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CSO
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OPINION-STANCE AND RECOMMENDATIONS ON THE RA 2019-2022 ANTI-CORRUPTION STRATEGY AND ITS IMPLEMENTATION ACTION PLAN DRAFT

CSO ANTI-CORRUPTION COALITION OF ARMENIA
ARMENIAN LAWYERS' ASSOCIATION

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PREFACE

On 19 December 2018, the “Armenian Lawyers’ Association” NGO (hereafter: ALA), jointly with the RA Ministry of Justice, in the scope of the “Commitment to Constructive Dialogue” project funded by the European Union, organised a public discussion on the RA Anti-Corruption Strategy and Its Implementation Action Plan Draft for 2019-2022 (hereafter: New Strategy), with members of the CSO Anti-Corruption Coalition of Armenia, as well as other participants from other civil society organisations.

In this regard, the CSO Anti-Corruption Coalition of Armenia welcomes the willingness of state agencies to engage in a constructive dialogue and ensure participation in the process of editing the new strategy. It is worth mentioning that on 11 June 2018 the CSO Anti-Corruption Coalition of Armenia (hereafter: Coalition) and ALA presented to the RA Ministry of Justice a *document entitled “Conceptual Provisions of the “RA 2019-2022 Anti-Corruption Strategy”* in its letter N 02/10. The document included 49 recommendations. **11 of them were fully accepted and included in the Strategy Draft, 7 were accepted partially, 6 were accepted to be taken into consideration, 22 were not accepted, 1 recommendation is at the stage of execution, and it was revealed during the above-mentioned discussion that 2 recommendations are expected to be included in the Strategy Draft.**

It is noted in the above-mentioned letter that the Coalition and ALA highly appreciate the format based on which the new anti-corruption Strategy Draft was developed, that is, it is expected to enforce the new anti-corruption policy through educational, preventive, and law enforcement activities. It should be noted that the Coalition and ALA have said many times that efficient fight against corruption, as shown through research on best international experience, is built on three main pillars: **anti-corruption education, corruption prevention, and inevitability of punishment in case of corruption offenses.**

The Coalition and ALA hereby presents **recommendations and observations on the draft of the “RA Anti-Corruption Strategy and Its Implementation Action Plan for 2019-2022,”** after having them **based on the logic of the new strategy and the three directions previously mentioned.**

The following documents, as well as best international expericen, served as a basis for the observations and recommendations included in this document:

1. International Documents:

- UN Convention against Corruption which entered into force on 14.12.2005;

- Report produced through the fourth cycle of monitoring carried out by the anti-corruption network of the Organisation for Economic Co-operation and Development (hereafter: OECD report);
- The fourth stage of evaluation by the Council of Europe Group of States against Corruption (GRECO) in Armenia; report on fulfilling obligations on “Corruption Prevention among NA Deputies, Judges, and Prosecutors;”
- 2018-2020 Strategy of the UN Anti-Corruption Coalition adopted on 16.01.2018թ;
- Republic of Armenia-European Union Comprehensive and Enlarged Partnership Agreement, signed on 24.11.2017;
- “Eastern Partnership: 20 Deliverables for 2020: Focusing on Key Priorities and Tangible Results,” adopted by the European Commission on 09.06.2017թ.,
- N1/2017 Directive of the EU-Armenia Cooperation Council on Priorities of Partnership of European Union and Armenia, adopted on 20.11.2017;
- EU-Armenia financial agreements;
 - “Armenia Public Funds Policy Reforms Project;”
 - “Support to Public Administration Reforms in Armenia: Provision of Best Services through More Efficient and Proper Public Administration.”

2. Inter-State Legal Acts and Other Documents:

- RA Government’s Programme approved by the NA decision 006-Ն on 25 June 2018;
- N 42 protocol decision “On Approving the Methodical Instruction on Development, Presentation, and Oversight of Strategic Documents Influencing State Revenues and Expenses” approved by the RA Government at its session on 5 October 2017 (hereafter: Methodical Instruction);
- 2019-2023 Strategic Plan of the CSO Anti-Corruption Coalition of Armenia adopted on 30.01.2019.

We hereby present the recommendations of the Coalition and ALA, according to the following:

- I. Anti-Corruption Strategy Draft of the Republic of Armenia;***
- II. 2019-2022 draft action plan for implementing the Anti-Corruption Strategy of the Republic of Armenia.***

I. ANTI-CORRUPTION STRATEGY DRAFT OF THE REPUBLIC OF ARMENIA

A) DEVELOPMENT PROCESS

1) The development process of the RA 2019-2022 Anti-Corruption Strategy Draft (hereafter: Strategy Draft) must be based on:

- a. International documents, based on the principles set out for the elaboration of such strategies. The main one of them is the **Kuala Lumpur Statement on Anti-Corruption Strategies (adopted on 21-22 October 2013, Kuala Lumpur) and its principles**. During the UN Convention against Corruption Member States Conference (25-29 November 2013, Panama) the importance of the Kuala Lumpur principles was discussed, and the participants adopted the 5/4 resolution.¹

It is mentioned in the Kuala Lumpur Statement that in the process of developing anti-corruption strategies **stakeholders' wide involvement** creates legal foundation and helps in ensuring the acceptability and efficiency of the strategies adopted. State agencies (executive, legislative and judicial) at the state and sub-state levels, civil society organisations, the private sector, the media, professional communities, commercial and industrial unions and trade unions, academic institutions, youth and cultural organisations can serve as important allies and partners in the process of developing anti-corruption strategies and can shrink the vulnerability of the reform-oriented efforts of the political leadership caused by changes.

It is indicated in paragraph 1 of recommendation 1 of the **OECD report** that the anti-corruption policy documents must be developed with **participants from a wide scope of stakeholders and be based on needs and risk assessment**.

Thus, when elaborating the strategy the following important Kuala-Lumpur principles were not followed:

- a) **POLITICAL, SOCIAL, ECONOMIC AND CULTURAL CONTEXT**: States must take into account their particular political, social, economic and cultural context when designing anti-corruption strategies.
- b) **COMMON VISION**: A consensus should be built around a common vision and intended objectives of strategies.

¹ See Paragraph 11 of the resolution here: <https://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session5-resolutions.html>

- c) **STRENGTHENING COORDINATION:** Anti-corruption strategies should focus on enhancing inter- and intra-agency coordination during the development process as well as implementation and monitoring phases.
 - d) **SOUND KNOWLEDGE BASE:** Development, implementation and monitoring of strategies should be informed by sound diagnostics, needs and evidence of risk and vulnerability areas and gaps in anti-corruption policies and institutions.
- b. The Strategy Draft must stem from the obligations assumed by the RA through the above-mentioned international agreements, in line with the recommendations included in the reports compiled by international organisations.
 - c. The Strategy Draft must correspond to the requirements set out in the domestic legislation for similar strategic documents, particularly the Methodical Instruction.

We suggest:

Carrying out the editing of the Strategy Draft, taking into account the principles listed below, as well as making it a subject for discussion among wide circles of civil society, also organising regional discussions, and forming public consensus on its final version.

B) ANTI-CORRUPTION DESIGN AND CONTENT

• Anti-Corruption Design

- 1) The design and content of the Strategy Draft are not based on **the following important Kuala Lumpur principles:**
 - a. **RATIONALE CORE OBJECTIVES AND REALISTIC GOALS:** Core objectives and goals, and rationale for interventions should be defined based on national priorities, and identified gaps and needs.
 - b. **COMPREHENSIVE AND COORDINATED APPROACH:** Anti-corruption strategies should be organised under an overarching/holistic approach while taking into account sector specific needs.
 - c. **CLEAR AND UNDERSTANDABLE DOCUMENT:** Strategies have to be clear, concise and easily understood.
 - d. **INTEGRATION WITH OTHER RELEVANT NATIONAL PROGRAMMES/REFORM AGENDAS:** Anti-corruption strategies should take into account and establish links with other relevant national strategies (e.g., judicial sector, public administration reform, open government, etc.) and should seek to form synergies with other agencies.

Part 1.2 of the Strategic Draft is dedicated to the “**New Anti-Corruption Strategy Goal and Objectives**”. According to Paragraph 10 of the Strategy Draft, “**The main goal of the Anti-Corruption Strategy is to create a public service and a society free from corruption.** In terms of reaching these goals, importance is attached to policy design and implementation in line with international anti-corruption criteria, using citizens’ great trust in state government bodies as a means to boost the principle of zero tolerance towards corruption.”

Speaking of the content formulation of the strategy goal we must mention that it is not formulated clearly and is not perceived definitely. It is also necessary that the following be taken into account: The goals of creating a “**public service**” and a “**society**” free from corruption,” **as result(s) or result indicators expected from the solution of the problems set out by the strategy**, cannot be compared to each other for the reason that having a “public service” free from corruption can be regarded as short-term or mid-term goal and can be reached in the terms of implementing a new anti-corruption strategy, and we can’t say the same as regards having a “society” free from corruption as it is formulated in a more general manner and more time is needed to reach it.

Secondly, we believe that such a strategy goal formulation is incomplete and does not fully reflect the anti-corruption policy vision of Armenia. Not only the public service and, globally speaking, the public, must be in the focus of the anti-corruption strategy, but also persons with political positions, the business sector, civil society organisations.

