

**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 2009**

**(Centralised Management)**

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# 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: "IPA Implementing 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 20 August 2009 the National Programme for Montenegro under the IPA-Transition Assistance and Institution Building Component in 2009 (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: 2009/021-170

Title: National Programme for Montenegro under the IPA-Transition Assistance and Institution Building Component in 2009

### **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) 1525/2007 of 17 December 2007. (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 2009 is fixed at a maximum of **EUR 27 232 179** (twenty seven million two hundred thirty two thousand one hundred seventy nine), 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 two 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 theses 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 Commission:*

European Commission

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

*For the Beneficiary Country*

Government of Montenegro  
Minister for European Integration  
Stanka Dragojevića 2  
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.

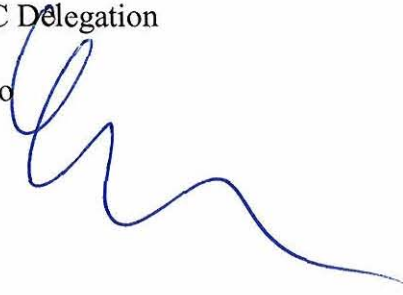
## 20 ENTRY INTO FORCE

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*

**Mr Leopold Maurer**  
Head of EC Delegation  
Podgorica  
Montenegro

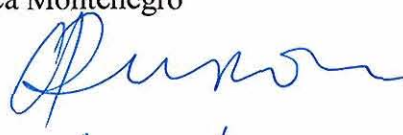
Date:



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

**Ms Gordana Đurović**  
Minister for European Integration and  
NIPAC  
Podgorica Montenegro

Date:

  
6/11/2009

**ANNEX A    NATIONAL PROGRAMME FOR MONTENEGRO UNDER THE IPA  
TRANSITION ASSISTANCE AND INSTITUTION BUILDING  
COMPONENT FOR 2008 ADOPTED BY COMMISSION DECISION  
C (2009)6420 of 20 August 2009**

## ANNEX A

### FINANCING PROPOSAL FOR THE NATIONAL PROGRAMME FOR MONTENEGRO UNDER THE IPA – TRANSITION ASSISTANCE AND INSTITUTION BUILDING COMPONENT FOR 2009– AS ADOPTED BY COMMISSION DECISION C (2009)6420 OF 20 AUGUST 2009

#### 1. IDENTIFICATION

Beneficiary	MONTENEGRO
CRIS number	2009/021-170
Year	2009
Cost	<b>EUR 27 232 179</b>
Implementing Authority	European Commission and GTZ (Projects 10, 14) <sup>1</sup>
Final date for concluding the financing agreements	31 December 2010.
Final dates for contracting	Two years following the date of conclusion of the Financing Agreement. No deadline for audit and evaluation projects covered by this Financing Agreement, as referred to in Article 166 (2) of the Financial Regulation. These dates apply also to the national co-financing.
Final dates for execution	Two years following the end date for contracting. These dates apply also to the national co-financing.
Sector Code	14050;15110; 15130; 15140; 15150; 15160; 21030; 22030; 24010; 31320; 72030; 99810
Budget line(s) concerned	BGUE-B2009-22.020200-C1-ELARG
Programming Task Manager	Unit C4 Albania, Montenegro
Implementation Task Manager	Delegation of the European Commission in Montenegro.

#### 2. PRIORITY AXES / (MEASURES) / PROJECTS

##### 2.a Priority Axes

The IPA 2009 National Programme for Montenegro is focused on the objectives set out in the Multi-Annual Indicative Planning Document (MIPD) 2009-2011. The MIPD reflects the key priorities of the European Partnership and the next steps in the Stabilisation and Association Process (SAP). It takes into account what was financed under CARDS and foreseen in IPA 2007 and 2008 and probable future priorities coming up in the overall European integration process (including the “Enhanced Permanent Dialogue” and sub-Committees) as well as the recommendations of the Montenegro progress report for 2008. It is also considering the National Programme for Integration (NPI) 2008-2012. It is taking forward the European Integration Process.

European integration is a wide ranging and complex process. It has to be viewed and analysed in the context of that longer time frame, and not solely on individual annual programme proposals. So for example, IPA 2008 programme focused on local government, developing sustainable solutions for refugees and displaced persons and support to the media; on

<sup>1</sup> In accordance with Article 54(2)(c) of the Financing Regulation



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improving environment, and enabling private sector development; and on rural development and food safety, animal disease control, financial market and customs, integrated border management and migration. The implementation of the 2008 programme will continue well into 2010/2011.

The present 2009 national programme under component I focus on the following priority axes as follows:

- (a) political requirements including support to judicial reform and police and border police administrations, and civil society development ;
- (b) economic requirements including measures to support infrastructures in the sectors of environment through solid waste management, and transport through upgrading railways, and to establish a national development plan;
- (c) ability to assume obligations of membership which includes support to DIS implementation and PIFC system, internal market, external audit, labour inspection, fisheries, as well as electronic communications;
- (d) the last two priority axis consist in supporting community programmes, as well as project preparation, technical assistance, and other support measures.

	TOTAL IPA in EUR million	
<i>Axis 1. Political criteria</i>	6.35	23.3%
<i>Axis 2. Economic Criteria</i>	10.80	39.7%
<i>Axis 3. Approximation membership</i>	7.78	28.6%
<i>Axis 4. Community programmes</i>	0.15	0.5%
<i>Axis 7. Support activities</i>	2.15	7.9%
Total	27.23	100%

## 2.b Description of projects grouped by priority axes

The following matrix summarises the projects that make up the IPA 2009 National Programme, except for actions implemented under the IPA Multi-beneficiary programme (€ 1.2 million for Tempus and € 0.2 million for Nuclear safety).

Priority axis	IPA support (€)	Project Purpose / main activities
Priority axis 1 <i>Political Criteria</i>	6,350,000	
<b>ME2009/1/1: Support to Implementation of the new Criminal Procedure Code (CPC)</b>	1,000,000	<p>Main beneficiary: Ministry of Justice; other beneficiaries: Prosecutors Office, Supreme Court, and Police.</p> <p>Objective: to strengthen the capacity of the judicial institutions for the implementation of the new Criminal Procedure Code (CPC).</p> <p>This project aims at improving the efficiency of the enforcement of the new law (to be adopted by parliament in Q2 2009), which provides for full protection of human freedoms and rights guaranteed by the Constitution and international conventions. The project should contribute to meeting the two important criteria: efficient work of judicial authorities and protection of human rights, and enable adequate enforcement of the CPC.</p> <p>A twinning* (€ 800,000) and a supply contracts are envisaged to be implemented with IPA funds. The tendering process is expected to</p>

		<p>begin in Q3 2009 for the twinning contract and in Q4 2009 for the supply contract.</p> <p>Co-financing: € 130,000</p>
<b>ME2009/1/2: Strengthening the capacities of police administration</b>	<i>2,000,000</i>	<p>Beneficiary : Police Administration (Two units: fight against organised crime and IT)</p> <p>The project aims at (i) strengthening the police capacity in terms of HRD with emphasis on special surveillance measures; forensic techniques and financial analysis / investigations, and (ii) establishing regional units within the Department for Fight Against Corruption and Organised Crime of the Police Directorate, particularly at the port of Bar and in the North of the Country; (iii) strengthening of the Border Police and its capacity through IT system, procedures and training.</p> <p>One twinning* (€ 1,250,000) and one supply contract will be implemented with IPA funds. The tendering process is expected to begin in Q3 2009 for the twinning contract and in Q3 2010 for the supply contract</p> <p>Co-financing: € 400,000</p>
<b>ME2009/1/3: Support to the Reception Centre for Asylum Seekers</b>	<i>450,000</i>	<p>Beneficiary: Ministry of Interior and Public Administration, Bureau for Care of Refugees</p> <p>The project aims to align the Montenegrin migration and asylum policy with the EU standards. It envisages (i) completion and equipping the facilities of the Reception Centre for Asylum Seekers (Department B) to be used as working premises by the Centre's staff and for accommodation of asylum seekers, (ii) construction and equipping of kitchen, dining-room, laundry- room, working premises for medical, legal aid services and a kindergarten (Department C of the Reception Centre). (iii) preparing the staff of the Reception Centre to effectively address the needs of asylum seekers through training on working procedures, standards and study visits to the country with developed asylum system.</p> <p>One works and one supply contract to be implemented with IPA funds. The tendering process is expected to begin in Q4 2009 for the works contract and in Q1 2010 for the supply contract</p> <p>Co-financing: € 330,000</p>
<b>ME2009/1/4: Implementation of Personal Data Protection strategy</b>	<i>700,000</i>	<p>Beneficiary: Ministry of Interior and Public Administration, Personal Data Protection Agency</p> <p>The project aims at supporting the implementation of the strategy and the action plan on data protection (to be approved by the Parliament during Q1 2009). The purpose is to assist establishing the Personal Data Protection Agency, which should perform the activities of the independent supervisory authority for the implementation of the personal data protection legislation. The project will also contribute to the visa liberalisation process.</p> <p>A twinning* contract is envisaged under this project. The tendering process is expected to begin in Q3 2009.</p> <p>Co-financing: € 500,000</p>
<b>ME2009/1/5: Civil society</b>	<i>2,200,000</i>	<p>Beneficiaries: Civil Society Organisations of Montenegro</p> <p>The project aims to enhance the contribution of Civil Society</p>



<b>development</b>		<p>Organisations (CSOs) to the social, economic and political development of Montenegro. Support will be provided for:</p> <p>(i) CSOs' activities focused on improving transparency and accountability of the public administration, judiciary, and Parliament. (incl. monitoring of court/Parliament proceedings, procurement procedures, implementation of primary and secondary legislation, campaigns on transparency and accountability, advocacy and research activities on legal documents and practices).</p> <p>(ii) Improving the quality of the services and the organisational sustainability of the CSOs.</p> <p>(iii) CSOs participation in the accession of Montenegro to EU (incl. participation of CSOs in the consultation process of MIPD, Action Plans and other documents related to EU integration process; specialised trainings; relevant researches and information campaigns).</p> <p>The project will be implemented through grant agreements following a Call for Proposals<sup>2</sup>. The grant contract duration is up to 18 months. Grants will range from € 50,000 to € 300,000. The call for proposals is expected to be launched in Q4 2009. The minimum co-financing from the final grant beneficiary is at least 10%.</p> <p>Co-financing: € 250,000</p>
<b>Priority axis 2</b>	<b>10,800,000</b>	
<b>Economic Criteria</b>		
<b>ME2009/1/6: Development Strategy of Montenegro (2010- 2015) and National Development Plan</b>	<b>1,000,000</b>	<p>Beneficiaries: Ministry of Finance, and Ministry for Economic Development.</p> <p>The project purpose is to draft the Development Strategy of Montenegro 2010-2015, and the National Development Plan, i.e. to support to establishing financial and political bases, developing methodology and institutional structures, preparing documents, as well as improving the capacity of the public institutions responsible for development issues.</p> <p>A twinning* contract is envisaged. The tendering process is expected to begin in Q3 2009.</p> <p>Co-financing: € 300,000</p>
<b>ME2009/1/7: Major rehabilitation of the main rail line Bar-Vrbnica (border with Serbia)</b>	<b>5,000,000</b>	<p>Beneficiary: Ministry of Transport and Telecommunications, The Railways company</p> <p>This intervention, parallel to EIB and EBRD loans, is aimed at supporting the renovation of a Montenegrin section (between the stations of Trebaljevo to Kolašin) of the international main railway line Bar-Beograd, allowing trains to travel safely without delays at the maximum design speed of 80 km/h.</p> <p>In case of privatisation within project duration the project will be cancelled and disbursements recovered.</p> <p>A works contract will be funded under IPA 2009. The tendering process is expected to begin in Q3 2009.</p> <p>Co-financing: € 10,000,000 (EIB and EBRD loans)</p>

<sup>2</sup> The essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for EC external actions.

<b>ME2009/1/8: Environmental Alignment and Solid Waste Management</b>	<b>4,800,000</b>	<p>Beneficiaries: Ministry of Tourism and Environment, municipalities of Bijelo Polje, Moikovac and Kolasin</p> <p>The project aims at:</p> <p>(i) improvement of solid waste management in the northern part of Montenegro, through constructing a new landfill (plus recycling yards and transfer station) for the municipalities of Bijelo Polje, Kolasin and Moikovac and closure of existing dump-sites in the respective municipalities;</p> <p>(ii) strengthening the capacities of the competent bodies and authorities for waste management and nature protection at central and local level, through enforcement of EU compatible national legislation, training processes and awareness raising.</p> <p>One twinning* (€ 800,000), one supply and one works contract are envisaged to be funded by IPA funds. The tendering procedures are expected to be launched in Q3 2009 for the works and twinning contracts and in Q2 2010 for the supply contract.</p> <p>Co-financing: € 9,355,648</p>
<b>Priority axis 3</b>  <i>Ability to assume the obligations of membership</i>	<b>7,780,000</b>	
<b>ME2009/1/9: Strengthening the management and control systems for EU financial assistance in Montenegro</b>	<b>2,000,000</b>	<p>Beneficiary: Ministry of Finance (CHU, CFCU, NF), 5 line ministries</p> <p>The project aims at strengthening the management and control system allowing proper use of public and EU funds. It will further improve the technical and administrative capacity of the key DIS players to cope with the EC requirements for the management of EU funds under the IPA Implementing Regulation. The project will assist Montenegro in the establishment of the necessary operating structures for the management of IPA components III, IV and V and will further improve the management of Components I and II. Special focus is put on building the capacity of the CHU and the internal audit services in the Ministry of finances and in the line ministries. Capacity for Financial Management and Control system (FMC) will be established and developed in 5 pilot institutions.</p> <p>One service contract is envisaged. The tendering process is expected to begin in Q3 2009.</p> <p>Co-financing: € 300,000</p>
<b>ME2009/1/10: Strengthening the State Audit Institution</b>	<b>800,000</b>	<p>Beneficiary: State Audit Institute</p> <p>The project will improve the audit process at the State Audit Institute (SAI), including planning, implementation and reporting, and will ensure its compliance with the EU best practice. It will also support the establishment and the building of the capacity of an Audit Authority for auditing the IPA funds.</p> <p>Indirect centralised management – one delegation agreement with GTZ<sup>3</sup>, which is expected to be awarded in Q4 2009.</p>

<sup>3</sup> The selection of the method of implementation and the delegatee body is based on the exclusive experience of GTZ in Montenegro in establishing and building the capacity of the State Audit Institution of Montenegro through a previous project funded with German funds. The president of SAI has expressed high satisfaction

<b>ME2009/1/11: Harmonization and implementation of the regulations on Labour Inspection and Safety at work</b>	<i>1,180,000</i>	<p>Beneficiary: Ministry of Health, Labour, and Social Welfare, Inspection Office</p> <p>The project purpose is to provide conditions in Montenegro for implementing the European standards on safety, protection and health of employees. It focuses on legal harmonisation in the field of labour and safety at work and on establishing a normative system of minimum standards in safety at work. Along, the project will invest in developing the human and technical resources of the governmental institutions to address the existing differences related to labour and safety at work between Montenegro and the EU.</p> <p>One twinning* (€ 1,000,000) and one supply contract are envisaged. The tendering procedures are expected to be launched in Q3 2009 (twinning) and Q2 2010 (supply).</p> <p>National Co-financing: € 180,000</p>
<b>ME2009/1/12: Sustainable Management of Marine Fisheries</b>	<i>1,000,000</i>	<p>Beneficiary: Ministry of Agriculture, Directorate of Fisheries, Institute of Marine Biology, Fisheries Inspectorate</p> <p>The project aims at strengthening the capacity to effectively manage Montenegrin fisheries in accordance with the requirements of the Common Fisheries Policy (CFP) and with the participation of all stakeholders. It will enhance the stock assessments of marine fishery resources in Montenegrin waters implemented by the Institute of Marine Biology and will improve the monitoring, control and surveillance by the Fisheries Inspectorate in accordance with the relevant regulations.</p> <p>One service, one supply and one works contract are envisaged to be funded with EU funds. The tender procedures are expected to be launched in Q3 2009 (service), Q2 2010 (supply) and Q1 2010 (works).</p> <p>National Co-financing: € 800,000</p>
<b>ME2009/1/13: Support to the Digitalisation of the Montenegrin Public Broadcasting</b>	<i>1,600,000</i>	<p>Beneficiary: Broadcasting Centre of Montenegro (RDC)</p> <p>Overall goal of the Project is to support development of the information society and audio-visual media services in Montenegro by providing added value services and faster access to new technologies to citizens of Montenegro that will ultimately contribute to an improvement of their standard of living and of citizens/consumers' rights. The project purpose is to assist digital switchover of the Public Service Broadcaster of Montenegro (RTCG) by providing equipment and training to RDC.</p> <p>One supply contract is envisaged to be funded with EU funds. The tendering process is expected to begin in Q3 2009.</p> <p>National Co-financing: € 1,095,000</p>
<b>ME2009/1/14: Accession to Internal Market</b>	<i>1,200,000</i>	<p>Beneficiary: Ministry of Economic Development</p> <p>The project is focused on enforcing the legislation and mechanisms related to the proper functioning of the internal market. It will build further the capacities for:</p> <p>(i) conducting effective competition and state aid control policy: the Authority for Protection of Competition and the State Aid Control</p>

with the services provided by GTZ so far and strong willingness to continue this cooperation. No other EU Member State has expressed such interest.



