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PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

TECHNICAL PAPER
OPINION ON THE DRAFT REGULATION ON THE FUNCTIONING OF THE
INTER-MINISTERIAL WORKING GROUP FOR PREPARATION, DRAFTING
AND FOLLOW-UP OF IMPLEMENTATION OF THE ANTI-CORRUPTION
STRATEGY

*Opinion of the Department of the Information Society and Action against Crime
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1 INTRODUCTION/EXECUTIVE SUMMARY

Under Activity 1.1.9 of the PACA Workplan, the project is expected to assist DIACA in improving the existing standing interagency coordination mechanism for the Anti-corruption Strategy and Action Plan. In a January 2011 assessment of the current coordination mechanism, which is regulated by the September 2010 Prime Ministerial Order on the Establishment of the Inter-ministerial Working Group for Monitoring of the Implementation of the Anti-corruption Strategy (IMWG), PACA recommended in particular that the Technical Secretariat of the IMWG (SIMWG) be properly established as a regularly convening body in order to fill the current gap in the capacity of the bodies responsible for coordination and monitoring of implementation of the Anti-corruption Strategy and Action Plan. This Technical Paper provides an assessment of the draft Regulation on the Functioning of the Inter-ministerial Working Group responsible for the preparation, drafting and follow-up of the implementation of the Anti-corruption Strategy (IMWG), provided to PACA by the Department of Internal Administrative Control and Anti-corruption in early April 2011.

The main findings and recommendations of this Technical Paper are the following:

- The Anti-corruption Action Plan/s is not mentioned anywhere in the draft Regulation, and it is essential for the Regulation to elaborate in detail the roles/duties of the bodies established by the September 2010 Prime Ministerial Order on the Inter-ministerial Working Group in coordinating, formulating and monitoring implementation of the Action Plan/s.
- The Regulation should clearly specify the inclusion, and procedure for inclusion, of independent institutions within the activities of the IMWG.
- The leadership and duties/functions of the Inter-sectoral Technical Working Group should be elaborated in more detail, especially regarding discussion of draft action plans and agreement on an integrated Action Plan for finalisation by the SIMWG and submission to the IMWG for approval.
- Most important, it is vital that the composition, functions/duties, division of responsibilities between members, and time commitment of members of the key SIMWG are clarified/elaborated; if this is not done, the expert believes that effective coordination and monitoring of Action Plan implementation will be practically impossible.

2 THE DRAFT REGULATION

The draft Regulation reiterates and elaborates on the September 2011 Prime Ministerial Order, especially in the following respects.

2.1 The Inter-ministerial Working Group (IMWG)

The draft Regulation defines the following functions/tasks of the IMWG

- To coordinate the process of drafting of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance according to the procedures stipulated in the “Manual on preparation of the National Strategy for Development and Integration, Sector and cross-cutting strategies”.
- To define the vision, priorities and strategic aims of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance
- To suggest to the Minister assigned as the Chair of the IMWG, at the end of the process of drafting of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance, the respective responsibilities for the full implementation or partial implementation of this strategy, through the setting up of *ad hoc* working groups or permanent functional structures in the line ministries.
- To monitor the work of the above-mentioned groups.
- To suggest to the chair of the IMWG the setting up of an Advisory Group and under the management of the technical secretariat and to organise the manner of consultation with this Group
- Each member of the IMWG submits the final draft of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance for approval by the Council of Ministers, in line with the standards presented in the Instruction on the Preparation of the National Strategy for Development and Integration (NSDI);
- After the approval of the inter-sector strategy, the Inter-ministerial working group will:
 - Ensure the implementation of the strategy;
 - Continue with the process of consultation with the Advisory Group;
 - Manage the process of monitoring and evaluation of the implementation of the strategy;
 - Organize according to the request a meeting for a consideration/review of the strategy

2.2 Inter-sectorial Technical Working Group (ISTWG)

The draft regulates the Inter-sectorial Technical Working Group – which PACA assumes to refer to Inter-ministerial Technical Working Group defined in the PM Order. The functions of the ISWG are defined as the following:

- To provide the necessary technical assistance that would serve for decision-making of the Inter Ministerial Working Group
- To ensure the observation of Instructions in the manual of preparation of the National Strategy for Development and Integration, Sector and cross-cutting strategies, during the discussion in the IMWG
- To negotiate with the consultative structures during the process of formulation of the sector strategies in order to ensure the compliance of their recommendations with the aims and objectives of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance

2.3 Secretariat of the Inter-ministerial Working Group (SIMWG)

The third body covered by the draft Regulation is the ‘Secretariat of the Inter-Ministerial Working Group’. The functions of this body are described in the draft Regulation as ‘to ensure logistical support, through assistance in organisation and running of activities of the IMWG and TWG during the whole process of preparation and drafting of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance.’ The draft reiterates the composition of the Secretariat described in the PM Order, i.e. representatives of DIACA, the Department for Strategies and Donor Coordination (DSDC) and the Cabinet of the Minister for Innovation and IT (who chairs the IMWG). Specifically, the draft lists the following duties of the Secretariat.

