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## **PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)**

### **TECHNICAL PAPER**

#### **PROPOSED TEMPLATE FOR REPORTS OF THE DEPARTMENT FOR INTERNAL ADMINISTRATIVE CONTROL AND ANTI-CORRUPTION (DIACA)**

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December 2012**

**ECU-PACA-19/2012**

## Table of Contents

Introduction/Executive Summary .....	3
1. Reporting template .....	4
1.1 Summary .....	4
1.2 Scope and purpose of audit/assessment.....	4
1.3 Process map .....	5
1.4 Implementation of procedures/actions/decisions: .....	5
1.5 Other institutional findings .....	6
1.5 Conclusions and recommendations.....	7
2. Final comments .....	7

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## Introduction/Executive Summary

Activity 1.1 of the Workplan for the PACA extension period envisages the provision of 'an assessment (technical paper) of up to two existing assessment/s by DIACA of the vulnerability of institutions to corruption.' In October 2012 PACA provided an assessment of a DIACA Inspection report on the National Medicines Control Centre. The Technical Paper provided recommendations in the following areas:

- The content of the report (and by implication other inspection reports)
- Broader issues concerning what DIACA should focus upon when it conducts such audits
- Relating to the above, concerns over the current definition of DIACA's role and function.

Following the submission of the paper to DIACA, the project was requested to provide specific recommendations of templates/guidelines for DIACA reports, particularly reports that would assess institutional corruption vulnerabilities and risks. One of PACA's main recommendations in the October Technical Paper was for a reappraisal - or at least clarification - of DIACA's role. Specifically, the paper suggested that DIACA's focus should shift away from inspections designed to investigate or address alleged individual violations, and to expressly avoid investigation of complaints about decisions by state institutions, employment disputes or other issues unrelated to its core role. Instead, it was argued, DIACA should focus more on 'institutional audits' – meaning assessments of institutions in order to identify problems of corruption and malpractice within them, their vulnerability to corruption and malpractice, and institutional (i.e. systematic) solutions of such problems. Such an interpretation of DIACA's role is theoretically consistent with Regulation 94/2006 on its internal procedures – for example Article 4, which includes as a responsibility of DIACA 'examining and analysing the working practices and procedures with the public administration, concerning the identification, reducing and preventing the corruption opportunities, focusing primarily on sensitive fields'.

This Technical Paper therefore provides a guideline and template for conducting such assessments. The template proposed draws upon elements of the 2006 Manual on Suggested Guidelines and Procedures on the Operations of the Department for Internal Administrative Control and Anti-corruption (PC-TC (2006)11) provided by the Council of Europe PACA Impact project (see Annex 1), and on the Risk Assessment Methodology Guide (ECD/2/2011) provided by PACA in January 2011 (see Annex 2). The main assumptions underlying the template are the following:

- Audits by DIACA should be of institutions and institutional processes, rather than being investigations of alleged individual violations. Complaints to DIACA about corruption and malpractice should serve as pointers/indicators of which institutions or processes should be audited, rather than as just initiatives for DIACA to investigate and address alleged individual violations. If audits of individual alleged violations are to be conducted, the expert refers to Section 3 of the the 2006 Technical Paper mentioned above.
- Audit subjects should be chosen on clear criteria which include the frequency and gravity of complaints about the institution (see first bullet point above), but also on the basis of other criteria such as the size of the relevant budget and its breakdown, the likely vulnerability of a process or institution in terms of the extent and nature of

direct contact with citizens, general perceptions or media reports, etc. This paper does not provide an exhaustive methodology for audit selection, but elements of the institutional questionnaire provided in the January 2011 Technical Paper may be used together with the other criteria mentioned here (complaints/initiatives and perceptions/media reports).

- Audits should be conducted according to a methodology that is consistent but also flexible enough to accommodate differences between institutions.
- Audits should assess not only whether institutions and their staff act according to legal norms and procedures, but also
  - i) assess the norms and procedures themselves and make recommendations for changes in them where appropriate;
  - ii) identify other institutional vulnerabilities that give rise to or increase the risk of corruption, and make appropriate recommendations.
- Finally, audits should be able to identify other forms of malpractice, or other problems within institutions, that become apparent to auditors/inspectors and do not necessarily fall directly under the label of 'corruption' – such as incompetence, poor management, lack of staff morale etc.

## **1. Reporting template**

The following structure is proposed for institutional audit reports

### **1.1 Summary**

The summary of the audit report should contain a brief (maximum 2 pages) synopsis of the following:

- i) Which institution/s and/or process/es were audited.
- ii) The most important findings of the report
- iii) The main recommendations of the report

### **1.2 Scope and purpose of audit/assessment**

This section should define precisely:

- i) Which institution/s and which process/es were audited
- ii) For what reason/s the audit was conducted. Reasons might include
  - a. The receipt by DIACA of a large number of complaints, or complaints that were very serious, about the institution/process under scrutiny.
  - b. Information from other official sources that indicate problems within the institution, for example internal inspection reports, internal audit reports, external audit reports (High State Audit), legal cases that indicate that an audit of the institution would be desirable, etc,

- c. Information from other unofficial sources, such as media reports or other reports of non-governmental organisations etc.
- iii) When the audit was conducted precisely, and for which time period (i.e. the time period in which the audited activities/processes occurred)
- iv) What was the objective of the audit. The main two types of objective are
  - a. To identify/gauge which aspects of existing procedural requirements are violated, how seriously and how often.
  - b. To identify more broadly what are the conditions within the institution and process/es audited that facilitate corruption or make it more likely to occur.

