

COMMISSION DECISION

C(2007)3083 of 27/06/2007

establishing a multi-beneficiary Customs and Fiscal Assistance Office (CAFAO) Programme to the Western Balkans under the IPA-Transition Assistance and Institution Building component in 2007

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)¹, and in particular Article 14(2)(a) thereof,

Whereas:

- (1) Regulation No 1085/2006 lays down the objectives and main principles for pre-accession assistance to countries listed in Annex I and Annex II to this regulation.
- (2) The former Yugoslav Republic of Macedonia is listed in Annex I to Regulation (EC) No 1085/2006, Albania, Bosnia and Herzegovina, Montenegro and Serbia including Kosovo (as defined in UNSCR 1244) are listed in Annex II to Regulation (EC) No 1085/2006.
- (3) The Commission has adopted the Multi-annual Indicative Planning Document 2007 for Countries Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, Montenegro, Serbia including Kosovo (as defined in UNSCR 1244) and Turkey which identifies the major areas of intervention and main priorities that the said countries are expected to develop in detail.
- (4) The objectives pursued by the programme described in the Annex to this Decision are to assist the customs and taxation authorities in the beneficiary countries in their preparation for future EU membership.
- (5) This decision constitutes a financing decision within the meaning of Article 75 of Council Regulation (EC, Euratom) No 1605/2002² and Article 90 of Commission Regulation (EC, Euratom) No 2342/2002³.
- (6) The measures provided for by this Decision are in accordance with the opinion of the IPA Committee.

¹ OJ L 210, 31.7.2006, p. 82.

² OJ L 248, 16.9.2002, p.1 Regulation as last amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p.9).

³ "Internal Rules on the implementation of the general budget of the European Communities (Commission section), adopted on 21 February 2007

HAS DECIDED AS FOLLOWS:

Article 1

The programme described in the Annex to the present decision is hereby adopted.

Article 2

The maximum amount of Community assistance shall be EUR 13.72 million to be financed through Budget line 22.02.07.01 of the General Budget of the European Communities for 2007.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission

ANNEX

1. IDENTIFICATION

Beneficiaries	Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Republic of Montenegro, Republic of Serbia, including Kosovo (as defined by the United Nations Security Council Resolution 1244 of 10 June 1999)
Programme	Customs and Fiscal Assistance Office to the Western Balkans (CAFAO); Technical Assistance to Customs and Taxation Administrations (TACTA)
CRIS number	2007/018-830
Year	2007
Cost	€13,720,000
Implementing Authority	The European Commission on behalf of the beneficiary countries
Final Dates:	Contracting: 31.12.2007
	Execution of contracts: 31.12.2008
Sector Code	15120
Budget line	22.02.07.01
Programming Task Manager	Robert Nelson
Implementation Task Managers	A. Troppmann, H. van Maele

2. PRIORITY AXES / (MEASURES) / PROJECTS

2.1 Priority axes

The setting up of well-functioning customs and taxation systems in the countries of the Western Balkans⁴ (WB) is critical in supporting efforts to raise State revenues, fight organised crime, establish a skilled and accountable administration and to develop good trade relations within the WB region as well as with the EU Member States (MS) and elsewhere. It is also an important step in the Stabilisation and Association process (SAP) and in forming a contractual relationship with the European Union (EU) following the eventual signature of a Stabilisation and Association Agreement (SAA).

⁴ Namely Albania, Bosnia and Herzegovina (BiH), Croatia, former Yugoslav Republic of Macedonia (fYRoM), Montenegro, Serbia including Kosovo (as defined by UNSCR 1244 of 10 June 1999).

The satisfactory implementation of a country's SAA obligations is essential when the EU considers an application for membership. The WB countries remain at various stages on their road towards membership of the EU.

In January 2006, SAA talks formally opened with *Bosnia and Herzegovina (BiH)*. Negotiations for a SAA with *Serbia* were suspended in May 2006 due to its poor cooperation with the International Criminal Tribunal for Yugoslavia and they have not yet been resumed. In June 2006, *Albania* signed the SAA as well as an Interim Agreement on trade and trade-related issues with the European Community. In September 2006, *Montenegro* held its first round of separate negotiations with the EU.

