OPINION AND RECOMMENDATIONS ON THE EDITED DRAFT OF THE RA GOVERNMENT'S DECISION ON APPROVING THE ANTI-CORRUPTION STRATEGY OF THE REPUBLIC OF ARMENIA AND ITS 2019-2022 IMPLEMENTATION ACTION PLAN

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PREFACE

On 19 December 2018, the RA Ministry of Armenia presented the draft on Anti-Corruption Strategy of the Republic of Armenia and Its 2019-2022 Implementation Action Plan (hereinafter: Draft) for public discussion on e-draft.am, the united website for publication of drafts of legal acts (hereinafter: e-draft.am). The "Armenian Lawyers' Association" NGO (hereinafter: ALA), which coordinates the work of the secretariat of the CSO Anti-Corruption Coalition of Armenia (hereinafter: Coalition) had uploaded the Coalition's opinion and recommendations[1] on the mentioned website. On 10 June 2019, the RA Ministry of Justice published on e-draft.am the already edited version of the Draft (hereinafter: Edited Draft). However, we find it appropriate to mention that the opinions and conclusions of the RA Ministry of Justice on the recommendations presented by the Coalition in the "SUMMARY" section of the website have not been published yet. It was only after ALA sent a respective letter to the RA Ministry of Justice that the requested summary was provided on 3 July 2019.

At the same time, we need to mention regarding the Draft presented for public discussion for the first time during the period between 19.12.2018 and 31.01.2019,[2] that the recommendations of the organisations which presented the draft to the agency in written form or through official e-mail are not published on e-draft.am. As a result, the agency, the RA Ministry of Justice, violated the **order prescribed by the RA Government in its decision N 1146-Ն of 10 October 2018.** In particular, according to paragraph 17 of the decision, "*During public discussions physical and legal entities can present their recommendations on a normative legal act published on a united website or through a link to the united website published on the official website of the agency holding public discussions by getting registered beforehand, mentioning the name and surname (name of the legal entity), e-mail address, password, residency address (if they wish), address and phone number of the residency (location). Recommendations can be presented on the website through being filled out online or* ***in writing, that is, through sending to the official website of the agency holding the public discussion or through handing it to that agency in paper."*** According to paragraph 18 of the same decision, "*The recommendations mentioned in paragraph 17 of this order are approved by the agency holding the public discussion not later than within two working days after receiving it, in order for it to be visible on the united website, and they are completed no later than within 10 working days.* ***The recommendations presented in writing are approved by the respective employee of the agency holding the public discussion and are completed in the respective section of the administrative part of the united website within 10 working days after receiving it."***

Thus, **we suggest** publishing the recommendations related to the initial version of the Draft, ensuring transparency and accountability before the public in these processes.

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[1] The Coalition's opinion and recommendations can be found at: https://armla.am/en/3653.html.

[2] The first version of the RA Anti-Corruption Strategy and Its 2019-2022 Implementation Action Plan can be found at: https://www.e-draft.am/projects/1439/about.

It also becomes clear from the summary of the Draft that **14 of the 61 recommendations presented by the Coalition were fully accepted, 5 were not accepted, 18 were taken note of, and 24 recommendations were accepted partially.**[3]

The Coalition and ALA present below their observations and recommendations, according to:

1) ***Anti-Corruption Strategy of the Republic of Armenia (hereinafter: Strategy) approved by Annex N 1 of the edited draft;***
2) ***2019-2022 Implementation Action Plan of the Anti-Corruption Strategy of the Republic of Armenia approved by Annex N2 of the edited draft (hereinafter: Action Plan).***

[3] This statistics is related to the recommendations included in the document entitled "OPINION-STANCE AND RECOMMENDATIONS ON THE RA 2019-2022 ANTI-CORRUPTION STRATEGY AND ITS IMPLEMENTATION ACTION PLAN DRAFT" submitted to the RA Ministry of Justice on 31 January 2019 by the CSO Anti-Corruption Coalition of Armenia and the Armenian Lawyers' Association.

1. Observations and Recommendations on the RA Anti-Corruption Strategy Draft

I. Paragraph 17 of the Strategy reads: "In the scope of the actions of the previous anti-corruption strategy, **the system of institutional agencies for the realisation of the anti-corruption strategy was not adequately discerned, a mandatory requirement of a certain agency specialised especially in fight against corruption was not defined; as a consequence, the state policy against corruption was really dissolved in various domains of functional jurisdiction of many state agencies, losing its features of coordination and unity. This, in its turn, led to futile fight against corruption."**

As far as the latter is concerned, we report that in June 2016 the Coalition and ALA carried out a study on the experience of anti-corruption agencies in 35 countries. This was done in the frames of a working group created by the decree of the RA Minister of Justice N 19-ա from 22 January. As a result, the Coalition suggested at the session of the Anti-Corruption Council[4] forming in Armenia ***an independent universal agency specialised in fight against corruption, the Bureau of Corruption Prevention and Anti-Corruption,*** endowed with three main functions: education, prevention, and law enforcement (including preliminary investigation). Because of absence of sufficient political will, only in case of it being impossible to bring this version to life, the Coalition proposed a backup option, that is, to create two separate agencies:

1. **An independent preventive anti-corruption agency, which would fulfil anti-corruption education and corruption prevention functions;**
2. **A law enforcement agency investigating corruption crimes, which will be created based on the capacities of the Special Investigation Service and will also be endowed with the functions of preliminary investigation.**

As a result, the former government did not showcase enough political will and preferred the second **backup option** suggested by the Coalition. As a result, on 9 June 2017, the package of law drafts On Making Changes and Additions in the Law on the Corruption Prevention Commission and Related Laws was adopted.

In the context of the above-mentioned, importance is attached to what changed in Armenia after the revolution which took place in the spring of 2018. The newly elected authorities had formed a public agenda of leading a relentless fight against corruption. Hence, **what kind of revolutionary and systemic solutions** does the political power running the country have for tackling this problem and **what is suggested in the Strategy** in terms of introducing an institutional system of fight against corruption in Armenia?

[4] The minutes of the sessions of the Anti-Corruption Council from 15 and 17 June 2016 can be found at: https://www.gov.am/u_files/file/KORUPCIA%2015_06_16%20ev%2017_06_16.pdf

It is worth highlighting that although it is mentioned in Paragraph 59 of the Strategy, "*New realities proved that* ***the RA Government shows necessary and sufficient political will in terms of reaching significant results in anti-corruption.*** *Nevertheless, alongside political will, importance is attached to systemic fight against corruption.* ***In this sense, one of the main guarantees of success is well-established institutional anti-corruption system."*** In Armenia though, **the Strategy does not suggest breakthrough changes in terms of introducing the institutional anti-corruption changes.** It is set out in Paragraph 60 of the Strategy, ***"...the vision of the following separate model of institutional anti-corruption system*** is suggested ***with the condition of potential perspectives of transitioning to the universal model in case the former is justified."***

Taking into account that further, in the sequence of strategy paragraphs, ***the agencies to be created through the introduction of the separate institutional anti-corruption system will be covered and referred to separately.*** We present below solutions suggested by the Coalition and ALA in fight against corruption through the introduction of a centralised institutional anti-corruption system.

The centralised institutional anti-corruption system, ***represented by the specialised independent universal anti-corruption agency (hereinafter: universal agency)***, gives an opportunity to transition from a de-centralised model of fight against corruption to a centralised one. Experience shows that choosing one united model instead of two and more anti-corruption agencies ***increases the efficiency, coordination and level of internal cooperation of the activities of an anti-corruption agency, the funds allocated by the state are saved, and the practice of the same function being fulfilled by different agencies is excluded.*** It works more efficiently, taking into account that the resources are under the same roof which makes the fulfilment of all inter-related functions easier. The **risk of departmental interests** is neutralised, and situations of conflicts of interest and unhealthy departmental competition decrease.

As a result, we have an agency which, functionally speaking, is endowed not only with such important anti-corruption instruments as ***anti-corruption education, preventive and law enforcement functions,*** but that agency also carries full responsibility for the results registered in fight against corruption. We find it necessary to note that it is well-accepted in international practice for the **universal agency** to develop its action plan individually and embark on implementing that plan.

