

ANNEX II: TERMS OF REFERENCE

European Union CARDS Programme - Albania

MARKET SURVEILLANCE SYSTEM

SUPPORT TO THE MINISTRY OF ECONOMY

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1) BACKGROUND INFORMATION

Beneficiary country

Albania

Contracting Authority

European Community represented by the Commission of the European Communities for and on behalf of the Government of Albania

Relevant country background

After a difficult period of ten years of privatisation, structural reforms and the adoption of a market-oriented economy, Albania is starting to make substantial progress. In the framework of the Stabilisation and Association process (SAP) Albania is improving in macro-economic and fiscal sustainability with a substantial strengthening of customs and tax administrations. Privatisation is progressing, although not at the expected pace, as privatisation of both the Savings Bank and Albtelkom has been delayed. The rate of growth is presently estimated at 6.5%, and forecast at 7% for 2003 and 2004.

Despite pressure in early 2002, inflation is expected to stand within a 2-4% target for the full year. Yet GDP per capita stands at only 1,400 euros (among the lowest figures for Europe), with growth failing to impact on the poorest segments of the population. Official figures estimate unemployment at 15%. Moreover, the current severe energy crisis threatens to seriously undermine the economy. A perceived drift in the restructuring of the state energy company and in the adoption and implementation of a clear energy strategy by the government poses a longer-term threat.

In the area of trade liberalisation, Albania is implementing its WTO accession commitments and it has also completed the negotiations on bilateral free trade agreements with the neighbouring countries under the Stability Pact Memorandum of Understanding on trade liberalisation and facilitation.

The gradual establishment of a free trade area (FTA) in the Balkans and a future FTA with EU require a proper market surveillance system, based on an adequate legal and administrative framework and appropriate safety standards in accordance with EU requirements.

a) Current state of affairs in the relevant sector

The first Albanian attempt to implement a comprehensive law on consumer protection dates back to 6th February 1997. The Consumer Protection Act was drafted to satisfy the most essential needs of consumers and partly transposed a number of provisions of EU consumer law.

A new law on consumer protection - "On Consumer Protection" - has been drafted with the assistance of German Technical Cooperation Organisation (Deutsche Technische Zusammenarbeit, GTZ) under the Project "Promotion of Albanian Legal Practice". This law, approved by the Parliament on 11 September 2003, is broader in scope and content than the previous and represents an important step towards the approximation of Albanian legislation to EU standards. This CARDS project will focus on the implementation of this law, including the drafting of necessary secondary legislation.

The law introduces the concept of protection of the environment along with the protection of health, safety of life and consumers' economic interests. It determines the consumers' rights (in particular by recognizing the right to organize in associations), the relationships among consumers, producers, sellers, suppliers and service providers, as well as market control and standardisation structures. Consumers Associations are competent for informing and promoting awareness on consumers' rights. They handle and follow up consumer complaints and take legal actions to the court against procedures, sellers, suppliers and service providers in case of violations.

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The new law disposes for the sale of energy, water and telecommunication services. This is particularly important in the ongoing process of reorganization and privatization of public utilities characterised by a strong need for an organised and coordinated inspectorate.

The new law "On Consumer Protection" defines the competencies of the Consumer Protection Department, which is a separate body under the Ministry of Economy since August 2002. Structure and functioning have been recently approved by the Council of Ministers.

The Department is composed of two sectors: a Policy Formulation Sector and a Market Surveillance Sector. It counts one Head, two experts on market surveillance and one in policy formulation. It is responsible for the management, organisation and supervision of a Market Surveillance system. It coordinates and monitors the activity of state institutions with the aim of protecting health, environment, life and economic interests of consumers. It is also competent for preparing and monitoring the legal and regulatory acts related to consumer protection and market surveillance as well as surveying the enforcement of the law. It is entitled to take action before the courts against the violation of consumer rights and to coordinate the activities of the market control structures (food safety, services, security, health, communication, etc.).