		<p>Authorities will be prepared to implement their functions, the legislation in the area will be improved and the public awareness on competition issues will be raised. The existing state aid schemes (implemented before the SAA) will be analysed and the capacities to prepare Annual Report on State Aid granted in Montenegro will be built up.</p> <p>(ii) effective consumer protection and market surveillance. The project envisages improving of legislation, awareness raising, enhancing the inter-institutional cooperation for market surveillance, developing of strategic guiding documents. Special focus will be put on strengthening the NGO sector to advocate for the interests of the consumers.</p> <p>(iii) protection of Intellectual Property Rights (IPR) – activities include elaboration of a national IPR strategy, strengthening of the Montenegrin Intellectual Property Office (MIPO) through improvement of its human and technical resources, drafting administrative guidelines for the internal procedures and transfer of know-how.</p> <p>One delegation agreement with GTZ<sup>4</sup> (€ 800,000) and one direct grant agreement with EPO<sup>5</sup> (€ 400,000). The award of the agreements is envisaged in Q4 2009 (GTZ) and Q4 2009 (EPO).</p> <p>Co-financing by EPO: € 50,000</p>
<b>Priority axis 4</b>	<b>146,500</b>	
<b>Support participation for in Community programmes and Agencies</b>		
<b>ME2009/1/15</b>	<b>146,500</b>	
<b>Support participation for in Community programmes</b>		<p>The objective is to co-finance the costs of the "entry-tickets" which Montenegro has to pay in accordance with the relevant Memoranda of Understanding establishing its participation in Community programmes, inter alia Culture, Entrepreneurship and Innovation, 7<sup>th</sup> Framework Programme for Research. The activity will be the reimbursement of part of the entry-ticket after it has been paid, on the basis of a grant (Q 2/3 2009).</p> <p>National Co-financing: €124,476</p>
<b>Priority axis 7</b>	<b>2,155,679</b>	
<b>Support Activities</b>		
<b>ME2009/1/16:</b>	<b>1,535,679</b>	
<b>Technical Assistance and Project</b>		<p>The overall objective is to improve the planning, programming and implementation of the Instrument for Pre-Accession Assistance (IPA) and, to facilitate mechanisms for an integrated EU accession process in</p>

<sup>4</sup> Currently GTZ is implementing TRIM MNE Project to the full satisfaction of the beneficiaries. It has an exclusive experience in Montenegro in introducing the EU internal market policies and in contributing to the approximation of the legislation in the key project fields (competition and state aid, consumer protection and market surveillance and IPR). There are no other EU Member State interested in providing this assistance.

<sup>5</sup> The direct contribution agreement with European Patent Office (EPO) will be concluded based on the provisions of Article 168(1)(c) of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/ 2002 on the Financial Regulation applicable to the general budget of the European Communities. This approach takes into account the high degree of specialization of EPO in Intellectual Property (IP) sector and its ongoing activities in the Western Balkans.

<b>Preparation Facility (TA&amp;PPF)</b>		<p>Montenegro. The purpose of TA &amp; PPF is to support the preparation and early implementation of activities under this and subsequent IPA National Action Programmes.</p> <p>Actions to be supported will include: recruitment of short-term technical assistance for activities typically including feasibility studies, inputs to terms of references and specifications, and tender evaluations, project preparatory and start-up actions, needs assessments and other studies relating to investment projects and programmes. Furthermore, where necessary, assistance may involve audits, monitoring and evaluations with regard to project implementation.</p> <p>Twinning light contracts, short term or long term technical assistance (e.g. framework contractors) generally amounting from € 50,000 to € 200,000 per project, or above if duly justified in case of more complex project preparation activities.</p> <p>An indicative number of 10 service (via framework contract) and twinning light contracts will be procured during the first two years after signing the financing agreement.</p>
<b>ME2009/1/17: Support Measures Facility (SMF)</b>	620,000	<p>A support measures facility for a total maximum amount of € 0.62 million, representing 2.3% of the total budget of this programme, is maintained to cover the costs of activities linked to preparation and follow-up directly necessary for the implementation of other activities already defined in the programme and the attainment of their objectives. Preparatory activities may cover activities such as studies, trainings, seminars, supervisory services and related technical assistances.</p> <p>Follow-up activities will consist of extending or supplementing other activities already defined in this programme and which have become necessary in order to achieve the intended results, without prejudice to Articles 242, 244 and 246 of the Implementing rules to the Financial Regulation<sup>6</sup>. A special project to prepare the population census would be included</p> <p>An average of 10 procurement contracts (mostly service and supply) will be concluded during the first two years of implementation.</p>
<b>TOTAL Component I</b>	27,232,179	

\* The essential selection and award criteria for selection of the proposals are laid down in the twinning manual referred to in point 4.3 of this Financing proposal. Where a twinning call for expression of interest is not successful, alternative methods of recruiting expertise will be employed. These may include service contract or twinning light agreement

## **2.c Overview of past and on going assistance (EU / IFI / Bilateral and national assistance) including lesson learned and donor coordination**

### ***Past and on-going assistance***

Overall EC assistance to Montenegro between 1998 and 2006 amounted to some € 280 million. Initially EC support included substantial humanitarian and food security programmes, followed by macro financial support. In addition some € 130 million has been provided through the CARDS and OBNOVA programmes. The underlying purpose of the assistance funded under the CARDS programme was to support: good governance, institution building and the rule of

<sup>6</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002.

law; the development of a market economy, while investing in vital physical infrastructure and the environment; the stabilisation of democracy, social development and civil society.

The pre-accession assistance under IPA 2007 and 2008 provided an additional € 50.7 million under the national programme and € 8.4 million under the Cross Border Cooperation (CBC) programmes.

The IPA 2007 and 2008 Programmes focused on: (1) Political requirements - support for civil society; the fight against organised crime and corruption; judiciary reform; local government; developing sustainable solutions for refugees and displaced persons and support to the media; (2) Socio-economic requirements – support for a national qualification and quality assurance framework; developing the transport sector and the energy market approximation; improving the environment sector and waste water treatment; enabling private sector development through eliminating barriers to business; (3) European standards - support for legal harmonisation of EU integration structures; animal identification/registration and veterinary services; statistical services; public procurement system; quality controls through support for standardisation, metrology and accreditation; tax administration; rural development and food safety; animal disease control; financial market regulation; customs administration; as well as integrated border management and migration.

In addition, particular attention will be given to the projects financed under the Multi-Beneficiary IPA programmes, managed by EC Headquarters, which are linked to numerous sectors of common interest, such as justice, social issues, statistics, and refugees. And in particular three broader programmes of the Multi-Beneficiary IPA are including in their documents some projects managed at national level. These are (1) the project on civil society development, included in the broader Civil Society Facility; (2) the projects of infrastructures, included in the financial crisis Facility; and (3) municipal infrastructures, included in the Municipal Window.

### ***Lessons learned***

The programming of IPA 2009 funds takes into account the lessons learned from previous CARDS as well as Phare assistance, as well as the IPA 2007 and 2008 exercises. The following is now being taken into account:

- EC assistance must be in line with EU policy towards Montenegro and projects should be developed taking into account the priorities of the European Partnership and SAA/Interim Agreement obligations.
- All EC assistance must complement and be consistent with Montenegro institutions development and action plans.
- Increasing local ownership is essential for the effective targeting of the support and achieving the agreed results in line with EU standards. Significant efforts have to be made to involve Montenegro's institutions in the planning and programming process for EC assistance.
- Particular attention must be paid to the preparedness and maturity of the projects to be selected.
- The absorption capacity and past achievement record of beneficiary organisations is important.

### ***Donor coordination***

Formal donor coordination has recently been re-established under the chairmanship of the Prime Minister. Donor coordination will also be done through regular sectoral meetings led by line ministries. In addition, an donors' assistance database is being developed; the local institution in charge of donor coordination is the Secretariat for European Integration under the

supervision of the Deputy Prime Minister for European Integration. The (SEI) also plans to link donor interventions more systematically to the National Programme for Integration (NPI).

- Donor information exchange will be developed through filling in an information matrix where each donor and agency indicates in which DAC sectors they are currently involved. Quarterly meetings among donors to strengthen cooperation in Montenegro will also be organised.
- The main bilateral and multilateral donors present in Montenegro are the following. **Germany**, through GTZ and KfW is one of the biggest bilateral donors to Montenegro, planning to provide some 31 millions euros (5 millions of grants and 26 millions of locus) in assistance for the country's development in 2009. The funds will be used for developing projects in the fields of water supply, energy efficiency and modernisation of communal infrastructure. Since 2000, Germany and Montenegro have already signed nine cooperation protocols worth approximately 200 millions euros. The projects, which are financed by the German side, include support for structural reforms, rehabilitation and development of the financial sector, development of infrastructure, entrepreneurship and tourism. **USA** through USAID is mainly involved in fostering the rule of law. It is also involved in decreasing discrepancy in economic development between Northern and Southern part of Montenegro. Its assistance is phasing out during the last years. **Greece** plans to invest € 17.5 million until 2011, focusing mainly on projects in public sector. **Netherlands**, through SNV, is mainly involved with capacity building and rural development projects. **Italy** is mainly involved in social sector, sustainable tourism and projects on integrating Roma population. **Turkey** through TICA has implemented 50 smaller projects in the field of technical assistance. **Austria** through ADA is focussing on projects on sustainable social-economic and democratic development, as well as on education.
- Regarding the IFIs, **EIB** is focusing on environmental infrastructure and transport (railways). The **World Bank** is implementing a large number of projects involved in the sustainable economic growth, in rural development, and private sectors through IFC. **EBRD** is mainly focused on projects in economic development and infrastructure through financial instruments. Among the UN agencies, **UNDP** is involved in social inclusion, institutional and judicial reform, economy and environment, regional environmental programme; **UNHCR** in establishing asylum system and finding durable solution for displaced persons; **UNICEF** on child protection reform and de-institutionalisation. Whereas the **OSCE** is implementing projects fostering democratization and protection of human rights, law enforcement, and media development, as well as assisting Parliament. The **Council of Europe** is focussing on public administration reform.

## 2.d Horizontal Issues

Systematically addressing cross-cutting issues has been a critical starting point in the project programme design. Each project fiche explains how cross-cutting issues shall be mainstreamed. Local actors/bodies, including civil society, will be consulted to assist Montenegrin institutions/organisations in effectively mainstreaming in line with European standards and appropriate practices. A portion of the projects' budgets may be allocated for this purpose.

### ***Equal opportunities and non-discrimination (Gender equality)***

Taking full account of the national framework on equal opportunities/non-discrimination, projects will be based on a consultative process with Montenegro Gender Equality Office which performs expert and coordination tasks related to the implementation of the principle of gender equality / women's rights. Specific attention will be given to ensure that women's needs and interests (including of those facing higher risks: refugees, Roma women, uneducated



women, unemployed women, single-mothers, etc.) are addressed throughout projects development and outputs (laws, regulations, policies, etc.) and that activities are organised so as to encourage/facilitate their participation so as to reduce the high rate of discrimination against women in Montenegro.

#### ***Support to Minorities and Vulnerable Groups***

Ensuring inclusion and participation of minorities and vulnerable groups into development assistance is an important prerequisite for economic growth, equitable prosperity and political stability. Although Montenegro has policies in place to promote the inclusion of minorities and vulnerable groups, implementation (e.g.; in education, use of languages, public administration, access to health care, etc.) often lags behind. Particular attention will be given to ensure that minority/vulnerable groups' specific needs and interests are addressed throughout the development and implementation of the proposed projects. Activities will be organised so as to encourage/facilitate their participation, so as to reflect the diversity of Montenegrin society.

#### ***Environmental protection***

The Constitution envisages that the country will become an "ecological state" and requires strict environmental standards are enforced. However, recent years have seen environmental degradation which directly affects the quality of life, notably of people living in urban areas, and of minorities who are at greater risk of being exposed to environmental hazards. Protecting the environment is also crucial to Montenegro's growing tourist industry. The proposed projects will systematically examine the opportunities to enhance the protection of the environment in Montenegro.

#### ***Good Governance***

Good governance, particularly the fight against corruption, is an important cross cutting issue in any effective development assistance programme. It takes on even greater significance in the context of Montenegro's preparations for EU membership. Citizens' trust in government and the rule of law, as well as investor/donor confidence, is undermined by corruption, leading to instability and economic stagnation. This programme takes systematic account of this issue. It is also explicitly addressed in a number of the proposed projects, including strengthening the capacity of the financial sector regulators, and providing technical assistance to the custom administration.

### **2.e Conditions**

The programme includes the following conditions:

- The government formally endorses the projects described in the fiches, including the identified parallel co-financing commitments.
- The government will ensure that the beneficiary institutions have adequate financial, material and human resources in order that that EC financial support is used in the most effective and sustainable manner possible.
- Beneficiary institutions will formally endorse the design and tender documents, including terms of reference.
- The government shall ensure the availability of land, free of ownership claims or disputes, for the construction of the planned works. The Government shall ensure long-term sustainability of the actions by allocating the necessary resources, including running costs and maintenance costs.
- Related to project 7 "Major rehabilitation of the main rail line Bar-Vrbnica", the Government shall reimburse disbursements in case of privatisation within project duration.

- Beneficiary institutions organise, select and appoint members (including gender and ethnic balance) of working groups, steering and coordination committees, and seminars as required by the project activities.

Additional project specific conditions are described in the project fiches. In the event that these conditions are not met, suspension or cancellation of the project or specific activities will be considered.

## **2.f Benchmarks**

This section shows the indicative benchmarks for the tendering and contracting of the funds. This is based on the assumption that the Financial Agreement will be signed end of 2009.

	2009		2010 (cumulative)* **		2011 (cumulative)* **	
	EU	NF*	EU	NF*	EU	NF*
Number of tenders launched **	13	16	19	23	19	23
Number of calls for proposals launched	1	-	1		1	
Direct Grant Awards / Contribution agreement/delegation agreement	3		3		3	
Contracting Rate (%)	8%	50%	96%	90%	100%	100%

\* Parallel Counterpart Co-financing under centralized management. There is no National Fund

\*\* Includes twinning

\*\*\* Cumulative numbers refer to the IPA community contribution and to counterpart co-financing respectively

## **2.g Roadmap for the decentralisation of the management of EU funds without *ex ante* controls by the Commission**

In Montenegro, preparatory work leading to a decentralised implementation system (DIS) with ex-ante controls is progressing. The government adopted in February 2008 the "Information on establishing the decentralised implementation system (DIS) in Montenegro", which includes an indicative schedule for different activities on the way to DIS. The government has set up the first DIS institutions and nominated the heads of DIS functions and structures, namely the Competent Accrediting Officer (CAO), the National Authorizing Officer (NAO), and the PAO (Programme Authorising Officer) as well as the SPOs (Senior Programme Officers). Recruitment of additional staff for the Operating Structure for IPA components I and II, and the National Fund (NF) will get underway shortly. The establishment of internal audit units (IAUs) in the Ministry of Finance and in the line ministries has been launched. Some initial arrangements have been made for the establishment of an Audit authority (AA) within the State Audit Institution (SAI).

