the law still does not cover employees of Legal Entities of Public Law. Moreover, the law still does not cover representatives of independent regulatory agencies, whose employees still perform core state functions. Nevertheless, **IDFI considers that there has been progress with regard to Recommendation 5.2.**

Assessment of progress



Recommendation 6: Professionalism in the civil service

Consider introducing a top civil service post in public authorities (such as Secretary General) to prevent undue influence.

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Government report

According to the CSL, the top civil servant position in the ministries is the position of the head of the department (first level unit). As for the Secretary General’s position, after discussions with international and local experts, considering the Georgian reality and practice, at this stage, this position should not be introduced.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 6.

NGOs report

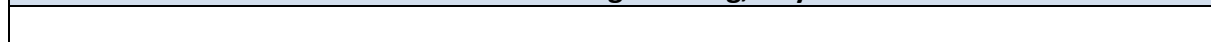
The position of the Government of Georgia is that introduction of top civil service post is not in the agenda, since it is not suitable for the Georgian model. No detailed communication or discussions had been held on this issue. As noted by GYLA, under the framework of the civil service reform, the introduction of Secretary General as a top civil service post has not been discussed and implemented. In spite of the recommendation of NGO sector, Georgian Government decided that Georgia Civil Service wasn’t ready for such important changes; furthermore, the Minister has also administrative functions, which may cause undue political interference or influence in the administration of public institution. GYLA believes that this recommendation is very important for creation of professional civil service, which is the main goal of the civil service reform. However, Georgian Government/Parliament have not taken any steps to reach this aim in the nearest future.

NGOs concur that there was no progress under this recommendation.

Assessment of progress

It should be noted from the start that the recommendation was to “consider introducing” a top civil service post in public authorities (such as Secretary General) to prevent undue influence. It is not clear from the Government’s report whether such consideration took place after the OECD/ACN Fourth Round Monitoring Report on Georgia was adopted and, if yes, what are the details and outcomes of such consideration. Therefore, there is Lack of progress under Recommendation 6.

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NGO report

No progress has been made with regard to implementation of Recommendation 6.

Assessment of progress

Recommendation 7: Merit-based recruitment and promotion

1. **Build capacity and enhance the status of the Civil Service Bureau in the application of merit-based recruitment and promotion rules.**
2. **Build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules.**
3. **Establish a human resource management information system to consolidate statistics.**

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7.1. Build capacity and enhance the status of the Civil Service Bureau in the application of merit-based recruitment and promotion rules.

Government report

Since 2015 important steps have been made to enhance the CSB capabilities. To name a few: in 2015 two new departments (Civil Service Institutional Set-up and Practice Generalization Department and Civil Service Human Resources Management Department) were created to tackle issues arose during the Civil Service reform implementation process; additionally, the top management layer of CSB was expanded by adding another deputy director.

In 2017, a new department - Asset Declarations Monitoring Department was created within the CSB to monitor asset declarations and verify the accuracy of the information received. This department was mandated to report to the relevant law enforcement agency or issue an administrative fine in case detecting a violation.

New CSL has also enhanced the CSB's authority regarding the Merit-based recruitment and promotions rules. According to the CSL, the CSB is responsible to:

- study and analyze the state of the public service;
- monitor implementation of a unified state policy in public service area;
- observe implementation of normative acts related to the government policy and prepare respective recommendations;

- develop action standards, instructions and guidelines, draft legislative proposals in the area of public service;
- maintain an electronic human resources management system;
- cooperate with human resources management units of public institutions in the process of preparation of annual human resources management plans;
- examine and generalize existing practices of recruitment, evaluation, career promotion, career management, professional development and dismissal of officers and adherence by public servants to ethical norms, and prepare respective recommendations;
- study the current level of qualification and the needs of professional trainings in public service;
- study the experience of other countries in the area of public service and cooperate with international organizations to improve public service management;
- analyze legal disputes arising between officers and prepare respective recommendations to improve the current practice;
- participate in the development and implementation of the state programs for fighting against corruption in public service;
- monitor asset declarations completed by public officials.

NGOs report

IDFI is not aware what activities have taken place in order to increase the capacity of the representatives of CSB. Although the new Law on Civil Service includes guarantees for merit-based recruitment, it has come into effect only recently and has most likely not had any practical influence over the system. According to TI Georgia, the role of the Bureau in this respect increased under the new Law as it is now responsible for managing the civil service reserve as well as certifying civil servants, facilitating their mobility and overseeing reorganization of public institutions.

7.2. Build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules

Government report

Article 24 of the CSL sets an obligation of creating a HRM in all public institutions and introduces a general frame of functions for these units. According to the law the key functions should be facilitating and planning the human resources management policy of a public institution, managing and administering human resources.

According to the principle elaborated by the CSB, a HRM unit should be the first level unit (Department) directly under the head of institutions (e.g. Minister) or it should be distanced from the head of institution only with one management layer (e.g. under Deputy minister).

The HRM units have crucial role in conducting competitions (open and closed), assessing the candidates' compliance with a competition requirements, ensuring organizational support of the performance appraisal process. Throughout the performance appraisal process, the HRM unit is responsible to: study documents produced in the evaluation process, request for additional information/documentation if needed, observe legality of the performance appraisal process and provide recommendations for improvements. The HRM units are also the central part of the career management (transfer, promotion, mobility, etc.), professional development, needs assessment and capacity building process.

NGOs report

Civil Service Bureau has organized several informational meetings with various public agencies, covering mainly the novelties introduced by the new Civil Service Law. IDFI is not informed whether CSB has worked with HRM units/departments on the topic of merit-based recruitment and promotion. The new law provides for a better integration of the HR units with the Civil Service Bureau, although TI Georgia is not aware of the extent to which their capacity has improved.

7.3. Establish a human resource management information system to consolidate statistics.

Government report

The Electronic Human Resources Management System (e-HRMS), which is the unified electronic database of Civil Service Employees, has been fully operational since the end of 2016. It was further adapted to the new requirements of the CSL. In particular, the minimum requirements and catalogues necessary for forming the unified database of civil service across the country were added. The system also allows to aggregate, generate and process data. Currently, majority of government agencies are linked to the e-HMRS.

NGOs report

The Civil Service Bureau has been active in installing the information system for human resources departments of public institutions – HRMS. However, IDFI is not informed on how many institutions have been covered by the system. According to the latest report of the Bureau, HRMS had been installed in all central level public institutions (mainly ministries); however, it is not clear whether the system is operational in Legal Entities of Public law and municipal public agencies.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 7.

NGOs conclusions

IDFI is not informed of any capacity development activities organized by the Civil Service Bureau for representatives of HRM units. Therefore, it can be stated that lack of progress has been shown with regard to recommendation 7.

Assessment of progress

Recommendations 7.1. and 7.2. concerned practical implementation of the new legal provisions and no information was provided on the practical steps taken to build capacity and enhance the status of the Civil Service Bureau, as well as to build capacity of HRM units in individual institutions for application of merit-based recruitment and promotion rules. No progress under these recommendations. However, progress was made under recommendation 7.3. where electronic Human Resources Management System has become functional. Overall, Georgia made Progress under Recommendation 7.

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NGO report

7.1) Although CSB conducts regular trainings of HRM units regarding merit based recruitment of civil servants, IDFI has observed instances of recruitment without competitive procedures outlined in the Law on Civil Service. In December 2017, a new amendment was introduced in the Law on Civil service, which simplifies recruitment procedures for individuals hired under a contract. IDFI and GYLA have published a [joint statement](#) objecting to the simplification of the procedure and consider that simplified procedures increase risks related to transparency, arbitrariness and nepotism. Although **IDFI considers that there has been some progress** related to implementation of Recommendation 7.1, the practice demonstrates significant problems related to the establishment of a career-based system in civil service of Georgia.

7.2) IDFI is not informed about capacity development activities of HRM units; therefore, progress cannot be assessed with regard to the implementation of recommendation 7.2.

7.3) Although CSB continues installation of the e-HRMS system in public institutions of Georgia, IDFI is not informed about exactly how many institutions were covered by the system in 2017-2018. Nevertheless, **IDFI considers that there is significant progress** with regard to implementing Recommendation 7.3.

Assessment of progress

Recommendation 8: Remuneration of civil servants

- 1. Ensure that remuneration of public officials is transparent and predictable and that the principle of “equal pay for equal work” is applied in law and in practice.**
- 2. Consolidate statistics on payroll.**

18th ACN Monitoring Meeting, September 2017

8.1. Ensure that remuneration of public officials is transparent and predictable and that the principle of “equal pay for equal work” is applied in law and in practice.

Government report

The CSB elaborated the first draft Law on Remuneration aimed at developing the general framework of the remuneration system, the scope of regulations and legal grounds of determining the labour remuneration for civil servants. The main calculations regarding the definition of coefficients, “monetary worth of work”, ceilings of supplements, etc. were developed by the MoF. As of the day of this report, the final draft law is submitted to the Government of Georgia for approval. The draft law regulates issues of the labour remuneration of persons employed by the civil service institutions, including the state-political and political public officials, administrative and labour contract employees,

persons working part time, at night, on holidays and weekends, in risky working conditions. The draft law also determines the amount of supplements and monetary awards (bonus).

The system of labour remuneration rests on principles of equality and transparency which imply the receipt of equal pay for the performance of equal job in accordance with rules established in advance. General rule of labour remuneration is that the source of formation of labour remuneration fund in a civil service institution is a corresponding budget. Reduction in budget allocations shall not become a ground of decrease in position wages.

According to the draft law, an employee of a civil service institution shall be entitled to labour remuneration from the day of employment to the day of dismissal from the job. In case of performing duties within the framework of a contract, labour remuneration may be received in accordance with actually completed work. Salary amount of positions of professional civil servants of each hierarchical rank shall be determined in light of functional load of a position, by multiplying a basic salary and a relevant rank coefficient. An additional criterion, for determining the salary scheme, set on local level is the size of the population of Municipalities. Moreover, the draft law defines the relevant percentage of supplement for each class, regulates the rule of calculating salary supplement, remuneration for performing work at night, on holidays/weekends and in grave working conditions and sets the upper limit for the monetary reward (bonus).

NGOs report

Since the law on remuneration is not submitted to the Parliament yet the conclusions cannot be given at this stage. However, the principle of “equal pay for equal work” is reflected in the Article 57 of the law on Civil Service and it is also reiterated in the new draft law on remuneration. According to the IDFI, the draft law contains many positive developments, however, it leaves room for risks related to transparency and predictability of remuneration. For example, according to the draft law, two individuals employed on similar civil service position can have a salary difference of 300%. The above-mentioned difference is however not linked to the civil service rank or class of the servant. In addition, the draft law does not regulate the problems that exist with regard to bonuses and salary supplements of high-level political officials (ministers, and heads of agencies), which remains problematic. Overall, the draft law on remuneration only describes the existing practices and fails to reform the negative tendencies established the remuneration system.

8.2. Consolidate statistics on payroll.

Government report

No further action has been taken at this stage.

NGOs report

IDFI is not aware if consolidated payroll statistics have been published, since the information has not been distributed to CSOs.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 8.

NGOs conclusions

Since the law on remuneration is not yet in force, there is lack of progress for

implementation of the recommendation 8.

Assessment of progress

The draft Law on Remuneration has been developed but not yet submitted in the parliament. Even if the Law on Remuneration was adopted it would not result automatically in implementation of the recommendation which is about implementation of the relevant principle both in law and in practice. No action was taken to consolidate statistics on payroll. There is, therefore, Lack of progress under Recommendation 8. The Government should also take into account the criticism of the draft Law on Remuneration stated by NGOs and consider amending the draft law.

19th ACN Monitoring Meeting, July 2018

NGO report

8.1) The Law on Remuneration in Public Institutions was adopted by the Parliament of Georgia on December 22, 2017. Article 3 of the law clearly outlines the principle of “equal pay for equal work”; however, further articles of the law do not provide for a clear application of the law. In practice, the law provides for a possibility for employees of the same rank and class to have different remuneration, which will be based on the individual decision of the head of the public institution. Although IDFI has not fully measured the practical application of the new law (since only 6 months have passed after the adoption of the law), it generally provides greater predictability and transparency regarding the remuneration of civil servants and public officials. Altogether, **IDFI considers that there has been significant progress** with regard to the implementation of Recommendation 8.1; however, additional changes have to be introduced in order to ensure more comprehensive application of the “equal pay” principle.

8.2) As far as IDFI is aware no consolidated payroll statistics have been published after the elaboration of the new law and considers that **there is lack of progress with regard to Recommendation 8.2**. Nevertheless, it must be pointed out that it will be reasonable to publish consolidated payroll statistics after the end of the year.

Assessment of progress

Recommendation 9: Conflict of interest, asset declarations and other anti-corruption requirements

1. **Extend the scope of all provisions in the Law on Conflict of Interest and Corruption in Public Service to all posts performing core public functions, including prosecutors.**
2. **Clarify the roles of different institutions in enforcement of conflict of interests and other anti-corruption restrictions, strengthen the capacity of internal audit or other units in line ministries and at the local level, consider designating special officers in large administrations and LEPLs to ensure the enforcement of rules on conflict of interest and other restrictions.**
3. **Monitor and evaluate effectiveness of the asset declaration verification system and impact of the asset declarations on the spread of conflict of interest and illicit enrichment.**
4. **Consider introducing effective penalties that would deter unexplained enrichment, conflict of interest and incompatibilities.**

18th ACN Monitoring Meeting, September 2017

9.1. Extend the scope of all provisions in the Law on Conflict of Interest and Corruption in Public Service to all posts performing core public functions, including prosecutors.

Government report

The Law on Conflict of Interest and Corruption in Public Institutions (CoI Law) establishes basic principles of prevention, discovery and elimination of conflict of interest and corruption in public institutions and basic principles of responsibility of perpetrators of corruption, and the basis and mechanisms of legal regulation. This Law also regulates the conditions and mechanism for the submission of asset declarations by officials and for the monitoring of submitted declarations, as well as the fundamentals of whistle-blower protection and the general rules of ethics and conduct. For the purpose of monitoring of the declaration, the term “public official” and for the purpose of conflict of interest the term “public servant” are used. Under both these terms falls the Chief Prosecutor of Georgia and his/her deputies, the heads of the Departments of the Chief Prosecutor's Office and persons equivalent to them thereto, regional and district prosecutors and prosecutors of Tbilisi and the Autonomous Republics of Abkhazia and Adjara.

NGOs report

According to TI Georgia, the provisions of the law Conflict of Interest and Corruption in Public Institutions currently apply to senior prosecutors. The updated civil service legislation extends to most posts performing core public functions, although there are some notable gaps, such as the employees of regulatory commissions.

According to GYLA, the scope of the CoI Law can be limited by the latest legislative initiative submitted by the Georgian Government to the Parliament on 27 May 2017. The draft law has already been approved by the Legal Issues Committee and Budget and Finance Committee. According to the draft law, Members of the Board of the National Bank of Georgia will not be obliged to submit the asset declarations, except the President and Vice-President of the Board. The Georgian Government explained that Members of the Board of the National Bank are not public servants and therefore, they should not be obliged to fill the asset declaration, which is not in compliance with the purpose and main principles of the Law on Conflict of Interest. The suggested amendments may increase the risk of

corruption and reduce the transparency and accountability among the Members of the Board of the National Bank.

9.2. Clarify the roles of different institutions in enforcement of conflict of interests and other anti-corruption restrictions, strengthen the capacity of internal audit or other units in line ministries and at the local level, consider designating special officers in large administrations and LEPLs to ensure the enforcement of rules on conflict of interest and other restrictions.

Government report

The decree of the Government of Georgia #200 adopted on April 20, 2017 “General Code of Ethics and Conduct for Civil Service” has created the ethical environment by developing the professional standards of Civil Servants and implementing the fundamental principles and values in Civil Service. According to the CSL disciplinary misconduct by officers includes neglect and breach of ethical norms and the general rules of conduct that are intended to discredit an officer or a public institution, irrespective of whether it is committed at or outside work.¹ Internal audit units in line ministries are responsible for the conduct of disciplinary procedures for enforcement of ethical principles and norms in public institutions.