At the moment there is no market surveillance to ensure coherence and efficiency in Albania. Many institutions are indeed responsible for different aspects of consumer issues: the Ministry of Food and Agriculture, Ministry of Health, Ministry of Energy and Industry, Ministry of Transports and Telecommunications, Ministry of Tourism and Territorial Adjustment and Ministry of Finance.

The Consumer Protection Department does not yet possess the competences and the powers required to ensure the establishment and implementation a full-fledged market surveillance system in Albania. Its resources are too limited to ensure a successful implementation of the law. The skills and administrative capacities of the Department need to be strengthened.

The wide dispersion of responsibilities and the lack of any overall co-ordination mechanism between state bodies are factors which contribute to confusion, conflicts of competence and to inefficiency. The existence of numerous control organs does not prevent the Albanian market from remaining submerged in products that do not conform to standards, are counterfeits, are dangerous, or are not accompanied by certificates attesting their quality or with the necessary instructions for use. An institutionalised coordination between the different Ministries and State bodies is thus necessary.

The implementation of a coherent market surveillance system clearly needs a comprehensive and coherent legal and institutional framework.

The weak enforcement of existing legislation is due finally to the lack of public awareness of its existence. Technical assistance is needed in enforcement issues. The new law recognizes the rights and advocacy role of the consumer Associations, and the Albanian Consumer Association has demonstrated its commitment to the work of protecting the rights and interests of Albanian consumers. Nevertheless the organisation has found itself financial difficulties undermining its ability to act as a credible independent consumer organisation. The Association also needs to develop and improve its internal management structures.

Related programmes and other donor activities

This is the first time EC provides Albania with assistance specifically in the field of market surveillance. The project is related to all other EC interventions for the support the economic reform in Albania, namely: 2001 CARDS Standards and Certification, 2002 CARDS Competition and State Aids, 2002 Trade Regulation and Promotion and CARDS 2003 Metrology.

German Technical Cooperation Organisation (Deutsche Technische Zusammenarbeit, GTZ) assisted the Department of Consumer Protection for the drafting of the law "On Consumer Protection". Under the "Study and expert fund", further short-term assistance – mainly training- has been provided to the Albanian Consumer Association.

Terms of reference

2) CONTRACT OBJECTIVES & EXPECTED RESULTS

Overall objectives

The wider objectives of the project are the protection of consumers and the promotion and liberalisation of trade.

Specific objectives

Its specific objective is the establishment and development of a market surveillance system. The project will help Albania to:

- (1) Select and implement an adequate a market surveillance system according to EC requirements;
- (2) Strengthen the management and institutional capacities of the Consumer Protection Department;
- (3) Build the capacities of the Albanian Consumer Association and other state institutions on market surveillance and for an information exchange system;
- (4) Increase public awareness on consumer protection and the benefits of a market surveillance system;

Results to be achieved by the Consultant

The expected results of this project are:

- (1) Establishment and gradual implementation of a market surveillance system;
- (2) Fully operational Consumer Protection Department;
- (3) Staff of the Consumer Protection Department trained in market surveillance issues and information exchange;
- (4) Strengthened capacities of the Albanian Consumer Association and other, related institutions;
- (5) Increased cooperation between all actors involved in market surveillance consumer protection;
- (6) Increased public awareness of consumer protection and the benefits of market surveillance;
- (7) Albania prepared for a future participation in a Rapid Alert Information Exchange system.

3) ASSUMPTIONS & RISKS

Assumptions underlying the project intervention

It is assumed that the Government remains committed to the reform and the implementation of a Market Surveillance System, compliant with the *acquis communautaire*, and that the Consumer Protection Department provides adequate support for carrying out its tasks in establishing and developing a system of market surveillance.

It is also assumed that the Consumer Protection Department, Inspectorates and Albanian Consumer Association are fully committed to and available for project activities.

Terms of reference

The business community must remain committed to increasing the quality and safety of products.

