

FINANCING AGREEMENT

BETWEEN

THE GOVERNMENT OF MONTENEGRO

AND

THE COMMISSION OF THE EUROPEAN COMMUNITIES

**CONCERNING THE NATIONAL PROGRAMME FOR
MONTENEGRO UNDER THE IPA-TRANSITION ASSISTANCE
AND INSTITUTION BUILDING COMPONENT FOR 2008**

Dated

(Centralised Management)

FINANCING AGREEMENT

between

THE GOVERNMENT OF MONTENEGRO

and

THE COMMISSION OF THE EUROPEAN COMMUNITIES

hereafter jointly referred to as "the Parties", or individually as "the beneficiary country" in the case of the Government of Montenegro, or "the Commission", in the case of the Commission of the European Communities.

Whereas:

- (a) On 1 August 2006, the Council of the European Union adopted Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (hereafter: the "IPA Framework Regulation"). With effect from 1 January 2007, this instrument constitutes the single legal basis for the provision of financial assistance to candidate countries (currently Croatia, the former Yugoslav Republic of Macedonia and Turkey) and potential candidate countries (Albania, Bosnia and Herzegovina, Montenegro, and Serbia, including Kosovo according to United Nation Security Council Resolution 1244) in their efforts to enhance political, economic and institutional reforms with a view to their eventually becoming members the European Union.
- (b) On 12 June 2007, the Commission adopted Regulation (EC) No 718/2007 implementing the IPA Framework Regulation, detailing applicable management and control provisions (hereafter: "Financial Regulation").
- (c) Community assistance under the instrument for pre-accession assistance should continue to support the beneficiary countries in their efforts to strengthen democratic institutions and the rule of law, reform public administration, carry out economic reforms, respect human as well as minority rights, promote gender equality, support the development of civil society and advance regional cooperation as well as reconciliation and reconstruction, and contribute to sustainable development and poverty reduction.

For potential candidate countries, Community assistance may also include some alignment with the *acquis communautaire*, as well as support for investment projects, aiming in particular at building management capacity in the areas of regional, human resources and rural development.
- (d) The Parties have concluded on 15 November 2007 a Framework Agreement setting out the general rules for cooperation and implementation of the Community assistance under the instrument for Pre-Accession Assistance.

- (e) The Commission adopted on 2 December 2008 the National Programme for Montenegro under the IPA-Transition Assistance and Institution Building Component in 2008 (hereafter: "the programme"). This programme is to be implemented by the Commission on a centralised basis.
- (f) It is necessary for the implementation of this programme that the Parties conclude a Financing Agreement to lay down the conditions for the delivery of Community assistance, the rules and procedures concerning disbursement related to such assistance and the terms on which the assistance will be managed.

HAVE AGREED ON THE FOLLOWING:

1 THE PROGRAMME

The Commission will contribute, by way of grant, to the financing of the following programme, which is set out in Annex A to this Agreement: Programme number: 2008/20-316

Title: National Programme for Montenegro under the IPA-Transition Assistance and Institution Building Component in 2008

2 IMPLEMENTATION OF THE PROGRAMME

- (1) The programme shall be implemented by the Commission on a centralised basis, in the meaning of Article 53a of Council Regulation (EC Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as last modified by Regulation (EC, Euratom) 1995/2006 of 13 December 2006. (hereafter: "Financial Regulation").
- (2) The programme shall be implemented in accordance with the provisions of the Framework Agreement on the Rules for co-operation concerning EC Financial Assistance to Montenegro and the implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA) concluded between the Parties on 15 November 2007 (hereafter: "the Framework Agreement"), which is set out in Annex B to this Agreement.

3 STRUCTURES AND AUTHORITIES WITH RESPONSIBILITIES

- (1) The Beneficiary shall designate a national IPA co-ordinator, in accordance with the Framework Agreement, who shall act as the representative of the Beneficiary vis-à-vis the Commission. He shall ensure that a close link is maintained between the Commission and the Beneficiary with regard both to the general accession process and to EU pre-accession assistance under IPA.