In 1996, the EU launched the CAFAO Programme to enable the creation of a customs service in *BiH*. The CAFAO programme was specifically charged with assisting *BiH* in implementing the customs-related provisions of the General Framework Agreement for Peace as laid down in the Dayton Peace Accord of 1995. Following the conclusions of the Peace Implementation Council in Bonn in December 1997, the programme was later expanded to include technical assistance in the collection of indirect taxation such as sales tax and excise duties.

CAFAO missions were subsequently established in *Albania (CAM-A)*, *Kosovo (CAFAO-UNMIK)*, *fYRoM (CAFAO-MAK)*, *Montenegro (CAFAO-Montenegro)* and *Serbia (CAFAO-Serbia)* based on needs for reconstruction of customs and to a certain extent taxation⁵. The MIPDs of the countries in question state that their goal is to ensure that their customs and taxation legislation be aligned to the *acquis* and to improve budget and fiscal management, thereby enhancing the control and collection capacity of the tax and customs administrations and to contribute to prudent fiscal policies.

The state of existing national infrastructure for both customs administration and indirect taxation has greatly influenced the extent of the CAFAO programme's activities in each country. For example, in *Montenegro*, which started its migration progress from sales tax to an EU-compliant Value Added Tax (VAT) system in 2000, CAFAO has mainly directed its efforts in ensuring that the system remains EU-compliant. In *BiH*, CAFAO was fully involved for several years in preparing the way for the country to migrate to an EU VAT-compliant tax system in 2006.

In order to provide a coherent approach, CAFAO as a rule uses as its models for development work EU Blueprints in Customs and Taxation developed by the (EC). These blueprints help ensure that the work the programme carried out is in line with EU standards and that it contributes to the respective SAP. *In situ*, CAFAO operates through teams of EU experts based in the country who complement the work already being undertaken by nationals of the countries concerned.

CAFAO/TACTA assistance lies within the scope of the Multi-Beneficiary 2007-2009 MIPD which defines two of the principal objectives of EU assistance, namely tackling cross-border problems and obtaining efficiencies through a multi-beneficiary approach.

The MIPD is designed to assist candidate and potential candidate countries' efforts to cooperate with each other in fields of common interest as they strive towards

⁵ Croatia has not formed part of the CAFAO programme: it was not considered necessary to have this form of assistance implemented in Croatia as it had already started the SAP, and in May 1999 signed the SAA.

membership of the EU. CAFAO/TACTA assistance forms part of the IPA Transition Assistance and Institution Building Component.

The approach is based on the axiom that certain national issues may benefit from being supported through Multi-Beneficiary programmes rather than through multiple national programmes, hence the funds being provided from the relevant National IPA allocation. For example, economies of scale may be obtained through Multi-Beneficiary programmes, including the effective and efficient use of limited resources to provide advice and consultancy on the implementation of the EU *acquis* through CAFAO/TACTA. Assistance under CAFAO/TACTA also includes delivery of skills and information to facilitate the implementation and enforcement of the *acquis* in the beneficiary countries.

2.2 Description of projects

The overall objective of the CAFAO Programme is to continue assistance to the customs and taxation authorities in the participating beneficiary countries in their preparation for future EU membership. CAFAO has in the past proved to be successful particularly in developing the capacity of the WB countries to manage their borders and to draw increased revenues from customs and excise duties. It is essential that the high quality of its delivery be maintained and to ensure that technical assistance be given according to the priorities defined by the EC in the European Partnerships, in Progress Reports as well as in the dialogue with the national authorities.

The overarching results to be *obtained* are:

- development of the administrative capacity of the beneficiary;
- sustainability, transfer of knowledge, and ultimately ownership by the beneficiary;
- preparation and delivery of an exit strategy.