The Secretariat for European Integration receives CARDS assistance for the implementation of the DIS roadmap, and for training of the staff of the DIS structures. The IPA 2008 programme will provide further assistance by helping to set up a paying agency and managing authority for rural development. The present financing proposal will provide additional support including for the accreditation process related to components 3 and 4.

### 3. BUDGET (AMOUNTS IN EUR)

#### 3.1. Indicative budget table

Centralised management	Institution Building (IB)					Investment (INV)					TOTAL IB+INV	TOTAL IPA	
amounts in Euros	IB TOTAL	IB IPA	%	IB NC*	%	INV TOTAL	INV IPA	%	INV NC*	%			%
	(a)=(b)+( c )	(b)	(1)	( c )	(1)	(d)=(e)+(f)	( e )	(1)	(f)	(1)	(g)=(a)+(d)	(h)=(b)+( e )	(2)
<b>PROJECTS</b>													
<b>Axis 1. Political criteria</b>	<b>5,770,000</b>	<b>4,950,000</b>	<b>86%</b>	<b>820,000</b>	<b>14%</b>	<b>2,190,000</b>	<b>1,400,000</b>	<b>64%</b>	<b>790,000</b>	<b>36%</b>	<b>7,960,000</b>	<b>6,350,000</b>	<b>23%</b>
Justice (CPC)	890,000	800,000	90%	90,000	10%	240,000	200,000	83%	40,000	17%	1,130,000	1,000,000	
Police administration	1,400,000	1,250,000	89%	150,000	11%	1,000,000	750,000	75%	250,000	25%	2,400,000	2,000,000	
Reception Centre for Asylum Seekers	30,000		0%	30,000	100%	750,000	450,000	60%	300,000	40%	780,000	450,000	
Personal data protection	1,000,000	700,000	70%	300,000	30%	200,000			200,000	100%	1,200,000	700,000	
Civil society development	2,450,000	2,200,000	90%	250,000	10%	0					2,450,000	2,200,000	
<b>Axis 2. Economic Criteria</b>	<b>2,400,000</b>	<b>1,800,000</b>	<b>75%</b>	<b>600,000</b>	<b>25%</b>	<b>28,055,648</b>	<b>9,000,000</b>	<b>32%</b>	<b>19,055,648</b>	<b>68%</b>	<b>30,455,648</b>	<b>10,800,000</b>	<b>40%</b>
National development plan	1,300,000	1,000,000	77%	300,000	23%	0					1,300,000	1,000,000	
Railways	300,000			300,000	100%	14,700,000	5,000,000	34%	9,700,000	66%	15,000,000	5,000,000	
Environment	800,000	800,000	100%		0%	13,355,648	4,000,000	30%	9,355,648	70%	14,155,648	4,800,000	
<b>Axis 3. Obligations of membership</b>	<b>5,925,000</b>	<b>5,560,000</b>	<b>94%</b>	<b>365,000</b>	<b>6%</b>	<b>4,280,000</b>	<b>2,220,000</b>	<b>52%</b>	<b>2,060,000</b>	<b>48%</b>	<b>10,205,000</b>	<b>7,780,000</b>	<b>28%</b>
Management and control systems	2,170,000	2,000,000	92%	170,000	8%	130,000		0%	130,000	100%	2,300,000	2,000,000	
State Audit Institute	800,000	800,000	100%		0%	0					800,000	800,000	
Labour Inspection	1,100,000	1,000,000	91%	100,000	9%	260,000	180,000	69%	80,000	31%	1,360,000	1,180,000	
Fishery	560,000	560,000	100%		0%	1,240,000	440,000	35%	800,000	65%	1,800,000	1,000,000	
Electronic digitalisation	45,000			45,000	100%	2,650,000	1,600,000	60%	1,050,000	40%	2,695,000	1,600,000	
Internal Market	1,250,000	1,200,000	96%	50,000	4%						1,250,000	1,200,000	
<b>Axis 4. Supporting programmes</b>	<b>270,976</b>	<b>146,500</b>	<b>54%</b>	<b>124,476</b>	<b>46%</b>	<b>0</b>					<b>270,976</b>	<b>146,500</b>	<b>1%</b>
Participation in Community programmes	270,976	146,500	54%	124,476	46%	0					270,976	146,500	

<b>Axis 7. Support activities</b>	<b>2,155,679</b>	<b>2,155,679</b>	<b>100%</b>	<b>0</b>		<b>0</b>					<b>2,155,679</b>	<b>2,155,679</b>	<b>8%</b>
TA&PPF	1,535,679	1,535,679	100%	0		0					1,535,679	1,535,679	
Support Measures	620,000	620,000	100%	0		0					620,000	620,000	
<b>Total</b>	<b>16,521,655</b>	<b>14,612,179</b>	<b>88%</b>	<b>1,909,476</b>	<b>12%</b>	<b>34,525,648</b>	<b>12,620,000</b>	<b>37%</b>	<b>21,905,648</b>	<b>63%</b>	<b>51,047,303</b>	<b>27,232,179</b>	<b>100%</b>

\* contribution (public and private national and/or international contribution) provided by national counterparts

(1) Expressed in % of the Total expenditure IB or INV (column (a) or (d)).

(2) Priority axis rows only; expressed in % of the grand total of column (h); it indicates the relative weight of the priority with reference to the total IPA Community contribution of the entire FP



### **3.2 Principle of Co-Financing applying to the projects funded under the programme**

The Community contribution, which represents **53%** of the total budget allocated to this programme, has been calculated in relation to the eligible expenditure, which in the case of centralised management is based on the total expenditure. Parallel co-financing will be used.

In total **12%** of co-financing is foreseen for IB and **63%** for INV. In view of these percentages, 6% of co-financing for priority axis 3 is acceptable. The level of co-financing per priority axis is not an expression of beneficiary preference or weighting, but a practical reflection of the nature of how the projects will function.

Individual grants agreements implementing the projects described in point 2b above will be financed in full by the Commission, in accordance with Art 253(1)(d) of the Implementing Rules to the Financial Regulation.

## **4. IMPLEMENTATION ARRANGEMENTS**

### **4.1 Method of implementation**

The programme will be implemented on a centralised basis by the European Commission in accordance with Article 53a of the Financial Regulation<sup>7</sup> and the corresponding provisions of the Implementing Rules<sup>8</sup>. The implementation of the programme is delegated to the European Commission Delegation in Montenegro. One project and two components of another project will be implemented by a delegated body, GTZ<sup>9</sup>, under indirect centralised management, through a Delegation Agreement, in accordance with art 54(2) (c) of the Financial Regulation.

### **4.2 General rules for procurement and grant award procedures**

Procurement shall follow the provisions of Part Two, Title IV of the Financial Regulation and Part Two, Title III, Chapter 3 of its Implementing Rules 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 third countries adopted by the Commission on 24 May 2007 (C(2007)2034).

Grant award procedures shall follow the provisions of Part One, Title VI of the Financial Regulation and Part One, Title VI of its Implementing Rules.

The Commission 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" ("Practical Guide") as published on the EuropeAid website<sup>10</sup> at the date of the initiation of the procurement or grant award procedure.

In case of projects containing works, the FIDIC<sup>11</sup> conditions of contracts will be followed. The supervision of the works will be ensured by the national authorities.

### **4.3 Implementation Principles for Twinning Projects**

Twinning projects shall be set up in the form of a grant agreement, whereby the selected Member State administrations agree to provide the requested public sector expertise against the reimbursement of the expenses thus incurred.

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<sup>7</sup> Regulation 1605/2002 (OJ L 248, 16.9.2002, p.1) as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p.1)

<sup>8</sup> Regulation 2342/2002 (OJ L 357, 31.12.2002, p. 1) as last amended by Regulation (EC, Euratom) No 478/2007 (OJ L 111, 28.4.2007, p. 13).

<sup>9</sup> During the consultation process, no other Member State has expressed such an interest.

<sup>10</sup> current address: [http://ec.europa.eu/europeaid/work/procedures/implementation/practical\\_guide/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm)

<sup>11</sup> FIDIC International Federation of Consulting Engineers (Fédération Internationale des Ingénieurs Conseils)

The contract may in particular provide for the long-term secondment of an official assigned to provide full-time advice to the administration of the beneficiary country as resident twinning advisor.

The twinning grant agreement shall be established in accordance with relevant provisions of Part One, Title VI of the Financial Regulation and Part One, Title VI of its Implementing Rules.

The twinning manual is available on the Website of DG ELARG at the following address: [http://ec.europa.eu/enlargement/financial\\_assistance/institution\\_building/twinning\\_en.htm](http://ec.europa.eu/enlargement/financial_assistance/institution_building/twinning_en.htm)

#### **4.4 Environmental Impact Assessment and Nature Conservation**

All investments shall be carried out in compliance with the relevant Community environmental legislation.

The procedures for environmental impact assessment, as set down in the EIA-Directive<sup>12</sup>, will fully apply to all investment projects and the application of the European Principles for the Environment will be ensured<sup>13</sup>.

Since projects 7, 8 and 12 are likely to affect sites of nature conservation importance, an appropriate nature conservation assessment shall be made for each project, equivalent to that provided for in Art. 6 of the Habitats Directive<sup>14</sup>.

### **5. MONITORING AND EVALUATION**

#### **5.1 Monitoring**

The Commission may undertake any actions it deems necessary to monitor the programmes concerned.

#### **5.2 Evaluation**

Programmes shall be subject to *ex ante* evaluations, as well as interim and, where relevant, *ex post* evaluations in accordance with Articles 57 and 82 of the IPA Implementing Regulation<sup>15</sup>, with the aim of improving the quality, effectiveness and consistency of the assistance from Community funds and the strategy and implementation of the programmes.

The results of *ex ante* and interim evaluation shall be taken into account in the programming and implementation cycle. The Commission may also carry out strategic evaluations.

### **6. AUDIT, FINANCIAL CONTROL AND ANTI-FRAUD MEASURES**

The accounts and operations of all parties involved in the implementation of this programme, as well as all contracts and agreements implementing this programme, are subject to, on the one hand, the supervision and financial control by the Commission (including the European Anti-Fraud Office), which may carry out checks at its discretion, either by itself or through an outside auditor and, on the other hand, 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 the Beneficiary Country.

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<sup>12</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175 5.7.1985, p. 40). Directive as last amended by Directive 2003/35/EC (OJ L 156, 25.6.2003, p. 17).

<sup>13</sup> Cf. Annex EIA to the corresponding investment project fiche, equivalent to that provided for by the EIA-directive).

<sup>14</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L206, 22.7.1992). Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>15</sup> Commission Regulation (EC) No 718/2007 of 12 June 2007 (OJ L 170, 29.6.2007, p.1)

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96<sup>16</sup>

The controls and audits described above are applicable to all contractors, subcontractors and grant beneficiaries who have received Community funds.

## **7. NON SUBSTANTIAL REALLOCATION OF FUNDS**

The authorising officer by delegation (AOD), or 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, may undertake non substantial reallocations of funds without an amending financing decision being necessary. In this context, cumulative reallocations not exceeding 20% of the total amount allocated for the programme, subject to a limit of EUR 4 million, shall not be considered substantial, provided that they do not affect the nature and objectives of the programme. The IPA Committee shall be informed of the above reallocation of funds.

## **8. LIMITED ADJUSTMENTS IN THE IMPLEMENTATION OF THE PROGRAMME**

Limited adjustments in the implementation of this programme affecting elements listed under Article 90 of the Implementing Rules to the Financial Regulation, which are of an indicative nature<sup>17</sup>, 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.

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<sup>16</sup> OJ L 292; 15.11.1996; p. 2

<sup>17</sup> 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.

# **FRAMEWORK AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF MONTENEGRO**

**AND**

**THE COMMISSION OF THE EUROPEAN COMMUNITIES**

**ON**

**THE RULES FOR CO-OPERATION CONCERNING EC-FINANCIAL  
ASSISTANCE TO MONTENEGRO IN THE FRAMEWORK OF THE  
IMPLEMENTATION OF THE ASSISTANCE UNDER THE  
INSTRUMENT FOR PRE-ACCESSION ASSISTANCE (IPA)**



- copy -

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The Commission of the European Communities, hereinafter referred to as "**the Commission**", acting for and on behalf of the European Community, hereinafter referred to as "**the Community**"

on the one part,

and

the Government of Montenegro, acting on behalf of Montenegro, hereinafter referred to as "**the Beneficiary**"

and together, jointly referred to as "**the Contracting Parties**"

Whereas

- (1) On 1 August 2006, the Council of the European Union adopted Regulation (EC) No 1085/2006 of 17 July 2006<sup>(1)</sup> establishing an instrument for pre-accession assistance (hereinafter referred to as "**IPA Framework Regulation**"). With effect from the 1 January 2007, this new instrument constitutes the single legal basis for the provision of financial assistance to candidate countries and potential candidate countries in their efforts to enhance political, economic and institutional reforms with a view to become members of the European Union;
- (2) On 12 June 2007, the Commission has adopted the regulation implementing the IPA Framework Regulation, detailing applicable management and control provisions;
- (3) The new instrument for pre-accession assistance (IPA) replaces the five previously existing pre-accession instruments: Regulation (EEC) No 3906/1989 on economic aid to certain countries of Central and Eastern Europe, Regulation (EC) No 1267/1999 on the establishment of an instrument for structural policies for pre-accession, Regulation (EC) No 1268/1999 on the support for pre-accession measures for agriculture and rural development, Regulation (EC) No 2666/2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, and Regulation (EC) No 2500/2001 on the financial assistance to Turkey;
- (4) The Beneficiary is eligible under IPA as provided for in the IPA Framework Regulation and in Commission Regulation (EC) No 718/2007 of 12 June 2007<sup>(2)</sup> implementing the IPA Framework Regulation (hereinafter referred to as "**IPA Implementing Regulation**");

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<sup>1</sup> OJ L 210, 31 July 2006, p. 82

<sup>2</sup> OJ L 170, 29 June 2007, p. 1

- (5) The Beneficiary currently figures in Annex II of the IPA Framework Regulation, and should therefore have access to the Transition Assistance and Institution Building Component and the Cross-Border Co-operation Component established under IPA and, once the Beneficiary has obtained the status of a candidate country and therefore figures in Annex I of the said Regulation, access to the other 3 components will in principle be opened to the Beneficiary;
- (6) It is therefore necessary to set out the rules for co-operation concerning EC financial assistance with the Beneficiary under IPA;

HAVE AGREED AS FOLLOWS:

## **SECTION I GENERAL PROVISIONS**

### **Article 1 Interpretation**

- (1) Subject to any express provision to the contrary in this Framework 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 Framework 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 Framework Agreement by means of amendments.
- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.

### **Article 2 Partial invalidity and unintentional gaps**

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 Contracting 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. The Contracting 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.

### **Article 3 Purpose**

- (1) In order to promote co-operation between the Contracting Parties and to assist the Beneficiary in its progressive alignment with the standards and policies of the European Union, including, where appropriate the *acquis communautaire*, with a view to membership, the Contracting Parties agree to implement activities in the

various fields as specified in the two regulations mentioned above and as applicable to the Beneficiary.

- (2) The assistance activities shall be financed and implemented within the legal, administrative and technical framework laid down in this Agreement and as further detailed in Sectoral Agreements and/or Financing Agreements, if any.
- (3) The Beneficiary takes all necessary steps in order to ensure the proper execution of all assistance activities and to facilitate the implementation of the related programmes.

#### **Article 4      General rules on financial assistance**

- (1) The following principles shall apply to financial assistance by the Community under IPA:
  - a) Assistance shall respect the principles of coherence, complementarity, co-ordination, partnership and concentration;
  - b) Assistance shall be coherent with EU policies and shall support alignment to the *acquis communautaire*;
  - c) Assistance shall comply with the budgetary principles laid down in Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002<sup>3</sup>) on the Financial Regulation applicable to the general budget of the European Communities (hereinafter referred to as "Financial Regulation") and its Implementing Rules<sup>4</sup>;
  - d) Assistance shall be consistent with the needs identified in the enlargement process and absorption capacities of the Beneficiary. It shall also take account of lessons learned;
  - e) The ownership of the programming and implementation of assistance by the Beneficiary shall be strongly encouraged and adequate visibility of EU intervention shall be ensured;
  - f) Operations shall be properly prepared, with clear and verifiable objectives, which are to be achieved within a given period; the results obtained should be assessed through clearly measurable and adequate indicators;
  - g) Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prevented during the various stages of the implementation of assistance;
  - h) The objectives of pre-accession assistance shall be pursued in the framework of sustainable development and the Community promotion of the goal of protecting and improving the environment.
- (2) Assistance for the Beneficiary shall be based on the priorities identified in the existing documents i.e. the European Partnership, the reports and strategy paper contained in the annual enlargement package of the Commission, and the Stabilisation and Association Agreement. Once the Beneficiary has obtained the status of a candidate country and therefore figures in Annex I of the IPA Framework Regulation,

<sup>3</sup> OJ L 248, 16 September 2002, p.1, as amended by Regulation No 1995/2006 of 13 December 2006 (OJ L 390, 30 December 2006, p.1)

<sup>4</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 357, 31.12.2002, p. 1) as last amended by Commission Regulation No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007)

assistance for the Beneficiary may also be based on the priorities identified in the Accession partnership, the national programme for the adoption of the *acquis communautaire* and the negotiation framework.