For clarifying the roles by capacity development of the staff members of internal audit units in line ministries, the CSB conducts the trainings on Ethics and Whistle-blowers protection mechanisms. Since 2015, the CSB conducts the trainings on Ethics and Whistle-blowers protection mechanisms, for the representatives of governmental institutions (line ministries, Legal Entities of Public Laws (LEPLs), Administration of President, members of the apparatus of the Parliament, administration of state trustees – Governors, central institutions of the Autonomous Republic of Abkhazia). As a result, during 2015-2016, 772 civil servants were trained. The target groups for the trainings are the representatives of internal audit, public procurement, legal and HRM units. The training covers the important issues connected with conflict of interest, incompatibility, “revolving door”, whistle-blowing, gift policy, integrity, professionalism, etc.

NGOs report

According to TI Georgia, no significant changes have been implemented to attain these objectives. There is still considerable ambiguity regarding the enforcement of anti-corruption and conflict of interest rules, while no special officers have been designated to ensure enforcement. GYLA stated that the Georgian Government has not taken any steps to strengthen the capacity of internal audit institutions on the central and local level. The enforcement of the conflict of interest rules in each public institution is still difficult to monitor and analyse. Despite the fact that the Georgian Government has adopted the decree on the Ethics and Code of Conduct in Civil Service, ethic commissioner has not been appointed in public institutions, who will be responsible for effective implementation and monitoring of the Code.

9.3. Monitor and evaluate effectiveness of the asset declaration verification system and impact of the asset declarations on the spread of conflict of interest and illicit enrichment.

Government report

¹ Article 85 (c), Civil Service Law of Georgia, 2015.

New amendments to the Col² established a monitoring system of the public officials' asset declarations. The objective of the monitoring is to increase accountability of public official and prevent conflict of interest, and corruption. The CSB was granted the authority to monitor declarations and to determine and verify accuracy of the information; also, in cases where it is found that public officer deliberately presented incomplete or incorrect data, or specific elements of crime were identified, the declaration in question together with appropriate documentation to forward it to law enforcement body for their consideration or issue an administrative fine in case of violation of the rules on filling the asset declaration. Furthermore, Government Decree on "Adoption of the Instruction for Monitoring Asset Declarations of Public Servants" (Instruction) was adopted on 14 February 2017.

For evaluation of effectiveness of the asset declaration monitoring system, in October 2016, international expert was invited by the CSB in order to conduct seminar on analysing: the risks and grey areas which must be monitored more thoroughly, what is the additional information needed from declarant for complete picture, how to identify the levels of violation and classification of violations, essential elements of conclusion and what important factors must be included in final output, mechanisms of protecting independence and autonomy of CSB.

According to the Col law and instruction, the ground for initiating the monitoring of an official's asset declaration shall be: a) a random selection by the electronic system and b) justified written statement (application). Total number of selected declarations by electronic system shall not exceed 5%. In addition, declarations are selected by the independent commission (composed of 5 members - 3 representatives of the NGOs and 2 representatives of Academia) established by the Head of the CSB on the basis of specific factors (positions of State-political officials, particular risk of corruption, high public interest and violations revealed as a result of the monitoring). The total number of selected declarations by the commission shall not exceed 5% as well. The results of the monitoring shall be proactively published at the end of each calendar year.

Additionally, in order to strengthen and improve the effective functioning of monitoring process, the CSB in cooperation with the Administration of the Government, adopted and published online multi-annual action plan 2017-2020 for the implementation of the asset declarations system and related activities. The action plan defines the baselines, targets and indicators for implementation of monitoring system.

NGOs report

GYLA reported that monitoring of the asset declaration started on 1 January 2017 and the final results will be published at the end of the year. Therefore, at this time, only the procedure for selecting asset declarations can be evaluated. According to the law, the asset declarations may be selected in three ways: a) random selection by the electronic program; b) selection by an independent commission, which is composed of representatives of NGO sector and academic sphere; c) an individual statement by interested person. This year, asset declarations are only selected randomly by electronic program and the independent commission has not been created, because Georgian Government adopted the decree on the asset declaration verification system with a delay, in February 2017, while the

² The amendments to the Col Law entered into force on 1 January 2017.

independent commission should have been created already in December last year. As a result, only the % of the asset declarations are being verified this year instead of 10%.

TI Georgia is not aware whether the authorities are currently monitoring and evaluating its effectiveness. IDFI published an article on the shortfalls of the ordinance. The monitoring of the effectiveness of the system will be possible after specific commitments derived from the ordinance are enforced. No further communication occurred by the Government of Georgia on the evaluation of effectiveness of system.

9.4. Consider introducing effective penalties that would deter unexplained enrichment, conflict of interest and incompatibilities.

Government report

No further action has been taken at this stage.

NGOs report

There have been no legislative amendments with regard to implementing effective penalties for violations of conflict of interest legislation. Currently there is an old system in place, which envisages a GEL 1,000 fine for improperly submitting the declaration. It must be pointed out that the only system is ineffective and does not adequately prevent conflicts of interest.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 9.

NGOs conclusions

The provisions of the Law on Conflict of Interest do not apply to all prosecutors – the law is only applicable to the Chief Prosecutor, Deputy Chief Prosecutors, Heads of Departments and individuals equivalent to their rank and heads of regional and district prosecution offices. There is a draft amendment to the law pending in the parliament which would exclude the board members of the National Bank of Georgia from the scope of the Law. Effectiveness of the asset declaration system has not been evaluated yet. Enforcement measures for conflict of interest legislation have not been amended and the old and ineffective system is still in place. The penalty for violations in the declaration is GEL 1000, which cannot be regarded as an effective measure. NGOs believe that there has been no progress in implementation of the recommendation 9.

Assessment of progress

As regards Recommendation 9.1., there was no progress in its implementation, because only senior prosecutors are covered by the Col Law, employees on labour contracts and majority of LEPLs' employees are not covered by the said Law. It is worrying in this regard that there is a pending draft law that was proposed by the Government and would further limit the scope of the law concerning National Bank's Board Members.

No progress can be stated with regard to Recommendation 9.2. either, as adopting an ethics code and conducting training does not address the recommendation.

On Recommendation 9.3., the Government of Georgia did not carry out the actual monitoring and evaluating effectiveness of the asset declaration verification system and impact of the asset declarations on the spread of conflict of interest and illicit enrichment. There was also a delay un the start of the verification of declarations, which, as noted by NGOs, resulted in the fact that lesser declarations would be verified in 2017. No progress

under this recommendation.

Overall, there was Lack of progress under recommendation 9.

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NGO report

9.1) The draft legal amendments to the Law on Conflict of Interest and Corruption in Public Service exempting the Board Members of National Bank of Georgia from the legal responsibilities (regulations on incompatibility; obligation to submit asset declarations) derived from the Law is still pending in the Parliament. IDFI expressed its concerns on the possible dangers derived from the legal amendments in the previous reporting period, noting to its [Article](#) that analysed the risks of corruption. Since, the draft is still pending and was not yet rejected by the Parliament the risk is still present and requires further attention. The Law does not apply to prosecutors and from the previous reporting period no further steps has been taken to implement this part of the recommendation.

9.2) Due to absence of information, progress cannot be assessed with regard to recommendation 9.2.

9.3) There is no information available on taking actions to monitor and evaluate effectiveness of the asset declaration verification system. As for the system itself, it is already functioning but the independent commission was neither established in 2017 nor in 2018. IDFI was writing on the shortfalls of the Government Decree and one of the parts of this [article](#) referred to the dangers of refusal to create the Commission. IDFI has underlined in this part that “the decree provides for the possibility of refusal for creation of the Commission. In particular, after the deadline of receiving the applications, if less than 3 applications are received from the NGOs or less than 2 applications are submitted by the members of academia, the CSB may only once extend the deadline for not more than 3 days and then take the decision on the refusal of creation of the Commission.

IDFI observes that extension of the deadline for only 3 days is a default rather than result oriented clause. This rises the assumptions that the simple regulations for the refusal of creation of the Commission misses the main objective of creating independent and impartial commission which should be alternative declaration review body, supporting the transparency of the process and the work of the CSB.” This exact gap in the decree resulted in the actual refusal of creation of Commission at the end of 2017, the CSB did not receive enough applications and as a result, it could easily lead to refusal to create the Commission. IDFI also considers that the call for the members of the Commission should be widely spread. According to the Decree, the CSB has obligation to publish it only on its webpage, which is not widely visited. The CSB announced the call for applications for the membership of commission on November 17, 2017 on its official webpage, and shared it on the social network (Facebook) only on December 7, one day prior to deadline. Lack of information on the announcement among possible interested candidates resulted in the insufficient amount of applications received by the CSB.

9.4) On May 4, 2018 amendments were adopted in the law on the Conflict of Interest and Corruption in Public Institutions of Georgia. The novelty of the law is related to the differentiation between significant and minor irregularities in the asset declaration of public official, which did not exist in the past. Moreover, a universal 1000 GEL fine was replaced by a fine of 25% of the public official's monthly salary but not less than 500 GEL. The purpose of this amendment was to decrease undue burden for officials whose salary is less than the previously existing fine but to increase the fine for high-ranking public officials whose salary is much greater compared to the 1000 GEL fine. These amendments were introduced by CSB and MPs and civil society has been consulted in the process. Moreover, current amendment proposal of the same law (introduced on May 16, 2018) that originates from the recent constitutional amendments, sets further compatibility restrictions for high-ranking public officials such as the President, members of the Government and MPs. In general, **IDFI considers that there is progress with regard to the implementation of Recommendation 9.4.** Nevertheless, IDFI considers it necessary to take additional measures to introduce more effective and comprehensive penalties and deterrence measures. Moreover, throughout the reporting period several legislative amendment proposals have been introduced by individual MPs, aiming the softening of sanctions for omissions and mistakes in the asset declarations of public officials. With regard to these proposed amendments, IDFI and GYLA have published a joint [statement](#) recommending recalling the proposal. In the end, joint advocacy efforts were successful and the amendment proposal was not passed by the parliament.

Assessment of progress

Recommendation 10: Protection of whistle-blowers

- 1. Continue education and awareness-raising activities about whistle-blowing in public institutions and in the private sector.**
- 2. Evaluate the effectiveness of reporting channels and the follow-up by law-enforcement bodies to identify the needs for further improvement.**

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10.1. Continue education and awareness-raising activities about whistle-blowing in public institutions and in the private sector.

Government report

Since 2015, the CSB conducts the trainings on Ethics and Whistle-blowers protection mechanisms, for the representatives of governmental institutions (line ministries, Legal Entities of Public Laws (LEPLs), Administration of President, members of the apparatus of the Parliament, administration of state trustees – Governors, central institutions of the Autonomous Republic of Abkhazia) and representatives of self-governing bodies. In May

2017, the training on “Ethics and Code of Conduct in Civil Service” was conducted for the representatives of the Public Defender’s Office of Georgia. In total, 6 trainings were delivered and 114 civil servants were trained. As a result, in 2016-2017, 35 trainings were delivered and 606 civil servants were trained.

The CSB is planning to launch the new project on “Capacity Building in Civil Service and Anti-Corruption Area” with the financial support of the UNDP. Training module on new the Law on Civil Service and corruption prevention mechanism will be developed and up to 350 public officials will be trained. Within the framework of this project, the Handbook on Ethics and Code on Conduct of Civil Servants will be updated, published and distributed throughout the civil service, Guidelines on Code of Ethics and new Law Civil Service will be elaborated and published, a module on ethics for political appointees as well as the concept of an E-learning module on ethics will be developed.

Furthermore, the CSB is working on the draft decree of Government on “Rule of Determining the Needs for Professional Development of Professional Civil Servant, Standard and Rule of Professional Development”. The mandatory standard of professional development will consist of basic and extra training programs, covering also the topics on ethics and whistle-blowing.

NGOs report

According to the IDFI, there is no activity envisaged by the new Anti-Corruption Action Plan on whistleblower protection. Problem of lack of statistics on whistleblowing is still present. IDFI has been observing that public servants still refrain from blowing the whistle on obvious corruption crimes they encounter (e.g. misuse of public resources). The reasons vary, including that they do not trust the institution they work in. Namely, they consider that the person in the managerial position would be better protected than them; they consider that it will damage them more than the perpetrator of corruption crime. The trainings on legislation and practice of whistleblower protection is envisaged in the concept of the training program of public officials and civil servants. An online whistle-blowing portal – www.mkhileba.gov.ge was created by the Civil Service Bureau and IDFI has been actively monitoring its utilization. In addition, the attitude towards the whistle blowing remains negative. Responsible agencies need to increase their efforts on the awareness activities on whistle blowers. TI Georgia noted that the Civil Service Bureau's training sessions for civil servants have covered whistle-blowing; TI Georgia is not aware of any similar undertakings in the private sector.

10.2. Evaluate the effectiveness of reporting channels and the follow-up by law-enforcement bodies to identify the needs for further improvement.

Government report

Amendments to the legislation regarding additional safeguards and protection of the rights of whistle-blowers have already entered into force and the so-called “Red Button” on the official web-page of the CSB is fully operational. 68 cases of whistle-blowing have already been registered through this channel and were forwarded to the appropriate institution for further respond.

NGOs report

There has been no official communication on the Government’s efforts to evaluate the

effectiveness of reporting channels.

According to GYLA, in spite of the good legislation in the area of the protection of whistle-blowers, the reporting channels are not working in practice and there are very rare cases reporting the malpractice in public administration internally or externally. The reason may be the lack of the administrative culture and awareness of public officials. During the monitoring period, additional steps haven't been taken to improve the reporting channels in practice.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 10.

NGOs conclusions

According to the training program of public and civil servants the Government will continue education activities on the whistleblowing in public institutions. The statistics of the cases of whistleblowing is still challenge in Georgian public service. No effort had been shown by the Government to evaluate the effectiveness of reporting channels. IDFI and GYLA believe that there was lack of progress in the implementation of recommendation 10, while TI thinks there was progress.

Assessment of progress

As acknowledged by NGOs, there was progress in continuing education and awareness-raising activities about whistle-blowing in public institutions, even such activities did not target the private sector. No evaluation of the effectiveness of reporting channels and the follow-up by law-enforcement bodies has been conducted. Overall, Georgia made Progress under Recommendation 10.

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NGO report

10.1) The CSB did not yet extend its training activities about whistle-blowing on the private sector. No educational activities had been conducted on whistle-blowing this year. IDFI, as well as other CSOs have observed that there are significant procedural shortcomings with regard to practical application of whistle-blower legislation. Furthermore, since whistle-blowing includes a serious societal stigma and there is very limited public awareness about whistle-blowing procedures, IDFI considers it absolutely necessary to increase awareness raising efforts with regard to the whistle-blowing procedures. In 2016-2017, IDFI has observed that individuals that have gone through the whistle-blowing procedure are not properly informed about how and when to use the whistle-blowing channels. **IDFI considers that there was lack of progress with regard to Recommendation 10.1.**

10.2) No further measures had been taken to implement this recommendation.

Assessment of progress

Recommendation 11: Integrity of political public officials

- 1. Ensure that a Code of Conduct for MPs is adopted and provides for a strong monitoring, enforcement and sanction mechanisms that are implemented in practice.**
- 2. Introduce post-employment (“revolving door”) restrictions for ministers in the law with an effective enforcement mechanism in place.**

18th ACN Monitoring Meeting, September 2017

11.1. Ensure that a Code of Conduct for MPs is adopted and provides for a strong monitoring, enforcement and sanction mechanisms that are implemented in practice.

