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Warsaw, 10 July 2020

Opinion-Nr.: CORR-UZB/379/2020[JG]

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# **URGENT COMMENTS ON THE DRAFT DECREE OF THE PRESIDENT ON MEASURES TO IMPROVE THE ANTI- CORRUPTION SYSTEM**

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## **UZBEKISTAN**

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This Opinion has benefited from contributions made by  
Lolita Cigane (OSCE/ODIHR Core Group of Experts on Political Parties)

Drago Kos (Independent Expert)

Based on an unofficial English translation of the Draft Law.

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OSCE Office for Democratic Institutions and Human Rights

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Ul. Miodowa 10, PL-00-251 Warsaw

Office: +48 22 520 06 00, Fax: +48 22 520 0605, [office@odihhr.pl](mailto:office@odihhr.pl)

[www.legislationline.org](http://www.legislationline.org)

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*This Opinion is also available in Russian.*

*However, the English version remains the only official version of the document.*

## EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

At the outset, the establishment of an Anti-Corruption Agency is a commendable step and could have a positive effect in the fight against corruption in Uzbekistan. However, anti-corruption agencies require a stable legislative framework and it is therefore recommended to establish the Agency through a special law or due a constitutional provision. The recommendations established in these Urgent Comments are valid for any legal act establishing the Agency. Should establishment by Decree be maintained, the recommendations also remain valid. Functional autonomy and effectiveness of the Agency should be ensured, it lacks necessary dualization and clarity with respect to powers and procedures, and in overall seems not meet many standards of the UN Convention against Corruption and the Jakarta Statement on Principles for Anti-Corruption Agencies (Jakarta Principles). The Agency seems to lack institutional and financial autonomy, as well as a robust mandate, clearly defined powers internal and external accountability.

More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations:

- A.** To establish the ACA through a proper and stable legal framework, such as the Constitution or a special law; [pars 13-16]
- B.** Throughout the Draft Decree: to include a clear definition of the nature of the Agency, its scope and functions, including reference to the natural and legal persons subject to the authority of the Agency, its independence and accountability mechanisms, as well as available resources; [pars 17-22]
- C.** In Points 2 and 3: to clearly define the mandate, powers and functions of the Agency, avoiding ambiguity and overbroad definitions. Efforts should be made to avoid the conflict with other provisions of the national legislation regulating the work of investigative bodies, courts,

or other state bodies; [pars 23-34]

- D.** In Point 4: to thoroughly define substantial and procedural elements of the Agency's investigative powers (a power to conduct an interview, a power to summon, a power to request documentation, etc.) and means for their effective application as well as the power of the Agency to request, receive and inspect all the necessary documentation needed for fulfilment of its tasks; [pars 35-38]
- E.** In Point 4: Introduce detailed procedures for submitting the complaints, protecting whistle-blowers and investigating alleged corrupt practices; [par 39]
- F.** Regarding Points 4 and 5: To regulate both Points in a law with a view to specifying the powers of the Agency to cancel executive and public decisions and to avoid disproportional interference with fundamental rights of natural and legal persons;.; [pars 40-41]
- G.** In Point 1: to ensure independence and autonomy of the Agency, it is important to define the criteria and procedure of selection candidate of the position of the director, specify his/her mandate and the grounds for dismissal, as well as introduce guarantees of independence; [par 42]
- H.** Throughout the Draft Decree: to introduce relevant provisions recognizing an obligation to provide the Agency with necessary recourses material, procedural rules on recruitment and promotion of the Agency's personnel and on ethical requirements for its staff members; [pars 43-46]
- I.** In Points 6, 7 and 8: to avoid overlapping mandates and establish regular information-sharing amongst institutions that collaborate in the fight against corruption; [par 47]
- J.** In Points 9, 11 and 12: to adopt a law with material and procedural rules on achieving the goals described in these Points, to introduce a duty of carefully selected organizations to cooperate with the Agency

and to considerably extend the deadlines for the tasks set out in cooperation and collaboration with other bodies. Additionally, interaction with civil society should be clearly structured without running a risk to impose on civil society undue demands and obligations. ; [pars 48-54]

- K.** Throughout the Draft Decree: to develop clear rules and standard operating procedures on internal and external accountability, including monitoring and disciplinary mechanisms, to minimize and sanction any misconduct and abuse of power by the Agency or its personnel; [pars 55-57].

***As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.***

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## I. INTRODUCTION

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1. On 12 June 2020, the OSCE Project Co-ordinator in Uzbekistan sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a review of the Draft Decree of the President of the Republic of Uzbekistan on further measures to improve the anti-corruption system in the Republic of Uzbekistan (hereinafter “the Draft Decree”).
2. In response, OSCE/ODIHR prepared these legal comments on the compliance of the Draft Decree with international human rights standards and OSCE human dimension commitments.
3. Given the short timeline to prepare this legal review, the OSCE/ODIHR decided to prepare an Urgent Opinion on the Draft Law concentrating on the main areas for concern left in the Draft Law.

## II. SCOPE OF REVIEW

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4. The scope of this Urgent Opinion covers only the Draft Decree submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional anti-corruption framework in the Republic of Uzbekistan.
5. The Urgent Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Draft Decree. The ensuing recommendations are based on international standards, norms and practices as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, the OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
6. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the Opinion’s analysis takes into account the potentially different impact of the Draft Act on women and men.<sup>1</sup>
7. This Opinion is based on an unofficial English translation of the Draft Decree commissioned by the OSCE/ODIHR, which is attached to this document as an Annex. Errors from translation may result. This Urgent Opinion is also available in Russian. The English version shall prevail.

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<sup>1</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>.

8. In view of the above, the OSCE/ODIHR would like to make mention that this Urgent Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework pertaining to the fight against corruption in Uzbekistan in the future.

### III. ANALYSIS

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#### 1. International Standards and OSCE Commitments on the Fight against Corruption

9. The most prominent anti-corruption standards on a global level derive from the United Nations Convention against Corruption<sup>2</sup> and the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions.<sup>3</sup> The Council of Europe's Criminal Convention on Corruption<sup>4</sup>, the Civil Law Convention against Corruption<sup>5</sup> and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime<sup>6</sup> are standard-setting regional conventions. While Uzbekistan is not a member State of the Council of Europe, documents issued by the Council of Europe, can provide useful guidance beyond the Council of Europe's geographical application.
10. These standards are also contained, reiterated and expanded in a number of soft-law standards, including the United Nations Declaration against Corruption and Bribery in International Commercial Transactions<sup>7</sup>, UN General Assembly Resolution 51/59 on Action against Corruption,<sup>8</sup> Council of Europe Committee of Ministers Recommendation (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption,<sup>9</sup> Recommendation CM/Rec(2017)2 on the legal regulation of lobbying

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<sup>2</sup> UNGA Res 58/4, *United Nations Convention against Corruption* (hereinafter "UN Convention against Corruption"), adopted 31 October 2003, entered into force 14 December 2005, GAOR 58th Session Supp 49 vol 1, 4. Uzbekistan acceded to the Convention on 29 July 2008.

