

Mitigating Corruption Risks in the Eurasian Region

**Summary Report of IACA's Anti-Corruption Tailor-made
Training for representatives of Eurasian Economic Union
(EAEU) Member States, 25-27 May 2016**

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Background

The International Anti-Corruption Academy (IACA) is an international organization that is dedicated to developing and sharing knowledge about corruption risks, creating a basis for new and holistic approaches to anti-corruption education and research, and providing networking opportunities for a wide variety of stakeholders dealing with research, mitigation, and management of anti-corruption risks.

IACA, inter alia, organizes tailor-made trainings to share experience and practices in preventing and fighting corruption. The trainings also provide a basis for discussion about existing and future challenges for mitigation of corruption risks in different sectors. The 2016 Anti-Corruption Tailor-Made Training for Representatives of the Member States of the Eurasian Economic Union, hereinafter the EAEU Training, was co-sponsored by the Government of the Russian Federation.

The writing of this handbook was inspired by the EAEU training taking place from 25–27 May 2016. This programme was provided by high-level experts from different areas of anti-corruption and compliance, including *inter alia* (in alphabetical order):

- Mushtaq Khan, professor of economics at the University of London, member of the Committee of Experts on Public Administration at the UN and a member of the Panel of Experts on Policy Implementation at the World Bank, talked about *Shadow Economy and Corruption, Problems of Measuring It and Options to Reduce Both*, and about *Governance of Anti-Corruption*.
- Nadejda Komendantova, leader of the research theme “Governance in transition” and the project leader within the Risk and Resilience Program at the International Institute for Applied Systems Analysis (IIASA) as well as the senior research scholar at ETH Zurich, analysed anti-corruption case studies from around the world.
- Vladimir Lafitskiy, substitute member of the Council of Europe’s Venice Commission (Russian Federation), discussed with the participants about *Corruption in the Eurasian Economic Union and the General Heritage, Counteraction and New Challenges in Anti-corruption*.
- Samira Musayeva, legal officer of the United Nations Commission on International Trade Law (UNCITRAL) lectured on *PP Model laws and UNCITRAL Model Law and the EBRD-UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS Countries*.
- Johannes Schnitzer, managing director of the Schnitzer Law Company, shared his expertise in *Anti-Corruption in the Area of Public Procurement – Vulnerabilities, Lessons Learned and Best Practices*.

The training brought together anti-corruption and compliance practitioners from Russia, Kazakhstan, Kyrgyzstan, and Armenia. The programme started with an insight into the history and new challenges of anti-corruption measures in the Eurasian Economic Union. It also provided an overview of theoretical and methodological issues in the area of anti-corruption research such as existing

problems to measure the shadow economy and corruption. Furthermore, mitigation measures, governance risks, and participatory governance were discussed. Additionally, it offered participants deeper and more comprehensive insights to particular topics and areas of anti-corruption and compliance practices such as public procurement, existing international incentives to enhance public procurement regulation in member countries of the Eurasian Union, and existing compliance measures regarding public-private partnerships. The event also provided an overview of case studies covering research on anti-corruption risks and examples of existing tools and methods of research on corruption, participatory governance, and measures for stakeholders, and civil society involvement in decision-making processes in order to mitigate corruption risks.

During the third day of the training, participants discussed the preliminary structure and ideas for the subject good practice guidebook. Their feedback was collected to improve the guidebook's quality, clarity, and structure. This discussion was also very helpful to understand which topics would be most useful for practitioners who deal with corruption problems.

Chapter 1: Introduction

1.1. Definition of corruption

The counteraction logic for any negative phenomenon dictates the importance of forming an understanding of the nature and boundaries of this phenomenon. In this context, corruption is not an exception. Notwithstanding great interest among the scientific community on the topic of corruption, its conceptual and categorical framework continues to be the subject of contentious debates. Often the complex, diverse, and constantly evolving nature of corruption is not taken into account, which holds back the development of comprehensive counteraction strategies.

Throughout history, the definition of corruption has been constantly evolving and improving to provide to society the most comprehensive description. For example, in Roman law the term "corrumpere" referred to, *inter alia*, an activity of several individuals aimed at disrupting the normal course of judicial process or corporate governance. Nowadays, the international perception of corruption is characterized by a trend to expand its interpretation.

One of the first internationally recognised documents, the *Code of Conduct for Law Enforcement Officials* (adopted by the UN General Assembly on 17 December 1979), states that national law shall determine the definition of corruption. Hereafter, the following definition will be used: "*the execution of any actions by an official or omission in the area of his official powers for remuneration in any form in the interests of a person giving this remuneration with violation of the employment position instructions and without their violation*"¹. The United Nations Convention Against Corruption (UNCAC), adopted in 2003, is the legally binding universal anti-corruption instrument and is recognized by the global anti-corruption community as the overarching tool in the fight against corruption. It is worth noting that the Convention mentions several forms of corruption and identifies a set of standards, measures and recommendations to fight this phenomenon, but does not provide a legal definition for corruption.

The international community utilizes several definitions, but one in particular is most widely used: *the abuse of entrusted power for private gain*. Hereafter, this definition will be utilized. This definition is being used by very important stakeholders in the fight against corruption, such as Transparency International². It also appears to be among the most comprehensive ones, *inter alia* because "entrusted power" encompasses both corruption in the public and private sector. The latter was often missing in previous classifications of corruption, resulting in partial definitions. For instance, a 1997 World Bank report on the role of the state in

¹ United Nations Human Rights Office of the High Commissioner, (1979). Code of Conduct for Law Enforcement Officials. Adopted by General Assembly resolution 34/169 of 17 December 1979. Retrieved on 14.07.2016 from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

² Transparency International. How do we define corruption? Retrieved on 14.06.2017 from https://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/

the modern world only includes the public sector component: corruption is "an abuse of the state power for private gain".³

The OECD, on the contrary, is aligned with Transparency International's definition and describes corruption as an "abuse of public or private office for personal gain"⁴. Thus, this term usually refers to disrupting politicians, employees of the state apparatus, business people, and other persons from performing their official duties in order to promote personal, family, or group interests for the purpose of enrichment or improving their social status.⁵

It is worth noting that, on the one hand, corruption in its classical representation is deemed to be a phenomenon harmful to society, which goes outside the bounds of ethics, legislation, and economic and political orders. On the other hand, corruption is a product of society and social relations. Society establishes appropriate practices and determines what, under which conditions and with what consequences is deemed to be corruption. In this regard, it is necessary to take into account an opposing viewpoint, in which corruption is presented as an organic institutional element of the economic and political processes.

Furthermore, it is necessary to recognize the existence of other definitions of corruption. According to the Council of Europe's *Civil Law Convention on Corruption* (Strasbourg, 4 November 1999), corruption means "*requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof*" (Article 2).⁶ This tells that the definition of corruption is not only narrowed down to giving or accepting bribes, but further expands to cover the requesting and offering. In addition, any other undue advantage or prospect can be considered as a bribe.

1.2. Historical perspectives on the corruption phenomenon

In order to fight corruption, it is important to uncover its origins. Corrupt practices have been known to human society since ancient times. Numerous historical records prove that the corruption phenomenon has existed for thousands of years.⁷ The law of the Roman Republic imposes the death penalty on corrupt judges. The Magna Carta of 1215 and the Ordinance for the Justices of 1346 in England require just legal processes and mitigation of corruption among judges. The corruption phenomenon is encountered in the writings on statesmanship, religion, and legal

³ World Bank (1997). *Helping Countries Combat Corruption: The Role of the World Bank*, Washington, DC, 1997

⁴ OECD, (2008), OECD Glossaries, "Corruption", A Glossary of International Standards in Criminal Law, OECD Publishing, 2008

⁵ Khabrieva, T., (2012). *Corruption: Nature, Types, Counteraction*. Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2012. Retrieved 27.08.2016 from http://humanrights.mofidu.ac.ir/article_23677_b232c15ca96c83445436065ee237bfaf.pdf

⁶ Council of Europe (1999). *Civil Law Convention on Corruption*. European Treaty Series No. 174. Council of Europe. Strasbourg, 4.XI.1999 Retrieved on 24.08.2016 from <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f6>

⁷ Maksimov, S., (2000). *Corruption management bases (nation-wide business ethics system)*, 2000.

literature of Egypt, Mesopotamia, Judea, India, and China, namely in centres of ancient civilizations. In the Ancient Greece, for instance, the myth of Prometheus tells that with the stolen fire, mankind received also the object of corruption aspirations for persons maintaining this fire. Aristotle considered fighting corruption as the basis for ensuring the stability of the state.

Corruption in ancient Asian states, specifically in ancient China and Japan, is distinguished by certain characteristics, largely determined by prevailing religious beliefs. Thus, Confucianism defined the state as “a big family”, where giving presents to elders was considered to be an accepted standard of conduct in the ancient Chinese tradition. The basis of the social structure in China was Confucianism — called “guanxi” (literally: ties, relations) — a system of informal social relations usually built on a family (clannish) principle.⁸ In order to “improve the effectiveness” of anti-corruption efforts in the public service system, the central authorities began to put not only greedy officials but also their families to death.⁹ The ancient Indian treatise on statecraft “Arthashastra” (4th century BC) emphasizes that the most important challenge that the king faces is a fight against embezzlement of state property. The famous laws of Hammurabi also mentioned official corruption.¹⁰

Throughout the course of Russian history, various “Asian” (imperial) bureaucratic models were combined and a mixture of Byzantine and Tatar policies dominated until the 18th century. The emergence of corruption in Russia as a social phenomenon is closely connected with societal traditions in the period of the state formation in Russia in the 9th-10th centuries. Corruption showed itself in various forms. It was a so-called “compliment” that was offered in advance by a petitioner for successful business conduct. Clerks were given “promises” for the acceleration of specific jobs and law infringements. In ancient Rus' the administrative system was based on so-called “fief-offices”. The local representatives of the central administration did not draw a salary and were supported or “fed” by the population. The amount of such “maintenance” was determined by official documents and customary practice. With such a management system, no illegal bribes in the modern sense of the term existed.

By the end of the 17th century there were three kinds of offerings to officials in Russia. The most common offering was a fee for technical jobs such as documents processing for example. Gifts to officials were equally often given. They were called compliments or commemorations, which were not considered a corrupt practice, but a token of respect for the authority. A promise was thought of as being an abuse of “feeding”, as exceedance of statutory criteria.

⁸ Adams, O., (2001). Anticorruption efforts in PRC in the reform phase (1978-2000). Thesis of cand. of sciences (politics), 2001, p. 32.

⁹ Adams, O., (2001). Anticorruption efforts in PRC in the reform phase (1978-2000). Thesis of cand. of sciences (politics), 2001, p. 29.

¹⁰ Vantsev, C., (2001). Problem of legal definition of the concept of corruption. Corruption in Russia. Information and analytical materials, 2001, Issue 3, p. 5.

The first mention of corruption in ancient Rus' in the form of "promises", i.e. illegal gratification, came in the Dvina Charter of the 14th century.¹¹ The bribery of court nobility and other officials, which was encouraged by the "feeding" system as well as the complete lack of rights of the lower classes, became a national calamity.¹²

The surviving monuments of law suggest that corruption of officials emerged simultaneously with the appearance of the ruling elite (i.e. leaders, princes, judges). The Law Book of 1497 prohibited state officials from receiving material assets in the conduct of court cases and complaints. Punishment for the commission of this crime called for a three-fold compensation to the amount of a claim and all court fees to the petitioner. In addition to legal liability, the guilty person was subject to imprisonment. Ivan the Terrible was the first to introduce the death penalty as a punishment for extreme bribes. The issues of criminal liability for bribery and other forms of profit-motivated misconduct were reflected in the Council Code adopted in 1649.

Under Peter I, corruption and the fight against it became a frequent theme. One representative case is an episode in which the Siberian governor Gagarin was accused of corruption and hung after several years of investigation. Just three years later, Mr. Nesterov, the Gagarin's accuser, was quartered for bribery. On 24 December 1714, Peter the Great issued a decree toughening the punishment for profiteering misconducts by officials of the public and administrative authorities. The decree introduced criminal liability for aiding and abetting in profiteering misconduct and failure to report these crimes.

During the reign of Catherine the Great, sanctions for bribery were not as harsh as they were during the reign of Peter the Great. According to the Criminal and the Remedial Penal Code of 1845, a public official receiving remuneration without a legal provision was subject to a custodial sentence for a period from one to three years, or whipped with 70 to 80 lashes and conscripted to forced military service for a period from two to five years. Russia reached its most extreme level of corruption in the last years of the reign of Emperor Nicholas II, in which senior government positions were bought and sold with the direct participation of Rasputin.

Changes to the political system and form of the government of the Russian state carried out by the Bolsheviks in October 1917 did not change the practice of bribery and other forms of profiteering misconduct. Bribes were given and taken by working class representatives, who took the upper hand. The USSR and other countries of socialist orientation were by no means free of corruption, including in the era of the Stalin's totalitarianism. Corruption scandals in the Soviet Union in the period of stagnation (such as those involving the fishing and cotton industries, or the Shchelokov-Churbanov case) were widely known. The demise of the Soviet Union heralded a new economic, political, social, intellectual, and foreign policy environment, and since then corruption in Russia has acquired a new color as well as new dimensions and proportions.

¹¹ Maksimov, S., (2000). Corruption. Law, Liability. YurInfoR, 2000. p. 8.

¹² Astanin, V., (2001). Corruption and fighting corruption in Russia in the second half of the 16th – 20th centuries (criminological investigation), Thesis of cand. sc. (Law), 2001.

1.3. Impacts of corruption

Corruption has a devastating effect on the overall functioning of almost every state and public institution globally. Therefore, it is impossible to effectively modernize economies and ensure progressive social and political development without solving the problem of corruption.

Broadening political and economic cooperation between states, as well as the increasing globalization, has made corruption an international problem. It has an influence not only on emerging economies, but also on highly developed countries.

Corruption builds a negative image of the state in the international arena and prevents foreign investments in national economies. The instances of corruption are diverse and present in the economic, financial, social, and political spheres. They can be found not only in government structures, but also in banking, financial, and social institutions, as well as in business structures. Corruption is growing in judicial systems, procurator authorities, and other law enforcement entities.

The reinforcement of authoritarian regimes results in reduced popular influence on governments, the concentration of strategic decisions in small groups of individuals, and compromised normal social relations. Government corruption replaces constitutional institutions and allows government workers to enrich themselves. Life is generally worse, as political and economic endeavours are undermined by criminal activity. This inevitably raises public protests. As a result, revolution, violent changes of political leadership, and national economic collapse contributes to tragic consequences: the loss of sovereignty, violations of human rights, and serious inter-state conflicts.

Corruption enfeebles not only state and social institutions, but also affects the public perception of society and the civil services. Civil duties become seen as an opportunity for personal enrichment. Corruption has also adverse effects on the current state of law and legal practice. In some cases, corruption-promoting norms are integrated in normative acts at the preparatory stage and its follow-up, which legalizes corruption offences. The lack of an effective mechanism to implement anti-corruption acts also leads to inaction of law. Money laundering, including laundering proceeds of corruption, causes substantial damage to the system of redistribution of national wealth and contributes to further spread corruption, organized crime, and the financing of terrorist activities.