Government report

With the purpose of implementing the OECD/ACN recommendation as well as other international recommendations, the Permanent Parliamentary Council on Open and Transparent Governance envisaged the issue of Code of Conduct for Parliamentarians in its 2017-2018 Action Plan. More specifically, the activity 4.3 of the Action Plan states that by the end of 2017 the Code of Conduct for the MPs will be adopted, the supervisory body will be determined, the enforcement mechanism will be created and the sanctions will be set. The Working Group consisting of MPs and the advisory group of the Council was created in 2017 and the work on reviewing the norms of ethics has been started. The Code of Ethics will be introduced to the Parliament by the end of 2017.

NGOs report

According to GYLA, the Code of Conduct for MP has not been adopted yet. The adoption of the Code is also one of the obligations under the new Open Parliament Action Plan (2017-2018). A consultative group composed of NGO representatives and the Members of the Parliament has been working on drafting the Code of Conduct for MPs. The draft Code was finalized and includes the enforcement mechanism, including sanctions for violation of the Code of Conduct. However, the Code of Conduct may be finally evaluated after its adoption by the Georgian Parliament.

11.2. Introduce post-employment (“revolving door”) restrictions for ministers in the law with an effective enforcement mechanism in place.

Government report

According to the Law on Conflict of Interest and Corruption in Public Institutions a dismissed public servant may not, within 1 year after dismissal, start working in the public institution or carry out activities in the enterprise which has been under his systematic official

supervision during the past 3 years. Within this period, he/she also may not receive income from such public institution or enterprise. Under these regulations fall the ministers, as for the purpose of the Law the term of “public official” includes the Ministers of Georgia and their Deputies.

NGOs report

As stated by IDFI, the only rule that applies to officials leaving the office is submission of asset declarations one year after resignation. There is no readiness from the Government side to introduce other rules in the legislation. According to TI Georgia, given the wording in the law, current post-employment restrictions appear to apply to civil servants only (rather than political officials, including ministers). No effective enforcement mechanism is in place and TI Georgia is not aware of any plans to establish one.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 11.

NGOs conclusions

Post-employment restrictions for ministers are not introduced in law. GYLA and IDFI believe there was progress in the implementation of recommendation 11, while TI Georgia thinks there was no progress.

Assessment of progress

While development of the draft Code of Conduct for MPs is a welcome step, it is not sufficient to acknowledge progress, as it has not been even officially introduced in the parliament. There was no progress with introduction of post-employment restrictions for ministers in the law with an effective enforcement mechanism in place. Overall, Lack of progress under Recommendation 11.

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NGO report

11.1) In April 2018, the Parliament of Georgia dropped the bill on the Code of Ethics of the MPs. In May 2018, the new draft Code of Ethics had been registered with the slight amendments. The Parliament hearing has not been conducted yet. Hence, it cannot be considered as the progress taking into consideration the previous experience, when registered Code of Ethics was dropped on the first hearing.

11.2) No further progress.

Overall, IDFI considers that the implementation of this recommendation should be evaluated as lack of progress.

Assessment of progress

Recommendation 12: Integrity in the judiciary

1. Increase transparency of the High Council of Justice activities, ensure that all Council's decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.
2. Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.
3. Introduce promotion of judges based on competitive procedure with an open announcement of vacancies and based on clear criteria for promotion.
4. Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.
5. Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.
6. Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.
7. Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.

18th ACN Monitoring Meeting, September 2017

12.1. Increase transparency of the High Council of Justice activities, ensure that all Council's decisions contain detailed justification. Strengthen control of conflict of interests in the work of the High Council of Justice and its staff.

Government report

The legislative amendments (so called "third wave reform") entered into force in the beginning of 2017 and most of the OECD-ACN and other international recommendations were covered by this reform. Article 49 of the Organic Law of Georgia on Common Courts (LGCC) was amended and newly added paragraph 4 states that all decisions made by the High Council of Justice (HCJ), information about the change of the HCJ members and any other information in respect with the HCJ's activities as well as information on the competition and the outcomes of the competition on the judge's position must be published on the official HCJ webpage. Additionally, the information regarding the HCJ meeting date and the agenda must be published on the HCJ webpage no later than 7 days before the meeting. Further actions for increasing the transparency of the HCJ's activities are foreseen by the New Anti-Corruption Action Plan (AC AP) 2017-2018 and the Judicial Action Plan 2017-2018 (this includes open sessions for the members of the civil society, the obligation for the HCJ to promptly deliver to the society its reports regarding the implementation of judicial power and analysis of statistical data, etc.). As regards

justification of the HCJ decisions, new AC AP envisages this requirement for the Judiciary, which based on the Action Plan should be completed by the end of 2017.

In respect of the conflict of interest, newly amended Article 35³ of the LGCC states that during the competition held for the selection of judges, a candidate has a right to ask for the disqualification of a member of the HCJ with the reason of conflict of interest, namely, if there are circumstances that will put under the doubt the objectivity, independence and/or impartiality of the member of the Council. Based on the same article, in case of conflict of interests the HCJ member must declare about it and disqualify himself/herself from taking part in deciding on the issue of selection of a judge. Same Article forbids the member of the HCJ to take part in decision-making on the selection of a judge if s/he is participating in the competition for a vacant position of a judge as a candidate. The decision to disqualify the member of the Council is taken by the HCJ with the majority vote. The member in question does not participate in a voting procedure.

NGOs report

IDFI emphasized in several instances that the HCoJ uses its powers against the interests of justice, instead of protecting them. The failure of the Ministry of Justice and the legislative authorities to act, and the inadequacy of legislative reforms that have been implemented so far, grants the HCoJ absolute power to act in an arbitrary manner, which is leading the judiciary into a crisis. Despite this, authorities are failing to take effective measures to address the crisis. On 31 May 2017, in protest of the developments in the judicial system, NGOs refuse to present their report and demand creation of a parliamentary forum to discuss the developments and prompt reforms.

According to GYLA, the general obligation of the HCoJ to substantiate its decisions has not been established by the law or the regulations. Some amendments have been introduced in the Organic Law on General Courts of Georgia as part of the third wave reform of the judiciary. The amendments are related to the judicial selection/appointment system, as well as prior publication of information on the upcoming HCoJ meeting. However, these amendments proved to be insufficient. The HCoJ adheres to its previous practice and considers issues and makes decisions without making prior public notification within the established time and makes decisions on the issues that have not been on the agenda.

As for the amendments related to the selection and appointment of judges, according to the existing HCoJ regulations the interviews with the judicial candidates are closed for public. It should be mentioned that procedure of interviewing candidates is the only open stage of the whole selection process. Despite the low public trust towards the objective appointments of judges, the law does not provide for open hearings. Although, in practice the HCoJ usually conducts interviews with judicial candidates in an open session, more and more candidates motion for closure of his/her interview based on the HCoJ regulation.

Some changes have been introduced to avoid conflict of interests in the HCoJ. However, the norms regulating this issue apply only to the decisions of the HCoJ related to the appointment of judges. New amendments on the avoidance of conflict of interests does not apply to other similarly important decisions of the council, such as, transfer of judges, appointment of court presidents, etc.

TI reported that providing justifications for the Council's decisions remains a problem in practice. The Council's decisions, including those concerning appointment of judges, are

too general and lack proper justification, while appeal mechanisms are ineffective. The issue of conflict of interest has only been addressed partially: As of March 2017, Council members can no longer administer competitions for judicial vacancies if they themselves are among the contestants but conflict of interest in other situations remains unregulated.

12.2. Regulate directly in the law the main procedures for selection, appointment, promotion, transfer and dismissal of judges, leaving to secondary legislation only technical details.

Government report

As a result of the new legal amendments of 2017 the LGCC now envisages detailed criteria for the selection of judges, which are based on competence and integrity. The LGCC now regulates in details the procedure for the selection of judges as well.³ Legal provisions on promotion, transfer and dismissal of the judges are now foreseen by the same law. The new AC AP 2017-2018 and the Judicial Strategy envisage to further regulate procedure for selecting judges and the trainees of the High School of Justice, to elaborate a clear and transparent system for the promotion of judges, which will be based on objective criteria and based on the outcomes of continuous evaluation of judges.

NGOs report

GYLA reported that criteria for the selection of judges according to their professionalism and integrity have been introduced by the amendments to the Organic Law on General Courts. However, the amendments do not comply with the established international standard of objective criteria for the selection of judges. No indication of sources of information or evidences on which the members of the HCoJ would be obliged to rely on while evaluating the candidates were introduced by the law or the HCoJ regulation.

Points based system of evaluation of judicial candidates has been introduced which aims to ensure substantiation of decisions on judicial appointments. However, the points based system applies only to the evaluation of competency of the candidate and does not apply to the evaluation of integrity of a person. This gives the HCoJ improper discretion for subjective evaluation and does not guarantee objective decisions on the judicial appointments. As a concluding stage of evaluation process, the third wave legislation preserves secret voting by the HCoJ members which excludes possibility of any substantiation of the final decisions on the judicial appointments. The suggestion of the NGO Coalition for an Independent and Transparent Judiciary, to abolish secret voting system and appoint candidates with the best evaluation results, has not been taken into consideration.

As a result, even after the adoption of the third wave reform, nothing has changed in the practice of appointment of judges, no proper transparency or substantiation of decisions on the appointment of judges are ensured by the HCoJ.

The Organic Law on General Courts contains general provisions of evaluation of probationary judges. The HCoJ has not adopted detailed rules of evaluation which would establish specific, objective procedure for evaluation which undermines the independence of judges on probation and makes whole process non transparent.

³ LGCC Articles 34, 35, 35¹, 35², 35³, 35⁴, 36.

The law still does not provide the liability of the HCoJ to substantiate any of its decisions, including decisions related to the transfer of judges. The established grounds for non-competitive transfer of judges are very broad, does not comply with established international standards and leave room for subjective decisions.

TI noted that some progress has been made, particularly in terms of establishing the rules for the transfer of judges, which have reduced the opportunities for abusing the transfer mechanism. Still, the transfer criteria remain vague, while important specific criteria such as the caseload in the courts and the specialization of the judges have not been included in the law. The same applies to the criteria used for admission to the High School of Justice and transparency of the selection process has not been ensured, while the Schools is also excluded from the process of judicial promotions. The introduction of criteria for judicial candidates in 2017 was a positive development, although the content of the criteria still leaves too much room for subjective decisions.

According to the IDFI, selection procedure of judges still remains of the main problem in the Georgian judicial system. NGOs stated that because of the deficient rules of judicial appointment, the public does not know what factors the Council considers during discussions and on what it bases its decision.

Recent appointments confirmed that in reality the amendments to the judicial selection and appointment system introduced by the so called “Third Wave” of reforms do not ensure appointment of candidates whose integrity and professionalism is adequately checked and confirmed. Additionally, the legislation still leaves the Council legal chances for arbitrary decisions, specifically allowing for appointment without substantiation and argumentation via secret ballot.

12.3. Introduce promotion of judges based on competitive procedure with an open announcement of vacancies and based on clear criteria for promotion.

Government report

After the amendments of 2017 the legal provisions on promotion of judges have been amended with the aim to define the criteria for promotion of judges; a judge cannot be promoted earlier than set by the law and the time passed after the appointment on a position of a judge after which s/he can be promoted was changed from two to five years. New AC AP 2017-2018 and the judicial strategy and the action plan foresee this recommendation in order to further improve the legal provisions on the promotion of judges. The HCJ has already started to implement the recommendation and together with international experts has elaborated the recommendations for improvement of the legislation in this respect. These recommendations will be discussed and the draft legal amendments prepared by the HCJ and the Ministry of Justice.

NGOs report

According to GYLA, the law does not provide objective requirements for the merit based promotion of judges or procedure for promotion of judges. The law requires the HCoJ to establish particular requirements and procedure for the promotion. Nothing has changed in the HCoJ regulations regarding the promotion of judges which does not establish objective criteria or transparent procedure for the promotion. TI Georgia concurred that the promotion criteria are not currently established by the law and the Council has full

discretion in regulating the question. It is necessary to at least have the rules for non-competitive promotion to be established by the law, which is currently not the case.

12.4. Revoke the powers of court chairpersons related to careers of judges, their material provision, bringing to liability and other powers that may affect judicial independence.

Government report

After the “third wave reform” the court chairpersons do not have a power to initiate the disciplinary proceedings against a judge, neither do they have the power to appoint a judge as the appointment of a judge is carried out based on the open competition regulated in detail by the law (discussed above in 12.1.), the court chairpersons do not have power to allocate the cases to judges. The reform regulated in details the functions of the court managers and separated it from the functions of the court chairpersons. Furthermore, the new AC-AP 2017-2018 envisages the activity for the judiciary to further review the functions and powers of the court chairpersons in accordance with the OECD-ACN recommendations and finalize this process by the end of 2018. According to the same action plan, the legal provisions on appointment of the court chairpersons should be reviewed by mid-2018.

NGOs report

TI Georgia reported that the administrative powers of court chairpersons were limited to some extent under the “Third Wave” of judicial reform as the power of direct administration of court staff was transferred to court managers. While this is a positive development, the chairpersons have retained significant administrative functions which also need to be transferred to court managers.

GYLA stated that nothing has changed in the law regarding the appointment and dismissal of court chairpersons or their powers influencing the career of individual judges. The appointment of court chair persons is practically not regulated by the law or the HCoJ regulations. Court chair persons are still perceived as being a mechanism in the hands of the HCoJ to influence individual judges and control the court system. In 2016 and 2017, many court chairpersons have been appointed or dismissed without any procedure or pre-determined criteria in place, without competitive selection or substantiation of those decisions. Moreover, the presence of court chairpersons in the HCoJ has been increased as the restriction of court chairpersons to become a member of the HCoJ has been abolished with the last-minute amendments in the third wave legislation.

12.5. Introduce an automated random case assignment in courts with publication of the results of such automated case assignment.

Government report

Effective steps have been taken to ensure the automatic/electronic case allocation system within the Judiciary. New legal amendments of 2017 envisaged this issue and in order to implement the new legal provisions, the HCJ approved automatic/electronic case allocation system in Common Courts of Georgia with the official decision of 1 May 2017. A pilot program of electronic case allocation system was launched in Rustavi City Court in July 2017; starting from 31 December 2017, the electronic system of automatic case allocation will be fully applied in the entire Common Court System.

NGOs report

GYLA noted that the principle of automated random case assignment has been introduced by the third wave legislation. However, no guarantees of safety of the program or list of exceptional circumstances when random case assignment will not apply or any procedure thereof has been established by the law. The law provides that the random case assignment system will come into force at the end of 2017. The pilot program of random case

assignment has been launched in one district court. Very general information has been presented to the public about the program/software launched which does not give the public sufficient information or confidence in the effectiveness and safety of the system. Recently the HCoJ amended the regulation on the automated random case assignment so that the issue was not included in the agenda of the meeting and the draft amendments were not published prior to its adoption.

12.6. Reform regulations in the law on disciplinary proceedings against judges by separating the function of investigation of disciplinary offences from the decision-making, revising grounds for sanctions to ensure legal certainty, ensuring fair trial guarantees for judges in the process.

Government report

Along with the abovementioned, in order to strengthen the control of conflict of interests, amendments were made to the Law of Georgia on Disciplinary Liability and Proceedings of Common Courts' Judges (LDDC). According to the amended Article 7 of the LDDC newly created institution of Independent Inspector is in charge with initiation and initial check of the disciplinary case and later reports to the HCJ. Based on Article 12(4) a judge whose case is being considered has the right to demand the disqualification of the Independent Inspector. This should be substantiated. The Independent Inspector has a right to disqualify himself/herself as well. The matter of disqualification of the inspector from a specific case is decided by the board of three members of the HCJ, selected by casting lots. In case of the disqualification of the Inspector from the case, the case is handled by a member of the HCJ chosen based on the Rules of Procedures of the HCJ. The HCJ member can be disqualified with the same grounds as the Inspector. The member who replaces the Inspector in the specific case cannot participate in decision making on that case.