<sup>3</sup> OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted 17 December 1997 <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>; Uzbekistan is not a State Party to the Convention.

<sup>4</sup> *Criminal Law Convention on Corruption*, adopted on 27 January 1999, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=173&CM=8&DF=2/20/2008&CL=ENG>; see also the *Additional Protocol to the Criminal Law Convention on Corruption*, adopted on 15 May 2003, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=191&CM=8&DF=2/20/2008&CL=ENG>

<sup>5</sup> *Civil Law Convention Against Corruption*, adopted on 4 November 1999, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=174&CM=8&DF=2/20/2008&CL=ENG>.

<sup>6</sup> *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime*, adopted on 8 November 1990, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=141&CM=8&DF=2/20/2008&CL=ENG>.

<sup>7</sup> *United Nations Declaration against Corruption and Bribery in International Commercial Transactions*, A/RES/51/191, 86th plenary meeting 16 December 1996, available at <http://www.un.org/documents/ga/res/51/a51r191.htm>.

<sup>8</sup> *UN General Assembly Resolution 51/59 on Action against Corruption*, A/RES/51/59, adopted on 12 December 1996, available at <http://www.un.org/documents/ga/res/51/a51r059.htm>.

<sup>9</sup> Council of Europe Committee of Ministers, *Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption* (hereinafter "Twenty Guiding Principles in the Fight Against Corruption") of 6 November 1997, available at <https://wcd.coe.int/ViewDoc.jsp?id=593789>.

activities in the context of public decision making<sup>10</sup> as well as Council of Europe Recommendation (2000)10 on Codes of Conduct for Public Officials.<sup>11</sup>

11. At the OSCE level, the fight against corruption is an integral part of the commitments undertaken by OSCE participating States, as underlined, for example, by the Maastricht Document of 2003<sup>12</sup> and, most recently in the 2012 OSCE Ministerial Council's Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism.<sup>13</sup>
12. Standards specific to anti-corruption agencies or authorities can be found in the Jakarta Statement on Principles for Anti-Corruption Agencies<sup>14</sup> (hereinafter "Jakarta Principles") and the Anti-Corruption Authority Standards (hereinafter the "EPAC Standards") and Ten Guiding Principles against Corruption (hereinafter "EPAC Principles") of the European Partners against Corruption (hereinafter "EPAC"), an independent forum for practitioners aiming to prevent and combat corruption.<sup>15</sup> Previous OSCE/ODIHR legal opinions which deal with the subject of anti-corruption will be referred to throughout the Urgent Comments.<sup>16</sup>

## 2. GENERAL COMMENTS

13. According to Jakarta Principles for Anti-Corruption Agencies, it is recommended to base anti-corruption agencies on a proper and stable legal framework, such as the Constitution or a special law.<sup>17</sup> Decisions of the representatives of the executive branch of power to establish a national anti-corruption body with legal instruments in their power have many significant deficiencies, seriously undermining the independence and

<sup>10</sup> Council of Europe Committee of Ministers, *Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making* of 22 March 2017, available at <https://rm.coe.int/legal-regulation-of-lobbying-activities/168073ed69>.

<sup>11</sup> Council of Europe Committee of Ministers, *Recommendation (2000)10 of the Committee of Ministers to Member states on codes of conduct for public official* (hereinafter "Recommendation (2000)10") of 11 May 2000, available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805e2e52](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2e52) and Appendix (*Model Code of Conduct for Public Officials*; hereinafter "CoE Model Code"); see also its Explanatory Memorandum, available at <https://rm.coe.int/1680534424>.

<sup>12</sup> Final Document of the Eleventh Meeting of the OSCE Ministerial Council, Maastricht, (2003), available at <https://www.osce.org/de/mc/40535>; par 2.2.7 states: "We agree to make the elimination of all forms of corruption a priority. We will consider accession to, encourage ratification of, and support full implementation of, international conventions and other instruments in the field of combating corruption, in particular those developed by the Council of Europe and the Organisation for Economic Co-operation and Development (OECD). We welcome the adoption of the UN Convention against corruption and look forward to its early signature, ratification and entry into force."

<sup>13</sup> OSCE Ministerial Council, *Declaration on Strengthening Good Governance and Combating Corruption, Money-Laundering and the Financing of Terrorism*, 7 December 2012, available at <http://www.osce.org/cio/97968?download=true>.

<sup>14</sup> *Jakarta Statement on Principles for Anti-Corruption Agencies*, 26-27 November 2012, available at [https://www.unodc.org/documents/corruption/WG-Prevention/Art\\_6\\_Preventive\\_anti-corruption\\_bodies/JAKARTA\\_STATEMENT\\_en.pdf](https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf). These principles were developed at a conference organized in Jakarta, Indonesia on 26-27 November 2012 for this purpose, which was attended by current and former heads of anti-corruption agencies, anticorruption practitioners and experts from around the world. The event was organized by the Corruption Eradication Commission of Indonesia, the United Nations Development Programme (hereinafter "UNDP") and the United Nations Office on Drugs and Crime (hereinafter "UNODC").

<sup>15</sup> Available at [h http://www.epac-eacn.org/downloads/recommendations/doc\\_view/1-anti-corruption-authority-standards](http://www.epac-eacn.org/downloads/recommendations/doc_view/1-anti-corruption-authority-standards) (the EPAC Guiding Principles can be found in the annex to the EPAC Standards).

<sup>16</sup> E.g. OSCE/ODIHR Opinion on the Law on Prevention of Corruption of Montenegro (29 October 2018), available at [https://www.legislationline.org/download/id/8123/file/331\\_CORR\\_MNE\\_29Oct2018\\_en.pdf](https://www.legislationline.org/download/id/8123/file/331_CORR_MNE_29Oct2018_en.pdf) (hereinafter "2018 Montenegro Opinion"); OSCE/ODIHR *Opinion on Two Draft Anti-Corruption Laws of Ukraine* (18 July 2014) available at <http://www.legislationline.org/documents/id/19137>; OSCE/ODIHR *Opinion on the Law on the Bureau on Prevention and Combating of Corruption of Latvia* (17 November 2014), available at <http://www.legislationline.org/documents/id/19392>.

