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REGIONAL ANTI-CORRUPTION INITIATIVE

REGIONAL ACTIVITY: DEVELOPMENT OF NATIONAL METHODOLOGIES ON ANTI-CORRUPTION ASSESSMENT OF LAWS

**“Methodology on Assessment of Corruption Proofing
in Albania’s Legislation”**

by the Institute for Development, Research and Alternatives – IDRA

Assessment by Tilman Hoppe

Anti-corruption Expert, Dr. iur., LL.M.

The views expressed in this document are solely those of the author and do not necessarily reflect the views of the Regional Anti-Corruption Initiative or its member States, or of the Austrian Development Cooperation.

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1 Summary

The Methodology drafted by IDRA continues efforts started by a Council of Project in 2010. It comes at an opportune time, when the Albanian authorities are ready to **further strengthen** corruption proofing.

In terms of **corruption risks**, the IDRA-Methodology provides a quite comprehensive list. However, it is not fully clear what the **added value** of the IDRA-Methodology is. It is by and large **copied** verbatim from the Addendum to the Albanian Law Manual, which exists already since 2011. In addition, the Addendum would seem to be somewhat outdated: The Addendum was drafted using the Moldovan methodology of 2007. The Moldovan methodology was revised in 2013 and is currently under revision again. In light of corruption proofing experiences in at least **13 countries**, it is not clear, why the IDRA-Methodology is only based on a Moldovan methodology of 2007. It seems, as if there are more didactical and comprehensive lists for corruption risks, than the one used by the IDRA-Methodology. This also concerns the scarcity of examples illustrating the risks.

In terms of **procedure**, the IDRA-Methodology seems not to be yet a document which the Albanian authorities could use to establish an official **framework** for corruption proofing. The following are questions, which need to be answered through a **future** State methodology and/or legal acts:

- What will be the **regulatory** basis for corruption proofing?
- Which **state body**/ies will be in charge of corruption proofing?
- How will it **cooperate** with other authorities?
- Will corruption proofing also include **enacted** laws and **sub-statutory** laws?
- What is the exact **timing** of the corruption proofing?
- What are the standard contents of a corruption proofing **report** and the **timeline** for its drafting and dissemination?
- Will there be a mechanism for monitoring **compliance** with recommendations in the reports and will the reports be publicly available (online) to this end?

The **Regional Methodology** by RAI of 2014 contains a structured list on of corruption risks and procedural recommendations. As RAI stated already on earlier occasions, its **Regional Methodology** can be used by the Albanian authorities for drafting an official national methodology and regulation on corruption proofing, including copying text as they see fit. RAI is also ready to consider supporting the **translation** of its Methodology into Albanian.

2 Terms of Reference

In 2014, RAI/RCC developed and published the **Regional Methodology** on Anti-corruption Assessment of Laws (corruption proofing of legislation).¹ Following up on the Regional Methodology, RAI intends to facilitate the introduction or strengthening of anti-corruption assessment of laws in at least three beneficiary countries until end of 2018.

In 2010, the **Council of Europe** Project Against Corruption in Albania (PACA) amended the semi-official “Law Drafting Manual – A Guide to the Legislative Process in Albania” of 2006 (updated 2010) through an addendum on “Avoiding Corruption Risks in Draft Legislation”.² The PACA Project distributed the Addendum to the legal drafting departments in the ministries to be included in the Manual. To this end, the Addendum was designed as a small booklet to fit into a folder in the back of the Manual. As of 2013, it remained unclear though as to what extent the corruption proofing methodology was utilised in practice,³ because there were no official statistics or other information on this subject matter. The Albanian authorities confirm that until recently, the Addendum has been by and large unused in practice.

The Albanian authorities want to strengthen efforts in this regard. Part of these efforts is the Institute for Development, Research and Alternatives – IDRA, a local NGO. It has drafted the “**Methodology** on Assessment of Corruption Proofing in Albania’s Legislation” (2016) with financial support of the Kingdom of Netherlands. The Albanian authorities plan to implement corruption proofing taking into account this document. In this context, the Albanian Ministry of State on Local Issues has asked RAI to review the Methodology, in order to have a perspective for the **future State** methodology.