Risks

Risks underlining the projects are as follow:

- Continuous confusion of responsibilities and lack of coordination between the various actors involved in market surveillance;
- The Ministry of Economy is insufficiently resourced to ensure project proper coordination.

4) SCOPE OF THE WORK

4.1. General

4.1.1. *Project description*

The purpose of this project is to establish and develop a market surveillance system in Albania.

The project will provide technical assistance for the selection of a model of a market surveillance system according to EC norms. This includes assistance to the drafting of a national policy for market surveillance and legal assistance for the drafting of necessary by-laws on the basis of the law passed with the help of GTZ (see above).

The project will also provide capacity building for the staff of the Consumer Protection Department, Consumers Association and other state institutions to ensure consumer protection and advocacy.

In pursuing these objectives and the activities outlined below, the Consultant will work in close collaboration with the project partner and other target groups and will liaise with a large number of stakeholders including the Ministry of Economy, line ministries, all public institutions affected by legislative changes, industry organisations and other donors.

The gradual implementation of a market surveillance system implies also preparing Albania for a future participation in a Rapid Alert Information Exchange System. Therefore this project will be complemented by a separate tender, which will procure specific software for the preparation of Albania to its future participation in a Rapid Alert Exchange System.

4.1.2. *Geographical area to be covered*

Albania

4.1.3. *Target groups*

The project partner is the Department of Consumer Protection at the Ministry of Economy.

Target groups are institutions involved in consumer protection, intermediate bodies, implementing agencies, consumer associations and civil society.

4.2. Specific activities

The project results will be carried out through a combination of training, technical assistance and awareness campaign.

This CARDS project should use participatory techniques as widely as possible and the experts should work closely together with the beneficiaries, target groups and other stakeholders.

Terms of reference

Inception phase

During the first three months of the project (Inception phase), the Consultant will carry out at least the following activities:

- Establishment of the project office. It is anticipated that the project will be located near the Consumer Protection Department and at the premises of the Project Partner inside the Ministry of Economy building;
- Recruitment of a key local support person;
- Meetings with all relevant institutions to ensure their awareness, commitment and participation to the project;

Performance of a training needs analysis and establishment of training schedule;

In consultation with the beneficiary and other stakeholders, draw up a project action plan, including training, with a timetable for project implementation, encompassing all project components and activities, an input schedule and a logical framework.

4.2.1. Implementation phase

The Contracting Authority envisages the following project activities. However, bidders may like to expand upon and adapt these component/activities in their offers in ways they think may best meet the project objectives.

(1) Technical assistance

- To assess Albanian needs and priorities in order to select an adequate model of market surveillance, including the drafting of a national policy for market surveillance;
- For the completion of the legislative framework (necessary by-laws) and conduct of surveys on the degree of enforcement of the laws.

(2) Capacity building

- To assess needs and priorities of the staff of the Consumer Protection Department, other Ministries, State bodies/inspectorates ('market control structure') and the Albanian Consumer Association;
- Delivery of training activities targeting the staff of the Consumer Protection Department, including for future participation to the Rapid Alert Exchange System;
- Delivery of training activities targeting the Albanian Consumer Association and other market control structures;

Study tours may also be considered.

Public awareness

- Provide assistance for an awareness-raising campaign to highlight legislative changes and the benefits of market surveillance;

In organizing these activities the mass media should be a key partner.

Terms of reference

- Drafting, printing and publication of adequate supporting material for each workshop. The Consultant shall prepare this material together with short-term information and communication experts and project partners;

The Consultant should, in close association with the Consumer Protection Department, produce such material with the help of modern media technology. The Consultant could, also in close association with the Consumer Protection Department, annually invite the media to specific briefings on the premises of the Consumer Protection Department.

4.3. Project management

4.3.1. Responsible body

The Contracting Authority will nominate a Project Manager who is its contact person with the Contractor (ref. article of 8 of the contract).