The common results to be *aimed* at are:

- Customs legislation and procedures to be further aligned with the EU *acquis* and a full and consistent implementation throughout the whole region to be achieved. Particular attention will be paid to rules of origin and administrative cooperation. (The administrative capacity to implement customs legislation and to fight corruption and cross-border crime will have further been strengthened. Use will be made of the EU Customs Blueprints.)
- Tax legislation to be further aligned with the EU *acquis*. Progress on direct taxation also to be achieved, notably with the implementation of the Code of Conduct for Business Taxation.
- Administrative capacity of the tax administration, including its collection and control capacity to have been further strengthened and the fight against corruption and tax fraud to be more efficient. (A national control strategy will be developed. Use will be made of the EU Taxation Blueprints.)
- Transparency and exchange of information with MS to have improved in order to facilitate the enforcement of measures preventing the avoidance or evasion of taxes.
- Process of computerising tax and customs administrations to have been started.

Additional specific results to be *aimed at* in each participating beneficiary country are as follows:

Albania:

- The beneficiary will have received assistance to enable it to implement the ASYCUDA customs declaration and processing system in all customs offices.
- The beneficiary will have received assistance to implement customs valuation rules in accordance with international standards and practices.

BiH:

- The beneficiary will have received assistance in order to ensure that the legal framework for free zones is compatible with EU standards and adequate supervision of free zones is guaranteed.
- The beneficiary will have received assistance to implement customs valuation rules in accordance with international standards and practices.
- Until December 2007, the Taxation Authority (ITA) will be further assisted by means of CAFAO. For 2008 all taxation elements will be managed by the new TACTA contract.

fYRoM⁶

- The beneficiary will have received assistance to align the level of general customs-related fees with the EU *acquis*.
- Modernisation of the national IT systems in the area of customs and taxation.

Montenegro⁷

- Common objectives identified above reflect the priorities for Montenegro.

Serbia⁸

- Implementation of the national integrated tariff management system (TARIS) will progress in compliance with the EU model.

Kosovo:

- The capacity of the criminal investigation unit will have been strengthened.

Two Customs and Taxation Sector Fiches are annexed to this Financial Proposal since the Programme is divided into two parts:

2.2.1. Direct agreement with Eurocustoms, 1 July 2007 – 29 February 2008 (CAFAO)

The EC entered into a direct agreement with Eurocustoms (€23.10 million) in March 2006. This contract is centrally managed, is financed from national CARDS allocations and will end on 30 June 2007. As it is not possible to extend it further, a second contract is being negotiated with Eurocustoms to cover operations during the second half of 2007 followed by a phasing-out period of two months until 29 February 2008. Except for Albania⁹, fYRoM (in part)¹⁰ and Serbia¹¹, each country/territory is to provide funds from its own IPA 2007 national allocation as follows:

- BiH: €3.00 million;
- fYRoM: €0.50 million;
- Kosovo: €1.50 million;

⁶ Until end of 2007 only.

⁷ Until end of 2008 only.

⁸ Until end of 2008 only.

⁹ €1.80 million to be financed from CARDS 2006: Commission Decision C(2006)2057, PE/2006/888.

¹⁰ €0.95 million to be financed from CARDS 2005 and 2006: Commission Decisions C(2005)1039, PE/2005/500; and C(2006)2057, PE/2006/888 respectively.

¹¹ €2.55 million to be financed from CARDS 2005 and 2006: Commission Decisions C(2005)1037, PE/2005/498, and C/2006)2057, PE/2006/888 respectively.

- Montenegro: €1.12 million;

The contribution of the IPA 2007 towards the contract with Eurocustoms is €6.12 million¹².

2.2.2. Customs & Taxation project: 1 January 2008 – 31 December 2008 (TACTA)

Eurocustoms will cease to exist as an operational organisation at the end 2007 and will be dissolved by the end of February 2008. A tender for a multi-beneficiary T/A service contract will be launched in 2007 (with a suspension clause regarding future funding¹³) in order that the new contract is in place by 1 January 2008. The new contract will be centrally managed by the EC. It will be necessary to set aside funds from the 2007 IPA allocation, which will finance the project for the calendar year 2008:

- Albania €1.80 million for Customs only;
- BiH: €1.50 million for Customs and Taxation;
- Kosovo: €2.00 million for Customs and Taxation;
- Montenegro: €0.80 million for Customs only;
- Serbia €1.50 million for Customs only.