In order to make the above said more tangible, we present below **the flaws and advantages of the centralised and de-centralised institutional anti-corruption systems, as well as the general criteria which must be applied to the anti-corruption agency, regardless of the method selected.**

A) Advantages of the centralised institutional anti-corruption system:

1. **Absence of one united responsible agency:** The united centralised universal agency will be responsible for and will coordinate the anti-corruption activities and events in Armenia. It will facilitate exchange of information between units of the anti-corruption agency working in 3 directions (prevention, education, and law enforcement), healthy cooperation and process of

reaching the realisation of a common goal. This will create a favourable working environment for the agency, in addition to giving the agency an opportunity to assess and analyse the real anti-corruption situation in Armenia, according to 3 directions. Thus, the centralised agency contributes to **systematisation and unity** of anti-corruption directions **through eradication of the functional competencies of state agencies in different domains.**

2. **Efficient expenditure of state resources, including funds, and exclusion of duplication of functions:** In case of a centralised system, the allocated state resources, including funds, will be saved and duplication of functions by different agencies will be excluded. Thus, the universal agency, when carrying out its activities, is guided by **the principle of effective management of the funds** allocated. In order to ensure the financial independence of the agency, funds are allocated to the agency by a specific line in the state budget. In case of having a united agency **spending funds for the fulfilment of the same functions will be excluded by different state agencies.** For example, each state agency, in order to ensure the efficiency of its activities, at least has the following departments: human resource management, finances and accounting, information and public relations, external relations, internal audit, information technologies, and special communication systems, reception of citizens, and discussion of applications, etc., as well as state property, public funds, for which funds and state property is annually allocated from the state budget. It turns out that in case of having a de-centralised anti-corruption system, the mentioned departments will fulfil similar functions, and they will be provided with state property and public funds.

   We find it expedient to mention that the Government leads a policy of public administration system optimisation, exclusion of repeated functions, efficient use of the state funds allocated to the agencies of the public administration system. Therefore, in case of a centralised system, the policy adopted by the government will be ensured.

3. **Exclusion of unhealthy competition between three branches of the centralised system and management of interdepartmental interests:** In case of a centralised system, the unhealthy competition between the three wings (prevention, education, and law enforcement) of the system is neutralised. Because of this, the unhealthy interdepartmental competition between anti-corruption agencies and the risk of departmental interests are also neutralised, situations of conflicts of interest decrease.

4. **Exclusion of confusion among the public about the activities of anti-corruption bodies.** In the case of a decentralized system, with the operation of 4 anti-corruption bodies in Armenia (*According to the Strategy, the following four anti-corruption bodies will operate in Armenia: Anti-Corruption Committee, Corruption Prevention Commission, Ministry of Justice of Armenia related to the Development and Implementation of Anti-Corruption Policies, Anti-Corruption Policy Council - Advisory Body*), the level of public confusion will

be high, as to which body to apply in relation to specific corruption or conflict of interests or other offenses. Moreover, at present, the public, having heard that, for example, the Anti-Corruption Policy Council is headed by the Prime Minister of the Republic of Armenia, identifies all the anti-corruption bodies with the Prime Minister and addresses the Prime Minister with any corruption issue.

B) What are the disadvantages of the decentralized anti-corruption institutional system proposed by the government?

1. **The actual independence of these bodies is not guaranteed.** The effectiveness of the institutional fight against corruption requires that this fight takes place **in an environment of the rule of law and provided with a stable constitutional and legal basis**. The aforementioned bodies (in particular the Corruption Prevention Commission (CPC), the newly created Anti-Corruption Committee provided by the Strategy) do not fall into the category of independent bodies provided for by the Constitution, i.e. the independence of these bodies is not guaranteed in the context of constitutional and legal regulation. As for the guarantees of legislative regulation, it should be noted that although the regulatory law and the Strategy guarantee the independence and autonomy of these bodies, yet it does not actually work. As a vivid example for this, we can bring the fact of resignation of the head of the Special Investigation Service as a result of recent political processes in the country, in the case where according to the "Law on Public Service" this is a self-governing position, and the person occupying it does not change during his tenure in the case of the changes of ratio of the political forces. Another striking example of the guarantee of independence being endangered is the Draft Law of the Republic of Armenia on Amendments and Additions to the Law on Prevention of Corruption[5] presented by Ararat Mirzoyan, the President of the National Assembly of the Republic of Armenia. In case of its adoption, the Competition Board shall be abolished without any legal justification. The provision of the council by the legislature was not an end in itself; this body should ensure a process of appointing the Board members which should guarantee the **members' non-political position, impartiality, neutrality, integrity and competence**.

[5] The Draft Law of the Republic of Armenia on Amendments and Additions to the Law on Prevention of Corruption" is available at the following link: http://www.parliament.am/drafts.php?sel=showdraft&DraftID=10588&Reading=0&fbclid=IwAR1tTsQZRZO76ri8iuwmW-nLW54f6zXZD3YiEKQyP5kjeobb-zP44pXVbes:

This is also in line with the 2012 Jakarta Principles for Anti-Corruption Agencies (hereinafter referred to as the Jakarta Principles)[6]. Further, the proposed legal framework provides that five of the candidates to the Commission are nominated by the ruling political force, one by the Government and 2 by the ruling faction of the National Assembly. Moreover, in case if the opposition factions of the National Assembly are unable to present a candidate, the latter is also nominated the ruling power in the person of the ruling faction of the NA. The last, 5th candidate is nominated by the SJC. As a result, 4 out of 5 members will assigned by the ruling force. With such legal arrangements**, the guarantees of independence are undoubtedly are seriously called under question**.

2. **The principle of accountability is not guaranteed.** No matter what kind of body it is and what its institutional affiliation is, every anti-corruption body should be integrated into a system of restraint and counterbalance **to ensure democratic governance**. Jakarta's principles are **internal and external accountability**, public communication and engagement. Although the law regulating the activities of the Commission refers to public and parliamentary monitoring, yet the law regulating the activity of that body **does not have a real mechanism for oversight by specialized civil society organizations - the Council for Public Oversight**. In the case of the **Anti-Corruption Committee** provided in the Strategy, there is generally no provision for public accountability. The Committy will be accountable only to the Prime Minister and Parliament, whose legal opinions will be available in the case of existence of a draft law.
3. **The principles of the authority over human resources and implementation of good governance are not guaranteed from the point of view of introducing simple and transparent procedures of recruiting and dismissal of such resources**. According to Jakarta principles, heads of anti-corruption agencies shall be appointed through a process that ensures his or her **apolitical stance, impartiality, neutrality, integrity and competence**. According to the same principles, ACA heads **shall be removed only through a legally established procedure** equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice**). (In the case of Armenia, the President of the Court of Cassation and the procedure for his dismissal)**. In the case of decentralized bodies, the above principles will not be respected, as different legal processes apply to different bodies.

[6] https://armla.am/wp-content/uploads/2019/01/Jakarta-statement-2012.pdf

Thus, the automatic termination or imposed termination arrangements of a member of the Commission provided in the Law on the Corruption Prevention Commission do not comply with the above principles. For example, early termination of the powers of a member of the Commission is imposed by the Commission. Moreover, if the National Assembly adopts the Draft Law on Making Amendments and Addenda to the RA Law on the Corruption Prevention Commission, **the process of election and termination of committee members will be highly politicized and will contradict Jakarta's well-known principles**.

4. **The principle of effective management of funds allocated to these agencies is not guaranteed**.
   Funds for the activities of bodies involved in a decentralized institutional system will be allocated from the state budget of each year, which **in terms of cost-effectiveness** means that having several (different) anti-corruption bodies would be much more expensive for the state. In this case, the functions carried out by various state agencies for the implementation of which state property and funds will be allocated, would be duplicated. This is also reflected among the advantages of the centralized body *under the heading "Saving state resources, including finances and excluding duplication of functions"*. It is important to note that the current government carries out a policy of optimizing the public administration system, excluding duplicated functions, and making the use of public funds allocated to public administration bodies effective, consequently, the introduction of a decentralized anti-corruption institutional system directly contradicts the current policy.
5. **The danger of having a shadow system:** In the case of a decentralized system with two separate anti-corruption bodies, there is **a risk of having shadow coordination**. However, it should be borne in mind that coordination will be required in the case of two separate agencies. And from this point of view, it is likely that the existing legal regulations may pose a risk of shadow coordination.
6. **Integrity is not guaranteed.** Legislation and strategy do not guarantee **integrity (accountability and transparency + ethics + competence - corruption)** as the most important value-system basis for the selection and appointment of Commission and Committee Heads and Staff.

C) Common Criteria we suggest to apply to the Institutional Anti-Corruption Agency, regardless of the selection of the model.