- (3) All operations receiving assistance under IPA shall in principle require co-financing by the Beneficiary and the Community, unless otherwise agreed upon in a Sectoral Agreement or Financing Agreement.
- (4) Where the execution of activities depends on financial commitments from the Beneficiary's own resources or from other sources of funds, the funding of the Community shall become available at such time as the financial commitments of the Beneficiary and/or the other sources of funds themselves become available.
- (5) The provision of Community financing under IPA shall be subject to the fulfilment by the Beneficiary's obligations under this Framework Agreement and under Sectoral Agreements and Financing Agreements, if any.

#### **Article 5      Implementation methods**

- (1) For the implementation of assistance under IPA in Montenegro, decentralised management, whereby the Commission confers the management of certain actions on the Beneficiary, while retaining overall final responsibility for general budget execution in accordance with Article 53c of the Financial Regulation and the relevant provisions of the EC Treaties, shall apply as a rule. Decentralised management shall cover at least tendering, contracting and payments by the national administration of the Beneficiary. Operations shall be implemented in accordance with the provisions laid down in Article 53c of the Financial Regulation and the ones referred to in this article.
- (2) However, the Contracting Parties may agree to make use of
  - a) centralised management as defined in Article 53a of the Financial Regulation under the Transition Assistance and Institution Building Component, in particular for regional and horizontal programmes, and under the Cross-Border Co-operation Component. It may also be used for technical assistance under any of the IPA components. Operations shall be implemented in accordance with the provisions laid down in Articles 53 point (a), 53a and 54 to 57 of the Financial Regulation.
  - b) joint management as defined in Article 53d of the Financial Regulation for the Transition Assistance and Institution Building Component, in particular for regional and horizontal programmes, and for programmes involving international organisations. Operations shall be implemented in accordance with the provisions laid down in Articles 53 point (c) and 53d of the Financial Regulation.
  - c) shared management as defined in Article 53b of the Financial Regulation under the Cross-Border Co-operation Component, for cross-border programmes involving Member States of the European Union. Operations shall be implemented in accordance with the provisions laid down in Articles 53 point (b), 53b and Title II of Part two of the Financial Regulation. The following particular provision shall be taken into account in the implementation of cross-border programmes with Member States.

Where one or more Member States of the European Union and the Beneficiary participating in a cross-border programme are not yet ready for implementation of the whole programme under shared management, the part of the programme concerning the Member State(s) shall be implemented in accordance with Title II (Cross-Border Co-operation Component), Chapter III, Section 2 of the IPA Implementing Regulation (Articles 101 to 138) and the part of the programme concerning the Beneficiary shall be implemented in accordance with Title II, Chapter III, Section 3 of the IPA Implementing Regulation. (Articles 139 to 146 IPA Implementing Regulation, with the exception of Article 142. The provisions concerning the joint monitoring committee of Article 110 shall apply).

- (3) If required by the related Financing Decision, the Commission and the Beneficiary shall conclude a Financing Agreement in accordance with Article 8 of the IPA Implementing Regulation on multi-annual or annual programmes. Financing Agreements may be concluded between the Commission and several beneficiary countries under IPA including the Beneficiary for assistance for multi-country programmes and horizontal initiatives.
- (4) This Framework Agreement shall apply to all Financing Agreements concluded between the Contracting Parties for the financial assistance under IPA. Where they exist, Sectoral Agreements related to a given component shall apply to all Financing Agreements concluded under that component. Where there is no Financing Agreement, the rules included in this Framework Agreement apply together with Sectoral Agreements, if any.

## **SECTION II MANAGEMENT STRUCTURES AND AUTHORITIES**

### **Article 6 Establishment and designation of structures and authorities for decentralised management**

- (1) The following structures and authorities must be designated by the Beneficiary in the event of decentralised management:
  - a) The competent accrediting officer (CAO);
  - b) The national IPA co-ordinator (NIPAC);
  - c) The strategic coordinator for the Regional Development Component and the Human Resources Development Component;
  - d) The national authorising officer (NAO);
  - e) The national fund (NF);
  - f) Operating structures per component or programme to deal with the management and implementation of assistance under the IPA Regulation;
  - g) The audit authority.
- (2) Specific bodies may be established within the overall framework defined by the bodies and authorities described above within or outside the operating structures initially designated. The Beneficiary shall ensure that the final responsibility for the functions of operating structures shall remain with the operating structure initially

designated. Such a restructuring shall be formalised in written agreements and shall be subject to accreditation by the national authorising officer and the conferral of management by the Commission.

- (3) The Beneficiary shall ensure that appropriate segregation of duties applies to the bodies and authorities mentioned under paragraph 1 and 2 above in accordance with Article 56 of the Financial Regulation. Duties are segregated when different tasks related to a transaction are allocated to different staff, thereby helping to ensure that each separate task has been properly undertaken.

**Article 7 Establishment and designation of structures and authorities for centralised or joint management**

- (1) In the event of centralised or joint management the national IPA co-ordinator 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.
- (2) The national IPA co-ordinator shall also be responsible for co-ordinating the Beneficiary's participation in the relevant cross-border programmes, both with Member States and with other Beneficiary countries, as well as in the trans-national, interregional or sea basins programmes under other Community instruments. He may delegate the tasks relating to this latter responsibility to a cross-border co-operation co-ordinator.
- (3) In the case of the Cross-border Co-operation Component, operating structures shall be designated and put in place by the Beneficiary, in accordance with Article 139 of the IPA Implementing Regulation.

**Article 8 Functions and common responsibilities of the structures, authorities and bodies**

- (1) The bodies and authorities mentioned in Article 6 above shall be allocated the functions and common responsibilities as set out in ANNEX A to this Framework Agreement.
- (2) Component-related specific allocations of functions and responsibilities may be set out in Sectoral Agreements or Financing Agreements. They must not be in contradiction to the basic approach chosen for the allocation of functions and common responsibilities as shown in ANNEX A.
- (3) Where under decentralised management specific persons have been given responsibility for an activity in relation to the management, implementation and control of programmes, the Beneficiary shall enable such persons to exercise the duties associated with that responsibility including in cases where, there is no hierarchical link between them and the bodies participating in that activity. The Beneficiary shall, in particular, provide those persons with the authority to establish, through formal working arrangements between them and the bodies concerned:



- a) an appropriate system for the exchange of information, including the power to require information and a right of access to documents and staff on the spot, if necessary;
- b) the standards to be met;
- c) the procedures to be followed.

### **SECTION III ACCREDITATION AND CONFERRAL OF MANAGEMENT POWERS UNDER DECENTRALISED MANAGEMENT**

#### **Article 9 Common requirements**

Management relating to a component, a programme or a measure can only be conferred on the Beneficiary, if and when the following requirements are fulfilled:

- a) The Beneficiary meets the conditions set to Article 56 of the Financial Regulation, in particular as regards the management and control systems. The management and control systems set up in Montenegro shall provide for effective and efficient control in at least the areas set out in the Annex to the IPA Implementing Regulation and as listed under No 1 c) of ANNEX A to this Framework Agreement. The Contracting Parties may define further provisions in Sectoral Agreements or Financing Agreements.
- b) The competent accrediting officer has given accreditation to the national authorising officer both
  - as the head of the national fund bearing overall responsibility for the financial management of EU funds in Montenegro and being responsible for the legality and regularity of the underlying transactions;
  - with regard to national authorising officer's capacity to fulfil the responsibilities for the effective functioning of management and control systems under IPA.

The accreditation of the national authorising officer shall also cover the national fund as described in Annex A, 5.

- c) The national authorising officer has given accreditation to the relevant operating structures.

#### **Article 10 Procedure for accreditation of the national authorising officer and the national fund by the competent accrediting officer**

- (1) Accreditation of the national authorising officer in accordance with Article 11 of the IPA Implementing Regulation is subject to his fulfilment of the applicable requirements set out in Article 11 of the said regulation and as further defined in Annex A, 4. This accreditation shall be supported by an audit opinion drawn up by an external auditor functionally independent from all actors in the management and control system. The audit opinion shall be based on examinations conducted according to internationally accepted auditing standards.

- (2) The competent accrediting officer shall notify the Commission of the accreditation of the national authorising officer, not later than the notification of the accreditation of the first operating structure. The competent accrediting officer shall provide all relevant supporting information required by the Commission.
- (3) The competent accrediting officer shall immediately inform the Commission of any changes concerning the national authorising officer or the national fund. Where a change affects the national authorising officer or the national fund in relation to the applicable requirements as set out in Article 11 of the IPA Implementing Regulation, the competent accrediting officer shall send to the Commission an assessment of the consequences of such a change on the validity of the accreditation. Where such a change is significant, the competent accrediting officer shall also notify the Commission of his decision concerning the accreditation.

**Article 11 Procedure for accreditation of operating structures by the national authorising officer**

- (1) Accreditation of an operating structure is subject to its fulfilment of the requirements set out in Article 11 of the IPA Implementing Regulation. This assurance shall be supported by an audit opinion drawn up by an external auditor functionally independent from all actors in the management and control system. The audit opinion shall be based on examinations conducted according to internationally accepted auditing standards.
- (2) The national authorising officer shall notify the Commission of the accreditation of the operating structures and shall provide all relevant supporting information required by the Commission, including a description of the management and control systems.

**Article 12 Procedure for conferral of management powers by the Commission**

- (1) The Commission shall confer management powers on the Beneficiary, only after the bodies and authorities referred to in Article 6 above have been designated and put in place and the conditions laid down in this article are fulfilled.
- (2) Before the conferral of management powers, the Commission shall review the accreditations of the national authorising officer and the operating structures as laid down in Articles 10 and 11 above and examine the procedures and structures of any of the bodies or authorities concerned in Montenegro. This may include on-the-spot verifications by the services of the Commissions or subcontracted to an audit firm.
- (3) The Commission may, in its decision to confer management powers, set further conditions, with a view to ensuring that the requirements referred to in Article 11 of the IPA Implementing Regulation are met. These further conditions must be fulfilled within a fixed period determined by the Commission for the conferral of management powers to remain effective.
- (4) The Commission Decision on the conferral of management powers shall lay down the list of the *ex ante* controls, if any, to be performed by the Commission on the tendering of contracts, launch of calls for proposals and the award of contracts and grants. This list may vary with the component or the programme. The *ex ante* controls

shall apply, depending on the component or programme, until the Commission allows for decentralised management without *ex ante* controls as referred to in Article 16 below.

**Article 13      Withdrawal or suspension of the accreditation of the national authorising officer and the national fund**

- (1) After the conferral of management powers by the Commission, the competent accrediting officer shall be responsible for monitoring the continuing fulfilment of all the requirements for this accreditation to be maintained and shall inform the Commission of any significant change related thereto.
- (2) If any of the applicable requirements set out in Article 11 of the IPA Implementing Regulation, are not, or are no longer, fulfilled, the competent accrediting officer shall either suspend or withdraw the accreditation of the national authorising officer, and shall immediately inform the Commission of his decision and of the reasons for his decision. The competent accrediting officer shall assure himself that those requirements are again fulfilled before restoring the accreditation. This assurance shall be supported by an audit opinion as specified in Article 10(1) above.
- (3) Where the accreditation of the national authorising officer is withdrawn or suspended by the competent accrediting officer, the following provisions shall apply:
  - The Commission shall cease to make transfers of funds to the Beneficiary during the period when the accreditation is not in force;
  - During the period when the accreditation is not in force, all the euro accounts or the euro accounts for the components concerned shall be blocked and no payment made by the National Fund from those euro accounts which are blocked shall be considered eligible for Community funding;
  - Without prejudice to any other financial corrections, the Commission may make financial corrections as laid down in Article 30 below against the Beneficiary in respect of its past non-compliance with the requirements for the conferral of management powers.

**Article 14      Withdrawal or suspension of the accreditation of the operating structures**

- (1) After the conferral of management powers by the Commission, the national authorising officer shall be responsible for monitoring the continuing fulfilment of all the requirements for this accreditation to be maintained and shall inform the Commission and the competent accrediting officer of any significant change related thereto.
- (2) If any of the requirements set out in Article 11 of the IPA Implementing Regulation are not, or are no longer, fulfilled, the national authorising officer shall either suspend or withdraw the accreditation of the operating structure concerned, and shall immediately inform the Commission and the competent accrediting officer of his decision and of the reasons for his decision.

The national authorising officer shall assure himself that those requirements are again fulfilled before restoring the accreditation concerned. This assurance shall be supported by an audit opinion as referred to in Article 11(1) above.

- (3) Where the accreditation of an operating structure is withdrawn or suspended by the national authorising officer, the following provisions shall apply:
- The Commission shall make no transfers to the Beneficiary of funds relating to programmes or operations implemented by the operating structure concerned while its accreditation is suspended or withdrawn;
  - Without prejudice to any other financial corrections, the Commission may make financial corrections as laid down in Article 30 below against the Beneficiary in respect of its past non-compliance with the requirements and conditions for the conferral of management powers;
  - No new legal commitments made by the operating structure concerned shall be considered eligible during the period when the accreditation is not in force;
  - The national authorising officer shall be responsible for taking any appropriate safeguard measures regarding payments made or contracts signed by the operating structure concerned.

#### **Article 15    Withdrawal or suspension of conferral of management powers**

- (1) The Commission shall monitor compliance with the requirements set out in Article 11 of the IPA Implementing Regulation.
- (2) Irrespective of the decision by the competent accrediting officer to maintain, suspend or withdraw the accreditation of the national authorising officer, or of the decision by the national authorising officer to maintain, suspend or withdraw the accreditation of the operating structure, the Commission may withdraw or suspend the conferral of management powers at any time, in particular in the event that any of the requirements mentioned in Article 11 of the IPA Implementing Regulation are not, or no longer, fulfilled.
- (3) Where the conferral of management powers is withdrawn or suspended by the Commission, the following provisions shall apply:
- The Commission shall cease to make transfers of funds to the Beneficiary;
  - Without prejudice to any other financial corrections, the Commission may make financial corrections as laid down in Article 30 below against the Beneficiary in respect of its past non-compliance with the requirements for the conferral of management powers.

The Commission may lay down other consequences of such a suspension or withdrawal in a specific Commission Decision.

- (4) The Commission Decision may lay down provisions concerning the suspension or withdrawal of the conferral of management powers in relation to specific bodies or authorities.

#### **Article 16 Decentralisation without ex-ante control by the Commission**

- (1) Decentralisation without ex-ante control by the Commission shall be the objective for the implementation of all IPA components where assistance is implemented on a decentralised basis in accordance with Article 5 above. The timing for attainment of this objective may vary depending on the IPA Component concerned.
- (2) Before dispensing with the *ex-ante* controls laid down in the Commission Decision on conferral of management, the Commission shall satisfy itself of the effective functioning of the management and control system concerned in accordance with the relevant Community and national rules. In particular, the Commission shall monitor the implementation, by the Beneficiary, of the roadmap included in the Financing Agreement, which may refer to a phased waiver of different types of ex-ante controls. The Commission shall take due account of the results achieved by the Beneficiary in this context, in particular in the provision of assistance and in the negotiation process.

#### **Article 17 Statement of assurance by the national authorising officer**

- (1) The national authorising officer shall make an annual management declaration covering
  - his overall responsibility, in his function as head of the national fund, for the financial management of EU funds in Montenegro and for the legality and regularity of the underlying transactions;
  - his responsibility for the effective functioning of management and control systems under IPA.