4 FUNDING

The funding for the implementation of this Agreement shall be as follows:

- (a) The Community contribution for the year 2008 is fixed at a maximum of € 26,800,000 (twenty six million eight hundred thousand euros), as detailed in the programme. However, payment of the Community contribution by the Commission shall be made within the limits of the funds available.
- (b) The cost of the structures and authorities put in place by the beneficiary country for the implementation of this programme shall be borne by the Beneficiary.

5 CONTRACTING DEADLINE

- (1) The individual contracts and agreements which implement this Agreement shall be concluded no later than t years from the date of conclusion of this Agreement.
- (2) In duly justified cases, this contracting deadline may be extended before its end date to a maximum of three years from the date of conclusion of this Agreement.
- (3) Any funds for which no contract has been concluded before the contracting deadline shall be cancelled.

6 DEADLINE FOR THE EXECUTION OF CONTRACTS

- (1) The contracts must be executed within a maximum of 2 years from the end date of contracting.
- (2) The deadline for the execution of contracts may be extended before its end date in duly justified cases.

7 DISBURSEMENT DEADLINE

- (1) Disbursement of funds must be made no later than one year after the final date for the execution of contracts.
- (2) The deadline for disbursement of funds may be extended before its end date in duly justified cases.

8 TREATMENT OF RECEIPTS

- (1) Receipts for the purposes of IPA include revenue earned by an operation, during the period of its co-financing, from sales, rentals, service enrolment/fees or other equivalent receipts with the exception of:
 - (a) receipts generated through the economic lifetime of the co-financed investments in the case of investments in firms;
 - (b) receipts generated within the framework of a financial engineering measure, including venture capital and loan funds, guarantee funds, leasing;
 - (c) where applicable, contributions from the private sector to the co-financing of operations, which shall be shown alongside public contribution in the financing tables of the programme.
- (2) Receipts as defined in paragraph 1 above represent income which shall be deducted from the amount of eligible expenditure for the operation concerned. No later than the closure of the programme, such receipts shall be deducted from the relevant operation's eligibility expenditure in their entirety or pro-rata, depending on whether they were generated entirely or only in part by the co-financed operation.

9 ELIGIBILITY OF EXPENDITURE

- (1) Expenditure under the programme in Annex A shall be eligible for Community contribution if it has been incurred after the contracts and grants implementing such

programme have been signed, except in the cases explicitly provided for in the Financial Regulation.

(2) The following expenditure shall not be eligible for Community contribution under the programme in Annex A:

- (a) taxes, including value added taxes;
- (b) customs and import duties, or any other charges;
- (c) purchase, rent or leasing of land and existing buildings;
- (d) fines, financial penalties and expenses of litigation;
- (e) operating costs;
- (f) second hand equipment;
- (g) bank charges, costs of guarantees and similar charges;
- (h) conversion costs, charges and exchange losses associated with any of the component specific euro accounts, as well as other purely financial expenses;
- (i) contributions in kind;
- (j) any leasing costs;
- (k) depreciation costs.

(3) By way of derogation from paragraph 2 above, the Commission will decide on a case-by-case basis whether the following expenditure is eligible:

- (a) operating costs, including rental costs, exclusively related to the period of co-financing of the operation;
- (b) value added taxes, if the following conditions are fulfilled:
 - (i) the value added taxes are not recoverable by any means;
 - (ii) it is established that they are borne by the final beneficiary, and
 - (iii) they are clearly identified in the project proposal.

(4) Expenditure financed under IPA shall not be the subject of any other financing under the Community budget.

10 RETENTION OF DOCUMENTS

- (1) All documents relating to the programme in Annex A shall be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the document relate.
- (2) In the case that the programme in Annex A is not definitely closed within the deadline set in paragraph 1 above, the documents relating to it shall be kept until the end of the year following that in which the programme in Annex A is closed.