- Ensure the organisation of meetings of the IMWG and TWF and provide the necessary logistics and participate in their meetings to keep the minutes and transcribe the decisions and assigned duties.
- Prepare the notifications and materials for each meeting of the IMWG and TWG and ensure their timely distribution to all the members and guest participants of other structures of preparation and drafting of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance.
- Keep the correspondence through the IMWG, TWG, Advisory Group, participating ministries and Department of Coordination of Strategies and Coordination of Foreign Aid during the whole process of preparation and drafting of the Cross-cutting Strategy for the Prevention of, Fight against Corruption and Transparent Governance
- Serve as contact and coordination point of all the actions and activities of the IMWG and TWG.

3 COMMENTS ON THE DRAFT REGULATION

3.1 General: the role of the Action Plans

The draft Regulation is undoubtedly an important step towards establishing clearer procedures and institutional responsibilities for the bodies involved in the coordination of and monitoring implementation of anti-corruption policy i.e. the IMWG, ISWG and SIWG. PACA. However, a major gap in the draft Regulation appears to be a failure to even mention the Anti-corruption Action Plan/s, which is explicitly cited in the PM Order as the specific policy document/s to be prepared for implementation of the Anti-corruption Strategy (ACS).

The draft discusses in some detail preparation, approval and revision of the ACS itself. However, the ACS was approved already in 2008, and PACA is not aware of any steps to be taken to revise it before the end of its implementation period – making this part of the draft Regulation of limited relevance. For example, the draft states that the ISTWG and SIMWG will ‘prepare the cross-cutting strategy’, which is not possible. By contrast, the role of the IWG and the other two bodies in formulating, coordinating and monitoring implementation of the action plans to implement the ACS is of fundamental importance, and PACA believes that this role should be laid out explicitly and in detail in the draft.

3.2 The Inter-ministerial Working Group

In addition to the previous general comment, PACA has a few concerns regarding the part of the draft concerning the IMWG

- The draft does not reiterate the composition of the IMWG, in contrast to the part of the Regulation concerning the SIMWG, which repeats the relevant provisions of the PM Order. Consistency would be advisable between these provisions. More important, given the need for participation of independent institutions such as the High Inspectorate for the Declaration and Audit of Assets, General Prosecutor’s Office, High State Audit, and Public Procurement Agency/Commission. Following PACA’s previous recommendations in this regard, it would be desirable for the Regulation to include an explicit provision on the proposing of memoranda of understanding or other forms of written agreement with such institutions on their inclusion in the anti-corruption policy framework.
- The Regulation ‘recommends’ that the IMWG meets every two months following approval of the ACS, ‘or according to the request of the Chair’. This is less strict than the PM Order, which states that the IMWG will meet six times per year. While the frequency of meeting is not necessarily crucial, again consistency would be desirable.

3.3 The Inter-sectoral Technical Working Group

Concerning the ISTWG, the following comments are offered:

- As mentioned previously, there is a lack of conformity with the PM Order concerning the name of this body. PACA is of the opinion that 'Inter-sectoral' is a more appropriate name than 'Inter-ministerial', given the need to include in this Working Group also representatives of the independent institutions mentioned above. It may be advisable to clarify that the regulation is referring with this new name to the Inter-ministerial Technical Working Group envisaged by the PM Order.
- The draft Regulation mentions the Chair of the ISTWG, but does not define who will be the Chair. This is an issue of key importance, given PACA's previous concerns in the January Technical Paper that the ISTWG does not appear to have any chair/head. It is strongly recommended to define clearly who in practical terms will coordinate the work and chair meetings of the ISTWG, bearing in mind that this is likely to be work that is too technical and intensive for the Chair of the IMWG to carry out. It would seem logical for the ISTWG to be chaired by a member of the Secretariat (SIMWG), and the obvious candidate would be DIACA's representative in the SIMWG.
- Most important, the expert is of the opinion that the elaboration of the duties of the ISTWG is not sufficiently detailed, especially in relation to its role in agreeing the discussing, coordinating and agreeing content of the integrated action plan. For example, the Regulation should establish more clearly for example that the ISTWG will:
 - meet to discuss the draft action plans of individual line ministries and other institutions;
 - agree on proposals for cross-cutting items (items that are common to more than one institution) for submission to the IMWG for approval;
 - agree at a technical level on a proposal for an integrated Action Plan.
- In direct relation to the latter point, the role of the Secretariat (SIMWG) in these activities should also be specified further (see below).