This management declaration shall take the form of a statement of assurance to be presented to the Commission by 28 February each year with a copy to the competent accrediting officer.

- (2) The Statement of Assurance shall be based on the national authorising officer's actual supervision of the management and control system throughout the financial year.
- (3) The Statement of Assurance shall be drawn up according to the model attached in **ANNEX B** to this Framework Agreement.
- (4) If the confirmations regarding the effective functioning of the management and control systems and the legality and regularity of underlying transactions required through the Statement of Assurance are not available, the national authorising officer shall inform the Commission, copy to the competent accrediting officer, of the reasons and potential consequences as well as of the actions being taken to remedy the situation and to protect the interests of the Community.

#### **Article 18 Establishment of reports and opinions by the audit authority and follow up by the national authorising officer and the Commission**

- (1) Subject to the detailed functions and responsibilities of the audit authority as set out in **ANNEX A** to this Framework Agreement, the audit authority shall in particular establish the following reports and opinions:

- a) An annual audit activity report according to the model in ANNEX C to this Framework Agreement;
  - b) An annual audit opinion on the management and control system according to the model in ANNEX D to this Framework Agreement;
  - c) An audit opinion on the final statement of expenditure for the closure of a programme or parts of a programme according to the model in ANNEX E to this Framework Agreement.
- (2) Following receipt of the annual audit activity report and the annual audit opinion referred to in paragraph 1, the national authorising officer shall:
- a) decide whether any improvements to the management and control systems are required, record the decisions in that respect and ensure the timely implementation of those improvements;
  - b) make any necessary adjustments to the payment applications to the Commission.
- (3) The Commission may decide either to take follow-up action itself in response to the reports and opinions, for example by initiating a financial correction procedure, or to require the Beneficiary to take action, while informing the national authorising officer and the competent accrediting officer of its decision.

#### **SECTION IV GENERAL RULES FOR COMMUNITY FINANCIAL ASSISTANCE**

##### **Article 19 Eligibility of expenditure**

- (1) In the event of decentralised management, notwithstanding accreditations by the competent accrediting officer and the national authorising officer, contracts and addenda signed, expenditure incurred and payments made by the national authorities shall not be eligible for funding under IPA prior to the conferral of management by the Commission on the concerned structures and authorities. The end date for the eligibility of expenditure shall be laid down in Financing Agreements, where necessary.
- (2) By way of derogation from paragraph 1,
- a) technical assistance to support the setting up of management and control systems may be eligible prior to the initial conferral of management, for expenditure incurred after 1 January 2007;
  - b) expenditure following the launch of calls for proposals or calls for tenders may also be eligible if the call is launched prior to the initial conferral of management, subject to this initial conferral of management being in place within the time limits defined in a reserve clause to be inserted in the operations or calls concerned, and subject to prior approval of the documents concerned by the Commission. The calls for proposal or calls for tender concerned may be cancelled or modified depending on the decision on conferral of management.
- (3) Expenditure financed under IPA shall not be the subject of any other financing under the Community budget.

- (4) In addition to paragraph 1 to 3 above, more detailed rules on eligibility of expenditure may be set out in Financing Agreements or Sectoral Agreements.

#### **Article 20 Property of interest**

Any interest earned on any of the component-specific euro accounts remains the property of the Beneficiary. Interest generated by the financing by the Community of a programme shall be posted exclusively to that programme, being regarded as a resource for the Beneficiary in the form of a national public contribution, and shall be declared to the Commission, at the time of the final closure of the programme.

#### **Article 21 Audit trail**

The national authorising officer shall ensure that all the relevant information is available to ensure at all times a sufficiently detailed audit trail. This information shall include documentary evidence of the authorisation of payment applications, of the accounting and payment of such applications, and of the treatment of advances, guarantees and debts.

#### **Article 22 Aid intensities and rate of Community contribution**

- (1) The Community contribution shall be calculated in relation to the eligible expenditure, as defined in Part II of the IPA Implementing Regulation for each IPA component.
- (2) Financing decisions adopting the annual or multi-annual programmes for each IPA component shall set the maximum indicative amount of the Community contribution and the subsequent maximum rate for each priority axis.

### **SECTION V GENERAL RULES FOR IMPLEMENTATION**

#### **Article 23 Rules on procurement**

- (1) Assistance under all IPA components shall be managed in accordance with the rules for External Aid contained in the Financial Regulation. This shall not apply to assistance implemented under the transitional arrangements of Article 99 IPA Implementing Regulation regarding the Cross-Border Co-operation Component to that part of the programme that is implemented on Member States' territory, unless otherwise decided by the participating Member State.
- (2) Results of tender procedures shall be published according to the rules referred to in paragraph 1 above and as further specified in Article 24(3) below.
- (3) The rules of participation and origin as laid down in Article 19 of the IPA Framework Regulation shall apply to all contract award procedures under IPA.
- (4) All service, supplies and work contracts shall be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question, unless otherwise provided for in Sectoral or Financing Agreements.



## Article 24      Publicity and visibility

- (1) In the case of centralised and joint management, information on programmes and operations shall be provided by the Commission with the assistance of the national IPA co-ordinator as appropriate. In the case of decentralised management and in all cases for programmes or part of programmes under the cross-border co-operation component not implemented through shared management, the Beneficiary, in particular the national IPA co-ordinator, shall provide information on and publicise programmes and operations. In the case of shared management, the Member States and the Beneficiary shall provide information on and publicise programmes and operations. The information shall be addressed to the citizens and beneficiaries, with the aim of highlighting the role of the Community and ensuring transparency.
- (2) In the case of decentralised management, the operating structures shall be responsible for organising the publication of the list of the final beneficiaries, the names of the operations and the amount of Community funding allocated to the operations by means of the award of grants in the following way:
  - a) The publication shall be made according to a standard presentation, in a dedicated and easily accessible place of the Beneficiary's internet site. If such internet publication is impossible, the information shall be published by any other appropriate means, including the national official journal.
  - b) Publication shall take place during the first half of the year following the closure of the budget year in respect of which the funds were attributed to the Beneficiary.
  - c) The Beneficiary shall communicate to the Commission the address of the place of publication. If the information is published otherwise, the Beneficiary shall give the Commission full details of the means used.
  - d) The operating structures shall ensure that the final beneficiary is informed that acceptance of funding is also an acceptance of their inclusion in this list of beneficiaries published. Any personal data included in this list shall nevertheless be processed in accordance with the requirements of Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>5</sup>, and with due observance of the requirements of security.
- (3) In the case of decentralised management, the relevant bodies shall prepare a contract award notice, once the contract has been signed, and send it to the Commission for publication. The contract award notice may also be published by the beneficiary in the appropriate national publications.
- (4) The Commission and the relevant national, regional or local authorities of the Beneficiary shall agree on a coherent set of activities to make available, and publicise, in Montenegro information about assistance under IPA. The procedures for implementing such activities shall be specified in the Sectoral or Financing Agreements.

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<sup>5</sup> OJ L 8, 12 January 2001, p. 1

- (5) Implementation of the activities referred to in paragraph 4 shall be the responsibility of the final beneficiaries, and might be funded from the amount allocated to the relevant programmes or operations.

**Article 25 Granting of facilities for the implementation of programmes and execution of contracts**

- (1) In order to ensure the effective implementation of programmes under IPA, the Beneficiary shall take all necessary measures to ensure:
- a) that, in the case of service, supplies or works tender procedures, natural or legal persons eligible to participate in tender procedures pursuant to Article 23 above shall be entitled to temporary installation and residence where the importance of the contract so warrants. This right shall be acquired only after the invitation to tender has been launched and shall be enjoyed by the technical staff needed to carry out studies and other preparatory measures to the drawing up of tenders. This right shall expire one month after the decision of contract award;
  - b) that personnel taking part in Community financed activities and members of their immediate family are accorded no less favourable benefits, privileges and exemptions than those usually accorded to other international staff employed in Montenegro, under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation;
  - c) that personnel taking part in Community financed activities and members of their immediate family are allowed to enter Montenegro, to establish themselves in Montenegro, to work there and to leave Montenegro, as the nature of the underlying contract so justifies;
  - d) the granting of all permits necessary for the importation of goods, above all professional equipment, required for the execution of the underlying contract, subject to existing laws, rules and regulations of the Beneficiary;
  - e) that imports carried out under IPA will be exempted from customs duties, import duties and other fiscal charges;
  - f) the granting of all permits necessary for the re-export of the above goods, once the underlying contract has been fully executed;
  - g) the granting of authorisations for the import or acquisition of the foreign currency necessary for the implementation of the underlying contract and the application of national exchange control regulations in a non-discriminatory manner to contractors, regardless of their nationality or place of establishment;
  - h) the granting of all permits necessary to repatriate funds received in respect of the activity financed under IPA, in accordance with the foreign exchange control regulations in force in Montenegro.
- (2) The Beneficiary shall ensure full co-operation of all relevant authorities. It will also ensure access to state-owned companies and other governmental institutions, which are involved or are necessary in the implementation of a programme or in the execution of the contract.

**Article 26 Rules on taxes, customs duties and other fiscal charges**

- (1) Save where otherwise provided for in a Sectoral Agreement or a Financing Agreement, taxes, customs and import duties or other charges having equivalent effect are not eligible under IPA.
- (2) The following detailed provisions shall apply:
  - a) Customs duties, import duties, taxes or fiscal charges having equivalent effect in the case of the import of goods under a Community financed contract are not eligible under IPA. The imports concerned shall be released from the point of entry into Montenegro for delivery to the contractor, as required by the provisions of the underlying contract and for immediate use as required for the normal implementation of the contract, without regard to any delays or disputes over the settlement of the above mentioned duties, taxes or charges;
  - b) Community financed contracts for services, supplies or works carried out by contractors registered in Montenegro or by external contractors shall not be subject in Montenegro to value added tax, documentary stamp or registration duties or fiscal charges having equivalent effect, whether such charges exist or are to be instituted. EC contractors shall be exempted from VAT for services rendered, goods supplied and/or works executed by them under EC contracts with the right of the contractors to offset or deduct input VAT paid in connection with the services rendered, the goods supplied and/or the works executed against any VAT collected by them for any of their other transactions. Should the EC contractors not be able to make use of this possibility, they shall be entitled to obtain VAT refund directly from the tax authorities upon submission of a written request accompanied by the necessary documentation required under the national/local law for refund and by a certified copy of the underlying EC contract.

For the purposes of this Framework Agreement, the term "EC contractor" shall be construed as natural and legal persons, rendering services and/or supplying goods and/or executing works and/or executing a grant under an EC contract. The term "EC contractor" shall also cover pre-accession advisors, also known as resident twinning advisors, and experts included in a twinning covenant or contract. The term "EC contract" means any legally binding document through which an activity is financed under IPA and which is signed by the EC or the Beneficiary.

At least the same procedural privileges shall apply to such contractors as applicable to contractors under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation.

- c) Profit and/or income arising from EC contracts shall be taxable in Montenegro in accordance with the national/local tax system. However, natural and legal persons, including expatriate staff, from the Member States of the European Union or other countries eligible under IPA, executing Community financed contracts shall be exempted from those taxes in Montenegro.
- d) Personal and household effects imported for personal use by natural persons (and members of their immediate families), other than those recruited locally, engaged

in carrying out tasks defined in technical co-operation contracts, shall be exempted from customs duties, import duties, taxes and other fiscal charges having equivalent effect, the said personal and household effects being re-exported or disposed of in the state, in accordance with the regulations in force in Montenegro after termination of the contract.

**Article 27      Supervision, control and audit by the Commission and the European Court of Auditors**

- (1) All Financing Agreements as well as all resulting programmes and subsequent contracts shall be subject to supervision and financial control by the Commission including the European Anti-Fraud Office (OLAF) and audits by the European Court of Auditors. This includes the right of the Delegation of the Commission in Montenegro to carry out measures such as ex-ante verification of tendering and contracting carried out by the related operating structures, as long as ex-ante control has not been waived in accordance with Article 16 above. The duly authorised agents or representatives of the Commission and of OLAF shall have the right to carry out any technical and financial verification that the Commission or OLAF consider necessary to follow the implementation of a programme including visits of sites and premises at which Community financed activities are implemented. The Commission shall give the national authorities concerned advance notice of such missions.
- (2) The Beneficiary shall supply all requested information and documents including any computerised data and take all suitable measures to facilitate the work of the persons instructed to carry out audits or inspections.
- (3) The Beneficiary shall maintain records and accounts adequate to identify the services, supplies, works and grants financed under the related Financing Agreement in accordance with sound accounting procedures. The Beneficiary shall also ensure that the agents or representatives of the Commission including OLAF have the right to inspect all relevant documentation and accounts pertaining to items financed under the related Financing Agreement and assist the European Court of Auditors to carry out audits relating to the use of Community funds.
- (4) In order to ensure the efficient protection of the financial interests of the Community, the Commission including OLAF may also conduct documentary and on-the-spot checks and inspections in accordance with the procedural provisions of Council Regulation (EC, Euratom) No 2185/1996 of 11 November 1996 <sup>(6)</sup>. These checks and inspections shall be prepared and conducted in close collaboration with the competent authorities designated by the Beneficiary, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. The Beneficiary shall identify a service which will assist at OLAF's request in conducting investigations in accordance with Council Regulation (EC, Euratom) No 2185/1996. If the Beneficiary wishes, the on-the-spot checks and inspections may be carried out jointly with them. Where the participants in Community financed activities resist an on-the-spot check or inspection, the Beneficiary, acting in accordance with national rules, shall give Commission/OLAF

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<sup>6</sup> OJ L 292, 15 November 1996, p. 2

inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

The Commission/OLAF shall report as soon as possible to the Beneficiary any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event, the Commission/OLAF shall be required to inform the above-mentioned authority of the result of such checks and inspections.

- (5) The controls and audits described above are applicable to all contractors and sub-contractors who have received Community funds including all related information to be found in the documents of the national fund of the Beneficiary concerning the national contribution.
- (6) Without prejudice to the responsibilities of the Commission and the European Court of Auditors, the accounts and operations of the National Fund and, where applicable, operating structures may be checked at the discretion of the Commission by the Commission itself or by an external auditor assigned by the Commission.

#### **Article 28      Prevention of irregularity and fraud, measures against corruption**

- (1) The Beneficiary shall ensure investigation and effective treatment of suspected cases of fraud and irregularities and shall ensure the functioning of a control and reporting mechanism equivalent to that foreseen in the Commission Regulation (EC) No 1828/2006 of 8 December 2006 <sup>(7)</sup>. In the case of suspected fraud or irregularity, the Commission shall be informed without delay.
- (2) Furthermore, the Beneficiary shall take any appropriate measure to prevent and counter any active or passive corruption practices at any stage of the procurement procedure or grant award procedure or during the implementation of corresponding contracts.
- (3) The Beneficiary, including the personnel responsible for the implementation tasks of the Community financed activities, undertakes to take whatever precautions are necessary to avoid any risk of conflict of interests and shall inform the Commission immediately of any such conflict of interest or any situation likely to give rise to any such conflict.
- (4) The following definitions shall apply:
  - a) *Irregularity* shall mean any infringement of a provision of applicable rules and contracts resulting from an act or an omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.
  - b) *Fraud* shall mean any intentional act or omission relating to: 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; non disclosure of information in violation of a specific

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<sup>7</sup> OJ L 371, 27 December 2006, p. 4

obligation with the same effect; the misapplication of such funds for purposes other than those for which they are originally granted.

- c) *Active corruption* is defined as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the financial interests of the European Communities.
- d) *Passive corruption* is defined as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or a third party, or accepts a promise of such advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the financial interests of the European Communities.

#### **Article 29      Recovery of funds in case of irregularity or fraud**

- (1) Any proven case of irregularity or fraud discovered at any time during the implementation of assistance under IPA or as the result of an audit will lead to the recovery of the funds by the Commission from the Beneficiary.
- (2) The national authorising officer shall recover the Community contribution paid to the Beneficiary from those who committed the irregularity, fraud or corruption or benefited from it, in accordance with national recovery procedures. The fact that the national authorising officer does not succeed in recovering all or part of the funds shall not prevent the Commission from recovering the funds from the Beneficiary.