Apart from that, importance was attached to two circumstances as so-called “guarantees” to reach or realise the mentioned strategic goals:

- 1) Policy development and implementation in accordance with international anti-corruption criteria;
- 2) Using citizens’ great trust towards state government agencies as a means to boost the principle of zero tolerance towards corruption.

At the same time, one should keep in mind that the principal guarantees for the implementation of the goals set out in the strategy must also be the concrete target events aimed at solving the problems revealed on the basis of national priorities and **the realistic, qualitative and quantitative result indicators** expected as a result of their implementation.

As for the 8 strategy problems listed in the Paragraph 11 of the Strategy Draft, we believe that they also need editing and clarification. For example, “**Creation of a public service class with maximum integrity**” has been set out as a problem. However, a similar approach was also adopted in the previous strategy. In this regard, we believe that, first of all, it was necessary to evaluate the results of the previous strategy in terms of solving this problem and then set out new problems based on the lessons learned. Another problem is “**Establishment of integrity in the business sector, ensuring separation of business from politics**”. We believe that we should avoid definitions that sound like declarations, transitioning to more productive and result-oriented formulations. In particular, speaking of integrity in the business sector, criminal liability must be foreseen also for legal entities and full introduction of the beneficial owners’ institution. In this regard, the respective recommendations have been presented in the other parts of this document.

One of the problems listed is also the “**Outline of the Sustainable and Productive Institutional Anti-Corruption System.**” We believe that the term “outline” is not appropriate here as directions for fight against corruption have been outlined for years. At the moment, it is necessary that institutional solutions are put into use in Armenia now and that concrete mechanisms are introduced and operated.

As a problem suggested in the above-mentioned paragraph, “**increasing the efficiency of fight against corruption through modernisation of belated events as a result of an efficient monitoring mechanism**”. In this sense, we believe that it is necessary to go into more detail in the Strategy Draft on what is implied under “**belated events.**” Does it imply the events planned in the previous 2015-2018 Anti-Corruption Strategy and Its Implementation Action Plan (including the sectoral programmes approved by the RA Government) that were not implemented. If yes, then which methods should be

applied to decide which are more important of the actions not completed, so that they get included in the 4th anti-corruption strategy and actions for its implementation.

Thus, it should be taken into account that the Strategy draft outlines the priorities and problems of the new anti-corruption policy, decides on the expediency of introduction of a new institutional system by anti-corruption agencies, as well as the activities that will minimise the corruption in different areas of public life, will voice the public trust and support towards processes aimed at fight against corruption. Based on these facts, we find that first and foremost it is necessary to reach public consensus around the short-term and long-term goals of the strategy and the vision that must be put in the Strategy Draft. Its goals as such must reflect the results of solving the problems set out there, they must be written in a clear and realistic manner.

For the clear formulation of the goals and problems included in the Strategy Draft, the main goals of the UN Convention against Corruption might be useful (in the first article). They are:

- a) encouragement and strengthening of the means to prevent corruption and fight against it more efficiently and proactively;
- b) in corruption prevention and fight against it, including encouragement, facilitation, and support to international cooperation and technical aid towards return of values;
- c) encouragement of honest, responsible and appropriate administration of state affairs and state property.

2) The Strategy Draft doesn't correspond to the Methodical Instruction.

In particular, according to Paragraph 41, 43, and 50:

*“41. **Realistic, qualitative and quantitative result indicators** must be set out for the strategic goals, such that will serve as a basis in the future for **measuring the project goals and evaluating their progress and efficiency**”.*

*«43. **When setting out the result indicators** in strategic documents, both **the respective target indicators and their baseline indicators** must be set out for each. The baseline indicators describe the factual level of the respective indicator according to which the target indicators have been set out and the progress per the respective result will be evaluated in the future (...)*”

*«50. In measuring any goals, for the results indicator to be regarded as **quality and useful**, it must correspond to the following criteria:*

1) When defining indicators, it is necessary to avoid general, indefinite, unclear expressions (e.g., “high quality”, “within a year”, “at a proper level” and others);

3) The indicator can be qualitative or quantitative, and the quantitative one can be actioned and the qualitative one can be evaluated;

5) The indicator must be logically linked to the respective goals or results and must describe them, emphasising the results that show whether the project or higher-level strategic goals/targets have been achieved, (...)”

Apart from that, it is important for the strategy and its implementation action plan to be based on the table with the format of result indicators description, as foreseen in paragraph 52 of the Methodical Instruction.

To be more specific, it is necessary to plan out the following indicator descriptions per each result²:

- i. **Goal/Importance:** It is explained what the indicator shows and why it is important.
- ii. **Information Collection/Source:** It is described where the information comes from and how it is collected.
- iii. **Calculation Method:** It is clearly described how the indicator is calculated.
- iv. **Information Restrictions:** All information restrictions related to the indicator are disclosed, including the factors that are out of the control of sectoral agencies.
- v. **Indicator Type:** It is presented what the indicator calculates (final, mid-term or direct result, or other performance estimations for cost-efficiency, goal efficiency).
- vi. **Presentation Manner:** It is described how performance is presented: accumulative or non-accumulative manner.
- vii. **Accountability Cycle:** The regularity of the indicator accountability is presented: monthly, quarterly or annual.
- viii. **Permissible Deviation:** It discovers what percentage of deviations of factual indicators from the target level is regarded as permissible.

The above-mentioned requirements must be related to both **the result indicators describing strategic goals** and **the main performance indicators defined for the project actions** implemented to reach those goals (see Paragraph 53 of the Methodical Instruction).

² It should be noted that the applicability of the mentioned indicator descriptions is analysed in detail in the actions of the 2019-2022 Anti-Corruption Strategy Implementation Action Plan, in section 2 of this document where separate anti-corruption actions are described.

It is worth mentioning that the circulated Strategy Draft foresees only the following indicator descriptions set out in the above-mentioned table: **Short Description, Goal/Importance, Responsibility.**

We suggest:

- i. Paying maximum attention in the future editing of the Strategy Draft to the requirements set out in the above-mentioned documents and editing the Strategy Draft, matching it to the Kuala Lumpur principles and the Methodical Instruction to the extent possible.*
- ii. Setting out the expiration date for the Anti-Corruption Strategy in 2023, taking into account the fact that this Strategy will be adopted later than the scheduled period.*

• Content

- 1) It is mentioned in the last paragraph of the **preface** of the Strategy Draft: “(...) **The guarantee of the implementation of the directions set out in the strategy will be the unprecedented political will manifested by the new government.**” We believe that this formulation is incomplete and does not fully reflect the anti-corruption ideology. Political will is a necessary but insufficient precondition in coordinated fight against corruption. Political will must be manifested through introduction of efficient guarantees, such as successful mechanisms of anti-corruption fight and development of the professional capacities of law enforcement and relevant agency representatives. Based on the above-mentioned, *we suggest editing the marked part under the light of the above-mentioned.*
- 2) **Part 1.1** of the Strategy Draft is related to the **results and shortcomings of the RA Anti-Corruption Strategy and Its Implementation Action Plan for 2015-2018.** It is mentioned in the preface of the Strategy Draft: “Although **many legislative regulations were developed and adopted, the legislation have been synchronised with international standards** in the scope of previous strategies, accordint to various indicators, **the level of corruption, citizens’ corruption perception, and the lack of steps towards eradicating corruption in practice give place to uncertainty.**”

It is mentioned in sub-paragraphs 7, 12, and 13 of **Paragraph 5** of the Strategy Draft:

*“5. Speaking of the results of Strategy implementation, it is necessary to note that the **key results** of the RA Anti-Corruption Strategy and Its Implementation Action Plan for 2015-2018 are:*

- 7. On 16 December 2016, the legislative package “On Making an Addition to the RA Criminal Code” and “On Making Additions to the Criminal Procedure Code of the Republic of Armenia” was adopted, and thus **illicit enrichment was criminalised and investigative subordination was defined.** As a result of the mentioned change, increase in the property and (or) decrease in the obligations of persons*

obliged to present a declaration in the reporting period, which significantly exceed their legal income, starting from 1 July 2017, these are regarded as illicit enrichment and subject to criminal responsibility.”

*12. In all state administration system agencies, **high-ranking officials coordinating anti-corruption programme implementation have been assigned** at the level of head of staff or agency head deputy, and **prescribed changes have been made in the position passports** of the respective high-ranking officials.*

*13. Persons responsible for anti-corruption programme implementation of all state administration agencies **pass continuous training.**”*

ALA and the Coalition have always stressed and advocated for the adoption of the mentioned legal acts both at national and international platforms. At the same time, adoption of legal acts must be followed by their practical application. In this sense, it is unfortunate that Armenia has not had any tangible achievements yet. Thus, *we suggest noting the main reasons/problems hindering the practical application of the mentioned legal acts in the scope of the strategy, foreseeing actions during Strategy Draft editing for the solution of those reasons/problems and realisation of these legal acts.*

We suggest adding assessment in 12-13 sub-paragraphs of Paragraph 5 of the Strategy Draft, for example, on how efficient the mentioned anti-corruption programmes and training mentioned above has been, whether their impact on the anti-corruption conduct of target groups has been evaluated.