It is also notable that disciplinary proceedings and disciplinary prosecution has been separated from each other. In particular, disciplinary proceedings against a judge can be initiated by the independent inspector, but disciplinary prosecution can be initiated by the HCJ. According to the recent changes, the HCJ decision on the disciplinary proceedings shall be sent not only to the author of complaint, but also to a judge in question. Moreover, changes have been made regarding the transparency of the disciplinary proceedings. In particular, according to the law, the HCJ is obliged to invite the relevant judge, and the author of complaint in case of necessity. In the disciplinary proceedings, the disciplinary board cannot refer to the HCJ with the issue which is not alleged by a party. Standard of proof for the disciplinary cases has been set by law.

Moreover, in accordance with the new AC AP 2017-2018 the HCJ in collaboration with the Ministry of Justice has to further revise the regulations on disciplinary liability for the purposes of increasing efficiency, transparency and impartiality; to improve disciplinary proceedings and to revise formulation of disciplinary liability. Based on the Action Plan the work in this respect should start in the second half of 2017 and be finalised by mid-2018.

NGOs report

IDFI stated that it is necessary to revise the current basics of disciplinary proceedings of judges. The particularly important issue is imposition of disciplinary liability against a judge for decisions made in the process of administration of the justice. A judge should have freedom in interpreting and explaining the law and be protected from the threats of disciplinary proceedings unless the judge's actions point at his/ her bad faith.

At the same time, it is necessary to increase the institutional guarantees of independence for the Independent Inspector who shall be appointed and dismissed for the 5-year term office by the High Council of Justice. The Independent Inspector based on a preliminary examination shall assess the validity of initiating disciplinary proceedings.

TI Georgia stated that there have been positive changes under the “Third Wave” of reform, notably in terms of limiting the power of the Council secretary to unilaterally deciding the question of launching disciplinary proceedings against the judge. This responsibility has now been assigned to an independent inspect who is to be appointed by the Council for a five-year term. On the negative side, the law does not currently contain sufficient guarantees of the inspector’s independence and neither does it establish predictable grounds of launching disciplinary proceedings against the judge, which makes it possible to abuse such proceedings for exerting pressure on judges.

According to GYLA, substantial changes still need to be introduced in the law, among others: the law should precisely define the goals and objectives of disciplinary proceedings in order to avoid the threat of administering the parallel justice in disciplinary proceedings; institutional guarantees of independence of the inspector (which has been established by the third wave) are not sufficient and need to be increased; the law should determine the standard of proof in disciplinary proceedings and the rules for admissibility of evidences; the provisions of the Criminal Code of Georgia which are related to judicial liability when exercising official duties need to be improved in order to clearly define in what circumstances a judge’s action may go beyond the disciplinary boundaries; decisions about lifting of the immunity of judges of district (city) courts and courts of appeal in criminal offences should be made by the High Council of Justice and not unilaterally by the Chairperson of the Supreme Court of Georgia; the disciplinary panel should make decisions by majority of the entire composition and not by a majority of members present at the sessions. These and other important procedural flaws have not been addressed by the third wave of the reform in the judiciary.

The third wave of the reform did not address the problem of the existing very broad and vague grounds for disciplinary liability of judges. The law should be precise and foreseeable in establishing grounds for disciplinary responsibility of judges. Also, any general provisions of ethical norms should not constitute the grounds for disciplinary proceedings. A judge’s action which affect and undermine the reputation of the court, and public confidence in the court should be expressly and foreseeably defined in the law.

12.7. Exclude in the law any discretionary payments (e.g. bonuses) from judicial remuneration.

Government report

This issue has been envisaged by the new AC-AP 2017-2018 (as well as the Strategy of the judiciary 2017-2021) which states that the issue of bonuses shall be dealt with during 2018 in accordance with the OECD-ACN recommendations.

NGOs report

GYLA noted that the provision which is established by the regulation of the HCoJ and which allows the HCoJ to decide on the bonuses of individual judges according to their in-service evaluation has not been removed. TI Georgia agreed that recent reforms have not included any changes regarding the allocation of salary "supplements" to judges which continue to be paid arbitrarily.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 12.

Assessment of progress

With regard to Recommendation 12.1., progress can be noted as the Third wave reform package amended the law to increase transparency in the work of the High Council of Justice (HCJ) and improve regulation of the conflict of interests of the Council’s members. However, it is also important to address concerns of the NGOs that state that in practice the HCJ often does not substantiate its decisions, formally interviews with judicial candidates remain a closed procedure and conflict of interests procedures do not cover all issues considered by the HCJ.

On Recommendation 12.2. progress was achieved by introducing in the law specific criteria for selection of judges and regulating procedure of transfer of judges. NGOs, however, criticise the substance of amendments, view selection criteria not objective enough and susceptible to abuse, criticise lack of transparency and justification of decisions in practice.

No progress with regard to implementation Recommendation 12.3.

Progress can be acknowledged with regard to Recommendation 12.4., as the power of direct administration of court staff was transferred to court managers from court chairpersons. However, it is regrettable that court chairpersons still have significant powers and that the latest judicial reform amendments did not exclude court chairpersons from the HCJ.

Significant progress was achieved under Recommendation 12.5. as the “Third Wave” judicial reform introduced automated case assignment in courts in the law; the system was piloted in one court and is planned for the universal roll-out in the end of 2017. At the same time, the Government should address concerns about security and reliability of the new system to ensure public trust and confidence in the system and results of automated case allocation.

There was progress under recommendation 12.6. as well, as the position of independent inspectors has been introduced to lead investigation into judicial misconduct and by separating “investigation” and “prosecution”. However, there are concerns about the independence of such inspectors. Grounds for disciplinary liability of judges have not been revised as recommended.

As important steps were taken to move forward with the judicial reform and there was some progress under each of the recommendation’s part, according to the progress updates methodology, the overall assessment under Recommendation 12 is that Georgia made Significant progress.

19th ACN Monitoring Meeting, July 2018

NGO report

12.1) The HCOJ used institution of the conflict of interest in such a way that hindered free fulfilment of the functions of members of the Council and expression of critical opinion within the Council.

At the 6 February 2018 session of the High Council of Justice, the majority of the Council members decided to challenge Anna Dolidze, a non-judicial member of the Council, and removed her from the process of lifetime appointment of the several Judges.

All the sessions at which the issue of challenge was considered were closed, due to which the interested persons did not have an opportunity to hear the legal arguments of the Council regarding the reasonableness of challenging the non-judicial member of the Council. However, according to the explanations that the member of the Council, Anna Dolidze, made in the media, she was challenged because of a critical statement she had made publicly before the start of the interviews with the judges to be appointed for life.

NGOs believed that the removal of Anna Dolidze from the process of lifetime appointment of judges due to her critical opinion undermines the quality of the ongoing process, prevents the member of the Council from fulfilling her obligation, and once again demonstrates the problem of intolerance to dissenting opinion in the judicial system. The aforementioned public statement of Anna Dolidze was not directed against any concrete judges whose lifetime appointment the Council was to consider at its session.

In addition, this practice forces members of the Council to make a very dangerous choice between refraining from talking about problems in the judicial system and distancing themselves from the process of making concrete decisions.

In all the aforementioned cases, the High Council of Justice deliberated on the issue of challenge at closed sessions. Neither the law nor the regulations established by the Council provide for examination of the issue of the conflict of interests in the process of appointment of judges at a closed session of the Council. The HCOJ did not publicize all decisions on challenging Anna Dolidze, a non-judicial member of the Council, and their justification;

12.2) According to the Law, if during the evaluation based on the integrity criterion, more than half of the evaluators considers that the judge does not fulfil this criterion, this constitutes a sufficient condition for refusing to admit the judge to the interview stage.

In addition, if the sum of the points gained by the judge based on competence criterion does not amount to 70% of the maximally available points, the Chairperson of the High Council of Justice of Georgia issues a legal act on the refusal by the High Council of Justice of Georgia to review the issue of lifetime appointment of a judge.

The mentioned regulation violates the principle of judicial independence, since the question of lifetime appointment of a judge appointed for a probationary period is not discussed if at least three evaluators assess the judge negatively based on the integrity criterion or if the judge fails to obtain a 70% score on the competence criterion.

The mentioned decision of the Council cannot be appealed to the Chamber of Qualification of the Supreme Court of Georgia. Certainly, the conclusion of the evaluator is later discussed by the Council, however, the discussion does not extend beyond the Council and no other independent institution can discuss the issue, therefore, this cannot be considered as an effective appeal mechanism.

It should be taken into account that this already represents the lifetime appointment process. Judges appointed for a probationary period are subject to legal guarantees of judicial independence. The fact that the issue is not discussed on a Council session directly jeopardizes judicial independence, especially as the act of refusal can be appealed in the Council only once and, if dismissed, is not subject to further appeal.

Furthermore, the Law does not prescribe interviews with judges until the Council refuses to discuss his or her lifetime appointment. The Law does not guarantee that appropriate process will be carried out and the judge will be heard before the decision that negatively affects the judge is made.

12.4) We believe that court chair must be elected by judges of the same court through a secret ballot. Furthermore, the law must exclude the possibility of the same person being elected for two consecutive terms.

The role and functions of a court chair must be limited to representative, instead of the current managerial activities. In addition, the court chair must not have the authority to instruct a judge to take a case on a different specialized panel in the same court.

The law must also establish that the composition of specialized panels must be defined by the High Council of Justice and not the court chair.

The membership quota for court chairs in the High Council of Justice must be abolished. More specifically, upon election of a new member of the Council, who also happens to hold the position of a Court Chair / Deputy Chair or Chamber / Panel Chair, the new member must immediately be removed from their administrative position.

12.5) The Coalition for an Independent and Transparent Judiciary was concerned by the April 30 decision of the High Council of Justice that established narrow specializations for judges at Tbilisi Appeals Court and gave the unilateral power over appointing judges to these specializations to the Chair of the Court, Mikheil Chinchaladze. Despite the fact that the legislation does not specifically give such authority to Court Chairs, since 2006, the Tbilisi City Court has had the flawed practice of the Chairs appointing judges to specializations. This creates significant risks because of the Chairs' influence on the case allocation process.

The Third Wave of Judicial Reforms introduced new rules for case allocation, which went into effect throughout the country on December 31, 2017. Establishing the new system for case allocation is one of the most significant reforms of recent years, and should be a response to numerous challenges to judicial impartiality and independence. The rules for case allocation must first of all exclude all outside intervention into this process.

In the new model of case allocation, the Court Chairs' power to appoint judges into specializations is troubling. The case allocation program randomly selects which specialized judge gets assigned to a specific case, but which judge is specialized in a legal area is decided by the Court Chairs. The problem is further exacerbated by the fact that the Chairs can change the judges' specialization without the need for any justification, in a short period of time. This creates a significant risk of the Court Chairs' influence on case allocation.

The narrow specialization of judges is particularly problematic at the Appeals Court level, where as a rule the cases are heard by a collegium of three judges. With the current rules, the electronic case assignment system only chooses one judge: the speaker judge in the panel of three judges. Hence, there is a great risk that by simply shuffling judges' narrow specialization without any substantiation one could influence the formation of the panel of three judges.

The Coalition has repeatedly criticized the role of Court Chairs, who are appointed by opaque rules and are a privileged group viewed as superiors to judges and as controlling them. Given this, the Coalition considers further expansion of the Court Chairs authority a negative development, and believes that if narrow specializations are created the legislation must give the power of specializing judges to the High Council of Justice, rather than the Court Chairs.

12.6) Considering the fact that current disciplinary proceedings have been numerous criticized by domestic and international organizations, the NGOs proposed several amendments to the Parliament, in particular:

In order to increase the guarantees of independence of the Independent Inspector, it is important to amend the procedural rules of appointment/dismissal, as well as the grounds for dismissal and the rules regulating appeal procedure of the dismissal. We believe selection and dismissal of the Independent Inspector should be possible by 2/3 of High Council of Justice (Council) members instead of simple majority. This will increase the influence of the non-judge members of the Council on an institutional level regarding the appointment/dismissal process of Independent Inspector;

The salary of the Independent Inspector should be defined by the law. In addition, Independent Inspector should have a right to determine the number of its staff and their salaries;

Independent Inspector should be granted an access to relevant information (access to certain available electronic databases) in order to properly investigate the cases of alleged disciplinary violations;

Legislation should clearly define that if a criminal offense is detected in the course of the investigation, Independent Inspector should be able to address the Prosecutor's Office directly. The consent of the Council in such instances should not be required;

Law should establish the possibility of an Independent Inspector to address the Council with the recommendation on the launching of disciplinary proceedings;

Law should define an obligation for the Inspector to proactively publish report on own activities every three months and as well as an annual report summarizing the whole year. The published information should contain details on the applied grounds of disciplinary misconducts and information on all decisions made by the Council based on the requests of an Independent Inspector.

Apart from that, Reform of the Grounds of Disciplinary Proceedings is still ongoing and current legislation contains important shortcomings. In order to eliminate those problems:

Law should clearly define the goals and scope of the disciplinary liability. Disciplinary proceedings should apply to grave professional violations only and not interpretations of the law or judicial errors;

Provisions of the Code of Ethics, which might cause disciplinary liability, should be clearly and thoroughly defined in the law;

Specific standard should clarify what kind of actions of a judge would qualify as "inappropriate and detrimental to the court reputation". Current formulation provided by the law is so general and vague that it poses a threat to its selective use in practice.

Assessment of progress

Recommendation 13: Integrity in the public prosecution service

1. To continue the reform aimed at further strengthening impartiality and independence of prosecutors, consider assigning the leading role in the recruitment, promotion, discipline and dismissal of prosecutors to the Prosecutorial Council or a similar body of prosecutorial self-governance independent from the Chief Prosecutor.
2. Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors.
3. Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.
4. Consider revoking the payment of any discretionary bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.

18th ACN Monitoring Meeting, September 2017

13.1. To continue the reform aimed at further strengthening impartiality and independence of prosecutors, consider assigning the leading role in the recruitment, promotion, discipline and dismissal of prosecutors to the Prosecutorial Council or a similar body of prosecutorial self-governance independent from the Chief Prosecutor.

Government report

At the end of 2016, the Prosecution Service of Georgia (PSG) completed its work on drafting the PSG Strategy and Action Plan 2017-2021, which were first consulted with the relevant state agencies and NGOs and were afterwards discussed at the meeting of the Criminal Justice Reform Council, after which they were adopted on January 31, 2017 and April 12, 2017 respectively.

Recommendation 13.1 was fully incorporated into the newly adopted PSG Strategy and Action Plan. Namely, under the Strategy and Action Plan, the PSG plans to increase the independence of prosecutors and undertake the research of international best practice regarding the role and functions of the collective bodies in different prosecution services. Based on the respective findings and the current PSG organization, PSG will elaborate recommendations aiming at increasing the role of its collective bodies. The recommendations will address, inter alia, the possible introduction of legislative safeguards for the said bodies and improvement of their rules and procedures. Besides, the new AC AP 2017-2018 envisages the activities which need to be carried out by the PSG in order to implement OECD/ACN recommendations in this respect. This includes activities aimed at increasing the independence of the prosecutors as well as activities aimed at increasing the role of the Consultative Council of the Prosecutor's Office.

NGOs report

According to GYLA, the Prosecutorial Council has no role in recruitment, promotion, discipline and dismissal of prosecutors (except chief prosecutor and three deputy chief prosecutors). No changes have been introduced in the law to ensure functional independence of the Prosecutorial

Council. In 2016 consultative body has been created in the chief prosecutor's office which is chaired by the Chief Prosecutor of Georgia, deputy chief prosecutors, and heads of departments of the Chief Prosecutor's Office. According to the official information published by the Chief Prosecutor's Office, the consultative body has been created with the aim to ensure transparency of the prosecutorial system, in order to make important decisions (including disciplinary matters) collegially rather than individually by the Chief Prosecutor. However, members of the consultative body are only high level officials from the prosecutorial system, the council is chaired by the Chief Prosecutor, no independent representative is a member to the consultative council, the meetings of the consultative body are not open for public, it is not an independent body and its decisions are not published, etc. Therefore, this mechanism cannot be regarded as a transparent, independent mechanism.