1. **Independence:** The anti-corruption body should be endowed with **constitutional independence and guarantees,** including **independence from political influence**. The constitution should provide

for **the accountability and transparency** of the anti-corruption institutional body, providing for four levels of oversight; **parliamentary, public, prosecutorial, "judicial"** (By "judicial oversight" we mean that criminal cases brought to court by an anti-corruption body will be examined by the anti-corruption court, and the verdict will serve as a "surveillance" tool to assess the law enforcement function of the body). Operating with high guarantees of independence stems from the **Jakarta Principles**. In this case, the effectiveness of the institutional fight against corruption is at a high level, since the independence of the ***body*** will be guaranteed on ***a solid constitutional and legal basis*** and activities will be carried out in ***an environment of the rule of law***.

2. **Principles of Authority over Human Resources and Effective Management.** The head of the anti-corruption agency **shall be elected by the National Assembly through a competition**. The latter should be empowered to act independently, develop a plan of action, undertake its implementation, and form a staff in accordance with the law. **The latter should be authorised** to act independently, develop an action plan, undertake its implementation, and form a staff in accordance with the law. According to Jakarta Principles: ACA heads shall be appointed through a process that ensures his or her **apolitical stance, impartiality, neutrality, integrity and competence**; and their removal shall be carried out only through a legally established procedure equivalent to the procedure for the removal of a key independent authority specially protected by law (**such as the Chief Justice**). **(In the case of Armenia, the President of the Court of Cassation and the procedure for his dismissal)**.
3. **Specialised Staff.** The management staff and the personnel of the Armenian institutional body should be based on clearly defined standards, based on a person's professional experience and professionalism and integrity **(integrity = accountability and transparency + ethics + competence - corruption)**.
4. **Immunity of heads and employees of the anti-corruption body. The Constitution should guarantee the immunity of heads and employees of the anti-corruption body.** According to Jakarta Principles: ACA heads and employees shall have immunity from civil and criminal proceedings for acts committed within the performance of their mandate. ACA heads and employees shall be protected from malicious civil and criminal proceedings.
5. **Financial Resources. Financial calculations** should be carried out for the implementation of the Anticorruption Strategy of the Republic of Armenia and its Implementation Action Plan 2019-2022, as well as for the establishment of the Anti-Corruption Agency in the Republic of Armenia and based on these calculations allocations from the state budget should be provided annually, taking into account the capacities and limits of the state budget. State budget allocations **should be**

appropriately distributed for the development of the three anti-corruption directions and the actions planned under them, which are; anti-corruption education, prevention of corruption, law enforcement functions.

6. **Work with the public. Strategic communication plans** with the public should be developed by the anti-corruption body and the work with the public should be carried out **through direct democratic (including electronic) tools**, including direct contacts, the organisation of various conferences, meetings, discussions, press conferences, educational programs and other events.

In addition to the aforementioned, in order to carry out an effective anti-corruption fight, it is also important **to develop the capacity of the specialized anti-corruption court and the staff of specialized unit on corruption cases in the Prosecutors Office**.

At the same time, it is worth noting that **if at this stage the government does not demonstrate sufficient political will to establish a single, unified, universal anti-corruption body, then in case of the establishment of two separate anti-corruption bodies** (endowed with: a) preventive and anti-corruption education functions, b) law enforcement functions) **the general criteria mentioned above should be met as far as possible**: and the management of the agencies should be selected exclusively **through competition: through appropriate competition boards, to ensure their apolitical stance, impartiality, neutrality, integrity and competence**. Our recommendations for the formation of the two bodies and the composition of the competition boards are set out below. In addition, in this case, **the Strategy should also stipulate that the Government, within a specified timeframe, will, in parallel with the implementation of this Strategy, initiate a constitutional reform phase to provide the constitutional guarantees to the anti-corruption institutional system**.

II. Point 18 of the Strategy reads as follows: **"In addition, the Anti-Corruption Council, established by Government Decree N 165-N of 19 February, 2015, did not record any significant results in terms of full and effective implementation and coordination of anti-corruption policy, elimination of the causes of corruption and its prevalence and had a formal nature.** In essence, it has indirectly stated that its creation **had no other practical purpose beyond the declaration component**."

We should note that although the Coalition and the ALA have reservations about the effectiveness of the Anti-Corruption Council's work, however, it is necessary to state in the Strategy that in recent years a number of initiatives aimed at institutionalising the fight against corruption in Armenia, **including the development of anti-corruption legislative acts, initially have**

been announced at the expert discussions that took place at the sessions of the Anti-Corruption Council and is a recorded fact.

Example 1: One of the items on the agenda of the Anti-Corruption Council meeting on 15 and 17 June, 2016 was the **presentation of studies on the new institutional system for the fight against corruption and criminalisation of illicit enrichment** conducted by the Coalition and the ALA. After presentation of the study, the Prime Minister of the Republic of Armenia (the Chairman of the Council), instructed the Minister of Justice to develop a legislative package with NGOs within two months and submit it to the RA Government Staff.[7] This was followed by the adoption of the laws of the Republic of Armenia "On the Corruption Prevention Commission" and "On Amendments to the RA Criminal Code".

Example 2: One of the issues discussed on the 21 January, 2017, meeting of the Anti-Corruption Council was the **presentation of the issue of reducing corruption risks, protecting the whistlblowers' rights (providers of information on corruption crimes)**. After which, the Prime Minister of the Republic of Armenia (the Chairman of the Council), instructed the Ministry of Justice to submit to the Government of the RA the Draft Law on Whistleblowing System" as soon as possible.[8]

That is to say, the above facts indicate that the Anti-Corruption Council served as a platform for professional discussions on anti-corruption issues, which yielded tangible results. From this point of view, it is surprising that the Strategy contains very contradictory and conflicting definitions. In particular, Point 21 of the Strategy sets out the results of the previous strategy and outlines the legislative packages of "Draft Laws on "Making Amendments and Addenda to the Law on Corruption Prevention Commission" and Related Laws", the legislative package on "The Law of the Republic of Armenia "On Amendments to the Criminal Code of the Republic of Armenia" and the Law of the Republic of Armenia "On Amendments to the Criminal Procedure Code of the Republic of Armenia" as examples of positive steps, as a result of which the illicit enrichment was criminalized and the investigative subordination was established, the legislative package on the Draft Laws on Whistleblowing System and Related Laws" was adopted, etc. On the other hand, there was no adequate assessment of the activities of the Anti-Corruption Council. Thus, we find that ***Point 18 of the Strategy is subject to editing and should properly state that the***

[7] The protocol of the Anti-Corruption Council is available here: https://www.gov.am/u_files/file/KORUPCIA%2015_06_16%20ev%2017_06_16.pdf

[8] The protocol of the Anti-Corruption Council is available here: https://www.gov.am/u_files/file/xorhurdner/korupcia/KORUPCIA%2021_01_17.pdf

aforementioned packages of laws that are essential for the fight against corruption have been elaborated as a result of the discussions held at the Anti-Corruption Council meetings that were initiated by the CSO Anti-Corruption Coalition of Armenia.

Regarding the role of the **Anti-Corruption Council (currently the Anti-Corruption Policy Council (hereinafter the Council))** in introducing an anti-corruption institutional system in Armenia, It should be noted that section ***3.1 of the Strategy did not address the question of what status the Council will have and whether its functions will be transferred to another body***.

Only Point 75 of the Strategy ***refers to steps to be taken to re-conceptualize the status of fight against corruption*** in order to ensure the improvement and effectiveness of the anti-corruption policy in the Republic of Armenia.

In the context of the aforesaid, we consider it necessary to reflect ***on the process of the formation of the recently formed Anti-Corruption Policy Council*** and the positions of the CSO Anti-Corruption Coalition and the ALA.

First, we should mention that the CSO Anti-Corruption Coalition of Armenia and the Armenian Lawyers' Association, after studying the ***RA Prime Minister's Draft Decision on "Creating an Anti-Corruption Policy Council and Approval of the Council Composition and Order of Activities, the Tender and the Rotation Order of the Non-Governmental Organisations Involved in the Council"*** sent by e-mail by RA Prime Minister's Staff on 27 May 2019 (hereafter: Draft) and the justifications for adopting this decision, informed that taking into account the fact that nowadays the RA Government, civil society, and other stakeholders actively discuss the necessity of creating an independent specialised anti-corruption agency in Armenia, we suggest looking ***into the possibility of not forming an anti-corruption policy council and reserving the authority of developing anticorruption policies to the specialised independent anti-corruption agency to be created***. And only in case if the proposition is not acceptable the Coalition and the ALA offered to consider their concerns and recommendations on the aforementioned Draft.[9]

International experience also shows that **in countries with a centralized anti-corruption institutional system, the function of developing anti-corruption policy is provided to the multi-functional body**. It should also be noted that having such a function of the multi-functional body is one of the advantages that characterize the effectiveness of the activity of those bodies.