### **1.3 Process map**

This section should describe the way the process/es that are under scrutiny are supposed to be conducted according to laws, rules and procedures in force. The process map should cover at least:

- i) What is the purpose of the procedure in general.
- ii) What are the stages of the procedure in terms of decisions or other processes.
- iii) Who (whether defined as individuals or units of institutions) is responsible or authorised at each stage and how.
- iv) What are the relevant requirements (e.g. documents required of citizens), timelines and deadlines relating to the procedure.
- v) What relevant appeal procedures against decisions exist.

The nature of the process map will vary considerably between different cases, and the list provided is therefore necessarily of a general nature. For example, an audit of licensing procedures, in which there is frequent face-to-face contact between ordinary citizens seeking a public service and officials responsible for providing it, will be based on a very different process map than an audit of the procurement process, in which public services are not provided and the key issues surround *inter alia* criteria for allocating budget resources and selecting private service providers.

### **1.4 Implementation of procedures/actions/decisions:**

This section will describe, in an analytical way, the findings of the audit. The section may be divided into three main sub-sections:

- i) An assessment of compliance with existing legal procedures and requirements.
- ii) Missing procedures or rules that are required by law, or are needed.

- iii) Procedures, rules or even provisions of relevant primary laws that are badly formulated or have negative consequences. In order to make such an assessment, the existing Law Drafting Manual and in particular the Annex to it provided by PACA on screening laws for corruption risks should be used (see Annexes 3-4). In addition, a common sense judgement about the quality of procedures/rules/legal provisions should be made based on a) whether there is a clear and expressed justification for them; and b) whether that justification is reasonable/well-founded. An example of a negative finding here might be where a procedure to obtain a permit (for example, an import license) is too complicated – for example, documents or permissions are required that are not justified on substantive grounds; another example would be where such a procedure is defined ambiguously so that it is not clear who is responsible for what.

The findings of this part of the audit should be presented analytically, in particular: stating how many times a particular type of violation occurred, with examples, rather than presenting all violations in details; and presenting general conclusions on missing or imperfect procedures/laws or imperfect with examples to support such conclusions.

### **1.5 Other institutional findings**

This section should present other findings of the audit. This section is of key importance, and goes beyond an analysis of procedures themselves to a broader assessment of the institutional environment in which such procedures are conducted. This section might identify, for example:

- i) Problems of institutional set-up that make procedures/rules difficult to follow (for example generally overlapping responsibilities). Such problems may sometimes overlap with 1.5.iii), but will be distinct in the sense that they are problems that affect not just the particular procedures/rules under scrutiny but the wider capacity of the institution to perform its functions.
- ii) More general problems which may undermine the capacity of public service to perform the duties or provide the services envisaged in the laws/rules/procedures under scrutiny – for example a general problem of understaffing, poor remuneration, poor training, recruitment based on criteria other than meritocratic (for example political and/or family affiliation), other factors that undermine staff morale or commitment, etc.
- iii) The presence of vested interests that operate in such a way as to block or undermine the implementation of policy – for example, business associations that strive to block licensing decisions that would result in increased competition in a particular market, or in extreme case the existence of organised groups that work systematically to undermine regulation in a sector, for example by producing counterfeit products or colluding to restrict competition.

In order to assess the institution/processes under scrutiny, the questionnaire provided as part of the PACA risk assessment methodology guide should be used to assess, as appropriate, issues related to the following areas:

- i) Organisational role
- ii) Budget (including procurement)

- iii) Human resources management
- iv) Training
- v) Procedures and decision-making processes
- vi) Record-keeping
- vii) Transparency
- viii) Access to Information
- ix) Ethics and integrity framework
- x) Accountability mechanisms
- xi) Internal notification of ethics breaches
- xii) Complaints mechanisms
- xiii) Disciplinary procedures and sanctions
- xiv) Vulnerable areas
- xv) Anti-corruption policies, codes of conduct, and ethical regulation

While all of the above aspects should be addressed, the nature of the institution/s and process/es under scrutiny will affect which of the aspects in the list above are most important - as already underlined in the PACA Risk Assessment Methodology Guide. Budget issues will be of key importance for a Transport Ministry that allocates large sums of money on major infrastructure projects, while ethics and integrity frameworks may be particularly important for an Education Ministry, and so on.

### **1.5 Conclusions and recommendations**

This section should provide conclusions on the following:

- i) Key problems identified by the audit
- ii) Good practices/well-functioning processes identified by the audit
- iii) Recommendations, which may be divided/classified according to the 15 areas listed above.

### **2. Final comments**

The expert wishes to make a final very important point about the structure/template proposed in this Technical Paper. This is that the template is not a precise blueprint that can be applied in exactly the same way for every institution or process audited. It must be tailored and adapted to the nature of the institution/s and processes under scrutiny, and in this sense those responsible for planning and conducting audits need to apply the template and methodology in a non-formalistic fashion.