

Preventing and Combating Corruption in the Eurasian Region

Summary Report of IACA's Anti-Corruption Tailor-made Training for Representatives
of the Eurasian Economic Union (EAEU) Member States
2 - 4 October 2017

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Background

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

The Academy provides, on a yearly basis, a variety of standardized trainings: International Anti-Corruption Summer Academy, Regional Summer Academy, Anti-Corruption in Local Governance Training, Procurement Anti-Corruption Training, and “Best Of” Seminars. In addition to thematic programmes, IACA offers tailor-made trainings individually designed to respond to the unique needs of a specific organization, corporation, or institution. The trainings also provide a basis for discussion about existing and future challenges for mitigation of corruption risks in different sectors or regions.

The 2017 Anti-Corruption Tailor-Made Training for Representatives of the Member States of the Eurasian Economic Union, hereinafter the EAEU Training, was co-sponsored by the Government of the Russian Federation. The creation of this Report was inspired by the EAEU training taking place from 2–4 October 2017. The training was delivered by high-level experts from different areas of anti-corruption and compliance, including, *inter alia* (in alphabetical order):

- Dr. Eduard Ivanov, International Anti-Corruption Academy, lectured on *Modern Challenges and Trends in Combating Corruption* and on *Anti-Money Laundering/Countering Financing of Terrorism and Anti-Corruption Compliance*.
- Alexey Konov, Director of the Anti-Corruption Research and Education Center of the Russian Presidential Academy of National Economy and Public Administration, discussed *Conflict of Interest Management and Prevention*.
- Drago Kos, Chair of the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery in International Business Transactions, shared his expertise in *Public-Private Partnerships in the Fight against Corruption*.
- Samira Musayeva, legal officer of the United Nations Commission on International Trade Law (UNCITRAL), lectured on the *UNCITRAL Model Law and the EBRD – UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS Countries*.
- Andrew Pepper-Parsons, Head of Policy for the whistleblowing charity Public Concern at Work (PCaW), analyzed *How to Make Whistleblowing Work*.
- Dr. Han-Kyun Rho, International Anti-Corruption Academy, talked about *Anti-Corruption Compliance from the Perspective of Organizational Management*.

The training brought together anti-corruption and compliance practitioners from Armenia, Belarus, Kazakhstan, Kyrgyzstan, and the Russian Federation. The training started with an insight into compliance management. It also provided an overview of modern challenges and trends in combating corruption. Furthermore, international legal instruments including an UNCITRAL model law were discussed. Additionally, it offered participants deeper and more comprehensive insights into particular topics and areas of anti-corruption and compliance practices such as whistleblower protection, conflicts of interest, public-private partnerships, participatory governance, measures for stakeholders, and civil society involvement in decision-making processes in order to mitigate corruption risks. The training also provided a comparative overview of anti-money laundering/countering financing of terrorism and anti-corruption compliance legal regimes and practices.

Chapter 1: International Efforts to Prevent and Combat Corruption

1.1 Modern Challenges and Trends in Combating Corruption

Corruption is a global challenge for the international community. We can identify several distinctive features of modern corruption:

- Connection of corruption with organized crime and terrorism
- Corruption relationships in the private sector
- The use of the international financial system for committing corruption offences
- In some cases, involvement of political leaders and senior public officials in long-term, stable corruption relationships¹

Corruption facilitates organized crime and terrorism. Criminals use corruption relations for the movement of persons and goods across customs and state borders. Corrupt officials support smuggling of migrants at several stages along the journey to Europe.² Corruption is one of the prerequisites for non-cooperation in combating other types of crime.

In Dr. Ivanov's opinion, for many years, corruption was associated with the public sector. Nowadays, various forms of corruption are becoming more and more notable in the private sector. Typical examples of corruption in the private sector are bribery in tenders, extortion of bribes by managers of supermarket chains from suppliers for access to the chain, and providing illegal financial services. Corruption relationships in financial institutions and supervisory bodies allow misuse of the international financial system for criminal purposes.

Systemic corruption creates numerous risks for governments and society:

- Loss of effectiveness of the public administration system
- The inability of governments to respond adequately to emerging threats
- Illegal impact on election results and decision-making processes by governmental authorities
- Loss of public trust in government and political institutions

Countries develop various measures to increase effectiveness of prevention and combating corruption, such as:

- Imposing additional restrictions on civil servants
- Increasing transparency in the private sector, e.g. identifying beneficial owners
- Strengthening the role of financial intelligence units in combating corruption
- Strengthening corporate and individual liability for corruption offences
- Supporting collective action initiatives

An important step towards transparency in the private sector was the establishment of legal obligations to identify beneficial owners. The International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation stipulated that countries establish legal mechanisms to identify beneficial owners of legal entities and legal arrangements.³ Countries have been taking measures to implement these norms into

¹ For example, the Petrobras case in Brazil and the investigation against the former President of South Korea, Park Geun-hye.

² Europol, 2016. *Migrant smuggling in the EU*. [pdf] Europol. Available at: <<https://www.europol.europa.eu/newsroom/news/europol-launches-european-migrant-smuggling-centre>> [Accessed 31 October 2017].

³ FATF, 2012. *International Standards on Combating Money Laundering, the Financing of Terrorism and Proliferation*. [pdf] Paris: FATF. Available at: <<http://www.fatf-gafi.org/media/fatf/documents/>>

national anti-money laundering laws and regulations. Originating from the Anti-Money Laundering (AML) / Combating the Financing of Terrorism (CFT) fields, the idea of identification of beneficial owners is also important for anti-corruption. In 2011, the joint UN Office on Drugs and Crime (UNODC)/World Bank Stolen Asset Recovery (StAR) Initiative published “The Puppet Masters,” a comprehensive study on large-scale corruption by high-level public officials which paid special attention to the use of shell companies, trusts, and foundations.⁴ In 2017, UNODC established a working group on beneficial ownership transparency which aims to prepare an updated version of “The Puppet Masters” focusing on best practices for identifying beneficial owners.

Countries use various approaches to build systems of beneficial ownership transparency. The fourth EU Anti-Money Laundering Directive (Directive (EU) 2015/849) calls for EU member states to establish registers of beneficial owners.⁵ Four Eurasian Union member states adopted amendments to AML/CFT laws establishing obligations of financial institutions and designated non-financial businesses and professions to take measures to identify beneficial owners among their customers. The Russian Federal Law “On Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism” also established obligations for all legal entities to know their beneficial owners.⁶

One of the trends in combating corruption in Russia is an active participation of Rosfinmonitoring (the Russian Financial Intelligence Unit (FIU)) in preventing and detecting corruption. Rosfinmonitoring is responsible for financial investigations of money laundering cases related to corruption offences. The microanalysis of financial information allows for the identification of financial institutions providing services for payments related to corruption offences.

In accordance with Federal Law No. 231-FZ dated 3 December 2012, which came into force on 1 January 2013, Rosfinmonitoring should also provide information about the transactions of state and municipal servants upon written requests of federal ministers, heads of subjects of the Russian Federation, and the Head of the Central Bank of the Russian Federation for purposes of controlling incomes and costs.

The procedure for submitting such requests and the list of positions of state and municipal servants are regulated by the Decree of the President of the Russian Federation No. 309 dated 2 April 2013.⁷ FIU’s information about obligatory, controlled, and suspicious transactions of public servants can be compared with their declarations of incomes and assets. This is an effective way to identify the transactions which are significantly higher than the declared official incomes of public servants.

Countries put a lot of effort into developing effective mechanisms of corporate and individual liability for corruption offences. Depending on their legal systems and doctrines,

recommendations/pdfs/FATF_Recommendations.pdf> [Accessed 4 November 2017].

⁴ Van der Does de Willebois, et al, 2011. *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It.* [pdf] Washington, DC: The International Bank for Reconstruction and Development/The World Bank. Available at: <<https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>> [Accessed 5 November 2017].

⁵ European Parliament and Council Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>>.

⁶ Federal Law on Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism. 2001. Russian Federation: Federal Assembly. Available at: <http://www.consultant.ru/document/cons_doc_LAW_32834/>.

⁷ Decree on Measures for Implementation of Certain Provisions of the Federal Law “On Fighting Corruption”. 2013. Russian Federation: The President of the Russian Federation. Available at: <<http://ivo.garant.ru/#/document/70350274/paragraph/1:0>>.

they implement criminal or administrative as well as civil corporate liability. In the Russian Federation, legal entities are not subject to criminal liability. There are ongoing debates in the professional community on the question of whether the Russian Criminal Code has to be revised.

Analyses of statistical data demonstrate that Russian courts more and more actively apply Article 19.28 of the Code of Administrative Offences which establishes administrative liability of legal entities for illegal remuneration on their behalf. The term “illegal remuneration” covers bribery of domestic and foreign public officials, officials of public international organizations, and commercial bribery. In 2011, the first year of application of Article 19.28, only 68 legal entities were held liable and fined. The statistical data for 2014-2017 from the Register of legal entities brought to administrative liability under Article 19.28 of the Code of Administrative Offences demonstrates the increasing application of Article 19.28 by Russian courts.⁸

Year	Number of legal entities brought to administrative liability under Article 19.28 of the Code of Administrative Offences
2014	239
2015	390
2016	397
2017 (January – September)	231

Corporate liability should by no means allow individuals to avoid liability for corruption offences. In the United States, the 2015 Yates Memo sent a clear message to all US Attorneys that individual accountability for corporate wrongdoing is a key priority. According to the memo, corporations should provide all information about individual misconduct if they want to cooperate and seek to settle a corporate case. No corporate resolution should provide protection from individual criminal or civil liability.⁹ Compliance officers are responsible for proper functioning of compliance programmes. They can be subject to liability along with other company managers. A recent example is the settlement that Thomas E. Haider, the former Chief Compliance Officer of MoneyGram International, Inc., reached in May 2017 with the US Department of Justice and the Financial Crimes Enforcement Network (FinCEN). Mr. Haider was accused of failing to ensure compliance in MoneyGram with AML laws. He agreed to pay a \$250,000 penalty and be barred from working as a compliance officer for any money transferring company for three years.¹⁰ In many countries, companies are not allowed to pay penalties for which employees are liable due to their misconduct. In some countries, insurance companies already offer professional liability insurance for compliance officers.

Recognizing the importance of law enforcement measures in combating corruption, we should not underestimate the role of public-private collaboration and joining forces against

⁸ The Prosecutor General's Office of the Russian Federation, 2017. *The Register of Legal Entities Brought to Administrative Liability Under Article 19.28 of the Code of Administrative Offences*. [online] Available at: <<https://genproc.gov.ru/anticor/register-of-illegal-remuneration/>> [Accessed 9 November 2017].

⁹ U.S. Department of Justice, 2015. *Memorandum for the Assistant Attorney General, et al., from Sally Quillian Yates on Individual Accountability for Corporate Wrongdoing*. [pdf] Washington, DC: U.S. Department of Justice. Available at <<https://www.justice.gov/archives/dag/file/769036/download>> [Accessed 25 November 2017].

¹⁰ Cassin, R., 2017. Former MoneyGram compliance chief pays \$ 250,000 penalty for AML failures. *The FCPA Blog*, [blog] 5 May. Available at: <<http://www.fcpablog.com/blog/2017/5/5/former-moneygram-compliance-chief-pays-250000-penalty-for-am.html#sthash.HwyOBIVX.dpuf>> [Accessed 25 November 2017].

corruption. Collective Action initiatives are becoming a popular form of collaboration between governments, the private sector, and other stakeholders.

The World Bank Institute defines Collective Action as “a collaborative and sustained process of cooperation amongst stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations, and levels the playing field between competitors”.¹¹

The Basel Institute on Governance defines three types of collective actions: an anti-corruption declaration, a standard setting or principles based initiative which can also include a certification model to monitor and audit adherence to an agreement not to bribe, and an integrity pact.¹²

During his lecture, Dr. Ivanov mentioned that Collective Action should have clear aims in the fight against corruption, should be an ongoing process rather than a single action, and should involve several participants.

The Collective Action initiative can include but is not to be limited to the following actions:

- Signing anti-corruption declarations
- Setting standards
- Developing and supporting external communication – government, law enforcement bodies, media, civil society
- Conducting training
- Providing consulting and other forms of assistance
- Conducting monitoring and regular assessments of impact

There are several examples of Collective Action initiatives in the EAEU member states. In 2014 in Kyrgyzstan, the Chamber of Commerce and Industry and twenty main business associations signed the Charter “Business of Kyrgyzstan against Corruption.”