[9] "Opinion and Recommendations of the Coalition and the ALA on RA Prime Minister's Draft Decision "On Creating an Anti-Corruption Policy Council" are available here: https://armla.am/43334.html:

Further, the RA Prime Minister's N 808-Ա decision of 24 June 2019 on creating an Anti-Corruption Policy Council, approving the Composition and Procedure of Operation of the Council, Competition and Rotation Order of Non-Governmental Organisations Included in the Composition of Council and on declaring invalid the RA Prime Minister's Decree No. 300 of April 18, 2015", which, without any justification undermines the role of CSOs, local self-government bodies and the Public Council in developing and implementing anti-corruption policies, because **the Public Council, the Coalition, the Union of Communities of Armenia were left out of the Council**.

Moreover the mentioned **Decision did not envisage organising a competition for the Coalitions to join the Council**. In this relation the he Governing Board of the CSO Anti-Corruption Coalition of Armenia, as a result of the extraordinary session of the Coalition on 3 July, 2019, made the statement,[10] noting that ***the approach to artificially leave the Coalition out of the Council's composition is not substantiated in any manner. Therefore, the below mentioned organisations of the Coalition's Governing Board do not find it expedient to participate in the competition for the membership of CSOs in the Anti-Corruption Policy Council, with the procedures defined in the 808-N decision from 24 June 2019. Despite this decision, the CSO Anti-Corruption Coalition of Armenia and members of the Governing Board of the Coalition, without becoming members of the Anti-Corruption Policy Council, will continue to further support the Government in the development and improvement of anti-corruption policies, with the purpose of building a corruption-free, harmonious, and happy society in the Republic of Armenia.***

Further, the Ministry of Justice of the Republic of Armenia, published on its official website www.moj.am, an announcement on competition for the purpose of involving non-governmental organizations in the Anti-Corruption Policy Council, with a deadline set on 10 July, which was prolonged for one day in violation of the requirements of legal acts. It should also be noted that the process of organising the competition also contained violations.[11] Thereafter, the first meeting of the Council took place on 12 July, 2014, and was attended by the ***representatives of 4 NGOs[12], despite the provision of Point 17 of Annex 3 to the RA Prime Minister Decision No. 808-N dated 24***

[10] The Statement of the Governing Board of the CSO Anti-Corruption Coalition is available here: https://armla.am/44019.html:

[11] Information on violations during the competition for involving non-governmental organizations in the Anti-Corruption Policy Council are available here: https://iravaban.net/en/232524.html

[12] The protocol of the first session of the Council is available here: https://www.gov.am/u_files/file/xorhurdner/korupcia/ardzanagrutyun-12_07_19.pdf?fbclid=IwAR38t_BRs2ZlQNH2PqPqtlGoz3_VXrcQz6HkXElZYfqFnM0CigLbndfKX3Q

June 2019, the Ministry of Justice failed to publish the information on the results of the competition on its official website within one day. Thus, considering the above said, we find that the Anti-Corruption Policy Council has already been formed in violation of the requirements of the legal acts; therefore, Section 18 of the Strategy should be amended in this respect, envisaging organisation of a new competition for NGO membership in the Anti-Corruption Policy Council in accordance with the procedure established by the Prime Minister's decision; as well as to provide membership of Coalitions in the Council, and for this purpose, if necessary, to organise a competition for the latter.

III. Points 61-63 of the Strategy refer to the steps taken up to date to create an Anti-Corruption Preventive Agency – the Corruption Prevention Commission (hereinafter referred to as the Commission), including the steps undertaken to form the Commission, formation of the Competition Board for the selection of candidates for the position of Member of the Commission. And point 64 of the Strategy states that the Strategy ***emphasizes undertaking urgent steps aimed at the formation of the Commission; as well as proposed to significantly expand the functions of the Commission by making it 13 instead of 5***. In this connection, we consider it appropriate to refer the process of adoption of the ***RA Draft Law on "Making Changes and Additions in the Law on the Corruption Prevention Commission" (hereafter: Draft Law)*** presented by the RA NA President Ararat Mirzoyan and adopted by the National Assembly on 25 June in the first reading. The key actors involved in anti-corruption process in Armenia have not unequivocally acknowledged it. In particular, the Governing Board of the Coalition ***issued a statement***[13] and reaffirmed its position that:

- ***Development***: The fundamental and mandatory legal processes had not been guaranteed during the process of drafting the law and it was adopted in gross violation of a number of norms of the RA Law on Normative Legal Acts; In particular the Draft Law has not been presented for public discussion and published on the website for publication of drafts of legal acts, **www.e-draft.am**.
- ***Contents***: The mechanisms of nominating candidates in the position of members or the chairman of the Corruption Prevention Commission (hereafter: Commission) are changed by the Draft Law, which is highly pro-governmental. First, the procedure for holding a competition for the formation of the Commission by the independent Competition Board

[13] See footnote 11:

(hereinafter referred to as the Competition Board) which is formed for this process and, which also ensured the participation of civil society in these processes has been removed. In addition 3 out of 5 candidates are nominated by the ruling power, one of which is nominated by the Government; and the other 2 are appointed by the ruling faction of the National Assembly. In case the opposition factions of the National Assembly are unable to represent a candidate by consensus, this candidate is also nominated by the ruling power in the person of the NA ruling faction. It turns out that in this case 4 out of 5 members of the Commission will be appointed by the ruling power. It should be noted that **these mechanisms also violate the Jakarta principles on the formation of independent anti-corruption agencies according to which the heads of such agencies shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence**.

- ***Justification.*** The Draft Law has not been subjected to an expertise, and the attached justifications which are a mandatory condition for document adoption, are missing, together with all their components. In addition the justifications for the necessity of the changes suggested as a Draft Law at the National Assembly on 25 June by the National Assembly President Ararat Mirzoyan and MP of "My Step" Alliance Anna Karapetyan, as being conditioned with the recommendations of international organisations, particularly the Organization for Economic Cooperation and Development (OECD), do not correspond to the reality.

The Governing Board of the Coalition has sent respective letters to National Assembly President Ararat Mirzoyan, as well as to the heads of all the National Assembly factions and the heads of the other political forces who participated in the parliamentary elections of the 7th convocation, to international organizations and **urged them to withdraw the Draft Law presented by Ararat Mirzoyan and which was adopted in the first reading on 25.06.2019,** also taking account of the fact that the Strategy and Action Plan are at the stage of public discussion, and a final decision on the adoption of the anti-corruption agency model still has not been adopted.

Taking into account the aforementioned, as well as the fact that the representatives of the Ministry of Justice of the Republic of Armenia, in the person of the Minister and Deputy Ministers, have stated that the final decision on the selection of the model of anti-corruption

institutional system in Armenia, including their formation will be discussed in the scope of the Public Debates of the Strategy and Action Plan. This makes it possible to fully revise the Draft Law adopted by the NA in the first reading. We **therefore recommend that no changes be made to the mechanisms for nominating candidates for the position of Commission Members and the Chairman, leaving the current competition procedure**. At the same time, **we propose to make changes only to the list of bodies appointing members of the Competition Board of the Commission, providing such authority to the bodies listed below**:

1) **The Supreme Judicial Council** as a representative of the judiciary;
2) **Opposition factions of the National Assembly** as representatives of the legislative branch;
3) **The Government of the Republic of Armenia, represented by the Public Council, a constitutional body, with 15 members appointed by Prime Minister Nikol Pashinyan** as a representative of the executive branch;
4) **Human Rights Defender**, as a constitutionally responsible body for the protection of human rights and freedoms;
5) **Chamber of Advocates** as an Independent Professional Institute of the Civil Society.

IV. Point 66 of the Strategy states that the second most important component of the institutional system in the fight against corruption **is the existence of a specialized body with the function of detecting corruption offenses and with guaranteed independence**; and Point 68 proposes to form **a specialized anti-corruption body, the Anti-Corruption Committee**. Further, Points 70-72 of the Strategy referred to the formation of the Anti-Corruption Committee, the guarantee of its effectiveness, financial independence and accountability. However, it should be noted that the draft law regulating the activities of that body has not been submitted to the public for discussion together with the Strategy and Action Plan. This does not allow assessing **whether** the new anti-corruption body will be formed in line with the principles of the activities of anti-corruption agencies described in the Jakarta Statement. **Whether** the independence of that body will be guaranteed in accordance with the requirements of the constitution for the status of an autonomous body, **or** will it be established as an investigative body in accordance with Article 178 of the Constitution? In the latter case, the full extent of the requirements for the independence of the newly formed body provided in the international documents for the anti-corruption agencies is in question: considering that **in case of formation as an investigative body**:

- **The scope of independence of that body will be outlined only at the level of the law;** therefore, in this case, the constitutional and legal arrangements for the formation of **independent constitutional bodies** are irrelevant;
- **The law regulating the activities of that body, including** the scope of independence of the Anti-Corruption Committee, may be amended at any time, including **as a result of a change of the political will and an imperative for the moment**, as we are having **a simpler and easier procedure for reducing the scope of independence of the anti-corruption body**.

In addition to the aforesaid it is necessary to pay attention to the provisions of Point 70 of the Strategy, according to which, "Unlike other investigative bodies operating in the RA, **candidates for the head of the Anticorruption Committee will be selected by the Competition Board as a result of an open competition. In order to provide a balanced representation, the Competition Board will be composed of the members of the National Assembly (governing and opposition factions), members of the Government and the Supreme Judicial Council**. At the same time, the meetings of the Competition Board will be open to the mass media and civil society and will be videotaped. The candidate nominated by the Competition Board as the winner of the competition will be appointed by the Prime Minister." That is to say, that in the case of both the ***Commission and the Anti-Corruption Committee***, it is possible (the term "possible" is used because the "Draft Law on Making Amendments and Addenda to the Law on the on Corruption Prevention Commission" submitted by RA NA President Ararat Mirzoyan, has been adopted only in the first reading.) that we may have two different approaches to the formation of these bodies: in particular, in the case of the Commission, appointing the members without competition; and in the case of a Committee, the appointment of the head on a competitive basis. Therefore, it is unclear that if in the case of the Commission there are provisions (this refers in particular to the existence of a Competition Board ensuring the competitive procedure for appointing the Commission Members.) in the law, which at this stage can ***in some ways*** *guarantee independence;* ***then why the President of the National Assembly is attempting to remove the competitive procedure for appointing the commission members, however, on the other hand, the Strategy provides for the appointment of the Head of the Anti-Corruption Committee on the basis of the competition itself.*** **We therefore reiterate that the members of the Committee should be appointed in a competitive manner.**

As for the procedure of appointing the head of the Anti-Corruption Committee, **we suggest**: here also as in the case of the Commission, in addition to the three branches of government to ensure

the participation of the Human Rights Defender and the Chamber of Advocates in the Competition Board. The Public Council, which is considered as a constitutional body and its 15 members are nominated by the Prime Minister of the Republic of Armenia Nikol Pashinyan to represent the executive branch in the Competition Board. Such approach will enable to adopt a unified and systematic approach to appointing heads of anti-corruption agencies and to have a unified policy, as well as to ensure a participatory process.

V. According to point 52 of the Strategy: "**The main objective of the anti-corruption strategy is the consistent implementation of the conceptual postulates and principles of the Government of the Republic of Armenia in the field of anti-corruption in all the necessary directions.**" In this relation, taking into account the 2013 Kuala Lumpur Statement on Anti-Corruption Strategies and the principles provided therein, in particular that the "**core objectives and goals, and rationale for interventions should be defined based on national priorities, and identified gaps and needs**", we find that:

- ***Such a formulation of the strategy's objective is incomplete and does not fully reflect the perspective of Armenia's anti-corruption policy.*** It is necessary to fix that the Strategy seeks ***to contribute to building a harmonious and happy society free of corruption; including the formation and rooting of perception of corruption as a threat to society, the formation of public disregard for corruption, the perception of intolerance, and the demand for good governance and raising public awareness, as well as use of high confidence of citizens in government bodies as a means of promoting the principle of zero tolerance against corruption***.

  The purpose of the strategy should not be connected only to the consistent implementation of the conceptual postulates and principles provided in the Government program, because governments are changing, as a result of which the priorities of their activities are also changed: therefore in such cases, the implementation of the measures provided for in the Strategy and Action Plan should in no way be suspended; moreover, the process of their implementation must continue uninterrupted. In addition, we have already had such situation when, following the revolution of spring 2018, state authorities failed to properly implement measures envisaged in the previous 2015-2018 anti-corruption strategy and its implementation action plan, considering the main reason for it the revolution in the country and the processes typical to the transition period. Therefore, **we suggest** editing the above statement with the logic that the Anti-Corruption Strategy consider and establish links with

other relevant state programs (e.g., judicial sector, human rights, public administration reforms, open government, etc.), including the Government Program; however, it should have its goals, objectives and priorities.

The main objectives of the UN Convention against Corruption, which are provided in Article 1. Can be useful for the clear formulation of the goals and objectives included in the Draft Strategy: They are:

a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
c) To promote integrity, accountability and proper management of public affairs and public property.

2. Recommendations on the Action Plan

I. **"Establishing a Corruption Prevention Commission and Ensuring Normal Activities" (Measure 1)**:

The "Expected Outcome" column of the measure for 2019 stipulates that the Commission will be formed. In this connection, referring to the process of drafting and adopting the Draft Law on Making Amendments and Addenda to the RA Law on the Corruption Prevention Commission, presented by the Ararat Mirzoyan, the President of the National Assembly of the Republic of Armenia, adopted by the National Assembly on the first reading on 25 June, as well as the positions of the Coalition and the ALA in this regard, we consider that **the draft law should be recalled and the election of the members of the Commission should be held in line with the current legislative regulations, given that these arrangements are also in line with Jakarta principles.** At the same time, taking into account the current Armenian context, we propose to revise the composition of the Competition Board and form it as follows, ensuring the involvement of the three branches of government, civil society and independent human rights bodies:

1) **Supreme Judicial Council as a representative of the judiciary;**
2) **Opposition factions of the National Assembly as representatives of the legislative branch;**
3) **The Government of the Republic of Armenia, represented by the Public Council, a constitutional body, with 15 members appointed by Prime Minister Nikol Pashinyan** as the executive branch;
4) **Human Rights Defender or Ombudsman's Staff** as a constitutionally responsible body for the protection of human rights and freedoms;
5) **Chamber of Advocates** as an independent civil society institution.

It should also be noted that "Control indicator" section of the measure provides that "**The State budget will provide for a separate line**, **allocated to funding of the Commission,"** while "funding source" provides for only **"financing sources not prohibited by law"**.

II. **"Formation of an anti-corruption law enforcement body with the functions of detecting corruption crimes, having investigative functions and with sufficient guarantees of independence" (Measure 2)**

Considering the fact that public debate on the introduction of the anti-corruption institutional system in Armenia is still ongoing and at least the Government's final political position is not available at this time, however, as in the case of the Commission, if a separate model of the anti-

corruption institutional system is preferred in Armenia and a separate anti-corruption law enforcement body is established, it is envisaged to allocate a separate line of financing in the State Budget of the Republic of Armenia. Consequently, there is a need to make a similar addition to the section on the source of funding of the **Anti-Corruption Law Enforcement Body (Measure 2**) and **Professional Anti-Corruption Courts (Measure 3)** for their normal functioning.

Notably, the Kuala Lumpur Statement states as a key principle that the anti-corruption strategies should provide for their **institutional and financial sustainability**, and should take into account capacity for implementation. In addition, point 6 of OECD Recommendation 1 states that **the anti-corruption strategy measures should be accompanied by the funding necessary for their implementation.**

In addition, referring to the procedure of appointing the head of the Anti-Corruption Committee, we propose, as in the case of the Commission, in addition to the three branches of the Powers, participation of the Ombudsman and the Chamber of Advocates should also be ensured in the Competition Board. At the same time the Public Council, which is considered as a constitutional body and its 15 members are nominated by the Prime Minister of the Republic of Armenia Nikol Pashinyan to represent the executive branch in the Competition Board. This approach will enable to adopt a unified and systematic approach in appointing heads of anti-corruption bodies and to have a unified policy, as well as to ensure a participatory process.

III. **Capacity building of bodies responsible for the development of anti-corruption policy and Non-Governmental Organisations (Measure 5)**[14]

Given the active involvement of CSOs in the fight against corruption in Armenia, **the *ALA and the Coalition positively assess the including of the measure intended to the capacity building of bodies responsible for the development of anti-corruption policies, including NGOs*.**

However, the importance of the role of civil society **especially in the process of monitoring of anti-corruption strategy**, the ALA and the Coalition suggested in their previous proposals to consider ***the issue of expediency of delegating implementation of the monitoring of the strategy to non-governmental organizations specialized in anti-corruption activities,*** and to foresee a separate event in the Action Plan**: *including the continuous development of monitoring capabilities. We propose to include this event in the "Development of Institutional Anticorruption System" section***

[14] The measure under numbering 4 is omitted in the sequential numbering of individual measures.

of the Action Plan, thus highlighting the role of CSOs in the implementation of the anti-corruption institutional system in Armenia.