3) Paragraphs 1-4 of the Strategy Draft elaborate on the evaluation of the results of the RA Anti-Corruption Strategy and Its Implementation 2015-2018 Action Plan. To be more specific, according to Paragraph 1 of the draft, “In order to outline the priorities and issues of the new anti-corruption policy in the RA, decide the expediency of introducing a new institutional system of RA anti-corruption agencies, decide the future steps of the government in the field of anti-corruption policy, importance is attached to the results assessment of the RA Anti-Corruption Strategy and Its Implementation Action Plan for 2015-2018.”

Parallel to this, the Strategy Draft bypasses the answers to the following questions:

- How efficient has the previous strategy and its action plan been, including annual sectoral anti-corruption programmes (health, education, state revenue collection, services provided to the public by the police)?

- What result and influence has the previous strategy and its action plans been in the fight against corruption in Armenia.
- Have the strategy and its implementation action plans been implemented fully or partially? In case of partial implementation, what were the reasons for failure to implement? What will be the future of the actions not implemented.

We recommend including the answers to the mentioned questions in the Strategy Draft:

- 4) *We recommend presenting in the Strategy Draft also the efficiency, results and impact assessment of law enforcement (the agencies that are competent in the manner prescribed by the RA legislation to carry out investigation of corruption cases) and the agencies implementing preventive anti-corruption activities (Commission on Ethics of High-Ranking Officials, Anti-Corruption Council adjacent to the RA Prime Minister) in the period of the previous Strategy.*
- 5) The following is foreseen in **Paragraph 2** of the Strategy Draft: “2. *The RA Anti-Corruption Strategy and Its Implementation Action Plan for 2015-2018 was aimed at decreasing corruption level and prevalence through conscientious and responsible officials, increasing public trust towards processes aimed at fight against corruption, expanding public support during implementation of anti-corruption actions, as well as application of more efficient and active means to prevent corruption.*” *We suggest including in the strategy the question on making the class of public servants conscientious and responsible, as well as that on the amount of public participation in the implementation of anti-corruption actions.*
- 6) In sub-paragraph **10 of Paragraph 5** of the Strategy Draft a reference is made also to the whistle-blowing system. We find that *the application results and impact assessment of this system should also be presented in the scope of the strategy. In addition to our recommendation to also note in this part the main reasons and challenges hindering the full application of the mentioned whistle-blowing system. We also suggest scheduling clear dates for the operation of the anonymous electronic reporting platform.*
- 7) Speaking of the results of the previous, 2015-2018 Anti-Corruption Strategy, presented in Paragraph 5 of the Strategy Draft, we recommend *presenting in its scope the comprehensive results of the State-Civil Society dialogue platform, referencing the dialogue efficiency and results achieved.* The mentioned will also prove the state evaluation on state-civil society dialogue and public participation in fight against corruption. Apart from that, *we ask to correct the name of the anti-corruption coalition in this part to CSO Anti-Corruption Coalition of Armenia.*

- 8) *We recommend adding to the problems and actions also the capacity building of specialised civil society organisations,* as their participation is also important in fight against corruption, as it has already been mentioned. It also stems from the requirements of the UN Convention against Corruption³. In this regard, respective recommendations have been presented in other parts of this document.
- 9) *Approaches to anti-corruption education* have been left out of the Strategy Draft, although it is regarded as one of the main directions of the strategy, which we *also recommend including.* In this regard, respective recommendations have been presented in other parts of this document.
- 10) In addition to the recommendations presented, we believe that *synergy between different parts of the new Strategy Draft shall be ensured,* foreseeing mutual additions and assistance between mechanisms and actions. At the same time, *we suggest ensuring synergy with other strategies, too,* bypassing repetition of similar provisions in this strategy and other departmental documents (including annual, three-year or five-year programmes, strategic documents, action plans, etc.), including strategies related to the fields of **public service, judicial system,** etc.
- 11) In the Strategy Draft or the new mechanisms suggested, there is no justification, specifically international experience showing how one or another mechanism was chosen, for example, the action of focusing the functions of corruption crime investigation, as well as carrying out operational intelligence activities on corruption crimes in an existing agency or creating a new one for this role. Thus, **we suggest that a justification accompanied by international experience be provided in case of new mechanisms being foreseen in the Strategy Draft.**

C) ANTI-CORRUPTION STRATEGY MONITORING AND EVALUATION

- 1) The strategy monitoring and evaluation foreseen in the new Strategy Draft are not based on the following **vital Kuala Lumpur principles:**

³ See at: http://www.un.org/res/UN%20Treaties/XI_9.pdf

- A. INTEGRAL PART OF STRATEGY DESIGN:** Monitoring and evaluation mechanisms are an integral part of national anti-corruption strategies. Elements of evaluation and data collection systems should be built into strategies from the design phase.
- B. INDICATORS WITH CLEAR BASELINES AND TARGETS:** Measurable indicators, with established baselines and tracking mechanisms, are needed to determine whether targets are being achieved.

In the draft of the new strategy insufficient attention has been paid to the section titled “**Monitoring Section,**” and in our evaluation 2 actions (61-62) in both the Strategy Draft and Its Implementation Action Plan cannot guarantee efficient mechanisms of monitoring implementation. According to the Kuala Lumpur statement, monitoring and evaluation mechanisms are an inextricable part of national anti-corruption strategies and evaluation elements and data collection systems must be included in strategies at the very first design phase.

According to the Methodical Instruction, one of the general requirements for the content of strategic documents is setting out result indicators. In particular, according to Paragraph 41 of the decision, **for strategic goals realistic, qualitative and quantitative result indicators must be defined, and they will serve as a basis in the future for measuring project goals, evaluating progress and efficiency.**

According to Paragraph 42 of the Methodical Instruction, “*The main result indicators are the main characteristics used to evaluate and action achievement of goals. (...)*” Then, paragraph 43 sets out the following: “*When setting out result indicators in strategic documents, both the **respective target indicators** and their **baseline indicators** shall always be defined for each. The **baseline indicators** describe the factual level of the respective indicator for which the target indicators have been defined and for which progress in the respective result line will be evaluated afterwards. The **target indicators** reflect the targeted (desirable) level of the respective indicator, which the state strives to achieve through the respective interventions. (...)*”

We suggest:

- 1) **Revising the strategy monitoring and evaluation system** in the editing stage of the new Strategy Draft, **matching them with the Kuala Lumpur Statement and the Methodical Instruction requirements;**
- 2) **Foreseeing result indicators for three months, six months, one year and the entire period that would reflect not only the factual performance of the action, but also the impact assessment;**
- 3) **Allocating funds from the state budget for the implementation of monitoring of the strategy and its action plan by independent CSO experts.**

III. DRAFT OF THE 2019-2022 RA ANTI-CORRUPTION STRATEGY IMPLEMENTATION ACTION PLAN

We present the following recommendations on the actions of the 2019-2022 Implementation Action Plan Draft of the Anti-Corruption Strategy of the Republic of Armenia (hereafter: Draft):

1) **Carrying out regular surveys in the public on corruption, public trust level and impact of anti-corruption actions, publicising survey results (Action 1):**

The paragraph 4 of the 1st recommendation presented in the OECD report related to anti-corruption policy documents is about a recommendation with the same content. However, it is mentioned in the OECD report that surveys on impact of anti-corruption actions shall also be carried out at the stage of anti-corruption strategy monitoring implementation.

We recommend:

- i. **Including surveys in the action planned in the draft also at the stage of carrying out anti-corruption strategy monitoring;**
- ii. **Considering the expediency of delegating implementation of the above-mentioned surveys to non-governmental organisations specialised in the field of anti-corruption and include them in the draft as responsible ones for that action.**

2) **Based on risk evaluation results, development and implementation of internal integrity action plans in state agencies (Action 2):**

In Paragraph 5 of the 1st recommendation of the OECD report, a recommendation with the same content is presented. However, we deem it necessary to note that **it is not clear what methodology will be used in risk assessment, and who will evaluate the efficiency of integrity action plan implementation.** Apart from that, it is not understandable why internal integrity programmes developed based on risk assessment at least in **5 agencies** have been defined. We strongly believe that it could lead to non-harmonious work of the governance system.

We suggest:

- i. ***Specifying the sequence of the implementation steps of the above-mentioned action of the Draft to the extent possible, in order to have qualitative and quantitative result indicators;***
- ii. ***Foreseeing the action for all agencies, not just 5.***

3) **Revealing corruption risks, project development and implementation in local government bodies with 15,000 and more population (Action 3):**

The action has been included in the Draft based on the recommendation in the N 02/10 letter of the Coalition and ALA on the new anti-corruption strategy sent to the Ministry of Justice on 11 June 2018 (hereafter: Recommendation Letter). However, **it is not clear what the justification is behind the selection of communities with 15,000 and more population selected** as targets. Moreover, if the anti-corruption strategy implemented at the state level is funded mainly from the state budget, **then it is not clear from the Draft whether anti-corruption action plans will be funded in communities by the state budget or community budgets**. If they are implemented with state funding, then the Draft must clearly mention about it, as well as give initial assessment on impact on state expenses in the Draft, in accordance with the requirements of the Methodical Instruction.

According to the Kuala Lumpur Statement on Anti-Corruption Strategies, the latter must provide for **institutional and financial sustainability**, in addition to taking into account implementation abilities. Therefore, if the above-mentioned action is to be realised from the state budget and will be introduced in those communities, then it is not clear from the Draft what agencies will be involved in revealing corruption risks, developing projects, monitoring implementation processes in communities as the capacities of communities in terms of developing such projects, implementing them and guaranteeing their efficiency are extremely limited.