Kazakhstan participates in the Extractive Industries Transparency Initiative (EITI) which is a global standard to promote the open and accountable management of oil, gas, and mineral resources.¹³

In 2012, the main business associations of the Russian Federation signed the Anti-Corruption Charter of Russian Business. Parties to the Charter include the Chamber of Commerce and Industry, the Russian Union of Industrialists and Entrepreneurs, the All-Russian Public Organization “Delovaja Rossiya” (Business Russia), and the All-Russian Public Organization of Small and Medium Businesses “Opora Russii” The Charter is based on several main principles developed to prevent and combat corruption. The Charter covers relationships both within the business community and between businesses and government authorities. The Russian Union of Industrialists and Entrepreneurs maintains the Register of parties to the Charter.¹⁴

¹¹ The World Bank Institute, 2008. *Fighting Corruption through Collective Action. A Guide for Business*. [pdf] p.11. Available at <https://www.globalcompact.de/wAssets/docs/Korruptionspraevention/Publikationen/fighting_corruption_through_collective_action.pdf> [Accessed 16 February 2018].

¹² Basel Institute on Governance, 2018. *Collective Action / ICCA*. [online] Available at <<https://www.baselgovernance.org/theme/icca>> [Accessed 16 February 2018].

¹³ The Extractive Industries Transparency Initiative (EITI), 2017. *Kazakhstan*. [online] Available at <<https://eiti.org/kazakhstan>> [Accessed 16 February 2018].

¹⁴ Commission on Crime Prevention and Criminal Justice (CCPCJ), 2013. *The Anti-Corruption Charter of the Russian Business and the Charter Road Map*. [pdf] Vienna: CCPCJ. Available at <https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/_E-CN15-2013-CRP08/E-CN15-2013-CRP8_E.pdf> [Accessed 25 November 2017].

1.2 UNCITRAL Model Law and the EBRD - UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS Countries

Public procurement is the process by which states purchase goods, works, and services using public funds in order to satisfy the needs of the state so that it can efficiently carry out its functions. The volume of public procurement accounts for 15-30% of GDP¹⁵ on average. In this regard, preventing and combating corruption in public procurement becomes one of the key priorities in the anti-corruption agenda of the international community. There are several international and regional legal instruments that identify essential mechanisms for the prevention of corruption in public procurement through a domestic legal framework:

- The United Nations Convention against Corruption of 2003 (UNCAC) defined a general framework for anti-corruption provisions in national public procurement legislation of the States Parties to the Convention.
- According to Article 9 of the UNCAC, each country is obliged to establish appropriate systems for public procurement, based on transparency, competition, and objectivity in decision-making. An effective system of domestic review, including appeal, the public distribution of information relating to procurement procedures and contracts, and the use of objective, predetermined, and transparent criteria for public procurement decisions are listed among the fundamental anti-corruption safeguards in any national procurement system.
- The World Trade Organization (WTO) Government Procurement Agreement (GPA) is a multilateral agreement on public procurement.¹⁶ In 2012, the text of the WTO GPA was revised.¹⁷ The goal of the WTO GPA is to create fair conditions of international competition in public procurement. The agreement requires transparent procedures of public procurement that are free from conflicts of interest and corruption, and refers in that respect to the Member States commitments under the UNCAC.
- Other international organizations published standards and guidance materials aiming to support governments in implementing effective anti-corruption mechanisms in public procurement. They are all based on the principles of transparency, competition, and integrity.
- The United Nations Commission on International Trade Law (UNCITRAL) contributed to international anti-corruption efforts by adopting the Model Law on Public Procurement in 2011.¹⁸ The UNCITRAL Model Law is widely used by States and donors in public procurement law reforms.

UNCITRAL was established on 17 December 1966 by a resolution of the UN General Assembly. Its main goal is to further the progressive modernization, harmonization, and unification of the law of international trade.

The 2011 Model Law modernized UNCITRAL's earlier texts in the area of public procurement. The 2011 version reflects modern ways of conducting procurement (in particular, electronic government procurement or e-GP) and is strengthened as regard to integrity and

¹⁵ Cernat, L. and Kutlina-Dimitrova, Z., 2015. *International public procurement: From scant facts to hard data*. Chief Economist Note. [pdf] Directorate-General for Trade of the European Commission. Available at: <http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153347.pdf> [Accessed 30 November 2017].

¹⁶ World Trade Organization Agreement on Government Procurement. 1994. Marrakesh: World Trade Organization. Available at: <https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm>.

¹⁷ World Trade Organization Revised Agreement on Government Procurement. 2012. Geneva: World Trade Organization. Available at: <https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf>.

¹⁸ United Nations, 2014. *UNCITRAL Model Law on Public Procurement*. [pdf] Vienna: United Nations Office at Vienna. Available at: <<https://www.uncitral.org/pdf/english/texts/procurem/ml-procurement-2011/2011-Model-Law-on-Public-Procurement-e.pdf>> [Accessed 29 November 2017].

accountability measures by including, *inter alia*, provisions guaranteeing an effective complaint mechanism.

UNCITRAL developed a unique law for handling public procurement that has become a model for the international community by showing international best practices and sample regulations. The Model Law is based on the UNCAC in terms of approaches to fighting corruption in public procurement. It includes procedures and principles that aim to improve economic efficiency and prevent corruption risks in public procurement. It requires transparency, fairness, objectivity, competition, and the absence of conflicts of interest in public procurement. The rule of transparency is a key principle in the fight against corruption. The Model Law requires the publication of existing laws on public procurement, information about future procurement, and criteria for decision-making. The system of electronic procurement plays a key role as it contributes to more transparent procedures.

The Model Law sets out minimum requirements for transparency, such as the publication of procurement results, procurement reports, and public information about all changes in procurement decisions, and the possibility to question the results of the procurement process. The mechanism to question the results is one of the most important parts of the Model Law. According to this mechanism, every decision of a public body, organization, or institution can be questioned by any potential participant of the tender. The Model Law also includes sanctions for the creation of unfair advantages, conflicts of interest, and collusion, and it also requires the adoption of a code of conduct for public officials.

The Model Law can be used as a template for national regulations regarding procurement. It has been harmonized not only with UNCAC but also with the WTO GPA, directives of the European Union, procurement guidelines of international development banks, and other international instruments in the area of public procurement.

According to Article 28.1 of the Model Law and the principle of competition, primacy is given to the open tendering method unless conditions exist making the use of that method impossible or costly (e.g. urgency, emergency, low-value procurement, procurement involving classified information, or limited market). The open tender procedure involves unlimited solicitation, which in turn creates conditions for maximum competition and reduces risks of collusion. The principle of objectivity is guaranteed, in particular, by Article 7 setting out the rules for communication of information during the procurement process, Article 9 setting out criteria and procedures for ascertaining qualifications, Article 10 setting out rules for specification of the subject matter of procurement and contract terms, and Article 11 setting out rules and criteria for evaluation. According to the principle of objectivity, bidders might be excluded from the process on the basis of established criteria and procedures which are allowed by law and are transparent from the earliest stages of the tender.

The Guide to Enactment of the Model Law on Public Procurement adopted by UNCITRAL is a helpful tool in identifying risks of corruption in public procurement.¹⁹ For instance, extended transparency might lead to risks in the market, such as the creation of additional opportunities for illegal agreements between market participants. It can also lead to abuse during the procurement procedure, for example, during preparatory conferences. This abuse might be possible due to the disclosure of information about preparatory selection and the disclosure of information about evaluations. At the same time, a low level of transparency

¹⁹ United Nations, 2014. *The Guide to Enactment of the UNCITRAL Model Law on Public Procurement*. [pdf] Vienna: United Nations Office at Vienna. Available at: <<http://www.uncitral.org/pdf/english/texts/procurem/ml-procurement-2011/Guide-Enactment-Model-Law-Public-Procurement-e.pdf>> [Accessed 30 November 2017].

could lead to a lack of accountability. This is a very delicate question of how to achieve a balance between these two parameters and, therefore, good knowledge of local market conditions, culture, and mechanisms of governance are crucial.

As discussed by Ms. Musayeva during her lecture at IACA, minimum transparency requirements of a sound procurement law include:

- Timely and meaningful publication of laws and regulations applicable to public procurement as well as of award criteria and procedures, and all rules that will govern relations between the procuring entity and bidders in a given procurement process
- Exhaustive record keeping of the procurement process, and timely and appropriate disclosure of the record to competent authorities, the public, and aggrieved suppliers
- Timely and meaningful notification and publicity of the award and other important decisions
- Standstill suspension of procurement proceedings and other measures ensuring effective review

The Guide is also helpful in identifying risks to competition in the market and putting in place mechanisms for preventing oligopolies, collusive behaviour, and barriers to access to the procurement market. Attention must be paid to narrow or tailored specifications, conditions for the use of single-source and other non-transparent methods of procurement, and to discretion given to the procuring entity as regards examination and evaluation of submitted tenders, in particular possible changes of submitted information. E-tools allow more efficient monitoring of the results of procurement, including contract implementation to identify, in particular, differences in prices for the same goods in different procurements, why the same supplier is winning or not winning in a particular procurement or region, and comparisons of subcontracting and bidding patterns for identification of possible collusion between bidders at the bidding stage.

The Model Law follows a unitary approach, meaning that the procurement law should apply to all procurement regardless of sector, sensitivity, and value but should be flexible enough to accommodate different needs while preserving essential transparency, competition, and objectivity.

The Model Law and accompanying materials do not address all possible measures of fighting corruption in public procurement. Some of them will be in the domain of criminal law, some will be handled through external and internal oversight, and some will need to be addressed in the context of contract administration. In practice, there is a wide range of measures to mitigate corruption risks and not all of them would be addressed in public procurement laws or regulations:

- E-procurement tools: Facilitate the organization and conduct of transparent, objective, and efficient procurement based on the principle of competitive trading. The goods, works, and services are purchased via the Internet, often in real time. Electronic platforms serve as a basis for exchanging data, which reflects all information about the tenders, procedures, and winners of the contracts. Information, which is reflected in the electronic public procurement portal, has an open character in order to give society a monitoring opportunity. At the same time, the need for human interaction is minimized or eliminated altogether. Today, this is considered the most efficient instrument to fight corruption in procurement.

- Complaint review/bid challenges: A system that allows participants, or potential participants, of the tender to register complaints about violations of the legal norms of public procurement legislation. It is one of the most efficient ways for detection and mitigation of corruption, based on complaints from the participants of tenders as well as from the procuring entities.
- Debarment of bidders: In the case that significant violations of procedures are detected, the participants of the tender can be excluded from the procurement procedure and blacklisted.
- Oversight: Usually implemented by the executive authority or body that sets policy, establishes regulations, and conducts control functions in the area of public procurement in the country.
- Monitoring of public procurement: A system of permanent observation accomplished by the collection, classification, generalization, and analysis of collected information about tenders, including the implementation of procurement plans. It is conducted with the goal of preventing corruption risks and creating sufficient levels of transparency with respect to tender processes.
- Audit: The analysis and evaluation of the planning process of public procurement, including its efficiency and the results of bidding. The audit includes all stages of planning and also the conclusion and implementation of the contract.
- Tender Board: A collegial organ which is usually formed by the organizers of the tender with the goal of conducting legal, transparent, fair, and efficient bidding processes, and identifying the winner according to the demands of the tender documentation.
- Whistleblowing: Reporting of any illegal, unethical, or inappropriate activity that violates public procurement procedures and anti-corruption norms.²⁰
- Corporate compliance programmes: Parts of the internal controls systems created for the identification and prevention of corruption and other violations of law. It includes a code of ethics, a set of norms and rules representing a system of moral principles of conduct which regulate the behaviour of employees in the area of procurement. A compliance programme identifies which types of behaviour should be promoted and which ones should be punished. It also includes tools to increase the qualifications of management staff.
- Prosecution: An activity carried out by a law enforcement body intended to convict a suspect accused of prohibited activities during the public procurement process.

The lecturer underlined the important role of the European Bank for Reconstruction and Development (EBRD) and the UNCITRAL Public Procurement Initiative for the modernization of procurement law framework in the EAEU region on the basis of the 2011 UNCITRAL Model Law. The initiative, launched in 2011 in Astana (Kazakhstan), originally covered the Commonwealth of Independent States (CIS) and Mongolia. The aim of the initiative was to promote the revised 2011 UNCITRAL Model Law on Public Procurement. The joint EBRD/UNCITRAL Task Force supported developing laws and institutions as well as providing training and information about best practices. Later the initiative has spread to other countries of the EBRD operations.²¹

²⁰ Vandekerckhove, W., 2006. *Whistleblowing and Organizational Social Responsibility: A Global Assessment*. Hampshire: Ashgate.

²¹ European Bank for Reconstruction and Development (EBRD), 2011. *EBRD and UNCITRAL Initiative on Enhancing Public Procurement Regulation in the CIS Countries and Mongolia*. [online] Available at: <<https://www.ppi-ebd-uncitral.com/index.php/en/ebd-uncitral-initiative>> [Accessed 16 February 2018].

Chapter 2: Anti-Corruption Compliance

2.1. Anti-Corruption Compliance from the Perspective of Organizational Management

Due to the efforts of the international community aimed at supporting the implementation of anti-corruption compliance management systems in companies, a significant number of international standards and guidance documents were adopted. In Dr. Han-Kyun Rho's opinion, companies usually consider standards and guidance documents published by the United Nations, OECD, International Organization for Standardization (ISO), and Transparency International in their operations.

Five components of an ethics and compliance programme

During his lecture, Dr. Rho presented his own framework of an ethics and compliance programme with five major components and 14 sub-components.

The five major components of this framework are: (1) risk assessment, (2) organizational declaration, (3) monitoring and detection, (4) post-detection action, and (5) communication.

In the risk assessment stage, an ethics and compliance programme tries to find as many risks as possible (risk identification), to analyze them for prioritizing organizational action (risk analysis), and to make a mitigation plan accordingly (risk mitigation plan).

In the organizational declaration stage, an organization makes clear its intention to deal with all the identified risks to both internal and external stakeholders. This declaration can be in the form of a major organizational policy and/or a code of conduct/ethics.

In the monitoring and detection stage, an organization tries to find any potential sources of the identified risks, which is sometimes termed as due diligence. An organization can use a hotline or other channels to collect allegations or other concerns from both internal and external stakeholders. It also manages an internal control and audit system to find any non-compliant acts. Lastly, when a non-compliance allegation is received, an organization investigates the allegation.

In the post-detection action stage, an organization can take at least three different actions when it detects a non-compliance case. It will analyze why this non-compliance case happened (sometimes called a 'root cause analysis'). It will take many different types of corrective actions, including personnel disciplinary measures and asset recovery. Finally, if necessary, an organization will seek, or cooperate in, an external intervention.

Although the communication stage is placed at the end of the framework, this stage should happen throughout the other four stages. Risk assessment, organizational declaration, monitoring and detection, and post-detection action should be communicated with a group of relevant stakeholders in an appropriate way. Staff training in order to improve morale is another form of communication.

Management system and organizational support

In addition to the five components of an ethics and compliance programme, there are two foundations for its successful implementation.

The first foundation is a management system. Developed on the basis of quality management, management systems have been applied to areas other than product quality for their continuous improvement.

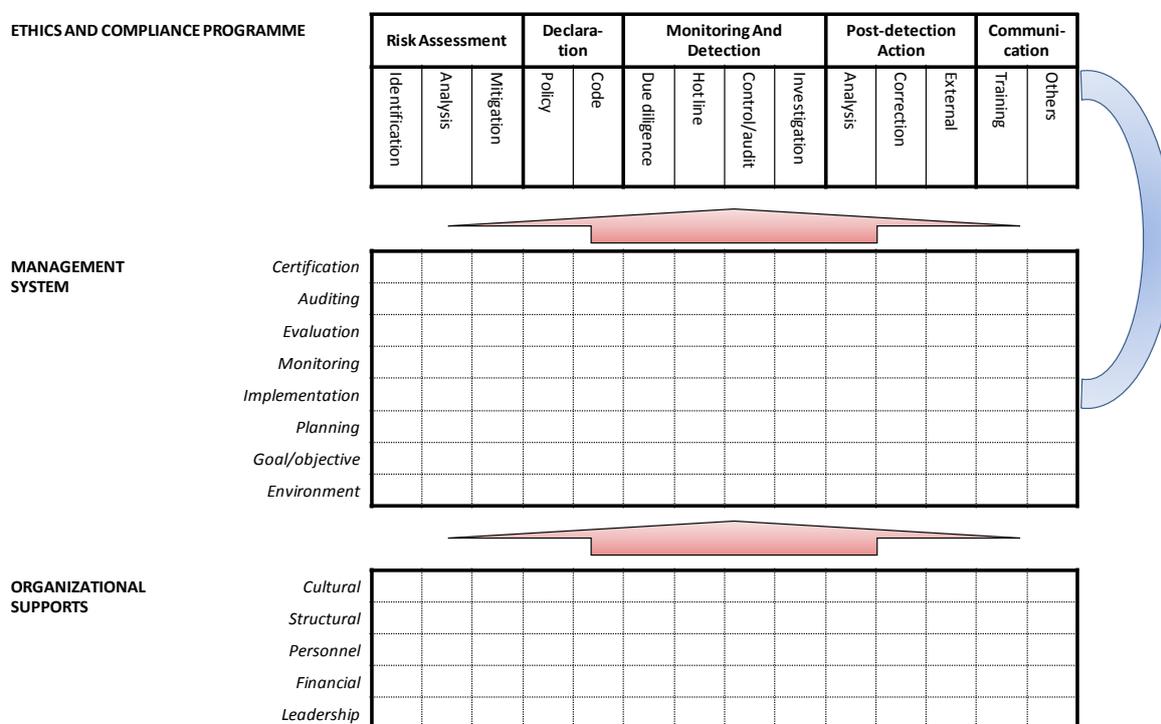
Deming’s PDCA (plan-do-check-act *or* plan-do-check-adjust) cycle is frequently used to depict the essence of the management system.²² However, here, we have included more elements than Deming’s PDCA to reflect current developments in the management system discussion and related areas of strategic management.

The framework of a management system includes eight components: (1) environment analysis, (2) goal and objective setting, (3) planning, (4) implementation, (5) monitoring, (6) evaluation, (7) auditing, and (8) certification.

The key difference between the ethics and compliance programme and the management system is that the latter is more about “how to manage” while the former is more about “what to do.” Therefore, as mentioned before, the idea of a management system can be applied to various areas of “what to do” including an ethics and compliance system.

The second foundation for successful implementation of an ethics and compliance programme is organizational supports. Organizational supports have at least 5 components: (1) leadership supports, (2) financial supports, (3) personnel supports, (4) structural supports, and (5) cultural supports.

The figure below combines the three parts: (1) an ethics and compliance programme, (2) a management system, and (3) organizational supports.



Source: Han-Kyun Rho.

²² The W. Edwards Deming Institute, 2018. *PDCA Cycle*. [online] Available at: <<https://deming.org/explore/p-d-s-a>> [Accessed 16 February 2018].

The lecturer underlined that an effective ethics and compliance programme and management system may allow organizations to decrease penalties and receive other benefits.

Designing and implementing compliance programmes can be based on formal technical approaches or on integrity (value-based) strategies. The first approach is aimed, first of all, at compliance with externally imposed standards. The idea of the second approach is to develop self-governance according to chosen standards.

Prof. Rho compared the two approaches using the following components: objective of compliance programme, leadership, methods of implementation, behavioral assumptions, and standards which employees should follow.

The main objective of the technical compliance programme is to prevent criminal misconduct of employees and other relevant persons. The value-based compliance programme creates positive incentives and enables responsible conduct. The technical compliance programme is usually carried out by lawyers. The value-based compliance programme is driven by senior management with the aid of lawyers, HR officers, and other staff members. For both types of compliance programmes education, auditing and controls, and the use of penalties are typical methods of implementation. However, it is important to mention that the technical compliance programme is characterized by a limited discretion in making decisions. In contrast, for the value-based compliance programme, leadership, accountability, and establishing effective organizational systems and decision-making processes are key factors of success.

The value-based compliance programme is based on behavioral assumptions that social beings are guided not only by material self-interest but by values, ideals and peers. The legal rules are the main guidelines for technical compliance. In value-based compliance programmes companies fulfill legal and other social obligations but company values and aspirations are also of significant importance.

In the lecturer's opinion, the integrity approach is more effective because it creates positive incentives and allows employees to engage in preventing corruption.

2.2. Making Whistleblowing Work

Whistleblower protection has become an important part of any effective compliance programme. However, Armenia is the only country in the Eurasian region which adopted a special law "On the Whistleblowing System of the Republic of Armenia."²³ The experience of local companies in implementing special protection measures into compliance programmes is very limited. In this regard, the lecture of Andrew Pepper-Parsons about the UK's experience in whistleblower protection was very useful for participants.

Whistleblowing and why it matters

The Whistleblowing Commission on the effectiveness of existing arrangements for workplace whistleblowing in the UK defined whistleblowing as the raising of a concern, either within the

²³ UNODC, 2017. *Information of the Republic of Armenia on implementation of provisions of the United Nations Convention against Corruption*. [pdf] UNODC. Available at: <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2017-August-21-23/Contributions_NV/Armenia_EN.pdf> [Accessed 16 February 2018].

workplace or externally, about a danger, risk, malpractice, or wrongdoing which affects others.²⁴

Explaining the role of whistleblowing, Mr. Pepper-Parsons underlined that silence has its costs for persons and companies:

- Destroyed lives and livelihoods
- Millions of pounds in fines, compensation, and insurance
- Crises management
- Jobs lost and reputations ruined
- Loss of public confidence
- Regulatory response

He explained the difference between a grievance and whistleblowing by providing several examples. An example of a grievance is a situation where a staff member tells that they are being constantly criticized by one particular manager. The manager seems to pick on their work and does so in front of others. The following two situations are examples of whistleblowing. The first example is a situation where a person works in the finance team and a staff member tells him/her that they have seen an invoice from a company that they have not previously heard of. They think they recognise the company address to be the finance director's home. The second example is a case from medical practice where a member of staff tells the person that they have seen a doctor asking a nurse to prescribe controlled drugs to a patient that they do not believe is in need of such a strong medication. Sometimes a situation can be unclear, e.g. a staff member tells someone that they have been asked to do some additional work but they are worried as they are struggling to manage their workload. In such cases additional information is necessary.

The UK whistleblower experience

A potential whistleblower who receives information about malpractice always has a dilemma. She/he can keep quiet, raise concerns internally, or go outside the organization. To better understand the whistleblowers' experience, Public Concern at Work (PCaW) and the University of Greenwich conducted a study of the experiences of 1,000 whistleblowers.²⁵ The respondents represented various industries and professions. They shared stories of raising concerns internally and externally.

The study dispelled the myth that whistleblowers are persistent. Most whistleblowers raise a concern only once (44%) and a further 39% go on to raise their concern a second time. The majority will only try internal options once or twice and then give up (83%). Only 22 respondents from the study went on to raise their concern four or more times. It was worrying that 74% of whistleblowers said their concerns have been ignored.

The next myth dispelled was that whistleblowers prefer to report their concerns outside of the workplace. The study demonstrated the opposite situation. The majority of working adults in Great Britain (83%) said that if they had a concern about possible corruption, danger, or serious malpractice at work, they would raise it with their employers. Only 0.5% responded that they would go directly to the media.

²⁴ Public Concern at Work, 2013. *The report of the Whistleblowing Commission on the effectiveness of existing arrangements for workplace whistleblowing in the UK*. [pdf], p.4. London: Public Concern at Work. Available at: <<https://www.pcaw.org.uk/files/WBC%20Report%20Final.pdf>> [Accessed 24 October 2017].

²⁵ Public Concern at Work and University of Greenwich, 2013. *Whistleblowing: The Inside Story. A study of the experiences of 1,000 whistleblowers*. [pdf] London: Public Concern at Work. Available at: <<http://www.pcaw.org.uk/content/4-law-policy/4-document-library/Whistleblowing-the-inside-story-FINAL.pdf>> [Accessed 24 October 2017].

Another typical fallacy is that whistleblowers are always dismissed. Sixty percent of those who called PCaW's advice line did not report any response (negative or positive) from management. Of the 40% who reported a response, the most common action was formal action short of discipline and 15% were dismissed. The public perception of whistleblowers in the UK is quite positive. The overwhelming majority of British workers view the term whistleblower as positive or neutral (72%).²⁶

The majority of whistleblowers (53%) were skilled or professional workers. Only 39% had been working for their employer for less than two years. One interesting finding was that employers' reactions depend, among other factors, on the age and experience of a whistleblower. Junior employees who raise concerns are more likely to be ignored. Senior employees are more likely to be dismissed.

The study demonstrated that a significant portion of whistleblowers do not care about anonymity. Sixty-eight percent of whistleblowers who contacted PCaW started by raising their concern openly and 9% raised a matter confidentially. Only 2% raised their concern anonymously.