In recent decades, new areas of corruption risks have emerged and brought new challenges for the governance of public projects. Public-private partnerships (PPPs) are one of the latter areas. Due to a number of reasons, such as demographic development, the challenges of the globalized economy, and the need for further infrastructure deployment, constraints on the public budget increased. One of the answers to this development was to outsource components of public services to the private sector. This was possible with, *inter alia*, the help of PPPs.

There are many definitions for PPPs. The Organisation for Economic Co-operation and Development (OECD), for instance, refers to the provision of assets which were traditionally regarded as governmental ones, such as hospitals, schools, prisons, roads, tunnels etc.¹³ The International Labour Organization (ILO) speaks of the voluntary character of cooperation between state and private stakeholders in order to achieve common goals.¹⁴ There is a significant difference between PPPs and privatization. The term privatization describes a situation when a private company completely incorporates an asset and all responsibility for the services. A PPP, on the other hand, is when an asset remains within the public sector and the responsibility for delivered services is shared between private and public actors. Experience has shown that PPPs provide certain benefits, such as a more efficient service delivery, the sharing of risks and creation of incentives for service deliveries. However, PPPs can, under certain conditions, also increase the risk of corruption and its social and political costs. There are several cases when PPPs failed and even resulted in civil unrests.

Corruption is regularly a barrier for development and investment. It has also become a significant obstacle for the deployment of new technologies. Large-scale infrastructure projects, in particular, are prone to such corruption risks as bribery, requiring gifts and other advantages for illegal actions, facilitation payments, or so-called speed-off payments. All these risks are manifestations of poor governance, such as favouritism or nepotism. The review of existing and newly deployed large-scale energy infrastructure projects, as a case study and an example of PPPs for new technologies such as concentrated solar power (CSP), showed that bureaucratic procedures were perceived as the most complex area in a project cycle and also as the area most prone to corruption risks.¹⁵ The number of bureaucratic procedures, uncertainties, and the lack of transparency were perceived as being, by far, a more significant barrier for investment into CSP projects than the instability of national regulations, absence of guarantees, low level of political stability, or the lack of support from local governments. The lack of transparency and complexity of regulatory procedures was perceived as the most likely and serious risk.¹⁶ Permitting procedures were the most problematic areas of the project cycle, followed by the construction phase. Operation and maintenance seem to be the least problematic areas of the project cycle and also the least prone to corruption risks. As the lack of transparency and the complexity of regulatory procedures is the most likely risk, the sub-categories of this risk are the expectation of money and gifts by officials, misuse of insider knowledge and confidential information, manipulation of

¹³ Organisation for Economic Cooperation and Development (2012). Recommendation of the Council on Principles for Public Governance of Public-Private Partnerships. Organization for Economic Cooperation and Development. Retrieved on 25.08.2016 from <https://www.oecd.org/governance/budgeting/PPP-Recommendation.pdf>

¹⁴ International Labor Organisation (2008). Labor clauses in public contracts: Integrating the social dimension into procurement policies and practices. International Labor Conference 97th Session, 2008. Retrieved on 18.08.2016 from

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_091400.pdf

¹⁵ Komendantova, N., Patt, A., Barras L., Battaglini, A., (2012). Perception of risks in renewable energy projects: The case of concentrated solar power in North Africa. Energy Policy, 2012, pp.103-109.

¹⁶ Komendantova, N., Patt, A., (2011). Could corruption pose a barrier to rollout of renewable energy in North Africa? In: Global Corruption Report: Climate Change, Transparency International, Earthscan, London, UK, 2011, pp.187-193.

regulations, contracts and loans, unauthorized sale of public property and licenses, as well as selection permission for tax evasion and the falsification of records.¹⁷

1.4. Participatory governance to mitigate corruption risks

It is impossible to effectively fight corruption without support from civil society. For the successful implementation of a national anti-corruption policy, it is necessary to disseminate information about the negative impacts of corruption to every member of a society, from schools to public servants. One of the state's primary task is to engage institutions of civil society in identifying and preventing corruption.

Participatory governance, one possible way to prevent corruption risks, is the involvement of stakeholders at different levels of the operation, from information sharing to consultation or even citizen control. It allows for different governance capabilities to enhance growth and development. Participatory governance is based on the idea of an inclusive institutional structure and state capabilities. Ideally, participatory governance makes the market so efficient that state intervention is no longer needed in order to correct market failures, which is, however, a very rare case. Open and transparent governance, such as the Extractive Industries Transparency Initiative (EITI), is one of the most well-known means of mitigating corruption risks.

As discussed by Passas in his lecture at IACA, there are several good governance mechanisms to mitigate corruption risks, such as:

- Establishment of clear lines of accountability;
- Identification of beneficial ownership of private companies;
- Clear regulatory frameworks;
- Risk assessment;
- Due diligence;
- Ongoing monitoring of contracts;
- Coordination mechanisms;
- Anti-corruption clauses;
- Disclosure of final beneficiaries;
- Obligations to inform counterparties on any case of corruption;
- Answers to requests about implementation of anti-corruption policies;
- Right given to a partner to audit anti-corruption procedures;
- Detailed justification of prices;
- Rejection of incentives for staff of business partners in their own interests;
- Conditions to ensure the confidentiality of anti-corruption procedures;
- Prevention of negative consequences for individuals revealing corruption.

Collective action is one of the forms of participatory governance to deal with corruption risks. It foresees collaboration between private and public actions,

¹⁷ Komendantova, N., Pfenninger, S., Patt, A., (2014). Governance Risks as Barriers for Deployment of Renewable Energy Projects in the Mediterranean Region. *International Spectator*, 2014.

awareness raising measures and trainings on anti-corruption standards. There are several types of collective action, which range from anti-corruption declarations and initiatives with anti-corruption standards to integrity pacts. However, many questions are still open in the governance-development debates. These questions are, among others:

- Are features of participatory governance only desirable goals or are they necessary preconditions for development?
- Is there an effective enforcement mechanism for anti-corruption practices?
- To which extent it is achievable under the conditions of developing countries?
- How would this mechanism enhance growth?
- What are other important institutional rules and governance capabilities for sustainable growth in a country?

Evidence and research show that issues like economic stagnation and bad governance are almost always connected. For instance, an unaccountable government could be prone to rent seeking and corruption. These situations would result in weak property rights and welfare-reducing interventions, followed by high transaction costs. This increase in costs would, in turn, lead to further economic stagnation. At the same time, features of participatory governance are connected with economic prosperity. These connections are often based on democratization, decentralization, accountability reforms, and economic policies that both stimulate the market and protect citizens.

In connection with participatory governance theory, corruption is often regarded as behaviour of a public authority stakeholder, which deviates from formal rules of conduct. As a result of this behaviour, resources are transferred from potentially productive investments to unproductive activities or low quality services through bribery. Such behaviour impedes growth as it creates barriers for productive activities in expectation of speed-off payments. It is the most significant barrier for investment. It creates uncertainties in policy, as rules can be changed or subverted according to the will of corrupt officials. In property rights, corruption can lead to expropriation and asset capture. The results of corruption and bad governance are reflected in poor quality investments because project developers can provide low-quality services by avoiding regulations. There are also other negative outcomes of corruption, such as illegal rent-seeking behaviour. First, it can undermine the legitimacy of the state and can even contribute to growing political instability in societies when people lose their trust in the governing authorities. Second, it decreases the force of formal rules and enforcement mechanisms and erodes the entire regulatory structure. It also undermines changes in the regulatory structure and the creation of more efficient regulations. There are many ways to enforce rule-following behaviour and to reduce corruption. One of them is by reducing or removing discretion. This can be done by removing unnecessary functions and by introducing discretion-reducing procedures. Another way is to change the cost-benefit equation of corruption for public officials, namely, by raising the costs of corruption and the benefits of rule-following behaviour. This can include several measures such as raising the salaries of public officials, which increases their

concern about losing their jobs, the introduction of additional penalties, and the promotion of the rule of law.

It is also important to keep in mind that there are not only individual drivers for rule-violating behaviour but also structural drivers. When corruption is an individual choice, it can be affected by changing the costs and benefits of corruption for rule breaking officials. Individuals in corrupt political and bureaucratic systems who refuse to participate in corrupt practices may face serious challenges by losing access to the informal resource flows that are common to these systems. Also, bureaucrats and politicians might protect each other, thus, making strategies to reduce corruption inefficient. Therefore, as a first step, it is important to identify the corruption activities which are the most damaging but easily reduced.

Prof. Khan developed the typology of corruption, which includes several classifiers, dependent on the state function (legal, illegal, and informal) and underlying state function (as beneficial or damaging). Following this clarification, he includes four types of corruption: market-restricting corruption, state-constraining corruption, political corruption, and predation.¹⁸

1. Market-restricting corruption includes the damage of both underlying and legal state functions. It is associated with a violation of market restrictions. One of the strategies to deal with this type of corruption is to remove damaging state functions, which restrict competition, such as creation of monopolies or industrial protectionism.
2. State-constraining corruption is associated with the distortion or evasion of necessary state functions. This type of corruption is typical for developing countries. Under this type of corruption, all state interventions create “rents.” Outcomes depend upon whether these rents can be managed or not by the enforcement of the appropriate conditions. Often these rents can be captured by powerful organizations, which might lead to the failure of development policies. This can also lead to a resource curse in society. Outcomes of this type of corruption are unclear, as evidence shows they can be positive and negative. Possible strategies to deal with this type of corruption can include the protection of state functions, enhancement of compliance mechanisms, strengthening of governance, and the legalization of some forms of rent seeking. Successful examples of management of this type of corruption are known in countries like South Korea in the 1960s or China in the 1980s. Both are characterized by a strong state, which can allocate or withdraw support dependent on the conditions of performance. In contrast, if the state is weak, the rent-seeking organizations can block decisions and rents will be allocated to powerful organizations. Other anti-corruption measures can include improved bureaucratic procedures and capabilities as well as the design of development policies in a way that would not require the disciplining of powerful organizations.

¹⁸ Khan, M., (2012). 'Beyond Good Governance: An Agenda for Developmental Governance.' In: Sundaram, Jomo Kwame and Chowdhury, Anis, (eds.), *Is Good Governance Good for Development?* Bloomsbury Academic, London, 2012, pp. 151-182.

3. Political corruption can be associated with informal decisions for political stabilization and the transformation of property rights. This type of corruption is typical for developing and emerging countries with rapidly growing and diversifying economies. There is no evidence that democracy in developing countries can reduce this type of corruption due to its often clientelistic character and patron-client politics structure. This type of corruption could be addressed in the middle term. Anti-corruption strategy, in this case, should include an increase of fiscal capacity to enable rule-following politics. Improper democratization or decentralization strategies can even increase rent-seeking behaviour and create greater political instability.

4. Predation and theft are connected with destructive both political corruption and expropriation and have adverse outcomes in political and economic terms. Any change in political conditions which reduces the time of the ruling coalition and its ability to control lower-level organizations can create incentives for predation. Another feature typical for developing countries is the fragmentation of ruling coalitions and the engagement of factions in short-term rent-seeking behaviour. The anti-corruption strategy in this case should strengthen legitimate enforcement capacities; it should rebuild viable and legitimate ruling coalitions and robust bureaucratic organizational capabilities. There is also a need to leave as much space as possible between political and developmental rents. While political rents are required for a political system's operation, a clear separation should be drawn between developmental and redistributive rents.

Chapter 2: Legal Basis and Instruments to Mitigate Corruption Risks

2.1. International anti-corruption regulations in the area of public procurement

Every state spends a significant part of its annual budget purchasing goods, services, and undertaking public works. According to the OECD, each year states spend around a combined 4 trillion USD on public procurement on goods and services globally¹⁹. This is why the system of public procurement is highly exposed to corruption risks.

Up to now, there is no common definition of corruption in the area of public procurement, but some international experts agree that a working definition is the “abuse of the public position with the aim to gain private benefits”.²⁰

In the area of public procurement, forbidden types of activity include:

- Bribery: the act of giving money, goods, or other forms of recompense to a recipient in exchange for an alteration of their behaviour (to the benefit of the giver). Bribe is defined as the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or legal duty²¹.

In the process of public procurement, there are such risks as the trade of influence of public servants, simplification of procurement procedures in the interest of some market participants, and deviation from the norms of public procurement regulation to the benefit of some participants.

- Fraud: consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury²².

A related activity, collusion, is an agreement between two or more parties, usually illegal and secretive, with the aim to limit open competition by deceiving, misleading, or defrauding others of their legal rights or to obtain an objective forbidden by law, typically by defrauding or gaining an unfair advantage on the market. These activities include falsifying facts with the goal of influencing the process of procurement and the implementation of contracts that could be damaging to the contracting side.

The damage from corruption makes a significant share in the overall cost of contracts. That is why several international organizations propose different methods of exchanging of information and experience in order to further develop instruments for mitigating corruption risks in the area of public procurement.

¹⁹ Organisation for Economic Co-operation and Development (2009). Principles for Integrity in Public Procurement. Organization for Economic Cooperation and Development, 2009, retrieved on 16.07.2016 from <http://www.oecd.org/gov/ethics/48994520.pdf>

²⁰ Black Law Dictionary. Retrieved on 23.07.2016 from <http://thelawdictionary.org/corruption/>

²¹ Black Law Dictionary. Retrieved on 15.07.2016 from <http://thelawdictionary.org/bribery/>

²² Black Law Dictionary. Retrieved on 15.07.2016 from <http://thelawdictionary.org/fraud/>

In practice, there is a wide range of instruments to mitigate corruption risks, which include:

- Laws on public procurement and other legal acts in the field of public procurement: some of the key instruments in fighting corruption. They establish norms and regulations for public tenders and help to further develop the legal and regulatory bases for the whole procurement process, from the initiation of tender up to conclusion and implementation of contracts.
- E-procurement: a procedure involving the organization and conducting of transparent, objective, and efficient procurement, based on the principle of competitive trading. The goods, works, and services are purchased via the Internet in real time or offline. Electronic platforms serve as a basis for exchanging data, which reflects all information about the tenders, procedures, and winners of the contracts. Information, which is reflected in the electronic public procurement portal, has an open character in order to give society a monitoring opportunity. Today, this is one of the newer and more efficient instruments to fight corruption.
- Bid challenges: a system that allows participants, or potential participants, of the tender to register complaints about violations of the legal norms of public procurement legislation.
- Complaint review commissions: instruments for the efficient detection and mitigation of corruption, based on complaints from the participants of tenders as well as from the procuring entities.
- Suspension and debarment of procurement: can follow violations of the tender procedures based on justified complaints and, thereby, the procurement process can be suspended. In the case that significant violations of procedures are detected, the participants of the tender can be excluded from the procurement procedure and blacklisted, and the procuring entities can be brought to justice.
- Oversight: usually implemented by the executive authority body that conducts policy, regulation, and control functions in the area of public procurement of the country.
- Monitoring of public procurement: a system of permanent observation accomplished by the collection, classification, generalization, and analysis of collected information about tenders, including the implementation of procurement plans. It is conducted with the goal of preventing corruption risks and creating sufficient levels of transparency with respect to tenders' conduct.
- Audit: the analysis and evaluation of the planning process of public procurement, including its efficiency and the results of bidding. The audit includes all stages of planning and also the conclusion and implementation of the contract.
- Tender Board: a collegial organ which is usually formatted by the organizers of the tender with the goal of conducting legal, transparent, fair, and efficient bidding processes, and to identify the winner according to the demands of the tender documentation.