We recommend:

- i. Clearly defining whether the funds necessary for the implementation of this action will be allocated from the state or the community budget;**
- ii. Revising the list of agencies responsible for the action implementation, also including non-governmental organisations working in the field of anti-corruption (with consent);**
- iii. Foreseeing in the Draft an action on the development of model versions of municipal anti-corruption strategies or plans and pilot trials in pre-selected communities, such as those in the Czech Republic, Poland, etc.**

4) Ensuring regular operation of the donor coordination mechanism created in the scope of the Anti-Corruption Council (Action 4).

It is defined in the “Expected Results” section of the mentioned action: *“In order to support the anti-corruption strategy and the action implementation process, the Anti-Corruption Council holds a donor coordination meeting and publicises at least once a year annually.”*

Taking into account our vision for the independent universal agency in fight against corruption, we believe that once the latter is created, the Anti-Corruption Council is to cease its activities, and the above-mentioned power, among others, must be transferred to the independent universal anti-corruption agency.

We recommend:

Transferring the function of ensuring the regular operation of the donor coordination mechanism created in the scope of the Anti-Corruption Council to the independent universal anti-corruption agency.

5) Improvement of the Transparency International Corruption Perception Index by 15 points (Action 5):

As regards the mentioned action, we deem it necessary to note that it is not clear what **the sequence of steps will be** for guaranteeing the annual improvement of the corruption perception index by 5 points, and **what is the justification behind the selection of that index improvement point. At the same time, it is not understandable why the RA Ministry of Justice has been chosen as the agency responsible for this action**, as there are different agencies responsible for the actions foreseen by the Draft. Thus, we will have improvement in the index also due to the results of the actions carried out by these agencies.

We recommend:

- i. Presenting a justification on the reason of selecting 15;
- ii. Presenting the sequence of steps for the implementation of this action;
- iii. Revising the responsible agency.

6) Foreseeing funds aimed at the implementation of anti-corruption actions, according to the RA Law on State Budget (Action 6):

It is mentioned in the Kuala Lumpur Statement as a vital principle that anti-corruption strategies should provide for their **institutional and financial sustainability**. It is noted in Paragraph 6 of recommendation 1 of the OECD report, that anti-corruption strategy actions must be accompanied by funding needed for implementation.

According to the requirements of the Methodical Instruction, the cost assessment related to strategies must be set out not only for the entire strategy, but also for the objectives and/or strategic plans/actions implemented in its scope, which then **must be transferred through budget programmes to the budget system and become a foundation for defining the Mid-Term Expenditure Plan and budget allocations**.

We recommend:

Removing this action from the Draft, taking into account that the funding source is mentioned for each action in a separate column and if the funding for implementing an event comes from the state budget, then the responsible authority will present and receive the respective funds with its annual budget application.

7) Establishment of the Corruption Prevention Commission and Ensuring Regular Operation (Action 7)

Consideration of the question on focusing the functions of corruption crime investigation, as well as carrying out operational intelligence activities on corruption crimes in an existing agency or creating a new one for this role (Action 52, typo in the Draft – 51).

On the one hand, the mentioned action will be implemented under the RA Law on the Corruption Prevention Commission, therefore there is no need for including this action in the Draft with this wording.

On the other hand, Paragraph 51 of the Draft foresees consideration of the question on focusing the functions of corruption crime investigation, as well as carrying out operational intelligence activities on corruption crimes in an existing agency or creating a new one for this role.

We cannot conclude from the analysis of the actions foreseen in the mentioned two paragraphs that the new Strategy Draft suggests establishing an independent universal anti-corruption agency, which will possess:

- Corruption prevention,
- Anti-corruption education and
- Preliminary investigation and operational intelligence functions and powers.

Acting Prime Minister of the Republic of Armenia Nikol Pashinyan has expressed the necessity of having an independent universal anti-corruption agency in his public speeches many times.⁴ Moreover, the selection of this model is expressed in the RA Government Programme approved by the National Assembly decision N 006-Ն from 25 June, 2018: *“In fight against corruption, the establishment of a specialised independent anti-corruption agency can have a significant meaning, not only will it have a chance to carry out monitoring, oversight and research, but it will also have the authority to fulfill operational intelligence, investigation and pre-investigation functions.”* The development of a legislative package for the fulfillment of the above-mentioned requirements of the RA Government’s Programme is also foreseen in RA Government’s N 1030-Լ decision from 6 September 2018, annex N1, paragraph 59, subparagraph 3. Apart from that, if the new Strategy Draft somehow references the two main functions fulfilled by the independent universal anti-corruption agency, the same cannot be said about introducing anti-corruption education and the authority responsible for its implementation. **The best international**

⁴See at: <https://iravaban.net/206438.html>

experience also speaks about (Hong Kong, Singapore, Latvia, Lithuania, and a number of other countries) the efficiency of such a model in fight against corruption.

We recommend:

- i. **Removing the above-mentioned two actions from the Draft;**
- ii. **Foreseeing an action on creating an independent universal anti-corruption agency instead, one that would possess the functions of corruption prevention, anti-corruption education and preliminary investigation, investigation, and operational intelligence.**

8) Establishment and operation of ethics commissions, according to the Public Service Law (Action 8):

Paragraphs 1-3 of Recommendation 6 of the OECD report suggests ending the process of creating legislative grounds necessary for ensuring proper activities of ethics commissions, ensuring that ethics commissions and integrity organisers possess the respective capacities and be able to apply them in practice, showing methodic support to them, as well as setting mechanisms for monitoring the activities of these commissions.

The following is foreseen as a result expected from action implementation: “According to the Law of the Republic of Armenia on Public Service, ethics commissions have been created by laws on **separate types of public service and public service.**” In this regard, we find it necessary to note that according to the Law of the Republic of Armenia on Public Service N 206-Ն adopted on 23 March 2018, Article 44, Part 1, **separate ethics commissions will be created for separate types of public service and for community service**, and according to Article 46, Part 1 of the same law, a **public service position for the organiser on integrity issues** is foreseen in the staff administration units of state and local government agencies. Apart from that, as an agency responsible for the implementation of the abovementioned action in the Draft, the Civil Service Office of the RA Prime Minister’s Staff has been foreseen. However, it is necessary to keep in mind that the mentioned is not an authority for specific types of state service, as well as community service.

We recommend:

Removing this action from the Draft, considering unacceptable the inclusion of the actions already foresee in other legal acts and other strategic documents approved by the RA Government in the Draft.

9) Capacity building of the agencies responsible for anti-corruption policy development (Action 9):

In the scope of the above-mentioned action, it has been foreseen that the employees of the respective unit of the RA Ministry of Justice and those of the RA Prime Minister’s Staff will pass regular training. However, during the development and implementation of the anti-corruption policy, **no actions have**

been foreseen for the capacity development of other actors with significant involvement, particularly civil society organisations specialised in fight against corruption, specialised investigative journalists and mass media outlets, while the involvement of civil society in fight against corruption is foreseen in the priorities of the UN Convention against Corruption Coalition through conducting anti-corruption training, for them to gain abilities to participate in the revision mechanisms of the UN Convention against Corruption. Apart from that, it is written in the “Eastern Partnership – 20 Deliverables for 2020” document that the involvement of the civil society is the key to fight against corruption.

We recommend:

Foreseeing an action on the capacity development of civil society organisations and mass media outlets specialised in fight against corruption.

10) Forming consensus on anti-corruption policy development (Action 10):

The formation of consensus on anti-corruption policy development has cornerstone importance. It is also evidenced in the best international experience. It is mentioned in the **Kuala Lumpur Statement** that stakeholders’ great involvement in the process of anti-corruption strategy development creates legal grounds and helps to ensure the acceptability and efficiency of the strategies adopted. State agencies (executive, legislative and judicial) at the state and sub-state levels, civil society organisations, the private sector, the media, specialised communities, commercial and industrial unions and trade unions, academic institutions, youth and cultural organisations can serve as important allies and partners in the development of anti-corruption strategies and can cut the vulnerability of reform-oriented efforts towards changes in political leadership. It is also mentioned in the statement that there must be consensus between the overall vision and goals of strategies. In recommendation 1, paragraph 1 of the **OECD report**, it is also mentioned that the anti-corruption policy documents must be developed with stakeholders’ active participation and will be based on assessment of needs and risks.

However, we firmly believe that the formation of consensus around anti-corruption policy development does not imply a separate action but a complex approach to all the actions foreseen in the Strategy.

In the meantime, in the Draft presented small space is given to the participation of civil society organisations and mass media in the actions to be carried out.

We recommend:

- i. **To remove this action from the Draft:**
- ii. **Provide for and maximise the participation and role of civil society organizations and the media as widely as possible. Throughout all stages of implementing the actions of the strategies, starting with**

the stage of anti-corruption policy, document review and expertise, public awareness and educational programs, including the implementation of the ongoing monitoring and evaluation phase.

11) Introduction and practical application of a new human resource management information system (Action 11).

