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IMPLEMENTING AGREEMENT

between the

National Authorising Officer (NAO)

and

Head of IPA Component IIb Operating Structure (HOS)

For the Management and Implementation of Cross-Border Programmes (CBPs)

**Croatia & Serbia; Croatia & Bosnia-Herzegovina; Croatia & Montenegro;
Participation of Croatia in "South-East Europe"; Participation of Croatia in
"Mediterranean"**

Financed by Instrument for Pre-accession Assistance (IPA)

Implementing Agreement between the National Authorising Officer (NAO) and the Head of IPA Component IIb Operating Structure (HOS) concerning decentralised management without ex-ante controls by the Delegation of European Union to Republic of Croatia of IPA Component II Programmes

Contracting parties:

The Ministry of Finance (MF),
The National Authorising Officer (NAO),
Ms Ivana Jakir-Bajo, Assistant Minister of Finance and State Treasurer, MF

and

The Ministry of Regional Development and EU Funds (MRDEUF),
The Head of IPA Component IIb Operating Structure (HOS),
Ms Franka Vojnović, Head of Sector for Regional Development Policy,
MRDEUF

Whereas:

- EC Council Regulation No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-accession Assistance (IPA) including amendments No 540/2010 of 16th June 2010, No 153/2012 of 15 February 2012; Corrigendum to Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) –referred to as the IPA Framework Regulation;
- With effect from the 1 January 2007, IPA has been the 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 becoming members of the European Union (EU);
- On 12 June 2007, the European Commission (EC) adopted Commission Regulation (EC) No 718/2007 of 12 June 2007 implementing Council Regulation (EC) No 1085/2006, detailing applicable management and control provisions, including amendments No 80/2010 of 28 January 2010, 1292/2011 of 9 December 2011, 813/2012 of 12 September 2012 and 484/2013 of 24 May 2013 - referred to as the IPA Implementing Regulation;
- On 27 August 2007 the EC and the Government of Croatia signed an agreement which governs the use of IPA financial assistance in Croatia and which contains detailed technical provisions for implementing IPA funded programmes and projects, namely the: *'Framework Agreement between the Government of the Republic of Croatia and the Commission of the European Communities on the Rules for Co-operation concerning EC- Financial Assistance to the Republic of Croatia in the Framework of the Implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA)'*;

Commission Decision C(2010)5665 of 18 August 2010 amending Commission Decision C(2008)6735 of 14 November 2008 conferring on the Republic of Croatia management powers relating to cross-border programmes between Croatia and one or more IPA beneficiary countries and transnational programmes involving Croatia under IPA component II. The amendment reflects the role of the Agency for Regional Development as the new implementing Agency

- On 12 February 2013, European Commission issued Implementing Decision (C(2013)647) amending

Commission Decision (C(2008)6735) of 14 November 2008 conferring on the Republic of Croatia management powers relating to the cross-border programmes between Croatia and one or more IPA beneficiary countries and transnational programmes involving Croatia under the Cross-Border Cooperation Component II of the Instrument of Pre-Accession Assistance (IPA) without ex-ante controls by the Commission;

- Treaty between Member States of the European Union and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union (OG – International Agreements, no. 2/12, 9/13);
- Commission Decisions for each Cross-Border Programme (understood to include Croatia's participation in ERDF European Territorial Cooperation trans-national programmes) will be adopted annually that will further specify the detailed implementation provisions contained therein;
- Financing Agreements for each Cross-Border Programme (understood to include Croatia's participation in ERDF European Territorial Cooperation trans-national programmes) will be signed between the Government of the Republic of Croatia and the European Commission annually and will further specify concrete terms and provisions for the management and disbursement of programme funds;
- Protocols will be signed by the relevant partner countries which will further specify the modalities of joint Cross-Border Programme management – the chief of which is the relevant programme Joint Technical Secretariat;
- Regulation on the Scope and Contents of Responsibilities and the Authority of Bodies Responsible for Managing the Instrument For Pre-Accession Assistance (IPA) and Transition Facility (OG 84/2014); Amendment to the Regulation on the Scope and Contents of Responsibilities and the Authority of Bodies Responsible for Managing the Instrument For Pre-Accession Assistance (IPA) and Transition Facility (OG 78/2015);
- Decision on the Appointment of Individuals Responsible for Managing the Instrument for Pre-Accession Assistance (IPA) and Transition Facility (OG 84/2014); Amendment to the Decision on the Appointment of Individuals Responsible for Managing the Instrument for Pre-Accession Assistance (IPA) and Transition Facility (OG 78/2015);