In the beginning of 2017 the strategy of the work of the prosecutorial system 2017-2021 and rules of evaluation of prosecutors were adopted by the Chief Prosecutor of Georgia. The strategy of the work of the prosecutorial system was considered by the Interagency Council under the Ministry of Justice chaired by the Minister of Justice. The document envisages increasing the role of collegial bodies, including Consultation Council established by the Chief Prosecutor. Namely, the Council will adopt the code of ethics of PSG staff, procedural regulations on disciplinary liability and proceedings of the staff of PSG. The Council will continue its sessions and will make decisions collegially on punishment and promotion of prosecutors.

13.2. Define in the law clear procedures for merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors.

Government report

Recommendation 13.2 was fully incorporated into the newly adopted PSG Strategy and Action Plan as well as in the new AC AP 2017-2018. Currently, the special working group is discussing the possible legislative amendments for improving the procedures of merit-based recruitment and promotion. In addition to that, PSG finalized drafting the new Code of Ethics, which defines in a thorough and precise manner the rules on ethics, the elements of disciplinary violations, disciplinary procedures and grounds for dismissal of prosecutors. The draft Code of Ethics was distributed among the employees of the Prosecution Service and Criminal Justice Reform Council as well as interested NGO-s for discussions. After receiving and analysing the feedback, on May 25, 2017 the Minister of Justice adopted the Code of Ethics. As a next step, PSG intends to elaborate commentary of the Code aiming at clarifying in greater details the elements of specific disciplinary misconducts and relevant sanctions. The newly adopted Code of Ethics was circulated to all PSG investigators and prosecutors. The trainings regarding the new Code of Ethics are currently underway.

NGOs report

The Law on Public Service does not apply to prosecutors and investigators of the prosecution system. No changes have been introduced to the Law on Prosecutorial System concerning merit-based recruitment and promotion, disciplinary proceedings and dismissal of prosecutors. The implementation of this part of recommendation is also envisaged in the Strategy of PSG. Practice and implementation should be monitored.

13.3. Continue to ensure that in practice the number of cases resolved or the number of acquittals do not play significant role in the performance evaluation of prosecutors.

Government report

On 31 January 2017, PSG completed the development of performance appraisal criteria of prosecutors covering the following areas: the quality of supervision over investigation and prosecution, substantiation of procedural documents, quality of work in the Integrated Criminal Case Management System, workload, abiding by the Code of Ethics and outcomes of participation in trainings. The workload is included in the appraisal criteria. It is evaluated in conjunction with other criteria, also taking into account the volume and complexity of cases. The newly adopted performance appraisal system of prosecutors does not envisage the number of acquittals as an evaluation criterion for prosecutors.

NGOs report

The document of performance evaluation of prosecutor includes different criteria, including the quality of the work and professional skills. However, the number of cases resolved or the number of acquittals are not the indicators and do not play the role in the performance evaluation process.

13.4. Consider revoking the payment of any discretionary bonuses to prosecutors. If bonuses are preserved, they should be small in relation to total compensation and paid based on clear and transparent criteria.

Government report

The new AC AP 2017-2018 envisages the activity for the PSG to implement transparent and objective system of remuneration and financial incentives (bonus) of prosecutors. In April 2017, the special PSG working group responsible for monitoring and improving the performance evaluation system of prosecutors started reviewing the current bonus system of prosecutors. The WG is tasked to undertake the study of international standards and the best practice in relation with bonus system of prosecutors. The conclusions and recommendations of the working group will be presented to the PSG Consultation Council for consideration and practical implementation. Depending on the findings and PSG needs, the WG will prepare conclusions and recommendations about improving the current bonus system of prosecutors or advisability of revoking it.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 13.

NGOs conclusions

IDFI noted that the Strategy of PSG was elaborated and adopted. The document gives important guarantees by shifting more powers and functions into the collective/collegial bodies. However, since the document is very recent its implementation and practical results should be evaluated. Overall, there has been progress in the implementation of recommendation 13.

Assessment of progress

There was no progress under Recommendations 13.1.-13.2. as relevant measures have only been planned in the action plan and not implemented. Progress was made under recommendation 13.3. as the new performance appraisal criteria of prosecutors do not include the number of acquittals as one of the criteria. Work started to implement recommendation 13.4. but it is too early to acknowledge it as a progress. Overall, there was Progress under Recommendation 13.

NGO report

13.1) The Prosecutorial Council does not exercise the powers of recruitment, promotion, disciplining and dismissal of prosecutors. However, in 2016 with the order of the Chief Prosecutor the Consultative Council was established. The Order of the Chief Prosecutor on establishing the Consultative Council is not publicly available. The general information is only available on the PSG webpage in the form of the statement. According to the statement, among other things, the Council deals with the incentives, promotion and disciplining of the employees of the Prosecution Service. Moreover, within its competences the Council discusses the issues related to professional development and career management. The Council is not independent from the Chief Prosecutor, since he/she is chairs the Council. The majority of the members of the Council are high-level officials of the system (deputy Chief Prosecutors, heads of departments and divisions of the Chief Prosecutor's Office, prosecutor of Tbilisi) and 8 prosecutor members of Prosecutorial Council. Even though the issues mentioned above will be discussed in advisory body the decisions are made by the Chief Prosecutor. The advisory body submits the recommendations to the Chief Prosecutor for the decision. The sessions of the Council is not open and only the summary of the sessions are published on the PSG webpage. Hence, IDFI considers that the standards that was set by the OECD-ACN Fourth Round Monitoring Report is not met and this recommendation cannot be considered as a progress. However, after Presidential Election, the PSG becomes independent body and the period until the election will be most appropriate to work on respective amendments in legal acts to ensure independency of prosecutors and to implement this recommendation.

13.2) The Action Plan of the PSG is not publicly available. According to the Anti-Corruption Action Plan the activity on setting up the working group on discussing the criteria and reasoning for recruitment and promotion and presenting respective legal amendments to the Government is envisaged in 2018 (the reporting period for AC AP 2018 is not yet due). Even though the basis and types of the disciplinary misconduct of the prosecutors is defined in the Code of Ethics the detailed procedure on disciplining the prosecutors is not given in this Code. In addition, the Code does not provide the regulations on dismissal of prosecutors. Hence, IDFI considers that this recommendation was not effectively implemented.

13.3) The status of implementation of this recommendation stays the same as in the previous reporting period.

13.4) According to the AC AP 2017-2018 the activity of PSG to implement the system of remuneration and incentives (bonuses) is envisaged for 2018 (the reporting period for 2018 for AC AP is not yet due).

Overall, IDFI considers that this recommendation should be evaluated as the lack of progress, since from the last reporting period no further steps has been taken for its effective implementation. The PSG should accurately consider implementation of this recommendation in the process of working on legal amendments to harmonize legislation to the constitutional amendments (PSG as an independent body).

Assessment of progress

Recommendation 14: Transparency in the public administration

1. Carry out a comprehensive revision of the access to information legal provisions preferably by adopting a stand-alone Access to Information Law in line with international standards and best practice, including provisions on public interest test.
2. Ratify the Council of Europe Convention on Access to Official Documents.
3. Set up an independent public authority for the oversight of access to information right enforcement (as a separate institution or an office merged with the data protection authority) and assign it with adequate powers, in particular to issue binding decisions.
4. Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions.
5. Carry out systematic training of information officers, including on the local level, and of other public officials dealing with access to information issues, including judges.

18th ACN Monitoring Meeting, September 2017

14.1. Carry out a comprehensive revision of the access to information legal provisions preferably by adopting a stand-alone Access to Information Law in line with international standards and best practice, including provisions on public interest test.

Government report

The draft law on Freedom of Information (FoI) Act was elaborated by the Ministry of Justice (MoJ) in collaboration with the OSGF experts and it was later presented to the MoJ for further improvement. Currently, the draft law is being refined in accordance with the comments and remarks provided by interested parties. Drafting of the FoI Act will be soon finalized and it will be submitted to the Parliament of Georgia for adoption in the Autumn 2017. The draft law implies wide range of amendments to the recent regulations of access to information. Monthly meetings of persons responsible for access to information of the ministries are held at the premises of MoJ to discuss the practical issues related to access to information. The obstacles of current regulations identified through the meetings were taken into account in the process of elaboration the draft law. The draft law complies with the main international standards and best examples of access to information laws. In particular, the draft law sets the harm and public interests tests which should be used when limiting access to information, while also establishing a list of information where the prevalence of the public interest is presumed and to which the access cannot be restricted.

NGOs report

IDFI noted that a stand-alone Access to Information Law has not been adopted. Moreover, the draft of the act has not been submitted to the Government for review, hence has not been initiated to the Parliament of Georgia. In May 2017, the MoJ sent Draft Freedom of Information Act (FoIA) to CSOs and other stakeholders for comments. It is notable that the

draft was based on the text of the law elaborated by a working group composed of representatives from CSOs, MoJ as well as independent experts and sent to MoJ in 2014.

Major part of the guarantees included in the Act elaborated by the working group was maintained in the distributed draft. Such guarantees included establishment of the Office of Freedom of Information Commissioner, introducing administrative sanctions for the violation of freedom of information legislation and including public interest as well as the harm test in the draft law.

The draft law circulated by MoJ also included number of provisions which in case of adopting the law would result in unjustified restrictions to access public information. Such restrictions were linked with restricting access to information on high-ranking public officials, lowering the standards of the process and timeframe of disclosing public information, introducing new category of closed information – documents being in the process of elaboration, widening the scope of executive privilege and limiting the scope of information to be published proactively.

IDFI sent its recommendations to MoJ highlighting the gaps of the draft and suggesting the ways of amending it. It is crucial for the GoG to initiative to the Parliament of Georgia Draft Freedom of Information Act which will address existing gaps in legislation and introduce higher standards of accessing public information, inter alia the notion of Freedom of Information Commissioner, having the function of FOIA oversight. It is also notable, that the new AC Action Plan approved by the ACC envisages implementation of freedom of information legislation according to the OECD-ACN recommendations. In addition, according to the schedule of the action plan the draft law was supposed to be submitted to the Parliament in second half of 2017, on spring session. However, the law is not yet submitted to the parliament.

GYLA also carried out an assessment of the draft law and positively evaluated the public interest test included in the text. However, the draft law does not guarantee effective Institute of Information Commissioner.

14.2. Ratify the Council of Europe Convention on Access to Official Documents.

Government report

Procedures necessary for ratification of the Council of Europe Convention on Access to Official Documents are underway. In particular, according to the law on international treaties of Georgia, Ministry of Foreign Affairs, in cooperation with the Ministry of Justice and other pertinent agencies, is coordinating the process in order to submit the Convention to the Government, whereupon it will be officially presented to the Parliament for ratification. Currently, remarks and proposals raised by competent authorities in relation to the compatibility of internal legislation to the Convention's certain provisions are considered by the coordinating agencies with the view of preparation of potential legislative amendments.

NGOs report

IDFI noted that there is no information or the expressed willingness/readiness from the Government to ratify the Convention.

14.3. Set up an independent public authority for the oversight of access to information right enforcement (as a separate institution or an office merged with the data protection authority) and assign it with adequate powers, in particular to issue binding decisions.

Government report

Draft law of Freedom of Information Act foresees the creation of an independent public authority for supervision of enforcing access to information right. Abovementioned authority will be entitled to issue legally binding decisions and impose fines for the violations of the requirements of the FOI Act.

NGOs report

In draft FOIA independent authority for oversight of FOIA rules is included. However, it is important to ensure the draft elaborated by the working group is adopted with all the guarantees.

14.4. Implement provisions on proactive publication of information and ensure functioning and effective public access to a centralised system for publication of court decisions.

Government report

As a result of the third wave reform of the judiciary Article 13(31) of the Law of Georgia on “Common Courts of Georgia” sets the obligation for courts to ensure proactive publication of court decisions. Therefore, the High Council of justice made decision⁴ to adopt the rules regarding online publication of court decisions. The new rule of online publication foresees accessibility of court decisions on an on-line basis, protection of personal data and delivering information to public in compliance with Georgian legislation. The online database has been set up in the framework of the website “info.court.ge” to provide accessibility of the decisions of common courts (all instances). Furthermore, the High Council of Justice launched presentation in July 2017 regarding to the development of new system of server and network infrastructure that ensures the improvement of the electronic case allocation and case management systems at courts, as well as refinement of functioning of web-page “info.court.ge”. Moreover, Tbilisi City Court supported by The European Union Project established new interface of its web-page in order to consolidate database of decisions delivered by Tbilisi City Court. Other Web-pages of common courts will be developed according to the web-page of Tbilisi City Court. In case of limited access to the database “info.court.ge” decisions will be published on the web-sites of courts considering the requirements of the Law of Georgia on “Common Courts of Georgia.”⁵

NGOs report

In 2012 the General Administrative Code of Georgia introduced the notion of proactive disclosure of information. The Code stipulates that public entities shall proactively publish information the list of which is to be regulated by a separate legal act. In 2013 GoG adopted a decree on introducing the list of information to be proactively published. The decree is applicable to central public institutions only. Even though number of self-government entities have adopted decrees regulating the topic on municipal level the issue of proactive disclosure of information remains to be highly problematic in the regions. Till to date no uniform legal act has been adopted which would regulate the process and content of

⁴ The High Council of justice, Decision of 12 September 2016.

⁵ Article 13, 3¹ The Law of Georgia on Common Courts of Georgia.

proactive disclosure and be applicable to every public institution in the country. Hence it can be argued that provisions of proactive disclosure enshrined in the General Administrative Code of Georgia are still not been fully implemented.

As of to-date no centralized system for publication of court decisions has been functional in Georgia. While decisions of the Supreme Court of Georgia as well as the Constitutional Court are published on the official websites of relevant courts the practice of publishing first and second instance court decisions is rare. There is no legislation regulating the topic of publishing court decisions on a centralized system. However, in September 2015 HCOJ adopted a decision on Disclosing and Publishing Court Decision of General Jurisdiction. According to the act all decisions of the courts of general jurisdiction are to be published on the centralized system – info.court.ge. Nevertheless, till to-date no progress has been made in the direction. Moreover, the decision of HCOJ does not have legal effect of law. It is crucial for a chapter on Access to Court Decisions to be added in the FoIA act which would regulate the issue of disclosing court decisions in case of FOI submitted by an applicant as well as the process of publishing court decisions on a centralized system.

The Open Government Georgia's Action Plan envisages the implementation of unified procedures for publishing court decisions. According to the Action Plan those procedures will be implemented by the end of 2017. The HCoJ adopted relevant resolution. However, to date only old system is functioning on info.court.ge, that is malfunctioning.

TI Georgia noted that no effective centralized system is currently in place for publication of court decisions (only the Supreme Court has an effective system of this type). GYLA added that the High Council of Justice has made the decision regarding the rules and procedures publishing the court decisions on 12 September 2016. According to this rule, the information of private legal entity will be also closed, which is required by the Law on Personal Data Protection that only protects personal information of individual. The information regarding the private legal entity participated in court proceedings is public information based on Georgian Legislation and it is illegal to close it based on the decision of the High Council of Justice.

14.5. Carry out systematic training of information officers, including on the local level, and of other public officials dealing with access to information issues, including judges.

Government report

Systematic training sessions and qualification upgrades will be conducted for information officers and other officials dealing with access to information issues, responsible for the issuance of public information after adopting the Freedom of Information Act. Training of information officers and other officials, including representatives of self-governing bodies and judges is one of the commitments under AC AP 2017-2018.

NGOs report

The new AC Action Plan envisages awareness rising activities for servants responsible on public information delivery.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 14.

NGOs conclusions

Based on the above-mentioned information, IDFI considers that there is lack of progress for recommendation 14.