<sup>17</sup> See *op. cit.* footnote 14 (Jakarta Principles) "PERMANENCE:ACAs shall, in accordance with the basic legal principles of their countries, be established by proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA"; see also Article 6 par 2 of the UN Convention against Corruption: "Each State Party shall grant the body or bodies ... the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence."



overall functioning of those bodies. Independence of the Anti-Corruption Agency (hereinafter “ACA” or “Agency”) is a cornerstone in the prevention of and the fifth against corruption and enshrined in Articles 6 par 2 and 36 of the UN Convention against Corruption.<sup>18</sup>

14. The place of ACA is the institutional system of the state does not become apparent from the Draft Decree. The Agency appears to be granted a power to instruct and direct other state bodies, or overrule their decision. The Draft Decree, Point 4 bullet point 8 states - “make binding written instructions on execution to suspend or cancel decisions of executive authorities, economic management bodies and their officials if they show signs of corruption”. At the same time, Point 3 bullet point 2 envisions only “interaction” with anti-corruption committees of several other institutions.
15. Unless the powers of the Agency are based in the law, this may conflict with primary legislation regulating the work of governmental bodies, which according to the Draft Decree will now be obliged to follow the Agency’s instructions.
16. If the agencies are established by a law or even by a Constitution, this implies participation and consultation of a much broader range of political actors in the country, ensuring wider recognition and support of those actors to the agencies. Further, the process for amending laws or constitutions is much more transparent, and complex and asking for a much broader engagement of different political actors than the process of amending the executive branch’s decisions. Additionally as mentioned above, ACAs need to be bestowed with broad powers and also a strong mandate, both of which is easier to do through primary legislation or through the Constitution. **Therefore, anti-corruption agencies should ideally be anchored in a stable legal act that cannot easily be changed by representatives of the executive branch.**

#### **RECOMMENDATION A.**

**To establish the ACA through a proper and stable legal framework, such as the Constitution or a special law.**

### **3. NATURE OF THE AGENCY**

17. The establishment of an Anti-Corruption Agency (hereinafter “ACA”) could be a positive step in fighting corruption in Uzbekistan. In fact, there are several good examples of such agencies in the OSCE region, such as Armenia, Latvia, Lithuania or Montenegro. However, the potential for effectiveness of such Agencies largely depends on the following aspects:
  - Clearly defined type of the agency<sup>19</sup>
  - Clearly defined mandate (tasks and functions)

<sup>18</sup> See also, e.g. in Guiding Principle 3 of the Twenty Guiding Principles for the Fight Against Corruption “to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations” see *op. cit.* footnote 9 (Twenty Guiding Principles in the Fight Against Corruption); see also *op. cit.* footnote 16 par 28 (2018 Montenegro Opinion).

<sup>19</sup> The agency can be a preventative, executive, outreach and coordination, auditing or oversight institution or have mixed attributes.

- Clearly defined accountability system
  - Safeguards for functional independence, including the ability in situations of sufficient proof to act against high public officials
  - Sufficient resources and safeguards for financial autonomy.
18. Additionally, to achieve the overall objective of preventing and suppressing corruption, this step should be accompanied with wide range of reforms aimed at increasing effectiveness and efficiency of law enforcement bodies, judiciary and other governmental structures. With regard to the preventative function of the Agency, an investment in training and the development of integrity platforms and tools should be considered.
19. The Draft Decree provides for a broad scope of the tasks that the ACA should undertake. In general, before establishment of any ACA it is important to determine what type of agency it should be. Some of the envisioned activities suggest strong executive function with investigative powers and even appear to be suggestive of intelligence gathering (special services) function. However, for instance Point 4 bullet point 6 of the Draft Decree seems to be explicitly stating the ACA “transfers [...] materials to law enforcement and other state bodies for response” and conducts administrative investigations of corruption offenses. This might be confusing as it is not clear whether the provision above deals with all corruption cases, including criminal offences, or possible administrative misdemeanours only. Serious instances of corruption should be dealt under a criminal law. To ensure effective functioning of the anti-corruption agency, it is also important that the ACA’s powers are clearly defined and do not overlap with powers of other public bodies, including law enforcement.
20. Obviously, the Agency may be given the power to carry out inquiry or investigation. However, if the Agency is granted administrative investigative powers, the ground, outcomes and procedure needs to be clearly stipulated in the law. If the Agency is to have such investigative powers, it should be equipped with effective tools, for instance, apart from being able to request all necessary documentation, access to premises, summoning of individuals, requiring clarifications or to request such actions from the responsible State authority.
21. Other envisioned functions (1.1., 2.5, 2.8, 2.13) are suggestive of coordination, outreach, international cooperation, work with society. In addition, it appears that there are functions that would be more typical for a classical model of State Audit Office. Furthermore, systems like public procurement are specific and distinctly procedural. With no specialized knowledge of e.g. transportation or building sectors, detecting corruption risks in complex public procurement schemes is complicated. For this reason, countries such as Slovenia or Ukraine practice a system of specialized procurement agencies that deal with complaints from competitors and have a right to administratively sanction for procedural violations. At the same time, intelligence gathering and investigation of potential criminal violations are dealt with either by specialized anti-corruption bodies, police or general prosecution. However, Point 9 of the Draft Decree tasks the ACA with the complex task of “implementation of public procurement through competitive bidding and tendering exclusively in electronic form using advanced information and communication technologies”. Further, functions such as “achievement of full compensation for harm to the interests of society” is more suggestive of a judicial mandate (2.4). The ACA could also function as an integrity hub, promoting standards and integrity guidance in the effort to prevent corruption.

Examples of such functions can be found, inter alia, in the ACAs of Italy, France and Sweden.

22. Although some of these functions can be successfully combined, such broad constellation of functions would result in a too complicated mandate resulting in difficult implementation or overlaps with other institutions, eventually casting the integrity of the newly created ACA in doubt and creating potential accountability risks.