- Whistle-blowing: when a person reports any illegal, unethical, or incorrect activity that violates [in this context] public procurement procedures and anti-corruption norms.²³
- Corporate compliance programmes: parts of the internal system created for the identification and prevention of corruption and violations of law. It includes a code of ethics, which is a set of norms and rules, and represents a system of moral principles of conduct, which regulate the behaviour of public officials in the area of procurement. This programme identifies which types of behaviour should be promoted and which ones should be punished. It also includes tools to increase the qualifications of management staff.
- Prosecution: a curial activity, carried out by the prosecution intended to convict a suspect accused of prohibited activities during the public procurement process.

United Nations Convention against Corruption (UNCAC)

Public procurement is the process by which states purchase goods, works, and services by using public funds in order to satisfy the needs of the state so that it can efficiently carry out its functions. Today, public procurement is one of the most corrupt areas; each year, the volume of public procurement accounts for 15-30% of GDP²⁴, on average. In light of this, several international organizations developed a number of measures to fight corruption in the area of public procurement. The UNCAC has one of its aspects to fight corruption in public procurement. It is the first fully international document against corruption and was ratified in the 58th session of the UN General Assembly on 31 October 2003. The major aim of this Convention is to create a culture of active opposition to corruption and to influence the policy and law-creation processes in the countries that are Parties to the Convention and beyond.

Countries that ratified the UNCAC are recommended to develop and efficiently implement policies against corruption, including punishment for violations of anti-corruption regulations and norms. The Convention also includes detailed requirements on international cooperation in the areas of investigation and prosecution of corruption. The Convention calls for public procurement, which is based on objective criteria and an efficient system of controls, including the possibility to question procurement decisions and their criteria and to request the avoidance of all possible conflicts of interest. According to Article 9 of the UNCAC, each country is obliged to establish special procedures for public procurement, based on the criteria of transparency, competition, and objectivity in decision-making processes. Information about the conditions and procedures of procurement should be available to the public and accessible for some period before the beginning of the procurement process.

²³ Vandekerckhove, W., (2006). Whistleblowing and Organizational Social Responsibility : A Global Assessment. Ashgate, 2006.

²⁴ Cernat, L., and Kutlina-Dimitrova, Z., (2015). International public procurement: from scan facts to hard data. Chef Economist Note. DG Trade of the European Commission, 2015. Retrieved on 03.08.2016 from http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153347.pdf

United Nations Commission on International Trade Law (UNCITRAL)

UNCITRAL was established on 17 December 1966 by a resolution of the UN General Assembly. Its main goal is to help countries to develop regulation in the area of public procurement and to contribute to the understanding and implementation of international standards in participating countries.

Two public procurement laws were adopted by the UN in 1993 and 1994, and an additional law was adopted in 2011. There are several common elements in the laws of 1993, 1994, and 2011. However, the text of the 2011 law contains a more extensive application and provides more detailed information about certain areas, such as complaint mechanisms. They also include modern methods of procurement and a more instrumental approach.

UNCITRAL developed a unique draft law for handling public procurement that has become a model for the international community by showing international practices and example regulations. The model law also has parallels with the UNCAC in that its target is to fight corruption. It includes procedures and principles that aim to improve economic efficiency and prevent corruption risks in the process of public procurement. It requires transparency, fairness, objectivity, competition, and the absence of conflicts of interest in public procurement. The rule of transparency is a key principle in the fight against corruption. Abiding by the rule of transparency involves the publication of existing laws on public procurement, existing and required information about future procurement and its volumes, including estimations on tenders, and criteria for decision-making. The system of electronic procurement plays another key role as it contributes to more transparent procedures. The model law settles minimum requirements for transparency, such as the publication of the procurement results, procurement reports, and public information about all changes in procurement decisions and the possibility to question the results of the procurement process. The mechanism to question the results is one of the most important parts of the model law. According to this mechanism, every decision of a public body, organization, or institution can be questioned by any potential participant of the tender. The model law also includes sanctions for the creation of unfair advantages, conflicts of interest, and collusion, and it also includes a code of conduct for public officials.

The law represents a standard example for national regulations regarding procurement. It also includes international obligations for the following conventions and documents: agreements of the World Trade Organization (WTO) on public procurement and free trade, directives of the European Union, norms of international development banks, and others. All of these documents set goals such as promoting free markets, regulating projects, anti-corruption strategies, and efficient management.

According to Point 1 of Article 28 and the principle of competition, the model law recommends conduct for procurement with the open tender method, if there is no urgent or emergency need for another method, the procurement volumes are too

low, or the tender procedures are too complex. The open tender procedure requires the maximum number of participants and therefore reduces the risks of collusion between potential suppliers. The principle of objectivity is guaranteed by Article 7, concerning the rules of information exchange, Article 9, which is about criteria for selection and qualification, Article 10, about specification of trade items, and Article 11, about rules and criteria for estimations. According to the principle of objectivity, stakeholders might be excluded from the process on the basis of established criteria and procedures, which are allowed by law and are transparent from the earliest stages of the tender.

However, the model law does not regulate the measures to fight corruption in relation to the conditions of implementation of duties under contract, prohibition of activities in frame of criminal law, internal or external inspection, and controls from the side of law enforcement bodies, audits.

Interestingly, it also discusses the indicators of risk. For instance, extended transparency might lead to risks on the market, such as the creation of additional opportunities for illegal agreements between market stakeholders. It can also lead to abuse during the procurement procedure, for example, during preparatory conferences. This abuse might be possible due to the disclosure of information about preparatory selection and the disclosure of information about evaluations. At the same time, a low level of transparency could lead to a lack of accountability. This is a very delicate question of how to achieve a balance between these two parameters and, therefore, good knowledge of local market conditions, culture, and mechanisms of governance are crucial.

As discussed by Musayeva during her lecture at IACA, minimum requirements for the law include the publication of:

- All rules and norms in advance, including laws and regulations about state procurement, rules on information exchange, information about procurement, criteria and procedures of procurement, and also attachments with additional information;
- A report about procurement;
- Information about the period necessary for the publication of results;
- A public statement about annulation of state procurement and mechanisms for complaints.

There are also certain risks for the establishment of competition in the market. These risks include, in terms of the definition of competition, if this is a real or fictive competition, the extent of monopolization of the market, the definition of narrow needs (for example, electricity and power stations), illegal agreements between participants in the market regarding the dampening of trade, additional trade, changes in the proposed price, subcontract and contract tasks. The rules of procurements from one source should also include the list and links to the results of trades. They should also show deals which did not take place. They should contain the disclosure of information about achieved and start prices and excessive use of electronic reverse auctions.

This corruption risk can be mitigated with the introduction of a common law. International open trade should be used under the following conditions: urgency and extreme need, procurement on low prices, and simple or complex procurement. Article 28 settles these rules for alternative methods to promote greater competition.

However, according to Musayeva's lecture at IACA, the model law does not regulate other possible anti-corruption measures, such as the following:

- Control over the implementation of contracts;
- Forbidden activities;
- Questions connected to criminal law;
- Internal and external audit, including the involvement of observers and active citizens;
- The creation of measures which support the auditing process, such as culture, professional education, and rewards for good auditing work.

World Trade Organization (WTO) and Government Procurement Agreement (GPA)

The WTO and the GPA include a comprehensive agreement on public procurement between participants of the WTO, which was developed by the round of trade negotiations in Uruguay in 1994. This agreement is one of the central parts of the General Agreement on Trade and Tariffs (GATT). Almost all member states of the WTO have signed this agreement. The goal of the WTO-GPA is to create conditions for international competition, to provide equal rights to all stakeholders, and to create conditions for participation in public procurement procedures on the territory of any of the member states of the WTO. The agreement requires transparent procedures of public procurement that are free from conflicts of interest. It also requires fighting corruption with instruments like the UNCAC. In 2012 the text of the WTO-GPA was revised and, according to Article 4, all procedures of public procurement should be implemented with the method of open tender, selective tender, or limited tender based on the principles of transparency and neutrality.

2.2. Cooperation with law enforcement organizations and mutual cooperation to verify corruption schemes

Cooperation of law enforcement organs plays a large role in mitigating corruption. However, such cooperation can only be successful if there are common goals and mutual understanding.

The following are forms of cooperation:

- Interdepartmental meetings of heads of law enforcement and federal agencies;

- Checks on execution of anti-corruption legislation by a concrete organ of executive power;
- Joint studies;
- Organization of joint seminars, conferences, and scientific colloquiums;
- Organization of joint events between law enforcement organizations and other state organs, as well as civil society and parliamentary commissions on questions of corruption; and
- Conducting coordination meetings.

There are additional forms of cooperation between organs of state power and law enforcement organs including:

- Analysis of materials that were submitted by law enforcement organs to federal state organs about law violations committed by public servants;
- Submission of requests to law enforcement organs to gain necessary and transparent information;
- Conducting checks concerning lack of transparency, inadequate information, as well as misconduct and abuse of public position;
- Submission of materials about planned or committed crimes and administrative violations in the federal state organ to law enforcement organs;
- Cooperation with law enforcement organs to conduct surveillance of anti-corruption measures in normative and legal acts; and
- Cooperation with law enforcement organs to conduct investigations of crimes connected with corruption.

Concerning these targets, the following is advised for cooperation between the staff in charge of corruption prevention and officials from law enforcement organs:

- Cooperation in the conducting of checks for the completeness and accuracy of data on income, property, and other assets provided by public servants;
- Cooperation in the enforcement of joint codes of conduct among public officials; and
- Cooperation in the audit and control of corruption investigation activities.

The success of these measures depends on the level of professionalism of the staff in the law enforcement organs.

2.3. International Programme for Monitoring Corruption (MONCOR)

Over the past two decades there has been a qualitative change in perceptions of the public danger of corruption at both the international and national level. Indices of corruption, calculated with respect to public authorities, municipalities, and business entities have a serious impact on these structures' reputations and assessments of their management processes. Furthermore, they are increasingly being used to assess the state of the fight against corruption in every country.

Thus, the need for objective assessment of corruption indices and their dynamics is evident. To this end, from 2011–2014 the Institute of Legislation and Comparative Law under the Government of the Russian Federation carried out interdisciplinary scientific research, resulting in the development of MONCOR.

Modern approaches to assess the level of corruption mainly rely on sociological research methodologies initiated by such organizations as the World Bank, the International Monetary Fund, and the European Bank of Reconstruction and Development. The main purpose of MONCOR is the creation of techniques that enable carrying out not only detailed measurements of corruption manifestations, but also to offer recommendations on possible improvements of legal regulation in this sphere. MONCOR is based on an interdisciplinary scientific approach identifying the level of corruption, combining methods of legal, economic, sociological, political, and other sciences that account for objective indicators.

In particular, it is proposed to use legal indicators that allow identifying the level of development of the institutional framework of combatting corruption, the state of anti-corruption legislation, and practice of its application. Under this approach it is proposed to carry out a regular assessment of international anti-corruption obligations undertaken by a particular country, providing a transition from the selective legislative amendments to the formation of a comprehensive model of legal regulations. In addition, significant consideration is paid to monitoring and assessing criminal manifestations of corruption.

Economic indicators assist in identifying the real scale of corruption and its impact on social development. The sociological indicators aimed at the study within at least three social groups (general population, professional legal community and human rights community as well as entrepreneurs) will serve the same purpose. The programme will use cross-country assessments of corruption made by such organizations as the World Bank, Transparency International, GRECO, and others to improve the level of completeness and objectivity of international scientific monitoring. The level of corruption existing in a particular country, expressed as the corruption index, will be calculated based on the total sum of all indicators. This approach aims at the exclusion of arbitrary and biased assessments that may distort the true state of affairs.

MONCOR is constructed in a way that allows the adapting of its techniques quickly to any country and legal system. This instrument takes existing experience from Russia and others into account, whilst assessing of corruption manifestations in the various spheres of public life. It is based on traditional economic and sociological methods of analysis, which are supplemented by the latest developments of various sciences related to economics and sociology (criminology, theory of system analysis, mathematical analysis, and cybernetics). The indicators rest on the principle of neutrality with respect to different political and socio-economic systems.

An important component of MONCOR is a socio-psychological assessment of corruption, including the attitude of the population, both at a national and regional level as well as various social groups, with the aim of determining their

predisposition for corrupt behaviour. Moreover, MONCOR assesses the socio-psychological factors that contribute to the corrupt behaviour of individuals.

The advantage of MONCOR is that it can help to provide self-evaluation without waiting for the results of research conducted by, e.g., the World Bank, rating agencies, and non-governmental organizations. The proposed instrumentation allows the development of effective measures for prevention of corruption, which will have both theoretical and practical value for actors combatting corruption. In this case, detecting the early manifestations of corruption is the initial step in a more complex process of anti-corruption policy — the prevention of corruption.

The practical value of MONCOR is that its quite universal methods can be used to monitor corruption internationally, in various national programmes, and in the preparation of the regulatory framework for anti-corruption activities on other levels. Specific uses might include providing information and analytical activities for the study of corruption manifestation, their causes and determination, effectiveness of preventive measures at earlier stages, evaluation of identified anti-corruption indicators, forecasting the state of corruption and programming of economic and social development of the state and society, implementation and adjustment of anti-corruption programmes, and coordination of the activities of various actors combatting corruption. Therefore, scientific monitoring can identify corruption risks and their scale, as well as failures in law enforcement practice that provide opportunities for corruption.

In addition, the International Programme for Monitoring Corruption is aimed at identifying not only the statistics but also the dynamics of the development of this social phenomenon, which will allow taking timely measures to adjust legislation and law enforcement practice.

2.4. Indices to assess corruption in the Eurasian Region

As the historical and cultural overview above shows, corruption is a difficult phenomenon that cannot be measured directly, and it is difficult to obtain objective data on corruption.²⁵ The different existing tools to measure corruption risk do not create a holistic picture of corruption in a country, but these tools might provide a comprehensive measure of part of the corruption problem. For instance, Transparency International (TI) categorizes various tools into 5 broad categories:²⁶

1. Aggregate indices
2. Expert country assessments
3. Public opinion surveys
4. Business surveys

²⁵ Rohwer, A., (2009). "Measuring corruption: A comparison between the Transparency International's Corruption Perceptions Index and the World Bank's worldwide governance indicators", 2009, p.1. CESifo DICE report 3/2009. Retrieved on 17.07.2016 from <https://www.cesifo-group.de/portal/pls/portal/docs/1/1192926.PDF>

²⁶ McDevit, A., (2016). "How to guide for corruption assessment tools", U4 Expert Answer, Transparency International and U4 Anti-corruption Resource Center, 2016, p.1. Retrieved on 23.07.2016 from http://www.transparency.org/files/content/corruptionqas/How_to_guide_corruption_assessment_tools_2016.pdf

5. Company assessments

Each of these categories and tools are summarized in Table 1.