It is due to mention that the involvement of civil society in the fight against corruption is envisaged by the ***priorities of the UN Anti-Corruption Coalition through the implementation of anti-corruption trainings***, so that the latter acquire abilities to participate in the review mechanisms of the UN Convention against Corruption. In addition, **"Eastern Partnership – 20 Deliverables for 2020"** states that engaging civil society is the key to the fight against corruption.

IV. **Identification of corruption risks, development and implementation of programmes in local government bodies with population of 15,000 and over (Measure 6)**

We propose to revise the approach that anti-corruption programs will only be implemented in local self-government bodies with a population of 15,000 and over (hereinafter referred to as LG). In particular, modify the quantitative limitation of having a population of 15,000 or more and provide as a basic criterion to introduce anti-corruption programs in LGs with large budgets.

In addition, in the opinion-stance and recommendations of the ALA and the Coalition of 31 January, 2019, there were concerns on the similar measure of the Draft, that 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 the programmes 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 to the protocol decision 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). In response to the aforementioned proposal, the summary submitted by the Ministry of Justice of the Republic of Armenia stated that "**In case of making a final decision on the financing of the mentioned measure, make a corresponding note will be made in the Draft**."

In this connection, having regard to the fact that a revised version of the Draft has already been submitted for public discussion, the final version of which should be submitted to the Government for approval by the last decade of August of this year, as well as the fact that the funds required for financing this measure will be allocated from the State budget, they should be reflected both in ***medium-term expenditure program for 2020-2022 of the Republic of Armenia, as***

well as the 2020 state budget, so it is necessary to have the ***preliminary assessments of the impact*** **on** ***public expenditure*** prior to the adoption of the Draft by the Government. It should also be noted that according to Kuala Lumpur's statement on anti-corruption strategies: ***Anti-corruption strategies should provide for their institutional and financial sustainability and should take into account capacity for implementation.***

As for the question raised by the Coalition about this measure, as to what structures will be involved in the processes of identifying corruption risks, developing programs, and monitoring, because the capacity of the communities to develop, implement and guarantee efficiency of such programs is extremely limited. In this connection we would like to inform that:

Although the list of responsible bodies for the measure has been revise, and include non-governmental organizations engaged in anti-corruption activities (by agreement); however, we find that monitoring of anti-corruption action plans in both the Strategy and Action Plan and targeted local government bodies should be delegated to non-governmental organizations specialized in anti-corruption activities.

In addition, **we also propose** to change the timetable of actions to be taken in the coming years for this measure, in view of the fact that if the Government approves the Strategy and the Action Plan in the last quarter of 2019, the implementation of the measures planned for the current year cannot be considered realistic.

V. **Based on risk evaluation results, development and implementation of anti-corruption, including internal integrity action plans in state agencies (Measure 7)**

The measure envisages developing a methodology for risk assessment in the system of public administration bodies in 2019, and based on this, risk assessments have been carried out in all public administration bodies. In this regard, as in the case of the previous measure 6, here we do not consider realistic the risk assessment in all bodies of the public administration system in the current year and suggest revising the deadlines.

It is also unclear whether all public administration bodies have the appropriate knowledge and abilities to properly evaluate and identify risks and **who will evaluate** the **effectiveness** of realisation of integrity action plans.

In addition, the Commission is missing from the list of bodies responsible for the implementation of the above mentioned measure, while in accordance with paragraph 2 of Point 65 of the Strategy it is envisaged to ***reserve to the Commission with the function of monitoring the***

implementation of anti-corruption measures and programs. On the basis of the aforesaid, **we recommend** making appropriate changes and additions to this paragraph.

VI. **Establishment and operation of ethics commissions and the institute of organiser on integrity issues in accordance with the Law of the Republic of Armenia on Public Service (Measure 9)**

ALA and the Coalition proposed in their Opinion and Proposals to withdraw the aforementioned measure, as it was unacceptable to include min the Draft a measure, which has been envisaged by law (**pursuant to Article 44, Part 1, of the Law of the Republic of Armenia on Public Service N 206-Ն adopted on 23 March, 2018, which reads: separate ethics commissions will be created for separate types of public service and for community service)** and other legal acts or strategic documents approved by the Government of the Republic of Armenia. In response, the Ministry of Justice of the Republic of Armenia stated in its summary that: "The immediate appointment of the members of ethics commission and the organisers on integrity issues is crucial to the proper observance of integrity rules of the public servants. Therefore, the Action Plan envisages the establishment of relevant ethics commissions and organisers on integrity issues in 2019, aimed at ensuring a prompt introduction in these institutes."

In connection with the aforesaid we consider that the Ministry of Justice of the Republic of Armenia has not provided sufficient justification as *to why this particular measure should be included in the Draft and be an additional burden if, in accordance to the requirement of the law, work is already being done in that direction.* That is to say, that this measure is already envisaged by law, and it is not necessary to provide strategic provisions on it.

It is also worth noting that *the Civil Service Office of the Prime Minister's Staff of the Republic of Armenia is not an authorized body for community service* and therefore cannot be considered as the body responsible for the implementation of the measure. As for the Commission being designated as the body responsible for the implementation of the measure, it should be noted that although Point 65 (9) of the Strategy provides for the *Commission to coordinate the work of philanthropic organizers, the Commission has no authority at this time*.

With regard to envisaging the Commission as the body responsible for the implementation of the measure, it should be noted that although Point 65 (9) of the Strategy provides to the "*Commission the function to coordinate the work of organisers on integrity issues, however, the Commission does not currently have any authority.*"

VII. **Improvement of remuneration system for public officials and civil servants (Measure 10)**

Point 1 of the OECD Recommendation 9, suggests increasing the level of competitiveness of civil service salaries. It is also **recommended to 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**.

Taking into account the above said, we propose to revise the bonuses and incentives by examining the relevant international experience and introducing a new system with clear and objective criteria and ratings in both the "**Expected Output**" and "**Control Indicator**" columns of the measure.

VIII. **Continuous improvement of the whistleblowing system (Measure 13)**

The ALA and the Coalition stated in their Opinion and Proposals on the same measures of the Draft (formerly 24, 56) 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***. In this regard, it is worth noting that no further measures have been envisaged to protect and encourage whistleblowers in the revised Draft, and the position of the Ministry of Justice on the abovementioned proposal is as follows: "It follows from the aforementioned that measures will be taken to ensure the most effective functioning of the whistleblowing system within the framework of the measure. **Whereas the points presented in the recommendation can be explored in the context of the system performance improvement.**"

It should be noted that 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.

Taking into account the aforementioned, the **recommendations** of the ALA and the Coalition for the improvement of the whistleblowing system are as follows:

- "Introduction of the Mechanisms for the Whistleblowers' Protection and Incentives."
- Financial incentives for the whistleblowing: 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.

- 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.
- Prepare and implement guidelines for whistleblowers.
- Provide for the legislative regulation on the allegations of illicit action performed by persons working in the national security system.
- Provide for the possibility of using a unified whistleblowing platform for persons who are in penitentiary institutions,
- Take measures to introduce whistleblowing system in the private sector, including the business;
- Provide possibility of creating alternative platforms for electronic whistleblowing by civil society organizations at the legislative level;
- Provide a prohibition of extradition for the whistleblowers the countries where the rights of the whistleblowers are not protected.

IX. **Improving the Effectiveness of the Anti-Corruption Impact Assessment System (Measure 15)**

Among other things, the aforementioned measure was incorporated in the revised Draft based on the recommendation of the ALA and the Coalition. Moreover, in accordance with Point 65 (1) of the Strategy, it is envisaged that ***the task of assessing the anti-corruption impact of the legal acts and their drafts will be reserved to the Commission***.

At the same time, the summary report submitted by the Ministry of Justice of the Republic of Armenia states that **within the framework of the mentioned measure the expediency of introducing the system of accreditation of anti-corruption experts will also be considered**. Taking into consideration the above said, we **suggest**, envisage conducting a study on the feasibility of introducing an accreditation system for anti-corruption experts, as an expected output within the framework of this measure.

X. **Improvement of the of the system for declaration of property, income and interests (Measure 16)**

Although the measure has been edited to some extent, and a summary submitted by the Ministry of Justice stated that "**all recommendations made by the Coalition and the ALA will be considered**

in the framework of the amendments to the RA Law on Public Service, as part of the measure"; however, we consider it appropriate to refer to the "Control Indicator" column of the measure, which includes some of the indicators that selectively include recommendations made by the Coalition and the ALA.