The **RAI** Secretariat met with representatives of **IDRA** in Tirana in May 2016 in order to understand and coordinate each others’ efforts.

¹ <http://rai-see.org/anti-corruption-assessment-of-laws/>.

² Regional Methodology, page 60.

³ PACA Project Final Narrative Report 30 June 2013, page 26, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/Final%20Report/PAC A%20Final%20Report.pdf>.

3 Assessment

3.1 Legal basis

So far, it is not clear if there will be a legal basis for corruption proofing in Albania. The IDRA-Methodology does not yet address this question. The Albanian authorities will have to decide on this issue (see Regional Methodology, Part 2, 2.1). For corruption proofing to work, other public entities need to cooperate with the corruption proofing entity and with civil society. A methodology or an internal decree cannot impose any legal obligations on other state entities. It is thus recommendable to regulate the basic aspects of corruption proofing in a **statutory law**: “A statutory provision ensures that all public stakeholders take part in the corruption proofing (including compliance reviews). It is also the appropriate legal level for obliging state bodies to respond to assessments submitted by civil society stakeholders.” (Regional Methodology, Part 2 no. 2.1).

3.2 Scope

The IDRA-Methodology (section 3.1) seems to aim only at **draft** laws. Furthermore, it is not fully clear, whether the review only aims at statutes, or also at **sub-statutory** law, such as directives or ordinances (on the central or local level). The Regional Methodology states in this context: “It is in fact the bylaws that often define procedures, fees and time limits and which also concretise statutory discretion. Many corruption schemes occur mostly or even only at the local level.” (Part 2 no. 1.2). However, IDRA representatives have confirmed towards RAI that it is intended to extend the activity to the local level. The following Principle 1 by the Regional Methodology should be recalled in this context: “Corruption proofing should be possible for all draft laws, **enacted** laws, laws of all regulatory levels (statutes and bylaws), laws of all regulatory sources (central, regional, local as well as parliamentary and executive including presidential acts) and of all sectors (administrative, criminal and private law). It should also include explanatory notes as they can play a decisive role in interpreting law.”

3.3 Timing

According to the IDRA-Methodology, corruption proofing will take place on the draft law “once it is completed by the drafters and prior to submission of the draft law for final adoption” (3.2). The timing is thus not fully clear – submission to the minister, to the Cabinet, or to Parliament for adoption? The Regional Methodology (Part 2, 1.4) contains recommendations in this regard. In particular, drafters of regulation should already be sensitised in this regard in order to minimise corruption risks from the very beginning.

3.4 Further procedure

The following procedural aspects of corruption proofing are not yet addressed in the IDRA-Methodology:

- The **entity** in charge of corruption proofing and of drafting/adopting the official methodology (Regional Methodology Part 2, no. 2.2, 2.3);
- **Cooperation** with other authorities (Regional Methodology Part 2, no. 2.5);
- The standard contents of a corruption proofing **report** (Regional Methodology Part 2, no. 1.7);
- A standardised **timeline** for issuing the “assessment reports, for draft laws in particular, so that the legislative process can continue. [...] A maximum time of 15 days should be sufficient in general.” (Regional Methodology Part 2, no. 1.7);
- The **dissemination** of the report to different stakeholders (Regional Methodology Part 2, no. 1.8);
- **Compliance**: a duty of the law-drafting or -adopting body to consider the recommendations, and a duty to provide compliance feedback to the State Commission, or to an external civil society reviewer (Regional Methodology Part 2, no. 1.9);
- Online **publicity** on corruption proofing, such as reports, compliance feedback, etc. (Regional Methodology Part 2, no. 1.10).

In terms of publicity, it should be noted that IDRA and the Albanian Ministry of State on Local Issues signed a cooperation agreement. Part of this agreement is a dedicated **website** on legislation. IDRA has reportedly created an online “Legislation Integrity Portal” where each report of the “proofed” legal acts is listed. The website will be publically available soon. It is planned that the transparency created by the website will help in monitoring to what extent recommendations have been implemented.

In terms of **standard contents** of a corruption proofing report, IDRA reportedly uses the following four categories:

- I. General Evaluation
- II. Justification of the Draft
- III. Substantive Evaluation of Corruption Risks
- IV. Conclusions

A **template** for the reports is shown below in the Annex.