Table 1: Tools to Measure Corruption

Category	Tools	Organization
Aggregate Indexes	Corruption Perceptions Index (CPI) Worldwide Governance Indicators (WGI) Ibrahim Index of African Governance (IIAG) Index of Public Integrity (IPI) Financial Secrecy Index (FSI)	Transparency International World Bank Mo Ibrahim Foundation Hertie School of Governance Tax Justice Network
Expert Country Assessments	Transformation Index (BTI) Sustainable Governance Indicators (SGI) Africa Integrity Indicators (AII) Open Budget Survey and Open Budget Index (OBI) Open Government Index (OGI) Global Right to Information (RTI) Rating, Open Data Index Government Defense Anti-corruption Index (GI) Country Policy and Institutional Assessments (CPIA)	Bertelsmann Foundation Bertelsmann Foundation Global Integrity International Budget Partnership World Justice Project Access Info Europe and Center for Law and Democracy Open Knowledge Foundation and Transparency International World Bank
Public Opinion Surveys	Global Corruption Barometer (GCB) Pan-European Survey on Quality of Government and Corruption at the National and Regional Level World Values Survey (WVS)	Transparency International Quality of Government Institute Network of Social Scientists Institute for Comparative Survey Research
Business Surveys	Enterprise Surveys Doing Business Global Competitiveness Report (GCR)	World Bank World Bank World Economic Forum
Company Assessments	Transparency in Corporate Reporting (TRAC) Defense Companies Anti-Corruption Index	Transparency International Transparency International

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Source: Transparency International

The overview of corruption risks based on the Corruption Perceptions Index (CPI), the Global Corruption Barometer (GCB), and the Global Competitiveness Index (GCI) allows the drawing of conclusions on corruption risks in the countries of the Eurasian region. Based on surveys and expert assessments of corruption, the CPI measures the level of perceived corruption in the public and political sectors, with “100” meaning “very clean” and “0” meaning “very corrupt”. This is a composite index, which uses twelve different data sources from the past twenty-four months from independent institutions specializing in governance and business climate analysis.²⁷

The GCB is a worldwide public opinion survey on perceptions and experiences of corruption. It provides an indicator of how corruption is viewed and experienced at the national level, and how efforts to curb corruption around the world are judged at the local level. It also measures personal experience of corruption risks in the past year, in general, and for specific institutions, like police, courts, etc.²⁸ The GCI measures “the set of institutions, factors, and policies that are important for the current sustainable development and the medium-term level of economic prosperity,” or the factors that drive productivity within a country.²⁹

It is composed of twelve pillars of competitiveness. The index takes into account the different stages of economic development of a country. Its three pillars are organized into three sub-indices: efficiency enhancers, innovation, and sophistication factors.

Table 2: Corruption Perceptions Index 2015

Nation	Score (out of 100)	Rank (out of 168)
Armenia	35	95
Russia	29	119
Kazakhstan	28	123
Kyrgyzstan	28	123
Belarus	32	107

Source: Transparency International

Under the CPI, the best scoring EAEU country is Armenia. With a score of 35, it holds the 95th place among 168 rated countries, although it should be noted that a score

²⁷ Transparency International (2016), Corruption Perceptions Index. Retrieved on 08.05.2017 from <http://www.transparency.org/research/cpi/overview>

²⁸ Transparency International (2016). Global Corruption Barometer. Retrieved on 10.05.2017 from <http://www.transparency.org/research/gcb/overview>

²⁹ World Economic Forum (2016). Global Competitiveness Index. Retrieved on 07.05.2017 from <http://www.gaportal.org/global-indicators/global-competitiveness-index>

below 40 is a strong indicator of the existence of systemic corruption in a country. Belarus has the 2nd best score (32), and Russia has the 3rd (29). Kazakhstan and Kyrgyzstan share 4th place, each with a score of 28³⁰.

The GCB findings in 2013 are even more interesting, although they do not contain data on Belarus. Based on a survey, the GCB measures perceptions of which institution is the most and the least corrupt within a country. In Armenia, the judiciary system is perceived as most corrupt (69% of all respondents indicated as such), while in Russia and Kyrgyzstan public officials and civil servants are considered most corrupt (92% of respondents in Russia and 90% in Kyrgyzstan). In Kazakhstan the police are the most poorly viewed (66%)³¹. Regarding the least corrupt institution, these are mainly perceived to be religious organizations, considered corrupt by 40% of surveyed Russians, 25% of Kyrgyz, and 15% of Kazakhs. In Armenia, NGOs are perceived as being the least corrupt institution (32%), although the option “religious organizations” was not available for survey respondents in Armenia.

The indices and surveys provide information not only about perceived corruption, but also about involvement and engagement of stakeholders as a way to address corruption risks. More than 50% of all respondents in Russia, Kazakhstan, and Kyrgyzstan think that empowerment of lay people can address corruption, while in Armenia this figure is 37%.

Table 3: Global Corruption Barometer 2013

Nation	Most Corrupt Institution	Least Corrupt Institution	Ordinary Citizens Can Make a Difference
Armenia	Judiciary (69%)	NGOs (32%)	Agree (37%)
Russia	Public officials and civil servants (92%)	Religious bodies (40%)	Agree (45%)
Kazakhstan	Police (66%)	Religious bodies (15%)	Agree (44%)
Kyrgyzstan	Police (90%), public officials and civil servants (90%)	Religious bodies (25%)	Agree (38%)
Belarus	NA	NA	NA

Source: Transparency International

Another question concerns management of public funds. The Global Competitiveness Report, with sub-indicators such as “Diversion of Public Funds” and “Wastefulness of Government Spending”, partly provides insights on this subject.

³⁰ Transparency International (2016). Corruption Perceptions Index 2015. Retrieved on 28.07.2016 from <https://www.transparency.org/cpi2015/>

³¹ Transparency International (2013). Global Corruption Barometer. Retrieved on 25.09.2016 from <https://www.transparency.org/gcb2013>

The best score among countries of the EAEU is Kazakhstan, which received 3.6 points for the sub-indicator “Diversion of public funds” and occupied the 59th place among 140 nations.

Table 4: Global Competitiveness Report 2015-2016

Nation	General Score and Rank	Diversion of Public Funds	Wastefulness of Government Spending
Armenia ³²	4.0 (82/140)	3.2 (77/140)	3.0 (78/140)
Russia ³³	4.4 (45/140)	2.7 (110/140)	2.8 (89/140)
Kazakhstan ³⁴	4.5 (42/140)	3.6 (59/140)	3.7 (41/140)
Kyrgyzstan ³⁵	3.8 (102/140)	3.0 (88/140)	2.4 (119/140)
Belarus	NA	NA	NA

Source: World Economic Forum

For the sub-indicator “Wastefulness of Government Spending”, Kazakhstan received 3.7 points and occupied the 41st place. On the general level, Russia is ranked better than Armenia (4.4 points and the 45th place for Russia). However, in terms of the aforementioned sub-indicators, Armenia has the 2nd best results, while Russia’s results for the sub-indicator “Diversion of Public Funds” is the worst among the group of four Eurasian countries states. For “Wastefulness of Government Spending”, Russia’s score is second best, following Kyrgyzstan.

³² World Economic Forum (2015). Global Competitiveness Report 2015-2016. Country / Economy Profile Armenia. Retrieved on 02.08.2016 from <http://www3.weforum.org/docs/gcr/2015-2016/ARM.pdf>

³³ World Economic Forum (2015). Global Competitiveness Report 2015-2016. Country / Economy Profile Russia. Retrieved on 02.08.2016 from <http://www3.weforum.org/docs/gcr/2015-2016/RUS.pdf>

³⁴ World Economic Forum (2015). Global Competitiveness Report 2015-2016. Country / Economy Profile Kazakhstan. Retrieved on 02.08.2016 from <http://www3.weforum.org/docs/gcr/2015-2016/KAZ.pdf>

³⁵ World Economic Forum (2015). Global Competitiveness Report 2015-2016. Country / Economy Profile Kyrgyzstan. Retrieved on 02.08.2016 from <http://www3.weforum.org/docs/gcr/2015-2016/KGZ.pdf>

Chapter 3: The Experience of the Eurasian Region in the Mitigation of Corruption Risks

3.1. Armenia³⁶

The fight against corruption is an important part of the political agenda for all political parties in Armenia. As in the majority of post-Soviet countries, Armenia developed and adopted legislation to fight corruption, but its implementation and enforcement suffer from procrastination. Due to Armenia's renewed aspirations for membership in the European Union, which would require the establishment of a European-style socio-political and institutional architecture, fighting corruption is being taken more seriously.

According to the NGO Policy Forum, Armenia lost 5.9 billion USD in 2013 due to corruption. Its GDP would have had 16.4 billion USD less governance risks, instead of actual 10.5 billion. According to the 2011 Global Financial Integrity's report on illicit financial flows, Armenia ranks number 70 out of 140 countries.³⁷ The average capital outflow from the country totalled 983 million EUR in the period 2004–2013. The Corruption Perception Index of 2015 showed that the level of corruption in the country is perceived as high, ranked 95th out of 168. Evidence also shows that corruption has a systemic character in the country. According to the Global Corruption Barometer 2013, 57% of Armenian respondents mentioned that political parties and parliament and 51% felt that business were corrupt³⁸. However, it is not perceived as the primary problem. For instance, the Caucasus Barometer 2015 showed that 40% of Armenian respondents perceived unemployment as being the most important problem, followed by poverty (17%). Only 6% of respondents perceive corruption, together with unresolved territorial disputes, as the primary problem, and 63% of those asked do not believe that they can make a difference in the fight against corruption³⁹.

Armenia is currently implementing its 3rd Anti-corruption Strategy and the 2015–2018 Action Plan to fight corruption in response to growing public demand to take corruption more seriously.⁴⁰ The measures of the Action Plan are the following:

- Formation of a class of public servants with a high level of integrity;
- Formation of a system of effective public governance;
- Formation of a system of transparent and accountable governance;
- Formation of a participatory governance system;
- Measures aimed at increasing public trust toward state bodies fighting corruption; and

³⁶ The EAEU Member States are listed in alphabetical order.

³⁷ Global Financial Integrity (2011). Illicit Financial Flows from Developing Countries: 2000 – 2008. Region/Country Specific Data: Armenia. Retrieved on 24.04.2017 from <http://iffdata.gfintegrity.org/?iffregion=Europe&iffcountry=Armenia>

³⁸ Transparency International (2013). Global Corruption Barometer. Retrieved on 24.04.2017 from <https://www.transparency.org/gcb2013>

³⁹ Caucasus Research Center (2013). Caucasus Barometer Armenia. Retrieved on 25.04.2017 from <http://caucasusbarometer.org/en/cb2013am/codebook/>

⁴⁰ Armenian version of the Strategy. Retrieved on 17.07.2016 from http://www.gov.am/u_files/file/xorhurdner/korupcia/1141_1k_voroshum.pdf

- Stipulating adequate liability and responsibility measures for corrupt behaviour.

The strategy has four sectors in focus: education, healthcare, customs and tax administration, as well as the police service. It foresees specific measures for each of these sectors; however, the sectorial anti-corruption strategies have not yet been adopted.

The institutional setup for the implementation of the strategy includes the Anti-Corruption Council, the Expert Group on Anti-Corruption Strategy, and the Anti-Corruption Programmes Monitoring Department. The Anti-Corruption Council can be considered a political body. It is composed of the heads of state bodies such as ministers and other heads of department, with the Prime Minister of Armenia chairing. Although the Council encourages the participation of NGOs and political opposition as full members, not all political opposition parties are able to participate. In theory, the Council allows the participation of up to two NGOs, but in practice none have applied to become members. The Expert Group is still in the process of formation and its main mission is to serve as a think tank for the Council. It is planned that the Expert Group will have four local anti-corruption experts to focus on each of the above-mentioned sectors. These experts will provide methodological guidance to fight corruption.

The Anti-Corruption Programmes Monitoring Department serves as secretariat both to the Council and to the Expert Group. The Monitoring Department provides technical assistance and implements various tasks required by the Council and the Expert Group. The Ethics Commission of High-Ranking Officials was formed in January 2012 according to Presidential decree and the Law on Public Service. The Commission is composed of five persons who serve six-year terms. The President of the National Assembly, the President of the Constitutional Court, the Chairman of the Court of Cassation, the Public Prosecutor General, and the Prime Minister each present a candidate to the President of Armenia, who then appoints the candidates as members of the Commission. Members of the Commission are required to exercise their powers independently. Members are not subject to any state, municipal body, or public official, and are independent from the officials who proposed their candidacy or appointed them.⁴¹

The functions of the Commission are:

- Operating a register of high-level public officials' declarations and declarations of related persons;
- Analyzing and publicizing declarations;
- Detecting conflicts of interest of high-level public officials (except for MPs, judges, prosecutors, and members of Constitutional Court) and presenting suggestions to the RA President, National Assembly, and government on preventing and eliminating conflicts of interest;

⁴¹ Republic of Armenia Anti-Corruption Strategy and Implementation Action Plan. Retrieved on 26.08.2016 from <http://www.gov.am/files/docs/74.pdf>

- Detecting ethics violations by high-level officials (except for MPs) and presenting suggestions to the RA President, National Assembly, and government on preventing and eliminating such violations;
- Detecting ethics violations of judges, prosecutors, and members of the Constitutional Court, which are not connected with the discharge of official powers, and presenting suggestions to the RA President, National Assembly, Constitutional Court, and General Prosecutor on preventing and eliminating such violations;
- Publicizing information pertaining to cases of ethics violations and conflicts of interest, detected within its area of competence, and also information pertaining to measures undertaken in relation to such cases; and
- Defining the conditions of submission of declaration and the requirements on filling this declaration.

The State Commission for the Protection of Economic Competition, the so-called Anti-Monopoly Commission, is also an important institution in the fight against corruption. It is composed of seven members who are appointed by the President of Armenia.⁴² The Law on the Protection of Economic Competition forms the legal basis for the Anti-Monopoly Commission. According to this law, the mandate of the Anti-Monopoly Commission is the protection and promotion of economic competition, the creation of an appropriate environment for fair competition, contributing to the development of entrepreneurship, and the protection of consumer rights.

The Anti-Monopoly Commission is granted broad powers and can adopt decisions, inter alia, on: possible or factual violations of the Law on Protection of Economic Competition; studies of product markets; instigating administrative proceedings and inspections; boundaries of product markets, the existence of dominant positions of economic entities in these markets, as well as on the implementation of measures in this regard; the disaggregation (division, separation, alienation of shares or assets) of economic entities abusing their dominant position twice or more within a year; and the imposition of penalties upon economic entities and their officials, and officials of state bodies for infringement of the Law on Protection of Economic Competition.

Armenia does not have a special law on investigation of corruption cases. Crimes of corruption are regulated in the Criminal Code. Armenia's institutional setup for corruption prosecution is diverse and spread between the Special Investigative Service, National Security Service, Investigative Committee, and investigators of tax and customs bodies. Having several institutions in charge of corruption investigation weakens accountability. The OECD's Monitoring Group on the Istanbul Anti-corruption Action Plan notes that no steps were taken by Armenia "in delineation of the law enforcement competences on corruption-related cases" and

⁴² Law of the Republic of Armenia on Protection of Economic Competition. Retrieved on 20.08.2016 from <http://www.aipa.am/en/EconomicCompetitionLaw/>

“that the situation remains the same with several law enforcement agencies having overlapping jurisdiction”⁴³.