11 ROADMAP FOR DECENTRALISATION WITHOUT EX-ANTE CONTROLS

- (1) The beneficiary country shall establish a detailed roadmap with indicative benchmarks and time limits to achieve decentralisation with *ex ante* controls by the Commission. In addition, the beneficiary country shall establish an indicative roadmap to achieve decentralisation without *ex ante* controls by the Commission.
- (2) The Commission shall monitor the implementation of the roadmaps mentioned in paragraph 1, and shall take due account of the results achieved by the beneficiary country in this context, in particular in the provision of assistance. The roadmap to achieve decentralization without *ex ante* controls may refer to a phased waiver of different types of ex-ante control.
- (3) The beneficiary country shall keep the Commission regularly updated with the progress made in the implementation of this roadmap.

12 INTERPRETATION

- (1) Subject to any express provision to the contrary in this Agreement, the terms used in this Agreement shall bear the same meaning as attributed to them in the IPA Framework Regulation and the IPA Implementing Regulation.
- (2) Subject to any express provision to the contrary in this Agreement, references to this Agreement are references to such Agreement as amended, supplemented or replaced from time to time.
- (3) Any references to Council or Commission Regulations are made to the version of those regulations as indicated. If required, modifications of these regulations shall be transposed into this Agreement by means of amendments.
- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.

13 PARTIAL INVALIDITY AND UNINTENTIONAL GAPS

- (1) If a provision of this Agreement is or becomes invalid or if this Agreement contains unintentional gaps, this will not affect the validity of the other provisions of this Agreement. The Parties will replace any invalid provision by a valid provision which comes as close as possible to the purpose of and intent of the invalid provision.
- (2) The Parties will fill any unintentional gap by a provision which best suits the purpose and intent of this Agreement, in compliance with the IPA Framework Regulation and the IPA Implementing Regulation.

14 REVIEW AND AMENDMENT

- (1) The implementation of this Agreement will be subject to periodic reviews at times arranged between the Parties.
- (2) Any amendment agreed to by the Parties will be in writing and will form part of this Agreement. Such amendment shall come into effect on the date determined by the Parties.

15 TERMINATION

- (1) Without prejudice to paragraph 2, this Agreement shall terminate eight years after its signature. This termination shall not preclude the possibility for the Commission making financial corrections in accordance with Article 56 of the IPA Implementing Regulation.
- (2) This Agreement may be terminated by either Party by giving written notice to the other Party. Such termination shall take effect six calendar months from the date of the written notice.

16 SETTLEMENT OF DIFFERENCES

- (1) Differences arising out of the interpretation, operation and implementation of this Agreement, at any and all levels of participation, will be settled amicably through consultation between the Parties.
- (2) In default of amicable settlement, either Party may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of this Agreement.
- (3) The language to be used in the arbitration proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.

17 NOTICES

- (1) Any communication in connection with this Agreement shall be made in writing and in the English language. Each communication must be signed and must be supplied as an original document or by fax.
- (2) Any communication in connection with this Agreement must be sent to the following addresses:

For the Community:

Postal Address
European Commission

Head of EC Delegation
Vuka Karadzica 12
81000 Podgorica
Montenegro
Fax.+382 (0) 20444666

For the Beneficiary Country

Postal Address
Government of Montenegro
Deputy Prime Minister for European Integration
Street: Jovana Tomaševića bb
81000 Podgorica
MONTENEGRO
Fax: +382 81 224 552

18 NUMBER OF ORIGINALS

This Agreement is drawn up in duplicate in the English language

19 ANNEXES

The Annexes A and B shall form an integral part of this Agreement.

20 ENTRY INTO FORCE

This Agreement shall enter into force on the date of signature. Should the Parties sign on different dates, this Agreement shall enter into force on the date of signature by the second of the two Parties.

*Signed, for and on behalf of the
Commission by*

*Signed, for and on behalf of the
Government of Montenegro*

Mr Leopold Maurer
Head of EC Delegation
Podgorica
Montenegro

Ms Gordana Đurović
Deputy Prime Minister for European
Integration and NIPAC
Podgorica

Date: 17/12/2008

Date: 23. January 2009