Legal protection of whistleblowers in the UK

The UK has a strong tradition of whistleblower protection. The Public Interest Disclosure Act was adopted in 1998. The Act includes a broad definition of wrongdoing. The worker may make a disclosure to show one or more of the following:

- A criminal offence has been committed, is being committed, or is likely to be committed
- A person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject
- A miscarriage of justice has occurred, is occurring, or is likely to occur
- The health or safety of any individual has been, is being, or is likely to be endangered
- The environment has been, is being, or is likely to be damaged
- Information revealing any matter falling within any one of the preceding points has been, is being, or is likely to be deliberately concealed²⁷

In 2015, the Financial Conduct Authority (FCA) adopted Whistleblowing Rules which regulate policies, communications, and training.

Best practices for employers

The lecturer, Mr. Pepper-Parsons, shared best practices of whistleblower protection with participants. He mentioned that good whistleblowing arrangements provide staff with a clear message that there is a safe alternative to silence. They allow for the deterrent and earlier detection of wrongdoing, encourage management to work ethically, and demonstrate accountability in an organization.

The lecturer identified distinctive characteristics of good policy on whistleblowing:

- Policy is written for the 'silent majority' offering them a safe alternative to silence

²⁶ Public Concern at Work, 2013. *1 in 10 workers have had a concern about corruption, danger or serious malpractice*. [press release] 26 June 2013. Available at: <www.pcaw.org.uk/files/PRYouGovFINAL%202013.pdf> [Accessed 16 February 2018].

²⁷ *UK Public Interest Disclosure Act 1998*. (c.23). London: The Stationery Office.

- Approach that they should raise concerns openly
- Distinguish whistleblowing from grievances and bullying
- Provide internal and external options
- Avoid any defensive legalistic terms in the policy

2.3. Conflict of Interest Management and Prevention

Alexey Konov shared good practices of conflict of interest management and prevention with participants. According to the lecturer, conflict of interest regulation everywhere is considered one of the key elements of anti-corruption policy at the level of individual bodies and organizations as well as the level of the state as a whole.

Article 7 of the 2003 UNCAC established that States Parties to the Convention shall, in accordance with the fundamental principles of their domestic law, endeavour to adopt, maintain, and strengthen systems that promote transparency and prevent conflicts of interest. The provisions of Article 7 were implemented either in national laws regulating public services in general or in special national laws regulating conflict of interest.

The general aim of conflict of interest regulation is to prevent a situation in which an official's private-capacity interest could improperly influence the performance of their official duties and responsibilities.²⁸ In a broad sense, conflict of interest means any link that with a high probability can induce a public official to use the power given by the state to benefit or harm the persons concerned. The conflict of interest as such is not corruption. It does not violate the law. However, the risk of committing a corruption offence is high when a public official has a conflict of interest. In this regard, the timely identification of such situations is an important tool for preventing corruption offences.

There are several features of the conflict of interest:

- The public official has an opportunity to obtain benefit for himself/herself or related persons from these actions/inactions or do harm
- The public official has a real opportunity to ensure an advantage in obtaining the benefits for himself/herself or related persons

One of the questions to discuss is whether conflicts of interest exist in any situation when a public official has the authority to act in respect of himself/herself or related persons, or only in a situation where his/her actions can cause harm to natural persons, legal entities, society, or the state.

In Russia's Federal Law No. 273-FZ "On Combating Corruption" adopted in 2008, harm to rights and legitimate interests of citizens, organizations, society, or the state was an element of the definition of a conflict of interest.²⁹

The new revision of Article 10, adopted in 2015, defines a conflict of interest as a situation in which the personal (direct or indirect) interest of a person in a position which involves the obligation to take measures to prevent and settle conflicts of interest, influences or may influence proper, objective, and impartial performance by that person of his/her official duties (execution of powers).

²⁸ OECD, 2003. *Managing Conflict of Interest in the Public Service*. [pdf], p.13. Paris: OECD. Available at: <<http://www.oecd.org/governance/ethics/48994419.pdf>> [Accessed 9 November 2017].

²⁹ Federal Law on Combating Corruption. 2008. Russian Federation: Federal Assembly. Available at: <http://www.consultant.ru/document/cons_doc_LAW_82959/>.

The definition of benefits is another interesting point for discussion. There is a general trend to use a broad definition of benefits which includes property, property related and non-property related services, and other benefits. This broad approach was also implemented in Russia's Federal Law "On Combating Corruption" in 2015.³⁰ Personal interest was defined as the possibility to receive profit in the form of cash, other property including property rights, property-related services, results of works performed, or any benefits by a person specified in part 1 of this Article and/or by persons who are related by blood or by marriage (parents, spouses, children, brothers, sisters, as well as brothers, sisters, parents, children of spouses and spouses of children), by individuals or organizations with which the person specified in part 1 of this Article, and/or persons related by blood or by marriage, have property, corporate, or other close relations.

The list of possible benefits is not exhaustive. Mr. Konov gave several examples of non-property related benefits: satisfaction from a feeling of revenge, ability to hide professional incompetence, and shortening of administrative procedures.

Russian legislators did not provide an exhaustive list of third parties who can benefit from public officials' wrongdoings. Aside from various family members and relatives, other categories, e.g. colleagues, business partners, former and future employers, can be considered.

The lecturer mentioned that it is impossible to describe all possible conflict of interest scenarios. As a result, an officer responsible for preventing corruption in the organization has the very complicated task of considering a boundless range of possible connections and situations.

According to the lecturer, conflict of interest regulation includes three main elements: prevention, identification, and resolving. Prevention is a system of restrictions, prohibitions, and other measures that do not allow public officials to find themselves in conflict of interest situations. Identification is a system of measures that allows for the timely reception and analysis of information about personal interests. Resolving means a limitation of participation in decision-making (committing actions) affecting personal interests.

It is not easy to identify and confirm a conflict of interest and it is even more difficult to resolve it. Therefore, special attention should be paid to preventive measures. It is important to build a system of restrictions and carefully handle potential conflicts of interest situations. Many existing restrictions in public service were adopted to prevent conflicts of interest. There are bans on receiving gifts, having additional paid jobs, possession of securities, and being in subordination of relatives.

The main instrument for the identification of conflicts of interest is a written declaration. As a rule, public officials are obliged to declare conflicts of interest. Depending on the national law, declarations can be submitted when public officials are appointed to a position, on a periodical basis, and when essential circumstances changed. The lecturer recommended the combination of periodical reporting with situational reporting. The declaration forms should collect data about existing interests and/or conflicts of interest. It can include detailed questions about particular interests.

Other methods can also be useful in identifying conflicts of interest or incorrect reporting. Information presented in a declaration can be compared with data from various available

³⁰ Federal Law of the Russian Federation on Combating Corruption, Article 10. Available at: <http://www.consultant.ru/document/cons_doc_LAW_82959/>.

databases. The use of hotlines allows for the reception of reports from external sources concerning corruption offences or other wrongdoings.

Resolving a conflict of interest is a complicated process. It requires a discussion of the details of a particular situation and non-standard approaches. It is recommended to start the discussion with milder measures and move on to more stringent ones and not to immediately threaten someone with dismissal. There are two reasons for using this approach. First, the official has not yet committed an offense and is entitled to expect resolution, not punishment. Second, the threat of dismissal does not contribute to the voluntary disclosure of information. In some cases, it is recommended to consider the possibility of preserving individual interests and even acting in a situation of conflict of interest. It is possible that a personal interest is not significant or actions of a public official regarding related persons cannot cause any damage. The measures taken to resolve a conflict of interest should be real. There are some measures which can mask a conflict of interest but not resolve it. A typical example is the transfer of authority to subordinates to make decisions about related persons.

There are several ways to resolve a conflict of interest: preserving individual interests, strengthening the supervision of actions regarding related persons, suspension from actions regarding related persons, creating barriers to influencing related persons, getting rid of personal interests, and dismissal. Preserving individual interests is possible if expressly provided for by law or if it was approved by an authorizing body. To get rid of personal interest, a public official can terminate other paid activities, return gifts, or sell the “problematic” assets. It should be taken into account whether the official has already received substantial remuneration in the framework of other paid activities from an organization or person. In some cases, the termination of the employment relationship may not be enough.

As mentioned above, the public official may not be punished just because they have a conflict of interest. An obvious question arises as to which actions related to a conflict of interest can entail liability. As a rule, the public official can be held liable for concealing a conflict of interest, for refusing to take measures to resolve a conflict of interest (not always), and for actions in a situation of a conflict of interest aimed at obtaining benefits. The type of liability depends on national laws. Many countries apply disciplinary measures. In Russia, in accordance with Article 13.1 of the Federal Law “On Combating Corruption,” a person holding a federal public position in the Russian Federation, a public position in a constituent territory of the Russian Federation, or a municipal position must be dismissed (resign) due to loss of confidence in the case of not taking measures in the prevention and/or settlement of the conflict of interest. In some countries, e.g. the US, criminal liability is also possible.

2.4. Anti-Money Laundering/Countering Financing of Terrorism and Anti-Corruption Compliance: Comparative Aspects

Corruption and money laundering have a lot of connections. In this regard it is not clear why approaches to regulation of AML/CFT compliance and anti-corruption compliance are so different.

Regulation of AML/CFT compliance is a typical example of the classic model of legal regulation. International law defines a general framework of AML/CFT compliance. The most important comprehensive international legal acts in this field are the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Transnational Organized Crime of 2000, and the

International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the Financial Action Task Force (FATF) Standards) of 2012. The United Nations Convention against Corruption of 2003 also contains provisions on preventing and combating money laundering. The rules of international law are implemented in national laws and regulations. In total, the FATF framework includes 204 states and territories. The FATF Standards define, in detail, obligations of financial institutions and designated non-financial businesses and professions.

The international anti-corruption law established a general obligation of states to cooperate with the private sector. The obligations of companies and formal requirements for anti-corruption compliance programmes were defined neither in international treaties nor in customary international law. The international soft law consisting of several non-binding standards and guidance documents aims to compensate for lack of regulation, and support companies in designing and implementing anti-corruption compliance programmes. Many countries do not have laws and regulations on anti-corruption compliance. In this regard companies in these countries consider foreign laws which have transnational application and compliance programmes of multinational corporations.

The obvious question arises as to whether AML/CFT and anti-corruption compliance are so different that they require two different approaches in legal regulation. From a very simplified point of view, the aim of AML/CFT compliance is to identify suspicious transactions and report them to the authorized governmental agency. AML/CFT compliance is very technical. The aim of anti-corruption compliance is to influence the behavior of staff members and other persons associated with a company to prevent corruption. Companies develop AML/CFT compliance programmes based on relevant legal rules. For anti-corruption compliance programmes, ethical principles and corporate values are of significant importance. At the same time, both types of compliance programmes are aimed at crime prevention. Moreover, a closer look at the structures of compliance programmes demonstrates that several components of AML/CFT and anti-corruption compliance are quite similar. Both programmes include due diligence, risk management, identification of suspicious transactions, training, monitoring, and evaluation.

As a rule, AML/CFT compliance is mandatory for financial institutions and designated non-financial businesses and professions, while implementation of anti-corruption compliance usually depends on shareholders and general management of companies. The main reasons for companies to implement anti-corruption compliance management systems can be classified into three groups: moral reasons, legal obligations and incentives, and market requirements.

The Russian approach to implementation of anti-corruption compliance is rather an exception. Federal Law No. 273-FZ "On Combating Corruption" established obligations for all organizations acting in the Russian Federation to take measures for the prevention of corruption, such as:

- Appointment of special officers or units responsible for countering corruption in a company
- Cooperation with law enforcement agencies
- Development and introduction of standards and procedures designed to ensure the ethical operation of the organization
- Adoption of a code of business ethics or corporate conduct
- Prevention and resolution of conflicts of interest
- Prohibition of maintaining unofficial accounting and use of forged documents

However, it is too early to say that Russia has been implementing mandatory anti-corruption compliance comparable to AML/CFT compliance. The liability for violation of AML/CFT law is very strict. The Central Bank of Russia may immediately revoke a banking license if a bank does not have an AML/CFT compliance system in place. There is no special liability under Russian law for not having an anti-corruption compliance programme in a company. However, the Prosecutor General's Office, which is responsible for supervising the implementation of anti-corruption legislation, is entitled to order, or request a court order for companies to implement measures in accordance with Article 13.3.

The Ministry of Labour and Social Protection of the Russian Federation published the Guidelines for the development and adoption of measures for prevention and countering corruption in organizations on 8 November 2013.³¹ The Guidelines aim to support the implementation of anti-corruption compliance programmes in organizations.