Have agreed as follows:

Article 1: General Provisions

- (1) The objective of this Implementing Agreement is to define the responsibilities and functions of the National Authorising Officer (NAO), the National Fund (NF), the Operating Structure (OS) and the Head of the Operating Structure (HOS) in financing, managing, and implementing the IPA Component IIb Cross-Border Programmes (CBPs), as laid down in Annex A(6) of the IPA Framework Agreement.
- (2) The Agreement makes a distinction between the three bilateral CBPs involving the bordering IPA beneficiary countries, and Croatia's participation in two Transnational Programmes (TnPs) under the European Regional Development Fund's (ERDF) European Territorial Cooperation objective for the appropriations 2007, 2008 and 2009.

- (3) The bilateral CBPs are managed by the OS in Croatia, namely:
- (i) CBP Croatia-Serbia, 2007-2013;
 - (ii) CBP Croatia-Bosnia & Herzegovina, 2007-2013;
 - (iii) CBP Croatia-Montenegro, 2007-2013;

All the provisions of this Agreement apply to the management and implementation of the three bilateral OPs.

- (4) The two TnPs are managed by Managing Authorities located in one of the participating EU Member States, namely:
- (i) Transnational Programme "South-East Europe ";
 - (ii) Transnational Programme "Mediterranean ".

The functions laid down in Annex A(6) of the Framework Agreement are modified in line with the relevant Financing Agreements.

Article 2: Responsibilities of the National Authorising Officer (NAO) and the National Fund (NF)

- (1) The Assistant Minister in the Ministry of Finance is appointed as the National Authorising Officer (NAO).

National Authorising Officer (NAO)

- (2) The NAO shall fulfil the following functions and assume the following responsibilities:

- (1) As the head of the National Fund, bearing overall responsibility for the financial management of EU pre-accession funds and Transition Facility funds in Croatia 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:

- (i) Providing assurance about the regularity and legality of underlying transactions;
- (ii) Drawing up and submitting to the European Commission (EC) 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 OS;
- (iii) Verifying the existence and correctness of the co-financing elements;
- (iv) Ensuring the identification and immediate communication of any irregularity;
- (v) Making the financial adjustments required in connection with irregularities detected, in accordance with Article 50 of the IPA Implementing Regulation;
- (vi) Being the contact point for financial information exchanged with the EC.

- (2) 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:

- (i) Being responsible for issuing, monitoring and suspending or withdrawing the accreditation of the Operating Structure;
- (ii) Ensuring the existence and effective functioning of systems of management of assistance under IPA;
- (iii) Ensuring that the system of internal control concerning the management of funds is effective and efficient;
- (iv) Reporting on the management and control system;

- (v) Ensuring that a proper reporting and information system is functioning;
- (vi) Following-up the findings of audit reports from the audit authority, in accordance with Article 18 of the Framework Agreement and Annex D of the Framework Agreement;
- (vii) Immediately notifying the EC, with a copy of the notification to the Competent Authorising Officer, of any significant change concerning the management and control systems.
- (viii) As corollary to the responsibilities under (i) and (ii) above, the NAO shall establish an Annual Statement of Assurance as defined in Article 17 of the Framework Agreement and following Annex B of the Framework Agreement, which shall include: (i) confirmation of the effective functioning of the management and control systems; (ii) a confirmation regarding the legality and regularity of the underlying transactions; (iii) information concerning any changes in systems and controls, and elements of supporting accounting information.
- (ix) For each Cross-Border Programme (CBP) managed by the OS, the NAO may issue specific instructions or guidelines, if needed.