Although the Point 1 of the OECD Recommendation 4, suggests to introduce the new human resources management information system and start its application in practice for the entire civil service, it is worth mentioning that here and the action itself, the expected outcome, as well as the performance indicator are unified, so it is subject to editing. In addition, the **new law on Civil Service**, which was adopted on 23 March, 2018, **already provides for the creation of an information platform for civil service**, which is an electronic program and will be managed by the Civil Service Office of the RA Prime Minister's Staff.

We recommend:

Removing the action from the Draft in order to avoid unnecessary duplication.

12) Raising the salaries of civil servants on a periodic basis (Action 12).

Point 1 of the OECD Recommendation 9, suggests to increase the level of competitiveness of civil service salaries. Limit the share of variable pay in total remuneration. Ensure that the bonuses are linked to the performance evaluation and based on the clear and objective criteria.

It should be noted that the exact amount of the raised remuneration has not been specified in this action, which does not provide an opportunity to evaluate the quantitative and qualitative indicators of the action.

Besides, the main instrument of the state regulation of wages in Armenia is the minimum wage, and a separate action on the **possibility of its consistent upgrade** is provided by the "**Action Plan of the Government of the Republic of Armenia for 2018-2022**" approved by the **RA Government Decree N 1030-L of 6 September 2018** ".

We recommend:

Removing the action from the Draft in order to avoid unnecessary duplication.

13) Defining the modal rules of conduct of the public servant, the rules of conduct of the civil servant provided by the RA Law on Public Service (Action 13).

Point 1 of the OECD Recommendation 12, suggests to develop codes of ethics or conduct for special categories of public servants prescribed by Law on Public Service, which will serve as a basis for maintaining ethical rules as well as teaching them. And point 2 recommends to provide practical training to public officials about the use of code of ethics in practice.

The recommendations of GRECO also propose to significantly strengthen the system of control over the observance of ethical and behavioral norms. In addition the priority issues of the European Union and Armenia also have provided for high ethical standards in public administration processes.

The anticipated outcome of this action is unclear why the formulation “*The model rules of behavior of the public servant are rules of behavior of the civil servant*” appeared in the column for the year "2021", because this formulation does not represent a qualitative and quantitative result as opposed to the indicators in the same columns of the years "2019" and "2020". In addition, such an event is already **stipulated by Clause 5 of Appendix N 2 of the Decree N 756-A of the RA Prime Minister "On Actions to Enforce the Law on Public Service" of 11 June, 2018.**

We recommend

Removing the action from the Draft in order to avoid unreasonable duplication.

14) Ensuring normal functioning of the system for declaration of property, income and interests (Action 14).

Point 1 of the OECD Recommendation 11 suggests to ensure systematic, impartial, consistent and objective scrutiny of asset declarations and subsequent follow up as required by law with the focus on high level officials and Point 3 recommends to ensure that the body in charge of verification has access to all information and databases held by public agencies and tools necessary for its full exercise of its mandate. At the same time, we consider that the functioning of the declaration system will also be implemented by the force of the RA Law "On the Corruption Prevention Committee", so there is no need to envisage such an arrangement.

On the other hand, we declare that the **Coalition and the ALA have also proposed a action to improve the system for declaration of property, income and interests**, but we consider it necessary to mention that *we recommend for this action to:*

- i. Review and extend the list of declarant persons,*
- ii. Review and extend the list of persons, affiliated with declaring officials, who shall be obliged to declare,*
- iii. Review the sanctions for incorrect or incomplete submission in the declaration,*
- iv. Review the subject matter of the declaration including the inclusion of non-asset costs in the declaration, review the financial threshold for the declaration of precious property,*
- v. Review publicity requirements, including donations,*
- vi. Review the authority of the body responsible for the analysis of declarations, including the power to request an ad hoc declaration of any citizen,*
- vii. Review the Declarations' Website by enabling to conduct searches for a specific asset and interest.*

15) Study of expediency of legislative regulation of lobbying activities (Action 15).

Please note that this proposal has been **included** in the draft **within the framework of the Recommendation Letter of the Coalition and ALA**. At the same time, we would like to note that this proposal was only partially included in the draft, as the recommendations were broader, covering corruption risks throughout the entire electoral process.

We recommend:

- i. To participate in the elections as a duty, and not as right: there is a fairly widespread international experience in the relation with this,*
- ii. Revise the regulations on the abuse of administrative resource and tighten sanctions,*
- iii. Revise the regulations referring to the propaganda round the polling stations and tighten the sanctions,*
- iv. Review the period of lobbying activities and reduce them.*

16) Continuous implementation of the commitments undertaken within the framework of Open Government Partnership (OGP) (Action 16). Introduction and launch of www.e-petition.am electronic system and conducting awareness-raising activities (Action 21).

At the 15 November sitting of the Government of the Republic of Armenia, the Government approved the fourth Action Plan of the Republic of Armenia within the framework of the Open Government Partnership initiative, which outlines the actions to be taken within the framework of this initiative, terms of their implementation, the responsible bodies and etc. Although Kuala Lumpur Statement states that **Anti-corruption strategies should take into account and establish links with other relevant national strategies** (e.g., judicial sector, public administration reform, open government, etc.), however **it does not mean that they should be corroborated to each other: Regardless of the inclusion or non-inclusion in the Draft, actions approved by the fourth OGP Program as an international commitment undertaken by the Government of the Republic of Armenia should be implemented by responsible agencies. Therefore,** there is no need to designate their implementation as a separate action.

In addition, two of the actions envisaged by the OGP related program were also included in the Draft (Actions 21 and 28 of the Draft, which are related to the www.e-petition.am electronic system and the Register of Beneficial Owners). In this regard, it is not clear based on what reasons this actions from the OGP fourth program have been included in this Draft: we shall refer to these separately. Additionally, if there is a need to provide for an event at a more advanced level regarding the Institute of Beneficial Owners in this Draft as well, yet it is completely absent regarding the petition system.

We recommend:

- i. Removing the action 16 from the Draft in order to avoid unreasonable duplication.*
- ii. Removing the action 21 from the Draft in order to avoid unreasonable duplication.*

17) Ensuring publicity of the process of deprivation of access to the procurement process (Action 17).

Although this action issues from the OECD Recommendation 19, this report also provides a number of other recommendations. Additionally, as an expected outcome of the event, periodic updating and publication of information is indicated. In this connection, we find that such a action could be, for example, in the Annual Action Plan of the Authorised Body responsible for procurement. Additionally, it is important to note that

the expected outcome of the event does not include quantitative and qualitative indicators, which do not allow for evaluating what significant progress will be recorded in the procurement process as a result of the action.

Within the framework of the Recommendation Letter of the Coalition and ALA, a number of recommendations aimed at the improvement of the procurement sphere and which were based on the requirements of the following documents were presented:

- EU-Armenia Comprehensive and Enhanced Partnership Agreement,
- Partnership Priorities between the European Union and Armenia,
- “Public Finance Policy Reform Program in Armenia” Financial Agreement.

We recommend:

- i. **To modify this proposal as follows: "Improvement of public procurement system"**
- ii. **In addition to the action of deprivation of the right to participate in the procurement process, focus on other priorities related to the procurement process as well as provide the following as sub-actions:**
 - ✓ ***Constantly carry out ongoing monitoring of procurements from single source, as well as public procurement on competitive basis,***
 - ✓ ***Reduce the procurement from single source as much as possible and strengthen control over the latter,***
 - ✓ ***Ensure the independence, professionalism, proper budgeting and staffing of the Procurement Appeals Board.***

18) Promotion of acceptance of anti-corruption compliance requirements in the business sector (Action 18).

In this regard, it is worth mentioning that this recommendation is derived from the OECD report and **the Recommendation Letter of the Coalition and ALA**. Particularly, OECD Recommendation 20 suggests: *“Develop business integrity section of the anti-corruption policy documents based on risk analysis, in consultation with companies and business associations. Promote active participation of private sector in the monitoring of anti-corruption policy documents.”*

It is worth mentioning in this connection that the **draft stipulates only anti-corruption compliance programs, whereas the above mentioned is strongly linked to the institute of criminal liability of legal persons, which is not provided in the Draft**. It is necessary to note that according to Article 129 of the new draft Criminal Code of the Republic of Armenia:

*“Criminal liability of a legal person is excluded if the person **has taken all necessary and sufficient actions** to prevent the commitment of the crime by the persons envisaged in part 1 of Article 128 of this Code, but there was no real opportunity to prevent the crime.”* However, there is no progress in this Draft for a long period of time. This also stems from the OECD report.

We recommend:

- i. To provide for the criminal liability for legal entities in this action.
- ii. To provide for the creation of relevant legislative basis aimed at the implementation of anti-corruption compliance programs as a result of the expected outcomes of this action.
- iii. Clarify the qualitative and quantitative outcome indicators expected to be implemented by the event, as well as provide a result indicator that compliance programs in Armenia will be implemented step by step and by 2022 the implementation of such programs will be mandatory for major commercial companies.

19) Revealing corruption risks in the business sector and introducing the mechanisms to overcome them (Action 19).

Although we the inclusion of a provision for identifying corruption risks in the business sector in this Draft is welcomed, however we believe that the mentioned formulation is very common and thus consider that there is a need for specific actions.