A major problem regarding corruption prosecution is weak protection of whistle-blowers in Armenia, which is not comprehensive, and the available legislation is complicated, scattered, and not well developed. There is no specific law developed for whistle-blowers and the available mechanisms cannot be considered effective. The issue is part of the Istanbul Anti-corruption Action Plan (Point 51). The reporting person (whistle-blower) can receive protection only if they have the status of a participant in proceedings as defined by the Criminal Procedure Code.⁴⁴ The participant status is only provided within three days of the reporting of a corruption crime, and during these three days the whistle-blower may virtually find themselves without any protection.

3.2. Belarus

In Belarus, corruption is regarded as a threat to national security⁴⁵. The basis document to mitigate corruption in the country is the Law of the Republic of Belarus “On the Fight against Corruption” from 20 July 2006, which defines corruption risks and mitigation measures. Other legal documents include the laws “Procurators of Belarus,” “On Measures to Prevent Legitimization of Illegal Income,” and “On Measures to Fight Organized Crime and Corruption.” Belarus also ratified such international acts to fight corruption as the Criminal Law Convention on Corruption from 1999. The United Nations Convention against Transnational Organized Crime was ratified by Belarus in 2000. The UNCAC was ratified by Belarus in 2003, and the CoE’s Civil Law Convention on Corruption was ratified in 2005.

Belarus achieved significant progress in the training of law enforcement personnel and the development of new mechanism for confiscation, reporting, and accounting according to international standards. However, it still needs to adopt an adequate anti-corruption strategy, an action plan for its implementation, and mechanism for monitoring of reforms.⁴⁶

Authorities of Belarus give high priority to the fight against corruption within the country. They demonstrate this through anti-corruption legislation, presidential decrees, and state programmes to fight corruption. However, the extent of corruption in the country is unclear as the authorities see corruption more as a systemic phenomenon, which affects social, economic, and organizational issues. Day-to-day corruption in the country is being addressed through control and law

⁴³ Organisation for Economic Cooperation and Development (2014). Anti-Corruption Network for Eastern Europe and Central Asia. Anti-Corruption Reforms in Armenia. Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan. Retrieved on 22.08.2016 from <https://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>

⁴⁴ Shulz, S., Harutyunyan, K., (2015). Combating corruption: The development of whistleblowing laws in the United States, Europe, and Armenia. *International Comparative Jurisprudence* 1, 2015, p. 9

⁴⁵ Працоуная Слава (2015). Борьба с коррупцией в Беларуси, одна из важнейших задач. Retrieved on 23.04.2017 from <http://psl.by/?p=15886>

⁴⁶ GRECO (2015). Joint First and Second Rounds of Evaluation. Summary of the Compliance Report on Belarus 2015. Group of States Against Corruption.

enforcement mechanisms, but not many sources of information are available on anti-corruption efforts on state-run public enterprises or on the hierarchical character of corruption.⁴⁷

Closely connected to this is the issue of public procurement, the basis of which is formed by the Civil Code of the Republic of Belarus. Public procurement plays an essential role in the economy of the country, reaching 15% of its GDP. The current existing procurement model in Belarus is characterized by elements of centralized and decentralized economies, such as a purchasing centre where all demands for purchases from various enterprises and services are collected. This provides low prices for wholesale purchases, but it is also less flexible and reflective on specific demands. The decentralized elements of the model are characterized by an independent implementation of all purchasing processes, which might make it more expensive but also more flexible. In total, in Belarus centralized elements are clearly dominating.

In 2013, a few forms of procurement were adopted such as open and close competitive tenders, online auctions, requests for quotation procedures, and exchange bidding. During the same year the digitalization of procurement started and is actively growing now. It provides new procedures for selecting suppliers, contractors, and performers. Electronic auctioning has also become an important element, but the system should be further developed. For instance, the role of public procurement in the system of regional and local government is not identified. Currently, all government purchases are funded by either the central or local budget. It is recommendable to develop interrelations between public procurement and regional and local governments for the further development of instruments to provide public services.⁴⁸

3.3. Russian Federation

International cooperation is one of the priorities of state policy in the anti-corruption arena in the Russian Federation. The Constitution of the Russian Federation recognizes the norms of international anti-corruption law and conventions, to which Russia is a party as part of the domestic legal system. In addition to being a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (ratified in 2011), the Russian Federation ratified the UNCAC and, during the last ten years, took a number of steps to implement recommendations of several international and multilateral organizations in the area of anti-corruption regulation. These recommendations made a basis for national regulation in the area of prevention and mitigation of corruption, which corresponds to international frameworks for state governance and international anti-corruption legal norms. On 25 December 2008, Russia ratified the federal law “On Combatting

⁴⁷ GRECO (2014). Joint First and Second Rounds of Evaluation. Summary of the Evaluation Report on Belarus 2014. Group of States Against Corruption.

⁴⁸ Krivorotko, Y., (2013). Public procurement system in Belarus: Administrative Aspect. International Outlook. Retrieved on 27.07.2016 from http://uni-nke.hu/uploads/media_items/yuri-krivorotko_publicprocurement-system-in-belorus-administrative-aspect.original.pdf

Corruption,” which officially defined corruption at the legal level for the first time. In accordance with the law “On Combatting Corruption,” several legal changes were made to state and municipal services, state procurement, taxes, as well as criminal and administrative laws. The law also identified the organizational basis for mitigating corruption for the legislative, executive, and judicial branches.

Russia is also a party to the Council of Europe’s Criminal Law Convention on Corruption (ratified in 2006), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified in 2001), and the UN Convention against Transnational Organized Crime (ratified in 2004). Soon after ratification of the UNCAC and the UNTOC, the Russian Federation announced that, on the basis of reciprocity, it would henceforth be using these conventions as the necessary and sufficient legal and contractual basis for international cooperation for the purposes of confiscation.

The Russian Federation has been actively cooperating with the UN Office on Drugs and Crime (UNODC), the Group of States against Corruption of the Council of Europe (GRECO), the OECD, the Financial Action Task Force on Money Laundering (FATF), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the APEC Anti-Corruption and Transparency Experts’ Working Group, and the G20 Anti-Corruption Working Group⁴⁹. Russia has separate bilateral and multilateral international treaties governing the provisions of legal assistance with more than 70 countries, including Brazil, Vietnam, India, China, and many others. Interaction with competent authorities of foreign countries with regards to criminal matters, including those related to the return of stolen assets, is carried out on the basis of multilateral and bilateral treaties of the Russian Federation or based on the principle of reciprocity.

On 1 April 2016, the President of the Russian Federation approved the National Plan for the Fight against Corruption for the period 2016-2017, which advocates the following measures to fight corruption:

- Improving the legal basis and organizational mechanisms to fight corruption and identifying conflicts of interests of public servants;
- Improving the control mechanism for expenses and income of state budget and property;
- Increasing efficiency to fight corruption in federal organs of executive power and state organs of the subjects of the Russian Federation;
- Furthering initiatives of federal and local organs to fight corruption;
- Establishing commissions for coordinating work against corruption in all regions of the Russian Federation;
- Increasing the efficiency of fighting corruption in state procurement and services to cover state and municipal needs;

⁴⁹ Asia-Pacific Economic Cooperation (2016). Anti-Corruption and Transparency Experts’ Working Group. Retrieved on 5.11.2016 from <http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Anti-Corruption-and-Transparency>

- Increasing influence of ethical and moral norms for the activities of officials at all levels of governance;
- Increasing the use of mechanisms for international cooperation for the identification, confiscation, and return of all funds received as a result of corrupt activities; and
- Increasing societal awareness to create an atmosphere intolerant of corruption.

The major principles of fighting corruption in the state service are included in the federal law “On Combatting Corruption”. The state service of the Russian Federation consists of federal state service and state service at the local level. The legal status of state officials is identified by the federal law “About State Service in the Russian Federation” as well as by legal systems at the local level.

These principles include the following:

- Recognition and protection of basic rights and freedoms of people and citizens;
- Rule of law;
- Transparent activities of state organs and organs of local governance;
- Responsibility for corrupt activities; and
- Complex utilization of political, organizational, informational, and awareness-raising norms as well as socio-economic, legal, special, and other measures that have priority to mitigate corruption and to stimulate cooperation between the state and the institutions of civil society, international organizations, and lay people.

On the basis of these principles to mitigate corruption, as well as with consideration of principles to prevent corruption risks, which are identified by federal law and a number of other legislative acts regarding public services, there are norms towards anti-corruption behaviour of public servants and standards that they are obliged to follow. These standards include common guarantees, rights, obligations, and limitations, which create conditions for the efficient functioning of state management, realization of the principles of transparency, and accountability of public services.

The analysis of the norms of the Russian anti-corruption legal framework regarding state services reveals that there is greater control over activities of public servants, an increased level of responsibility for acts of corruption, and further transparency requirements for information about income and spending of public servants and members of their families. These regulations, which cover public services, represent anti-corruption norms and are one of the means to mitigate and fight corruption. They are barriers to avoid the abuse of power by public officials, as well as damages to legal interests and rights of lay people, society, and the state.

The limitations regarding the activities of public servants include the following:

- Obligation to take measures to prevent and regulate conflicts of interests, namely when personal interests of a public servant influence or may influence objective and efficient realization of public duties;
- Obligation to show all information about income, property, and other belongings as well as that of family members;
- Obligation to show information about spending by public servants, as well as spending by the members of their families;
- Prohibition to engage in commercial activities for public servants or through their trusted partners;
- Prohibition to acquire securities, such as equities of foreign companies, that provide income;
- Prohibition to represent interests of third parties in the state organ, in which a public official is performing their duties;
- Prohibition to accept all kinds of remunerations from physical or legal persons such as presents, money, loans, services, entertainment, travel, transport, and all other kinds of remunerations;
- Prohibition to participate in any type of travel abroad, which is financed by physical or legal persons, with the exception of travel missions, which are realized in accordance with the law of the Russian Federation;
- Prohibition to use, in any type of aims that are not connected with the realization of professional activities, any materials or other types of property belonging to the state or to allow the use of this property by third parties;
- Prohibition to make classified information public or use it for personal interests;
- Prohibition to use public positions for any type of promotion prior to elections;
- Prohibition to be a member of any type of management of commercial organizations, such as management or advisory boards, which are active on the territory of the Russian Federation (there are, however, exceptions made by international contracts or laws of the Russian Federation);
- Prohibition to perform any type of paid activity financed by other countries, international and foreign organizations, foreign citizens, or persons without citizenship without written approval of one's employer (again, there are exceptions made by international contracts or laws of the Russian Federation);
- Prohibition of the public official and their spouses or children to open and own accounts, have deposits or other equity in foreign banks outside the territory of the Russian Federation, to own or utilize foreign banks, or to use foreign financing instruments; and
- Prohibition of the replacement of a public official by a layperson. The period of prohibition is two years – after the termination of public service work.

Russia very actively implemented laws making public servants liable for conflicts of interests. In the last two years several public servants were fired or received administrative and disciplinary punishments for submitting false, incorrect, or incomplete information about income and spending.

On 1 January 2013, the federal law “On the Control over the Compliance of Expenses and Incomes of Persons holding Public Offices” entered into force. The law stipulated that additions be made to the federal law “On Combatting Corruption” and the Civil Code of the Russian Federation. This law introduced a new mechanism to fight corruption, namely the right of procurators to take actions based on the spending disparities of public servants and members of their families towards their incomes and property. During the last two years, procurators identified several violations of legal demands to provide information about spending. According to the follow-up reports, public servants could not provide information about sources of income with which they acquired expensive property. In these cases, procurators instructed courts to confiscate the property.

The national plan to fight corruption for the period 2016–2017 foresees further development of mechanisms of control over the spending and confiscation of private properties and equities, which were acquired with unverified income⁵⁰.

During the past years, mechanisms to fight corruption also included the administrative liability for public servants accused of corruption. The Code of the Russian Federation foresees administrative liability for more than twenty different types of corruption. Among them are bribery of the electorate, the inability to present information about spending and the sources of means to finance elections or referenda, the illegal financing of election campaigns, which also includes providing free or underpriced goods and services, the use of official position during elections, the collection of signatures in places that are forbidden by law, the limitation of competition by organs of power, the use of an official position as an advantage on asset markets, and other violations of Code norms.

The Code amends a number of legal acts of the Russian Federation in order to comply with the norms and provisions of UNCAC. It also amends federal laws about the mitigation of corruption and brings administrative liability for corruption to the judicial branch through special articles about illicit enrichment or illegal employment of public officials.

Regarding administrative offences, the Code of the Russian Federation prescribes mechanisms for mitigating corruption with administrative liability for public servants who committed acts of corruption. The norms of the Code are applied often, however, further development of Russian anti-corruption legislation requires changes in the legal framework of administrative crimes. In particular, the Code does not include the following violations of anti-corruption regulations committed by public servants:

- illegal participation in the management of commercial organizations,
- business activities conducted by public servants,
- incomplete information about income and property, and,
- illicit enrichment from private sector and the judiciary.

⁵⁰ Government of Russia (2016). Decree of the President of the Russian Federation About National plan to mitigate corruption for the years 2016-2017. Retrieved on 13.08.2016 from <http://static.kremlin.ru/media/acts/files/0001201604010004.pdf>

It is obvious that the Code needs further development, such as building on the experiences of other countries of the Eurasian region. For example, the Republic of Kazakhstan handles administration with characteristics of corruption in a separate chapter. Even so, the introduction of administrative crimes with corrupt characteristics is a progressive step for the Code and represents further development of new legal mechanisms to mitigate corruption.

The requirement of companies to take enhanced measures to prevent corruption is contained in the Federal Law No. 273 “On Combatting Corruption”. Although the absence of material defects in Russia’s internal compliance programme does not, per se, qualify as a crime under local law, current enforcement practices include an increasing number of prosecutors’ actions and court cases in connection with inspections of Russian entities in terms of non-compliance with the requirements of Federal Law No. 273 “On Combatting Corruption”. Also, the absence of, or material defects in, the Russian entity’s internal compliance programme would constitute an aggravating circumstance in case of prosecution of the Russian entity or its officials for corrupt behaviour. Article 13.3 Federal Law No. 273 “On Combatting Corruption” requires that all organizations develop and implement measures to prevent bribery and specifically recommends the following:

- Designating departments, staffed with structural units and officers, to be responsible for the prevention of bribery and related offenses;
- Cooperating with law enforcement authorities;
- Developing and implementing standards and procedures designed to ensure ethical business conduct;
- Adopting a code of ethics and professional conduct for all employees;
- Determining the means for identifying, preventing, and resolving conflicts of interest; and
- Preventing the creation and use of false and altered documents.

Official guidance as to how measures should be taken by legal entities was prepared by the Russian Ministry of Employment, in cooperation with several public associations, and was released in November 2013. The comprehensive guidance includes clarifications of the legal frameworks in terms of Russian, international, and foreign laws, as well as practical recommendations for implementing the requirements of Article 13.3.