#### **Article 30      Financial corrections**

- (1) In the case of decentralised management, in order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms in accordance with Article 53b(4) and 53c(2) of the Financial Regulation and as detailed in Sectoral Agreements or Financing Agreements.
- (2) A financial correction may arise following either:
  - identification of a specific irregularity, including fraud;
  - identification of a weakness or deficiency in the management and control systems of the Beneficiary;
- (3) If the Commission finds that expenditure under the programmes covered by IPA has been incurred in a way that has infringed applicable rules, it shall decide what amounts are to be excluded from Community financing.
- (4) The calculation and establishment of any such corrections, as well as the related recoveries, shall be made by the Commission, following the criteria and procedures provided for in Articles 32, 33 and 34 below. Provisions on financial corrections which have been set down in Sectoral Agreements or Financing Agreements shall apply in addition to this Framework Agreement

### **Article 31 Financial adjustments**

In the case of decentralised management the national authorising officer, who bears in the first instance the responsibility for investigating irregularities, shall make the financial adjustments where irregularities or negligence are detected in operations or operational programmes, by cancelling all or part of the Community contribution to the operations or the operational programmes concerned. The national authorising officer shall take into account the nature and gravity of the irregularities and the financial loss to the Community contribution.

### **Article 32 Criteria for financial corrections**

- (1) The Commission may make financial corrections, by cancelling all or part of the Community contribution to a programme, in the situations referred to in Article 30(2) above.
- (2) Where individual cases of irregularity are identified, the Commission shall take into account the systemic nature of the irregularity to determine whether flat-rate corrections, punctual corrections or corrections based on an extrapolation of the findings should be applied. For the Rural Development Component, criteria for financial corrections are set out in Financing Agreements or Sectoral Agreements.
- (3) When deciding the amount of a correction, the Commission shall take into account the nature and gravity of the irregularity and/or the extent and financial implications of the weaknesses or the deficiencies found in the management and control system in the programme concerned.

### **Article 33 Procedure for financial corrections**

- (1) Before taking a decision on a financial correction, the Commission shall inform the national authorising officer of its provisional conclusions and request his comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Beneficiary shall be given the opportunity to establish the actual extent of the irregularity, through an examination of the documentation concerned. In agreement with the Commission, the Beneficiary may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a period of two months after the two-month period referred to in the first subparagraph.
- (2) The Commission shall take account of any evidence supplied by the Beneficiary within the time limits mentioned in paragraph 1.
- (3) The Commission shall endeavour to take a decision on the financial correction within six months after opening the procedure as set out in paragraph 1.



#### **Article 34      Repayment**

- (1) Any repayment to the general budget of the European Union shall be effected before the due date indicated in the recovery order drawn up in accordance with Article 72 of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.
- (2) Any delay in repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

#### **Article 35      Re-use of Community contribution**

- (1) The resources from the Community contribution cancelled following financial corrections pursuant to Article 30 shall be paid to the Community Budget, including interest thereon.
- (2) The contribution cancelled or recovered in accordance with Article 31 above may not be re-used for the operation or operations that were the subject of the recovery or the adjustment, nor, where the recovery or adjustment is made for a systemic irregularity, for existing operations within the whole or part of the priority axis in which the systemic irregularity occurred.

#### **Article 36      Monitoring in the case of decentralised management, monitoring committees**

- (1) In the case of decentralised management, the Beneficiary shall, within six months after the entry into force of the first financing agreement, set up an IPA monitoring committee, in agreement with the Commission, to ensure coherence and coordination in the implementation of the IPA components.
- (2) The IPA monitoring committee shall be assisted by sectoral monitoring committees set up under the IPA components. They shall be attached to programmes or components. They may include representatives of civil society, where appropriate. More detailed rules may be provided for in Financing Agreements or Sectoral Agreements.
- (3) The IPA monitoring committee shall satisfy itself as to the overall effectiveness, quality and coherence of the implementation of all programmes and operations towards meeting the objectives set out in the multi-annual indicative planning documents and the financing agreements.
  - (a) The IPA monitoring committee may make proposals to the Commission, the national IPA co-ordinator and the national authorising officer for any actions to ensure the coherence and co-ordination between the programmes and operations implemented under the different components, as well as for any cross-component corrective measures needed to ensure the achievement of the global objectives of the assistance provided, and to enhance its overall efficiency. It may also make proposals to the relevant sectoral monitoring committee(s) for

decisions on any corrective measures to ensure the achievements of programme objectives and enhance the efficiency of assistance provided under the programmes or IPA component(s) concerned;

- (b) The IPA monitoring committee shall adopt its internal rules of procedure in compliance with a monitoring committee mandate established by the Commission, and within the institutional, legal and financial framework of the Beneficiary;
- (c) Unless otherwise provided in the monitoring committee mandate set out by the Commission, the following provisions shall apply:
  - aa) The IPA monitoring committee shall include among its members representatives of the Commission, the national IPA co-ordinator, the national authorising officer, representatives of the operating structures, and the strategic co-ordinator.
  - bb) A representative of the Commission and the national IPA co-ordinator shall co-chair the IPA monitoring committee meetings;
  - cc) The IPA monitoring committee shall meet at least once a year. Intermediate meetings may also be convened on a thematic basis.

#### **Article 37 Monitoring in the case of centralised and joint management**

In the case of centralised and joint management, the Commission may undertake any actions it deems necessary to monitor the programmes concerned. In the case of joint management, these actions may be carried out jointly with the international organisation(s) concerned.

#### **Article 38 Annual and final reports on implementation**

- (1) The operating structures shall draw up a sectoral annual report and a sectoral final report on the implementation of the programmes for which they are responsible, in compliance with the procedures defined for each IPA component in Part II of the IPA Implementing Regulation.

The sectoral annual reports on implementation shall cover the financial year. The sectoral final reports on implementation shall cover the whole period of implementation and may include the last sectoral annual report.

- (2) The reports referred to in paragraph 1 shall be sent to the national IPA co-ordinator, the national authorising officer and to the Commission, after examination by the sectoral monitoring committees.
- (3) On the basis of the reports referred to in paragraph 1, the national IPA co-ordinator shall send to the Commission and the national authorising officer, after examination by the IPA monitoring committee, annual and final reports on the implementation of assistance under the IPA Regulation.
- (4) The annual report on implementation referred to in paragraph 3, which shall be sent by 31 August each year and for the first time in 2008, shall synthesise the different sectoral annual reports issued under the different components and shall include information about:

- a) progress made in implementing Community assistance, in relation to the priorities set up in the multi-annual indicative planning document and the different programmes;
  - b) financial implementation of Community assistance.
- (5) The final report on the implementation as referred to in paragraph 3 shall cover the whole period of implementation and may include the latest annual report mentioned in paragraph 4.

#### **Article 39 Closure of programmes under decentralised management**

- (1) After an application for final payment has been received by the Commission from the Beneficiary, a programme is considered closed as soon as one of the following occurs:
- payment of the final balance due by the Commission;
  - issuance of a recovery order by the Commission;
  - de-commitment of appropriations by the Commission.
- (2) The closure of a programme does not prejudice the right of the Commission to undertake a financial correction at a later stage.
- (3) The closure of a programme does not affect the obligations of the Beneficiary to continue to retain related documents.
- (4) In addition to paragraph 1 to 3 above, more detailed rules on the closure of programmes may be set out in Financing Agreements or Sectoral Agreements.

#### **Article 40 Closure of programmes under centralised and joint management**

- (1) A programme is closed when all the contracts and grants funded by this programme have been closed.
- (2) After a final payment application has been received, a contract or grant is considered closed as soon as one of the following occurs:
- payment of the final amount due by the Commission;
  - issuance of a recovery order by the Commission following receipt of the final payment application;
  - de-commitment of appropriations by the Commission.
- (3) The closure of a contract or grant does not prejudice the right of the Commission to undertake a financial correction at a later stage.
- (4) In addition to paragraph 1 to 3 above, more detailed rules on the closure of programmes may be set out in Financing Agreements or Sectoral Agreements.

## **SECTION VI FINAL PROVISIONS**

### **Article 41 Consultation**

- (1) Any question relating to the execution or interpretation of this Framework Agreement shall be the subject of consultation between the Contracting Parties leading, where necessary, to an amendment of this Framework Agreement.
- (2) Where there is a failure to carry out an obligation set out in this Framework Agreement which has not been the subject of remedial measures taken in due time, the Commission may suspend the financing of activities under IPA after consultation with the Beneficiary.
- (3) The Beneficiary may renounce in whole or in part the implementation of activities under IPA. The Contracting Parties shall set out the details of the said renunciation in an exchange of letters.

### **Article 42 Settlement of differences, arbitration**

- (1) Differences arising out of the interpretation, operation and implementation of this Framework Agreement, at any and all levels of participation, will be settled amicably through consultation as provided for under Article 41.
- (2) In default of amicable settlement, either Contracting 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 Framework Agreement.
- (3) The language to be used in the arbitral 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 Contracting Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.

### **Article 43 Disputes with third parties**

- (1) Without prejudice to the jurisdiction of the court designated in a contract as the competent court for disputes arising out of that contract between the parties to it, the European Community shall enjoy in the territory of Montenegro immunity from suit and legal process with respect to any dispute between the European Community and/or the Beneficiary and a third party, or between third parties, which directly or indirectly relates to the provision of Community Assistance to the Beneficiary under this Framework Agreement, except in so far as in any particular case the European Community has expressly waived its immunity.
- (2) The Beneficiary shall in any legal or administrative proceedings before a court, tribunal or administrative instance in Montenegro defend this immunity and take a position which takes duly account of the interests of the European Community. Where necessary, the Beneficiary and the European Commission shall proceed with consultations on the position to take.

#### **Article 44 Notices**

- (1) Any communication in connection with this Framework 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 Framework Agreement must be sent to the following addresses:

For the Commission:  
European Commission  
Directorate-General Enlargement

1049 Brussels  
BELGIUM  
Fax: +32 2 295.95.40

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

#### **Article 45 Annexes**

The Annexes shall be deemed an integral part of this Framework Agreement.

#### **Article 46 Entry into force**

This Framework Agreement shall enter into force on the day on which the Contracting Parties inform each other in writing of its approval in accordance with the existing internal legislation or procedure of each of the Parties.

#### **Article 47 Amendment**

Any amendment agreed to by the Contracting Parties will be in writing and will form part of this Agreement. Such amendment shall come into effect on the date determined by the Contracting Parties.

#### **Article 48 Termination**

- (1) This Framework Agreement shall continue to be in force for an indefinite period unless terminated by written notification by one of the Contracting Parties.
- (2) On termination of this Framework Agreement, any assistance still in the course of execution shall be carried out to its completion in accordance with this Framework Agreement and any Sectoral Agreement and Financing Agreement.

#### **Article 49 Language**

This Framework Agreement is drawn up in duplicate in the English language.

Signed, for and on behalf of the  
Commission by

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

**Mr Pierre Mirel**  
Director  
Directorate-General Enlargement

Brussels,

Date: 5.11.2007



**Mrs Gordana Đurović**  
NIPAC  
Deputy Prime Minister for European  
Integration

Podgorica,

Date: 15.11.2007



## ANNEX A

### **Allocation of functions and common responsibilities to the structures, authorities and bodies in accordance with Article 8 of the Framework Agreement between the Commission and the Government of Montenegro**

#### *Preliminary remark:*

*This list shows the main functions and common responsibilities of the structures, authorities and bodies concerned. It is not to be considered exhaustive. It supplements the core part of this Framework Agreement.*

#### **1) The Competent Accrediting Officer (CAO):**

- a) The CAO shall be appointed by the Beneficiary. He shall be a high-ranking official in the government or the state administration of the Beneficiary.
- b) The CAO shall be responsible for issuing, monitoring and suspending or withdrawing the accreditation of the national authorising officer (NAO) both
  - as the head of the national fund bearing overall responsibility for the financial management of EU funds in Montenegro and being responsible for the legality and regularity of the underlying transactions;
  - with regard to the NAO's capacity to fulfil the responsibilities for the effective functioning of management and control systems under IPA.

The accreditation of the NAO shall also cover the national fund (NF).

The CAO shall notify the Commission of the accreditation of the NAO and shall inform the Commission of any changes regarding the accreditation of the NAO. This includes the provision of all relevant supporting information required by the Commission.

- c) Prior to accrediting the NAO, the CAO shall satisfy himself that the applicable requirements set out in Article 11 of the IPA Implementing Rules are fulfilled. This includes the verification of the compliance of the management and control system set up by the Beneficiary for effective controls in at least the areas set out in the Annex to the IPA Implementing Regulation (accreditation criteria). This annex provides for the following overall requirements:
  - Control environment (establishment and management of the organisation and the staff) comprising ethics and integrity policies, irregularity management and reporting, staff planning, recruitment, training and appraisal including sensitive post management, sensitive functions and conflicts of interest, establishment of legal bases for bodies and individuals, formal establishment of accountability, responsibility, delegated responsibility and any necessary related authority for all tasks and positions throughout the organisation);
  - Planning and risk management comprising risk identification, assessment and management, objective setting and allocation of resources against objectives, planning of the implementation process;



- Control activities (implementation of interventions) comprising verification procedures, procedures for supervision by accountable management of tasks delegated to subordinates, including annual statements of assurance from subordinate actors, rules for each type of procurement and calls for proposals, procedures including checklists for each step of procurement and calls for proposals, rules and procedures on publicity, payment procedures, procedures for monitoring the delivery of co-financing, budgetary procedures to ensure the availability of funds, procedures for continuity of operations, accounting procedures, reconciliation procedures, reporting of exceptions, amongst others exceptions to normal procedures approved at appropriate level, unapproved exceptions and control failures whenever identified, security procedures, archiving procedures, segregation of duties and reporting of internal control weaknesses;
- Monitoring activities (supervision of interventions), comprising internal audit with handling of audit reports and recommendations, evaluations;
- Communication (ensuring all actors receive information necessary to fulfil their role) comprising the regular coordination meetings between different bodies to exchange information on all aspects of planning and implementation and the regular reporting at all appropriate levels on efficiency and effectiveness of internal control.

## 2) The National IPA Coordinator (NIPAC):

- a) The NIPAC shall be appointed by the Beneficiary. He shall be a high-ranking official in the government or the state administration of the Beneficiary.
- b) He shall ensure the overall coordination of assistance under IPA.
- c) The NIPAC shall ensure partnership between the Commission and the Beneficiary and close link between the general accession process and the use of pre-accession assistance under IPA. He shall bear the overall responsibility for
  - the coherence and coordination of the programmes provided under IPA;
  - the annual programming for the Transition Assistance and Institution Building Component at national level;
  - the co-ordination of the participation of the Beneficiary in the relevant cross-border programmes both with Member States and with other Beneficiary countries, as well as the transnational, interregional or sea basins programmes under other Community instruments. The NIPAC may delegate the tasks relating to this co-ordination to a cross-border co-operation co-ordinator.
- d) The NIPAC shall draw up and, after examination by the IPA monitoring committee, submit to the Commission the IPA annual and final reports on implementation as defined in Article 38 of this Framework Agreement and in Article 61(3) of the IPA Implementing Regulation. He shall send a copy of these reports to the NAO.

**3) The Strategic Co-ordinator:**

- a) A strategic co-ordinator shall be appointed by the Beneficiary to ensure the co-ordination of the Regional Development Component and Human Resources Development Component under the responsibility of the national IPA co-ordinator. The strategic co-ordinator shall be an entity within the state administration of the Beneficiary with no direct involvement in the implementation of components concerned.
- b) The strategic co-ordinator shall in particular:
  - co-ordinate assistance granted under the Regional Development Component and the Human Resources Development Component;
  - draft the strategic coherence framework as defined in Article 154 of the IPA Implementing Regulation;
  - ensure co-ordination between sectoral strategies and programmes.

**4) The National Authorising Officer (NAO):**

The NAO shall be appointed by the Beneficiary. He shall be a high-ranking official in the government or the state administration of the Beneficiary.