The National Fund (NF)

- (3) The National Fund (NF) is located in the Ministry of Finance and is under the responsibility of the NAO. It has a central budgetary competence and acts as the "central treasury entity" referred to in Annex A (5) of the Framework Agreement
- (4) 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 EC, authorising the transfer of funds from the EC to the Operating Structure to enable it to make payments to grant beneficiaries, and the financial reporting to the EC. In this regard, the NF is in particular responsible for:
 - (a) Receiving payments of IPA funds from the EC, and holding an own interest bearing account for each Cross-Border Programme (CBP), and keeping records of all transactions.
 - (b) Executing transfer of IPA funds to the Operating Structure, on the basis of individual 'Requests for Funds from EU and National Co-Financing' (RfF); the National Fund shall prescribe the form of RfF and issue instructions for drawing up RfF.
 - (c) Carrying out controls, in order to satisfy itself and provide assurance to the NAO that:
 - ☑ The Head of the Operating Structure, and the constituent bodies of the Operating Structure, have fulfilled their responsibilities as set out in Annex A(6) to the Framework Agreement;
 - ☑ RfF show evidence of properly selected projects and include only eligible costs, supported by receipted invoices or accounting documents of equivalent probative value, as stated in the 'Request for Payment' (RfP) from the grant beneficiary;
 - ☑ Financial data in the monitoring system is complete and consistent;
 - ☑ No obstacles of a general nature have been detected for the execution of payments from the IPA funds.

- (d) Receiving and checking all records and documents related to operations, financed from IPA funds, as well as for on-the-spot checks at all levels.
- (e) Keeping records of amounts recoverable and already recovered
- (f) Drawing up and submitting to the NAO, for approval and certification, statements of interim and final expenditure from IPA funds with Applications for Payment from IPA funds to the EC.
- (g) Drawing up and submitting forecasts of Applications for Payment from IPA funds for the current and the following year, based on data submitted by the Operating Structure.
- (h) Ensuring irregularity reporting for irregularities discovered by the NF to the NAO.

Article 3 Responsibilities of the Operating Structure (OS)

- (1) In accordance with Article 139 of the IPA Implementing Regulation (IR), the Operating Structure for IPA Component IIb is responsible for the following functions:
 - (a) drafting the annual or multi-annual programmes;
 - (b) ensuring that co-financing funds have been reserved in the State budget;
 - (c) monitoring programme implementation and guiding the work of the Joint Monitoring Committees as defined in IR Article 142, notably by providing the documents necessary for monitoring the quality of implementation of the programmes;
 - (d) drawing up the CBP annual/final Implementation Reports defined in IR Article 144 and, after their examination by the Joint Monitoring Committees, submitting them to the Commission, to the National IPA Coordinator and to the National Authorising Officer;
 - (e) 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 EU and national rules;
 - (f) setting up procedures to ensure the retention of all documents required to ensure an adequate audit trail, in accordance with Article 20;
 - (g) arranging for tendering procedures and grant award procedures;
 - (h) arranging for the ensuing contracting of selected Grant Beneficiaries and making payments to, and recovery from, Grant Beneficiaries;
 - (i) ensuring that all organizations/bodies involved in the implementation of operations maintain a separate accounting system or a separate accounting codification;
 - (j) ensuring that the National Fund and the National Authorising Officer receive all necessary information on the procedures and verifications carried out in relation to expenditure;
 - (k) setting up, maintaining and updating the reporting and information system iPerseus and MIS;
 - (l) carrying out verifications to ensure that the expenditure declared has actually been incurred in accordance with applicable rules, the products or services have been delivered in accordance with the approval decision, and the Request for Payment by the Grant Beneficiary are correct. These verifications shall cover administrative, financial, technical and physical aspects of operations, as appropriate;
 - (m) ensuring internal audit of its different constituting bodies;
 - (n) ensuring irregularity and risk management reporting;
 - (o) ensuring compliance with the information and publicity requirements.

- (2) The Operating Structure (OS) for IPA Component IIb in Croatia is composed of the following bodies in accordance with IR Articles 28, 31 and 139:

- (i) The Ministry of Regional Development and EU Funds (MRDEUF);

Service for International Territorial Cooperation (SITC), which is part of the Sector for Regional Development Policy, within the Directorate for Regional Development (DRD) in MRDEUF – BROP – executes the programming and programme management functions, on behalf of the HOS.

Department for Incentive Measures and Control, within the Service for Regional Development Policy and Coordination, which is part of the Sector for Regional Development Policy in the Directorate for Regional Development in MRDEUF (hereafter named DRD-DIMC) – performs supervision of the ARD, JTS and BROP on behalf of the HOS, and

- (ii) The Agency for Regional Development (ARD) of the Republic of Croatia.

- (3) The modalities of the OS for IPA Component IIb in Croatia depend on the specific CBP:

- (i) For the three bilateral CBPs (Croatia - Serbia, Croatia - Bosnia & Herzegovina, Croatia - Montenegro): the OS is responsible for all functions indicated under point (1) above i.e. items (a) to (o);

- (ii) For the Transnational Programmes CBPs ("South-East Europe" and "Mediterranean"): the OS is responsible only for the following functions in point (1), namely items (f), (h), (i), (j), (l), (m), (n), and (o). Other functions indicated under point (1) are under the responsibility of the Managing Authority in the EU Member State.

- (4) In compliance with Article 139 (5) of the IPA Implementing Regulation, the ARD will fulfil the responsibilities of the Implementing Agency¹ for Croatia. The ARD has been established to bear responsibility for financing, procurement, payments and monitoring of the implementation of programmes and projects of regional development policy in Croatia²

- (5) The NAO shall designate the Director of the ARD to fulfil the role of Programme Authorising Officer (PAO)³, in compliance with Article 139 (5) of the IPA Implementing Regulation. The Director of ARD will be responsible to HOS and accountable for the legality, regularity and sound financial management of each implementation transaction (contract and payment) under IPA Component IIb.

¹ "The operating structures in each participating beneficiary country shall include one implementing agency which shall be established within the national administration or under its direct control. The implementing agencies shall undertake tendering, contracting, payments, accounting and financial reporting of the procurement of services, supplies and works and contracting, payments, accounting and financial reporting of grants."

² In accordance with Article 2 of the 'Regulation establishing the Agency for Regional Development of Republic of Croatia' (OG 155/08, 83/2012, 111/2014)

³ "The national authorising officer in each participating beneficiary country shall, after consulting the national IPA coordinator, designate a programme authorising officer to head the implementing agency. The programme authorising officers shall be officials of the State administration of the beneficiary countries. He shall be responsible for the activities carried out by the implementing agency".

- (6) In accordance with Article 139 (4) of the IPA IR, for each cross-border programme among beneficiary countries, the relevant operating structures shall also set up a Joint Technical Secretariat (JTS) to assist the operating structures and the joint monitoring committee referred to in Article 142 in carrying out their respective duties. The JTS may have antennae established in each of the participating countries. The JTS is financed from the technical assistance component of its respective CBP, and governed by the Protocols between the participating countries.

Article 4 Responsibilities of the Head of Operating Structure (HOS)

- (1) The HOS is responsible and accountable for the activities of the Operating Structure, in relation to the bilateral Cross-Border Programmes and Transnational Programmes under IPA Component IIb in Croatia.
- (2) The HOS will sign an Operational Agreement with the Director of the ARD, laying down clearly defined functions of each body in the OS, in compliance with this Implementing Agreement. The Operational Agreement will be reviewed by the NAO, prior to its signature, and counter-signed by the NAO. It will include clear supervising mechanisms by HOS through the DRD-DIMC, over the ARD, based on risk-based sample checks to verify the correctness of ARD's activities and systems, to ensure that HOS retains accountability for the activities of the Operating Structure in Croatia. Similarly, the HOS will through the DRD-DIMC oversee each Joint Technical Secretariat (JTS) for the IPA Component IIb bilateral CBPs and BROP, and supervise its systems and activities through sample checks.
- (3) For the purposes of Annex A(4b) of the Framework Agreement, the Head of Operating Structure shall, in particular, be responsible for implementing the following tasks:
- a) Preparing a semi-annual statement of assurance for the last six (6) month period, which shall include a confirmation of the effective and efficient functioning of the internal control system concerning the management of funds and a confirmation regarding the legality and regularity of the underlying transactions with elements of supporting accounting information, to be submitted by the HOS to the NAO by 31 July each year;
If the confirmations previously mentioned are not available, the HOS shall inform the NAO of the reasons and potential consequences, as well as of actions being taken to remedy the situation;
 - b) Preparing an annual statement of assurance for the previous financial year, which shall include a confirmation of the effective functioning of the internal control system concerning the management of funds and a confirmation regarding the legality and regularity of the transactions with elements of supporting accounting information, to be submitted by the HOS to the NAO by 15 February each year;
If the confirmations previously mentioned are not available, the HOS shall inform the NAO of the reasons and potential consequences, as well as of actions being taken to remedy the situation;
 - c) Ensuring appropriate follow-up of internal audit reports of bodies within the OS, and reporting by the HOS on internal audit findings and follow-up actions to the NAO, at the latest together with the annual statement of assurance;
 - d) Ensuring regular quarterly reporting on irregularities by the HOS to ISCIF for the NAO;

- e) Informing the NAO *ex-ante* on any planned changes in the management and control system and structures within the OS, allowing sufficient time for the NAO to consider whether these changes are substantial or not, and obtaining prior approval from the NAO before they are implemented;
- f) Co-operating with the NF in exchange of information relating to payment forecasts, Requests for Funds, and financial implementation at priority level per CBP.

Article 5 Accreditation of the Operating Structure (OS) by the National Authorising Officer (NAO)

- (1) In accordance with Article 11 of the Framework Agreement, the NAO is responsible for the accreditation of the OS.
- (2) Prior to accrediting the OS, the HOS shall submit to the NAO the request for national accreditation supported by an internal audit opinion.
- (3) Prior to accrediting the OS, the NAO shall satisfy himself that the requirements for national accreditation, as laid down in Article 11 of the IPA Implementing Regulation, are fulfilled by the OS. 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 systems. The audit opinion shall be based on examinations conducted according to internationally accepted auditing standards.
- (4) The NAO shall notify the EC of the accreditation of the OS and shall provide all relevant supporting information required by the EC, including a description of the set up management and control system, which shall provide for effective controls in at least the areas set out in the Annex I to this Implementing Agreement.

Article 6 Withdrawal or Suspension of the Accreditation of the Operating Structure (OS) by the National Authorising Officer (NAO)

- (1) After the conferral of management powers by the EC, the NAO shall be responsible for monitoring the continuing fulfilment of all the requirements for this accreditation to be maintained and shall inform the EC 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 NAO shall, in accordance with Article 14 of the Framework Agreement either suspend or withdraw the accreditation of the operating structure concerned, and shall immediately inform the EC and the Competent Accrediting Officer of his decision and of the reasons for his decision. The NAO 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) of the Framework Agreement.
- (3) Where the accreditation of the OS is withdrawn or suspended by the NAO, the provisions of this paragraph shall apply. The NF shall make no transfers to the Operating Structure for IPA Component IIb funds relating to CBPs or operations implemented by the OS while its accreditation is suspended or withdrawn. No new legal commitments made by the OS shall be considered eligible during the period when the accreditation is not in force. The NAO shall be

responsible for taking any appropriate safeguard measures regarding payments made or contracts signed by the operating structure concerned.

Article 7 Eligibility of expenditure

The HOS shall ensure that rules on eligibility of expenditure, as provided for in Article 19 of the Framework Agreement, are fully respected. The expenditure eligible under the IPA Regulation with regard to CBPs is indicated in Article 89 of the IPA Implementing Regulation and as such copied in Annex II to this Agreement. In addition to it, more detailed rules on eligibility of expenditure may be set out in the relevant CBP Financing Agreements.

Article 8 Procurement

- (1) The Operating Structure shall ensure that all service, supply, works and grants contracts are awarded and implemented in accordance with the provision in the relevant Financing Agreements, the EC rules and regulations referred to therein and in accordance with the provisions of the Treaty between Member States of the European Union and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union.
- (2) Procurement shall follow the provisions of Part One, Title VI of the Financial Regulation and Part One, Title VI of its Implementing Rules as well as the rules and procedures for service, supply and works contracts financed from the general budget of the EU for the purposes of cooperation with third countries.
- (3) 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.
- (4) Where appropriate, the Contracting Authority will use the standard templates and models facilitating the application of the above rules provided for in the "Practical Guide to contract procedures for EU external actions" ("Practical Guide") as published on the EuropeAid website at the date of the initiation of the procurement or grant award procedure.

Article 9 National Co-financing

- (1) The HOS shall ensure the national contributions to the CBPs has been planned and included under programmes in the respective budget of MRDEUF.
- (2) Where national co-financing shall be ensured by municipalities or any other parties, the HOS shall ensure that they inform the ARD about availability of national co-financing funds prior to signing the contract and take care to ensure that co-financing funds will be made available when needed for the project concerned and that co-financing funds are allocated in the budgets of municipalities or any other parties.

Article 10 National Pre-Financing for the Final Payment of IPA funds by the EC

When the combined total of pre-financing and interim payments of IPA funds transferred by the EC to the NF has reached the 95% of the EU contribution as laid down in the Article 39 of the IPA Implementing Regulation for IPA Component II, the amount of EU contribution should be pre-financed from the state budget and NAO shall only submit a new certified statement of expenditure and information about the amounts received when requesting the payment of the final balance.

Article 11 Payment of IPA funds

- (1) The usage of IPA funds shall be based on the principle of reimbursement of eligible public expenditure or eligible expenditure as laid down in the IPA Implementing Regulation and CBP Financing Agreements signed with the EC.
- (2) The HOS shall ensure that the OS performs verification checks of each Request for Payment from the Grant Beneficiary, in accordance with Annex A(6) of the Framework Agreement, the present Implementing Agreement, Operational Agreement and other instructions and guidance provided by the NAO.
- (3) The OS shall, after carrying out all of its verification checks on the 'Request for Payment', prepare a 'Request for Funds from EU' and submit it to the NF, provided that they are complete and correct.
- (4) The NF shall, after carrying out all the checks of the 'Request for Funds' that are within its competence, arrange for transfer the IPA funds.
- (5) The NF may reject the Request for Funds if it does not fulfil the required conditions, and shall inform thereof the OS by providing adequate argumentation.
- (6) Further elaboration of the process of preparing and processing payment claims, and the distribution of functions within the OS, are set out in the Operational Agreement between the HOS and the ARD Director.

Article 12 Recovery of IPA funds

- (1) For an irregularity or fraud discovered at any time during the implementation of the CBP concerned or as the result of an audit, the OS will take all necessary actions to recover the funds from the Grant Beneficiaries.
- (2) If the OS fails in recovering funds within the deadline given by the NAO, the amount of IPA funds to be recovered by the NAO to the EC should be covered from the state budget allocation of the MRDEUF.

Article 13 Accounting and Audits

- (1) The HOS shall ensure that all relevant bodies constituting the OS operate a double entry or analytical accounting system covering all contractual and other financial operations concerned for the projects co-financed by IPA funds under the CBPs. The accounting system shall have adequate records for all payments coded by programme, priority, measure, project, sub-project (where appropriate), and contract, providing as well information on open pre-financing and cost recognized (interim and final) and recovery context on ineligible costs and recoveries.
- (2) The HOS shall ensure that written records of the entire financial management, tendering and contracting, including the original documentation, shall be securely stored for an adequate number of years. Detailed provisions regarding the period for compulsory retention of documents shall be laid down in the relevant Financing Agreements. This period shall be interrupted either in the case of legal proceedings or at the duly motivated request of the EC.
- (3) The accounts and operations of the bodies constituting the OS may be checked at regular intervals by representatives of the NF and/or other designated representatives of the NAO, national audit institutions, the EC and of OLAF as well as by (where applicable) outside auditors

contracted by the EC without prejudice to the responsibilities of the EC and the European Court of Auditors. The HOS shall ensure that all bodies constituting the OS provide access to the information and documents required by the controllers or the auditors.

- (4) The controls and audits and the access to the information and documents described above are applicable also to all Grant Beneficiaries, Contractors and Sub-contractors who have received Community funds.

Article 14 Communication and reporting to the National Authorising Officer (NAO)

- (1) The HOS shall ensure that regular co-ordination meetings between the bodies of the OS and the NAO/NF are held to exchange information on all aspects of planning and implementation. At the co-ordination meetings, the bodies of the OS shall report on the following:
 - ☐ Status of planning of programmes and projects
 - ☐ Project implementation compared to implementation plan, in particular with regard to tendering and contracting progress,
 - ☐ Efficiency and effectiveness of internal control at all appropriate levels.
- (2) The HOS shall ensure regular reporting to the NAO regarding:
 - ☐ irregularities;
 - ☐ internal audit findings of all bodies within the OS;
 - ☐ financial management;
 - ☐ status of tendering and contracting of projects;
 - ☐ Authorisation of the derogation from rule of origin and nationality in exceptional cases;
 - ☐ on-the-spot checks performed;
 - ☐ Closure of programmes;
 - ☐ When relevant, meeting notes of regular and *ad hoc* meetings of the bodies of the OS.

Article 15 Publicity and visibility

The HOS shall ensure that provisions regarding publicity and visibility referred to in the Article 24 of the Framework Agreement are fully respected.

- (1) At least as far as tendering and contracting are concerned, the HOS shall ensure that the OS, in accordance with the provisions of Article 24 (2) of the Framework Agreement and Article 24 (3), respectively organises:
 - ☐ Publication of the list of the Grant Beneficiaries, the names of the operations and the amount of EU funding allocated to the operations by the grants awarded, and
 - ☐ Preparation of a contract award notice, once the contract has been signed, and its submission to the EC for publication.

Article 16 Settlement of disputes

- (1) Any question between the parties of this Implementing Agreement relating to the execution or interpretation of this Implementing Agreement shall be the subject of consultation between the HOS and the NAO, leading, where necessary, to an amendment of this Implementing Agreement.
- (2) If the consultation does not lead to amicable settlement, the Minister of Finance as the Competent Authorising Officer shall try to find an acceptable solution with the legal department within the Ministry of Finance, and notify this decision to the NAO and the HOS and to the EC for information.

Article 17 Final provision

- (1) This Implementing Agreement is prepared in 2 originals in English and shall enter into force on the date of the signature by all parties and shall remain valid until the closure of the programme as referred to in the Article 39 of the Framework Agreement or in the Financing Agreements concerned.
- (2) As general rule, this Implementing Agreement may only be amended in writing by common consent of the parties. However, this Implementing Agreement may be modified unilaterally in writing by the NAO where necessary to fulfil the NAO's obligations and responsibilities under the Framework Agreement.
- (3) The NAO may terminate this Implementing Agreement if the Bodies within the Operating Structure for the CBP concerned failed to meet minimum accreditation criteria listed in the Annex II to this Implementing Agreement.
- (4) This agreement supersedes the previous implementing agreement between the National Authorising Officer (NAO) and the Head of IPA Component IIb Operating Structure (HOS), dated 13 May 2013, which is hereby repealed.