3.4 The Secretariat of the Inter-ministerial Working Group

The functioning of the SIMWG is in practice the most important factor determining the effectiveness of coordination, formulation and monitoring implementation of anti-corruption policy. The expert holds serious concerns over the adequacy of the draft Regulation to establish a well-functioning Secretariat. Comments on this may be divided into four components.

3.4.1 Composition

The draft Regulation reiterates the PM Order concerning the composition of the SIMWG, namely that it will be composed of representatives of DIACA, the Department for Strategies and Donor Coordination (DSDC) and the Cabinet of the Minister for Innovation and IT (who chairs the IMWG). Statements made by representatives of DIACA and the IWG made at the PACA Steering Committee and in other fora have however created the impression that the Secretariat will also include a representative of the Ministry for Integration. It is vital that the composition of the SIMWG is clarified formally, due to the need for clear division of responsibilities as covered in Section 3.4.3.

In addition, if the inclusion of an extra member is possible, even if not envisaged by the PM Order, then the expert believes that more than one representative of DIACA should be included. PACA understands that in addition to the one DIACA staff member currently involved in anti-corruption policy coordination, another member of staff is also earmarked for assistance in this; if this is the case, it would make sense for that member of staff to also be included in the Secretariat.

3.4.2 Functions of the Secretariat

The functions/duties of the SIMWG listed in the draft Regulation are predominantly 'secretarial' – ensuring organisation of meetings, prepare and distribute materials for meetings, keep correspondence, and 'serve as contact and coordination point of all the actions and activities of the ISWG and TWG'. The expert believes that this elaboration of the functions/duties of the Secretariat is not sufficiently detailed, and that it is necessary to elaborate much more the substantial tasks of the Secretariat. An incomplete example of such elaboration might be the following:

- Preparation of the integrated Action Plan:
 - Function as the recipient of draft action plans and other communication from line ministries and other institutions relating to anti-corruption policy drafting and implementation
 - Conduct initial analysis of draft action plans, provide feedback to the institutions submitting them and secure necessary additional information
 - Draft integrated Action Plan for discussion by ISTWG and coordinate work of ISTWG to discuss and agree integrated Action Plan
 - Submit draft integrated Action Plan to the IWG for discussion and approval
- Monitoring implementation of the Action Plan:
 - Function as the recipient of draft six month and annual reports from line ministries and other institutions (as agreed with them) on implementation of the integrated Action Plan

- Review implementation reports, provide feedback to institutions submitting them and request missing information or supplementary information needed to verify implementation reports (for example statistics to verify statements made in draft implementation reports)
- Finalise integrated implementation reports, including analysis and commentary

3.4.3 Division of responsibilities between members

In order for the Secretariat to function practically, the expert believes that it is essential that the responsibilities of its individual members are clearly defined. For example, the main DIACA representative might be responsible as the repository of all working documents; communication with line ministries of feedback, requests for clarification or proposals; etc. The representative of the DSDC might logically be responsible for checking the overlap/complementarity between the anti-corruption action plans and the other government policy strategies that exist or are in the process of being drafted, as well as the adherence by the SIMWG, ISTWG and IMWG to the Manual on preparation of the National Strategy for Development and Integration, Sector and cross-cutting strategies, etc.

3.4.4 Commitment of time/frequency of meeting

It should be noted that the term ‘Secretariat’ invariably refers to a full-time staff. This is clearly not the case for the SIMWG. For this reason, the expert strongly believes that the Regulation should contain extra provisions on resource commitments to the Secretariat.

First, the expert believes it is essential that the Regulation defines somehow the actual physical/time commitment of the members of the Secretariat to the duties/responsibilities that they are to perform, including the elaboration of duties as mentioned in Section 3.4.2. In the case of the DIACA representative/s, the expert recommends that this is explicitly defined in terms of the percentage of work time devoted. This might be elaborated in terms of work commitment in particular periods – for example committing Secretariat members temporarily on a full-time basis at certain times of year when implementation reports are being processed.

Second, the work or meeting schedule of the Secretariat should also be elaborated to some extent. The expert recommends that this is done by defining a minimum meeting schedule, such as once per month, with a clear duty of the DIACA representative to provide an agenda on which the meeting will be based.

4 CONCLUSION

In conclusion, the most important argument of this Technical Paper is that there is a need to elaborate more clearly the functions and responsibilities of the different bodies established for coordination, formulation and monitoring of anti-corruption policy, and of the Action Plan/s in particular. Above all, the expert wishes to reiterate and stress the importance of the issues covered in Section 3. Unless the composition of the SIMWG, the responsibilities of the individual members and their time commitment are unambiguously defined by the Regulation, the expert believes that the Secretariat will simply not function, in which case effective coordination and monitoring of Action Plan implementation will be practically impossible.