Assessment of progress

As regards Recommendation 14.1., it is a welcome step that the Ministry of Justice sent the draft law on Freedom of Information to CSOs for comments. However, it should be remembered that adoption of the stand-alone access to information law has been planned for a long time and there has been a significant delay in the elaboration of the draft text. No progress can be stated under this recommendation unless the draft law is submitted in the parliament and its text conforms with the applicable international standards. Similarly, there was no progress under Recommendation 14.3. concerning the independent oversight authority for access to information, as relevant provisions are included in the draft FOI Act.

The process of Georgia's acceding to the Council of Europe Convention on Access to Official Documents has started, but as the draft ratification law has yet to be submitted to the parliament, there is lack of progress under Recommendation 14.2.

Concerning Recommendation 14.4., it appears that no centralised system of on-line publication of court decisions has been set up. The decision by the High Council of Justice is welcome as it gives guidance to courts as to how to publish their decisions, even though it is regrettable that according to this decision information about legal entities is limited in disclosure. Implementation of the proactive publication requirements under the General Administrative Code have not been universally and uniformly implemented. Therefore, the provided information is not sufficient to state progress under this Recommendation.

Overall, there is Lack of progress under Recommendation 14.

19th ACN Monitoring Meeting, July 2018

NGO report

14.1) According to the AC AP 2017-2018 the draft law on Freedom of Information (FoI) should have been submitted to the Parliament in 2017 at the Spring Session. This activity was not implemented by the Ministry of Justice of Georgia. It is over 4 years now that the draft law is pending in the MoJ. There have been promises by the MoJ on several instances (including Anti-Corruption Council meetings) that the law would be adopted by the Parliament no later than 2017 but the necessary steps were not taken by the Government. Taking into consideration that the draft law is ready and there is no hindrance left the delay in the proceeding with the submission of the law to the Parliament concerns the civil society. From the last reporting period no further steps has been taken by the MoJ to proceed with the submission procedure of the law.

14.2) The convention is not ratified by Georgia. IDFI considers the status of implementation of Recommendation 14.2 **as lack of progress.**

14.3) This recommendation will not be fulfilled until adoption of FoI Act. Therefore, **IDFI's assessment is that there is lack of progress for Recommendation 14.3.**

14.4) No further steps had been taken to implement this recommendation.

14.5) In total 10 trainings are envisaged in two halves of 2018 according to the AC AP.

IDFI considers that sufficient steps had not been taken to implement this recommendation after previous reporting period. There is lack of progress.

Assessment of progress

Recommendation 15: Integrity in the public procurement

- 1. Further reduce the list of exemptions from the Public Procurement Law and substantially reduce the volume of direct contracting. Adopt clear regulations on state secret procurement.**
- 2. Formally initiate negotiations on Georgia's accession to the WTO Government Procurement Agreement.**
- 3. Include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector.**
- 4. Ensure publication of regular and up-to-date procurement data in open data formats and free for re-use. Implement e-signature in procurement procedures and integrate e-procurement with other e-government services.**
- 5. Provide for a right to appeal against any procurement-related decisions.**
- 6. Consider separating the Dispute Resolution Board from the State Procurement Agency and paying compensation for the work of the non-governmental members of the Board to ensure its professionalism and full impartiality.**
- 7. Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management. Strengthen conflict of interests safeguards in the public procurement.**

18th ACN Monitoring Meeting, September 2017

15.1. Further reduce the list of exemptions from the Public Procurement Law and substantially reduce the volume of direct contracting. Adopt clear regulations on state secret procurement.

Government report

In 2015 the State Procurement Agency (SPA) presented to the Government of Georgia relevant draft amendments to the Law of Georgia on “Public Procurement” (the Law), which aimed at reducing both, the list of exemptions foreseen in the Law and the total number of simplified procurement (i.e. Direct Contracting or Single Source Procurement). The Government of Georgia decided to initiate the amendments to the Law, which were considered to be appropriate at a given stage and further reflected in the Law of Georgia on “Public Procurement”. The abovementioned amendments introduced new approach for the conduct of simplified procurement. As of today, contracting authorities shall obtain prior approval from the State Procurement Agency (SPA) in order to further proceed with simplified procurement procedure and award a contract. The decision on simplified procurement shall be agreed with the SPA through eProcurement System. Applications submitted to the SPA, through electronic system are public and any interested person can express their opinions.

In terms of reducing the number of direct contracting, it was essential to abolish the “replacement” as a means of direct contracting. The mentioned amendment entered into force on 30 June 2017. As a result, contracting authorities shall use eProcurement System and announce a tender, when replacing vehicles, computer and electronic equipment, instead of direct contracting. It is worth mentioning that, in order to reduce the number of simplified procurement, SPA holds regular meetings and consultations with economic operators, maintains face to face communications, both in the regions of Georgia and at the headquarter of the SPA in Tbilisi. Additionally, SPA issues guidelines and recommendations for economic operators on the best ways to conduct proper procurement process.

With regard to the regulations on State Secret Procurement, the Government of Georgia adopted a Decree #321 of 11 July 2016 on the list of state procurement objects related to the state secret and the rule for conduction procurement in this respect as defined by the Law of Georgia on State Secrets and the procedure for the conduct of procurement. On 21 April 2017, Georgian Young Lawyers’ Association (GYLA) provided SPA with its remarks on the rule for the list of public procurement objects related to the state secret as defined by the Law of Georgia on State Secrets and the procedure for the conduct of procurement. In this respect, representatives of the SPA held a meeting with the representatives of GYLA in June 2017 and offered them relevant clarifications. In addition to that, this issue was additionally discussed and explained at the meeting in April 2017, organized by the SPA, which was attended by 21 representatives of civil society organizations, Chairman of the SPA, Deputy Chairmen, as well as heads of the departments.

NGOs report

According to GYLA, although the government has tightened the regulations on confirmation of the simplified procurement, this did not proportionally impact the amounts of sums, spent on simplified procurements. Therefore, the government needs to make more effective steps to decrease the proportion of simplified procurements. More information on simplified procurements is available in GYLA’s research, available here. State secret procurement remains a problem, despite the government’s adoption of the regulations on the simplified state procurements (in 2016). A number of problems remain, for example – there is no consistent/uniform practice on issuing public information related to the state secret procurement, electronic platform for procurement management is still flawed. For

more information, see GYLA's research [here](#).

IDFI reported that the list of exemptions from the law has not been reduced. All the controversial points from Art. 1 (3¹) of the Law on Public Procurement have remained and discussion on this matter did not take place. Furthermore, deterioration can be seen concerning removing certain procurements of the Georgian Public Broadcaster from the remit of the public procurement legislation. Over the past 2 months, a new legislative proposal is being pushed in the parliament, according to which The Public Broadcaster will be exempt from regulations of the Law of Georgia on Public Procurement while purchasing services and goods. Only a small part of procurement will remain under the jurisdiction of the Law on Public Procurement. The volume of direct contracting has not been reduced substantially. In terms of value, direct procurement made 37% of total expenditures on public procurement, which is 3% higher than 2015. IDFI has published the policy [document](#) on Implementation Assessment of the Georgian Public Procurement Legislation.

Positive steps were made towards regulating state secret procurement. Resolution No. 321 of the Government of Georgia on Approval of the List of State Secrecy Related Public Procurement Objects, as foreseen by the Law of Georgia on State Secrecy, and of Procurement Procedure (dated 11 July 2016) was adopted. The Resolution provides the list of classified public procurement objects, procurement procedures and the procedure for its conduct, the rights and obligations of contracting authorities and suppliers, terms and conditions on control of award, performance and execution of contracts execution.

TI Georgia noted that the exemptions in the law have not been reduced and the volume of direct contracting actually increased in 2016 compared with 2015. No regulations have been adopted on secret procurement.

NGO "Procurement Monitoring and Training Centre" reported that the biggest problem in the state procurement in Georgia remains the simplified procurements and its unprecedented high share in the whole system. For example, in 2016 according to the State Procurement Agency's report 1 500 000 000 GEL was spent on Simplified Procurements, 37% of the Procurements in total. Besides, standard services are being classified as "Top Secret" to limit transparency, the number of participants and evaluation. There are no specified procedures when the procurements are classified as "Top Secret". For instance, in the Ministry of Corrections and Legal Assistance the nutrition of inmates has been classified as "Top Secret" since 2015 and the Prosecutor's Office has started the criminal proceedings concerning embezzlement of public funds and corruption.

15.2. Formally initiate negotiations on Georgia's accession to the WTO Government Procurement Agreement.

Government report

The feasibility study and analysis of economic benefits of such accession for Georgian companies is at the final stage. In this respect, EBRD provides technical assistance to the SPA. It should be noted that, on 19-20 June 2017, in Geneva, EBRD held a presentation on a draft of the abovementioned research study. Georgian counterparts made comments and remarks, which are due to be reflected in the study. Once all the comments are reflected in the study, the final draft of the study will be sent to the Government of Georgia.

NGOs report

No progress was made in this regard. No developments are mentioned on any of the official websites, such as spa.ge.

15.3. Include procurement in the utility sector in the Public Procurement Law or adopt a special law to encourage competition and reduce corruption in the sector.

Government report

According to the EU-Georgia Association Agreement, public procurement regulations will apply to the utility sector in the third phase of the legal approximation process - within six years after the entry into force of the Agreement, i.e. September 2020. Approximation and implementation of the EU Directive 2014/25, will be finalized in the fifth phase of legal approximation process, - within eight years after the entry into force of the Agreement, i.e. September 2022.

NGOs report

Utility sector has not been included in the PPL, as it is still a part of the exception list of Art. 1 of the PPL. However, adopting special law on utilities is planned as according to the Roadmap and Action Plan for the Implementation of the Public Procurement Chapter of the EU-Georgia Association Agreement.

15.4. Ensure publication of regular and up-to-date procurement data in open data formats and free for re-use. Implement e-signature in procurement procedures and integrate e-procurement with other e-government services.

Government report

With the aim of implementing OECD Recommendations as well as commitments undertaken by the Government of Georgia in May 2016 at the Anticorruption Summit in London, IT department of the SPA, together with the Analytical Department and other divisions of the SPA are currently conducting intensive methodological research and program-technical works.

On this point, SPA is supported by international experts' group of the World Bank (WB). WB mission visited SPA in February 2017 in order to facilitate implementation of Open Data principles and Open Contracting Data Standard. Leading experts from the SPA, the Ministry of Justice of Georgia and the Ministry of Finance of Georgia attended a workshop, which was organized by the WB. Experts from the WB introduced a study on the new approaches to the procurement data and ways of introduction and transposition of open data formats. New component of international project was initiated in this context, which ensures introduction and soon after, publication of procurement related data in open data format. The SPA, together with international experts, drafted a gradual plan on transposition-aggregation-publication of open data available in the Georgian eProcurement System, into OCDS.

Following the plan, agreed with the management of the Agency, IT department of the SPA created the special webpage – opendata.spa.ge, which will be accessible for any interested person in the near future. Public information and Data on electronic tenders will be gradually published on this webpage in JSON format.

On 21 April 2017, the Parliament of Georgia adopted the law of Georgia on “Electronic Documents and Electronic Trust Services”, which determines the legal basis for using electronic documents, electronic signature and electronic trust service. Pursuant to the

provisions of the new Law, a qualified e-signature has the same legal force as a personal signature on paper and is considered to be admissible in legal proceedings. Accordingly, until 1 July 2018, all contracting authorities are obliged to gradually move to the e-Government and e-Proceedings when taking part in public procurement. In order to further develop e-services within e-Government, in 2017 new eProcurement services have been introduced by the Revenue Service within the Ministry of Finance of Georgia – “Economic Operators’ Debt to the Budget” and “VAT Payer’s Status”.

NGOs report

IDFI noted that the SPA has only started to prepare for creating data in open formats. With the help of the World Bank, the SPA will initially provide procurement data of 2016 in open format, gradually renewing it and updating as new procurements are made.

15.5. Provide for a right to appeal against any procurement-related decisions.

Government report

Within a complex reform process of Dispute Resolution (Review) Board (DRB) the SPA in cooperation with the Ministry of Economy and Sustainable Development of Georgia drafted relevant amendments to the Law foreseen in Article 143 (2)(b) of the EU-Georgia Association Agreement. It is noteworthy to mention that the Law establishes the right for all interested parties to file a complaint against any procurement related decision either to the relevant contracting authority or lodge an application directly with the court.

NGOs report

IDFI noted that there was no change or progress in this regard, as decision to cease or stop the tender still cannot be disputed or appealed against. TI Georgia added that the circle of those who can lodge appeals has been narrowed down to tender participants.

15.6. Consider separating the Dispute Resolution Board from the State Procurement Agency and paying compensation for the work of the non-governmental members of the Board to ensure its professionalism and full impartiality.

Government report

Pursuant to Article 143 (2)(b) of the EU-Georgia Association Agreement Georgia is obliged to designate an impartial and independent body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts. This obligation must be met in the first phase of the approximation process - within three years from the entry into force of the Agreement, i.e. in September 2017. The SPA in cooperation with the Ministry of Economy and Sustainable Development of Georgia drafted relevant amendments to the Law and presented it to the Government of Georgia for further considerations. As for the remuneration for the work of the non-governmental members of the DRB, SPA’s position is that the introduction of such a commitment will question/undermine the independence of the NGO’ members. Furthermore, it is worth mentioning that given the information provided to the SPA, NGOs usually reimburse the relevant employees working hours spent at the DRB and transportation expenses.

15.7. Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management. Strengthen conflict of interests safeguards in the public procurement.

Government report

The SPA aims to modernize eProcurement System so as to automatically restrict participation in the procurement process of the founders and managers of those companies which have been debarred due to the corruption related offences. In this respect, SPA will cooperate with several government entities, such as: Ministry of Justice of Georgia LEPL National Agency of Public Registry, Ministry of Justice of Georgia LEPL Public Service Development Agency, Ministry of Finance of Georgia LEPL Revenue Service, Prosecutor's Office of Georgia and Judiciary branch of the Government on exchange of information and/or data.

NGOs report

No progress has been made with regard to debarment procedures. The equivalent of debarment – Black List, and the grounds for being black listed remained the same.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 15.

NGOs conclusions

According to the IDFI, the list of exemptions from the law has not been reduced. According to the new Anti-Corruption Action Plan, the Public Procurement Agency will only provide recommendations and methodological guidance to procuring entities/authorities on conducting direct procurement. Positive steps were made towards regulating state secret procurement. The SPA has only started to prepare for creating data in open formats. No progress was shown in other parts of the recommendation. Overall, there is lack of progress in the implementation of recommendation 15. TI Georgia concurred that there was no progress.

Assessment of progress

As regards Recommendation 15.1, the efforts made by SPA in reducing the direct contracting are noted. The amendment to the PPL providing for competitive selection of suppliers for a selected range of goods instead of the direct selection is a positive step forward. However, the undertaken measures are yet insufficient to consider the issue of direct contracting resolved, especially given that the overall volume of such procurement remains very high.

As to state secret procurement, the regulations adopted in July 2016 have already been covered in the Fourth Round Monitoring report and cannot be considered as a new development. Moreover, the monitoring report requested regulating relevant grounds and procedures via primary laws, not through the secondary legislation.

As to Georgia's accession to the WTO Government Procurement Agreement, the preparatory work by the Government in this direction is noted, however, it is yet insufficient to report progress under Recommendation 15.2. SPA is recommended to publish more information of the progress on WTO GPA accession on their web-site.

There has been no progress under Recommendation 15.3 concerning regulation of the procurement in the utility sector in order to encourage competition and reduce corruption in the sector.

Significant progress can be seen with regard to Recommendation 15.4, as SPA carried out significant work on publishing procurement data in machine-readable format, in particular by creating a special web-site opendata.spa.ge. Adoption by the Parliament of a new law on “Electronic Documents and Electronic Trust Services”, which determines the legal basis for using electronic documents, electronic signature and electronic trust service, is a substantial step in achieving the compliance with the Recommendation.