#### **RECOMMENDATION B.**

Throughout the Draft Decree: **to include a clear definition of the nature of the Agency, its scope and functions, including reference to the natural and legal persons subject to the authority of the Agency, its independence and accountability mechanisms, as well as available resources.**

#### **4. MANDATE**

23. **At the outset, and as mentioned above, it is recommended to describe the processes, powers, required cooperation and coordination as well as the interaction with addressees that is sketched out in the Draft Decree in a proper law in order to establish a clear and therefore enforceable mandate of the ACA.**
24. The mandate of the agency is described mainly in Point 2 though some aspects are also entailed in Points 1 and 4. Point 1 states that the ACA is a “special state body authorized to form and fulfil the state policy on prevention and combating corruption”. Normally, bodies like ACA are entrusted with (participation in) their drafting and with monitoring of the implementation of national anti-corruption strategies. It happens only exceptionally that those agencies also adopt the strategies. It is much more common that the national anti-corruption policy is adopted by a political body, the president, the government or the parliament. In such a way, a political buy-in and support are ensured, which is extremely important in the process of the implementation. The good solution would be adoption of the national anti-corruption strategy by the parliament allowing also the opposition to influence the final form of the strategy and internalize its content and implementation. **Therefore, the phrase “forming” should be interpreted in a way that the Agency will be in charge of drafting of the text of the national anti-corruption strategy, which will later be adopted by an appropriate political body in Uzbekistan.**
25. The second bullet-point lists the following guiding principles, which should lead the work of the Agency: legality, objectivity, openness and transparency. Apart from that, protection of human rights and integrity can also be mentioned as one of the guiding principles. The principles should be applied “regardless of other government bodies, organizations and their officials”, which is not a very clear formulation and could also be interpreted in a way that the Agency will follow the principles mentioned even if other public bodies will not do so. Implicitly, that allows room for other public bodies to decide not to follow those principles. Legality, objectivity, openness and transparency of functioning are important principles to ensure effective anti-corruption efforts. **Therefore, it is recommended that the words “protection of human rights”**

**and integrity could be added to existing four principles and the text “regardless of other government bodies, organizations and their officials” should be either deleted or changed.**

26. According to Point 2 third bullet-point, the Agency will also be responsible for “carrying out a comprehensive analysis and monitoring the corruption crime investigation system. Monitoring of the corruption crime investigation system is not possible without obtaining the information needed. The mandate, the tasks, powers and responsibilities (including obligation for the protection of personal and other sensitive data) of the Uzbek corruption criminal investigation authorities are regulated by the law. Thus, the decree as a legal instrument carrying comparatively less legal strength cannot impose any obligation on the investigators running against the provisions of the law, including the obligation to share any data with the Agency. **Therefore, it is recommended to adopt the law, which would precisely describe the powers of the Agency in relation to investigative authorities, without interfering with their autonomy.**
27. Point 2 fourth bullet-point requires from the Agency to “monitor the achievement of full compensation for harm to the interests of society and the state, as well as eliminate damage to the international credibility of Uzbekistan caused by corruption crimes”. It is not clear how the agency can “monitor” how Uzbek courts are compensating victims of corruption. In addition, individual victims are even not mentioned here as beneficiaries of Agency’s activities. **The word “monitor” might be meant to authorise the Agency to simply analyse application of compensation measures of Uzbek courts in general terms. If, however, the intention is to authorise the Agency to work with courts in ensuring full compensation of victims of corruption, such power can only be given to the Agency with a law, fully respecting independence of the judicial branch and also including individual victims of corruption as beneficiaries.** Additionally, while an ACA equipped with a strong mandate and adequate resources will through its work “eliminate damage to the international credibility of Uzbekistan caused by corruption crimes,” it is unusual to put such formulation in a legal act itself. It has to be ensured that this provision is not used to, for example, restrict credible reporting of corruption in Uzbekistan.
28. According to the Jakarta Principles, anti-corruption agencies “shall have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution, either through one agency or multiple coordinated agencies.”<sup>20</sup>
29. Point 2 bullet-point 10 mentions such prevention and integrity aspects as within the mandate of the ACA and requires from the Agency to “take effective measures to introduce integrity standards (“integrity vaccines”) and solutions to the conflict of interests in the public service, as well as monitor their compliance”. The explicitly mentioning of integrity standards is a welcome and a positive element of the Draft Decree. Public integrity is ensuring citizens that the government is working in their interest.<sup>21</sup> Ideally, the ACA would have the responsibility to advance those integrity standards in Uzbekistan. **In order to do so, much more clarity and details need to be present in the Draft Decree defining its subjects and responsibilities. In particular, the Draft Decree should state the Agency’s authority over public officials.**<sup>22</sup> Other

<sup>20</sup> *Op. cit.* footnote 14 (Jakarta Principles) “MANDATE”.

<sup>21</sup> See also OECD Recommendations on Public Integrity, available at <https://www.oecd.org/gov/ethics/recommendation-public-integrity/>; see also, e.g. the Preamble, Article 5 par 1 and Article 8 par 1 of the UN Convention against Corruption.

<sup>22</sup> *Op. cit.*, footnote 2 (UN Convention against Corruption). Article 2 defines public officials as “1. (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether

**educational and awareness-raising elements that are traditionally part of the work of an ACA should also be included into its mandate and clarified.**

30. Dealing with conflict of interests in the public sector is almost a traditional task for every anti-corruption body. In some countries, it is so important that it is contained in special laws dealing with conflict of interests, while in the others, this topic is part of the general anti-corruption laws. Due to its importance and complexity it is simply not possible to deal with this area in a decree and in such a short, although well intended paragraph. **Therefore, it is recommended to adopt a law, thoroughly describing powers of the Agency in the prevention of possible and in the resolution of existing conflicts of interests and corresponding obligations of public officials in this area.**
31. Point 2 bullet-point 11 requires from the Agency to “ensure implementation and functioning of the income and property reporting system of civil servants, verification of the accuracy of declarations, as well as timely response to corruption practices found in this process”. Same as in the previous paragraph, the area of monitoring assets of certain categories of public officials is also a traditional task for anti-corruption bodies. Additionally, it seems that the civil servants will have to report their assets. If it is meant that all civil servants in Uzbekistan will have to do it, the system of monitoring can become an unmanageable one due to a large number of incoming reports. Such solution is not very common. It has to be the top echelon of public officials – ministers, members of parliament, as well as all other officials with decision-making powers (such as heads of departments or units), etc., whose wealth should be monitored for corruption not low-level civil servants. **Therefore, it is recommended to adopt a law, thoroughly describing powers of the Agency in the collection of assets’ reports, their verifications, sanctioning of possible breaches and corresponding obligations of certain categories of public officials in this area. In order to detect misuse and close loopholes which might facilitate corruption, it would be important to require persons related to a public official up to the second or third degree to report on their assets and income.**<sup>23</sup>
32. The next bullet-point asks the Agency to “analyse the effectiveness of the anti-corruption control system in public procurement and the use of budgetary funds, loans of international organizations and foreign states, the sale of state assets, and to develop enhancement proposals”. The aim of this paragraph is to ensure effectiveness of public financial operations – public procurement, budgetary expenditure and sale of state assets - through enhancement of their internal anti-corruption controls. These operations are - most probably - already legally regulated with different laws and a decree cannot impose new or different obligations in those areas. In addition, it seems that the paragraph is based on the presumption that “anti-corruption control systems” already exist in those areas. In order to ensure useful implementation of the idea of this bullet-point, **it is recommended to adopt (a) law(s), thoroughly regulating introduction and assessment of corruption prevention mechanisms in the areas of public procurement, budgetary expenditure and sale of state assets, defining clearly procedures and powers of the Agency and obligations of responsible institutions in all three areas.**

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paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law.”

<sup>23</sup> See e.g. *op. cit.* footnote 16 par 22 (2018 Montenegro Opinion).

33. In accordance with Point 3 bullet-point 9, the Agency “provides, in a prescribed by law manner, the media with materials on corruption practices that outrage public opinion”. While engaging with media and public communication is important, it is unclear what is the procedure “prescribed by law” for communication, how the Agency would define “corruption practices that outrage public opinion” and whether it should limit its communication with media to such extraordinary cases. While public communication and engagement seem to be critical for the long-term success of the anti-corruption efforts and are also highlighted in the Jakarta Principles,<sup>24</sup> an obligation of the ACA to provide material to the media seems problematic. The Draft Decree should, at a minimum, add more clarity on what sort of practices the Agency should inform the media about and how information can be provided while, at the same time, safeguarding ongoing investigations and protecting confidential information.
34. According to Point 3 eighth bullet-point, the Agency “approves draft regulatory acts on the prevention and combating corruption”. Similarly, Point 4 bullet-point 2 states that “the Agency is authorized to “approve in the prescribed manner regulatory legal acts on matters in its competence”. The Agency established by a decree and with powers defined by the same decree is not in a legal position to interfere in any legislative procedure for draft regulatory acts of bodies, established and functioning by a law. In its currently designed position, the Agency can only issue non-binding opinions on draft regulatory acts on the prevention and combating corruption. **It is recommended to adopt a law, introducing the power of the Agency to approve draft regulatory acts on the prevention and combating corruption with all of its substantial and procedural elements.**

#### **RECOMMENDATION C.**

**In Points 2 and 3: to clearly define the mandate, powers and functions of the Agency, avoiding ambiguity and overbroad definitions. Efforts should be made to avoid the conflict with other provisions of the national legislation regulating the work of investigative bodies, courts, or other state bodies.**

## **5. POWERS OF THE AGENCY**

35. The ACA should be authorized to receive and inspect materials related to the use of budget funds, study the state of corruption, study criminal materials in a strict accordance with the legislation pursuant to Point 4.
36. Point’s 4 third bullet-point requires from the Agency to “inform the President of the Republic of Uzbekistan on results of the investigation on corruption crimes jeopardizing the foundations of public administration in socio-economic, socio-political development and security”. This text can be interpreted differently: either the Agency will report on results of their own corruption-crime investigations or on results of other state bodies in the same area. If it is the first possibility, the Agency would have to have corresponding investigative powers. According to bullet-point 7 of Point 4, the Agency is planned to

<sup>24</sup> *Op. cit.* footnote 14 (Jakarta Principles) “ACAs shall communicate and engage with the public regularly in order to ensure public confidence in its independence, fairness and effectiveness”.

conduct administrative investigations of corruption offenses, however, such powers cannot be given to the Agency by the virtue of the Decree. In addition, “corruption crimes” cannot be investigated through an administrative investigation but through a criminal one, which requires a completely different set of investigative powers. If the Agency is to have such investigative powers, it should be equipped with effective tools, for instance, apart from being able to request all necessary documentation, to order freezing of assets, seize or confiscate property or to request such actions from the responsible State authority. If the Agency is planned to report on results of investigations of other state bodies, it is the question why those bodies would not report on results of their investigations themselves. **Therefore, it is crucial to clarify what is the real meaning and intention of this bullet-point and regulate any form of investigative powers of the Agency by a law.** This is also necessary in light of bullet-points 5 and 6 of Point 4, according to which the Agency is empowered to “study criminal materials in a strict accordance with the legislation, including criminal procedure, to identify and reveal trends of systemic corruption” and to “transfer, following results of study and other measures, materials to law enforcement and other state bodies to respond in accordance with the law, including the initiation of criminal cases, in respect of persons signalling corruption crimes.”

37. The power to conduct administrative investigations of corruption offences is bestowed upon the ACA through Point 4 bullet-point 7. The Agency may conduct administrative investigation of other forms of corrupt or potentially corrupt practices and engage in preliminary inquiries of corruption offences but – being established by a decree – cannot have any law enforcement investigative powers. One way or another, any form of investigative powers for the Agency can only be introduced by a law. **It is recommended to thoroughly define substantial and procedural elements of the Agency’s investigative powers (a power to conduct an interview, a power to summon, a power to request documentation, etc.) and means for their effective application.**
38. According to the first bullet-point of point 4, the Agency has the power to “receive and inspect materials related to the use of budget funds, the implementation of state assets, public procurement, investment projects and state programs”. This is the power meant to enable the Agency to perform the tasks described in bullet-point 12 of Point 2. Two important elements are missing here. First, the Agency has to have the power not only to “receive and inspect” but also to “request” relevant materials on the use of financial resources. Second, the power of the Agency to collect and inspect documentation should not only be limited to documentation in the budgetary area. **Therefore, it is recommended to regulate by a law the power of the Agency to request, receive and inspect all the necessary documentation needed for fulfilment of its tasks.**

#### **RECOMMENDATION D.**

**In Point 4: to thoroughly define substantial and procedural elements of the Agency’s investigative powers (a power to conduct an interview, a power to summon, a power to request documentation, etc.) and means for their effective application as well as the power of the Agency to request, receive and inspect all the necessary documentation needed for fulfilment of its tasks.**

39. Bullet-point 3 of Point 4 empowers the Agency to “consider appeals of individuals and legal entities on corruption practices and take measures to restore violated rights and protect their legitimate interests”. The power to accept and work with corruption complaints of natural and legal persons is one of the most important powers of any anti-corruption body. Therefore, procedures for submitting the complaints, protecting whistle-blowers and investigating alleged corrupt practices should be very precise and clear. There is a question if the restoration of violated rights and protection of legitimate interests can be a task of the Agency. Namely, if the investigation conducted by the Agency will prove - with a required degree of probability - that there have been corrupt practices, the Agency will not be in position to make a final judgment on cases since this cannot be the role of the investigators. As the legal consequences - such as restoration of violated rights and protection of legitimate interests - of any wrongdoing can only occur after a final decision in a due process, which cannot be the power of the Agency, decision on and implementation of those consequences will have to be the power of other authorities, most probably courts. Therefore, **it is recommended that detailed procedures for submitting the complaints, protecting whistle-blowers and investigating alleged corrupt practices are regulated by a law. In the same way, responsible institutions should be empowered for introduction and implementation of legal consequences for proven corrupt practices.**

**RECOMMENDATION E.**

**In Point 4: Introduce detailed procedures for submitting the complaints, protecting whistle-blowers and investigating alleged corrupt practices.**

40. Pursuant to Point 4 bullet-point 8 the Agency is entitled to “make binding written instructions on execution to suspend or cancel decisions of executive authorities, economic management bodies and their officials if they show signs of corruption”. This is extremely broad and strong power which raises concerns with regard to its compatibility with the rule of law. In particular, with the principle of legal certainty as well as with the efficiency of the administrative system as a whole. . More precisely, the Agency would be in position to demand cancellation of decisions of not only public but also of private entities and their representatives. Since decision-making processes and corresponding appellate procedures are almost certainly already regulated by Uzbek laws, which most probably do not foresee such an external interference, there is a question if this power of the Agency should be so broad. **Therefore, it is recommended to reconsider the power of the Agency to demand cancellations of decisions, narrow it down to the most exposed areas and regulate all of its substantial and procedural elements by a law. The same concern is given with regard to Point 4 bullet point 9 which states that the agency should “contribute to government bodies, organizations and their officials the binding warnings on the inadmissibility of corruption practices, as well as provisions on taking measures to eliminate the causes and conditions conducive to corruption”.**
41. Finally, Point 5 bullet point 2 states that “the Agency requirements for the submission of documents, materials and other information, as well as conducting audits, inspections, allocation of specialists, elimination of corruption crimes, causes and conditions conducive to them, are mandatory for execution by state and economic management bodies, their officials and citizens.” Bullet-point 3 envisages that “the Agency employees, within their competence, have the right to freely visit state bodies



and organizations, law enforcement bodies, places of detention, custody, penitentiary institutions, to see documents for study and analysis the causes and conditions of systemic corruption.” These formulations are extremely broad and can affect a variety of fundamental rights, such as the right to liberty and security, right to privacy, protection of property, freedom of movement, protection of business secrets, etc. Such power can only be defined by a law, detailing all of its substantial and procedural elements. **Therefore, it is recommended that all powers of the Agency interfering with fundamental rights of natural and legal entities with all of their substantial and procedural elements are regulated by a law. The legislation should clearly regulate the grounds, procedure and timeframe of requesting relevant information from other bodies and institutions as well as their obligation to respond. Apart from procurement processes, the Agency should also be mandated to look into recruitment processes of public/civil servants and potential conflicts of interest.**

#### **RECOMMENDATION F.**

**In Points 4 and 5: To revise both Points in a law with a view to specifying the powers of the Agency to cancel executive and public decisions and to avoid disproportional interference with fundamental rights of natural and legal persons.**

## **6. LEADERSHIP OF THE AGENCY**

42. Point 1 of the Draft Decree envisages appointment and dismissal of the director of the Agency by the President of the Republic of Uzbekistan. Even if the Agency is accountable to the President or the legislator, it should be able to operate with functional independence, otherwise its effectiveness and credibility may be questioned. It is equally important that the legislation provides clear criteria and procedure for selection of other members. The regulatory framework in which the Agency operates should be provided by the law, while Agency itself should be allowed to adopt its internal regulations. **In line with the UN Convention against Corruption, to ensure independence and autonomy of the Agency, it is important to define the criteria and procedure of selection candidate of the position of the director, specify his/her mandate and the grounds for dismissal, as well as introduce guarantees of independence.**<sup>25</sup> Additionally, it is necessary to revise Point 8 of the Draft Decree, which empowers the President of the Republic to approve the framework regulating the activities of the Agency, including regulations on the Agency and rules of employees ethical conduct.

#### **RECOMMENDATION G.**

**In Point 1: to ensure independence and autonomy of the Agency, it is important to define in the law the criteria and procedure of selection candidate of the position of the director, specify his/her mandate and the grounds for dismissal, as well as introduce guarantees of independence.**

<sup>25</sup> See op. cit. footnote 2 (UN Convention against Corruption) Article 6 par 2.

## 7. FINANCIAL AUTONOMY, FINANCIAL AND HUMAN RESOURCES

43. According to Point 5 first bullet-point, the Agency “is staffed with highly qualified specialists in the field of justice, economics, finance, taxes, auditing, information and communication technologies and other specialties needed for the implementation of the assigned tasks”. While it is important to describe the necessary qualification of ACA staff and emphasize that the Agency requires highly qualified employees, this cannot be achieved without guaranteeing adequate financial and other material resources. This is required by Article 6 par 2 of the United Convention against Corruption<sup>26</sup> and by the Jakarta Principles<sup>27</sup>. Additionally, the EPAC Standards highlight further that “[i]ndependence must be understood as enabling the ACA to perform its functions without undue influence. Independence is a key element for establishing and safeguarding the overall credibility of the ACA. There are several aspects to independence, which include political independence, functional and operational independence, as well as financial independence.”<sup>28</sup> **In order to guarantee the independence and effective functioning of the Agency, it is important to provide for sufficient financial, material and human resources. Therefore, it is recommended to introduce relevant provisions recognizing an obligation to provide the Agency with necessary recourses.**
44. According to Point 8 and among other issues, the administration of the President of the Republic of Uzbekistan and the Agency will recruit the staff of the Agency and adopt its internal legal framework. Beyond any doubt, the Agency as a new body will require the assistance of the President’s administration but the crucial questions should exclusively be responded by the Agency itself: who will be hired, what will be the organisational structure of the Agency, what will be the content of the employees’ code of conduct, its internal structure and composition etc. The initiative of the President to establish such Agency is highly commendable, but if the Agency wants to establish and maintain independence as one of its most important features<sup>29</sup>, there cannot be an external body deciding on the mentioned issues. ACAs must have authority over its human resources according to the Jakarta Principles.<sup>30</sup> Only if the role of the President’s administration is meant purely to be ensuring administrative support to the Agency in

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<sup>26</sup> “Ibid. Each State Party shall grant the body or bodies referred to in para-graph 1 of this Part the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.”

<sup>27</sup> *Op. cit.* footnote 14 (Jakarta Principles) The key recommendations for anti-corruption agency (ACA) include:

- employees shall be remunerated at a level that would allow for the employment of sufficient number of qualified staff; (RENUMERATION)
- ACAs shall have sufficient financial resources to carry out their tasks, taking into account the country’s budgetary resources, population size and land area. ACAs shall be entitled to timely, planned, reliable and adequate resources for the gradual capacity development and improvement of the ACA’s operations and fulfillment of the ACA’s mandate (ADEQUATE AND RELIABLE RESOURCES);
- ACAs shall receive a budgetary allocation over which ACAs have full management and control without prejudice to the appropriate accounting standards and auditing requirements (FINANCIAL AUTONOMY).

<sup>28</sup> *Op. cit.* footnote 9 (Twenty Guiding Principles in the Fight Against Corruption) “Independence”; see also *op. cit.* footnote 16 par 28 (2018 OSCE/ODIHR Montenegro Opinion).

<sup>29</sup> *Op. cit.* footnote 2 (UN Convention against Corruption). As required Article 6 par 2: “Each State Party shall grant the body or bodies ...the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence”.

<sup>30</sup> *Op. cit.* footnote 14 (Jakarta Principles) AUTHORITY OVER HUMAN RESOURCES:ACAs shall have the power to recruit and dismiss their own staff according to internal clear and transparent procedures.

making the decisions mentioned, it would be in line with standard approaches and practices in the world while establishing new anti-corruption bodies.

45. In order to hire personnel and make other important personnel-related decisions within the Agency, clear rules have to exist on the procedures regulating these activities, encompassing also the necessary substantial requirements for them – for example, needed level of education, professional skills, expertise, integrity, etc. for the candidates for recruitment. These rules should also encourage the ACA to conduct its recruitments with the view to achieve gender balance in its personnel. Before starting the staffing these rules have to be developed and they have to be developed by a law, ensuring fulfilment of crucial conditions for the independence of the Agency and their stability. **Therefore, it is recommended that material and procedural rules on recruitment and promotion of the Agency’s personnel and on ethical requirements for its staff members are regulated by a law.**
46. Point 13 provides for the system of allocation of the ACA’s budget by the Ministry of Finance that is tasked with allocation of sufficient funds for the repair of the premises, purchase of equipment, etc. The Ministry of Finance is also responsible for the yearly allocation of the state budget for the ACA’s needs. The procedure for designing the budget should first of all involve ACA representatives. **Advisably, a system in which ACA makes a reasonable budgetary proposal, Ministry of Finance accepts it, and then the optimal budget is finalised and passed on to (the President or the Parliament) for approval should be considered.**

#### RECOMMENDATION H.

Throughout the Draft Decree: **to introduce relevant provisions recognizing an obligation to provide the Agency with necessary recourses material, procedural rules on recruitment and promotion of the Agency’s personnel and on ethical requirements for its staff members.**

## 8. COOPERATION AND COLLABORATION WITH OTHER BODIES AND ENTITIES

47. According to the Point 6 of the Draft Decree, the updated composition of the Republican interagency anti-corruption commission should be approved. It would be important to know the mandate of this interagency anti-corruption commission and how it relates to the mandate of the Agency. Point 8 mentions some activities of the commission and states that the Agency contributes to them but remains very general. **If there are several institutions with similar or overlapping mandates, this could create duplication of efforts, institutional loopholes and ultimately render the fight against corruption less effective. It is all the more important in these situations that bodies regularly share information and collaborate, which should also be highlighted in the Draft Decree. The Draft Decree should also be more specific on mutual aid between the institutions and ad hoc assistance arrangements to ensure collaboration leads to greater efficiency in anti-corruption work.** Point 7 bullet-point 1 states that ACA “shall provide effective organizational and methodological support to the activities of the Commission”. This creates confusion of how the

decisions of ACA will be taken. Whereas parts of Articles 2, 3, 4 suggest strong executive powers and a strong place in the institutional hierarchy among other state institutions, this clause, if fully capturing the nature of the envisioned Agency, demotes it to a supporting function. As a minimum, for being able to assess viability of this arrangement, the composition and the decision making procedure of this Commission should be known.

#### **RECOMMENDATION I.**

**In Points 6, 7 and 8: to avoid overlapping mandates and establish regular information-sharing amongst institutions that collaborate in the fight against corruption.**

48. Point 9 of the Draft Decree establishes collaboration with on a multitude of tasks with different governmental bodies. The ACA is tasked to introduce compliance mechanisms (in cooperation with the General Prosecutor's Office, the Ministry of Justice, the Agency for the Development of Civil Service under the President of the Republic of Uzbekistan and other stakeholders) in the period 2020-2021; develop proposals for the increase of accountability in public procurement procedures, publication of concluded contracts, introduction of competitive bidding and introduction of electronic tendering (in cooperation with the Ministry of Finance and the General Prosecutor's Office of the Republic of Uzbekistan) within three months; study the state of compliance with legislation in public procurement, management and use of state property (in cooperation with the Antimonopoly Committee, the Ministry of Finance, the Ministry of Economic Development and Poverty Reduction, the Ministry of Justice, the Central Bank and the Accounts Chamber of the Republic of Uzbekistan) within three months; and conduct remote monitoring of potential conflicts of interests in the area of public procurement (in cooperation with General Prosecutor's Office of the Republic of Uzbekistan) as a permanent task.
49. The tasks given to the Agency in Point 9, if properly implemented, will cause significant and positive anti-corruption developments in Uzbekistan in very important areas. It is questionable though if all institutions, which - according to Draft Decree - will have to cooperate with the Agency in reaching goals mentioned, have the legal basis, the necessary resources, knowledge and experience to do so. The Draft Decree also lacks minimal procedural rules for so many different tasks and collaborations of the Agency. Lastly, all deadlines for the fulfillment of these tasks are too short and unrealistic which will risk the effective implementation of the Draft Decree. **It is therefore recommended to adopt a law with material and procedural rules on achieving the goals mentioned in Point 9, containing a duty of other institutions to cooperate with the Agency and introducing realistic deadlines for the Agency's activities.**
50. According to Point 11, the Agency, in cooperation with the Ministry of Development of Information Technologies and Communications and the General Prosecutor's Office of the Republic of Uzbekistan has to introduce the electronic platform "E-Anticor.uz", for monitoring and evaluating the effectiveness of public authorities and administration in combating corruption, as well as state and other programs in this area; a special mobile app to inform the Agency about corruption; the Agency's access to information databases of public and private legal persons within three months. Similar to what has been stated above, these goals cannot be achieved in such short timeframe.