Comparing the legal regulations of AML/CFT compliance and anti-corruption compliance we can always identify pro and contra arguments. The strict hard law approach to the regulation of AML/CFT compliance can be criticized for creating a lot of paperwork for financial institutions. It requires sufficient resources and funding. Some businessmen describe it as a very formal “one size fits all” approach. At the same time, all the legal requirements are very clear. Financial institutions and other subjects that have obligations under AML/CFT law can be punished only for violation of formal rules.

The soft law as a legal base for anti-corruption compliance in many countries is more flexible. It gives more space to maneuver in designing and implementing anti-corruption compliance programmes but it also means more responsibility. Dr. Ivanov mentioned that the soft law approach creates particular problems for companies. They develop compliance programmes based on soft law but can be penalized for non-prevention of corruption under hard criminal law. In the absence of clear legal rules and criteria, room for discretion in the assessment of anti-corruption compliance programmes is huge. In the lecturer's opinion, in countries with corrupt judicial systems such legal uncertainty can even become a prerequisite for other corruption offences, for example, extortion of a bribe by a judge for the positive assessment of a compliance programme.

Supervision

As a rule, in the field of AML/CFT compliance, regulators and/or financial intelligence units are responsible for the supervision of compliance with AML/CFT laws and regulations. This supervision includes providing financial institutions and designated non-financial businesses and professions with guidance and official clarifications, and conducting supervisory inspections. It can also include a function of the approval of particular compliance-related documents.

For anti-corruption compliance regulation, the supervisory functions of governmental agencies are exceptions. A question about public evaluation of anti-corruption compliance management systems usually arises when a company is going to use it as a defense in a judicial trial. In the lecturer's opinion, the certification of anti-corruption compliance management systems, which nowadays is becoming an international trend, is an attempt to replace supervision in some aspects.

³¹ Ministry of Labor and Social Protection of the Russian Federation, 2013. *Guidelines for the development and adoption of measures for prevention and countering corruption in organizations*. [online] Available at: <<https://rosmintrud.ru/docs/mintrud/employment/26>> [Accessed 24 November 2017].

According to the lecturer, supervision in general and supervisory inspections in particular are quite often criticized by business people for unnecessary bureaucracy and creating additional burdens for business. At the same time, supervisory bodies share responsibility with financial institutions for the quality of compliance programmes.

Companies which provide certification services are not bound by strict legal rules and may use a more flexible approach for the evaluation of compliance programmes. However, the legal significance of certification is not clear. Courts may but are not obliged to consider certificates in criminal, administrative, or civil proceedings.

AML/CFT and anti-corruption compliance in the corporate structure

One officer, unit, or department can be in charge of AML/CFT compliance depending on the size of the financial institution or company, amount of work, and in some cases, on legal requirements. The most typical solutions are to have a specialized AML/CFT unit/department or an AML/CFT unit as part of a compliance or legal department.

In defining a place for anti-corruption compliance in the corporate structure, companies usually choose between three possible solutions. According to the lecturer, they can establish a special compliance unit or department, include anti-corruption compliance on the list of functions of the legal department, or task the security department with handling anti-corruption.

Comparative analyses of compliance policies

Comparative analyses of AML/CFT and anti-corruption compliance programmes demonstrate that several policies are quite similar. In both types of compliance, companies have to conduct customer/counterparty/third party due diligence and risk assessment. The process of due diligence starts with identification. In AML/CFT compliance, financial institutions and designated non-financial businesses and professions are required to identify their customers, customer representatives, beneficial owners, and beneficiaries. In anti-corruption compliance, companies as a rule conduct due diligence on all their counterparties.

After publication of the new International Standards on Combating Money Laundering, the Financing of Terrorism, and Proliferation (FATF, 2012), mechanisms for the identification of beneficial owners were implemented in national AML/CFT legislation and compliance programmes of financial institutions and other subjects having obligations under AML/CFT laws.

Russia's AML/CFT law defines a beneficial owner as a natural person who ultimately, directly or indirectly (through third parties), owns (with predominantly more than 25 percent interest in capital) a client, a legal entity, or has the ability to control the actions of the client.³² All Russian companies are obliged to know their beneficial owners and provide this information to financial institutions and to relevant governmental agencies. The definition of a "beneficial owner" in the Republic of Kazakhstan is similar.³³ The Republic of Armenia adopted a 20 percent threshold³⁴. The Republic of Belarus adopted a 10 percent threshold.³⁵ The definition

³² Federal Law on Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism. 2001. Russian Federation: Federal Assembly. Available at: <http://www.consultant.ru/document/cons_doc_LAW_32834/>.

³³ Law on Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism. 2009. Republic of Kazakhstan: Parliament. Available at: <https://online.zakon.kz/Document/?doc_id=30466908>.

³⁴ Law on Combating Money Laundering and Terrorism Financing. 2008. Republic of Armenia: National Assembly. Available at: <https://www.cba.am/Storage/EN/FDK/Regulation_old/law_on_combating_money_laundering_and_terrorism_financing_eng.pdf>.

in the AML/CFT law of the Kyrgyz Republic combines descriptions of beneficial owners and beneficiaries. A beneficial owner (beneficiary) is defined as a person who owns money or property and on behalf of whom and/or at whose expense the client performs an operation (transaction) with money or property, or in accordance with the contract concluded between such a person and the client has the possibility, directly or indirectly, to influence the client's transactions involving money or property.³⁶ There are two main practical challenges in the process of the identification of beneficial owners: complex corporate structures in various jurisdictions and beneficial ownership based on informal relations and control.

In the case of complex corporate structures, financial institutions usually request that their customers provide information and documents related to the last company in the chain and natural persons/owners of that company. This procedure is sufficient to fulfil the formal requirements of AML/CFT laws. A situation where financial institutions request the documents of all companies in the chain is rather an exception. Available open sources of information such as registers of companies and beneficial owners as well as commercial databases can be used in addition to information provided by the customers. If a customer is not able to provide information about beneficial owners and information from open sources is not available, financial institutions may recognize the executive body of the customer as a beneficial owner or reject opening a bank account or signing a contract.

In both types of compliance, companies pay special attention to the transactions of public officials. AML/CFT compliance programmes contain obligations to identify politically exposed persons (PEPs) and their relatives, and to analyze their transactions. Financial institutions may take measures to identify sources of incomes of PEPs. In anti-corruption compliance, lower level public officials may also be objects of enhanced due diligence.

Risk assessment is a key component for effective AML/CFT and anti-corruption compliance programmes. AML/CFT compliance programmes take into consideration a wide range of risks related to various predicted offences and money laundering typologies. However, according to the lecturer's experience, the risks of money laundering related to corruption, e.g. geographical risks, are usually specifically underlined in guidelines and AML/CFT compliance programmes. Transparency International's (TI) Corruption Perceptions Index is often considered for geographical risks assessments.

The scope of reporting obligation in anti-corruption compliance depends on the laws of a country. National criminal law can establish obligations to report corruption offences relating to serious or organized crime or having a particular threshold of imprisonment as a liability. In other cases, disclosure of information depends on the compliance policy. In AML/CFT compliance, financial institutions and designated non-financial businesses and professions are obliged to report mandatory controlled transactions in accordance with national laws and to report suspicious transactions as defined in the AML/CFT compliance programme. So, in both types of compliance, we see a combination of binding obligations to report and discretionary reporting.

In the lecturer's opinion, the "technical" part of an anti-corruption compliance programme is very similar to the corresponding parts of AML/CFT compliance programmes. AML/CFT and anti-corruption compliance functions can be exercised by one compliance unit or department. It would help avoid the unnecessary duplication of several procedures (due

³⁵ Law on Measures to Prevent Legalization of Proceeds Gained from Crime, Financing of Terrorist Activity and Proliferation of Mass Destruction Weapons. 2014. Republic of Belarus: Parliament. Available at: <http://base.spinform.ru/show_doc.fwx?rgn=68802>.

³⁶ Law on Combating the Legalization (Laundering) of Criminal Proceeds and Financing of Terrorist or Extremist Activities. 2006. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/1926>>.

diligence, risk assessment, analysis of transactions, training) and reduce the costs of the compliance function. In small and medium-sized enterprises (SMEs), one compliance officer can be responsible for both types of compliance. At the very least, cooperation between AML/CFT and anti-corruption compliance officers (units) in a company can create opportunities to prevent crime in a more effective way. The harmonization of AML/CFT and anti-corruption laws, unification of definitions, and technical parts of compliance programmes could be very helpful for financial institutions and companies which have obligations under AML/CFT law.

Chapter 3: Public-Private Partnerships in the Fight against Corruption

In the 21st century, public-private partnerships in the fight against corruption have become more and more important. Drago Kos, Chair of the OECD Working Group on Bribery in International Business Transactions, underlined the role of society's participation in combating corruption and shared best practices of public-private partnerships.

Article 5 of the UNCAC established obligations for each State Party, in accordance with the fundamental principles of its legal system, to develop and implement, or maintain, effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency, and accountability.

Mr. Kos mentioned that a multi-stakeholder approach is important for developing and implementing effective anti-corruption policies in countries. He suggested that when a country is drafting a general type of anti-corruption policy, the following actors have to be included/invited:

- All relevant public institutions
- Relevant representatives of the private sector
- Relevant representatives of civil society (NGOs)
- Relevant representatives of the media
- Well known individuals from the country

However, not all of them have to be present at all times while working on the policy.

When anti-corruption policy is designed and approved, it is useful to organize regular meetings of all relevant stakeholders, including civil society, to:

- Discuss the implementation of the policies in general or in specific areas
- Agree on useful approaches to implementation
- Enhance the level of cooperation and coordination
- Improve efficiency and effectiveness of the implementation
- Decide on new anti-corruption measures and on abandoning the old/ineffective ones

The prerequisites for the implementation of anti-corruption policy in a country are the private sector integrity, trust, and cooperation between the public and private sectors.

The lecturer referred to Article 12 of the UNCAC which calls for cooperation with the private sector and promoting integrity of private entities. He stressed the critical role of corporate integrity for achieving significant improvements in the society's integrity.

The basic elements of private sector integrity are:

- Managements' commitment to fight corruption
- Companies' anti-corruption strategies
- Compliance function in the company
- Proper motivation
- Professional assistance in the area of corporate integrity
- Companies' codes of conduct
- Internal controls
- Involvement of all stakeholders
- Whistleblowing

- Assessment and management of corruption risks
- Adequacy and suitability of the managerial staff
- Transparency and reporting
- Disclosure of actual ownership structure and financial status of companies
- Anti-corruption training and cooperation
- Self-reporting
- Cooperation with law enforcement bodies
- Positive motivation for effective compliance systems
- Voluntary settlements in cases of criminal offences

To explain why private sector integrity is necessary, Mr. Kos presented several findings from the Edelman Trust Barometer:

- Fewer than one in five respondents believe business leaders will tell the truth when confronted with difficult issues
- Only 50% of businesses are trusted to do what is right
- Only 18% of business leaders are trusted to tell the truth
- The “truth gap” is largest in the USA and China
- Multinational corporations in China, India, and Mexico have low trust scores
- Banks enjoy the lowest level of trust (but have some of the most expensive compliance functions)³⁷

There are various reasons for unethical behaviour in the private sector:

- Management does not set a good example
- Rules have not been properly explained or justified
- Employees do not have enough work to use up their time and attention
- Employees with low morale, culture, and bad habits
- Management incompetence and the lack of capacity
- Unsuitable employees are being tolerated

To develop an ethical climate in the organization, management should care about the employees. Each employee should understand the objectives of the organization and know what is expected of them to achieve those objectives. Employees should be kept informed on their progress. Trust and respect are important prerequisites for an ethical climate. Employees should feel that they can influence management and have a say in the decisions which affect them. They also have to be sure that the workload and standards required are reasonable and that favoritism is not acceptable in the organization.

A real public-private partnership is impossible without trust between the government and the private sector. Mr. Kos mentioned that governments do not trust the private sector at all. Companies trust their governments even less.

The consequences of lacking trust are:

- Strong orientation of governments towards enforcement
- Tendency for excessive monitoring
- Sanctions for non-existing or weak compliance systems
- Absolute lack of positive rewards for effective compliance systems
- No real will for cooperation

³⁷ Edelman, 2013. *Edelman Trust Barometer*. [online] Available at: <<https://www.edelman.com/2013-edelman-trust-barometer/>> [Accessed 30 November 2017].

There is a connection between the level of corruption in a country and the level of trust between the government and the private sector. In the most corrupt countries there is no trust. The higher the level of trust, the lower the level of corruption.