There has been no progress under Recommendation 15.5 concerning the right to appeal against any procurement related decision.

Substantial work by SPA in respect of Recommendation 15.6 is noted, namely efforts to set up an independent dispute resolution board planned for 2017. It is assumed that the new set up will resolve the matter of remuneration of the experts involved. The current view of SPA on remuneration is noted, but not upheld, in view of the fact that given the growing number of disputes, the situation neither seems to provide for a sustainable approach, nor for a firm commitment by NGO experts, as reported after the Monitoring mission. To fulfil the recommendation “to consider” the Georgian authorities need to present the proof that the recommendation to institute the said remuneration was indeed considered (minutes of an official meeting, official decision, etc.).

The plans of SPA under Recommendation 15.7 are noted, however, no actual progress is yet observed. It is recommended that SPA in their work takes into account not only Georgian companies and individuals, but also foreign tenderers debarred for corrupt practices anywhere.

Overall, in view of the above conclusions, Georgia made Progress under Recommendation 15.

19th ACN Monitoring Meeting, July 2018

NGO report

15.1) This recommendation is partially fulfilled, as the list of exemptions from the law was not reduced. All the controversial points from Art. 1 (3¹) of the Law on Public Procurement have remained unchanged. However, it should be noted that a new draft law will be introduced into the parliament soon, where the exemptions will be taken out, as the law will replicate provisions of the EU Directive 24. The final draft is yet to be seen, but IDFI has had communication with the SPA on this matter.

There was progress in terms of reducing the volume of direct procurement. In 2015, amendments were made to the law and contracting authorities now obtain prior permission from the State Procurement Agency (SPA) in order to further proceed with simplified procurement procedure and award a contract. In 2017, the volume of direct contracting amounted to 24% of net value of public procurement expenditures. Compared to previous years (2011-2016), this is a substantial decrease as on average throughout the existence of the electronic system, the volume of direct procurement was over 30%. Despite the fact that 24% is still a high share for direct procurement, progress was definitely made.

There was no change in terms of State Secret Procurement as the latest changes were already reflected in the Fourth Round Monitoring report.

15.2) As to Georgia's accession to the WTO Government Procurement Agreement, the SPA stated on several occasions that preparatory work is at hand, however, it is yet insufficient to report progress under Recommendation 15.2. Furthermore, there is no information on this subject on the SPA's website.

15.3) Utility sector has not been included in the PPL, as it is still a part of the exception list of Art. 1 of the PPL. However, adopting special law on utilities is planned as according to the Roadmap and Action Plan for the Implementation of the Public Procurement Chapter of the EU-Georgia Association Agreement in 2020, thus **so far the progress cannot be assessed.**

15.4) progress was made in the direction of providing public procurement information in open data format. The SPA launched a new website opendata.spa.ge where tender related information is uploaded in machine-readable (JSON) format. However, the information on direct procurement as well as other modules of the public procurement system are not integrated in the new website. Additionally, the live information on tenders is still yet to be integrated on the new website.

No significant progress was made in terms of electronic signatures and public procurement contracts.

15.5) **No change or progress for this commitment**, as decision to cease or stop the tender still cannot be disputed or appealed against. Additionally, the possibility to appeal against the decisions of the tender commission was narrowed down to tender participants only, which may cause potential problems when there is only one tender participant and an evident misconduct can be identified. Therefore, there was deterioration in the possibility to appeal any procurement related decision.

15.6) Minor **progress** was made in terms of the Dispute Resolution Board. In 2017 the Board consisted of six members and it was composed of the representatives of the LEPL - State Procurement Agency and non-governmental sector according to parity principle. Amendments were made to the Law of Georgia on State Procurement on 23 December 2017, regulating institutional rearrangement of Dispute Resolution Board and the composition of the Dispute Resolution Board was partially changed. The new composition of the Board reviews complaints filed only with regard to those e-tenders and contests, the estimated value of which is equal to or exceeds the monetary thresholds set by the EU Directives effective in the field of public procurement. In this case, apart from three representatives of the SPA and three representatives of NGOs, the Board also includes the representatives of the Competition Agency, Chamber of Commerce of Georgia and Business Ombudsman of Georgia, of the respective academic community, one from each. This is an improvement, however only applies to disputes over a certain monetary threshold, thus does not cover all the dispute resolution cases.

No change was made in terms of remunerating members of the dispute resolution board.

15.7) Lack of progress.

Overall, IDFI considers that there was progress under recommendation 15. Progress was made on 15.1, 15.4, as volume of direct procurement was reduced for the year 2017 and information on tenders in open data format is available. There was lack of progress in terms of 15.2, 15.5, 15.6 and 15.7. Progress cannot be assessed on 15.3.

Assessment of progress

Recommendation 16: Business integrity

- 1. Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.**
- 2. Develop capacity of the business ombudsman to promote business integrity measures.**
- 3. Implement integrity and anti-corruption plans for state- and municipally-owned (controlled) enterprises, increase their transparency by extending to them the proactive publication requirements.**
- 4. Explore the possibility of concluding integrity pacts in large publicly funded projects.**
- 5. Require mandatory disclosure of beneficial ownership in legal persons in a central register and publish this information on-line. Establish an effective liability for non-disclosure or false disclosure.**

18th ACN Monitoring Meeting, September 2017

16.1. Study business integrity risks, raise awareness and train companies and government officials about these risks and prevention measures.

Government report

With regard to promoting business integrity, due to the complexity of the issue, several public institutions are involved in fulfilling the recommendation. In 2016, Competition Agency of Georgia studied business integrity risks in the passenger air transportation market. It should be noted that the Agency studied business integrity risks not in general but only within its competences - in relation to the competitive environment on the relevant market.

Important steps have been taken for raising awareness on business integrity issues in private and public sectors. In October 2016, the Competition Agency of Georgia organized a meeting with more than 30 SMEs, where detection of business integrity problems in dominant entities and their subsequent reporting was discussed. Further, the Agency

hosted a competition advocacy seminar which was intended for the representatives of the business sector and focused on the issue of competition challenges in the process of public procurement. In June 2017, the Agency organized series of seminars for public officials in cooperation with the State Procurement Agency of Georgia, where one of the main issues was competition in public procurement, associated risks and solutions.

The SPA is also involved in promoting business integrity. The SPA regularly holds meetings and consultations with the representatives of economic operators on various issues including integrity in public procurement. Since September 2016, SPA has held four meetings with a number of business sectors in Tbilisi. Besides, the chairman of the SPA holds regular meetings with the representatives of different business sectors and discusses some of the most important issues concerning the procurement process. Since September 2016, there have been conducted 14 such meetings. SPA also organized two consultations with regional companies. The main topic of these meetings was proper conduct of procurement process, through respecting procurement rules and doing business with integrity. Furthermore, SPA is regularly issuing guidelines and other teaching materials for economic operators on the one hand and contracting authorities on the other. This creates an opportunity for the relevant stakeholders to stay updated with the information about the best ways of conducting proper procurement process, the best international and European practices used in these cases.

Besides, the Secretariat of the Anti-Corruption Council of Georgia is going to adopt business integrity guidelines for the private sector representatives. This obligation is included in the AC AP 2017-2018.

NGOs report

Awareness rising on business integrity is envisaged by the new AC Action Plan. There is no information on further activities to study business integrity risks.

16.2. Develop capacity of the business ombudsman to promote business integrity measures.

Government report

One of the biggest achievements of the new AC AP 2017-2018 is the involvement of the Business Ombudsman (BO) in the Anti-Corruption activities. BO expanded its capacity to cover the area of business integrity as well. Unlike previous years when the Ombudsman acted only as a partner institution in the new Action Plan BO is now a responsible body having undertaken the Anti-Corruption obligations. Business Ombudsman Office of Georgia aims to raise awareness about the BO and increase the accessibility of the BO Office for the business representatives. Business Ombudsman of Georgia plans to organize meetings and presentations for representatives of the business associations and the members of the Georgian Chamber of Commerce and Industry. First meeting was held on 18 July 2017. Business Ombudsman of Georgia works on the development of the e-portal with the aim to create the electronic communication platform with the business representatives. At the moment, the e-portal is running in the testing regime and it will be launched in September 2017.

NGOs report

IDFI reported that the new AC Action Plan does not cover capacity development of the business ombudsman. The representative of business ombudsman mentioned several

times, during the working group meetings, that they lack capacity (including staff) to implement any action in the scope of AC Action Plan. However, in the document presented to the ACC business ombudsman presented few activities.

16.3. Implement integrity and anti-corruption plans for state- and municipally-owned (controlled) enterprises, increase their transparency by extending to them the proactive publication requirements.

Government report

The Order of the Head of the National Agency of State Property (NASP) has been issued to promote transparency and accountability in the large and operational SOEs, which envisages that the latter category of SOEs are obliged to provide their annual report (which also includes financial data) to the NASP; moreover, functional companies are obliged to publish the report on their web-pages. Herewith, in accordance with the abovementioned Order, the person responsible for public information has been appointed in every large and operational state-managed companies and information about these persons is published on the web-pages of the companies and of the NASP. Consequently, significant progress has been made regarding extension of proactive publication requirements to the SOEs. With the aim to raise awareness on Anti-Corruption issues, trainings on the relevant subjects are organized regularly for the managers of SOEs. In addition, draft document establishing ethical standards for employees of SOEs and draft Order of the Head of NASP on promotion and disciplinary procedures of Managers of SOEs has been adopted. Currently, final versions of the draft documents are being reviewed in the NASP.

NGOs report

IDFI informed that the activities for the National Agency of State Property (the main public agency that owns and manages the centrally owned SAO-s) in the AC Action Plan do not include elaboration and implementation of integrity and anticorruption plans. One of the activities covers proactive disclosure of public information and elaboration of ethics' standards for the staff of state owned enterprises. Within the project aimed at supporting the Ministry of Regional Development and Infrastructure (MRDI), the integrity and transparency strategy largely focuses on improving the integrity and accountability mechanisms in the SAOs managed by the MRDI.

GYLA stated that no effective steps were made towards transparency and publicity of the state-owned enterprises. Publication of information on web-pages, contact information, activity reports remain a problem. Despite the declared policy of the state to decrease the number of state-owned enterprises and certain activities in this regard, no tangible impact was observed. The problem is even more acute at the local self-government level. Unfortunately, there is no uniform standard/system available in Georgia, providing access to information regarding the state-owned enterprises. Same applies to the enterprises, owned by the Adjara government. Much more efforts are required from the government to achieve tangible results in this regard.

16.4. Explore the possibility of concluding integrity pacts in large publicly funded projects.

Government report

No further action has been taken at this stage.

16.5. Require mandatory disclosure of beneficial ownership in legal persons in a central register and publish this information on-line. Establish an effective liability for non-disclosure or false disclosure.

Government report

No further action has been taken at this stage.

NGOs report

Despite IDFI's [recommendations](#) and strong advocacy on every working group meeting the Government was unable to include the activity in the AC Action Plan on disclosure of beneficial ownership in a central register.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 16.

NGOs conclusions

NGOs consider that there was no progress under this recommendation

Assessment of progress

In view of the information presented above by the Government, there was Progress in implementation of Recommendation 16. It is regrettable, however, that no action whatsoever was taken under recommendations 16.4. and 16.5.

19th ACN Monitoring Meeting, July 2018

NGO report

16.1) Under activity 9.1.1. of the AC AP 2017-2018 the State Procurement Agency conducted in total 15 meetings in 2017. The aim of the meetings, conducted in the first half of 2017, were to present new legal amendments to the law on state procurement and give the information on the innovations implemented in the unified electronic system of the state procurement. The issues of business integrity in the state procurement were also discussed. All the meetings in the second half of 2017 was dedicated to the discussion of ongoing reforms in the state procurement system. Overall, IDFI considers that the meetings in the scope of AC AP was not responding to the focus of this recommendation. IDFI noted in its [recommendations](#) for AC AP 2017-2018, that "In addition, the indicator of the result 9.1 includes the study of the risks associated with business integrity; however, the activity includes only awareness raising, which is not in line with the goals of the indicator, and would create problems during the implementation and monitoring process". Moreover, elaboration of business integrity guidelines in envisaged in the second half of 2018.

16.2) It was [recommendation](#) of IDFI to involve Business Ombudsman as a responsible institution in the AC AP to implement OECD-ACN recommendation. First draft of AC AP did not include Business Ombudsman at all and after recommendations received from CSOs the involvement of BO was possible only on the very last stage of elaboration of AC AP. The activities in this part is rather limited and does not cover capacity building of BO. In the second half of 2017, the BO should have launched electronic portal, however due to the deficiencies the portal is not

available for third parties and is in the internal testing mode (based on the last monitoring of AC AP).

16.3) There is no progress on the first part of this recommendation, meaning that anticorruption and integrity plans for state owned enterprises is not elaborated. Implementation of this part is not included in AC AP. On the policy level, AC AP monitoring states that the practice of proactive publication is implemented in the large enterprises.

16.4) Lack of progress.

16.5) Lack of progress.

Overall, IDFI considers that there is lack of progress in implementing this recommendation.

Assessment of progress

CHAPTER 3: ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION

Recommendation 17: Criminal law against corruption

1. **Revise sanctions for passive bribery to ensure that they are proportionate and dissuasive.**
2. **Approve prosecution guidelines to provide detailed guidance on how to interpret and apply Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. Consider revising relevant provisions to align them with the UNCAC.**

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17.1. Revise sanctions for passive bribery to ensure that they are proportionate and dissuasive.

Government report

The new AC AP 2017-2018 envisages the activity of the Ministry of Justice and the PSG to revise criminal sanctions for passive bribery if necessary and in accordance with the OECD-ACN recommendations. Based on the action plan the revision process will start in the beginning of 2018 and be finalised by the end of 2018.

NGOs report

According to GYLA, the sanctions for Articles 332 or 333 of Criminal Code have not been revised during the monitoring period. The only change about sanctions is that a new type of sanctions – a house arrest – was added. This change is a result of the Criminal Code reform which removed restriction of liberty from criminal code and added a new type of sanction – house arrest.

17.2. Approve prosecution guidelines to provide detailed guidance on how to interpret and apply Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. Consider revising relevant provisions to align them with the UNCAC.

Government report

The new AC AP 2017-2018 envisages the activity of the PSG to elaborate detailed guidelines on prosecution of the articles 332 (Abuse of official powers) and 333 (Exceeding official powers) of the Criminal Code in accordance with the OECD-ACN recommendations. The PSG has already carried out important activities in this respect. In April 2017, the Department for Supervision over Prosecutorial Activities and Strategic Development and Investigation Division of PSG started developing guidelines on how to interpret Articles 332 (abuse of office) and 333 (excess of authority) of the Criminal Code. In parallel, the Department for Supervision over Prosecutorial Activities and Strategic Development together with the Legal Department of the Office of the Chief Prosecutor of Georgia started reviewing the compliance of the above-mentioned provisions with the requirements of UNCAC.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 17.

Assessment of progress

The Government has started some preparatory work on implementing the recommendation, but it is not sufficient to acknowledge progress. Conclusion: Lack of progress.

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NGO report

17.1) The implementation of this recommendation is envisaged in the AC AP from 2018 (the reporting period is not yet due). On the legislative level, no amendments had been proposed yet.

17.2) The implementation of this recommendation is envisaged in the AC AP from 2018 (the reporting period is not yet due). On the legislative level, no amendments had been proposed yet.

Overall, IDFI considers that there is lack of progress in implementing this recommendation.

Assessment of progress

Recommendation 18: Liability of legal persons

- 1. Include practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for their further in-service training. Train judges on the application of corporate liability.**
- 2. Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.**
- 3. Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.**
- 4. Consider introducing in the legislation an exemption (defence) from liability for companies with effective internal controls and compliance programmes.**

18th ACN Monitoring Meeting, September 2017

18.1. Include practical training exercises focusing specifically on liability of legal persons for corruption offences in the curriculum for newly appointed investigators and prosecutors, as well as for their further in-service training. Train judges on the application of corporate liability.