We recommend:

- i. **Introduce and operate computer software programs (screens) that will identify, in the market irregularities, which will be a tool for combating monopoly, dominating position and anti-competitive agreements. Competences to apply it in international practice are assigned to the State Commissions for the Protection of Economic Competition and which have guarantees of independence.**
- ii. **Reveal the risks that occur in the trust management process and take steps for their eradication.** The solution to this problem is necessary to fight against the merger of business and politics, monopoly and dominating position. In this regard, the Council of Europe's Group of States against Corruption (GRECO) also recommends to undertake appropriate actions to prevent evading the limitations for the MPs that hold positions in the commercial organizations and their engagement in entrepreneurial activity or other paid work within the framework of entrepreneurial activity. GRECO assessed the implementation of this recommendation as partially implemented and wishes to conduct additional assessment of the situation after some time of operation of the implementation of actions by the RA, since the practical application of the rules of incompatibility was the main reason for the recommendation. One of the possible solutions is the effective work of the Anti-Corruption Authorities Monitoring Units.

20) Ensure access to information on the state-owned organizations or organizations funded from the state budget (Action 20).

Point 4 of the OECD Recommendation 20 suggests to promote integrity of state-owned enterprises through their systemic reform, by introducing effective anti-corruption programs and increasing their transparency, including setting the requirement for proactive publication of information. Develop, implement and monitor anti-corruption actions in state-owned enterprises.

We recommend:

- i. To implement anti-corruption actions and monitor them in the state-owned or state-funded organizations.**
- ii. Provide as an outcome of the aforementioned event, that the drafts of legal acts aimed at ensuring transparency and accountability of the activities of organizations funded from the state budget were adopted rather than such drafts had been elaborated.**

21) Creating opportunity for obtaining of licenses and permits electronically (Action 22)

Development and Implementation unified system for electronic justice (e-justice.am) (Action 23)

Introduction and operation of a single electronic system for courts e-court (Interventions 25);

Implementation and operation of bankruptcy managers' platform www.e-bankruptcy.am (Action 26);

Implementation and operation of a unified www.e-verify.am system for the control and validation of official documents (Action 27);

A single hotline platform of the executive power for citizens' complaints, inquiries and appeals (Action 29);

Ensuring public participation in the drafting of legal acts (, modernization of the platform www.e-draft.am, Action 30);

Establishing a complete and effective e-governance system through modernization of the employment management e-governance system (Action 31);

Establishing an Information System for Social Evaluation of the Family (social case management) (Action 32);

Regulation of the adoption process (provision of data on children subject to adoption, introduction of the mechanisms for matching) modernization of the information system (Action 33)

Automation of the decision-making process, expanding the scope of information (data) acquired and used automatically from other information systems, improving the effectiveness of the pension system and public benefit management system (Action 34)

Improvement of the funeral benefit payment procedures in case of death of the pensioner (Action 35)

Digitization of Workbooks (Action 36)

Automation of the kindergarten registration system (Action 38)

Establishment of mechanisms for excluding discretionary approaches during tax control (Action 39)

Increase of the level of customs operations automation and implementation of reporting marks in the system of customs operations carried out by the customs bodies in the automated customs declaration system (Action 40)

Reduction of tax employee-taxpayer contacts through transfer of the tax control to the risk management basis through improving and automating risk management mechanisms (Action 41)

Modernization of the Unified Operators sso.am electronic system and introduction of the Mygov.am electronic platform on the basis of this system (Action 42)

Creating a Single Platform for Proactive Publishing of Information (Action 43)

The above 23rd, 32nd, 34th, 35th, 36th, 39th, 40th, 41st and 42nd actions the events almost identically repeat the actions provided in Point 75 of "Action Plan for Activities of the Government of the Republic of Armenia for 2018-2022" and the actions 19, 12, 15, 14 and 295-311 as approved in Annex 1 to Government Decision 1030-L of September 6, 2018 N. In this case, the question arises as according to what principle the arrangements envisaged by the decision were chosen as anti-corruption actions and provided for in the Draft Strategy, as a number of other actions (such as 196.4, 268-269, 274, 269, etc.) were not included.

As for the aforementioned 22nd, 25th, 26th, 27th, 29th, 30th and 31th actions, they all fit within scope of the concept of having digital justice, yet to what extent is it appropriate and substantiated the complete inclusion of the above mentioned actions in the Draft. In being led with such an approach, we can come across a situation where a large number of annual activities of the bodies of executive power, including a number of events aimed at the modernization of electronic systems or increasing the efficiency of their daily activities will be automatically considered as anti-corruption actions and will be included in the strategy without prior identification of corruption risks, their assessment and clear outcome indicators that will substantially reduce or neutralise those risks.

In this case, it is important to take into account the principle in **Kuala Lumpur statement** on Anti-Corruption Strategies that a systematic and comprehensive approach to anti-corruption strategies should be made, strategies should be Anti-corruption strategies should be **organised under an overarching/holistic approach while taking into account sector specific needs** and **Point 2 of Recommendation 1 of the OECD Report suggests to incorporate into the draft Strategy ambitious actions to target actual corruption risks, key areas vulnerable to corruption requiring reform as a matter of priority.**

In addition, when addressing electronic systems, it is also necessary to speak about the corruption risks in the **funeral** sector and the manifestations of non-conscientious activity, mainly associated with the burial of the funeral bureau and the burial ground. **According to Article 10 (3) of the RA Law "On Organization of Funerals and Operation of Cemeteries and Deacons" adopted on February 27, 2006,** "2.5 (2.5x1.0) square meters of land is provided for one graveyard at the request of the applicant on a free basis at community cemeteries for the burial of the body of the deceased (dead), and a maximum of 12.5 square meters of land for the organization of the family grave." However, this requirement of the law is not met, as the cemetery authorities take money from relatives of the deceased for providing land. In addition, the deceased's relatives officially pay for burial about 27,000 AMD, but pay 30,000 AMD for the same purpose as the cemetery. In addition, an extra 1000 AMD is charged in the Bureau for issuing a certificate for grave.

We recommend

- i. *To remove from the Draft the actions provided in the Implementation Plan of the RA Government for 2018-2022, considering unacceptable the practice of being guided by the above-mentioned approach during the drafting of the Draft Strategy and for avoiding groundless duplications.,*
- ii. *Include the above mentioned actions on introduction and launch of electronic systems envisaged by the Draft in one common action.*
- iii. *By the action for introducing electronic systems, introduce an electronic system aimed at eliminating corruption manifestations in the funeral process, which will map the free land plots for the provision of new free graveyards and maximum 6 square meters of land plots which will be provided on paid basis.*

22) Implementation and operation of unified www.azdararir.am electronic whistleblowing platform (Action 24)

Raising awareness on Whistleblowers System and the Guarantees for the protection of whistleblowers, (Action 56 – or action 55 according to the typo in the Draft)

Addressing the Whistleblowers System in the Draft is definitely welcomed. However, in this regard, we would like to note that first of all, **the introduction and implementation of the unified electronic platform for whistleblowing proceeds from the RA Law on Whistleblowers' System**, so there is no need to envisage a action in the Draft. Additionally, according to action 56, the **implementation of continuous awareness campaigns** on the whistleblowers system, including on the unified electronic platform, was mentioned as an expected outcome. In this regard, we find it necessary to state that **no practical action is provided for the protection and promotion of whistleblowers**, which can have a negative impact on raising public awareness and public awareness activities. Moreover, the protection and promotion of whistleblowers is envisaged in the EU-Armenia Comprehensive and Enhanced Partnership Agreement and the priorities of the UNCAC Coalition. In addition, special regulations are envisaged in the reports of the PACE Committee on Legal Affairs and Human Rights.

We recommend:

- i. *Combining actions related to whistleblowing under one action,*
- ii. *Name the above mentioned action as Introduction of the Mechanisms for the Whistleblowers' Protection and Incentives,*
- iii. *Establish financial incentives for the whistleblowing, the mechanisms that exist in the United States, South Korea, etc.*
- iv. *Ensure the safety of whistleblowers, envisaging only the RA Prosecutor General's Office as the authorised and competent authority and authorizing it with the exclusive jurisdiction to access the unified electronic platform of whistleblowers,*

- v. To provide opportunity for reporting through the unified whistleblowers' platform to the reporting persons whose information though not related to the corruption offenses, yet correspond to the external and internal reporting provided by the RA Law on the Whistleblowers' System,
- vi Prepare and implement guidelines for whistleblowers;
- vii Provide for the legislative regulation on the allegations of illicit action performed by persons working in the national security system;
- viii Provide for the possibility of using a unified whistleblowing platform for persons who are in penitentiary institutions,
- ix. Provide possibility of creating alternative platforms for electronic whistleblowing by civil society organizations at the legislative level;
- x. Provide a prohibition of extradition for the whistleblowers the countries where the rights of the whistleblowers are not protected.

23) Implementation of the Register of Beneficial Owners (Action 28)

The draft envisages the introduction of the Register of Beneficial Owners, which almost repeats the actions provided in Point 4 of Annex 1 to the RA Government of Armenia Decision N 1307-L of 15 November 2018 on “Approving the Fourth Action Plan of the Open Government Partnership Initiative of the Republic of Armenia” with the difference that the program envisages the introduction of an open public Register of Beneficial Owners. **However, this document provides for only the creation and operation of a registry, as a result of which legal persons are provided the right and not the obligation to disclose to the beneficial owners.** It should be noted that the creation and launch of this register is already envisaged to be implemented within the framework of the Extractive Industries Transparency Initiative (EITI) where a pilot commitment will be set only for legal entities operating in the metal mining industry.

