**Needs assessment**

**Commission on Ethics of High-Ranking Officials of Armenia**

*This assessment was prepared by the GovRisk team based on the discussions with the Commissioners and other stakeholders during the country visit in Armenia, Yerevan, on 25-27 September 2017. The assessment also takes account of the SWOT analysis that the GovRisk team conducted with the Commissioners during the Yerevan visit. The assessment is a part of the project “Support to the Republic of Armenia in strengthening institutional and civil society capacity in the fight against corruption, 2017-18”, funded by the UK FCO.*

*The objective of this assessment is to provide a brief overview of the current gaps and needs in the Commission’s mandate and capacities. The assessment’s conclusions can also be taken into account during the transition to the new Corruption Prevention Commission. International donors and technical assistance projects can use this assessment to plan and implement their support programmes in Armenia in the anti-corruption area.*

The views expressed in this document are solely those of the authors and do not necessarily reflect the views of the Armenian authorities or the UK FCO.

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# **Introduction**

The Commission on Ethics of High-Ranking Officials of Armenia (CEHRO or Commission) was established in 2012 according to the Republic of Armenia (RA) Law on Public Service. The official mission of the Commission is to build citizen trust towards public institutions, implement good governance and ensure transparency and accountability of the high-ranking officials.

The CEHRO is composed of five members who are appointed by the RA President upon the nomination of the Chairperson of the National Assembly, Prime Minister, Chairperson of the Constitutional Court, Chairperson of the Cassation Court, General Prosecutor – each nominating one candidate for a 6-year term. The CEHRO elects a chairperson and one deputy chairperson from among its members.

In June 2017, Armenia’s parliament adopted a new Law on the Corruption Prevention Commission that is supposed to supersede the current Commission. The new law establishes additional guarantees of the Commission’s independence, provides it with stronger powers and dedicated secretariat, regulates its main activity procedures. The selection of the Commissioners under the new legislative provisions will start in April 2018. Until the new Commission is formed the current CEHRO continues its work.

The CEHRO main functions under the current provisions are:

(1) maintaining the register of declarations of high-ranking public officials and other persons, analysis and publication of declarations, determining the requirements with regard to filling in the declaration and the procedure for its submission;

(2) detecting conflicts of interests of high-ranking public officials and violations of the rules of ethics (except for the violations of the rules of ethics related to the exercise of the powers of the members of the Constitutional Court, judges, prosecutors, members of parliament), providing recommendations on the elimination and prevention of conflicts of interests and ethics violations;

(3) publishing information on violations of the rules of ethics detected, as well as the measures taken in their regard.

The new Corruption Prevention Commission will have the following key functions as described in the law:

(1) to follow compliance with the incompatibility requirements and other restrictions for high-ranking officials, as well as the ethics codes and regulations on conflict of interest for high-ranking officials, except for parliament deputies, judges and prosecutors;

(2) to regulate the process of declaration, and to inspect and analyse the declarations;

(3) to ensure the consistent application of the incompatibility requirements and other restrictions prescribed by law; and

(4) to participate in the development of anti-corruption policy.

# **Functional capacities**

## Legislative framework

* Current Commission is established according to the Public Service Law, which in itself is an important guarantee of the Commission’s independence. The new Law on the Corruption Prevention Commission confirms the special status of the Commission and affirms it as an autonomous state agency.
* The new Commission will no longer be dependent on the staff of the President of the Republic in terms of the organisational and logistical support; it will have a professional staff supporting its work. The new Commission will have a dedicated budget line in the state budget and will have the possibility to defend its budget before the Government and the Parliament.
* The new law also regulates in detail the procedure for open and competitive selection of the Commissioners by a panel consisting of members nominated by the entities that at least formally are not dependent on the governing coalition or the RA President. The new Law also provides guarantees of individual autonomy of the Commissioners and their secure tenure with no possibility of discretionary dismissal by political entities.
* Overall, the new Law on the Corruption Prevention Commission appears to be mostly in line with the best international practices and standards, e.g. the UN Convention against Corruption and Jakarta Principles for Anti-Corruption Agencies.
* Deficiencies that can be noted with regard to the institutional set-up of the Commission, its powers and proceedings according to the new Law:
	+ According to the Law on Public Service, the number of employees and the staff list of the Commission’s will be determined by the Government. This limits Commission’s autonomy. It would be better if the law directly set the maximum number of staff and the Commission could have full autonomy in deciding on the structure of its staff.
	+ Insufficient provisions on the civil society oversight of the Commission.
	+ Some limitations on the powers of the Commission.
	+ Short statute of limitations for reporting infringements (Art. 28).
	+ Inflexible time limits for the Commission’s infringement proceedings (Art. 32).
	+ Limited role of the Commission with regard to the protection of whistle-blowers (the Commission can only receive whistle-blower reports and forward them to law enforcement agencies, but has no mandate to protect the whistle-blowers).

## Asset declarations

* Armenia has a good basic system of asset and income declarations, which are submitted electronically and published on-line. The system, however, has a number of deficiencies and could be further improved.
* **Submission process**. Declarants who have no digital signature have to submit two declaration forms – electronically and on paper. The Commissioners then have to manually compare both forms and accept submission in the system of the electronic copy. It’s a time-consuming process that puts an unnecessary burden on the declarants and the Commissioners. Paper-based forms should be eliminated.

To allow this the e-signature process should be streamlined. This is not just an issue of asset declaration system, but of a broader e-governance capacity of the country where electronic identification/authentication becomes a bottleneck. A system of accessible digital signatures should be rolled out, complemented by other options (e.g. Bank-ID, Mobile-ID, ID-card).

Control of submission should be automated to enable effective detection of declarants who failed to submit declarations or who did not do it on time.

* **Types and scope of declarations**. The new amendments to the Public Service Law and the new Law on the Corruption Prevention Commission extended the scope of public officials that are supposed to submit asset declarations and also extended the definition of family members of the declarant officials. However, the new provisions still keep declarations of officials and their family members as separate documents, which multiplies the number of documents submitted and complicates their verification. It is advisable in the future to merge the declarations and oblige the declarant official to submit the declaration covering assets, income and liabilities of the official and his family members. One declaration form should also cover different declaration types depending on the time of submission (entry, in-service, termination of office).
* The declaration form should be improved to capture more data that is important for the verification, analysis of cash flows and detection of illicit enrichment.
* **Access to databases.** The Commission already has access to five external databases that can be used in the verification of asset declarations (registries of the population, legal entities, civil acts, vehicles, land cadastre). It can exchange electronic data with these registries/databases which is a key condition for the automated electronic verification of declarations. It lacks access to databases of: (i) the tax administration; (ii) credit bureaus; and (iii) Central Depositary of Securities. The last two should become accessible under the new law, but there is no technical capacity to implement such access as yet. There is also an issue of poor data quality of the external registries, which goes beyond the Commission’s capacity.
* **Bank data.** Neither the current provisions nor the new Law on the Commission allows it to access bank data, even based on a court authorisation (though the new regulations allow access to information held by credit bureaus). It can be viewed as a major deficiency that may affect Commission’s effectiveness in verifying asset declarations.
* **Publication of declarations.** Reportedly, there isa public perception that insufficient data is made public from the asset declarations. The new Commission will need to review the scope of the disclosure and decide on the data that would remain confidential. The Corruption Prevention Commission will take over the power of deciding on the scope of disclosure from the Government.

It is a good practice to disclose as much information as possible in view of the significant public interest of having access to such information.[[1]](#footnote-2) Such public interest outweighs other interests, including the privacy and personal data protection, with only very limited exceptions that can be justified by security considerations. For instance, the current arrangement is not to disclose any names of individuals mentioned in the declaration form; this significantly limits the possibility of public scrutiny. The same concerns names of banks where the declarant or his family members have accounts and aggregation of information about monetary assets of the declarant.

It is unclear from the publicly available information whether the declaration was submitted on time or not, as the declaration is not automatically published on-line immediately after submission. In response to media’s criticism to this and as part of Armenia’s commitments under the Open Government Partnership Initiative, the Commission started publishing the lists of officials who failed to submit their declarations which is a commendable development. It would be important to automate this in the future and to eliminate any gaps between the submission and on-line publication of the declaration (except for short technical delays due to the processing of data).

It is also important to improve public access to declarations through the Commission’s web-site. Functionalities of extended search and filtering data should be provided. Declarations should also be available in the machine-readable format, and the public should be able to download a dataset of declarations through an API. This would enable data analysis by the civil society, comparison of declarations data with other public data (e.g. e-procurement).

* **Verification**. The new legal provisions upgraded the Commission’s mandate from declaration analysis to a full-scale verification and clearly defined the offences in this regard. It’s an important task which, if implemented, would create a powerful deterrent against corruption in the public sector and facilitate detection of illicit enrichment. Ensuring Commission’s capacity to perform this task effectively should be the focus of the next steps during the transition and establishment of the new Commission. The Commission will have to align its regulations with the new law, update the declaration form, decide on the scope of the public disclosure and determine verification procedures.

It will also be necessary to develop IT tools (software) to carry out the automated verification through a system of automated risk-based verification rules (‘red flags’). While automated verification is an important tool to filter out the declarations, it is only the first step in the verification process. It is, therefore, important to carefully design the business process of the declarations verification, decide on the stages and actions to be taken. As the Commission will have support staff and since it is a collegiate body, it will also be necessary to delineate roles and decision-making powers.

One impediment for the effective verification of declarations could be the lack of universal asset and income disclosure in Armenia. Usual tax declarations are limited and are not submitted if the person’s sole source of income is one place of employment. To establish a baseline wealth situation of all nationals, it is advisable to consider some universal asset and income disclosure. Prohibiting cash transaction above a certain threshold for the public officials is an important first step in this regard.

* **Referral to the investigative agency**. The new law also established basic provisions on the referral of cases to the RA Prosecutor’s General Office (PGO) if the Commission detects elements of a crime (illicit enrichment or others). The Commission will have to develop its internal procedures and guidelines on such referral. It will also need to coordinate its approach with the PGO to have consistent application and to agree bilaterally on the cooperation and information exchange procedures.

The law uses some terms which are subject to wide interpretation (e.g. “leaves doubt”, “change of assets … reasonably justified”, “source of income is not lawful or credible”, “not sufficient to dispel the existing doubt”). While the formulation is based on international standards, it is important that the Commission provides a clear explanation on its understanding of these provisions.

* **Awareness raising and training**. An important function of the Commission with regard to the asset declaration system is to train declarants, issue recommendations and clarifications on the declaration process. The new law increases the scope of declarants, and it will put an additional burden on the Commission, especially during the high declaration period. It is important to develop additional capacity to deal with the high influx of inquiries during certain periods. Even with the support staff, the Commission may not be able to process all the requests. If this would be the case, the solution could be to outsource this work during the period of declaration submission campaign to cover at least simple inquiries that can be resolved through scripted advice by non-experts.

## Conflict of interest (CoI)

* While the Commission received additional powers with regard to the conflict of interest enforcement, relevant regulations as such remain outdated and not detailed enough. The law does not set clear procedures for managing CoI, includes a vague and incomplete definition of the CoI and narrow definition of private interests, and does not properly delineates CoI from other violations. These issues have to be addressed in the additional amendments in the law.
* The new legislative amendments also introduced new types of declarations – a declaration of interests and a declaration of related persons. Both of them will be submitted by high-ranking officials only. It would be advisable to merge different declarations into one e-form to streamline the submission process and simplify public access and scrutiny.
* The declaration of interests includes disclosure of contracts the official or his related persons have concluded with the public authorities. This is an essential tool to prevent and detect conflicts of interests. It is important to cover relevant information in detail in the declaration form and to ensure that it is made public to allow public scrutiny.

## Incompatibilities and other anti-corruption restrictions

* The new law extends the Commission’s powers with regard to enforcement of the incompatibilities and other anti-corruption restrictions, e.g. limitations on gifts. The Commission will be responsible for enforcing relevant restrictions with regard to all high-ranking officials, not only in the executive branch (but excluding MPs, judges, prosecutors). It will also review decisions on enforcement of these rules with regard to other officials taken by the local ethics commissions (see below).
* There are still loopholes in the definition of the incompatibility requirements and what are the allowed/prohibited activities: clear definition of the scope of allowed entrepreneurial activities is needed; how paid/non-paid work and membership in management/supervisory bodies should be treated, etc. It would be important to have a uniform understanding of the relevant provisions to ensure legal certainty; the Commission should be in charge of providing a uniform interpretation.
* Similar legislative gaps exist concerning other anti-corruption restrictions, e.g. regulation of gifts (definition, allowed sources, thresholds, official gifts, etc.).
* On all these issues, there is also need to raise awareness and train public official.

## Ethics commissions

* Current Law on Public Service provides that, in addition to the Ethics Commission for High-Ranking Officials, ethics commissions should be established in the central state authorities, Parliament, Central Bank, local self-government bodies, other public authorities. The local ethics commissions remain a weak spot in the system of enforcement of ethics and anti-corruption requirements. They usually consist of staff members who have additional duties and have limited capacity to perform their functions.
* Even though under the new law the Corruption Prevention Commission will be significantly strengthened, it will not be able to ensure effective enforcement without the assistance of local ethics officers/commissions. The Commission is responsible mainly for about 750 high-ranking officials, while other ethics commissions have to cover the remaining public service (roughly 30,000 officials). Therefore, strengthening the capacity of such ethics officers/commissions should be a priority. This is especially the case since the ethics commissions will be responsible for sanctioning violations of incompatibility requirements or other anti-corruption restrictions.
* The Corruption Prevention Commission will be able to review and revise decisions of the ethics commissions in such cases; it is also given powers to issue guidelines. The Commission has to develop detailed guidelines and recommendations on how to treat various situations of alleged incompatibilities and other anti-corruption restrictions; it should also closely follow the case law of the ethics commissions, summarise the enforcement practice and issue recommendations to steer the practice in the right direction of consistent and just application. The new Commission should have the necessary expert capacity to perform this important function.
* The powers of the Commission under the new legislative provisions may need to be further strengthened to ensure consistent and effective enforcement of the anti-corruption restrictions by ethics commissions. The position of the Commission could be strengthened, e.g. by assigning it a role in the appointment and dismissal of the ethics officers in individual agencies, coordination of their activities.
* It would also be important to coordinate Commission’s work with the enforcement mechanisms that are outside of its scope, namely with regard to judges, prosecutors and members of parliament.

## Policy development

* Until recently the Commission had a very limited role in the development of the anti-corruption policy. It was limited to taking part in the meetings of the Anti-Corruption Council. This was due to limited resources and also lack of mandate to deal with policy issues. The new law affords more powers to the Commission in this regard, namely to carry out expert analysis of the draft anti-corruption strategies and action plans (including sector-specific programmes) and present proposals to the competent bodies, develop corruption prevention programmes and submit them to the Government. These are important provisions that should strengthen anti-corruption policy-making process.
* Another gap in the system of anti-corruption policy planning in Armenia is the lack of agency-level integrity plans or anti-corruption programmes. Such plans/programmes should be based on the institutional corruption risk assessment. The Commission could have a key role in this area by defining a methodology for developing individual anti-corruption programmes and conducting a risk assessment on the institutional level, by reviewing compliance of individual agencies with the relevant requirements.

## Relations with the media and civil society

* Corruption remains high on the political agenda in Armenia. There is a strong public demand to see tangible results in the fight against corruption. The Commission, being the only specialised anti-corruption agency in Armenia, draws a lot of attention in this regard. It also results in exaggerated expectations the public has towards the Commission which go beyond its mandate. There is a wide spread lack of understanding of the Commission’s role, which is often perceived as a repressive institution, which it is not.
* In this context, the Commission will have to continue its awareness-raising and public education work. Until now, this work has been hampered by the lack of resources. Having no support staff, there is only so much the Commission can do in this regard. While the Commission has a Communications Strategy, its implementation is undermined by the lack of resources. The new Commission, once it is established, will have to significantly strengthen its work in this area. This could be achieved by allocating dedicated staff to deal with the media and public relations.
* As regards the civil society, Armenia has strong anti-corruption NGOs. The potential of cooperation with the civil society has not been fully used, also due to insufficient capacity inside the Commission. It is worth exploring new forms of such cooperation to institutionalise it and make more sustainable. For example, involving NGOs and civil society experts more actively in the Commission’s work (e.g. in the drafting of its regulations and guidelines in the area of anti-corruption).
* Media and civil society can also play an important role in uncovering violations of restrictions and requirements that the Commission (especially the new one) is supposed to enforce. To this end, the Commission could provide guidance as to the content of media and civil society notifications required for the Commission to start its proceedings and review specific allegation. The Commission could also train the investigative media and journalists, watchdog NGOs on how to analyse asset declarations and look into other possible violations of anti-corruption provisions, notably with regard to conflict of interest, incompatibilities, gift regulations.

# **Organisational capacity**

## Strategy

* In 2015, the Commission drew up its Strategy and Action Plan for 2016-2018. These are solid documents with clear activities and output indicators. However, due to the recent legislative changes, the Commission’s Strategy has to be updated. While the new Commission, once established, would need to draw up its new strategy and activity action plan, the current Commission could prepare an action plan to transition to the new agency and to implement the new legislative provisions.

## Staff and other resources

* The recently adopted Law on the Amendments to the Public Service Law guarantees institutional development of the Ethics Commission. The Government of Armenia approved the Commission’s proposal on the number of staff and the staffing list. The Commission was also allocated additional budget resources.
* The new Commission will be have 50 supporting staff. The Commission will have 12 staff members by mid-November; the recruitment will, however, have to be conducted once again after the new Commission is legally established after April 2018. While this complicates the situation, it allows the current Commission to have minimum support during the transition period.
* The Commission also plans to move to the new separate premises shortly. This is an important step to ensure the autonomy of the Commission. It should be ensured that the new premises are suitable for the Commission’s work, in particular that they allow receiving members of the public for them to file complaints and reports of corruption, provide facilities for building sustainable IT infrastructure of the Commission, providing access to communications network for the Commission to be able to connect to external government databases, etc.

## Web-site

* The Commission needs to update its web-site and make it more use-friendly. It is important to identify main target audiences of the web-site (e.g. citizens, civil society, media, whistle-blowers, public officials, international donors and organisations) and ensure that the web-site caters to their interests.

## IT capacity

* It is recommended to conduct a comprehensive IT gap analysis to identify the Commission’s needs in strengthening its IT capacities. The new Commission will have extended mandate in several areas, including in those where IT tools are important (e.g. asset declaration system, detection of conflict of interests, processing of whistle-blowers reports).
* To carry out an automated verification of declarations, the Commission will need to ensure interoperability and automated electronic exchange of data, support of the verification software and hardware to store and process increasing amount of data. It is also important to decide on how to ensure the sustainability of the asset declaration system, which is currently maintained by an outsourcing company. This may represent a risk, taking into account sensible data processed.
* The Commission will also need an electronic case management system to deal with investigations of infringements within its mandate.

# **Summary of recommendations**

1. Continue the anti-corruption legislation reform, in particular to:
	1. Bring definition and procedures of conflict of interest management, regulation of gifts and incompatibilities, other anti-corruption restrictions in line with the international standards and best practices and ensure their uniform application.
	2. Improve asset declaration system, in particular, by extending the scope of information declared, merging different types of asset and interest declarations into one form, eliminating paper-based submissions.
	3. Introduce mandatory integrity plans/anti-corruption programmes in individual public authorities that are based on the corruption risk assessment; define the role of the Corruption Prevention Commission in this regard (determining methodology, review of draft programmes, control of enforcement).
	4. Introduce background checks of candidates for high-ranking offices to prevent conflict of interests.
2. Adopt necessary bylaws to:
	1. Implement new legislative procedures with regard to verification of asset declarations, enforcement of anti-corruption restrictions (incompatibilities, conflict of interest, etc.), review of decisions of the ethics commissions, referral of cases to the law enforcement agencies.
	2. Define procedures and internal decision-making process within the new Commission and its staff.
3. Promote the civil society engagement and oversight over the Commission.
4. Design and implement comprehensive awareness-raising and public education campaigns to inform and clarify the new legislative provisions and powers of the Corruption Prevention Commission. Train the investigative media and journalists, watchdog NGOs on how to analyse asset declarations and look into other possible violations of anti-corruption provisions, and provide guidance on the notification of violation allegations to the Commission. Establish measurable indicators of such campaigns and education activities to evaluate their effectiveness.
5. Prepare and implement training strategy in the area of anti-corruption to target different groups of public officials.
6. Prepare and disseminate guidelines for the public officials and ethics commissions on the implementation of the new provisions on anti-corruption requirements and restrictions.
7. Ensure that the Corruption Prevention Commission has necessary capacity to research corruption-related issues or funds to commission such research on a regular basis.
8. Conclude MoU with the Prosecutor’s General Office and other agencies on the referral of cases detected by the Commission and exchange of data necessary for the verification of declarations and performance of other functions of the Commission.
9. Ensure cooperation with anti-corruption enforcement mechanisms for judges, prosecutors and members of parliament to ensure consistent application of legislative requirements.
10. Build organisational capacity of the Commission:
	1. Update Strategy and Action Plan of the CEHRO to ensure the transition to the new Corruption Prevention Commission and implementation of the new legislative amendments.
	2. Conduct training for the new staff to be recruited.
	3. Equip the Commission with the necessary IT and other resources in the new premises suitable for its functions; identify the Commission’s further needs in strengthening its IT capacities.
	4. Update web-site of the Commission and make it more user-friendly.
	5. Develop electronic case management system for the Commission to process its case files of infringement investigations within its mandate.
	6. Provide funding to outsource the processing of inquiries during asset declaration submission campaigns, if needed.
1. See, for example, decision of the European Court of Human Rights in the case of [Wypych v. Poland](http://hudoc.echr.coe.int/eng?i=001-71236) (25 October 2005, application no. 2428/05). [↑](#footnote-ref-2)