Government report

Since 2016, practical training sessions focusing on liability of legal persons for corruption offences have been included in the curriculum for newly appointed investigators and prosecutors as well as for in-service training. In September 2016, the PSG conducted the training on investigation and prosecution of offences involving legal persons. International experts were acting as trainers during the training. The attendees were the prosecutors and investigators of the PSG and other investigation agencies. Moreover, the new AC AP 2017-2018 provides that training sessions will be held every year for professionals involved in the relevant field in order to improve the mechanism for prosecution of legal entities.

In the reporting period, the High School of Justice (HSJ) developed a curriculum on “Effective Review of Corruption-related Cases” which also covers the issue of criminal corporate liability. A working group consisting of international expert and Georgian judges identified the topics and elaborated the training materials. The training of trainers was conducted for the Georgian judge-trainers by the CoE expert. In May 2017, the pilot training was conducted for 16 judges from various courts of first and second instances. In the second part of 2017, one more training is planned to be conducted for judges. Based on the Anti-Corruption Plan 2017-2018, similar training will be held for judges at least once a year.

18.2. Provide investigators and prosecutors with a manual on effective investigation and prosecution of corruption cases involving legal persons.

Government report

In December 2016, the PSG in cooperation with the Council of Europe completed initial process of drafting the manual on effective investigation and prosecution of corruption cases involving legal persons. In the beginning of 2017 manual was submitted to the Council of Europe experts for final expertise. After receiving the feedback, in April 2017 manual was finalised and sent for publication. The manual will be published in September 2017.

18.3. Ensure that enforcement of the liability of legal persons for corruption offences is included in the policy priorities in the criminal justice area.

Government report

The enforcement of the liability of legal persons, *inter alia*, for corruption offences, was included in the PSG Strategy and national Anti-Corruption Strategy as a part of the policy priorities, the process of discussions has started and this issue will be considered as well.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 18.

Assessment of progress

In view of the information provided by the Government, there was Significant progress in implementing Recommendation 18.

NGO report

18.1) It is not certain from the AC AP monitoring, whether further trainings had been conducted for investigators and prosecutors on liability of legal persons, after previous reporting period. AC AP envisages training activity in the second half of 2018. In addition, the report for 2017 of the Chief Prosecutor does not provide information on trainings on liability of legal persons.

18.2) Even though the PSG indicated in the previous reporting period of OECD-ACN, as well as in the AC AP first half of 2017 monitoring, the manual should have been published in September 2017 the document is not yet publicly available.

18.3) Due to absence of information, progress cannot be assessed with regard to recommendation 18.3.

18.4) No legal amendments have been introduced for implementation of this recommendation. Therefore, IDFI considers that there is **lack of progress** for Recommendation 18.4.

Assessment of progress

Recommendation 19: Foreign bribery

- 1. Conduct trainings and raise awareness among law enforcement practitioners, Georgian trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement.**
- 2. Develop guidelines on effective investigation and prosecution of foreign bribery and include prosecution of foreign bribery in criminal justice policy priorities.**

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19.1. Conduct trainings and raise awareness among law enforcement practitioners, Georgian trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement.

Government report

Since September 2016 until July 2017 eight trainings and five study visits were conducted on the matters of fight against corruption. The 26 PSG investigators and prosecutors were trained in total. Among the number of issues related to investigation and prosecution of

different forms of corruption, the training sessions addressed the matters of enforcing foreign bribery offence.

19.2. Develop guidelines on effective investigation and prosecution of foreign bribery and include prosecution of foreign bribery in criminal justice policy priorities.

Government report

The Anti-Corruption Unit of the Office of the Chief Prosecutor of Georgia is currently working on developing guidelines on effective investigation and prosecution of foreign bribery for all corruption investigators and prosecutors. The fight against bribery, also covering the prosecution of foreign bribery, was included in the PSG Strategy and the National Anti-Corruption Strategy as a part of the policy priorities. The PSG Strategy and the National Anti-Corruption Strategy were adopted on January 31, 2017 and April 24, 2017 respectively.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 19.

Assessment of progress

From the information provided it is not clear if the training for investigators and prosecutors specifically targeted foreign bribery. No training or awareness-raising for trade and diplomatic missions abroad and other relevant officials about foreign bribery enforcement have been conducted or planned. Beginning of work on the guidelines on effective investigation and prosecution of foreign bribery is a welcome step, but it is too early to acknowledge it as a progress. Conclusion: Lack of progress.

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NGO report

19.1) Lack of progress

19.2) There is only training activity on foreign bribery envisaged in the second half of 2018 in AC AP. Moreover, the Strategy of PSG does not cover foreign bribery separately; one chapter is dedicated to fighting against corruption crimes, the part of which is not foreign bribery.

IDFI considers that, there is lack of progress in implementing this recommendation.

Assessment of progress

Recommendation 20: Procedures for investigation and prosecution of corruption offences

1. Continue implementing the plea bargaining reform by ensuring close judicial scrutiny of agreements reached between the prosecutor and defendant, conducting extensive training for judges, prosecutors and criminal attorneys on the plea bargaining and safeguards against abuse in its application.
2. Consider establishing a central register of bank accounts to facilitate tracing of criminal assets.
3. Extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.

18th ACN Monitoring Meeting, September 2017

20.1. Continue implementing the plea bargaining reform by ensuring close judicial scrutiny of agreements reached between the prosecutor and defendant, conducting extensive training for judges, prosecutors and criminal attorneys on the plea bargaining and safeguards against abuse in its application.

Government report

In July 2017, 20 Prosecutors were trained in application of the plea bargaining. Training on the plea bargaining is also included in the curriculum of the PSG interns. In April 2017, one training on the “plea bargaining and safeguards against abuse in its application” was conducted for judges at the HSJ. Georgian and international experts conducted the seminar. 14 judges from various courts of first and second instances participated in the training. The training was envisaged by the In-Service Training Program of Judges and Court Staff 2017. Based on the Anti-Corruption Plan 2017-2018, similar training will be held for judges at least once a year.

NGOs report

IDFI stated that it is indicated in the Strategy of PSG that the recommendations on the circumstances to be considered during plea agreement procedure will be elaborated. The information on the planned trainings is not available.

20.2. Consider establishing a central register of bank accounts to facilitate tracing of criminal assets.

Government report

With the purpose to implement the OECD-ACN recommendation regarding a central register of bank accounts to facilitate tracing of criminal assets the representatives of the National Bank and the Ministry of Justice conducted a meeting facilitated by the First Deputy Minister of Justice of Georgia. They discussed the recommendation and the steps to be taken in order to implement it. The decision was made that the representatives of the Ministry and the National Bank will conduct the study of international practice and after that the analysis will be made regarding the necessity of creation of such an account. The working group has already started working on the issue.

20.3. Extend the definition of Politically Exposed Persons in the anti-money laundering legislation to national public officials and their affiliated persons.

Government report

No further action has been taken at this stage.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 20.

Assessment of progress

According to the information provided, there was Progress under Recommendation 20.

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NGO report

20.1) In the Chapter of plea-bargaining of Criminal Procedure Code of Georgia the latest amendments entered into force in 2014. Since then the plea bargaining reform is not reflected on the legislation. If the changes had been taken place on the practical level the relevant information should be presented by the government. Activity 6.2.7 of the AC AP 2017-2018 envisages the trainings for judges on corruption issues. The specific themes, such as plea bargaining is not indicated in the AP.

20.2) No further steps had been taken to implement this recommendation. IDFI can assess the status of this recommendation as **lacking progress**.

20.3) Lack of progress.

Assessment of progress

Recommendation 21: Anti-corruption criminal justice bodies

- 1. Consider removing anti-corruption investigative powers from the Security Service and the Prosecution Service.**
- 2. Strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service.**

3. Review guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.
4. As the priority for increased confiscation is enforced, consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation.

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21.1. Consider removing anti-corruption investigative powers from the Security Service and the Prosecution Service.

21.2. Strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service.

Government report

In May 2017, the working group composed of the representatives of the Legal Department, the Department for Supervision over Prosecutorial Activities and Strategic Development and the Anti-Corruption Unit of the Office of the Chief Prosecutor of Georgia started the research of international standards and best practice regarding the anticorruption investigative powers of the Prosecution Service as well as consideration of possible measures for strengthening the autonomy of the Anti-Corruption Unit. The recommendations of the working group on the above-mentioned matters will soon be presented to the management of the PSG for considering the possibility of removing anticorruption investigative powers from the Prosecution Service and undertaking measures for strengthening the autonomy of the Anti-Corruption Unit.

NGOs report

IDFI informed that it published policy document indicating the necessity of establishing independent Anti-Corruption Agency and describing the challenges in the institutions working on prevention of corruption, including State Security Service, PSG, etc.

21.3. Review guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds.

Government report

In April 2017, the Department for Supervision over Prosecutorial Activities and Strategic Development and Investigation Division of the PSG started reviewing guidelines for transferring cases from one investigative authority to another to ensure that corruption-related cases could be removed from the designated authority only on exceptional and justified grounds. The process will soon be finalized.

21.4. As the priority for increased confiscation is enforced, consider setting up a special unit/agency responsible for managing assets that may be subject to confiscation.

Government report

No further action has been taken at this stage.

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 21.

Assessment of progress

Georgia has started the process of consideration of whether the anti-corruption investigative powers should be removed from the Prosecution Service and how to strengthen the autonomy of the anti-corruption unit of prosecutors within the Prosecution Service. Also, the PSG started reviewing guidelines for transferring cases from one investigative authority to another. Conclusion: Progress.

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NGO report

21.1) Anti-Corruption investigative powers stays in the Security Service as well as in the Prosecution Service of Georgia. IDFI considers that, without forming an independent Anti-Corruption Agency the implementation of this recommendation will not be feasible.

21.2) No further steps had been taken to implement this recommendation.

21.3) IDFI does not possess information on finalization of this recommendation as was mentioned by the government for last year's progress report.

21.4) No further steps has been taken to implement this recommendation.

Assessment of progress

CHAPTER 4: PROCUREMENT FOR INFRASTRUCTURE PROJECTS AT THE NATIONAL AND LOCAL LEVEL IN GEORGIA

Recommendation 22: Procurement for infrastructure projects

1. Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects, including turn-key and Design-Build-Operate contracts.
2. Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators.
3. Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use.
4. Introduce a comprehensive quality control system for contract management critical decision making and overall supervision of works.
5. Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.

18th ACN Monitoring Meeting, September 2017

22.1. Develop and include in the Law and e-Procurement system competitive procurement procedures that ensure efficient coverage of infrastructure projects, including turn-key and Design-Build-Operate contracts.

Government report

No further action has been taken at this stage.

NGOs report

IDFI reported that special procedure for infrastructure projects' related procurements have been adopted. The procedure is based on the principle of pre-qualification. The bidders submit proposals, qualification documents, and cost breakdown. After evaluating all bidders, if tender terms and conditions are met, contracting authority can invite the bidder with the lowest proposal price, to sign the contract. However, no progress was made in terms of introducing design-build-operate contracts, as legal procurement framework for concession/PPP and turn-key contracts in Georgia is at its initial development stage.

22.2. Adopt a comprehensive law on Public-Private Partnership/concessions, providing for a competitive selection of concession holders or operators.

Government report

As for the adoption of a new law on Private-Public partnerships (PPP), the Ministry of Economy and Sustainable Development of Georgia (MoESD) in close cooperation with other relevant state institutions, line ministries and International Financial Institution (IFI) is actively working on implementation of the PPP reform. Currently, draft law on PPP (together with amendments in secondary legislation) has been elaborated and MoESD is coordinating the activities with main stakeholders to submit the draft PPP law to the Government of Georgia for approval. Legal package of the reform is expected to be

submitted to the parliament in the Autumn session of 2017.

NGOs report

IDFI noted that no significant progress was made in terms of adopting a more comprehensive law on public-private partnership. The Law of Georgia "On the Procedure for Granting Concessions to Foreign Countries and Companies" still requires to be improved regarding the scope of application, as it contains very few provisions regarding the selection of the concessionaire. Hence, the problem of concessionaires being chosen directly remains the same.

22.3. Approve a comprehensive set of contract terms and conditions templates for infrastructure projects, as well as guidance for their use.

Government report

Starting from 2016, Ministry of Regional Development and Infrastructure presented a set of new amendments to the State Procurement Law ensuring the implementation of international obligations and the EU Standards and reflecting the fundamental values of equal treatment and principle of proportionality. The main substance of the amendments to the law could be divided into several directions: a) principles, b) specifications, c) deadlines, d) the rule of appeal, e) technical issues. These amendments aim to bring the procurement law closer to the EU Member States practice by strengthening equal treatment, proportionality and by promoting fair competition in the procurement process. At the same time, in order to ensure fair evaluation of the tender proposals, the Ministry of the Regional Development and Infrastructure of Georgia issued a recommendation introducing the Double Envelope Arrangement for the public procurement. Based on this scheme, starting from 2017 the technical proposals are evaluated purely on their technical merits and ability to meet the advanced technology requirements set out in the bidding applications without being unduly skewed by the financial proposal.

22.4. Introduce a comprehensive quality control system for contract management critical decision making and overall supervision of works.

Government report

As a result of the initiative of the Ministry of Regional Development and Infrastructure of Georgia, the technical designs of the assignments, concurrently with the civil works, will be the subject to comprehensive review process through the accredited supervisory company, while the list of the supervisory companies are approved by the State Accreditation Agency under the Ministry of Economy and Sustainable Development of Georgia. Once the project design is finally concluded and approved, the assignment steps into the implementation phase, where the supervisory company tracks the progress and provides the regular compliance assessments. This institutional enforcement proposal is aimed at improving the overall time efficiency and quality control procedures in public project management system, ensuring the effective and efficient public infrastructure project outcomes in the regions.

22.5. Implement knowledge sharing/education programmes for public sector organisations (their staff) involved in infrastructure project development and implementation.

Government report

From the 1st September 2016 until August 2017 Training Centre of the Procurement Agency

provided training sessions to the 989 employees operating at state institutions, municipalities, local self-governments and public schools from overall Georgia.

Government conclusions

Based on the abovementioned the Government of Georgia considers that the progress has been made in implementing the recommendation 22.

Assessment of progress

There has been no progress under Recommendation 22.1 concerning procurement of complex contracts for infrastructure projects.

The MoESD took significant effort in respect of Recommendation 22.2 concerning adoption of PPP/Concession awards, which is a progress.

There has been no progress under Recommendation 22.3 concerning introduction of comprehensive contract terms and conditions templates for infrastructure projects. Introduction of the two-part proposal system is a separate matter (which should have been reported under recommendation 22.1) and may only be seen as a mildly positive development if implemented through well secured e-system only, where the financial proposals are protected from manipulation after submission.

The developments with regard to Recommendation 22.4, i.e. introduction of mandatory impartial professional supervision of the works, are seen as progress because such supervision is an essential part of good project management, which safeguards public interests. It is assumed that the supervisors will be appointed and paid by the employers under separate contacts pro rata to the required professional inputs. However, it is also required that appropriate measures be introduced in respect of review and approval of the critical material modifications to the contracts.

The actions by SPA in respect of recommendation 22.5 are very positive and need to be maintained. The Government is following up on the Recommendation well.

Overall, in view of the above conclusions, Georgia made Progress under Recommendation 22.

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NGO report

22.1) No further progress was made since the previous reporting period

22.2) New law on Public-Private Partnership was adopted on 4th of May 2018, which fully regulates the PPP related matters. Therefore, there is significant progress on this recommendation.

22.3) Due to absence of information, progress cannot be assessed with regard to recommendation 22.3

22.4) Due to absence of information, progress cannot be assessed with regard to recommendation 22.4.

22.5) Due to absence of information, progress cannot be assessed with regard to recommendation 22.5.

Assessment of progress