4.3.2. Management structure

The Consultant will be responsible for the detailed execution of the programme under the overall direction of the Project Manager of the Contracting Authority. In particular it will ensure the completion of planning and preparation, engage and supervise key long and medium term experts and short-term experts required for the programme. It will manage the individual components of the project according to specified budgetary and other targets. The Ministry of Economy will appoint a project counterpart, most likely from the Department of the Consumer Protection.

The Consultant will report to the Contracting Authority and to the Steering Committee that will be established for the project. Ideally the Steering Committee would represent members from the following bodies:

- Deputy Minister of Economy;
- The Ministry of European Integration;
- The Contracting Authority;
- The representative of the Department of the Consumer Protection;
- The representative of the Albanian Consumer Association;
- Representative(s) of the private sector and agencies, such as the Tirana Chamber of Commerce, the Union of Chambers of Commerce.

The Deputy Minister of Economy will act as chair of the Steering Group.

The Steering Group will meet every four months. Its main functions will be:

- To assess project progress;
- Discuss jointly any critical points or bottlenecks in further project implementation;
- Propose and discuss remedied actions to be taken to tackle problems, and to discuss such issues as timing, cost or project content;
- Discuss and evaluate the Consultant's Inception, Interim and Final Reports.

The Consultant will prepare both the agenda and the minutes of the Steering Group meetings and will distribute documentation to all its members. The Consultant will keep the minutes filed as project documentation.

Terms of reference

4.2.3. Facilities to be provided by the Contracting Authority and/or other parties

The Ministry of Economy will provide facilities for the Consultant at the Ministry.

5) LOGISTICS AND TIMING

5.1. Location

The project location will be the premises of the Ministry of Economy, Department of Consumer Protection, Tirana.

5.2. Commencement date & Period of execution

The intended commencement date is 5 August 2004 and the period of execution of the contract will be 24 months from this date. Please refer to Articles 4 and 5 of the Special Conditions for the actual commencement date and period of execution.

6) REQUIREMENTS

6.1 Personnel

6.1.1. Key experts

All experts who have a crucial role to play in implementing the contract are referred to as key experts. The profiles of the key experts for this contract are as follows:

Key expert 1: Team Leader (full time)

The team leader will be engaged for the full duration of the project. The team leader will be responsible for supervising the project. The tasks of the team leader will consist of:

- Overall supervision of the project management and coordination of all activities;
- Administrative management of the project;
 - Permanent contact with the national Project counterpart;
 - Coordination of the different components of the project and experts involved;
 - Liaison with EC Project Manager;
 - Liaison with other donors.

Qualifications and skills

- University degree in law or equivalent;
- Capacity to manage a team composed of international and local specialists;
 - Capacity to supervise and co-ordinate all technical aspects of a contract;
 - Capacity to ensure good client communication;
 - Capacity to organise and oversee administrative and logistical support;
 - Excellent project management capacities;

Terms of reference

Strong communication skills;

Strong skills in report writing;

Fluent English.

General professional experience

The Team Leader should be an expert in market surveillance issues (with at least 10 years relevant experience);

Past experience in similar EC funded projects, of which at least 2 years as Team Leader position.

Specific professional experience

- Experience of working with consumer protection agencies in transition economies an asset.

Key expert 2: Senior legal expert (300 working days)

Qualifications and skills

- University Degree in Law or equivalent;
- Strong skills in report writing;
- Ability to supervise a team of short-term experts;
- Fluent English.

General professional experience

- At least 10 years of recent experience with consumer protection departments in EU Member States;
- Involvement in projects with large components on training in the field is an asset.

Specific professional experience

- At least 5 years of experience in implementing market surveillance systems, preferably in accession and/or Balkans countries, including drafting guidelines and secondary legislation in the field of market surveillance, preferably in accession and/or Balkans countries.

6.1.2 Other experts

In addition to the key experts, the Consultant shall select and hire foreign and local short-term experts (ad hoc) for a total of **250 working days**. Short-term experts could cover areas such as

- Training field of market surveillance and consumer protection, including exchange information, alert notification and mechanisms to carry on such action;
- Drafting of secondary laws in the field of market surveillance;
- Information and communication.