Governments should create positive incentives to promote a culture of integrity and motivate companies to implement anti-corruption compliance management systems. In the lecturer's opinion, countries could adopt legal rules which consider an effective compliance programme as a pre-requisite for entering public procurement processes, additional criteria for winning public procurement contracts, and additional requirements to receive official development assistance or access to export credits.

Analyzing the role of various stakeholders in public-private partnerships Mr. Kos referred to Article 13 of the UNCAC. In accordance with the Article, States Parties to the Convention shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations, and community-based organizations, in the prevention of and the fight against corruption.

The lecturer highlighted the golden rules on participation in the decision-making process:

- Civil society must have the opportunity and ample time to participate in the legislative process
- If civil society's proposals are not followed, government has to explain the grounds for that
- It is very useful to introduce corruption risk assessment of (at least) new pieces of legislation

Promoting integrity and building trust are hardly possible without access to public information. Decisions blocking access to public information have to be justified and legal grounds have to be cited. Judicial protection of the right to access to public information has to be guaranteed.

Mr. Kos' conclusion was that governments which think they can win the war against corruption without the participation of the private sector and civil society have already failed.

Chapter 4: The Experience of the Eurasian Economic Union Member States in Preventing and Combating Corruption

4.1. Republic of Armenia³⁸

The Republic of Armenia is a party to the 2003 UNCAC, the United Nations Convention against Transnational Organized Crime (UNTOC) of 2000, the Council of Europe Criminal Law Convention on Corruption of 1998, the Council of Europe Civil Law Convention on Corruption of 1999, the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime of 1990, and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005.

The Republic of Armenia has been cooperating with UNODC, the Organization for Security and Co-operation in Europe (OSCE), IACA, the Group of States against Corruption of the Council of Europe (GRECO), and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). Armenia also has an observer status in the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG).

The Republic of Armenia participates in the Istanbul Anti-Corruption Action Plan for the countries of Central Asia and Eastern Europe, which was proposed by OECD.³⁹ During the Monitoring Meeting of the parties to the Istanbul Anti-Corruption Action Plan in Paris on 8-10 October 2014, the report about the third round of monitoring of the legal framework of Armenia was adopted. The report provided recommendations for Armenia in three areas: anti-corruption policy and institutions, criminalisation, and prevention of corruption.⁴⁰

The main legal acts of the Republic of Armenia in the field of combating corruption are:

- The third Anti-Corruption Strategy and the 2015–2018 Action Plan
- The Criminal Code of the Republic of Armenia
- The Law of the Republic of Armenia No. ZR-96 dated 28 June 2017 “On the Commission for the Prevention of Corruption”

Armenia has been implementing its third Anti-Corruption Strategy and the 2015–2018 Action Plan to fight corruption in response to growing public demand to take corruption more seriously.⁴¹ The measures of the Action Plan are the following:

- Formation of a class of public servants with a high level of integrity
- Formation of a system of effective public governance
- Formation of a system of transparent and accountable governance
- Formation of a participatory governance system
- Measures aimed at increasing public trust toward state bodies fighting corruption
- Stipulating adequate liability and responsibility measures for corrupt behaviour

³⁸ The EAEU Member States are discussed in alphabetical order.

³⁹ OECD, 2003. *Istanbul Anti-corruption Action Plan*. [online] Available at: <<https://www.oecd.org/corruption/acn/istanbulactionplan/>> [Accessed 12 June 2018].

⁴⁰ OECD, 2014. *Anti-Corruption Reforms in Armenia. Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan*. [pdf] Paris: OECD. Available at: <<http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>> [Accessed 12 June 2018].

⁴¹ Anti-Corruption Strategy of the Republic of Armenia. 2015. Republic of Armenia: Government. Available at: <http://moj.am/storage/files/pages/pg_4229796232272_razmavarutyun_eng_1_2_.pdf>.

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

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

The Commission on Ethics of High-Ranking Officials of Armenia was formed in January 2012 according to the Law on Public Service. The Commission is composed of five persons who serve six-year terms. The members are appointed by the President of the Republic of Armenia upon the nomination of the Chairperson of the National Assembly, Prime Minister, Chairperson of the Constitutional Court, Chairperson of the Cassation Court, and the Prosecutor General. Members of the Commission are required to exercise their powers independently. Members are not subject to the authority of any state, municipal body, or public official, and are independent from the officials who proposed their candidacy or appointed them.⁴²

The functions of the Commission are:

- Operating a register of high-level public officials' asset declarations and asset declarations of their related persons
- Analyzing and publicizing asset declarations
- Detecting conflicts of interest of high-level public officials (except for members of parliament (MPs), judges, prosecutors, and members of the Constitutional Court) and presenting recommendations to the President, the National Assembly, and government on preventing and eliminating conflicts of interest
- Detecting ethics violations by high-level officials (except MPs) and presenting suggestions to the President, the National Assembly, and government on preventing and eliminating such violations
- Detecting ethics violations of judges, prosecutors, and members of the Constitutional Court which are not connected with the exercise of their official powers, and presenting suggestions to the President, the National Assembly, the Constitutional Court, and the Prosecutor General for preventing and eliminating such violations
- Publicizing information pertaining to cases of ethics violations and conflicts of interest detected within its area of competence, and also information pertaining to measures undertaken in relation to such cases

⁴² Law on Public Service. 2011. Republic of Armenia: National Assembly. Available at: <<http://www.ethics.am/files/legislation/239.pdf>>.

- Defining the conditions of submission of asset declarations and the requirements for filling these declarations

The State Commission for the Protection of Economic Competition, the so-called Anti-Monopoly Commission, is also an important institution in the fight against corruption. It is composed of seven members who are appointed by the President of Armenia.⁴³ The Law on the Protection of Economic Competition forms the legal basis for the Anti-Monopoly Commission. According to this law, the mandate of the Anti-Monopoly Commission is the protection and promotion of economic competition, the creation of an appropriate environment for fair competition contributing to the development of entrepreneurship, and the protection of consumer rights.

The Anti-Monopoly Commission is granted broad powers and can make decisions on, *inter alia*:

- Possible or actual violations of the Law on Protection of Economic Competition
- Studies of product markets
- Instigating administrative proceedings and inspections
- Boundaries of product markets, the existence of dominant positions of economic entities in these markets, as well as on the implementation of measures in this regard
- Disaggregation (division, separation, alienation of shares or assets) of economic entities abusing their dominant position twice or more within a year
- Imposition of penalties upon economic entities and their officials and officials of state bodies for infringement of the Law on Protection of Economic Competition

In 2017, in accordance with the new Law of the Republic of Armenia “On the Commission for the Prevention of Corruption” a new governmental body – the Commission for the Prevention of Corruption – was established.⁴⁴

Crimes of corruption are defined in the Criminal Code. Corruption in the public sector is criminalized in Chapter 29 (Articles 308-314) of the Criminal Code. Article 200 specifies criminal liability for commercial bribery. The subjects of liability under this article are not only employees of commercial organizations but also arbitrators, auditors, and advocates (trial lawyers). Facilitation payments are not excluded from the definition of bribery. Legal entities are not subject to criminal liability under the Criminal Code of the Republic of Armenia.

Armenia's institutional setup for corruption prosecution is diverse and spans the Special Investigative Service, the National Security Service, the Investigative Committee, and investigators of tax and customs bodies.

4.2. Republic of Belarus

The National Security Concept of the Republic of Belarus includes corruption on the list of threats to national security. An effective counteraction against corruption is recognized as one of the main national interests.⁴⁵ Belarus has been developing anti-corruption legal and

⁴³ Law on the Protection of Economic Competition. 2000. Republic of Armenia: National Assembly. Available at: <<http://www.aipa.am/en/EconomicCompetitionLaw/>>.

⁴⁴ Law on the Commission for the Prevention of Corruption. 2017. Republic of Armenia: National Assembly. Available at: <http://base.spinform.ru/show_doc.fwx?rgn=101653>.

⁴⁵ Decree on Approval of the National Security Concept of the Republic of Belarus. 2010. Republic of Belarus: The President of the Republic of Belarus. Available at: <https://www.nrb.by/legislation/documents/E_575.pdf>.

organizational frameworks and participates in international cooperation on preventing and combating corruption.

The Republic of Belarus is a party to the 2003 UNCAC and the UNTOC of 2000. Belarus is not a member of the Council of Europe. Nevertheless, the National Assembly ratified in 2006 the Council of Europe Civil Law Convention on Corruption of 1999 and in 2007, the Council of Europe Criminal Law Convention on Corruption of 1998.

The Republic of Belarus has been cooperating with UNODC, OSCE, GRECO, MONEYVAL, and the EAG.

The main legal acts of the Republic of Belarus in the field of combating corruption are:

- The Concept of National Security of the Republic of Belarus, approved by the Decree of the President of the Republic of Belarus No. 575 dated 9 November 2010
- The Law of the Republic of Belarus No. 305-Z dated 15 June 2015 “On Combating Corruption”
- The Criminal Code of the Republic of Belarus
- The Code of Administrative Offences of the Republic of Belarus
- The Law of the Republic of Belarus No. 165-Z dated 30 June 2014 “On Measures to Prevent Legalization of Proceeds Gained from Crime, Financing of Terrorist Activity, and Proliferation of Weapons of Mass Destruction”
- The Law of the Republic of Belarus “On Public Procurement of Goods (Works, Services)” No. 419-Z dated 13 June 2012
- Joint decision of the Prosecutor General's Office, the State Control Committee (KGC), the Operations and Analysis Center under the President of the Republic of Belarus (OAC), the Ministry of Interior, the State Security Committee (KGB), and the Investigative Committee of the Republic of Belarus No. 43/9/95/571/57/234

The Law “On Combating Corruption” defines governmental agencies responsible for combating corruption and specifies a set of preventive measures including obligations and restrictions for public servants. The Law also identifies a number of misconducts that create conditions for corruption, such as: interference of a public official with the use of his official powers in the activities of other state bodies and other organizations if it is not within the scope of his powers and is not based on a legislative act; the creation by a public official or an equivalent person of obstacles to physical or legal persons in the exercise of their rights and legitimate interests; and demand by a public official or equivalent person of information from individuals or legal entities, including documents, the provision of which is not provided for by legislative acts. The Law “On Combating Corruption” defines the functions of governmental bodies in the field of preventing and combating corruption. Article 8 provides for the establishment of special anti-corruption units in the Prosecutor General’s Office, the Ministry of Interior, and state security bodies.

Article 46 of the Law “On Combating Corruption” establishes a legal basis for participation of citizens and public associations in public control in the field of combating corruption. They may participate in the activities of anti-corruption commissions established in governmental agencies as well as in drafting and providing feedback on drafts of anti-corruption laws and regulations.⁴⁶

⁴⁶ Law on Combating Corruption. 2015. Republic of Belarus: Parliament. Available at <<http://pravo.by/document/?guid=3871&p0=H11500305>>.

Prevention of corruption in public procurement is one of the priorities for many countries. In 2012, the Law of the Republic of Belarus “On Public Procurement of Goods (Works, Services)” established new forms of procurement such as open and closed competitive tenders, online auctions, requests for quotation procedures, and exchange bidding. The Law contains a number of provisions aimed at increasing transparency in public procurement such as the use of modern information technologies.⁴⁷ In 2013, the digitalization of procurement started and is now actively growing. It provides new procedures for selecting suppliers, contractors, and performers.

The Criminal Code of the Republic of Belarus does not contain a special chapter on corruption crimes. The list of corruption offences is defined in the Joint Decision of the Prosecutor General's Office, KGC, OAC, the Ministry of Interior, KGB, and the Investigative Committee of the Republic of Belarus No. 43/9/95/571/57/234.

Commercial bribery is also criminalized in Article 252 of the Criminal Code. Facilitation payments are not excluded from the definition of bribery. In accordance with the Criminal Code of the Republic of Belarus, the subjects of criminal liability are natural persons only.

Anti-corruption law in the Republic of Belarus does not establish obligations for companies to implement anti-corruption compliance programmes.

4.3. Republic of Kazakhstan

Between 2014 and 2015, a number of new incentives for the mitigation of corruption risks were adopted in the Republic of Kazakhstan. The basis for these incentives was set by the Decree of the President of the Republic of Kazakhstan No. 986 dated 26 December 2014 “On the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025” which significantly changed the approach to fighting corruption and recognized the priority of measures to mitigate corruption risks rather than to manage their consequences. The main focus of the Strategy is the mitigation of corruption risks in the work of public officials, awareness measures about corruption risks, and interaction with the public, civil society, and the media. The Anti-Corruption Strategy was developed with the assistance of Kazakh and international experts, scientists, civil society institutions, and international practice.