The application guidelines entitled “Asset recovery: Practical Step-by-Step Guide on International Cooperation” contain information about legal assistance as following:

All requests for legal assistance shall be addressed to the central authorities of the Russian Federation. If there is a treaty with the requesting state providing for legal assistance in criminal matters, requests for legal assistance are sent to the authorities of the Russian Federation that are defined by this international treaty as the appropriate entities. The central authorities of the Russian Federation responsible for implementation of the provisions of the UN Convention against Transnational Organized Crime and the UN Convention against Corruption are the Ministry of Justice of the Russian Federation for civil matters, including the civil law

aspects of criminal matters, and the Prosecutor General's Office of the Russian Federation for criminal matters, respectively. In the absence of a treaty on legal assistance in criminal matters, requests for legal assistance related to the search and seizure of property are generally directed to the Prosecutor General's Office of the Russian Federation, and for the confiscation of property, to the Ministry of Justice of the Russian Federation.⁵¹

The application guidelines also contain practical information on how Russia can contribute to the recovery of assets by foreign states, as well as specific steps to be followed by foreign states and their competent authorities in establishing cooperation with the relevant government bodies of the Russian Federation in order to obtain assistance. The Application Guidelines also contain more detailed information and are available on the official website of the Ministry of Justice of the Russian Federation in Russian, English, and Arabic.⁵²

There is no liability for non-compliance within Article 13.3 of Federal Law No. 273 "On Combatting Corruption". However, the General Prosecutor's office, which oversees the sphere of combatting corruption, is entitled to order, or requests a court to order, companies to implement measures aimed at preventing bribery. For legal entities and individuals in Russia, administrative liability is fault-based. Article 2.1 of the Code of Administrative Offenses of the Russian Federation defines fault of a legal entity as a failure to take all measures within its power to comply with the Code's requirements. Therefore, a legal entity may raise, as a defence, the measures it has taken to prevent bribery on its behalf. Recent enforcement practice confirms that a legal entity may avoid liability under Article 19.28 of the Code of Administrative Offenses if it proves that it has taken all reasonable measures to prevent corruption, including those recommended by Article 13.3 of Federal Law No. 273 "On Combatting Corruption".

The Criminal Code of Russia prohibits both active and passive bribery. According to the Criminal Code of Russia, a bribe is defined as money, securities, other property, the illegal provision of services or other property benefits to a public official (bribe taker). The bribe taker can act in favour of the bribe giver or any parties that represent the bribe giver. The acts or omissions from the side of bribe taker can fall within the range of the ex officio powers of the public official. For instance, a public official can, by reason of his or her ex officio status, foster such acts or omissions as well as the general patronage or connivance in committed service. Aiding and abetting public bribery is a separate criminal offense. Aiding and abetting is defined as the physical giving of a bribe on the instructions of the person either giving or receiving a bribe, as well as any other assistance to either of these persons in reaching or executing an agreement between themselves. This also applies to offers or promises of assistance in public bribery, regardless of the value of the bribe.

⁵¹Ministry of Justice of the Russian Federation. Prosecutor General's Office of the Russian Federation (2016). Asset recovery: practical step-by-step guide on international cooperation. Guidelines. Retrieved on 28.07.2016 from <http://minjust.ru/sites/default/files/13703880-13708920.pdf>

⁵² Ministry of Justice of the Russian Federation. Prosecutor General's Office of the Russian Federation (2016). Asset recovery: practical step-by-step guide on international cooperation. Guidelines. Retrieved on 28.07.2016 from <http://minjust.ru/sites/default/files/13703880-13708920.pdf>

Russian law does not recognize facilitation payments, and in most cases, such payments could qualify as bribes. They are thus prohibited by law. The applicable limitations on acts of hospitality generally do not depend on the type of hospitality (gifts, loans, services, payment for entertainment, vacations and transportation expenses, among others) but rather on the status of the recipient and the general purpose of the hospitality. A general prohibition on accepting any hospitality applies to state and municipal servants. At the same time, under Russian law, not every public official falls under the category of a state or a municipal servant, and each case requires a separate assessment. Russian public officials are defined, in Article 285 of the Criminal Code of Russia, as persons who permanently or temporarily, pursuant to a specific authorization, perform the function of a representative of state power, as well as persons who perform organizational or administrative functions in the state and municipal bodies, state or municipal establishments, or in the Russian military and other armed forces.

Consequences of bribery are as follows for individuals and the companies/legal entities involved:

a) For individuals:

The sanctions under Article 291 of the Criminal Code of Russia vary, depending on (a) whether the person giving a bribe has acted alone or in conspiracy with others; (b) whether the bribe is given for the commission of a lawful or an unlawful act (or failure to act); and (c) the amount of the bribe.

The minimum sanction for a bribe not exceeding 25,000 RUB is a fine up to 500,000 RUB, a salary or other income of the convicted for the period of up to one year, a fine from 5–30 times the amount of the bribe, correctional labour for the period up to two years, with or without the prohibition from holding certain positions or engaging in certain professional activity for up to three years, forced labour for the period of up to three years, or imprisonment for up to two years with or without a fine of 5–10 times the amount of the bribe. The maximum sanction for a bribe exceeding 1 million RUB is a fine from 70–90 times the amount of the bribe or imprisonment from 7–12 years and a fine 70 times the amount of the bribe. A person who has given a bribe may be relieved of criminal liability if he or she actively aids in the detection and prosecution of the crime, if they reported themselves to the criminal law enforcement authorities after the commission of the crime, or if they were solicited by a particular public official to give a bribe⁵³.

According to Article 104.1 of the Criminal Code of Russia, property obtained as a result of a criminal offense and any property into which such criminally obtained property has been subsequently transformed, as well as any proceeds from the use of such property, may be subject to confiscation. The sanctions for aiding and abetting public bribery are comparable to those for bribery.

b) For companies and legal entities:

⁵³ The Criminal Code of the Russian Federation No. 63 – Fz Of June 13, 1996. Retrieved on 05.04.2017 from <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>

As previously mentioned, when a legal entity is held responsible for unlawful conduct, such an entity is ordinarily subject to administrative liability, such as administrative fines.

Article 19.28 of the Code of Administrative Offences provides for the administrative liability of a legal entity for the unlawful provision, offer, or promise of anything of pecuniary value to a Russian public official for any actions or omissions to act in the interests of this legal entity. The sanctions under Article 19.28 of the Code of Administrative Offences vary depending on the amount of the bribe. The minimum sanction for a bribe up to 1 million RUB is a fine of up to three times of the amount of the bribe, but not less than 1 million RUB. The maximum sanction for a bribe over 25 million RUB is a fine of up to 100 times of the amount of the bribe, but not less than 100 million RUB. In all cases, the bribe or its equivalent value may be confiscated. A legal entity may be held liable under Article 19.28 of the Code of Administrative Offences, irrespective of the liability of a particular individual involved in the giving of a bribe⁵⁴.

Article 204 of the Criminal Code of Russia defines private bribery (named in the legislation as “commercial bribery”) as the unlawful provision of anything that has pecuniary value (including property rights and services, among others) to a person who performs managerial functions in a commercial or other organization for an act or omission in connection with such person’s official position in the interest of the provider.

Article 204 contains provisions on passive commercial bribery, that is, receipt by a person who performs managerial functions in a commercial or other organization of anything that has pecuniary value (including property rights, services, etc.) for an act or omission in connection with such person’s official position in the interest of the provider. Moreover, the same conduct may be prosecuted under Article 201 of the Criminal Code of Russia, which prohibits the abuse of authority, which is defined as the use of authority by a person who performs managerial functions, in a commercial or other organization of their authority, contrary to the lawful interests of this organization, for the purpose of obtaining an advantage for themselves or other persons, as well as for the purpose of causing damage to other persons.

A person who performs managerial functions, according to Article 201 of the Criminal Code, may be an individual executive officer or a person who is a member of a collective executive body or the board of directors. In addition to the top management, relevant persons include those who perform organizational or administrative functions, that is, manage at least some personnel or at least some property of the organization. As a practical matter, it should be noted that Article 204 of the Criminal Code also covers conspiracies to engage in commercial bribery, which expands the reach of this article beyond persons with managerial functions.

Consequences of private bribery are as follows for individuals and companies/legal entities involved:

⁵⁴ Code of Administrative Offences of the Russian Federation No. 195 – Fz of December 30, 2001. Retrieved on 11.08.2016 from <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru073en.pdf>

a) For individuals:

The sanctions for active commercial bribery under Article 204 of the Criminal Code of Russia vary, depending on whether the person giving a commercial bribe has acted alone or in conspiracy with others, as well as on whether the commercial bribe is given for the commission of a lawful or an unlawful act (or failure to act). The minimum sanctions are a fine from 10–50 times the amount of the commercial bribe and a prohibition on holding certain positions or engaging in certain professional activity for a period of up to two years, limited freedom for a period of up to two years, forced labour for a period of up to three years, or imprisonment for a period of up to three years (Criminal Code of Russia). The maximum sanctions are a fine from 40–70 times the amount of the commercial bribe and prohibition on holding certain positions or engaging in certain professional activity for a period of up to three years, forced labour for a period of up to four years, incarceration for a period from three to six months, or imprisonment for a period of up to six years (Criminal Code of Russia).

The sanctions for passive commercial bribery, under Article 204 of the Criminal Code of Russia, vary depending on whether the person receiving a bribe has acted alone or in conspiracy with others as well as whether the commercial bribe is received for the commission (or omission) of a lawful or an unlawful act and on whether there was extortion of the commercial bribe. The minimum sanctions are a fine from 15–70 times the amount of the commercial bribe and prohibition from holding certain positions or engaging in certain professional activity for a period of up to three years, forced labour for a period of up to five years with or without prohibition from holding certain positions or engaging in certain professional activity for a period of up to three years, or imprisonment for a period of up to seven years and a fine up to 40 times the amount of the commercial bribe. The maximum sanctions are a fine from 50–90 times the amount of the commercial bribe and prohibition from holding certain positions or engaging in certain professional activity for a period of up to three years or imprisonment for a period of up to twelve years and a fine up to 50 times the amount of the commercial bribe.

A person who has committed an offense of active commercial bribery, covered by Article 204 of the Criminal Code, may be relieved of criminal liability if he or she actively aided in detecting or prosecuting this offense, the commercial bribe was extorted from him or her, or if he or she voluntarily reported the commercial bribe to criminal law enforcement authorities.

b) For the company's legal entities:

In Russia, legal entities have no criminal liability. When a legal entity is held responsible for unlawful conduct, such an entity is ordinarily subjected to administrative liability, such as administrative fines, under Article 19.28 of the Code of Administrative Offences as detailed above.

Article 291 of the Criminal Code of Russia prohibits the provision of a bribe to foreign public officials and officials of public international organizations. This article also covers the provision of a bribe through intermediaries. A foreign public official

is defined, in Article 290 of the Criminal Code of Russia, as any person who is appointed or elected to an office in the legislative, executive, judicial, or administrative body of a foreign state, including a public administration or enterprise. An official of a public international organization or any person authorized by such an organization to act on its behalf is an international civil servant.

Consequences of corruption for foreign public officials are as follows for individuals and companies or legal entities involved:

a) For individuals:

The sanctions under Article 291 of the Criminal Code of Russia vary, depending on: (a) whether the person giving a bribe has acted alone or is in conspiracy with others; (b) whether the bribe was given for the commission of a lawful or an unlawful act (or failure to act); and (c) the amount of the bribe (see comments above).

b) For companies and legal entities:

When a legal entity is held responsible for unlawful conduct, such an entity is ordinarily subjected to administrative liability, such as administrative fines, under Article 19.28 of the Code of Administrative Offences (see comments above).

Despite the known issues with anti-corruption work, including organizational, staffing, and methodological problems, legislation of the Russian Federation for mitigating corruption risks corresponds to the norms of international law and includes a well-developed set of legal mechanisms, which efficiently mitigate corruption risks. Also taking into consideration the extent and severity of corruption risks in the development of the Russian state and society, further development of the legislation process is needed, which would eliminate drawbacks in the current legislation and significantly aid further development of anti-corruption legislation.

One of the important mechanisms to coordinate the activities of public servants and realize anti-corruption measures is enacted by the special commission, which regulates conflicts of interests of public servants. The special commission includes representatives from state organs and independent experts from scientific and educational organizations. The main aim of the commission is to help state organs to regulate conflicts of interests, which might damage the interests of citizens, organizations, society, and the state.

The commission is tasked with the following:

- Informing the managers of state organs about mismanagement or conflicts of interest;
- Gathering statements from public servants about their failure to provide information about income, property, or other equities of their spouses or children;
- Gathering statements from public servants about violations of federal law regarding the opening of deposits and accounts in international banks for the themselves, their spouses, or children;

- Notifying public servants about conflicts of interests;
- Requiring leaders of state organs, or other members of the commission, to regulate conflicts of interests or implement measures to mitigate corruption; and
- Requiring leaders of state organs to provide documentation in case of lax information regarding the income and spending of public servants, their families, and others.

The duties of this commission include identifying facts about conflicts of interests, including the reasons for a lack of full and transparent information about properties of public servants and their family members. In cases of improper conduct, the commission may recommend that the head of the state organ apply the necessary measures towards such public servants.

Measures for conflicts of interest among public servants include remarks, reprimands, and warnings about improper official conduct. A public servant could be also fired in the event that they:

- Did not take the appropriate measures to regulate conflict of interests in which they are involved;
- Provided incorrect information about income, property, or spending for themselves or for members of their family;
- Participated in the activities of a commercial organization, such as management or an advisory board, and received remuneration for this participation (however, there are exceptions identified by federal law);
- Performed commercial or business activities;
- Participated in the management organ of any international non-commercial or non-governmental organization on the territory of the Russian Federation, which was not identified by international contract or the laws of the Russian Federation; and
- Owned any assets in banks outside the Russian Federation personally, or if their families did so.

The main Russian law enforcement authorities in the field on combatting corruption are the Prosecutor General's Office, the Investigative Committee of the Russian Federation, and the Ministry of the Interior. These bodies form the basis of the national anti-corruption system. Every Russian law enforcement agency has its own powers, including the authority to ensure international anti-corruption cooperation, the recovery of stolen assets, and its functions in the framework of international legal assistance in order to achieve a common goal.

The Investigative Committee of the Russian Federation was established as a successor to the Investigative Committee of the Prosecutor General's Office of the Russian Federation. It began to operate on 15 January 2011. The Committee is subordinate to the President of Russia, and the Chairman is appointed by the President as well. The creation of the Committee followed an earlier decision to recognize the Investigative Committee of the Prosecutor General's Office as "an independent federal structure" answering directly to the President. It aims to

separate prosecutorial supervisory and preliminary investigative functions, enhance the Committee's status, and expand its jurisdiction.

Forming an investigative agency, organizationally and functionally independent from other governmental authorities, was first carried out by Peter the Great in the course of judiciary reform. One of his objectives consisted of separating criminal procedure into introductory and judicial examination. In 1713, the first professional investigative agencies of Russia were established as major offices of investigation, which were directly subordinate to Peter the Great, in accordance with the Order of 9 December 1717⁵⁵. The mandate of these agencies covered the cases involving the most dangerous acts that threatened the foundations of the state, which were primarily criminal acts involving corruption (bribery, peculation, forgeries, and swindling) committed by senior government officials. Today, the Investigative Committee is the independent federal state body exercising powers in the sphere of criminal trial. The Investigative Committee is not included into any structure or branch of the government.