Terms of reference

CVs for experts other than the key experts are not examined prior to the signature of the contract. They should not have been included in tenders.

The Consultant shall select and hire other experts as required according to the profiles identified in these Terms of Reference. These profiles must indicate whether they are to be regarded as long-term/short-term, international/local and senior/junior so that it is clear which fee rate in the budget breakdown will apply to each profile. For the purposes of this contract, international experts are considered to be those whose permanent residence is outside the beneficiary country while local experts are considered to be those whose permanent residence is in the beneficiary country.

The Consultant should pay attention to the need to ensure the active participation of local professional skills where available, and a suitable mix of international and local staff in the project teams. All experts must be independent and free from conflicts of interest in the responsibilities accorded to them.

The selection procedures used by the Consultant to select these other experts shall be transparent, and shall be based on pre-defined criteria, including professional qualifications, language skills and work experience. The findings of the selection panel shall be recorded. The selection of experts shall be subject to approval by the Contracting Department.

Note that civil servants and other staff of the public administration of the beneficiary country cannot be recruited as experts.

6.1.3. Support staff & backstopping

Backstopping costs are considered to be included in the fee rates.

The costs of support staff must be included in the fee rates of the experts.

6.2. Office accommodation

Office accommodation of a reasonable standard and of approximately 10 square metres for each long term key expert working on the contract is to be provided by the Ministry of Economy.

Local support staff:

The Contractor shall select and hire local support staff, including sufficient interpreter/translation capacity, as required to allow professional staff to concentrate on their core tasks. The costs of support staff must be included in the fee rates of the experts.

6.3. Facilities to be provided by the Consultant

The Consultant shall ensure that experts are adequately supported and equipped. In particular it shall ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. It must also transfer funds as necessary to support its activities under the contract and to ensure that its employees are paid regularly and in a timely fashion.

If the Consultant is a consortium, the arrangements should allow for the maximum flexibility in project implementation. Arrangements offering each consortium partner a fixed percentage of the work to be undertaken under the contract should be avoided.

6.4. Equipment

No equipment is to be purchased on behalf of the Contracting Authority/Beneficiary Institution as part of this service contract or transferred to the Contracting Authority/Beneficiary Institution at the end of this contract. Any equipment related to this contract which is to be acquired by the beneficiary country must be purchased by means of a separate supply tender procedure.

Terms of reference

6.5. Incidental expenditure

The Provision for incidental expenditure covers the eligible incidental expenditure incurred under this contract. It cannot be used for costs which should be covered by the Consultant as part of its fee rates, as defined above. Its use is governed by the provisions in the General Conditions and the notes in Annex V of the contract. It covers:

- Travel costs and subsistence allowances for missions to be undertaken as part of this contract from the base of operations in the beneficiary country;
- Study tour, training;
- Translation and interpretation costs in the beneficiary country and during the study visits;
- Awareness campaign;
- Publication.

The Provision for incidental expenditure for this contract is EUR 120,000. This amount must be included **without modification** in the Budget breakdown.

Any subsistence allowances to be paid for missions undertaken as part of this contract from the base of operations in the beneficiary country must not exceed the per diem rates published on the Web site http://europa.eu.int/comm/europeaid/index_en.htm at the start of each such mission.]

6.6. Project Budget

The total project implementation is EUR 1,000,000

7. REPORTS

7.1. Reporting requirements

Please refer to Article 26 of the General Conditions. Interim progress reports must be prepared every six months during the period of execution of the contract. They must be accompanied by a corresponding invoice.

There must be a final progress report and final invoice at the end of the period of execution. The draft final progress report must be submitted at least one month before the end of the period of execution of the contract. Note that these interim and final progress reports are additional to any required in Section 0 of these Terms of Reference.

In addition, an updated financial report must be submitted with each of the above progress reports. The updated financial report must contain details of the time inputs of the experts and of the incidental expenditure. The final progress report must be accompanied by the final invoice and an audit certificate (as defined in Article 30 of the General Conditions and in accordance with the template in Annex VI of the contract) confirming the final certified value of the contract.]