The amount of the multi-beneficiary T/A service contract to be funded from the IPA 2007 is €7.60 million.

The TACTA project will differ from CAFAO in that certain beneficiary countries' requirements for customs and taxation will vary:

Country/territory	Customs	Taxation
Albania	Centralised management ¹⁴	Deconcentrated management ¹⁵
BiH	Centralised Management	
Kosovo	Centralised management	
Montenegro	Centralised management	Deconcentrated management
Serbia	Centralised management	Deconcentrated management

Before launching the tender, a study will be undertaken to identify their needs for the new contract. The needs assessment will contribute towards the content of the new tender. Its objectives will be to make an overall analysis and verification on-the-spot of the countries' current and future needs for technical assistance in the areas of customs and taxation (direct and indirect) and to draft a work programme based on the findings of the assessment. The work programme will follow the model handed over to the experts at the initial kick-off meeting at the beginning of the project.

2.2.3. Summary

The amounts from each country's IPA 2007 allocation for CAFAO and TACTA are as follows:

¹² The total amount of the contract with Eurocustoms will be €1.42 million.

¹³ From IPA 2008 for continuation in 2009.

¹⁴ i.e. managed at EC headquarters.

¹⁵ i.e. managed by the EC Delegation.

Country/ territory	IPA 2007		Total
	<i>Euro- customs: CAFAO</i>	<i>New project: TACTA</i>	
Albania	-	€1.80m	€1.80m
BiH	€3.00m	€1.50m	€4.50m
fYRoM	€0.50m	-	€0.50m
Kosovo	€1.50m	€2.00m	€3.50m
Montenegro	€1.12m	€0.80m	€1.92m
Serbia	-	€1.50m	€1.50m
<i>Sub-total</i>	€6.12m	€7.60m	
Total	-		€13.72m

2.3 Overview of past and present assistance

Since its inception, it has been generally recognised that the CAFAO programme has been a success in attaining its objectives of assisting the reconstruction of new and modern customs and fiscal systems in the countries of the Balkans post-conflict. The success is evidenced by:

- A substantial increase in revenues for the benefit of the national authorities;
- The installation of modernised systems and procedures;
- The development of management capacity in the staff of the beneficiary organisations;
- Significant contribution to border security and the fight against organised crime.

The programme has won praise from beneficiaries and the respect of international donors for the work done and results delivered by experienced international experts and well qualified, dedicated local staff.

2.3.1 Past European Commission Assistance

CAFAO programme / Year	Allocated
1996	€12,750,000
1997	€8,100,000
1998	€17,400,000
1999	€19,299,912
2000	€14,200,000
2001	€31,400,000
2002	€17,500,000
2003	€27,000,000
2004	€17,500,000
2005	€14,500,000
2006	€23,100,000
Total	€193,149,912

From 1996 to 2005, CAFAO was managed and administered centrally by the EC, which dealt with all aspects of the projects such as recruitment of staff, staff contracts and budget control.

The assistance was provided separately to each of the participating countries and the composition of the work varied accordingly, including Customs, VAT, Excise, Legislation, IT and Human Resources, and the assistance was based on the strategic approach set out in the EU Blueprints.

There was no coordination of the progress of the countries as a group and consequently they tended to find themselves at different stages of development. Many of the beneficiary Customs Services began the programme at a low level due to the political upheaval and war situation at the time and therefore the programme was well received by the beneficiaries. The situation later became calmer and CAFAO was widely recognised as having made a major contribution to increased revenue collection, detection of fraud, frontier protection and institution-building.

In 2004, the EC reviewed the management of CAFAO and decided that changes were necessary because the management was not compatible with the EU's Financial Regulation and because the EC found it increasingly difficult to resource the management of the project adequately. The EC consulted the MS on the various options available, including twinning contracts or a role for Eurocustoms. The MS unanimously supported the option of management by Eurocustoms.

2.3.2 Present European Commission Assistance

In March 2006, the EC signed a contract with Eurocustoms for the provision of technical assistance in the field of customs and taxation in the WB. The first phase of the contract was financed through the remaining funds of CARDS decisions of previous years. By means of the proposed direct agreement, Eurocustoms will until the end of 2007 continue to provide technical assistance to the beneficiary authorities through the implementation of annual work programmes prepared, approved and monitored in close coordination with the beneficiaries and the EC.

The principal activities undertaken are:

- Provision of technical assistance to the customs and taxation authorities of the beneficiary countries in drafting legislation and implementing rules in the areas concerned;
- Assistance in establishing efficient administrative structures as well as proper implementation and control procedures, for developing, implementing and enforcing the legislation concerned;
- Transfer of the appropriate knowledge to the beneficiary authorities through training programmes, with particular emphasis on “training the trainers” programmes;
- Assistance in developing beneficiaries’ cooperation with the competent authorities of the MS and neighbouring countries and in establishing partnerships with appropriate qualified institutions in the MS;
- Assistance in bringing about final ownership by the beneficiary and preparing for an exit strategy.

2.4 Cross-cutting issues

The WB countries’ customs services and CAFAO have created efficient customs services that not only allow for the better management of border-crossing points, customs checks at airports and ports for *public security*, but also increase potential revenue from customs and excise duties on legitimate trade. By boosting revenues, governments have been able to increase their public spending in *social development*. They have also been able to develop an effective infrastructure in the *fight against organised crime* and commercial fraud as well as to facilitate legitimate trade.

2.5 Conditionality: None.

2.6 Benchmarks

	30/11/2007	30/11/2008	30/11/2009
Direct agreement	1	-	-
Tenders launched	1	-	-
Call for proposals launched	-	-	-
Contracting Rate	100%	-	-

3. BUDGET (amounts in €million)

3.1. Budget table

	EU – IPA assistance				Total co-financing of project	Total (IPA plus co-financing)
	Eurocustoms: Institution Building	Institution Building	Investment	Total	CARDS	
T O T A L	6.12	7.60	-	13.72	5.30	19.02

3.2 Principle of co-financing applying to the projects funded under the programme

N/A.

4. IMPLEMENTATION ARRANGEMENTS

4.1 Method

The programme will be implemented on a centralised basis by the EC following Article 53.1 (a) of Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation (FR) applicable to the general budget of the EC as further detailed in the rules for the implementation of Council Regulation on the FR applicable to the general budget of the EC (Implementing Rules: IR).

The direct agreement with Eurocustoms is in conformity with Article 242(1) (b) IR whereby “*services may be entrusted to public-sector bodies and relate to activities of an institutional basis*”.

4.2 Procurement

Procurement shall follow the provisions of Part 2, Title IV of the FR and Chapter 3 of Part 2, Title III of its IR¹⁶ as well as the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with non-member countries adopted by the EC on 24 January 2006 (C(2006)117).

¹⁶ Commission Regulation (EC, Euratom) N° 2342/2002 of 23 December 2002 as last amended by Regulation (EC, Euratom) N° 1248/2006 of 7 August 2006, (OJ L 227, 19/08/2006 p. 1).

The EC shall also use the procedural guidelines and standard templates and models facilitating the application of the above rules provided for in the “Practical Guide to contract procedures for EC external actions” as published on the EuropeAid website¹⁷ at the date of the initiation of the procurement or grant award procedure.

5. MONITORING AND EVALUATION

5.1 Monitoring

The EC may undertake any actions that it deems necessary to monitor the programme.

5.2 Evaluation

The programme shall be subject to ex-ante evaluations as well as interim and, where relevant, ex post evaluations in accordance with Article 21 of the Implementing Rules for the FR, and the specific provisions laid down for the Transitional Assistance and Institution Building component in Part II of Regulation (EC), with an aim to improve the quality, effectiveness and consistency of the assistance from Community funds and the strategy and implementation of the programmes.