Considering the aforesaid, however, we find it appropriate to once and again reiterate the Coalition's **recommendations** for the improvement of the system for declaration of property, income and interests, which are as follows:

- Review and extend the list of declaring persons;
- Review and extend the list of persons, affiliated with declaring officials, who shall be obliged to declare;
- Review the sanctions for incorrect or incomplete submission in the declaration;
- 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:
- Review publicity requirements, including donations;
- Review the authority of the body responsible for the analysis of declarations, including the power to request an ad hoc declaration of any citizen;
- Review the Declarations' Website by enabling to conduct searches for a specific asset and interest.

XI. **Clarification of the legal status of the organizations of public importance and the introduction of a corruption risk reduction toolkit, including identification of existing corruption risks and the introduction of mechanisms to overcome them (Measure 18) and Promoting the adoption of anti-corruption compliance requirements in business sector (Measure 19)**

In connection with these measures it is recommended:

1. To foresee the introduction of the **"Institute of Private Detectives in Business"** as the expected output of the measure: considering that the latter is interconnected with anti-corruption compliance programs in so far as one of their components is "Due Diligence" - conducting risk-based due diligence study of third parties, including business partners, which is carried out by *background checks*, often involving private detectives for this purpose. In the business sector, private detectives provide essential support to businesses in assessing the authority and financial standing of their debtors and other partners and in realizing their financial obligations. The above said prevents the conclusion of risky transactions and the

evasion of debt by debtors. A private detective can determine if the assets are fictitious, whether the payments are inadequate or if there are other misstatements or frauds. In addition, private detective entities carry out extensive work in identifying facts of intellectual property rights violations, especially in the illicit use of trademarks, etc. Analysing the international experience on this issue, it becomes clear that the US, UK, England, France, Germany, Canada, India, Israel, Japan, Norway, Spain, Italy, Portugal, Mexico, Russia and many other countries around the world the institute of private detectives is recognized at the state level.

2. Provide, as an expected outcome of the action, ***"Definition of the Legislative Requirement for the Implementation of Anti-Corruption Compliance Programs for public sector organizations, non-public sector companies and organizations with more than fifty percent of state or community shares".***
3. Foresee as an expected outcome of the measure the ***"Implementation of the Anti-Corruption Compliance Program as a basis for excluding/mitigating the liability of legal entities"***. For more details see the recommendation regarding Measure 42:
4. Foresee as an expected outcome of the measure the ***"Implementation of the Anti-Corruption Compliance Program as a basis for preferring participants in equal conditions of public procurement."***

XII. **Introduction of the institute of criminal liability of legal persons for corruption offenses (Measure 42)**

In connection with this measure it is recommended:

1. **To foresee the "issue of determining the type of liability for legal entities" as the expected output of the measure:**

   Article 26 (2) of the United Nations Convention against Corruption provides: "*Subject to the legal principles of the State Party, the liability of legal persons may be* ***criminal, civil or administrative***". As we can see, the convention does not only require criminal liability. This institute is vested in the laws of a number of countries: Austria, England, Belgium, Denmark, Hungary, Israel, Ireland, Iceland, Canada, China, USA, France, Switzerland and elsewhere. However, different countries have different views on the liability of legal entities. In particular, the basis of corporate liability varies from country to country: in some countries such as the United States, Great Britain, the Netherlands, criminal liability is envisaged, and

some countries such as Germany, Italy envisage administrative liability. It should be noted that theoretical literature states that**: in countries which have separate administrative courts and administrative litigation, such as in Germany, it is desirable to provide administrative liability rather than criminal liability, since administrative litigation already provides levers for bringing legal entities to justice**. In this regard provide the name of the measure as "**Introduction of the institute of criminal liability of legal persons for corruption offenses**" and provide as the expected outcome of the implementation of the measure as "Development of relevant Draft Laws" rather than "**Draft Laws "On Amendments and Additions to the Criminal Code" and "On Amendments and Additions to the Criminal Procedure Code" have been elaborated**", because it is possible that a different kind of liability than the criminal one which will be regulated by other laws may be provided.

2. **To foresee the "issue of the decision of the choice of sanctions for legal entities" as an expected output for implementation of the measure as well**. Article 26 (4) of the United Nations Convention against Corruption provides: "*Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to* ***effective, proportionate and dissuasive*** *criminal or non-criminal* ***sanctions****, including monetary sanctions.*" Article 131 of the New Draft Criminal Code, provides for the following types of punishment of legal persons: "*fine, temporary suspension of the right to engage in certain types of activity, compulsory liquidation and prohibition of activities in the territory of the Republic of Armenia*". The list of remedies provided by the draft, unlike international experience, was very exhaustive. The Recommendation of 1988 of the Council of Europe Committee of Ministers provides for a number of penalties, with a focus primarily on preventive fines and not on the economic destruction of a company. In addition, the principle of proportionality of punishment must be maintained. Exploring the international experience shows that there are alternative sanctions, such as administrative oversight (Albania), judicial supervision (up to 5 years in France), etc. If a legal entity is subject to legal liability for corruption offenses, it shall also be punishable by deprivation of participation in the public procurement process.
3. **Foresee the *"provision of exemption /mitigation of the legal entity from criminal liability"* as an expected output of the measure.** In this connection, it is necessary to undertake measures to foresee link between the measures aimed to introduce anti-corruption compliance programs (18 and 19) and this measure. The study of international practice indicates that the existence of an anti-corruption compliance program in many countries is taken into account

when determining the liability of the legal entity. Different countries have proposed different approaches to exempting or mitigating the liability of legal entities. For example, in some countries the law provides for full exemption from liability where there is an anti-corruption compliance program, and the responsible staffs have done their utmost to prevent corruption, for example, in the Netherlands, Spain, Switzerland, and Australia. In some countries the existence of an anti-corruption compliance program may be taken into account when establishing the liability of a legal entity, such as in Latvia, Montenegro, Serbia and Ukraine. In some countries the existence of an anti-corruption compliance program may be taken into account when determining the liability of a legal person, but the burden of proof lies with the legal entity that there are no deficiencies in their anti-corruption compliance program, for example, in Japan and Korea. It should be added that Article 129 of the Draft Criminal Code provided for the exclusion of criminal liability of a legal person, "*if the legal person has taken all necessary and sufficient measures to prevent the commission of the crime, but the real possibility of preventing the crime has been missing*". That is, the Republic of Armenia intended to adopt the principle of exclusion of responsibility.

XIII. The previous version of the project envisaged **"Revealing corruption risks in the business sector and introducing the mechanisms to overcome them" (Measure 20)** which in the current revised version of the Draft has been named **"Improving the Procurement Sector" (Measure 20).** In this connection we consider it necessary to state the following:

1. **Providing only of the procurement sector is very restrictive, as we can meet corruption risks in many other areas in the business sector, so we suggest naming this measure *"Revealing corruption risks in the business sector and introducing the mechanisms to overcome them"*.**
2. **Foresee the *"Revealing corruption risks in the procurement sector and introducing the mechanisms to overcome them"* as an expected output of the implementation of the measure and view under it:**
    - ***"Development of Standards for Basic Technical Specifications".*** Technical specifications and other standards in the call for tenders in the field of public procurement are tailored to specific organizations, in order to secure their victory, as a result of which contracts are always signed with the same organizations. As a solution to the problem, the RA Ministry of Finance adopted the Draft Governmental Decision "On approval of the characteristics of procurement items approved by the customer and of the

evaluation of the qualification requirements presented to the participants through selection regime", which provided authority to the Ministry of Finance to examine the qualification requirements for customers and the qualification requirements for the participants from the point of view of maintaining the demand for ensuring competition. However, further reports show that this mechanism did not justify itself, as long as the latter exists, the vicious practice of tailoring specific technical specifications for specific persons continues. Such examples are: reports received through BizProtect website: the napkin price bid announced by the Ministry of Defence of the Republic of Armenia (ՀՀՊՆՆՏԱԴ-ԳՀԱՊՁԲ-7/67), Electronic auctions for medical supplies and consumables (ՀՀՊՆՆՏԱԴ-ԷԱՃԱՊՁԲ-9/3, portions 3-6), (ՀՀՊՆՆՏԱԴ-ԷԱՃԱՊՁԲ-9/26, ՀՀՊՆՆՏԱԴ-ԷԱՃԱՊՁԲ-9/28 և ՀՀՊՆՆՏԱԴ-ԷԱՃԱՊՁԲ-9/30, portion՝ 177), Request for a bid announced by the "Barekargum" (Improvement) administration of the Municipality of Echmiadzin (ՀՀԱՄԷՀ ԲՏ ԳՀԱՊՁԲ 19/4, ՀՀԱՄԷՀ ԲՏ ԳՀԱՊՁԲ 19/6), Request for a bid announced by Vanadzor Municipality (ՀՀԼՄՎՔ ԳՀԱՇՁԲ-19/42), tender for construction and installation of slot machines announced by the Municipality of Yerevan. The Ministry of Finance of the Republic of Armenia foresees introducing a system of public examination of the procurement bids approved by the client. We believe that, however, the development of standards of basic technical characteristics will only support the launch of the system of expertise.