We are convinced that the full implementation of this institution will be an instrument for fighting against merger of business and politics, monopoly, dominating position and anti-competitive agreements. The aforesaid was also mentioned in the following documents:

- The EU-Armenia Comprehensive and Enhanced Partnership Agreement states that the *parties undertake to cooperate in the following areas: fighting and preventing corruption and the disclosure of information on final beneficiaries of legal entities in line with the UN Convention against Corruption of 2003, the recommendations of the Group of States against corruption (GRECO) and the OECD.*
- Point 7 of the OECD Recommendation 20 Point, suggests to **ensure gradual and effective beneficial ownership disclosures: as well as ensure dissuasive sanctions for nondisclosure in law and in practice.**
- In the "20 Deliverables for the Eastern Partnership for 2020", which particularly emphasises the keeping the public register of beneficial owners.

We recommend:

- i. Establish a legislative obligation to ensure that all legal entities registered and / or operating in the Republic of Armenia disclose their beneficial owners and not just introduce and run the register.
- ii. Provide an obligation under which commercial legal entities already registered in the Republic of Armenia will obtain information about their beneficial owners in reasonable time and will provide the registering authority, and providing such information for the newly registered legal entities will be a mandatory requirement for registration. It is necessary to define specifically who from the staff of the commercial legal entity will be responsible for obligation to maintain it, for example, the executive director, and in addition to the obligation to maintain, the executive director will be in charge for the updating of the above-mentioned information.
- iii. Provide an obligation for publicizing information on the beneficial owner of the information, including making amendments to statutory regulations governing joint stock companies and defining the publicity of the shareholders list.
- iv. Provide for sanctions for deliberate failure by a commercial legal person and its corresponding employee to perform the above obligation, after proper notice of that, and also the companies and its employees.
- v. Establish leverages for the registrar body to verify the credibility of information such as banking and tax secrecy.
- vi. Establish leverages for commercial legal entities to obtain information about their beneficial owners, such as the inability to generate profit / loss when selling their shares by existing owners.

24) Increased transparency of Social Protection System Expenditures: and the cost effectiveness of funds provided from the State budget (Action 37)

Monthly publication of the expenditures of funds allocated to the social protection system from the state budget in the website of the Ministry of Labor and Social Affairs, which is indicated as an expected outcome, itself cannot guarantee the increase of cost-effectiveness of the funds provided to the sector, as well as to indicate that the possible corruption risks in this area have decreased. Additionally, clear quantitative and qualitative indicators for this action are missing.

We recommend

- i. *Edit the expected outcome of the action and the auditing indicator,*
- ii. *Establish clear quantitative and qualitative indicators.*

25) Study of the compliance of the elements of corruption crime provided in the Criminal Code with the international standards, and, where appropriate, submit proposals for bringing corruption crimes in line to international standards (Action 44)

First, a question arises: why this action is **intended only for corruption crimes, leaving out corruption offenses?** In connection with this action it is worth mentioning that at present, corruption crimes are defined

by the order of the RA Prosecutor General and frequently are subjected to radical changes by different Prosecutors General of the RA. Therefore, we believe that the constituent part of this action should be a definition of a definite list of corruption crimes. In addition, there are also corruption offenses, such as failure to perform the obligation to declare property, income and interests. There is not a list of in this regard, which will list corruption offenses.

We recommend.

- i. **Include a study on the elements of corrupt practices (offences) and, if necessary, submit proposals,**
- ii. **Include a list of corruption crimes at the legislative level, for example in the RA Criminal Code, in a special chapter.**
- iii. **Include a list of corruption offenses in the Code of Administrative Offenses of the Republic of Armenia, with a special chapter.**

26) Development of methodology for the investigation of certain Corruption Crimes, including the Illicit Enrichment: Training of the Criminal Prosecution Bodies based on the Methodology (Action 45 – or action 44 according to the typo in the Draft)

This event is emphasised in the light of the fact that the criminal prosecution authorities avoid to institute criminal proceedings under this article, taking into consideration the distribution of burden of proof and other peculiarities, and prefer to initiate proceedings under the embezzlement and other articles.

We recommend:

- i. **Revise the list of responsible bodies for the action, and include non-governmental organizations engaged in anti-corruption activities (by agreement);**
- ii. **Develop the capacities of the criminal prosecution agency dealing with anonymous complaints of the whistleblowers, taking into account the particular nature of the latter, within the framework of an independent anti-corruption body.**

27) Maintaining statistics on sources of information on corruption offenses (Action 46 - 45 of the Draft law) (Action 46 – or action 45 according to the typo in the Draft)

Supplementing of the criminal statistics on corruption offenses by data on property confiscation and levy (Action 47 – or action 46 according to the typo in the Draft)

This is in line with OECD recommendations, which we also highlight as it promotes the implementation of the principles of transparency and publicity. However, we do not see the necessity to provide the above mentioned as two separate events.

We recommend

- i. **Consolidation of these two actions under one action.**
- ii. **Renaming the action to "Supplementing of Statistics on Corruption Crimes".**

28) Ensuring access for criminal prosecution authorities to information databases of state bodies through electronic inquiries (Action 48 – or action 47 according to the typo in the Draft)

This proposal stems from the OECD report which states as an expected outcome, "*Law enforcement agencies have effective access to electronic databases of state bodies through electronic inquiries required for effective investigation of corruption and other economic crimes.*"

However, we find that there is no need for providing an implementation action for this in such an important Draft, as it is intended to improve the efficiency of the internal work of the authorities.

We recommend

1. **To remove this action from the Draft.**

29) Creating a Centralised Registrar of Bank Accounts (Action 49 – or action 48 according to the typo in the Draft)

In this regard, it is worth mentioning that this recommendation derives from the OECD report and from the **Recommendation Letter of the Coalition and ALA**, which is of great importance to us. The expected outcome is that "*the Central Registry Bank Accounts has been created and access to criminal prosecution agencies with the data protection guarantees has been ensured.*"

Taking into consideration our vision of having an **independent universal anti-corruption body** for the fight against corruption, we find that by the creation of the latter, the registry data is accessible to the **independent universal anti-corruption body**.

We recommend

Make the above-listed registry data accessible to the independent universal anti-corruption body.

30) Strengthening International Cooperation in the framework of Investigation and Disclosure of Corruption Crimes (Action 50 – or action 49 according to the typo in the Draft)

Harmonization of the RA legislation on confiscation and return of the criminally obtained assets with the requirements of the UN Convention against Corruption (Action 51 – or action 50 according to the typo in the Draft)

These actions, in essence, include actions aimed at restoring of the assets obtained in criminal way. However, we believe that these actions are not enough to restore stolen assets. For example, the level of recoverability of assets acquired as a result of corruption and the level of accountability of recovered assets are provided in the document "Eastern Partnership - 20 Deliverables for 2020", which provides that the States are required to envisage legal framework allowing for the effective seizure, confiscation and management of crime proceeds across the EaP region and establishment of asset recovery and management offices with a track record for identification, freezing, management and confiscation of criminal/unjustified wealth across the EaP region.

We recommend:

- i. Join these recommendations and edit in the following way: "Introducing a Program for the Criminally Obtained Assets", which also includes the following sub-sections:
- ii. Establish an asset recovery office. Determine whether such services can be served by the existing bodies or there is a need to create a new body or unit, for example, only a specialised department on corruption affairs in the prosecutor's office.
- iii. Create a stolen assets registry.
- iv. To strengthen the international, particularly the bilateral Mutual Assistance Institution for the investigation and disclosure of corruption crimes,
- v. Introduce civil in rem procedures beyond the beyond the scope of criminal proceedings for asset recovery (such as in the UK, Switzerland, Ireland, Italy, Germany, Slovenia, Canada, US, Liechtenstein, and other developed countries).
- vi. To implement legislative reforms for the purpose of nationalization of assets, and then for the introduction of repatriation, and then for the introduction of repatriation mechanisms.

31) Consider the expediency of improving the legislation on the election of the candidate to the position of the Prosecutor General, the organization of the competition for hiring prosecutors, the appeal of the Attorney General's Recommendations (Action 53 – or action 52 according to the typo in the Draft)

We consider that in the Prosecutorial system, besides the above mentioned, there is also a need to carry out other anti-corruption reforms, some of which have institutional character. Particularly, the Prosecutor's Office has a specialised department on corruption and economic issues, but we believe that it is **necessary to have only a specialised department on corruption cases**. The aforementioned issues from the vision of having a specialised corruption law enforcement system that we anticipate in the form of the universal anti-corruption body, as well as of having a specialised court on criminal cases.

We recommend.

To create in the Prosecutor's Office a subdivision dealing only with the corruption crimes.

32) Raising Public Awareness on the reforms of the Rights of Individuals in communication with the State Authorities during the Implementation of Anti-Corruption Actions, whistleblowing and the Mechanisms of Appeal, (Action 54 – or action 53 according to the typo in the Draft)

Organizing a public awareness campaign on corruption risks in the business sector (Action 55 – or action 54 according to the typo in the Draft)

Raising the level of public awareness on freedom of information, including raising of awareness on proactive publication of information of the public servants and public officials on proactive of information disclosure (Action 57 – or action 56 according to the typo in the Draft)

It should be noted that the two last actions are already included in the first one because the public awareness on actions to be taken within the framework of the new anti-corruption strategy is envisaged by the **annual awareness-raising program**.

