

FINANCING AGREEMENT

BETWEEN

THE GOVERNMENT OF MONTENEGRO

AND

THE EUROPEAN COMMISSION

CONCERNING THE "IPA ADRIATIC CROSS_BORDER
COOPERATION PROGRAMME" UNDER THE
INSTRUMENT FOR PRE-ACCESSION ASSISTANCE

Dated

(Shared Management)

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Annex A “IPA Adriatic Cross border cooperation programme” for Community assistance from the Instrument for Pre-Accession Assistance for the Cross-border Co-operation component adopted by Commission decision C(2008)1073, as last amended by Commission Decision C(2012) 4937

Annex B Framework Agreement between the Commission of the European Communities and the Government of Montenegro dated 15 November 2007



FINANCING AGREEMENT

THE GOVERNMENT OF THE REPUBLIC OF MONTENEGRO

and

THE EUROPEAN COMMISSION

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 European Commission.


Whereas:

- (a) On 17 July 2006, the Council of the European Union adopted Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance¹ (hereafter: the "IPA Framework Regulation"). With effect from 1 January 2007, this IPA Framework Regulation, as last amended by Regulation (EU) No 153/2012, 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 their eventually becoming members of the European Union.
- (b) On 12 June 2007, the Commission adopted Regulation (EC) No 718/2007, as last amended by Regulation (EU) No 813/2012, implementing the IPA Framework Regulation², detailing applicable management and control provisions (hereafter: the "IPA Implementing Regulation").
- (c) European Union 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.

European Union assistance for candidate countries should additionally focus on the adoption and implementation of the full *acquis communautaire*, and in particular prepare them for the implementation of the Union's agricultural and cohesion policy.

¹ OJ L 210, 31.7.2006, p. 82.

² OJ L170, 29.6.2007, p. 1.



- (d) On 15 November 2007, the Parties concluded a Framework Agreement setting out the general rules for cooperation and implementation of the Union assistance under the Instrument for Pre-accession Assistance (hereafter: "the Framework Agreement").
- (e) On 25 March 2008, the Commission adopted the IPA Adriatic Cross-border cooperation programme (hereafter: "the Programme") by Decision C(2008)1073, as last amended by Decision C(2012)4937. Supporting cross-border cooperation between Greece, Italy, Slovenia, Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia (hereafter referred to as "the participating countries"). The Programme is to be implemented by shared management, in accordance with the provisions laid down in Article 53b and Title II of part two of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities³ (hereafter: "the Financial Regulation").
- (f) It is necessary for the implementation of the Programme that the Parties conclude a Financing Agreement (hereafter: "this Agreement") to lay down:
 - (i) the provisions by which the beneficiary country accepts the assistance of the European Union and agrees to the rules and procedures concerning disbursement related to such assistance; and
 - (ii) the terms on which the assistance is managed, including the relevant methods and responsibilities for implementing the Programme.

HAVE AGREED ON THE FOLLOWING:

1 THE PROGRAMME

The Commission will contribute, by way of grant, to the financing of the Programme, which is set out in Annex A to this Agreement:

Programme number: CCI 2007 CB 16 IPO 001

Title: IPA Adriatic Cross-border cooperation programme

2 IMPLEMENTATION OF THE PROGRAMME

- (1) The Programme shall be implemented by shared management, in the meaning of Article 53b of the Financial Regulation.
- (2) The Programme shall be implemented in accordance with the provisions referred to in Section 2 of Chapter III of Title II of Part II of the IPA Implementing Regulation (Articles 101 to 138), those of the Framework Agreement, which is set out in Annex B to this Agreement and those of Commission Decision C(2008)1073 of 25 March 2008 approving the "IPA Adriatic cross-border cooperation programme", as last amended by Commission Decision C(2012) 4937.
- (3) The participating countries shall endeavour to ensure that all activities and objectives pursued with the implementation of the Programme are consistent with Union

³ OJL 248, 16.9.2002, p.1.



legislation and policies in force as may be applicable to the relevant sector and contribute to the progressive alignment with the *acquis communautaire*.

- (4) The participating countries shall ensure adequate coordination, consistency and complementarity of the assistance provided under the Programme with other forms of Community assistance, including but not limited to the other IPA components covered by the IPA Framework Regulation, as well as assistance financed by the European Investment Bank, other international financing institutions and bilateral donors.