- ***"Review of the Procurement Appeal System".*** There are a number of examples known in international practice when there is no general procurement appeal body in place, and instead the appeal for procurements is carried out by the courts, e.g. Bulgaria, Austria, United Kingdom (Supreme Court). Consider the feasibility of switching to such a system.

3. **Foresee the "Identification of corruption risks in the field of protection of economic competition and introduction of mechanisms to overcome them" as an expected output of the implementation of the measure and view under it:**
   - Adoption of the ***RA Law on "State Aid Control"*** aimed at reducing nepotism and patronage in state aid.
   - ***"Revision of legislation relevant to the protection of economic competition"***: including modifying the range of functions of the State Commission for the Protection of

Economic Competition of the Republic of Armenia; the order of establishment and reducing discretionary powers in defining responsibilities;

- ***Reveal the risks that occur in the trust management process and introducing the mechanisms to overcome them.*** The solution to this problem is necessary to fight against the merger of business and politics, monopoly and dominating position. The Council of Europe's Group of States against Corruption (GRECO) has also referred to this issue and recommended 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 intends 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.
- ***"Introduction and operation of computer software programs (screens) that will identify, irregularities in the market, which will be a tool for combating monopoly, dominating position and anticompetitive 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.

It should be noted that the Coalition and the ALA have proposed to include the last two measures in the previous version of the Draft, and the Ministry of Justice of the Republic of Armenia stated in its response summary statement that, "*The proposals are in fact aimed at specific legislative changes that cannot be discussed in the scope of this Draft.*" We consider that this position is not substantiated and contradicts the Draft itself and has not paid proper attention to the content of the proposal according the following reasoning***: "Ensuring and guaranteeing freedom of economic activity and free economic competition***; (Point 54 (4)) in terms of introducing anti-corruption mechanisms in the private sector, it is important to: ***"Guarantee free economic competition, freedom of economic activity, providing an environment conducive to fair competition"*** (Point 95) and provides for "***a review of legislation related to the protection of economic competition, including amending the scope of functions of the State Commission for the Protection of Economic Competition of the Republic of Armenia***" (Article 96). Therefore, if the Strategy addresses the protection of free

economic competition, a separate measure / action should be envisaged in the Action Plan for its resolution."

4. **Foresee the establishment of the "Institute of Business Ombudsman" as an expected outcome of the action**. The latter will act as a mediator for business and the state, which will ensure the representation and protection of business interests in state and local government bodies, including on corruption cases. Analysis of international experience shows that different models of business ombudsman are available in a number of countries, such as Australia, Ukraine, Georgia, Kazakhstan, Russia, the USA and others.

XIV. **Implementation of the Register of Beneficial Owners (Measure 21)**

The Coalition has presented a number of suggestions in its opinion-position and recommendations on the introduction of the Institute of Beneficial Owners in Armenia and a number of recommendations on its effective implementation. In response to this the RA Ministry of Justice stated in its response summary statement that: *"The issues raised in the recommendation and relevant proposals will be discussed in the context of the application of paragraph 21 of the Draft."*

However, we consider that the recommendations below remain relevant and should be formulated as an expected outcome of the action:

1. ***Establish leverages for the registrar body to verify the credibility of information,*** such may be banking and tax secrecy.
2. ***Establish the level of publicity of information about Beneficial Owners.*** In this regard, it should be noted that countries have initially adopted different approaches to data access. There are three levels of data access: only the body maintaining the registry, only interested parties, or the public at large. From the outset, the 4th Anti-Money Laundering Directive of the EU left the issue to the States. However, the 5th Anti-Money Laundering Directive of the EU implies a wider level of accessibility. When addressing this issue, it is also necessary to refer to changes in the legal norms regulating joint stock companies.
3. ***Establish the types of sanctions for failure to fulfil the obligation***. The EU directives provide for a penalty of 10% of the company's annual turnover. Other sanctions include a ban on public procurement, a ban on certain activities, and so on.
4. ***Establish leverages for commercial legal entities to obtain information about their beneficial owners.*** In the UK, for example, the impossibility of generating profits/earnings from the sale

of their shares by owners prior to providing information on beneficial owners serves as such lever.

XV. **Introduction and implementation of e-governance tools in the justice sector, implementation of awareness raising activities (Measure 22)**

Introduction of a single hotline platform for citizens' complaints, inquiries and appeal (Measure 23).

Increasing the effectiveness of public participation in the development of draft legal acts (Measure 24).

Modernization of the Unified Operators sso.am electronic system and introduction of the Mygov.am electronic platform on the basis of this system (Measure 24).[15]

Creating a Single Platform for Proactive Publishing of Information (Measure 31).

The "Expected Outcome" column of the event for 2019 and 2020 states that **www.e-petition.am** (electronic petition system), **e-justice.am** (unified system for electronic justice), **e-court** (single electronic system for courts), **www.e-bancruptcy.am** electronic management systems should be introduced and launched.

It is worth mentioning that the ALA and the Coalition have already stated in their previous opinion-stance and recommendations that the implementation of the above-mentioned electronic tools is foreseen in a number of strategic documents and action plans, ***which implies that the state has already undertaken to introduce these electronic tools, therefore, in the revised draft there was no need to define them separately or together, unnecessary duplication and additional burden on the document should also be excluded.*** In fact, the Ministry of Justice of the Republic of Armenia has not given up on the approach adopted previously and **has removed only 3 measures from the Action Plan** based on the proposals made (Measures 32, 35 and 36 of the previous version of the Action Plan); Some of the measures aimed at regulating electronic platforms have been combined into two measures – **Measures 22 and 30**; and some measures are again presented separately - **Measures 23, 24 and31**.

We once again note that 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***

[15] Measures under numbering 27-29 are omitted in the sequential numbering of individual measures.

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*.

XVI. **Identification and clarification of the scope of discretionary powers in state and local government (Measure 26).**

It is important to note that first of all it is not clear why the above-mentioned event is included in the Action Plan "**Introduction of e-governance tools, introduction and improvement of public participation mechanisms in the public administration process, simplification of administration**" section. If the justification is that the identification and clarification of the scope of discretionary powers in state and local government will lead to simplification of administration, introduction of mechanisms for public participation in the public administration process, ensuring a transparent and accountable work style; it should be noted that measures 6 and 7 of the Action Plan provide for the introduction of anti-corruption, including internal integrity action plans based on the results of the risk assessment in state and local government bodies; which in itself would imply the exercise of these authorities' powers, including discretionary, self-assessment of the framework and taking of appropriate measures. Therefore we find that there is no need to provide for a separate measure.

XVII. **Incorporation of the subject "Principles of Anticorruption Policy" into the educational modules of all higher education institutions (Measure 45).**

Taking into account that the above mentioned measure is foreseen in the "Public Awareness and Anti-Corruption Education" section of the Action Plan, it is worth mentioning that

It should be mentioned *that in the previous opinion-stance and recommendations, the ALA and the Coalition, referred to the need for a systematic approach to the introduction of anti-corruption education, stressing that 8 actions which were included in the homonymous section of the Action*

Plan 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. The ALA and the Coalition considered that that anti-corruption education should have one main objective: to make people allies in the fight against corruption and be a cornerstone and thus they *recommended to 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.*

However, in response to the abovementioned proposal, the Ministry of Justice of the Republic of Armenia has noted that it has envisaged a measure to include anti-corruption subjects in the educational curricula of higher education institutions, but the teaching of anti-corruption subjects at other levels is under discussion.

Assessing positively the inclusion of the subject "Principles of Anticorruption Policy" in the educational modules in higher education institutions, we believe that the inclusion of such subject in pre-school, general and vocational education programs should also be considered compulsory and practical steps should be taken starting at this very stage.

CSO Anti-Corruption Coalition of Armenia

"Armenian Lawyers' Association" NGO

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