We recommend:

Including all public awareness-raising actions under one awareness campaign.

33) Implementation of training on new civil service regulations among civil servants (Action 58 – or action 57 according to the typo in the Draft)

The New RA Law on Civil Service was adopted on 23 March, 2018, on the basis of this law on 9 January 2019, the first Deputy Prime Minister of the Republic of Armenia made a decision on establishing **training procedure** for civil service according to which civil servants are regularly trained.

We recommend:

Removing this action from the Draft to avoid unreasonable duplication.

34) Implementation of training on rules of ethics among public servants (Action 59 – or action 58 according to the typo in the Draft)

Point 2 of the OECD Recommendation 12 provides for ensuring systematic and coordinated ethics trainings throughout the public service. As an audit indicator for the implementation of the mentioned action, it is noted that 35 training programs will be implemented in the period of in 2019-2022. In this respect, given the fact that the training of public servants is mainly organised by the laws governing certain types of state services included in the public service and other by-laws, we consider that there is a need for specific types of public service training programs and for making corresponding changes their respective regulatory legal acts.

We recommend:

Make amendments to the legal norms defining specific types of public service programs and to envisage a course on ethics as a separate and mandatory component.

35) Improvement of knowledge and skills of tax and customs officers in the field of anti-corruption and integrity (Action 60 – or action 59 according to the typo in the Draft)

Appendix 3 to the decree N 1141-N of the Government of the Republic of Armenia of 25 September, 2015 adopted the "Action Plan and Actions for Neutralization and/or Reduction of the Corruption Risks Identified in the Area of the State Revenue Collection". Paragraph 1 of the document, provides for a separate action for the **improvement of knowledge and skills of tax and customs officials in the field in anti-corruption and integrity**. It is necessary to mention that it is envisaged to introduce a mandatory training program aimed at improving the knowledge and skills of tax and customs officers in the field of anti-corruption and integrity, which is already being implemented by the RA Government Decree N 1141-N of 25 September 2015 as a separate action within the framework of the Action Plan and Actions for Neutralization and/or Reduction of

the Corruption Risks Identified in the Area of the State Revenue Collection. Moreover, it was included in the training program in the 4th quarter of 2018 by the Decree No. 569-A of the President of the SRC of 19 September, 2018.

We recommend:

To remove the abovementioned action from the Draft taking into account that currently tax and customs officers are being trained on anti-corruption and integrity issues.

36) Develop and introduce a system of monitoring indicators for the implementation Action Plan of the RA Anti-Corruption Strategy 2019-2022 (Action 61 – or action 60 according to the typo in the Draft).

We find that the draft does not provide for the development and implementation of monitoring indicators as the latter should already be included in combination with each action. Another issue is that there is no operational monitoring system for which more detailed recommendations are provided in the relevant section of the Draft Strategy. Additionally, the dates of the event are also subject to review.

We recommend:

- i. **To plan developing and introducing of a monitoring system rather than planning the developing and introducing of a system of monitoring indicators,**
- ii. **Define the first half of 2019 as deadline for the performance.**

37) Organizing anti-corruption public awareness campaigns (Action 62 – or action 61 according to the typo in the Draft)

The provision of this event is crucial, but the expected result is that public awareness campaigns are intended only to increase the level of anticorruption perception among business entities and only in tax and customs sectors. It is unclear why such a narrow circle of subjects for raising awareness has been provided. In addition, this event is included in the monitoring section, whereas there are no similarities among them.

We recommend:

Expected results of this event include:

- i. **Remove from the expected outcome of the action only the restrictions relating to economic entities and tax and customs sectors;**
- ii. **Place the mentioned actions under a new heading of anti-corruption education;**
- iii. **Use of targeted social advertising;**
- iv. **Organizing anti-corruption public discussions with communities and local non-governmental organizations in communities,**
- v. **Organizing a national flash mob on the International Anti-Corruption Day - December 9th,**

- vi. Organizing of a Youth Forum and Plenary Meetings Anti-Corruption Issues on the on the International Anti-Corruption Day - December 9th,,
- vii. Programming of various computer games that will address the fight against corruption, both informative and situational, based on anti-corruption scenarios,
- viii. Organising anti-corruption staging performances in theaters;
- ix. Organising anti-corruption national competitions and camps.

38) Adoption of an institutional approach to the introduction of anti-corruption education;

We have already mentioned in the above said that the Draft Strategy has not addressed one of the important functions which is implemented by the universal anti-corruption body * the anti-corruption education. Instead, a separate section entitled "Public Awareness and Anti-Corruption Education" has been provided by the Strategy, in which a total of 8 actions were included and which cannot be considered sufficient bringing the anti-corruption education on the contextual basis and these are also problematic in terms of its introduction in the three level education system of the country. We believe that anti-corruption education should have one main objective: to make people allies in the fight against corruption and be a cornerstone.

We recommend:

Introduce modules for ethics, integrity and anti-corruption topics in pre-school, general and higher education and vocational education institutions, taking into account the age-specific characteristics of trainees in those institutions.

39) Improving Anti-Corruption Expertise System of legal acts;

Assessment of regulatory impact of regulatory legal acts in the anti-corruption sphere is carried out in accordance with the Law of the Republic of Armenia "On Regulatory Legal Acts" and Government Decision No 1205-N "On Approval of the Procedure for Impact Assessment of Normative Legal Acts in Anti-Corruption Sphere" of 22 October 2011. However now a new order is being elaborated, as stipulated by the RA Law on Regulatory Legal Acts.

We recommend:

- i. As a result of the study of best international practices, introduce a more flexible, up-to-date system and methodology to assess the effectiveness of anti-corruption impacts in the newly elaborated system, based on the priorities of the anti-corruption policy of the state and the results of recent legislative reforms.
- ii. Introduce a system of accreditation of anti-corruption experts, such as in Russia.
- iii. Training for officials conducting anti-corruption expertise.

40) Establishing a specialised court on corruption cases

Study of international practice suggests that in the fight against corruption, the courts specialised in corruption cases become more and more practical. At present, there are specialised anti-corruption courts in

over 20 countries, such as Indonesia, Kenya, the Philippines, Slovakia, Uganda and so on. By saying an Anti-Corruption Court, we understand the judiciary or the specialised court staff who are specialised in investigating corruption cases. Creating such a court is a logical continuation of a specialised anti-corruption law enforcement system that we see under a universal anti-corruption body and a specialised anti-corruption unit in the prosecutor's office. Otherwise, no matter how professionally prepared is the case which goes to court, if the judge is not in specialised anti-corruption cases, where there are a number of peculiarities, for example, in connection with the burden of proof of illicit enrichment, it cannot be just and impartial. As a result, all anti-corruption efforts undertaken by the state will be useless.

We recommend:

To establish a specialised court on corruption cases or a specialised court staff.

41) Join the "Transparency Pledge" initiative

One of the priorities of the UN Anti-Corruption Coalition is the unification of the "Transparency Pledge" initiative, as well as the promotion of freedom of information on anti-corruption efforts. The "Transparency Pledge" is a commitment undertaken by the state, to adhere to the six principles of transparency, during the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. Among these are the funding of civil society researchers to enable them to be present at the subsidiary bodies of the United Nations Convention against Corruption, as well as to organise discussions of the report of the UN Convention against Corruption, and so on. A number of countries have already joined the Pledge, among them: Belgium, Bulgaria, Cyprus, France, Germany, Italy, Latvia, Norway, USA, Slovenia and others.

We recommend:

- i. **To Join the "Transparency Pledge" initiative**
- ii. **To foresee means from the RA State Budget to fulfill the obligations assumed by the Republic of Armenia.**

42) Struggle against corruption risks in the process of recognizing property as a prevailing public interest

The Law of the Republic of Armenia "On Alienation of Property for ensuring Prevailing Public Interest" has attempted to define the objectives that the prevailing public interest can pursue, giving a fairly comprehensive interpretation that enables each case to be included in that concept. In addition, only the nature of the objectives is listed: the prevailing public interest can pursue state protection, ensuring state and public security, education, promotion of health and sports, as well as other objectives.

We recommend:

- i. **to make a change in the definition of "prevailing public interest" and to list and incorporate the names of specific structures, sectors, whose activities truly reflect the prevailing public interests,**
- ii. **to define that in each case, by recognizing the acquired property as an exclusive prevailing public interest, the state is required to substantiate that interest is predominant over the interest of the**

owners of alienated property and the realization of the purpose is impossible without the acquisition of that particular property. Moreover, if the property of several owners is acquired, that justification must be given to the acquisition of the property of each of them.

iii. to determine that the grounds and documents required for the Government's decision to acknowledge the prevailing public interest include the area to be alienated.

43) Establish Anti-Corruption Audit:

Such experience exists in Botswana, Poland, the Czech Republic and so on. Currently, a study is being carried out on this issue. The results will be presented additionally.

We recommend:

To establish anti-corruption audit in public and private sectors

CSO Anti-Corruption Coalition of Armenia

“Armenian Lawyers’ Association” NGO

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