3 STRUCTURES AND AUTHORITIES WITH RESPONSIBILITIES

- (1) The national IPA co-ordinator as referred to in Article 22 of the IPA Implementing Regulation and as designated in accordance with the Framework Agreement shall be responsible for co-ordinating the beneficiary country's participation in the relevant cross-border programmes as well as in the transnational, interregional or sea basins programmes under other Union instruments.
- (2) The participating countries shall set up control systems as described, pursuant to Article 108 of the IPA Implementing Regulation, in Chapter 11 of the Programme.
- (3) The participating countries shall set up a joint monitoring committee for the Programme, pursuant to Article 110 of the IPA Implementing Regulation.
- (4) The participating countries shall be responsible for the management and control of the Programme in particular through the measures set out in Article 114 of the IPA Implementing Regulation, including the recovery of amounts unduly paid.
- (5) The participating countries shall conclude a written agreement concerning the arrangements agreed between them to allow the programme authorities to exercise their duties arising from the IPA Implementing Regulation, pursuant to Article 118 of that Regulation and annexed to the description of the management and control systems referred to in Article 115 of that Regulation. In accordance with Article 121(2) of that Regulation, such written agreement shall also cover the provisions under Point 8 of this Agreement.

4 FUNDING

The total funding for the implementation of the Programme covered by this Agreement shall be as follows:

- (a) the European Union contribution is fixed at a maximum of € 245,611,916, as detailed in Chapter 9 of the Programme. However, payment of the European Union 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 the Programme shall be borne by the Beneficiary with the exception of the costs referred to in Article 94(1)(f) of the IPA Implementing Regulation, as detailed in the Programme.



5 AUTOMATIC AND FINAL DECOMMITMENT


According to Article 137 of the IPA Implementing Regulation and Article 166(3) of the Financial Regulation,

- (a) any portion of a budget commitment for the Programme shall be automatically decommitted where, by 31 December of the third year following year *n* being the one in which the budget commitment was made:
 - (i) it has not been used for the purpose of pre-financing; or
 - (ii) it has not been used for making intermediate payments; or
 - (iii) no declaration of expenditure has been presented in relation to it;
- (b) that part of budget commitments still open on 31 December 2017 for which a declaration of expenditure has not been made by 31 December 2018 shall be automatically decommitted.

6 TREATMENT OF RECEIPTS

- (1) According to Article 35 of the IPA Implementing Regulation, 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, 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.

7 ELIGIBILITY OF EXPENDITURE

- (1) Expenditure under the Programme shall be eligible for European Union contribution if it has actually been incurred after the signature of this Agreement.
 - (2) According to Article 34(3) and Article 89(2) of the IPA Implementing Regulation, the following expenditure shall not be eligible for Union contribution under the Programme:
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- (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) interest on debt.
- (3) By way of derogation from paragraph 2 and in accordance with Article 89(3) of the IPA Implementing Regulation, the Commission will decide on a case-by-case basis whether the following expenditure is eligible:
- (a) value added taxes, if the following conditions are fulfilled:
 - (i) they 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.
 - (b) charges for transnational financial transactions;
 - (c) where the implementation of an operation requires a separate account or accounts to be opened, the bank charges for opening and administering the accounts;
 - (d) legal consultancy fees, notarial fees, costs of technical or financial experts, and accountancy or audit costs, if they are directly linked to the co-financed operation and are necessary for its preparation or implementation;
 - (e) the cost of guarantees provided by a bank or other financial institutions, to the extent that the guarantees are required by national or Union legislation;
 - (f) overheads, provided they are based on real costs attributable to the implementation of the operation concerned. Flat-rates based on average costs may not exceed 25% of those direct costs of an operation that can affect the level of overheads. The calculation shall be properly documented and periodically reviewed;



- (g) the purchase of land for an amount up to 10% of the eligible expenditure of the operation concerned.
- (4) In addition to the technical assistance for the Programme referred to in Article 94 of the IPA Implementing Regulation and in accordance with Article 89(4) of that Regulation, the following expenditure paid by public authorities in the preparation or implementation of an operation shall be eligible:
- (a) the costs of professional services provided by a public authority other than the final beneficiary in the preparation or implementation of an operation;
 - (b) the costs of the provision of services relating to the preparation and implementation of an operation provided by a public authority that is itself the final beneficiary and which is executing an operation for its own account without recourse to other outside service providers if they are additional costs and relate either to expenditure actually and directly paid for the co-financed operation.

The public authority concerned shall either invoice the costs referred to in point (a) of this paragraph to the final beneficiary or certify those costs on the basis of documents of equivalent probative value which permit the identification of real costs paid by that authority for that operation.

The costs referred to in point (b) of this paragraph must be certified by means of documents which permit the identification of real costs paid by the public authority concerned for that operation.

- (5) Without prejudice to the provisions of paragraphs 1 to 4, further rules on eligibility of expenditure may be laid down by the participating countries in the Programme.

8 PUBLIC PROCUREMENT RULES

In accordance with Article 121(1) of the IPA Implementing Regulation, procurement procedures in the whole area of the cross-border programme, both on the Member States territories (Italy, Slovenia, Greece) and on Montenegro territory, shall follow the provisions of Chapter 3 of Part 2, Title IV of the Financing Regulation and Chapter 3 of Part 2, Title III of Regulation (EC, Euratom) No 2342/2002⁴, as well as Commission Decision C(2007) 2034 on the rules and procedures applicable to service, supply and work contracts financed by the general budget of the European Communities for the purposes of cooperation with third countries, with the exclusion of Section II.8.2. Those provisions shall apply in the whole area of the cross-border programme, both on the Member State's and on the beneficiary countries' territory.

9 RETENTION OF DOCUMENTS

- (1) In accordance with Article 134 of the IPA Implementing Regulation, all documents relating to the Programme shall be kept available for a period of at least three years following the closure of the Programme as defined in Article 133(5) of that Regulation.

⁴ OJ L 357, 31.12.2002, p. 1



This period shall be interrupted either in the case of legal proceedings or at the duly motivated request from the Commission.

- (2) The documents and records shall be kept in accordance with the detailed provisions laid down in Article 134 (2) to (7) of the IPA Implementing Regulation.

10 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 reference to Council or Commission Regulations or Decisions are references to such instruments as amended, supplemented or replaced.
- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.


11 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.

12 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.

13 TERMINATION

- (1) Without prejudice to paragraph 2, this Agreement shall terminate three years after the date of closure of the Programme as defined in Article 133(5) of the IPA Implementing Regulation. This termination shall not preclude the possibility for the Commission making financial corrections in accordance with Articles 49 to 54 of that Regulation.
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- (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.

14 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.

15 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
Directorate-General for Regional and Urban Policy
B-1049 Brussels
Belgium
Fax: +32 2 206 32 90

For the Beneficiary Country

Montenegro
Ministry of Foreign Affairs and European Integration
Stanka Dragojevića 2
81000 Podgorica, Montenegro
Fax: +382 20 225 591

16 NUMBER OF ORIGINALS

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

17 ANNEXES



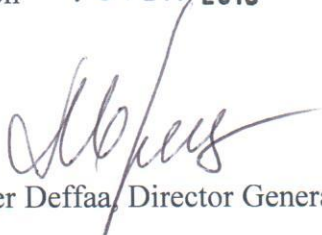
The Annexes A and B shall form an integral part of this Agreement.

18 ENTRY INTO FORCE

This Agreement shall enter into force on the date of signature, replacing the existing Financing Agreement. 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,

at Brussels, on 19 FEB. 2013



by Mr Walter Deffaa, Director General

for the Director General absent,
Normunds Popens
Deputy Director General

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

at Podgorica, on 11/11/13



By Ambassador Aleksandar Andrija Pejović, State Secretary for European Integration
NIPAC



**ANNEX A "IPA ADRIATIC CROSS BORDER COOPERATION PROGRAMME"
FOR COMMUNITY ASSISTANCE FROM THE INSTRUMENT FOR PRE-
ACCESSION ASSISTANCE FOR THE CROSS-BORDER CO-OPERATION
COMPONENT ADOPTED BY COMMISSION DECISION C(2008)1073, AS LAST
AMENDED BY COMMISSION DECISION C(2012) 4937**

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