51. It is also unclear what would be the role of the General Prosecutor's Office of the Republic of Uzbekistan in introduction of electronic solutions, supporting functioning of the Agency since these solutions are not (only) intended to deal with criminal offences, which is the task of the prosecutors. The power of the Agency to access databases of all public and private legal persons raises the issue of proportionality: leaving aside the fact that such interference with – sometimes very sensitive - data of all organizations in a country cannot be introduced by a decree. This is especially true for private legal persons but also for public organizations, which are rarely obliged to provide access to all of their databases. **Therefore, it is recommended to adopt a law with material and procedural rules on achieving the goals mentioned in Point 11, containing a proportionate duty of carefully selected organizations to cooperate with the Agency and introducing realistic deadlines for the Agency's activities.**
52. In accordance with Point 12, the Agency, in cooperation with the Ministry of Justice, the General Prosecutor's Office of the Republic of Uzbekistan and other interested departments would have to develop a plan for improving the position of Uzbekistan in international anti-corruption ratings in two months and draft laws of the Republic of Uzbekistan “On the declaration of income and property of public servants”, “On combating corruption” and “On the anti-corruption assessment of legal acts and their projects”, all in three months.
53. This Point again sets very ambitious deadlines which the Agency might not be able to adhere to. A plan for improving the position of Uzbekistan in international anti-corruption ratings can be developed in two months, but three important laws should be drafted in a proper consultative manner. **It is recommended to significantly extend the deadline in Point 12.**
54. Points 1.1. and 3.4. address collaboration with civil society. A dialogue with civil society is important for well-functioning ACA, however, it needs to have clear legal bases and limitations. Some agencies practice so-called consultative councils, which contain representatives of civil society and serve as places for dialogue on the state of corruption in the country (e.g. Anti-corruption bureau in Latvia). **Nevertheless, this interaction should be clearly structured without running a risk to impose on civil society undue demands and obligations.**

#### **RECOMMENDATION J.**

**In Points 9, 11 and 12: to adopt a law with material and procedural rules on achieving the goals described in these Points, to introduce a duty of carefully selected organizations to cooperate with the Agency and to considerably extend the deadlines for the tasks set out in cooperation and collaboration with other bodies. Additionally, interaction with civil society should be clearly structured without running a risk to impose on civil society undue demands and obligations.**

## **9. INTERNAL AND EXTERNAL ACCOUNTABILITY**

55. According to the Point 3 of the Draft Decree “the Agency prepares annual National Report on Combating Corruption in the Republic of Uzbekistan and submits to the President of the Republic of Uzbekistan and the chambers of the Oliy Majlis of the Republic of Uzbekistan for consideration”. It should be clarified what this consideration

entails and to what degree the Oliy Majlis performs an oversight function. The Oliy Majlis should be able to discuss the report presented to it during a parliamentary debate. Additionally, the Jakarta Statement recommends that ACAs shall formally report at least annually on their activities to the public.<sup>31</sup> **Therefore, it is recommended to publish the ACAs reports, including online at the ACA’s website.**

56. Additionally, the Draft Decree seems to not have any provisions for internal<sup>32</sup> or external<sup>33</sup> accountability both of which are highlighted as key standards under the Jakarta Principles. **The ACA should have clear rules on monitoring and disciplinary mechanisms, to minimize and sanction any misconduct and abuse of power by the Agency or its personnel.**
57. **As mentioned above (see par 44 above), the ACA should be able to** adopt its own code of conduct to establish and maintain internal accountability. Additionally, accountability is also linked with transparency. In this respect, ACAs should lead by example and ensure that its officials and staff proactively disclose their assets, publicly report on the Agency’s activities and make it accessible to a broader public. **It is therefore recommended that all of the ACA’s final decisions are published on its website.**

#### RECOMMENDATION K.

**Throughout the Draft Decree: to develop clear rules and standard operating procedures on internal and external accountability, including monitoring and disciplinary mechanisms, to minimize and sanction any misconduct and abuse of power by the Agency or its personnel.**

## 10. FINAL COMMENTS

58. Point 16 of the Draft Decree is establishing an obligation for media to “organize publications and thematic programs to cover the goals and objectives of this Decree”. Although fighting corruption is very important task, it should not interfere with other rights of public and private entities. Media should be respected and a free media can add a lot to the governments’ efforts against corruption. If media are obliged to report on government efforts, this might have the opposite effect. It should be activities and achievements of anti-corruption bodies, which should motivate the media to assist them in the fight and not an upfront obligation to do so. **Therefore, it is recommended that the words “shall regularly organize publications and thematic programs in the media” in Article 16 are replaced by “shall be invited to organize publications and thematic programs”.**
59. One of the main recommendations of these Urgent Comments is to establish the ACA by formal primary legislation. While doing so, the legislator is reminded that OSCE

<sup>31</sup> *Op. cit.* footnote 14 (Jakarta Principles) PUBLIC REPORTING:ACAs shall formally report at least annually on their activities to the public.

<sup>32</sup> *Ibid.* INTERNAL ACCOUNTABILITY: ACAs shall develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms to minimize any misconduct and abuse of power by ACAs;

<sup>33</sup> *Ibid.* EXTERNAL ACCOUNTABILITY:ACAs shall strictly adhere to the rule of law and be accountable to mechanisms established to prevent any abuse of power.

commitments require legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document of 1991, par 18.1). Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.<sup>34</sup> To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process,<sup>35</sup> meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.<sup>36</sup> Discussions should be held in an inclusive manner and with input by persons or groups affected by the draft legislation. The legislation should take into account how legislation potentially affects women and men differently and include women in all stages of the process.<sup>37</sup> Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders’ understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also tends to improve the implementation of laws once adopted.

60. In light of the above, the Uzbek legislator is therefore encouraged to ensure that any legislation on the establishment of an ACA is subject to inclusive, extensive and effective consultations, according to the principles stated above, at all stages of the law-making process.

[END OF TEXT]

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<sup>34</sup> See e.g., Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, <<http://www.osce.org/odihr/183991>>.

<sup>35</sup> See e.g., OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), Section II, Sub-Section G on the Right to participate in public affairs, <<http://www.osce.org/odihr/119633>>.

<sup>36</sup> Ibid.

<sup>37</sup> OSCE/ODIHR Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation (2017) available at <https://www.osce.org/odihr/327836>.