The NAO shall fulfil the following functions and assume the following responsibilities:

- a) As the head of the national fund, bearing overall responsibility for the financial management of EU funds in Montenegro and being responsible for the legality and regularity of the underlying transactions. The NAO shall in particular fulfil the following tasks as regards these responsibilities:
  - providing assurance about the regularity and legality of underlying transactions;
  - drawing up and submitting to the Commission certified statements of expenditure and payment applications; he shall bear overall responsibility for the accuracy of the payment application and for the transfer of funds to the operating structures and/or final beneficiaries;
  - verifying the existence and correctness of the co-financing elements;
  - ensuring the identification and immediate communication of any irregularity;
  - making the financial adjustments required in connection with irregularities detected, in accordance with Article 50 of the IPA Implementing Regulation;
  - being the contact point for financial information sent between the Commission and the Beneficiary.
- b) being responsible for the effective functioning of management and control systems under IPA. The NAO shall in particular fulfil the following tasks as regards these responsibilities:
  - being responsible for issuing, monitoring and suspending or withdrawing the accreditation of the operating structures;

- ensuring the existence and effective functioning of systems of management of assistance under IPA;
- ensuring that the system of internal control concerning the management of funds is effective and efficient;
- reporting on the management and control system;
- ensuring that a proper reporting and information system is functioning;
- following-up the findings of audit reports from the audit authority, in accordance with Article 18 of this Framework Agreement and Article 30(1) of the IPA Implementing Regulation;
- immediately notifying the Commission, with a copy of the notification to the CAO, any significant change concerning the management and control systems.

As corollary to the responsibilities under a) and b) above, the NAO shall establish an Annual Statement of Assurance as defined in Article 17 of this Framework Agreement and following ANNEX B to this Agreement, which shall include:

- a confirmation of the effective functioning of the management and control systems;
- a confirmation regarding the legality and regularity of the underlying transactions;
- information concerning any changes in systems and controls, and elements of supporting accounting information.

If the confirmations regarding the effective functioning of the management and control systems and the legality and regularity of underlying transactions (a) and b) above) are not available, the NAO shall inform the Commission, copy to the CAO, of the reasons and potential consequences as well as of the actions being taken to remedy the situation and to protect the interests of the Community.

#### **5) The National Fund (NF):**

- The NF shall be a body located in a State level Ministry of the Beneficiary and shall have central budgetary competence and act as central treasury entity.
- The NF shall be in charge of tasks of financial management of assistance under IPA, under the responsibility of the NAO.
- The NF shall in particular be in charge of organising the bank accounts, requesting funds from the Commission, authorising the transfer of funds from the Commission to the operating structures or to the final beneficiaries and the financial reporting to the Commission.

#### **6) The Operating Structures:**

- An operating structure shall be established for each IPA component or programme to deal with the management and implementation of assistance under IPA. The operating structure shall be a body or a collection of bodies within the administration of the Beneficiary.

- b) The operating structure shall be responsible for managing and implementing the IPA programme or programmes concerned in accordance with the principle of sound financial management. For those purposes, the operating structure shall carry a number of functions that include:
- drafting the annual or multi-annual programmes;
  - monitoring programme implementation and guiding the work of the sectoral monitoring committee as defined in Article 36(2) of this Framework Agreement and in Article 59 of the IPA Implementing Regulation, notably by providing the documents necessary for monitoring the quality of implementation of the programmes;
  - drawing up the sectoral annual and final implementation reports defined in Article 38(1) and (2) of this Framework Agreement and in Article 61(1) of the IPA Implementing Regulation and, after their examination by the sectoral monitoring committee, submitting them to the Commission the NIPAC and the NAO;
  - ensuring that operations are selected for funding and approved in accordance with the criteria and mechanisms applicable to the programmes, and that they comply with the relevant Community and national rules;
  - setting up procedures to ensure the retention of all documents regarding expenditure and audits required to ensure an adequate audit trail;
  - arranging for tendering procedures, grant award procedures, the ensuing contracting, and making payments to, and recovery from, the final Beneficiary;
  - ensuring that all bodies involved in the implementation of operations maintain a separate accounting system or a separate accounting codification;
  - ensuring that the NF and the NAO receive all necessary information on the procedures and verifications carried out in relation to expenditure;
  - setting up, maintaining and updating the reporting and information system;
  - carrying out verifications to ensure that the expenditure declared has actually been incurred in accordance with the applicable rules, the products or services have been delivered in accordance with the approval decision, and the payment requests by the final Beneficiary are correct: These verifications shall cover administrative, financial, technical and physical aspects of operations, as appropriate;
  - ensuring internal audit of its different constituting bodies;
  - ensuring irregularity reporting;
  - ensuring compliance with the information and publicity requirements.
- c) The heads of the bodies constituting the operating structure shall be clearly designated and shall be responsible for the tasks assigned to their respective bodies, in accordance with Article 8(3) of this Framework Agreement and with Article 11(3) of the IPA Implementing Regulation.

## 7) The Audit Authority:

- a) The audit authority shall be designated by the Beneficiary and shall be functionally independent from all actors in the management and control system and comply with internationally accepted audit standards.
- b) The audit authority shall be responsible for the verification of the effective and sound functioning of the management and control systems.
- c) The audit authority, under the responsibility of its head, shall in particular fulfil the following functions and assume the following responsibilities:

- During the course of each year, establishing and fulfilling an **annual audit work plan** which encompasses audits aimed at verifying:

- the effective functioning of the management and control systems;
- the reliability of accounting information provided to the Commission.

The audit work shall include audits of an appropriate sample of operations or transactions, and an examination of procedures.

The annual audit work plan shall be submitted to the NAO and the Commission before the start of the year in question.

- submitting reports and opinions as follows:
  - an **annual audit activity report** following the model in ANNEX C to this Framework Agreement and setting out the resources used by the audit authority, and a summary of any weaknesses found in the management and control system or in transaction findings from the audits carried out in accordance with the annual audit work plan during the previous 12 month period, ending on 30 September of the year concerned. The annual audit activity report shall be addressed to the Commission, the NAO and the CAO by 31 December each year. The first such report shall cover the period 1 January 2007 - 30 November 2007.
  - an **annual audit opinion** following the model set out in ANNEX D to this Framework Agreement as to whether the management and control systems function effectively and conform to the requirements of this Framework Agreement and the IPA Implementing Regulation and/or any other agreements between the Commission and the Beneficiary. This opinion shall be addressed to the Commission, the NAO and the CAO. It shall cover the same period and have the same deadline as the annual audit activity report.
  - an **opinion on any final statement of expenditure** submitted to the Commission by the NAO, for the closure of any programme or of any part thereof. Where appropriate, the final statement of expenditure may include payment applications in the form of accounts submitted annually. This opinion shall address the validity of the final payment application, the accuracy of the financial information, and, where appropriate, be supported by a final audit activity report. It shall follow the model provided in ANNEX E to this Framework Agreement. It shall be sent to the Commission and to the CAO at the same time as the relevant final statement of expenditure submitted by the NAO, or at least within three months of the submission of that final statement of expenditure.

- Further specific requirements for the annual audit work plan and/or the reports and opinions mentioned under the previous bullet point may be set out in the Sectoral Agreements or Financing Agreements.
- With regard to the methodology for the audit work, reports and audit opinions, the audit authority must comply with international standards on auditing in particular as regards the areas of risk assessment, audit materiality and sampling. That methodology may be complemented by any further guidance and definitions from the Commission, notably in relation to an appropriate general approach to sampling, confidence levels and materiality.

## ANNEX B

### to the Framework Agreement between the Commission and the Government of Montenegro

#### Statement of Assurance<sup>1</sup>

##### of the National Authorising Officer of Montenegro<sup>2</sup>

I, (*name, first name, official title or function*), National Authorising Officer of Montenegro herewith present to the Commission the [statement of expenditure] [accounts and statement of expenditure]<sup>3</sup> of the Instrument for Pre-accession (IPA) for Montenegro for the financial year 01/01/20xx to 31/12/20xx.

I declare that I have put in place, and supervised the operation of, a management and internal control system relating to the IPA component [1 to 5] (Annual Management Declaration).

I confirm, based on my own judgment and on the information at my disposal, including, *inter alia*, the results of the work of the internal audit, that:

- The expenditure declared [and the accounts submitted]<sup>3</sup> to the Commission during the financial year 01/01/20xx to 31/12/20xx give<sup>3</sup>[s], to the best of my knowledge, a true, complete and accurate view of the expenditure and receipts related to the IPA component [1 to 5] for the financial year mentioned above;
- The management and control system has functioned effectively to provide reasonable assurance on the legality and regularity of the underlying transactions including, *inter alia*, the adherence to the principles of sound financial management;
- The management and control system in operation for component [1 to 5] was not [significantly]<sup>4</sup> changed as compared to the description provided at the moment of submitting the application for conferral of management (taking into account of changes notified to the Commission in previous years);
- All relevant contractual agreements which could have a material effect on the expenditure declared [and the accounts submitted]<sup>3</sup> during the reference period in the event of non-compliance have been complied with. There have been no incidences of non-compliance with Community rules that could have a material effect on the expenditure declared [and the accounts submitted]<sup>3</sup> in the event of non-compliance.

I confirm that, where necessary, I have taken appropriate actions in respect of the reports and opinions from the audit authority issued to date in accordance with Article 29 of the IPA Implementing Rules.

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<sup>1</sup> per component

<sup>2</sup> pursuant to Article 27 of the IPA Implementing Regulation

<sup>3</sup> option to be selected for component 5

<sup>4</sup> where appropriate

[This assurance is, however, subject to the following reservations *<also describe remedial actions>*:

- ...
- ... ].

Furthermore, I confirm that I am not aware of any undisclosed matter which could be damaging to the financial interest of the Community.

*(Place and date of issue*

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*Signature*

*Name and official title or function of the National Authorising Officer)*



# ANNEX C

to the Framework Agreement between the Commission and the  
Government of Montenegro

## Annual Audit Activity Report<sup>1</sup> of the Audit Authority of Montenegro<sup>2</sup>

addressed to

- the European Commission, Directorate-General ...
- the Competent Accrediting Officer (CAO) of Montenegro and
- [copy to]<sup>3</sup> the National Authorising Officer (NAO) of Montenegro

### 1. INTRODUCTION

- Identify the component/programme of IPA covered by the report
- Indicate the bodies that have been involved in preparing the report, including the Audit Authority itself
- Describe the steps taken for the preparation of the report
- Indicate the scope of the audits (including the expenditure declared to the Commission for the year concerned in respect of the relevant operations)
- Indicate the period which is covered by this annual audit activity report (*previous 12 months ending on 30/09/20xx*)

### 2. SUMMARY OF FINDINGS

- Describe the nature and extent of findings arisen from both systems and substantive testing. (Categorise these findings by reference to their level of importance - "major", "intermediate" and "minor". The list of these findings is shown in the annex to this report). Indicate those errors, which are considered systemic in nature and assess the probability of a possible subsequent qualification linked to the errors. Describe and quantify any irregularities encountered.

### 3. CHANGES IN MANAGEMENT AND CONTROL SYSTEMS

- Indicate any significant changes in the management and control systems as compared to the description provided for at the moment of submitting the application for conferral of management (decentralised management) and since the last annual audit activity report.
- Confirm whether or not the changes referred to have been communicated by the NAO in accordance with Annex A 4) b) of the Framework Agreement.

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<sup>1</sup> per component

<sup>2</sup> pursuant to Article 29(2)(b) of the IPA Implementing Regulation

<sup>3</sup> option to be selected

#### **4. CHANGES TO THE ANNUAL AUDIT WORK PLAN**

- Indicate any changes that have been made to the annual audit work plan or are proposed, giving explanations and reasons.
- Given the changes listed above, describe the audit approach adopted in response. Outline the implications of the changes and deviations, including an indication of the basis for selection of any additional audits in the context of the revised annual audit work plan.

#### **5. SYSTEMS AUDITS**

- Indicate the bodies that have carried out systems testing for the purpose of this report, including the Audit Authority itself.
- Attach a summary list of the audits carried out; indicate the materiality and confidence levels applied (%), where appropriate, and the date on which the audit report was forwarded to the Commission.
- Describe the basis for selection of the audits in the context of the annual audit work plan.
- Describe the principal findings and the conclusions drawn from the audit work for the management and control systems, including the adequacy of the audit trail and compliance with Community requirements and policies.
- Indicate any financial impact of findings.
- Provide information on the follow-up of the audit findings and in particular any corrective and preventive measures applied or recommended.

#### **6. AUDITS OF SAMPLE OF OPERATIONS**

- Indicate the bodies that have carried out substantive testing for the purpose of this report, including the Audit Authority itself.
- Attach a summary list indicating the number of audits carried out, the materiality and confidence levels applied (%), where appropriate, and the amount of expenditure checked, broken down by components, programme priority axis and/or measure if relevant, distinguishing between risk-based and statistical sampling, where appropriate. Provide the percentage of expenditure checked in relation to total eligible expenditure declared to the Commission (both for the period in question and cumulatively).
- Describe the basis for selection of the operations inspected.
- Describe the principal results of the substantive testing, indicating in particular, the overall rate of financial errors in proportion to the total expenditure audited resulting from the sample.
- Provide information on the follow-up of errors the application of any financial adjustments and/or any remedial action plan.
- Indicate any resulting financial corrections.

**7. CO-ORDINATION BETWEEN AUDIT BODIES AND SUPERVISORY WORK OF THE AUDIT AUTHORITY**

- Describe the procedure for co-ordination between different national audit bodies and the audit authority itself (if applicable).
- Describe the procedure for supervision applied by the audit authority to other audit bodies (if applicable).

**8. FOLLOW-UP OF PREVIOUS YEARS' AUDIT ACTIVITY**

- Provide information, where appropriate, on the follow-up to audit recommendations and results of audits of operations from earlier years.

**9. RESOURCES USED BY THE AUDIT AUTHORITY**

- Describe the resources used in order to establish this Annual Audit Activity Report

**ANNEX: Annual audit work plan** for the reference year (*previous 12 months ending on 30/09/20xx*)

[List of findings according to point 2 above]

[List of changes according to point 4 above]

[Summary list according to point 5 above following the model enclosed]

[Summary list according to point 6 above following the model enclosed]

**[Summary list according to point 5 above] FOR SYSTEMS AUDITS**

Date of performance of the systems audit	Programme / system audited	Auditing entity	Expenditure declared in reference year	Total cumulative expenditure declared	Basis of selection of the programme

**[Summary list according to point 6 above] FOR DECLARED EXPENDITURE AND SAMPLE AUDITS**

Fund	Reference (CCI no)	Programme	Expenditure declared in ref year	Expenditure in ref year audited for the random sample		Amount and percentage (error rate) of irregular expenditure in random sample (3)		Other expenditure audited (4)	Amount of irregular expenditure in other expenditure sample	Total expenditure declared cumulatively	Total expenditure <i>audited</i> cumulatively as a percentage of total expenditure <i>declared</i> cumulatively	Materiality level (%)	Confidence level (%)
				1.	2.	Amount	%	1.					

1. Amount of expenditure audited.

2. Percentage of expenditure audited in relation to expenditure declared to the Commission in the reference year.

3. Where the random sample covers more than one Fund or programme, the information is provided for the whole sample.

4. Expenditure from complementary sample and expenditure for random sample not in reference year.

# ANNEX D

to the Framework Agreement between the Commission and the  
Government of Montenegro<sup>1</sup>

## Annual Audit Opinion

of the Audit Authority of Montenegro<sup>2</sup>  
on the management and control systems

addressed to

- the European Commission, Directorate-General .....
- the Competent Accrediting Officer (CAO) of Montenegro and
- [copy to]<sup>3</sup> the National Authorising Officer (NAO) of Montenegro

### Introduction:

I, (*name, first name, official title or function*), Head of the Audit Authority of Montenegro, (*name of Audit Authority designated*), have examined the functioning of the management and control systems for the operations under component [1 to 5] of the Instrument for pre-accession (IPA) during the previous 12-month period ended on (*date*), as presented in the description sent to the Commission on (*date*) at the moment of submitting the application for conferral of management (taking into account of changes notified to the Commission in previous years on (*date*) together with the changes identified in the annual audit activity report accompanying this opinion).

The objective of this examination is to issue an opinion on the conformity of the management and control systems with the Framework Agreement and/or any other agreements between the Commission and Montenegro in the framework of IPA and as to whether these management and control systems - designed to contribute to the production of reliable [statements of expenditure] [accounts and statements of expenditure]<sup>4</sup> presented to the Commission and therefore to help to ensure, inter alia, the legality and regularity of the transactions underlying those statements - were operated effectively.

### Respective responsibilities of the NAO and the auditors:

The NAO is responsible, inter alia, for the preparation and fair presentation of the Statement of Assurance in accordance with Article 25 of the IPA Implementing Regulation (IPA IR). This responsibility includes the expression of a representation as regards the truth, completeness and accuracy of the expenditure declared [and the accounts submitted]<sup>3</sup> to the Commission, as well as whether the effective functioning of the management and control systems under IPA provides reasonable assurance as to the legality and regularity of transactions underlying the Statement.

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<sup>1</sup> per component

<sup>2</sup> pursuant to Article 29(2)(b) of the IPA Implementing Regulation

<sup>3</sup> option to be selected

<sup>4</sup> option to be selected depending on the component

The NAO should base his/her assessment upon all information at his/her disposal. This includes the work of the internal audit service.

My responsibility in this report – in accordance with Article 29(2)(b) 2<sup>nd</sup> indent of the IPA IR - is to **express an opinion** on the effective functioning of the management and control systems established for the operations under the IPA component [1 to 5] during the previous 12-month period ended on *(date)* in all material respects.

Our audits are organised with this objective in mind (together with the objective of also providing opinions on expenditure declared [and annual accounts of Component 5]<sup>5</sup> and final statements of claim). We organise an overall audit work plan to fulfil all our responsibilities under Article 29 IPA IR. We did not plan and perform our audits with a view to be able to express an overall opinion on the reliability of the NAO's Statement of Assurance as such. However, we do state our conclusions whether the results of the audit work that we have carried out give rise to any significant doubts in respect of the Statement of Assurance. In particular we have assessed whether our audit findings are consistent with the presence or absence of reservations by the NAO to the Statement of Assurance. We conducted our audits in accordance with international auditing standards. Those standards require, inter alia, that we comply with ethical requirements, and that we plan and perform the audits to obtain reasonable assurance on which to base our opinion.

I believe that the work carried out provides a sound basis for our opinion.

#### **Scope of the examination:**

The audit assignments were carried out in accordance with the annual audit work plan in respect of this component during the 12-month period in question and reported in the annual audit activity report covering the period until ... *(date)*.

Our system-based audit included an examination, on a test basis, of the design and operation of the management and control systems put in place by the beneficiary to effectively manage those risks which threaten the production of reliable [statements of expenditure] [accounts and statements of expenditure]<sup>3</sup> presented to the Commission.

#### **Indicate any limitations on the scope of the examination:**

- Explain any limitations

#### **Auditors' Opinion:**

##### ***[Option 1 - Unqualified opinion]***

Based on the examination referred to above, it is my opinion that for the period 1 October 20xx until 30 September 20xx+1) the management and control systems established for the component [1 to 5] to contribute to the production of reliable [statements of expenditure] [accounts and statements of expenditure]<sup>3</sup> presented to the Commission and, therefore, to help to ensure, inter alia, the legality and regularity of the transactions underlying those statements, functioned effectively and, concerning its design and operation, complied in all material respects with all applicable requirements of the IPA Framework Agreement and/or any other agreements between the Commission and Montenegro in the framework of IPA. Without expressing an opinion on the overall reliability of the Statement of Assurance I conclude that the Statement of Assurance issued by the NAO did not contain any representations that would

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<sup>5</sup> option to be selected for component 5

be materially inconsistent with our audit findings and which would therefore provide any reason to doubt that the Statement of Assurance has been correctly drawn up in accordance with the applicable legislation.

The audits were conducted between DD/MM/20YY and DD/MM/20YY. A report on my findings is delivered at the same date as the date of this opinion.

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated)]*

***[Option 2 - Qualified opinion<sup>6</sup>***

Based on the examination referred to above, it is my opinion that for the period 1 October 20xx until 30 September 20xx+1) the management and control systems established for the component [1 to 5] to contribute to the production of reliable [statements of expenditure] [accounts and statements of expenditure]<sup>3</sup> presented to the Commission and, therefore, to help to ensure, inter alia, the legality and regularity of the transactions underlying those statements, functioned effectively and, concerning its design and operation, complied in all material respects with all applicable requirements of the IPA Framework Agreement and/or any other agreements between the Commission and Montenegro in the framework of IPA except in the following respects:

- State and explain the qualifications (whether due to disagreement with the NAO or scope limitation); in particular, indicate the bodies concerned
- Indicate whether the qualifications are of a recurring / systemic nature or one-off

As a consequence, [Montenegro] [the ... authority] [any other actor(s)] has **failed** to comply with the requirements of the IPA Framework Agreement and/or any other agreements between the Commission and Montenegro in the framework of IPA.

I estimate the **impact** of the qualification(s) to be ... EUR [%] of the total expenditure declared, corresponding to ... EUR [%] of the public contribution. The Community contribution affected is thus..... Without expressing an opinion on the overall reliability of the Statement of Assurance as a whole, I conclude that the Statement of Assurance issued by the NAO contained representation(s) that is / are materially inconsistent with our audit findings and which therefore provide(s) some reason to doubt that the Statement of Assurance has been correctly drawn up in accordance with the applicable legislation in this respect. This/These reservation(s) and inconsistency(ies) is / are: <describe reservation>

The audits were conducted between DD/MM/20YY and DD/MM/20YY. A report on my findings is delivered at the same date as the date of this opinion.

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated)]*

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<sup>6</sup> applicable due to either disagreement with the NAO or scope limitation.

***[Option 3 - Adverse opinion***

Based on the examination referred to above, it is my opinion that for the period 1 October 20xx until 30 September 20xx+1) the management and control systems established for the IPA component [1 to 5] to contribute to the production of reliable [statements of expenditure] [accounts and statements of expenditure]<sup>3</sup> presented to the Commission and, therefore, to help to ensure, inter alia, the legality and regularity of the transactions underlying those statements, did **not** function effectively and, concerning its design and operation, **failed** to comply, in significant respects, with applicable requirements of the IPA Framework Agreement and/or any other agreements between the Commission and Montenegro in the framework of IPA.

This adverse opinion is based on the following observation(s):

- Describe the circumstances giving rise to the reservations – together with its significant compliance implications with Community rules - and name in particular the bodies affected, if applicable.

Because of the effects of the matters described in the preceding paragraph [Montenegro] [the ... authority] [any other actor(s)] has **failed** to comply with the requirements of the IPA Framework Agreement and/or any other agreements between the Commission and Montenegro in the framework of IPA.

The audits were conducted between DD/MM/20YY and DD/MM/20YY. A report on my findings is delivered at the same date as the date of this opinion.

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated))*

***[Option 4 - Disclaimer of opinion***

Because of the significance of the matter discussed in the preceding paragraph, **I do not express an opinion** on the effectiveness of the management and control systems under the IPA component [1 to 5] for the period 1 October 20xx until 30 September 20xx+1 and its conformity with the IPA Framework Agreement and/or any other agreements between the Commission and Montenegro in the framework of IPA. Without expressing an opinion on the overall reliability of the Statement of Assurance as a whole, I conclude that the Statement of Assurance issued by the NAO contained representation(s) that is / are materially inconsistent with our audit findings and which therefore provide(s) some reason to doubt that the Statement of Assurance has been correctly drawn up in accordance with the applicable legislation in this respect. This/These reservation(s) and inconsistency(ies) is / are: <describe reservation>

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated))*



# ANNEX E

to the Framework Agreement between the Commission and the  
Government of Montenegro<sup>1</sup>

## Audit Opinion

of the Audit Authority of Montenegro<sup>2</sup>

on the final statement of expenditure of the [programme with reference: ...]

[on the accounts and statement of expenditure of component 5]<sup>3</sup>

[part ... of the programme with reference: ...]

[as supported by the final Audit Activity Report]<sup>4</sup>

addressed to

- the European Commission, Directorate-General .....
- the Competent Accrediting Officer (CAO) of Montenegro

### 1. Introduction

I, (*name, first name, official title or function*), Head of the Audit Authority of Montenegro, (name of Audit Authority designated), have examined the results of the audit work carried out on the programme (indicate programme - title, component, period, reference (CCI) number) by or under the responsibility of the Audit Authority in accordance with the audit work plan [and have carried out additional work as I judged necessary].

### 2. Respective responsibilities of the National Authorising Officer (NAO) and the auditors

In accordance with Article 25 of the IPA Implementing Regulation (IPA IR) the preparation and fair presentation of the expenditure statements submitted to the Commission, as well as ensuring the legality and regularity of the transactions underlying those statements, rest with the NAO.

[This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of annual accounts that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances]<sup>3</sup>.

My responsibility in this report – in accordance with Article 29(2)(b) 3<sup>rd</sup> indent of the IPA IR - is to express an opinion [on the reliability of the final statement of expenditure] [on the reliability of statement of expenditure and annual accounts]<sup>3</sup> [and the validity of the final payment application] submitted by the NAO. I conducted the audits in accordance with international auditing standards.

<sup>1</sup> per component

<sup>2</sup> pursuant to Article 29(2)(b) of the IPA Implementing Regulation

<sup>3</sup> option to be selected for component 5

<sup>4</sup> where appropriate, in any case not applicable to component 5

Those standards require that I plan and perform the audits in order to obtain reasonable assurance about whether the statement of expenditure [and the annual accounts]<sup>3</sup> [and the payment application for the final balance of the Community contribution to the programme] is [are] free of material misstatement [and the effectiveness of internal control procedures]<sup>3</sup>.

We organise an overall audit work plan to fulfil all our responsibilities under Article 29 of the IPA IR. The audits included [examination, on a test basis, of evidence supporting the amounts and disclosures in the final statement of expenditure and the payment application for the final balance of the Community contribution to the programme] [examination, on a test basis, of evidence supporting the information in the annual accounts, an examination of procedures and of an appropriate sample of transactions to obtain audit evidence about the amounts and disclosures in the statement of expenditure and the annual accounts]<sup>3</sup>. [The audits covered compliance of payments with Community rules only as regards the capability of the accredited administrative structures to ensure that such compliance has been checked before payment is made]<sup>5</sup>.

I believe that my audits provide a reasonable basis for my opinion.

### 3. Scope of the examination

I have conducted my examination in accordance with Article 29(2)(b) IPA IR.

<The scope of our examination was not designed to form an opinion on the legality and regularity of the transactions underlying the final statement of expenditure submitted to the Commission.><sup>6</sup> <There were no limitations on the scope of the examination.><sup>5</sup>

The scope was further limited by the following factors:

- (a) ...
- (b) ...
- (c) ..., etc.

*(Indicate any limitation on the scope of the examination, for example any systemic problems, weaknesses in the management and control system, lack of supporting documentation, cases under legal proceedings, etc., and estimate the amounts of expenditure and the Community contribution affected. If the Audit Authority does not consider that the limitations have an impact on the final expenditure declared, this should be stated.)*

### 4. Errors and irregularities

[The error rates and cases of irregularity found in the audit work are not such as to preclude an unqualified opinion given the satisfactory way they have been dealt with by the NAO and the trend in the level of their occurrence over time.]

**Or**

[The rate of errors and irregularities found in the audit work and the way, they have been dealt with by the NAO, are such as to preclude an unqualified opinion. A list of these cases is provided in the final audit activity report together with an indication of their possible systemic character and the scale of the problem.]

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<sup>3</sup> optional for component 5

<sup>6</sup> option to be selected

## 5. Auditors' opinion on the final statement of expenditure

### *[Option 1 - Unqualified opinion]*

*(If there have been no limitations on the scope of the examination, and the error rates and cases of irregularity and the way they have been dealt with by the NAO do not preclude an unqualified opinion)*

[Based on the examination referred to above covering the audit work carried out in accordance with Article 29(2)(b) IPA IR [and the additional work I have performed], it is my opinion that the accounts submitted to the Commission for the operations under the IPA component [1 to 5] for the period from (date) to (date) (in particular, the statement of expenditure) are **presented fairly, in all material respects** <sup>7</sup>, including those pertaining to the legality and regularity of the underlying transactions<sup>7</sup> [and the internal control procedures have operated satisfactorily]<sup>3</sup>.]

**Or**

[Based on the examination referred to above covering the audit work carried out in accordance with Article 29(2)(b) IPA IR [and the additional work I have performed], it is my opinion that the final statement of expenditure **presents fairly, in all material respects** - <including those pertaining to the legality and regularity of the underlying transactions<sup>7</sup> - the expenditure paid under the operational programme with reference: ... of the IPA component [1 to 5] for the period from (date) to (date), and that the application for payment of the final balance of the Community contribution to this programme is valid.]

My audits were conducted between DD/MM/20YY and DD/MM/20YY.

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated))*

### *[Option 2 - Qualified opinion]*

*(If there have been limitations on the scope of the examination and/or the error rates and cases of irregularity and the way they have been dealt with by the NAO calls for a qualified opinion but do not justify an unfavourable opinion for all the expenditure concerned)*

[Based on the examination referred to above covering the audit work carried out in accordance with Article 29(2)(b) IPA IR [and the additional work I have performed], it is my opinion that the accounts submitted to the Commission for the operations under the IPA component [1 to 5] for the period from (date) to (date) are presented fairly in all material respects - <including those pertaining to the legality and regularity of the underlying transactions<sup>7</sup> [and the internal control procedures have operated satisfactorily]<sup>3</sup> - except in the following respects:

- (a) ...
- (b) ...
- (c) ..., etc.

*(state the qualifications, in particular the bodies concerned, and explain, e.g. whether they are of a recurring / systemic nature or one-off)*

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<sup>7</sup> to be included optionally for components where applicable (see foot-note 6 above).

I estimate the impact of the qualification(s) to be [EUR] [%]... of the total expenditure declared, [corresponding to [EUR] [%] of the public contribution]. The Community contribution affected is thus ....].

*Or*

[Based on the examination referred to above covering the audit work carried out in accordance with Article 29(2)(b) IPA IR [and the additional work I have performed], it is my opinion that the final statement of expenditure presents fairly, in all material respects - <including those pertaining to the legality and regularity of the underlying transactions><sup>7</sup> the expenditure paid under the operational programme with reference:... of the IPA component [1 to 5] for the period from (date) to (date), and that the application for payment of the final balance of the Community contribution to this programme is valid **except** with regard to the matters referred to at point 3 above and/or to the observations at point 4 regarding the error rates and cases of irregularity and the way they have been dealt with by the NAO.

I estimate the impact of the qualification(s) to be [EUR] [%]... of the total expenditure declared, [corresponding to [EUR] [%] of the public contribution]. The Community contribution affected is thus ....].

My audits were conducted between DD/MM/20YY and DD/MM/20YY.

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated))*

**[Option 3 - Adverse opinion**

*(If the nature and extent of the errors and of the cases of irregularities and the way they have been dealt with by the NAO are so pervasive that a qualification is deemed inadequate to disclose the misleading nature of the final statement of expenditure as a whole)*

[Based on the examination referred to above covering the audit work carried out in accordance with Article 29(2)(b) IPA IR [and the additional work I have performed], and in particular in view of the nature and extent of the errors and of cases of irregularities and the fact that they have not been dealt with satisfactorily by the NAO as disclosed under point 4, it is my opinion that that the accounts submitted to the Commission for the operations under the IPA component [1 to 5] for the period from (date) to (date) are **not** presented fairly, in all material respects [and the internal control procedures have not operated satisfactorily]<sup>3</sup>.]

**OR**

[Based on the examination referred to above covering the audit work carried out in accordance with Article 29(2)(b) IPA IR [and the additional work I have performed], it is my opinion that the final statement of expenditure does **not** present fairly, in all material respects - <including those pertaining to the legality and regularity of the underlying transactions><sup>7</sup> the expenditure paid under the operational programme with reference:... of the IPA component [1 to 5] for the period from (date) to (date), and that the application for payment of the final balance of the Community contribution to this programme is **not** valid.]

My audits were conducted between DD/MM/20YY and DD/MM/20YY.

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated))*

**[Option 4 - Disclaimer of opinion**

*(If there have been major limitations on the scope of the examination such that no conclusion can be reached on the reliability of the final statement of expenditure without considerable further work)*

[Based on the examination referred to above covering the audit work carried out in accordance with Article 29(2)(b) IPA IR [and the additional work I have performed], and in particular in view of the matters referred to at point 3, I am **unable to express an opinion.**

*(Place and date of issue*

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*Signature*

*Name and official title or function of the Head of the Audit Authority designated))*

- [copy to: National Authorising Officer (NAO) of Montenegro]<sup>6</sup>