The legal basis for the activities of the Investigative Committee are the Constitution of the Russian Federation, the conventional principals and regulations of international law, relevant international agreements, and federal laws and other regulatory legal acts of the Russian Federation. The Investigative Committee of the Russian Federation is authorized to investigate criminal corruption and the majority of economic crimes. It is one of the main bodies combatting crimes of corruption committed by public officials, including foreign ones.

The Investigative Committee consists of a central office in Moscow and investigative departments in all regions of the Russian Federation. Corruption can be investigated both centrally and regionally and would fall under the competence of the departments and divisions on the investigation of crimes committed by public officials. These departments are generally responsible for the investigations of complex corruption crimes. They are staffed with the most experienced investigators and supported by special departments on procedural control in combatting corruption. The departments have been established in the headquarters and each region to provide methodological support in the conducting of complex corruption investigations, including foreign bribery.

The Investigative Committee has achieved notable results during its years of operation as an independent federal structure. In 2011 (the first full year of operation of the Investigative Committee), it initiated more than 12,000 criminal anti-corruption investigations. In 2012, this figure jumped to 20,500 cases, and in the year 2015, the figure reached more than 25,000 criminal anti-corruption investigations. Included were such crimes as bribery, fraud, forgery, embezzlement of budget funds, abuse of power, and others. There are two reasons for such

⁵⁵ The Investigative Committee of the Russian Federation. History of the Creation of the Investigative Committee of the Russian Federation and Its Present Legal Status. Retrieved on 06.04.2017 from <http://en.sledcom.ru/investigative/History>

growth⁵⁶. The first one is that, according to requirements of international anti-corruption conventions and other legal instruments in this sphere, Russian anti-corruption legislation has fundamentally changed, allowing Russia to detect and fight corruption more efficiently. The second one is that the Investigative Committee has introduced the specialization of investigators involved in the investigation of corruption and economic crimes and has continued to improve on the training of its personnel. For instance, the Academy of the Investigative Committee of the Russian Federation was created in 2014 as a fully-fledged higher education institution for the training of investigators.

Some notable results of the Investigative Committee include:⁵⁷

- Receiving 38,495 reports concerning commitment of crimes of corruption in 2015;
- Charging 6,530 officials in 2015 (at 15 % higher rate than in 2011);
- In 2015, the total number of criminal cases of bribery – 63,7 %, fraud, embezzlement committed by officials using their official position – 21 %, abuse of power – 6,2 %;
- Convicting high-ranking officials, for example the governor of the Tula region, the Deputy Prime Minister of Penza region, and the first deputy of the Vologda region, for passive bribery and other crimes; and
- Prosecuting almost 400 heads of local governments and other officials, as well as representatives of legislative bodies, in 2015.

One of the most important activities of the Investigative Committee is asset recovery and compensation for damage caused as a result of economic and corruption crimes. The possible types of international cooperation in this sphere cover a wide range of forms, such as investigative activities, searches for evidences, questioning witnesses and suspects, inspections of sites, and seizures. Subject to international treaties, Russia may also conduct joint investigations with other countries.

One of the key tasks of the Investigative Committee of the Russian Federation includes international cooperation in the field of criminal justice proceedings within the scope of the agency's competence set out in federal legislation. Activities of this type include not only the issues related to providing mutual legal assistance in specific criminal cases, but also cover a wide range of other focus areas related to solving both sectorial and national tasks that affect the authority and the status of Russia in the international arena. The Investigative Committee of the Russian Federation closely cooperates with Russian and foreign financial intelligence bodies. For example, investigative bodies of Saint Petersburg have finished certain investigations concerning bribery and the mediation of bribery. Investigators and financial intelligence officers have identified cases of illegal receipt of funds by banks transferred to the European Union with the help of their foreign colleagues.

⁵⁶ The Investigative Committee of the Russian Federation. History of the Creation of the Investigative Committee of the Russian Federation and Its Present Legal Status. Retrieved on 15.04.2017 from <http://en.sledcom.ru/investigative/History>

⁵⁷ The Investigative Committee of the Russian Federation. History of the Creation of the Investigative Committee of the Russian Federation and Its Present Legal Status. Retrieved on 15.04.2017 from <http://en.sledcom.ru/investigative/History>

This made it possible to obtain the necessary evidence to identify bribes and convict the criminals responsible.

The Investigative Committee of the Russian Federation actively participates in the implementation of a number of international legal instruments in Russia that the state ratified in parliament. Among such instruments, special mention should be given to the UNTOC, UNCAC, the Council of Europe Criminal Law Convention on Corruption, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The substantial list of international legal rules has been implemented into national legislation and is related to the mandate and powers of the Investigative Committee. These rules are, for example, the obligation to combat bribery of foreign officials in business undertaken by Russia or the country's participation in the mutual recovery of assets stolen by corruption.

In order to assess the performance of the obligations undertaken by any given country, international organizations and entities (UN, Council of Europe, OECD) establish monitoring tools to assess the degree of implementation of international rules in national legislation, their practical implementation, the public's legal awareness of international requirements, and other factors. The Investigative Committee of the Russian Federation takes part in all stages of such assessments as the agency whose mandate contains the practical application of the implemented rules. Such participation includes preparing relevant reports on operational results, publishing sectorial regulations required to implement international requirements, training investigators and furthering their professional development, and meeting foreign governmental assessment experts in order to represent and maintain the position of the Russian Federation. Such work, regarding the application of the provisions of international anti-corruption legal instruments, has been carried out by the Investigative Committee of the Russian Federation since its establishment at the forums of the UN, Council of Europe, and the OECD. In addition to the aforementioned international organizations with existing systems for monitoring the administration of law, the Investigative Committee participates in a number of other regional formats that do not have clear-cut binding mechanisms.

The most significant intergovernmental forum at the moment is the Asia-Pacific Economic Cooperation (APEC). As has been rightly pointed out by legal academics, APEC does not have the status of an international organization in its classical meaning. Instead, it represents a system of different interrelated forums (consultations, meetings, and sessions) of the economic members of APEC, its governing body being the annual meeting of the APEC economic leaders, i.e. heads of state and governments.⁵⁸ The informal community of states and territories of the Asian Pacific Region was established in 1989 to discuss the problems of regional economic cooperation and gradually turned into a rather powerful intergovernmental forum covering a wide range of issues.

⁵⁸ Fyodorov, A., (2013). APEC: the Issues of Combating Corruption. Scholarly Notes of the V.V. Bobkov Saint Petersburg Branch of the Russian Customs Academy, 2013, No. 3(47). pp. 95-112

Anti-corruption activities have become one of the key topics discussed by members of APEC. The decisions of its anti-corruption task force, established in 2005 (the task force changed its status to the Anti-Corruption and Transparency Experts' Working Group in 2011), have become important ideas in anti-corruption work of the world's largest economic union and the most densely populated region on the planet. The activities of the group are based on the principles enshrined in the UN Convention against Corruption as well as such fundamental anti-corruption instruments of APEC such as the Santiago Commitment to Fight Corruption and Ensure Transparency⁵⁹ and the APEC Course of Action on Fighting Corruption and Ensuring Transparency.

The Working Group coordinates focus areas of international cooperation such as legal assistance in prosecuting acts of corruption, forfeiture and recovery of assets gained from corruption, and ensuring cooperation with representatives of law enforcement establishments and anti-corruption experts in APEC economies. As part of its activities, the Working Group prepares anti-corruption initiatives and recommendations in this area for senior officials and leaders of APEC and arranges various training events.

The Russian Federation acceded to APEC in 1998, and after hosting the annual summit on its territory in Vladivostok in 2012, it continued to increase its participation in the events of the Intergovernmental Forum in different focus areas including anti-corruption activities. The Vladivostok Declaration⁶⁰ signed by the APEC leaders contains a special annex, "Fighting Corruption and Ensuring Transparency", in which the attention was drawn to the dangers of corruption for regional economies. The Declaration detailed how corruption prevents the development of competition while increasing the cost of infrastructure projects and utilities. At the same time, strengthening anti-corruption authorities and assisting regional anti-corruption communication were designated as some of the main priority areas.

In this context, in 2013 representatives of the Investigative Committee of the Russian Federation were invited to participate in the activities of APEC's Anti-Corruption and Transparency Experts' Working Group. At the first event, they adopted an active position towards facilitating the interests of the agency and Russia in general in the international arena. At the expert workshop held in Santiago (the Republic of Chile), a report prepared by the Investigative Committee on the practice of procuring evidence in criminal cases of corruption and laundering criminal proceedings was presented as part of the declared topic involving the development of efficient strategies for criminal prosecution in the cases on corruption and laundering criminal proceeds in order to bring the perpetrators to justice and recover stolen assets. Subsequently, the provisions of the report were used in the collection of best practices of criminal prosecution in APEC economies published by the APEC Anti-Corruption and Transparency Experts' Working Group.

⁵⁹ Asia-Pacific Economic Cooperation (2004). Santiago Commitment To Fight Corruption And Ensure Transparency. Retrieved on 20.08.2016 from www.apec.org/~media/Files/Groups/ACT/04_amm_032rev1.pdf

⁶⁰ Asia-Pacific Economic Cooperation (2012) 20th APEC ECONOMIC LEADERS' Declaration Vladivostok Russia. ANNEX E, FIGHTING CORRUPTION AND ENSURING TRANSPARENCY. Retrieved on 23.08.2016 from http://apec.org/~media/Files/LeadersDeclarations/2012/2012_AELM_Declaration_AnnexE.pdf

In the same year, at the meeting chaired by the Republic of Indonesia, the Regional Anti-Corruption Network of Law Enforcement Authorities (hereafter the Network) was established at the APEC forum, with its main tasks being ensuring communications for the purpose of exchanging information and sharing experience in the detection, investigation, and prosecution of corruption cases, discussing the issues of prevention of corruption, and professional development of personnel in relevant national authorities.

The resolution on establishing the Network was recorded in the final declaration signed by the APEC economic leaders, which gave rise to the question of representation of Russian law enforcement authorities in the Network to ensure adequate participation. By resolution of the Administration of the President of the Russian Federation, the Investigative Committee was defined as the coordinating agency in the Network's operations with due consideration of its mandate, with two of its representatives being appointed as contact persons from the Russian Federation. In selecting the candidates, a number of factors were taken into account, including practical experience in anti-corruption work and language skills.

National contact points including Russia's, established on the basis of the Investigative Committee, were presented at the first meeting of the Network held in Beijing (the People's Republic of China) in August 2014. Members of the Network agreed on a communication format between national law enforcement agencies with a focus on sharing best practices, strengthening anti-corruption potential by arranging expert events and training programmes of various kinds, as well as cooperation of law enforcement authorities in criminal cases on the basis of strict compliance with the provisions of national legislation, confidentiality of the issues in question, and open discussions.

Provisions on the procedures for law enforcement in anti-corruption activities, including those based on specific examples of criminal prosecution of corruption cases, with a focus of the most frequent challenges in investigating activities, were included in the founding documents of the Network. Simplifying direct cooperation between national agencies of the member states on a routine basis was announced as the Network's top priority. Together with that, a special closed digital resource aimed at the prompt sharing of confidential information was created to facilitate efficient operation of the newly established format.

As early as the first meeting of the Network, representatives of law enforcement authorities from China, Hong Kong, the USA, Australia, Indonesia, and Singapore delivered presentations related to the practice of international cooperation of recovery of assets stolen by corruption, forfeiture of criminal proceeds, and repatriation. Specific examples of interstate communications were discussed.

With due consideration of the urgency and the significance of the issues planned to be discussed within the framework of the Network, the management of the Investigative Committee of the Russian Federation recognized Russia's participation in the Network's activities as one of the priority areas in the field of international cooperation. A resolution of the Chairman of the Investigative Committee

established a relevant working group led by one of his deputies, whose participation in APEC events was included in the agency's action plan.

Prior to the 2nd session of the Network, the Investigative Committee of the Russian Federation held a cross-sectoral meeting, during which the priority focus areas of Russia's membership in the above format for the next few years were developed. They included the issues related to cooperation in the field of anti-corruption activities and combatting the legalization (laundering) of proceeds from crimes, illegal withdrawal of funds out of the country, the efficiency of mutual international legal assistance in criminal matters, cooperation in terms of extradition related to corruption cases, communications between the investigative authorities and financial intelligence units of APEC aimed at detecting corruption crimes including foreign bribery, combatting corruption in bio-resource extraction and the utilization of the forest resources in the Asia Pacific Region, communications in combatting corruption in law enforcement authorities and business communities, and the joint dissemination of anti-corruption standards.

At the 2nd session of the Network held in Cebu (Republic of the Philippines), the representative of the Investigative Committee of the Russian Federation delivered a presentation on issues of international cooperation in recovering assets and emphasized the most challenging aspects of formal and informal cooperation of law enforcement authorities of APEC economies. The report was received positively and raised interest in a number of countries in terms of sharing experience and enhancing mutual cooperation with the competent authorities of the Russian Federation.

The activities of the new format of communications between law enforcement authorities in the Regional Anti-Corruption Network, established within the framework of the APEC forum, are picking up speed. It is planned to hold the Network's sessions once a year, chaired by one APEC economy. At the same time, expert-level educational events are already being delivered (in 2014-2015, workshops were arranged in the Kingdom of Thailand, the People's Republic of China, the Republic of Philippines, and the USA).

The involvement of the Investigative Committee of the Russian Federation in this type of international event is expanding each year, which is reasonable considering increasing transnational crime and the need to investigate complex international financial criminal schemes, develop new methods of investigative activities, and strengthen cooperation between the relevant authorities both within Russia and in the international arena.

The educational events help the sharing of experience and best investigative practices, developing the most efficient ways of communication, and reducing the time for providing relevant information and coordinating joint approaches to solving specific tasks aimed at combatting corruption. The above activities make it possible not only to use the obtained information to improve investigative operations and procedural control, but also to initiate relevant amendments and supplements to current national legislation.

Experience gained in international cross-sectorial communications facilitates the development of Russia's own national methods for suppressing particular phenomena, e.g. the illegal withdrawal of funds from the country, and improves the tools for recovery of assets stolen from the country by corruption while ensuring that relevant amendments are introduced into current legislation.

It is not a secret that asset recovery is a very complicated process that is nevertheless essential in order to ensure the rights of harmed parties, and its smooth and efficient operation helps to guarantee that the budget system remains intact. At the same time it is evident that positive results for the state in terms of asset recovery may be achieved only with close cooperation with the officials and competent authorities of foreign states. Also important are direct contacts at a highly professional and qualified level; there are cases when representatives of the Investigative Committee, attending meetings abroad, raised and solved issues of inadequate performance following requests for international legal assistance.

Strengthening international cross-sectorial cooperation is an essential factor for successfully implementing a governmental anti-corruption policy. Given the Russian Federation's role in geo-politics, APEC's Regional Anti-Corruption Network of Law Enforcement Authorities stands a good chance of becoming an influential forum for resolving urgent problems in cross-sectorial communications within the framework of the national campaign against corruption based on fundamental principles and standards of international law.