During the period of implementation of a programme, at least one interim evaluation shall be carried out, and specifically when the monitoring of the programme reveals a significant departure from the goals initially set.

Ex-post evaluation of the implementation of assistance shall be the responsibility of the EC. Ex post evaluations shall include identifiable IPA component-specific results.

The results of ex-ante and interim evaluations shall be taken into account in the programming and implementation cycle.

The EC may also carry out strategic evaluations.

6. AUDIT AND FINANCIAL CONTROL, AUDIT TRAIL, ANTI-FRAUD MEASURES AND CORRECTIVE ACTIONS

6.1 Audit and Financial control

The accounts and operations of all activities carried out under the programme are subject to supervision and financial control by the EC (including the European Anti-Fraud Office - OLAF) and audits by the European Court of Auditors. This includes measures such as ex ante verification of tendering and contracting carried out by the Delegation in any of the Beneficiary Countries.

In order to ensure the efficient protection of the financial interests of the Community, the EC (including OLAF) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96¹⁸.

¹⁷ http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

¹⁸ Council Regulation (EC, Euratom) 2185/96 of 11 November 1996, (OJ L 292; 15.11.1996; p. 2)

The controls and audits described above apply to all contractors and subcontractors who have received Community funds.

6.2 Audit trail

The EC shall ensure that all the relevant information is available to ensure at all times a sufficiently detailed audit trail. This information shall consist of documentary evidence of the tendering of contracts, launches of calls for proposals, awards of contracts and grants, authorisations of payments, accounting and payments of such applications, and of the treatment of advances, guarantees and debts.

6.3 Antifraud measures and corrective actions

If the EC finds that expenditure under the programme has been incurred in a way that has infringed applicable rules, it shall decide what amounts are to be excluded from Community financing.

The calculation and establishment of any such corrections, as well as the related recoveries, shall be made by the EC by cancelling all or part of the Community contribution to a programme.

Beneficiary states shall inform the EC without delay of any element of information indicating the possible existence of irregularities or fraud.

“Irregularity” shall mean any infringement of applicable rules and contracts resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the EU by charging an unjustified item of expenditure to the general budget.

“Fraud” shall mean any intentional act or omission relating to:

- i. The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
- ii. The non-disclosure of information in violation of a specific obligation, with the same effect;
- iii. The misapplication of such funds for purposes other than those for which they are originally granted.

The procedures foreseen in Commission Regulation N° 1681/1994 of 11 July 1994 on the communication in case of irregularities and the putting in place of a system to administrate the information in this field shall apply.

The applicability of the FR includes the application of administrative and financial sanctions, as provided for in Articles 93 to 96 and 114 of the FR, and Article 133 of the IR.

7. VISIBILITY AND PUBLICITY

7.1 Publicity

Information on programmes and operations shall be provided by the EC with the assistance of the national IPA coordinator as appropriate.

In accordance with Article 90 of Regulation (EC, Euratom) N° 1605/2002, the EC shall publish the relevant information on the contracts. The EC shall publish the results of the tender procedure in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media, in accordance with the applicable contract procedures for Community external actions.

7.2 Visibility

The EC and the relevant national, regional or local authorities of the beneficiary countries shall agree on a coherent set of activities to make available, and publicise, in the beneficiary countries, information about assistance under the IPA Regulation. Implementation of these activities shall be the responsibility of the final beneficiaries and shall be funded from the amount allocated to the relevant programme

8. LIMITED CHANGES

Limited changes in the implementation of this programme affecting essential elements listed under Article 90 of the Implementing Rules to the Financial Regulation, which are of an indicative nature¹⁹, may be undertaken by the authorising officer by delegation (AOD), or by the authorising officer by sub-delegation (AOSD), in line with the delegation of powers conferred upon him by the AOD, in accordance with the principles of sound financial management without an amending financing decision being necessary

¹⁹ These essential elements of an indicative nature are, for grants, the indicative amount of the call for proposals and, for procurement, the indicative number and type of contracts envisaged and the indicative time frame for launching the procurement procedures.