Kazakhstan is a party to the 2003 UNCAC and UNTOC of 2000. Though not a member of the Council of Europe, Kazakhstan ratified, in 2014, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990.

The Republic of Kazakhstan has been cooperating with UNODC, OSCE, IACA, and EAG.

Since 2004, Kazakhstan participates in the Istanbul Anti-Corruption Action Plan for the countries of Central Asia and Eastern Europe, which was proposed by the OECD. During the Monitoring Meeting of the parties to the Istanbul Anti-Corruption Action Plan in Paris on 13 September 2017, the report about the fourth round of monitoring of the legal framework of Kazakhstan was adopted. The recommendations for Kazakhstan include further development of anti-corruption measures and promoting greater transparency and integrity in the higher education sector.⁴⁸

The main legal acts of the Republic of Kazakhstan in the field of combating corruption are:

⁴⁷Law on Public Procurement of Goods (Works, Services). 2017. Republic of Belarus: Parliament. Available at: <<http://www.pravo.by/document/?guid=3871&p0=H11200419>>.

⁴⁸ OECD, 2017. *Anti-Corruption Reforms in Kazakhstan. Round 4. Monitoring of the Istanbul Anti-Corruption Action Plan*. [pdf] Paris: OECD. Available at: <<http://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-Round-4-Monitoring-Report-ENG.pdf>> [Accessed 12 June 2018].

- The Law of the Republic of Kazakhstan No. 410-V dated 18 November 2015 “On Counteraction of Corruption”
- The Law of the Republic of Kazakhstan No. 191-IV dated 28 August 2009 “On Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism”
- The Criminal Code of the Republic of Kazakhstan
- The Code of Administrative Offences of the Republic of Kazakhstan
- Decree of the President of the Republic of Kazakhstan No. 328 dated 13 September 2016 “On the Reorganization of the Ministry of Civil Service Affairs of the Republic of Kazakhstan”
- Decree of the President of the Republic of Kazakhstan No. 155 dated 29 December 2015 “On the Approval of the Rules for Conducting an External Analysis of Corruption Risks”
- The Order of the Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption No. 6 dated 13 October 2016 “On the Approval of the Regulation on the National Bureau of Anti-Corruption of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption”
- The Order of the Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption No. 12 dated 19 October 2016 “On the Approval of the Rules for Holding an Internal Analysis of Corruption Risks”
- The Order of the Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption No. 13 dated 19 October 2016 “On the Approval of the Rules for Conducting Anti-Corruption Monitoring”

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

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

The analysis of endogenous and exogenous corruption risks is directed towards the identification and definition of reasons and conditions that contribute to corrupt acts. Article 8.2 of the Law says that exogenous analysis of corruption risks is conducted by the special authority established to fight corruption. The rules of analysis of corruption risks are identified by presidential decree and contain two main directives. One is the identification of corruption risks in legal acts relating to activities of state authorities and organizations. The second directive includes the identification of corruption risks in the management activities of state authorities. This includes human resource management, implementation of anti-corruption regulations by public officials, and regulation of conflicts of interest. Further activity is conducted to identify gaps and double meanings in the standards and regulations of public services. This activity also includes the identification of gaps in the definition of

punitive measures, regulations, and controls at the regional level. It also includes the definition of gaps and administrative barriers during the process of issuing permits for small and medium enterprises.

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

According to Article 8.5 of the Law “On Counteraction of Corruption”, analysis can be conducted by governmental bodies and organizations themselves. This is a new development that provides the legal definition of public organizations as an objective of anti-corruption regulation. It allows increased efficiency of corruption prevention measures.

For the first time, according to the Law, civil society and NGOs are recognized as actors in the fight against corruption. According to Article 7 of the Law, such actors can conduct anti-corruption monitoring. The results of this monitoring can facilitate decisions about the need for external analysis of corruption risks and the development of recommendations on how to increase the efficiency of anti-corruption institutions. Monitoring should be conducted in accordance with the Order of the Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption No. 13 dated 19 October 2016 “On the Approval of the Rules for Conducting Anti-Corruption Monitoring.”⁴⁹

The Law “On Counteraction of Corruption” does not contain formal requirements for companies to implement anti-corruption compliance programmes similar to the obligations of Russian organizations under Article 13.3 of the Federal Law “On Combating Corruption”. However, Article 16 of the Law of the Republic of Kazakhstan includes general provisions that business sector stakeholders should take preventive measures to fight corruption, follow principles of honest competition, prevent conflicts of interests, adopt and comply with business ethics standards, take measures to create an anti-corruption culture, and cooperate with governmental agencies in preventing corruption. Furthermore, the Law stipulates that business associations may develop anti-corruption standards for the business sector.

The Law also introduces the practice of publishing the National Report on Counteraction of Corruption. According to Article 17, the National Report should contain analyses and definitions of the conditions and tendencies for corruption risks at the international and national levels, as well as propositions for formulation, realization, and improvement of anti-corruption policy. The National Report on Counteraction of Corruption is based on the results of the work of special authorities to fight corruption as well as on contributions from natural and legal persons.

In 2016, the Ministry of Public Service of the Republic of Kazakhstan was reorganized by the President of the Republic of Kazakhstan into the Agency of the Republic of Kazakhstan for Public Service and Anti-Corruption. The Agency is responsible for systematic prevention of corruption. It is directly subordinate and accountable to the President of the Republic of Kazakhstan.⁵⁰ The National Bureau of Anti-Corruption was established within the framework of the Agency for Public Service and Anti-Corruption.⁵¹

⁴⁹ Order on the Approval of the Rules for Conducting Anti-Corruption Monitoring. 2016. Republic of Kazakhstan: Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption. Available at: <<http://kyzmet.gov.kz/en/pages/anti-corruption-monitoring-rules>>.

⁵⁰ Decree on the Reorganization of the Ministry of Civil Service Affairs of the Republic of Kazakhstan. 2016. Republic of Kazakhstan: The President of the Republic of Kazakhstan. Available at:

The Criminal Code of the Republic of Kazakhstan contains a special chapter, Chapter 15, on corruption and other criminal offences against state services and governance. Commercial bribery is also criminalized in Article 253 of the Criminal Code. Facilitation payments are not excluded from the definition of bribery. However, in particular circumstances, a guilty person can be held liable under the Code of Administrative Offences instead of criminal liability. The subjects of criminal liability are only natural persons. Legal entities can be subjects of administrative liability for illegal remuneration under Article 678 of the Code of Administrative Offences.

4.4. Kyrgyz Republic

In 2012, the President of the Kyrgyz Republic adopted the State Strategy of the Anti-Corruption Policy of the Kyrgyz Republic. The Strategy defines priorities, main principles, and directions in preventing and combating corruption.⁵²

Along with other member states of the Eurasian Economic Union, the Kyrgyz Republic is a party to the UNCAC of 2003 and the UNTOC of 2000, and developed a national anti-corruption system in accordance with its obligations under international law.

The Kyrgyz Republic has been cooperating with UNODC, OSCE, IACA, and EAG.

During the last fifteen years, the Kyrgyz Republic has been establishing a legal framework for preventing and combating corruption. The main legal acts of the Kyrgyz Republic aimed at preventing and combating corruption are the following:

- The Law of the Kyrgyz Republic No. 153 dated 8 August 2012 “On Counteraction of Corruption”
- The Law of the Kyrgyz Republic No. 135 dated 31 July 2006 “On Combating the Legalization (Laundering) of Criminal Proceeds and Financing of Terrorist or Extremist Activities”
- The Criminal Code of the Kyrgyz Republic No. 68 dated 1 October 1997
- The Criminal Code of the Kyrgyz Republic No. 19 dated 2 February 2017
- The Code of the Kyrgyz Republic on Administrative Liability No. 114 dated 4 August 1998
- The Code of the Kyrgyz Republic on Violations No. 58 dated 13 April 2017
- The Law of the Kyrgyz Republic No. 75 dated 30 May 2016 “On the Civil Service and Municipal Service”
- The Law of the Kyrgyz Republic No. 164 dated 2 August 2017 “On Declaring Incomes, Expenses, Obligations, and Assets of Persons Substituting or Occupying State or Municipal Positions”
- The Law of the Kyrgyz Republic No. 72 dated 3 April 2015 “On Public Procurement”
- Decree of the President of the Kyrgyz Republic No. 26 dated 2 February 2012 “On the State Strategy of the Anti-Corruption Policy of the Kyrgyz Republic and Measures for Combating Corruption”

<http://www.akorda.kz/ru/events/akorda_news/akorda_other_events/ukaz-o-reorganizacii-ministerstva-po-delam-gosudarstvennoi-sluzhby-respubliki-kazahstan>.

⁵¹ Order on the Approval of the Regulation on the National Bureau of Anticorruption of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption. 2016. Republic of Kazakhstan: Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption. Available at: <http://online.zakon.kz/Document/?doc_id=32058022>.

⁵² Decree on the State Strategy of Anti-Corruption Policy of the Kyrgyz Republic and Measures for Combating Corruption. 2012. Kyrgyz Republic: The President of the Kyrgyz Republic. Available at: <<http://finpol.gov.kg/ru/orders/anti-corruption-activities-order>>.

The mitigation of corruption risks in public service is based on promoting ethics for state employees and capacity building. The Law of the Kyrgyz Republic “On the Civil Service and Municipal Service” defines ethical principles, regulates employee behaviour, and provides measures of punishment for violations of the norms of conduct.⁵³ The general provisions of the Law are further detailed in the Code of Ethics of State and Municipal Employees of the Kyrgyz Republic.⁵⁴ Capacity-building includes general professional education and special anti-corruption trainings.

The Law of the Kyrgyz Republic “On Declaring Incomes, Expenses, Obligations and Assets of Persons Substituting or Occupying State or Municipal Positions” established a mechanism which allows for the identification of state and municipal employees’ illegal incomes resulting (with high probability) from corruption offences.⁵⁵

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

The Competition Commission, which includes representatives from civil society and certified specialists in the area of state procurement, deals with these complaints. It operates according to Article 10 of the Law on Public Procurement and usually includes three persons, one of whom should be an expert on state procurement and prove his expertise by certification. A CEO of a purchasing company can also be included on this commission. The members of the commission are personally liable if violations of the Law on Public Procurement take place. This commission can require a pause in trades and an exemption from the procurement procedure on the basis of complaints about violations in the process.⁵⁶

The Criminal Code of the Kyrgyz Republic stipulates liability for corruption offences in Chapter 30. Unusual for criminal law, the Criminal Code of the Kyrgyz Republic contains a separate “corruption” offence - Article 303. Corruption is defined as intentional acts consisting of creating an unlawful and stable connection between one or several officials who have official power and individuals or groups, for the purpose of unlawfully obtaining materials, any other benefits and advantages, and also providing these benefits to individuals and legal entities, creating a threat to the interests of society or the state. Corruption in the business sector is criminalized in Chapter 23 of the Criminal Code. Facilitation payments are not excluded from the definition of bribery. The subjects of

⁵³ Law on the Civil Service and Municipal Service. 2017. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/111354>>.

⁵⁴ Code of Ethics of State and Municipal Employees of the Kyrgyz Republic. 2016. Kyrgyz Republic: Civil Service and Municipal Service Council. Available at: <<http://ud.gov.kg/index.php/ru/otsenka-deyatelnosti-gos-sluzhashchikh/353-kodeks-etiki-gosudarstvennykh-i-munitsipalnykh-sluzhashchikh-kyrgyzskoj-respubliki>>.

⁵⁵ Law on Declaring Income, Expenses, Obligations and Assets of Persons Substituting or Occupying State or Municipal Positions. 2017. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/111671>>.

⁵⁶ Law on Public Procurement. 2015. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/111125>>.

criminal liability are only natural persons.⁵⁷ The administrative liability of legal entities for corruption offences also does not exist in the legal framework of Kyrgyzstan.

In February 2017, within the framework of legal reform, the Kyrgyz Republic adopted a new Criminal Code which will enter into force on 1 January 2019.⁵⁸ In the new Code an important step towards corporate criminal liability for corruption offences was taken. Article 26 does not recognize the legal entity as a subject of criminal liability. At the same time, it specifies application of coercive measures to legal entities under criminal law. In relation to corruption offences, application of coercive measures is possible in cases of active bribery (Art. 328); intermediation in bribery (Art. 327); illegal participation of an official in entrepreneurial activities (Art. 324); abuse of authority in a commercial or other organization (Art. 233); violation of the procedure for holding public trades, auctions, or tenders (Art. 234); abuse of powers by private notaries, auditors, experts, or appraisers (Art. 235); commercial bribery (Art. 237); and illegal remuneration to employees (Art. 238). Coercive measures are applied in accordance with Chapter 20 of the Code if the act is committed on behalf of or by means of a legal entity by an individual acting in the interests of the legal entity, regardless of whether such an individual is held to be criminally liable. The coercive measures may include fines, restriction of rights, and liquidation of the legal entity. Confiscation of property can be applied as an additional measure.

The new Code of the Kyrgyz Republic on Violations which should replace the Code on Administrative Liability was adopted in April 2017 and will also enter into force on 1 January 2019.⁵⁹ The new Code does not contain any provisions regarding liability for corruption offences.

The governmental bodies responsible for combating corruption are the Prosecutor General's Office, the State Committee for National Security, the State Service for Combatting Economic Crime (financial police), the State Financial Intelligence Unit, and the Ministry of Interior.

4.5. Russian Federation

In 2008, Russia adopted the Federal Law "On Combating Corruption" which became the cornerstone of the national anti-corruption system.⁶⁰ In 2010, the President of the Russian Federation approved the National Anti-Corruption Strategy. The Strategy defined the necessary steps to implement the Federal Law "On Combating Corruption" at the federal, regional, and municipal levels.⁶¹ In December 2013, the Presidential Anti-Corruption Directorate was established within the framework of the Presidential Executive Office.⁶² The Directorate supports the implementation of the state anti-corruption policy and activities of the Presidential Council for Countering Corruption and of the Presidium of the Council.

⁵⁷ Criminal Code. 1997. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/568>>.

⁵⁸ Criminal Code. 2017. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/111527>>.

⁵⁹ Code on Violations. 2017. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/111565?cl=ru-ru>>.

⁶⁰ Federal Law on Combating Corruption. 2008. Russian Federation: Federal Assembly. Available at: <http://www.consultant.ru/document/cons_doc_LAW_82959/>.

⁶¹ Decree on the National Anti-Corruption Strategy and the National Anti-Corruption Plan for 2010-2011. 2010. Russian Federation: The President of the Russian Federation. Available at: <<http://base.garant.ru/12174916/>>.

⁶² Decree on the Anti-Corruption Directorate of the President of the Russian Federation. 2013. Russian Federation: The President of the Russian Federation. Available at: <http://www.consultant.ru/document/cons_doc_LAW_155190/942772dce30cfa36b671bcf19ca928e4d698a928/>.

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

- Improving the legal bases and organizational mechanisms to fight corruption and identifying conflicts of interest of public servants
- Improving the control mechanism for expenses and income of state budget and property
- Increasing efficiency to fight corruption in federal organs of executive power and state organs of the subjects of the Russian Federation
- Furthering initiatives of federal and local organs to fight corruption
- Establishing commissions for coordinating work against corruption in all regions of the Russian Federation
- Increasing the efficiency of fighting corruption in state procurement and services to cover state and municipal needs
- Increasing the influence of ethical and moral norms for the activities of officials at all levels of governance
- Increasing the use of mechanisms for international cooperation for the identification, confiscation, and return of all funds received as a result of corrupt activities
- Increasing societal awareness to create an atmosphere intolerant of corruption⁶³

The Russian Federation is a party to the 2003 UNCAC, the UNTOC of 2000, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, the Council of Europe Criminal Law Convention on Corruption of 1998, the Council of Europe Civil Law Convention on Corruption of 1999, and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime of 1990.

In September 2017, the Russian Federation ratified the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, and on the Financing of Terrorism of 2005. The Convention entered into force for Russia on 1 January 2018.

The Russian Federation has been actively cooperating with UNODC, GRECO, OECD, IACA, FATF, MONEYVAL, EAG, the APEC Anti-Corruption and Transparency Experts' Working Group, and the G20 Anti-Corruption Working Group.

Cooperation in the framework of BRICS⁶⁴ creates new opportunities for economic growth and sustainable development for all BRICS countries. An effective system of anti-corruption measures is an important prerequisite for mutual investments and joint economic projects. In July 2015, the leaders of the BRICS countries adopted the Seventh BRICS Summit Ufa Declaration and created a BRICS Working Group on Anti-Corruption Cooperation.⁶⁵

The main Russian legal acts in the field of combating corruption are:

- Federal Law No. 273-FZ dated 25 December 2008 "On Combating Corruption"
- Federal Law No. 115-FZ dated 7 August 2001 "On Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism"

⁶³ Decree on the National Plan for the Fight against Corruption for the Period 2016-2017. 2016. Russian Federation: The President of the Russian Federation. Available at: <<http://www.kremlin.ru/acts/bank/40657>>.

⁶⁴ BRICS is the acronym for an association of five states: Brazil, Russia, India, China, and South Africa.

⁶⁵ BRICS, 2017. *The VII BRICS Summit Ufa Declaration*. [online] Available at: <http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1282066.shtml> [Accessed 24 November 2017].

- Federal Law No. 230-FZ dated 3 December 2012 “On the Control over the Correspondence of Expenses and Incomes of Persons Holding Public Office and Other Persons”
- Federal Law No. 44-FZ dated 4 April 2013 “On the Contract System in the Sphere of Procurement of Goods, Works, Services for the Provision of State and Municipal Needs”
- The Criminal Code of the Russian Federation
- The Code of Administrative Offences of the Russian Federation
- The Decree of the President of the Russian Federation No. 309 dated 2 April 2013 “On Measures for Implementation of Certain Provisions of the Federal Law ‘On Combating Corruption’”
- The Decree of the President of the Russian Federation No. 147 dated 1 April 2016 “On the National Plan for the Fight against Corruption for the Period of 2016-2017”

The general definition of corruption in the Russian legal framework is quite broad. In accordance with Article 1 of the Federal Law No. 273-FZ dated 25 December 2008 “On Combating Corruption”, corruption means:

- a) Abuse of public office, giving or receiving bribes, abuse of powers, commercial graft, or other illegitimate use by an individual of his/her official status against legal interests of society and the State to receive private gain in the form of money, values, other property or services involving property, and other property rights for himself/herself or for third parties, or the illegal provision of such benefits to said individual by other individuals
- b) Committing acts indicated in paragraph a) of this Section on behalf of or for the benefit of a legal entity.

As follows from the definition, bribery is prohibited both in the public and private sectors. Facilitation payments are not excluded from the definition of corruption.

There is no special chapter on corruption crimes in the Criminal Code of the Russian Federation. Corruption offences are contained in various chapters. However, the list of corruption offences is defined in the Order of the Prosecutor General’s Office and the Ministry of Interior dated 11 September 2013 No. 387/11/2 (List of Corruption Offences No. 23) adopted for purposes of criminal statistics.⁶⁶ The Russian criminal law doctrine traditionally recognizes only natural persons as subjects of criminal liability.

The main directions in preventing and combating corruption in the Russian Federation are the following:

- Criminalization of corruption
- Law enforcement measures
- Establishing obligations and restrictions for public officials
- Anti-corruption expertise in drafts of legal acts
- Special anti-corruption measures in public procurement
- Public-private collaboration
- Implementing anti-corruption compliance in organizations
- Developing international cooperation in preventing and combating corruption

⁶⁶ Order on the Introduction of the List of Articles of the Criminal Code of the Russian Federation used in the Formation of Statistical Reporting. List 23 of Corruption Offences. 2016. Russian Federation: The Prosecutor General’s Office and the Ministry of Interior. Available at: <<http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=209595&rnd=290511.82946040&dst=100007&fld=134#0>>.

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

One of the current trends in preventing and combating corruption in Russia is the active participation of the Financial Intelligence Unit (FIU). The Russian FIU was established on 1 November 2001 as the Financial Monitoring Committee (FMC) by Presidential Decree No.1263 and is now called the Federal Financial Monitoring Service (Rosfinmonitoring). Rosfinmonitoring is a central authority for combating money laundering and financing of terrorism (ML/TF) in the Russian Federation, an administrative type FIU.⁶⁷ In 2012, Rosfinmonitoring was placed directly under the authority of the President of the Russian Federation, though the agency still enjoys full operational autonomy. The structure of Rosfinmonitoring includes the central office and interregional offices in the federal districts of the Russian Federation.

In accordance with Federal Law No. 231-FZ dated 3 December 2012, Rosfinmonitoring should also provide information about transactions of state and municipal servants upon written requests of federal ministers, heads of subjects of the Russian Federation, and the Head of the Central Bank of the Russian Federation for the purpose of income and costs control. The procedures for submitting requests and the list of positions of state and municipal servants are regulated by the Decree of the President of the Russian Federation No. 309 dated 2 April 2013.⁶⁸ FIU's information about obligatory controlled and suspicious transactions of public servants can be compared with their declarations of incomes and assets. This is an effective way to identify transactions in the amounts which are significantly higher than the declared official incomes of public servants.

In December 2012, Russia enacted important amendments to the Federal Law "On Combating Corruption. The Article 13.3 established obligations for all organizations in the Russian Federation to take measures to prevent corruption.

Measures which can be taken by organizations for the prevention of corruption can include:

- Determination of units or officials responsible for the prevention of corruption
- Cooperation with law enforcement agencies
- Development and introduction of standards and procedures designed to ensure the ethical operation of the organization
- Adoption of a code of ethics and a code of conduct for employees of the organization
- Prevention and settlement of conflicts of interest
- Prevention of compilation of unofficial reports and forged documents

Russian legislators do not use the term "anti-corruption compliance." However, it is clear from the analysis of Article 13.3 that all Russian organizations have to implement an anti-corruption compliance management system, which includes the appointment of special

⁶⁷ Decree on the Authorized Body for Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism. 2001. Russian Federation: The President of the Russian Federation. Available at: <http://www.consultant.ru/document/cons_doc_LAW_33838/>.

⁶⁸ Decree on Measures to Implement Certain Provisions of the Federal Law "On Combating Corruption". 2013. Russian Federation: The President of the Russian Federation. Available at: <http://www.consultant.ru/document/cons_doc_LAW_144338/>.

officers or units responsible for countering corruption in the organization, the adoption of a code of business ethics or corporate conduct, and the adoption of an anti-corruption compliance programme.

Despite the general legal obligation, there is no specific liability under Russian law for not having an anti-corruption compliance programme in the organization. However, the Prosecutor General's Office, which is responsible for supervising the implementation of anti-corruption legislation, is entitled to order or request a court to order companies to implement measures in accordance with Article 13.3.

The idea of public-private collaboration in the fight against corruption has become increasingly popular in Russia in the last decade. The main business associations of the Russian Federation signed, in 2012, the Anti-Corruption Charter of Russian Business. The Charter is open to accession by any business person or company.

Conclusion

The training at IACA provided a broad overview of international and national efforts aimed at preventing and combating corruption with special focus on the Member States of the Eurasian Economic Union. The Report on preventing and combating corruption in the Eurasian region consists of four chapters and summarizes the main ideas presented in lectures and discussions.

Chapter one highlights the distinctive features of modern corruption, connections between corruption and other types of crime, and new challenges for the international community. It gives insights into current trends in combating corruption such as the implementation of new measures to increase transparency of beneficial ownership, public procurement procedures, effective application of criminal and administrative liability, and support of Collective Action initiatives by various stakeholders.

Chapter two focuses on the implementation of anti-corruption compliance programmes in the business sector. It gives an overview of anti-corruption compliance from the perspective of organizational management and pays special attention to whistleblower protection and conflict of interest regulation. Chapter two also includes comparative analyses of legal regulations and the key components of AML/CFT and anti-corruption compliance.

Chapter three provides readers with good practices for public-private collaboration and promoting integrity in the private sector. It includes an overview of the success factors in building trust and involving various stakeholders.

The last chapter introduces readers to current developments in anti-corruption legislation and to the implementation of new anti-corruption measures in the Member States of the Eurasian Economic Union. It focuses on special anti-corruption programmes, strategies, and laws, individual and corporate liability for corruption offences, including commercial bribery and facilitation payments, and functions of various governmental authorities in the anti-corruption field. The chapter also addresses participation of the Member States of the EAEU in international cooperation for preventing and combating corruption.

The report can be used for developing anti-corruption policies and drafting anti-corruption laws and regulations in the Member States of the EAEU, and for designing and implementing anti-corruption compliance programmes in organizations.

The 2018 Anti-Corruption Tailor-Made Training for Representatives of the Member States of the Eurasian Economic Union (EAEU 2018) will take place from 24 to 26 September 2018 and is co-sponsored by the Government of the Russian Federation. The EAEU 2018 training will be delivered by globally renowned academics and professionals, and will address international regulations, current trends, best practices, and new approaches in the fight against corruption.



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