3.4. Kazakhstan

Between 2014 and 2015 a number of new incentives for mitigation of corruption risks were adopted in Kazakhstan. The basis for these incentives was laid by the statement of the President of the Kazakh Republic about the Anti-Corruption Strategy for 2015-2025, which significantly changes the approach to fight corruption and recognizes the priority of measures to mitigate corruption risks, rather than to manage their consequences. The main focus of the strategy is mitigation of corruption risks in the work of public officials, awareness measures about corruption risks, and interaction with the public, civil society, and mass media. The Anti-Corruption Strategy was developed with the experience of Kazakh and international experts, scientists, civil society institutions, and international practice.

The new Law of the Republic of Kazakhstan on Counteraction of Corruption entered into force on 1 January 2016 and is a milestone in the modernization of anti-corruption policy. The law also provides the new definition on "corruption", which entails property benefits, but also on "non-material benefits" and "third parties". This definition corresponds to the UNCAC definition. The Law also includes new descriptions of violations of ethical and moral principles by public officials and corruption risks. The acts of violation of ethics and moral principles are now regarded as actions that discredit public service.

The Law of the Republic of Kazakhstan on Counteraction of Corruption also outlines the system of measures to fight corruption. For the first time in Kazakh practice, it defines methodologies that prevent corruption such as anti-corruption monitoring, analysis of corruption risks, definition of anti-corruption culture, identification of corruption norms in juridical practice, financing control, anti-corruption limitations, conflicts of interest and preventive measures against them, measures to prevent corruption in the sphere of business, anti-corruption standards, as well as the development and publication of the National Report on Corruption Prevention.

The analysis of endogenous and exogenous corruption risks is directed towards identification and definition of reasons and conditions that contribute to corrupt acts. Point 2 of Article 8 of the Law says that exogenous analysis of corruption risks is conducted by the special organ established to fight corruption. The rules of analysis of corruption risks are identified by presidential decree and contain two main directives. One is identification of corruption risks in the legal acts relating to activities of state organs and organizations. The second direction includes identification of corruption risks in the state and management activities of state organs. This includes human resource management, implementation of anti-corruption regulations by public officials, and regulation of conflicts of interest. Further activity is conducted to identify gaps and double meanings in the standards and regulations of public services. This activity also embraces the identification of gaps during definition of punishment measures, regulations, and controls on the regional level. It also includes the definition of gaps and administrative barriers during the permission process for small and medium enterprises.

The analysis of exogenous corruption risks involves experts from the non-governmental sector as well as the National Chamber of Commerce. It also includes the experience of a number of countries that were successful in minimizing corruption risks.

According to Point 5 of Article 8 of the Law Counteraction of Corruption, analysis can be realized by state organs and organizations themselves. This is a new development that provides the legal definition of public organizations as an objective of anti-corruption regulation. It allows increased efficiency of corruption prevention measures.

According to the Law, civil society, NGOs and other societal organizations are recognized as actors in the fight against corruption for the first time. According to Article 7 of the Law, such actors can conduct anti-corruption monitoring. The results of this monitoring can facilitate decisions about the need for external analysis of corruption risks and development of recommendations on how to increase the efficiency of anti-corruption institutions.

The Law also includes regulation of questions about corruption in business. In particular, it prescribes that business sector stakeholders take preventive measures to fight corruption, follow principles of honest competition, prevent conflicts of interests, and obey anti-corruption regulation. Furthermore, the Law identifies new

anti-corruption standards that represent a system of recommendations for a particular area of societal relations and are directed towards corruption prevention.

The Law also introduces the practice of publishing the National Report on Counteraction of Corruption. According to Article 17, the National Report should contain analysis and definitions of the conditions and tendencies for corruption risks at the international and national levels, as well as propositions for the formulation, realization, and improvement of anti-corruption policy. The National Report on Counteraction of Corruption is based on the results of the work of special organs to fight corruption as well as on contributions from physical and juridical persons. In case of approval by the President of the Kazakh Republic, the National Report becomes a basis for further development of the national anti-corruption policy. The realization and implementation of mechanisms to prevent corruption is conducted by the Ministry of Civil Service of the Republic of Kazakhstan, which was created on 11 December 2015.

The Republic of Kazakhstan also implemented a number of other incentives to mitigate corruption risks. Since 2004 it participates in the Istanbul Plan of Action to Fight Corruption in the Countries of Central Asia and Eastern Europe, which was proposed by the Organization for Security and Co-operation in Europe (OSCE). During the 16th Monitoring Meeting of the parties to the Istanbul Plan of Action in Paris, the report about the third round of monitoring of legal framework of Kazakhstan was adopted. This report provides positive evaluations of political will and anti-corruption measures and reforms realized by Kazakhstan. The recommendations for Kazakhstan include further development of anti-corruption regulation in such areas as anti-corruption policies, criminal responsibility, and mitigation of corruption risks⁶¹. New incentives in Kazakhstan also include the “100 Concrete Steps” proposed by Kazakhstan’s President, and the laws “On Public Councils”, “Access to Information”, and “On Publishing Activity”⁶². Especially positive feedback was given for Kazakhstan’s efforts to involve civil society to fight corruption.

3.5. Kyrgyzstan

As in other countries of the Eurasian Union, the Kyrgyz Republic is actively implementing measures to fight corruption. The most important instrument to fight corruption in the area of state procurement is the Law on Public Procurement, which regulates all aspects of the process of public trade in the country. There are also a number of other laws that regulate anti-corruption measures such as the Law on the Fight Against Corruption, the Law on Competition, and the Law on Public Service.

⁶¹ Organisation for Economic Cooperation and Development (2014). Anti-Corruption Reforms in Kazakhstan. Round 3. Monitoring of the Istanbul Anti-Corruption Action Plan. Retrieved on 25.08.2016 from <http://www.oecd.org/corruption/acn/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf>

⁶² Меморандум на законопроект Республики Казахстан «Об издательской деятельности»-Article 19, London, 2007. Retrieved on 13.04.2017 from <https://www.article19.org/data/files/pdfs/analysis/kazakhstan-publishing-06.ru.pdf>

According to Chapter 17, the Law on Public Procurement is the primary mechanism that contributes to the involvement of as many participants as possible and thus contributes to the establishment of competition on the market. According to Chapter 15 of the Law on Public Procurement, the electronic portal was created and the trade organizers are obliged to post information about future trades and all required packages of information on this portal. The goal of the portal is to contribute to transparency and a more open, objective, and efficient procurement process. The portal also includes a system to submit complaints, which are automatically registered. According to Chapter 48 of the Law on Public Procurement each bidder has the right to bring complaints to the independent Inter-Ministerial Commission at each stage of procurement.

The implementation bodies were also created by the Law on Public Procurement. For instance, the Independent Inter-Ministerial Commission, which according to Chapter 49 of the Law on State Procurement provides an opportunity to register complaints to the government of the Kyrgyz Republic. The Competition Commission, which includes representatives from civil society and certified specialists in the area of state procurement, deals with these complaints. It operates according to Chapter 10 of the Law on Public Procurement and usually includes three persons, one of which should be an expert on state procurement and prove his expertise by certification. The leader of a purchasing company can also be included on this commission. The members of the commission carry personal responsibility if violations of the Law on Public Procurement take place. This commission can require a pause in the trades and an exemption from the procedure of procurement on the basis of complaints about violations in the procedures.

Other involved organizations are:

- The Department of State Procurement at the Ministry of Finance, which is responsible for control and regulation in state procurement efforts;
- The Department for Monitoring and Analysis of State Procurement;
- The Chamber for State Auditing, whose audits include all phases of planning, the realization of procurement, and the fulfillment of the contract;
- Public Councils of the Ministries, which actively work on the monitoring and identification of corruption schemes during state procurement; and
- Prosecution for severe violations of legislation in the area of state procurement, which is realized by the State Procurator.

Besides this, the mitigation of corruption risks is based on two principles: ethics of state employees and capacity-building. The ethics of state employees of the Republic of Kyrgyzstan include norms and the code of conduct. In addition, violators face measures of punishment. Capacity-building includes professional education on the questions of efficient management of state finances, which is realized by the training centre of the Ministry of Finance.

Conclusion

The training at IACA provided a broad overview of the existing measures in the Eurasian Economic Union to fight corruption and also took into consideration the history of corruption in the region and its characteristics. It also highlighted existing international practice tools to assess corruption risks and practices to mitigate them. The background section of the report provided information about the role of IACA in developing and sharing knowledge about corruption, along with the goal of the training to share experience and practices in the mitigation of corruption risks. The basis of the training, and of this report, takes on board concepts of cultural relativism theory, and its understanding of the corruption phenomenon, which, in contrast to the universal approach, recognizes cultural differences in definition of the corruption phenomenon.

Chapter 1 provided information about cultural differences in understanding the notion of corruption and a short overview of the history of anti-corruption efforts in different countries, starting from ancient times to today. A broad variety of definitions of corruption have existed for several centuries. The history of the mitigation of corruption risks is long, and the first definition of corruption, as well as anti-corruption efforts, could be found in Ancient Greece. In the Roman law, corruption was understood as an activity to disrupt the normal course of the judicial process. In the present, all existing definitions of corruption have common characteristics such as the negative side of corruption as a social phenomenon. These offences might be committed by a social group or a person with the goal of personal enrichment. The impacts of corruption are devastating. It impedes economic development and efficient modernization of the economy. Corruption creates a negative image of a state towards its inhabitants and destroys the legitimacy of the ruling government. Furthermore, it has adverse effects on the legal system and decreases the quality of public services.

In addition, Chapter 1 includes a description of participatory governance mechanisms to mitigate corruption risks. The concept of participatory governance is based on inclusive institutional structures and state capabilities to engage different stakeholders. It allows for mitigating corruption risks in different areas such as PPPs, the judiciary system, public services, and within the police force. Through the involvement of different stakeholders at all levels into the design and management of projects, it increases the transparency of decision-making processes and the quality of the projects. Levels of stakeholder engagement range from collective action to citizen control. There are also different forms of involvement, starting from providing information to consultation, partnership, and transfer of decision-making power. Descriptions of existing participatory governance measures, initiatives, and tools are provided in the first chapter.

Chapter 2 focused on the legal basis and instruments to mitigate corruption risks. These instruments include international anti-corruption regulations and conventions in the area of public procurement such as UNCAC, UNCITRAL, and WTO-GPA. They also include different methods to assess corruption risks, including MONCOR. The chapter provided descriptions of these instruments and their key features. Further

on, it discussed major forms of cooperation to implement these instruments and to enforce cooperation on the mitigation of corruption risks. As several stakeholders are involved in this process, the chapter discussed different forms of cooperation between them, including the collection of data, enforcement of joint codes of conduct, and the audit and control of corruption investigation activities. This chapter ends with the descriptions of available indices to measure corruption and provided a review of these indices in regards to the five member-states of the EAEU: Armenia, Belarus, Kazakhstan, Kyrgyzstan, and the Russian Federation. The analysis of the indices showed that progress was made in several of these countries, but there are still problematic areas. Corruption is perceived by several stakeholders who do business in the countries of the Eurasian region as a significant risk. The corruption measuring tools, such as the Corruption Perception Index, the Global Corruption Barometer, and the Global Competitiveness Index are based on experts' assessments and stakeholders' perceptions and show significant corruption risks in the Eurasian region. They also show areas where anti-corruption measures are urgently needed, for example in the judiciary system in Armenia, in the public services of Russia and Kyrgyzstan, and the police services in Kazakhstan.

Chapter 3 focused on the experiences of different countries of the Eurasian Region in the mitigation of corruption risks and provided an overview of the experiences of these countries in the implementation of anti-corruption measures. The subchapter on the Russian Federation included information on existing international cooperation with major anti-corruption entities worldwide, such as the OECD and the UNODC. It also provided descriptions of major enforcement entities within the country to fight corruption, such as the Investigative Committee of the Russian Federation, which, since the time of its establishment, has been dealing with several cases of corruption among public officials, as well as the description of the legal framework to fight corruption and existing compliance programmes.

The subchapter on Belarus includes an overview of the major legal documents in the country to fight corruption, the success stories, such as the training of law enforcement personnel and development of new mechanisms for confiscation, reporting, and accounting. It also provides descriptions of new laws on public procurement in the country.

The subchapter on Armenia includes the Anti-Corruption Strategy for four sectors, such as education, healthcare, customs, and tax administration and the description of the institutional framework in the country to implement this strategy. One of them, the Anti-Monopoly Commission, plays an especially important role in guaranteeing economic competition in the domestic economic market.

The subchapter on Kyrgyzstan includes the Law on Public Procurement, which regulates all aspects of public trade in the country. It also provides insights on the implementation bodies, such as the Inter-Ministerial and Competition Commissions.

The subchapter on Kazakhstan is based on the description of the Anti-Corruption Strategy, which changes the approach to corruption in the country and recognizes the need to mitigate corruption risks rather than to manage their consequences. It

also defines methodologies to prevent corruption, such as anti-corruption monitoring, analysis of corruption risks and culture, as well as the identification of norms to prevent conflicts of interests. Furthermore, it presents the Law on Combatting Corruption, which includes principles of participatory governance and recognizes civil society, NGOs, and other societal organizations as actors to fight corruption.

There are different legal and regulatory instruments as well as a number of international organisations dealing with the tasks to mitigate corruption risks, such as the United Nations Convention against Corruption (UNCAC), United Nations Commission on International Trade Law (UNCITRAL), the Government Procurement Agreement (GPA), and the World Trade Organization (WTO). The countries of the Eurasian Economic Union have different experiences with the implementation of these instruments. They also developed their own country-specific tools as well as regulatory and institutional frameworks to mitigate corruption risks. Examples include national laws and compliance programmes, anti-corruption strategies, and action plans specifically established to support anti-corruption institutes at the national and local governance levels. There have been several recent successful international and national initiatives. One is the Network of Law Enforcement Authorities, which was established by the APEC forum with the goal of exchanging information and experience as well as to cooperate in the prosecution of corruption cases. The network has already included representatives from several countries and helped to recover assets, which disappeared because of corruption. Another one is the federal law of the Russian Federation, “On Combatting Corruption”, which includes several principles to prevent corruption risks in state services, and which is currently actively implemented in Russia making several public servants liable for conflicts of interests. The principles of the law are developed to be a risk mitigation measure against power abuse by public officials and to protect the rights of people, the State, and society, in general.

Besides regulatory and legal norms, there are several measures of participatory governance, which allow the involvement of different stakeholders and a joint effort in the mitigation and management of corruption risks. Participatory governance is one of the potential keys that could address corruption risks. The concept is based on inclusive institutional structures and state capabilities and engages different stakeholders. Participatory governance is also a mechanism that stimulates growth and development. Enforcement of rule-following behaviour, which can be introduced by removing unnecessary functions and by introducing procedures to reduce discretion, can also help to reduce corruption.

Participatory governance might be a way to mitigate corruption risks in different areas, such as PPPs, the judiciary, and public services or within the police force, as it involves stakeholders at different levels. It can help to provide information about certain projects or services in order to increase transparency, or to activate engagement into the design of the projects or service delivery and its implementation up to citizen control. Collective action is one potential way of such engagement as it includes collaboration between private and public stakeholders, awareness rising, and trainings on anti-corruption standards.