An Inception Report must be submitted at the latest 4 months after the signature of the contract (so here one inception report per component). The Inception Report will:

- Define clearly the aims and objectives of technical assistance;
- Set out a detailed work plan and time schedule for the project duration, and contain an overall plan for action for the whole project duration, as set in Section 4.2.1 above.

Terms of reference

The inception report will be submitted to the Steering Committee and subsequently approved by the Project Manager if satisfactory.

Interim Reports must be prepared every four months during the period of execution of the contract. They must respect any format suggested by the Project Manager.

These reports should in any case include:

- A comparison of achievements against planned activities as well as overall progress against the initial timetable, as set out in the Inception Report;
- A summary of the financial status of the implementation of the project, including a detailed description of resources utilised against activities undertaken;
- A review of problems encountered during implementation of project activities and the corrective measures taken or proposed;
- A detailed work plan for the following period and any interim findings or preliminary conclusions.

A corresponding invoice and an updated monitoring spreadsheet must accompany each report. The monitoring spreadsheet must contain details of the time inputs of experts and of incidental expenditure. It must also update the cash flow forecast.

A Final Report must be left at the end of the period of execution. The draft Final Report must be submitted at least one month before the end of the period of contract execution.

The Final Report should include:

- A complete overview of all the activities implemented during the project;
- A summary of outputs and the identification of any major problems which may have arisen during the performance of the contract; and
- An assessment of the impact of the project measured against the stated project objectives and the indicators of achievement included in the log-frame matrix.

The Final Report should be accompanied by the final invoice and final monitoring spreadsheet update, along with an audit certificate confirming the final certified value of the contract. Please refer to Article 28 of the General Conditions.

The Project Manager will provide comments within four working weeks of the submission date of the draft Final Report. If comment is not received within that time, the draft Final Report will be deemed to constitute the Final Report. If comment is heard, the Consultant will provide an appropriately amended Final Report within two weeks of the receipt of comments.

7.1.1. Other project documents to be provided are as follows:

- Notes to be submitted to the Project Manager and the EC Delegation in Tirana as frequently as considered necessary in order to monitor the substance and quality of the technical assistance;
- In addition, the Consultant shall provide such information on project progress as is reasonably required by the Project Manager or the EC Delegation in Tirana, and shall regularly inform both bodies of political, financial or institutional developments of relevance to the project;

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- Training material prepared under this project;
- Technical reports prepared by short-term experts.

In addition, the cash flow monitoring spreadsheet must be updated and submitted to the Project Manager with each of the above reports.

7.2. Submission & approval of progress reports

Two copies of the progress reports referred to above must be submitted to the Project Manager identified in the contract. The progress reports must be written in English. The Project Manager is responsible for approving the progress reports.

Two copies of the reports referred to above must be submitted in hard copy and electronic format to the Project Manager identified in Article 8 of the Special Conditions. The reports must be written in English.

No report or document shall be distributed to third parties prior to the approval by the European Commission. The Consultant shall pay particular attention to the confidentiality of data. Reports, as well as press statements, etc, made by the Consultant will make clear that any opinions expressed therein remain those of the Consultant and do not represent the opinion of the European Commission. Copyright on all reports and other material prepared under this contract shall reside with the European Commission.

8. MONITORING AND EVALUATION

8.1. Definition of indicators

Suitable quantitative or qualitative indicators will be agreed upon between the Contracting Authority and the Consultant because they provide valid, useful, practical and comparable measures of progress towards achieving expected results. The Consultant is expected to present a proper assessment and analysis methodology which at least indicates:

ToR task item;

Contractual obligation;

Responsible expert;

Project phase;

Achievement/ Indicators (i.e. Number of training days provided or approximately rate of completion etc.);

Comments; and

- Non-achievement and main reason.

8.2. Special requirements

None.