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PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

OPINION AND COMMENTS ON DRAFT CODE OF ETHICS FOR THE IMMOVABLE PROPERTY REGISTRATION OFFICE

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1 INTRODUCTION/EXECUTIVE SUMMARY

Within the PACA project Extension Workplan Expected Result 1, specifically ‘...institutions develop policies to address previous risk assessment findings and recommendations’, Ms Kathrine Kelm was commissioned to provide expertise on a Code of Conduct for the employees of the Immovable Property Registration Office (IPRO), as one policy that contributes to the implementation of the PACA Corruption Risk Assessment of the Property Registration System (CMU-PACA-09/2011). The expert was asked to provide in July 2012 an opinion on the issues that should be addressed by a Code of Conduct for Employees of the Immovable Property Office (IPRO), followed by a second Technical Paper in October 2012 with comments on a draft Code of Conduct to be provided by IPRO. However, PACA was provided with a draft Code already on 16 July 2012, and was informed that the Code is intended to be approved by the end of July 2012. The expert therefore provided these brief comments on the draft Code on 23 July 2012.

2 BACKGROUND

On 21 March 2012 Law No. 33 ‘On the Registration of Immovable Property’ was approved. The Law is a major component of both the development, content and implementation of the Crosscutting Strategy on “Reform in the Field of Property Rights (2012 – 2020)”, which was approved later on 27 June 2012. One of the priorities of the Strategy is to reform the IPRO into a more efficient and service-oriented institution. One component of IPRO reform is to introduce professional standards for selecting and certifying staff and to improve staff conduct through various measures such as the introduction of the Code of Ethics.¹ The term Code of Ethics is a direct translation from the Albanian “Kodi I Etikes” and will be used in this report, although in terms of general practice internationally the content of the draft submitted by IPRO is more in line with a Code of Conduct as it is prescriptive and contains sanctions.

The draft Code is divided into the following sections:

A descriptive introduction:

- Our Mission
- Principles that Guide Us
- Our Basic Values
- What ‘ethics and ethical’ means

Specific points:

- I. General Points
- II. Mission
- III. Reasons and Area of Operations

¹ For discussion on the nuances and differences between Codes of Ethics and Conduct, see Stapenhurst and Pelizzo, “Legislative Ethics and Codes of Conduct” World Bank Institute, 2004.

- IV. General Principles
 - o Correctness
 - o Independence
 - o Equal Treatment
 - o Confidentiality
 - o Honesty before the law and morality
 - o Rules of Conduct
 - o Dedication and Ability
 - o Client Relations
 - o Actions Outside of Work
 - o Conflict of Interest
 - o Application and Implementation of the Ethics rules
 - o Reference to relevant legislation (including disciplinary action and sanctions)

3 COMMENTS ON THE DRAFT

In general the draft Code of Ethics (Code) covers many of the main issues that should be addressed by such a Code. It is clear that IPRO have considered carefully what its staff should do and how they should act. The Code describes the obligation of IPRO staff to conduct their work on the basis of “values, integrity, impartiality, transparency, professionalism and efficiency”- in summary, the main values and principles that are standard for a Code of Ethics.

The main point that is missing in the draft Code, however, is reference to limits on political affiliations and activity. It is standard for staff of public institutions to be subject to limits and restrictions on (a) membership in a political party or at least the governing structure of a political party, and (b) participation in political activities or advocating openly for political parties. It is also normal for staff to be prohibited clearly from using their position for partisan purposes, and to be obliged to act and conduct work in a politically neutral manner.

The issue of the role of politics and political influence is delicate but relevant with regard to IPRO. Currently, many staff appointments are political or based on political considerations. However, the government has made steps to increase the professionalism and to introduce more independent oversight and functions within IPRO through the provisions in Law 33 that (a) appoint a governing board (even though the members are appointed by the Prime Minister and other ministers) and by introducing staff recruitment based on professional qualifications and certification. **The Code of Ethics should further advance the concepts of independence and professionalism by including restrictions on political activity and political influence in IPRO functions.**

Other points that should be strengthened or added are the following:

1. Mission Statement. In the Mission Statement it should be clear that the main function of IPRO is as a *client service-oriented* institution. IPRO Staff are there to provide efficient, reliable and trusted services to clients, both state and private.

2. Conflict of interest and declaration of Interests and Assets. The Code should explicitly prohibit staff from performing registration functions for their own property or that of friends and family; the registration function in that case should be handled by another staff member. While there is legislation to cover declaration of assets and interests, the Code should reiterate the need for directors at all levels to declare their assets, especially for immovable property, in conformity with the law. This is especially important in local offices where staff will likely own and perhaps even transact property within their district. In addition, in view of the fact that the provisions of the Asset Declaration Law do not apply to registrars and other staff who are not directors, the Code should also reiterate clearly the obligation of staff (under the Conflict of Interest Law) to declare interests on a case-by-case basis (i.e. where they are subject to a private interest that could affect the performance of their duty).
3. Acceptance of gifts or payments. The acceptance of gifts of payments is briefly covered/addressed in Section IX (Conflict of Interest). The expert believes that a separate section should be devoted to this issue, given its key importance. The Code should make clear that is prohibited for employees to accept offers of financial payment or gifts over thresholds as defined elsewhere. Moreover, there should be guidance on what the employee is to do when confronted with improper offers, for example: refuse the offer, try to identify who made the offer, obtain witnesses if possible, prepare a written statement with the details, report the attempt immediately and try to avoid contact with the person in the future.
4. Provision of information to other unauthorised parties. The Code should make clear that it is unlawful to provide any IPRO information to persons who are not authorised to receive it.
5. Reporting Requirements. The reporting requirements in Section IX should be more comprehensive. Staff should have a direct obligation to report any unlawful, criminal or unethical behavior (of other staff, other government officials, state employees, notaries, clients etc.) to the appropriate authority. The Code should make the reporting requirement obligatory and clear, and set out the appropriate level of reporting (to superiors, to the Board of Supervisors, to the anti-corruption authorities, etc).
6. Misuse of official position. The Code should prohibit IPRO registrars and other staff from using their position to influence others or to influence events. These provisions should cover misconduct in a wider sense, i.e. not just the acceptance of illicit payments or gifts, but also for example abusing power or trying to influence the actions of others.

Finally, once adopted, IPRO staff should indicate their understanding and agreement to follow the Code. The IPRO should include the professional ethics component in the general training program that all staff must attend and

conclude with each member signing a statement that they understand and agree to follow the points in the Code.