3.5 Corruption risks

The chapter 4 “Detailed Analysis of Risks for Corruption in a Legal Act” of the IDRA-Methodology contains substance information on corruption risks. It is by and large **copied** from the current Addendum to the Law Manual, which in itself was drafted by a Council of Europe Project (see above). The Council of Europe draft again is by and large a taken from the Moldovan methodology of 2007. The IDRA-Methodology is also copied in parts from the main part of the Law Manual without mentioning this source, though.

There are some observations in this regard:

- The Moldovan methodology of 2007 is in itself **outdated**. It has been replaced by another methodology in 2013, and is currently being revised again, since the Moldovan authorities believe that there is still room for improvement.
- There are strong examples of corruption proofing beyond Moldova. In total, there are at least **13 countries** having such a methodology in place. The Regional Methodology is the result of analysing all these methodologies as of 2014, and the document has been adopted by representatives of 11 Balkan integrity institutions. The IDRA-Methodology takes note of “some success stories of application of the corruption proofing methodology in other countries” (page 7), without any further specifics, but then appears to rely solely on the (outdated) Moldovan methodology.
- The Moldovan methodology of 2007 appears sometimes to mix risks stemming from issues of language with risks of substance. It also does not seem ideal in terms of **didactics**, as the **structure** of risks appears to follow a rather complex logic. By contrast, the main division into “Ambiguity” and “Prevention Mechanisms” was found to be more understandable and compelling by representatives of 11 Balkan integrity institutions (Regional Methodology, Part 2, no. 4 and 5). Furthermore, there should be a clear distinction to **corrupted** legislation, i.e. illicit influences on the legislative process itself, as opposed to illicit acts facilitated by weak legislation itself (Regional Methodology, Part 2, 6 – Addendum).
- There are in total only 7 short **examples** used to illustrate the main categories of risks. By comparison, the Regional Methodology uses about 40 examples to illustrate not only the risks, but also to provide a suggested solution to minimise each risk. This seems to be a more didactical approach.
- The risk of a lack of “**judicial review**” and **sector-specific** risks (Regional Methodology, Part 2, 5.1.7 and 5.1.8) are missing in the IDRA-Methodology. Similar

is the case with prevention measures such as “separation of tasks” or “rotation” (5.5.1).

3.6 Overview on legislative process

This Assessment does not review chapter 2 in detail. However, one can say that chapter 2 of the IDRA-Methodology is an interesting addition. The chapter for sure can be an informative source of information for the reader. It seems advisable to point out to the reader in which regard the chapter can be beneficial for anybody applying corruption proofing (Identifying the right timing of corruption proofing? Understanding the interests and influences involved? Etc.).

3.7 Minor formal observations

The English title “Methodology on Assessment of Corruption Proofing in Albania’s Legislation” seems to contain duplicate words being semantically wrong. It should either be “Methodology on Assessment of Corruption Risks Proofing in Albania’s Legislation” or “Methodology on ~~Assessment~~ of Corruption Proofing in Albania’s Legislation”. It should also be noted that the English version of the Methodology lacks page numbering.

Annex: Template Report

IDRA reportedly uses the following template for its corruption proofing reports:

Informations about legal act	
Name of Expert	
Category of Act :	
Title of Act :	
Number of Act :	
Author of the draft :	
Date :	
File 1	
File 2	
File 3	
1. GENERAL EVALUATION	
Status	
Goal of the act	Notes:
2. JUSTIFICATION OF THE DRAFT	
a. Explanatory memorandum accompanying the draft	Notes:
b. Sufficiency of the reasoning contained in the explanatory memorandum	Notes:
c. Financial Justification	Notes:
3. SUBSTANTIVE EVALUATION OF CORRUPTION RISKS	
a. Promotion of interest/ benefits contrary to the public interest.	Notes:
b. Damages contrary to the public interest, which might be inflicted through enforcement of the act.	Notes:
c. Compatibility of the draft with the provisions of the national legislations	Notes:
d. Linguistic formulation of the draft	Notes:
e. Regulation of the activity of the public authorities	Notes:
f. Detailed analysis of the corruption risks	Notes:
LIST OF CORRUPTION RISKS	
	Notes:
	Notes: