

IPA 2008 National Programme for Albania
Support for the Albanian Competition Authority and State Aid Department

1. Basic information

1.1 CRIS Number: 2008/020-116

1.2 Title: Support for the Albanian Competition Authority and State Aid Department.

1.3 Sector: 03.08

1.4 Location: Tirana, Albania

Implementing arrangements:

1.5 Contracting Authority (EC): Delegation of the European Commission to Albania

1.6 Implementing Agency: Delegation of the European Commission in Tirana on behalf of the Government of Albania

1.7 Beneficiary (including details of project manager):

The Albanian Competition Authority (ACA) and the State Aid Department (within the Ministry of Economy, Trade and Energy) are the beneficiaries of this project. The ACA and SAD will be in close cooperation with the implementing agency. The contact points for this project are:

For ACA: Lindita Milo, Chairwoman, Competition Authority of Albania
Address: Rruga "Sami Frasheri" Nr.IV, Tirana-Albania
E-mail: lmilo@caa.gov.al, Tel :+355 4 234 504, Fax: +355 4 234 497

For SAD: Edlira Baraj, Director of State Aid Department
Address: Ministry of Economy, Trade and Energy, Nr 1001 Tirana
E-mail: ebaraj@mete.gov.al, Tel ++ 355 4 22 81 77

Financing:

1.8 Overall cost (VAT excluded)¹: 1.500.000 Euro

1.9 EU contribution: 1.500.000 Euro

1.10 Final date for contracting:

Three years following the date of the conclusion of the Financing Agreement

1.11 Final date for execution of contracts:

Two years following the end date for Contracting

1.12 Final date for disbursements:

One year following the end date for the execution of contracts

¹ The total cost of the project should be net of VAT and/or other taxes. Should this not be the case, the amount of VAT and the reasons why it should be considered eligible should be clearly indicated (see Section 7.6)

2. Overall Objective and Project Purpose

2.1 Overall Objective:

The overall objective is to contribute toward ensuring a competitive environment in the country and the establishment of a state aid discipline

2.2 Project purpose:

The project purpose is to increase and strengthen the efficiency and effectiveness of administrative capacities in the fields of competition and state aid and to ensure the approximation of legislation in those fields with the new legal framework introduced within the European Union legislation.

2.3 Link with AP/NPAA / EP/ SAA

The **Stabilization and Association Agreement** (SAA) between the Government of Albania and the European Community was signed in July 2006. According to Articles 70, 71, 72 of SAA and Article 37 (SAA Article 71) and 38 (SAA Article 72) of the Interim Agreement, Albania commits itself to ensure that an operationally independent public body is entrusted with the power to secure fair competition and establish a comprehensive inventory of aid schemes.

The project will assist to achieve the priorities included in the proposal of the European Commission dated 06.11.2007 for a Council Decision on the principles, priorities and conditions contained in the **European Partnership** (EP) with Albania repealing Decision 2006/54/EC. The European Partnership outlines as short-term and medium-term priorities in the area of competition and state aid further improvement of the enforcement records in these areas, as well as to improve and approximate to the acquis the existing anti-trust legislation to reinforce competition control, and adopt implementing legislation on state aid and continue updating the inventory of state aid schemes:

In response to the EP, and the SAA, the Albanian Government has drafted the **National Plan for the Implementation of the SAA** (NPISAA), as adopted in September 2007, where short and medium term general priorities and their resultant legislative and implementation activities have been identified. In this document the general priorities for the short term are related to the assessment of the legal framework and the drafting of the needed guidelines and regulations. Annex IV provides the full list of short and medium priorities, and legislative reforms foreseen in the NPISAA.

2.4 Link with MIPD

The Multi-annual Indicative Planning Document has foreseen the institutional set-up of key market actors, particularly State Aid Authorities and Competition Authority. In the specific way, the project is proposed based on 2.2.3.2 section of MIPD 2007-2009 titled “European Standards”.

2.5 Link with National Development Plan (where applicable)

The Competition Commission of ACA has approved the National Competition Policy .The overall objective of this document is to be a descriptive program in order to ensure and encourage effective market competition. Also this document will contribute to the

communication with the public, business community and public institutions. The policy describes the principles contained in the Law.

2.6 Link with national/sectoral investment plans (where applicable)

N/A

3. Description of project

3.1 Background and justification:

The SAA and IA envisage the development and approximation of the EU legislation in the fields of competition and state aids, as well the establishment of functionally independent structures to deal with restrictive agreements and concerted practices, abuse of dominant position and any state aid that distorts competition, favouring certain products or undertakings.

There is a legal framework in force, in both competition and state aid fields. The Competition Authority as an independent public institution, responsible for the enforcement of the competition rules, and state aid controlling structures are operating as well.

Following the completion of the negotiations, the work is now focussing on implementing the transitional mechanism provided for in the SAA and IA. The project is foreseen as a continuation of the Community assistance towards both institutions, in order to fulfil their commitments, obligations and the Recommendations of EC for the coming period.

Considering that a comprehensive and consistent reform is recently in place in the EU, much more effort is required from competition and state aid controlling structures in the country, to ensure the appropriate adoption and effectiveness prior to accession. Stronger enforcement tools, less and better targeted state aid and a refined economic approach will be the main objectives for the coming period in order to enhance the implementation of competition rules and the transparency in the use of public funds.

The National Competition Policy has been approved by the Competition Commission. The Competition Policy is the body of measures and legal framework in which companies that operate in the private or public sector can carry out their economic activities freely based on free, effective and fair competition. The fundamental mission of the Competition policy is to correct market distortions, given that a competitive market generates development and increases the overall wellbeing of our society. With the approval by the Assembly of Albania of the decision no 96, dated 30.04.2007 “On approval of the structure and organigramme of Competition Authority”, the number of personnel of Competition Authority has been increased with 15 new members and trainings are needed. The Competition Authority of Albania is composed by The Competition Commission and the Secretariat. The CC is composed by 5 members (commissioners). The secretariat has 3 directories and 1 sector:

- The Directory of Investigating the Markets (10 members)
- The Directory of Legal Affairs and European Integration (6 members)
- The Directory of Human resources and documentation.(5 members)
- The sector of monitoring the markets. (3 members)

In that context the legislation should be improved and completed, reflecting, in particular, the EC Merger regulation nr.139/2004, nr.802/2004, Commission notice on fines and reduction of fines in cartel cases, The procedure rules related with the right to be consulted with the file, other guidelines covering antitrust issues, the GBER (R&D&I, Environmental Aid, risk capital aid), White Paper /guidelines on SGEI, Multisectoral Framework (RAG) etc. The

ACA, SAD and SAC are required to enhance their effectiveness, whilst the aid providers, business community and courts should have their full commitment to comply with their obligations and to enforce the rules properly. Best practices from homologue structures in old or new Member States, through twinning projects, will be very fruitful in achieving these objectives.

3.2 Assessment of project impact, catalytic effect, sustainability and cross border impact (where applicable)

The project will have an impact in creating a competitive market in Albania through enforcing competition rules and state aid discipline; and will foster the competitiveness of Albanian undertakings to adapt to disciplines already established in the EU, and joint efforts with homologue structures in Balkan Region to comply with internal market requirements.

3.3 Results and measurable indicators:

The expected results from the project are:

- Administrative capacities of the Competition Authority and State Aid Department effective and efficient in case handling covering all sectors. The project will provide training for new ACA staff (the number of personnel of competition authority has been increased by 15) which is crucial for the effectiveness of ACA. The performance of ACA and SAD are closely related to other market partners and also members of public and private institutions, members from the judiciary, and business partners will be trained. Because of this, it is considered important that these partners should be involved in a joint training process.
- Secondary legislation in competition and state aid field approximated with the new EC legal reform. The secondary legislation needs to be completed in accordance with EU legislation especially the EC Merger regulation nr.139/2004, nr.802/2004, Commission notice on fines and reduction of fines in cartel cases, the procedure rules related with the right to be consulted with the file, other guidelines covering antitrust issues, the GBER (R&D&I, Environmental Aid, risk capital aid), White Paper guidelines on SGEI, Multisectoral Framework (RAG) etc., the commentary of the Law “On Competition protection” etc.
- The aid providers, business community and courts become aware of, and committed to, complying with their legal obligations
- Documents, such as bulletins and brochures, on competition and state aid translated and published.
- The economic partners, the central and local governments and courts are aware of ACA and SAD activity and also partners in the process of drafting the new legislation.
- Other institutions such as Institute of Statistics, General Directorate of Customs, General Directorate of Taxes, Ministry of Finance, Courts etc will assist in data collection and information in cases handled and assisted by external experts.

3.4 Activities:

The main component activities under proposed project are:

- To develop the profile of the resident.
- To follow the examples of the checklist, there are missing.
- Twinning Project with the homologue structure in one of Member States
- Technical assistance for improving legislation in both fields, translation and publications

Activity 1

The Twinning Project will be focused, in particular, on:

- 1.1. Exchange of experience in case handling (mutual exchange of experts for particular cases in the process of investigation-short term mission experts)
- 1.2. Organization of study visits (several 4-5 days working visits for the teams to the homologue authority or other linked institutions)
- 1.3. Organization of joint- training seminars (such seminars will be organized for the staff, as well as for the central and local administration, business community and judges)
- 1.4. Organization of conferences and/or other competition and state aid activities (work-shops, road shows may be also a useful tool for the explanation of competition and state aid legal and institutional reform to the central and local governments and courts)
- 1.5. Organization of round tables with homologue structures in Balkans (Working Meetings for particular issues)

Activity 2

Technical assistance for improving the legislation will be focused on:

- 2.1. Amending the existing legislation, reflecting, in particular the new legal reform in EU (as described above in 3.1)

Drafting new implementing regulations and guidelines

- 2.2. Translation of EC Regulations and other interpretative documents, according to NPISAA

Publication of Albanian legislation and other informative brochures in competition and state aid fields (Publication of the Official Bulletin of ACA and summary of publication for the state aid legislation together with any informative brochure)

3.5 Conditionality and sequencing:

The successful implementation of the project requires the full commitment of the ACA and State Aid Department. In addition, all the required information, materials and office facilities should be made available to the twinning partners in order to be effective.

3.6 Linked activities

The CARDS 2002 Project “Support for Competition and State aid in Albania” has assisted competition and state aid field by 2 million Euros. The support has been focused on:

- the alignment of the Albanian competition legislation to the *acquis*, in order to meet criteria set by the European Union and to support the implementation of legislation;
- strengthening of the system of competition regulation through the establishment of a trained Independent Competition Authority;
- supporting the ACA for the formulation of the mid-term strategy;
- raising awareness of among the business community, economic operators in general;
- Raising awareness for the competition rules,

Both institutions have been supported, also, by GTZ, which, in accordance with the CARDS Project, has assisted in the organisation of training for the business community, school of magistrates/judges, and aid providers at central and local level. GTZ is also collaborating with ACA and has given its financial contribution in different publication, in giving expertise in ACA cases, is helping to evaluate the legislation.

3.7 Lessons learned

From the previous CARDS 2002 Project, some issues have been pointed out:

It seems difficult to find the best experts in the fields offering the long term assistance. Short term mission experts (from the very best ones, offered in frequent bases, will better serve our structures).

On the job training is one of the most useful tools, serving not only for the new staff, but also for the existing one.

Similar problems to the ones that the homologue structures of the Member States have already faced, are being faced thus similar solutions are being required, in order to solve them appropriately.

In the implementing process of the previous CARDS 2002 project ACA didn't had the necessary staff. Only in June 2007 ACA increased it staff with 15 new members and now is completed and is ready for the implementation of this project.

The legal and operational approximation also is a strategic objective of ACA and is also important for Albania for the accession on the EU. Cards 2002 has recommended completing the secondary legislation (in process) and also to increase the competition and state aid advocacy.

Technical assistance is very important to fulfil the obligation of SAA. (Related to prohibited agreements, abuse of dominant position and control of concentration).

4. Indicative Budget (amounts in €)

			SOURCES OF FUNDING									
			TOTAL EXP.RE	IPA COMMUNITY CONTRIBUTION		NATIONAL CONTRIBUTION					PRIVATE CONTRIBUTION	
ACTIVITIES	IB (1)	INV (1)	EUR (a)=(b)+(c)+(d)	EUR (b)	%(2)	Total EUR (c)=(x)+(y)+(z)	% (2)	Central EUR (x)	Regional / Local EUR (y)	IFIs EUR (z)	EUR (d)	% (2)
Contract 1 Twinning Project with EU Member State			1.000.000	1.000.000	100 %							
Activity 1.1 Exchange of experience in case handling	480.000	–	480.000	480.000	48%							
Activity 1.2 Organisation of study visits	180.000	–	180.000	180.000	18%							
Activity 1.3 Organisation of joint training seminars	90.000	–	90.000	90.000	9%							
Activity 1.4 Organisation of conferences	190.000	–	190.000	190.000	19%							
Activity 1.5 Organisation of round tables with similar structures in the Balkans	60.000	–	60.000	60.000	6%							
Contract 2 Technical assistance for improving legislation			500.000	500.000	100%							
Activity 2.1 Amending existing legislation to reflect new EU legal reform	350.000	–	350.000	350.000	70%							
Activity 2.2 Translation of EU Regulations and other interpretative texts	150.000	–	150.000	150.000	30%							
TOTAL IB			1.500.000	1.500.000	100%							
TOTAL INV												
TOTAL PROJECT			1.500.000	1.500.000	100%							

NOTE: DO NOT MIX IB AND INV IN THE SAME ACTIVITY ROW. USE SEPARATE ROW

Amounts net of VAT

(1) In the Activity row use "X" to identify whether IB or INV

(2) Expressed in % of the **Total** Expenditure (column (a))

5. Indicative Implementation Schedule (periods broken down per quarter)

Contracts		Start of Tendering	Signature of contract	Project Completion
Contract (Twinning Programme)	1.1	1 st Quarter 2009	2 nd Quarter 2009	2 nd Quarter 2011
Contract (Technical assistance)	1.2	2 nd Quarter 2009	3 rd Quarter 2009	2 nd Quarter 2011

All projects should in principle be ready for tendering in the 1st Quarter following the signature of the FA

6. Cross cutting issues (where applicable)

6.1 Equal Opportunities

During the implementation of the project equal opportunities within the General Directorate of Prisons will be guaranteed.

6.2 Environment

N/A

6.3 Minorities

During the implementation of the project respect for minority rights within the General Directorate of Prisons will be guaranteed.

ANNEXES

- 1- Log frame in Standard Format
- 2- Amounts contracted and Disbursed per Quarter over the full duration of Programme
- 3- Description of Institutional Framework
- 4 - Reference to laws, regulations and strategic documents:

- 5- Details per EU funded contract (*) where applicable:

For *TA contracts*: account of tasks expected from the contractor

For *twinning covenants*: account of tasks expected from the team leader, resident twinning advisor and short term experts

For *grants schemes*: account of components of the schemes

For *investment contracts*: reference list of feasibility study as well as technical specifications and cost price schedule + section to be filled in on investment criteria (**)

For *works contracts*: reference list of feasibility study for the *constructing works* part of the contract as well as a section on investment criteria (**); account of services to be carried out for the *service part* of the contract

(*) non standard aspects (in case of derogation to PRAG) also to be specified

(**) section on investment criteria (applicable to all infrastructure contracts and constructing works):

- Rate of return
- Co financing
- compliance with state aids provisions
- Ownership of assets (current and after project completion)

ANNEX 1
Logical framework matrix in standard format

LOGFRAME PLANNING MATRIX FOR Project Fiche	Support on competition and state aid	
	Contracting period expires: December 2010	Disbursement period expires : 2 nd Quarter 2011
	Total budget :1,500 000 euro	IPA budget: 1,500 000 Euro

Overall objective	Objectively verifiable indicators	Sources of Verification	
To contribute toward ensuring a competitive environment in the country and the establishment of a state aid discipline	SAA articles Albania 2007 European Partnership	Albanian Monthly Reports	
Project purpose	Objectively verifiable indicators	Sources of Verification	Assumptions
To increase and strengthen the efficiency and effectiveness of administrative capacities in the fields of competition and state aid and to ensure the approximation of legislation in those fields with the new legal framework introduced in the European Union	National Plan for the Implementation of the SAA, Law and regulation in accordance with EU legislation Number of cases completed	The project reports	ACA and SAD are committed to implement the project in the proper way, in good cooperation with line ministries, and other institutions
Results	Objectively verifiable indicators	Sources of Verification	Assumptions
Administrative capacities of the Competition Authority and State Aid Department effective and efficient in case handling. The project will help for the training of the new ACA staff Members of public and private institutions, members from courts, and the business partners trained. Secondary legislation in competition and state aid field approximated with the new EC legal reform. the aid providers, business community and courts will be aware and committed to comply with their legal obligations The economic partners, the central and local	Number of trained staff of both institutions (30) Number of trained economic partners, business, courts (minimum 50 participants) New regulation and guidelines approved (in accordance with EU legislation)	Project reports, Mission reports Reports of implementing agency Documents of the ministry of Integration The presentations and workshop materials. Participation list	Good cooperation with the Ministries of Line, with the Parliament of the Republic Of Albania, with the Business partners, with the courts etc.

<p>governments and courts became aware of ACA and SAD activity and also partners in drafting of legislation.</p> <p>Other institutions such as Institute of Statistics, General Directorate of Customs, General Directorate of Taxes, Ministry of Finance, Courts etc will assist in data collection and information in cases handled and assisted by external experts.</p>	<p>Number of documents, such as bulletins, summaries of legislation and brochures, on competition and state aid translated and published.</p> <p>Documents translated and published</p>		
Activities	Means	Costs	Assumptions
<p>Activity 1</p> <p>The twinning Project will be focused, in particular, to:</p> <p>1.1. Exchange the experience in case handlings (mutual exchange of experts for particular cases in the process of investigation-short term mission experts)</p> <p>1.2. Organize study visits (several 4-5 days working visits for the teams to the homologue authority or other linked institutions)</p> <p>1.3. Organize joint- training seminars (such seminars will be organized for the staff, as well as for the central administration,)</p> <p>1.4. Organize conferences and/or other competition and state aid activities (workshops, road shows may be also a useful tool for the explanation of competition and state aid legal and institutional reform to the central and local governments and courts)</p> <p>1.5. Organize round tables with homologue structures in Balkans (Working Meetings for particular issues).</p>	<p>Twinning package of 24 months</p> <p>24 Short term missions of 2 x 6 days (from the experts of the twinning structure)</p> <p>12 Short term missions of 4x6 days (from ACA and SAD to the homologue structure)</p> <p>8 study visit 5 days x 10 persons</p> <p>Trainig seminars for the staff, (12 x 1 day sessions)</p> <p>4-5 Training seminars for the line ministries /regulatory entities</p> <p>International conference 6 Road shows 2 work shops</p> <p>1-2 round tables with the homologue structures in SEE</p>	<p>Total :1 000 000 Euro</p> <p>Total: 480.000 Euro</p> <p>Total 180.000 Euro</p> <p>Total: 90.000 Euro 40.000 Euro 50.000 Euro</p> <p>Total: 190.000 Euro 90.000 Euro 80.000 Euro 20.000 Euro</p> <p>Total cost :60.000 Euro</p>	<p>ACA and SAD are committed to the implementation of the project and to achieve its purposes.</p> <p>Both institutions will provide the twinning project with the necessary materials and documents in order to operate effectively.</p>

<p>Activity 2</p> <p>2.1 Amending the existing legislation, reflecting, in particular the new legal reform in EU (as described above in 3.1)</p> <p>Drafting new implementing regulations and guidelines</p> <p>2.2. Translation of EC Regulations and other interpretative documents, according to NPISAA</p> <p>Publication of Albanian legislation and other informative brochures in competition and state aid fields (Publication of the Official Bulletin of ACA and summary of publication for the state aid legislation together with any informative brochure)</p>	<p>The legislation completed and improved according with EU legislation: CR No. 139/2004, CR No.802/2004, Commission notice on fines and reduction of fines in cartel cases, Procedural rules related with the right to be consulted with the file, GBER (R&D&I, Environmental Aid, risk capital aid), White Paper /guidelines on SGEI, Multisectoral Framework (RAG) etc, the commentary of the Law “On Competition protection”</p> <p>EU legislation will be translated. The amended and new legislation will be published</p>	<p>Total cost 500.000 Euro</p> <p>350.000 Euro</p> <p>150.000 Euro</p>
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Pre-conditions

ANNEX II
Amounts (in €) Contracted and disbursed by quarter for the project

Contracted	Q1 2009	Q2 2009	Q3 2009	Q4 2009	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012
Contract 1.1		1,000,000														
Contract 2.1			500,000													
Cumulated		1,000,000	1,500,000													
Disbursed																
Contract 1.1			100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000				100,000	
Contract 2.1				80,000	80,000		80,000		80,000		80,000				100,000	
Cumulated			100,000	280,000	460,000	560,000	740,000	840,000	1,020,000	1,120,000	1,300,000				1,500,000	

ANNEX III

Description of Institutional Framework

The Competition Authority, is an independent public institution, established for the implementation of law No. 9121, dated 28.7.2003 “On Protection of Competition”. The Competition Authority consists of the Competition Commission, as a decision-making body and the Secretariat, as its executive body.

The Commission consists of five members (commissioners) appointed by the Parliament, for a 5 (five) year period and functions as a permanent collegial body. It has all necessary competencies to take decisions as regards its initiatives, as regards restrictive issues, as regards issues that obstruct or deform competition in the market, for both private and public enterprises, as well as to propose all necessary means to protect open and effective competition. The Competition Commission presents an annual report to the Competition Authority.

The Secretariat is the administrative and executive structure, acting based on law no. 9121, “On Protection of Competition”. The Secretariat is headed by the General Secretary and is composed of three directorates: Directorate of Market Surveillance, Directorate of Legal Issues and Directorate of Human Resources and Services. The Competition Commission no longer determines the structure of the Competition Authority, as it was provided in article 24, letter b, of law no. 9121, dated 28.07.2003. Based on article 10 of law no. 9584, dated 17.07.2006, “The structure and staff of constitutional independent bodies is approved with a decision of the Parliament, based on the approved number, in compliance with the state budget for each of these institutions.

Pursuant to the law, the Competition Authority cooperates with the central and local government, regulatory bodies and Courts.

As per the existing legal framework governing state aid, two structures of state aid control have been established and are operational – the Directorate of State Aid at the Ministry of Economy, Trade and Energy, and the State Aid Commission.

a) The Directorate of State Aid, within the Ministry of Economy, Trade and Energy is the structure entrusted with the technical-administrative competences for the control of state aid in Albania. The Directorate’s mission is the implementation of state aid legislation through analysis, evaluation and state and individual aid scheme control, aiming at ensuring the disposal of the state aid discipline in the country, transparency in the utilization of public funds, and the balancing-out of these policies for the achievement of horizontal, sector, and regional objectives.

b) The State Aid Commission is the decision-making body entrusted with the competencies to authorise the plans of granting state aid, or to order the restitution of illegal aid. Pursuant to the provisions of the law, the Commission is a collegial body, which consists of five members. It is independent in exercising its functions.

ANNEX IV

Reference to laws, regulations and strategic documents:

Reference to relevant laws and regulations

The legal framework on the bases of which Albanian Competition Authority operates:

- The National Competition Policy
- The Law no.9121, date 28.07.2003 “On Competition protection”

The following regulations, for the implementation of law “On protection of Competition” have been approved:

- Regulation “On the functioning of Competition Authority”;
- Regulation “On assessing expenses for the purpose of following the procedures near to the Competition Authority”;
- Regulation “For the implementation of procedures on enterprises concentration”, which is based on Regulation 4064/89;
- Regulation “On Penalties and their Reductions”, which is in conformity with regulation 2003/C 10/13
- Guideline on the Form of Agreement Notification;
- Guideline on the Form of Concentration Notification;
- Form of Agreement Notification;
- Form on Concentration Notification.

On the other hand, the State Aid Directorates regulates its operations on the bases of the following legal framework:

- Law No. 9374, dated 21.04.2005 “On State Aid”
- CoM Decision No. 815, dated 28.12.2005 “On the Conditions and Procedures of Granting the Regional Aid”
- CoM Decision No. 816, dated 28.12.2005 “On the Conditions and Procedures of Granting the Aid for rescuing and reconstructing”
- CoM Decision No. 817, dated 28.12.2005 “On the procedures and the form of report”
- Guideline “On the Presentation of Complaints for the Illegal Aids and Assessment of the illegal aids”

Reference to Stabilisation and Association Agreement

The project is in line with the provisions of the Stabilization and Association Agreement (namely Articles 70, 71, and 72)

ARTICLE 70

1. The Parties recognise the importance of the approximation of Albania's existing legislation to that of the Community and of its effective implementation. Albania shall endeavour to ensure that its existing laws and future legislation shall be gradually made compatible with the Community acquis. Albania shall ensure that existing and future legislation shall be properly implemented and enforced.

2. This approximation shall start on the date of signing of this Agreement, and shall gradually extend to all the elements of the Community acquis referred to in this Agreement by the end of the transitional period as defined in Article 6.

3. During the first stage as defined in Article 6, approximation shall focus on fundamental elements of the Internal Market acquis as well as on other important areas such as competition, intellectual, industrial and commercial property rights, public procurement, standards and certification, financial services, land and maritime transport – with special emphasis on safety and environmental standards as well as social aspects – company law, accounting, consumer protection, data protection, health and safety at work and equal opportunities. During the second stage, Albania shall focus on the remaining parts of the acquis.

Approximation will be carried out on the basis of a programme to be agreed between the Commission of the European Communities and Albania.

4. Albania shall also define, in agreement with the Commission of the European Communities, the modalities for the monitoring of the implementation of approximation of legislation and law enforcement actions to be taken.

ARTICLE 71

Competition and other economic provisions

1. The following shall be incompatible with the proper functioning of this Agreement, insofar as they may affect trade between the Community and Albania:

- (i) all agreements between undertakings, decisions by Associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;
- (ii) abuse by one or more undertakings of a dominant position in the territories of the Community or of Albania as a whole or in a substantial part thereof;
- (iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the competition rules applicable in the Community, in particular from Articles 81, 82, 86 and 87 of the Treaty establishing the European Community and interpretative instruments adopted by the Community institutions.

3. The Parties shall ensure that an operationally independent public body is entrusted with the powers necessary for the full application of paragraph 1(i) and (ii), regarding private and public undertakings and undertakings to which special rights have been granted.

4. Albania shall establish an operationally independent authority which is entrusted with the powers necessary for the full application of paragraph 1(iii) within four years from the date of entry into force of this Agreement. This authority shall have, *inter alia*, the powers to authorise State aid schemes and individual aid grants in conformity with paragraph 2, as well as the powers to order the recovery of State aid that has been unlawfully granted.

5. Each Party shall ensure transparency in the area of State aid, *inter alia* by providing to the other Party a regular annual report, or equivalent, following the methodology and the presentation of the Community survey on State aid. Upon request by one Party, the other Party shall provide information on particular individual cases of public aid.

6. Albania shall establish a comprehensive inventory of aid schemes instituted before the establishment of the authority referred to in paragraph 4 and shall align such aid schemes with the criteria referred to in paragraph 2 within a period of no more than four years from the date of entry into force of this Agreement.

7. For the purposes of applying the provisions of paragraph 1(iii), the Parties recognise that during the first ten years after the date of entry into force of this Agreement, any public aid granted by Albania shall be assessed taking into account the fact that Albania shall be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community.

Within five years from the date of entry into force of this Agreement, Albania shall submit to the Commission of the European Communities its GDP per capita figures harmonised at NUTS II level. The authority referred to in paragraph 4 and the Commission of the European Communities shall then jointly evaluate the eligibility of the regions of Albania as well as the maximum aid intensities in relation thereto in order to draw up the regional aid map on the basis of the relevant Community guidelines.

8. With regard to products referred to in Chapter II of Title IV:

- paragraph 1(iii) shall not apply;
- any practices contrary to paragraph 1(i) shall be assessed according to the criteria established by the Community on the basis of Articles 36 and 37 of the Treaty establishing the European Community and specific Community instruments adopted on this basis.

9. If one of the Parties considers that a particular practice is incompatible with the terms of paragraph 1, it may take appropriate measures after consultation within the Stabilisation and Association Council or after thirty working days following referral for such consultation. Nothing in this Article shall prejudice or affect in any way the taking, by either Party, of antidumping or countervailing measures in accordance with the relevant Articles of GATT 1994 or the WTO Agreement on Subsidies and Countervailing Measures or related internal legislation.

ARTICLE 72

Public undertakings

By the end of the third year following the date of entry into force of this Agreement, Albania shall apply to public undertakings and undertakings to which special and exclusive rights have been granted the principles set out in the Treaty establishing the European Community, with particular reference to Article 86 thereof.

Special rights of public undertakings during the transitional period shall not include the possibility of imposing quantitative restrictions or measures having an equivalent effect on imports from the Community into Albania.

Reference to European Partnership

The project will assist to achieve the priorities included in the proposal of the European Commission dated 06.11.2007 for a Council Decision on the principles, priorities and conditions contained in the European Partnership (EP) with Albania repealing Decision 2006/54/EC. The European Partnership outlines as short-term and medium-term priorities in the area of competition and state aid the following:

Short – term priorities:

- Improve and approximate to the *acquis* the existing anti-trust legislation to reinforce competition control;
- Strengthen the administrative capacity of the competition authority and provide adequate staff and training;
- Adopt implementing legislation on state aid;
- Continue updating the inventory of state aid schemes.

Medium – term priorities:

- Further improve the enforcement record in the areas of anti-trust and state aid control.

Reference to National Plan on the Implementation of the SAA

In response to the EP, and the SAA, the Government's the National Plan for the Implementation of the SAA (NPISAA), as adopted in September 2007, identifies short and medium term general priorities and their resultant legislative and implementation activities.

In this document, under section 3.7.1, in the *area of competition* the following short and medium term legislative initiatives and implementing activities are foreseen:

Short-term Legislative Initiatives

- Drafting and implementing an action plan, in order to implement the document of National Competition Policy;
- Drafting and approving the new Regulation "On the functioning of the Competition Authority";
- Draft-regulation "On the investigating procedures to be applied by the Competition Authority while examining violations of law no. 9121, dated 28.07.2003, "On protection of competition";
- Drafting the Guideline "On the Control of the Concentration between Undertakings";
- Drafting the Guideline "On the assessment of horizontal concentrations between undertakings";
- Drafting the Guideline "On the restriction of horizontal and vertical agreements"

Short-term Implementing Activities

- Staffing the new structure of the Competition Authority.
- Carrying out procedures for staff recruitment, in compliance with law no. 8549, dated 11.11.1999, "On the status of civil servants";
- Organizing training seminars for the new and existing staff of the Competition Authority, in cooperation with TIPA, OECD, GTZ, etc.
- Organizing awareness seminars on the competition right;
- Drafting and publication of a glossary on competition, in cooperation with the GTZ;
- Signing memorandums of understanding with the ERT, INSTAT, Bank of Albania

Medium-term Legal Initiatives

- Mutual Instruction with the Ministry of Finance "On the use of income generated by the Competition Authority during its activity", aiming at increasing and enforcing the financial independence;
- Draft-Regulation "On the internal procedural rules as regards the rights of consultation with the file";
- Commentary, in relation to the law "On competition protection";
- The new Regulation "On the simplification and reduction of penalties for trusts";
- Assessment of existing legislation and draft-laws, for issues that affect the market competition, as per definitions of article 69, law no. 9121, dated on 28.07.2003, "On competition protection";

Medium-term Implementing Activities

- Strengthening of the Competition Authority institutional capacities, through training sessions and workshops;
- Carrying out an awareness program with the market actors, as regards the importance of competition;
- Participation in the trainings of the regional competition network and ICN, aiming at strengthening cooperation with sister-like authorities

Under the same section, point **3.7.2 state aid** the following short and mid term legal and implementing activities have been foreseen.

Short-term Legislative Initiatives

- Decision of Council of Ministers “On the State Aid Inventory Schemes”;
- Guideline “For some categories of horizontal assistance”, which will be aligned with Regulations 68/2001, 363/2004, 70/2001, 364/2004, 2204/2002 of the European Commission;
- Guideline “On the Analysis Methodology concerning the State Aid Standards, costs and models on the declaration of the information dealing with the small and medium enterprise (SME)s qualification”;
- Guideline “On State Aid in the form of Public Services Compensation”.

Short-term Implementing Activities

- Strengthening the administrative capacities of the state aid structures with four new persons;
- Strengthening the institutional capacities of the state aid structures, especially as regards training and IT equipment for the newly appointed staff;
- Designation of the zones and the respective intensities of state aid for the preparation of the regional state aid map;
- Rising awareness of the state aid granters, as regards their legal obligations in the field of state aid;
- Preparing a comprehensive inventory of state aid schemes that are implemented in Albania, following the criteria and rules of the European legislation

Medium-term Legislative Initiatives

- Amending the law no. 9374, dated 21.04.2005, “On the state aid”, so that it reflects the changes undertaken in the frame of the Action Plan for State Aid and the respective legal reform;
- DCM on the preparation of annual reports for state aid

Medium-term Implementing Activities

- Strengthening the administrative capacities of the state aid control structures;
- Designation of the zones and the respective intensities of state aid for the preparation of the regional state aid map;
- Strengthening the institutional capacities for granters of the state aid, in order to implement their legal obligations in the field of state aid;
- Rising of public awareness on the state aid concept

Reference to MIPD

The proposed project is in compliance with section 2.2.3 of MIPD 2007-2009 titled “European Standards,” where it is foreseen the institutional set-up of key market actors, particularly State Aid Authorities and Competition Authority.

In point 2.2.3 Albania has undertaken commitments in the area of *competition* under the SAA. Regarding *anti-trust*, the functioning of the Competition Authority has improved, but it is held back by the scarcity and inexperience of its staff. *State aid*-related SAA preparations are on track. The legal framework and inventory is now complete. The State Aid Department's operational independence now needs to be ensured.

In the “Main priorities” point 2.2.3.1, MIPD foresees:

- Support to the development of strategies and policies in order to establish sectoral policies and a regulatory framework compatible with European standards.
- Support to the establishment and capacity building of agencies and institutions required for the implementation and enforcement of the sectoral policies, including mechanisms for the verification of EU compatibility of government policies and draft laws.

Such support should assist these institutions to achieve the fulfillment of the following result as mentioned under point 2.2.3.2“Expected results”.

- The institutional set-up of key market actors, particularly state aid authorities, the Competition authority,

Reference to National Development Plan

The Competition Commission of ACA has approved the National Competition Policy .The overall objective of this document is to be a descriptive program in order to ensure and encourage effective market competition. Also this document will contribute to the communication with the public, business community and public institutions. The policy describes the principles contained in the Law.

ANNEX V

Details per EU funded contract (*) where applicable:

For *TA contracts*: account of tasks expected from the contractor

For *twinning covenants*: account of tasks expected from the team leader, resident twinning advisor and short term experts

Profile of experts required:

Very good knowledge of EU legislation and practice on competition and state aid

Management and coordination skills

Minimum of 10 years experience dealing with competition and state aid issues/practical case handling.

For *grants schemes*: account of components of the schemes

For *investment contracts*: reference list of feasibility study as well as technical specifications and cost price schedule + section to be filled in on investment criteria (**)

For *works contracts*: reference list of feasibility study for the *constructing works* part of the contract as well as a section on investment criteria (**); account of services to be carried out for the *service part* of the contract

(*) non standard aspects (in case of derogation to PRAG) also to be specified

(**) section on investment criteria (applicable to all infrastructure contracts and constructing works):

- Rate of return
- Co financing
- compliance with state aids provisions
- Ownership of assets (current and after project completion)