CLASS:
REF.NO:


CLASS: 910-01/08-01/319
REF.NO: 513-05-05-16-34

For the MRDEUF:

Head of Operating Structure

Ms Franka Vojnović, Head of Sector

Date : 22 February 2016

Signature : 


For the National Fund / Ministry of Finance:

National Authorising Officer

Ms Ivana Jakir-Bajo, Assistant Minister of Finance
and State Treasurer

Date : 22 February 2016

Signature : 


ANNEX I
(as per Annex to the IPA Implementing Regulation)

As referred to in the Article 5 (4) of this agreement, IPA Management and control system shall provide for effective controls in at least the areas set out below. In addition, provisions on other areas could be laid down in Financing Agreements or Sectoral Agreements.

- 1. Control Environment (establishment and management of the organisation and the staff)**
 - (a) Ethics and integrity policies
 - ensuring the culture for the organisation required by top management is understood throughout the organisation
 - (b) Irregularity management and reporting
 - ensuring possible irregularities noted lower down the organisation are reported appropriately and followed-up, including protection for 'whistle-blowers'
 - (c) Staff planning, recruitment, training and appraisal (including sensitive post management)
 - ensuring adequate numbers and quality of staff are in place at all levels
 - (d) Sensitive functions and conflicts of interest
 - ensuring that staff in 'sensitive posts' are identified (i.e. those where the staff may become vulnerable to undue influence by the nature of their contacts with third parties or the information they have);
 - ensuring that appropriate controls (including, where appropriate, rotation policies) are applied to sensitive posts;
 - ensuring that procedures exist to identify and avoid conflicts of interests.
 - (e) Establishment of legal bases for bodies and individuals
 - ensuring bodies and individuals have full legal authority to fulfil their functions.
 - (f) Formal establishment of accountability, responsibility, delegated responsibility, and any necessary related authority for all tasks and positions throughout the organisation:
 - ensuring that no member of staff is in doubt as to the extent of their responsibilities. For commitments or payments engaged to third parties, a single manager should be accountable for all aspects of the transaction;
 - mission statements, job descriptions etc are up to date and known.
- 2. Planning / risk management (planning of interventions)**
 - (a) Risk identification, assessment and management
 - ensuring that risks are identified and management, in particular that adequate control resources are applied in all areas, in function of the significance of different risks they mitigate.
 - (b) Objective setting and allocation of resources against objectives
 - ensuring that appropriate (and measurable) objectives at output and impact level are established at all levels and understood throughout the organisation;
 - ensuring that resources are appropriately allocated against those objectives respecting transparent sound financial management principles;
 - ensuring that responsibility for those objectives is clear.
 - (c) Planning of the implementation process
 - ensuring clear planning of steps needed to deliver objectives - including timing and responsibility for each step, and critical path analyses where necessary.
- 3. Control Activities (implementation of interventions)**
 - (a) Verification procedures
 - ensuring double-check of all steps in a transaction (ex-ante and, where appropriate, ex-post).
 - (a) Procedures for supervision by accountable management of tasks delegated to subordinates (including annual statements of assurance from subordinate actors)

- ensuring that responsibility is supported by active supervision - and not merely considered a passive or theoretical concept.
- (b) Rules for each type of procurement and grant calls
 - ensuring appropriate legal framework for all such commitment processes.
- (c) Procedures (including checklists) for each step of procurement and grant calls (e.g. Technical Specifications, Evaluation committees, reporting of exceptions etc)
 - ensuring each member of staff is clear as to their task responsibilities in these areas.
- (d) Publicity rules and procedures
 - ensuring that these Commission requirements are fulfilled.
- (e) Payment procedures (including procedures for confirmation of output delivery, and/or eligibility conditions, 'on-the-spot' where necessary).
 - ensuring that payments are made only for justified payment applications which fulfil all contractual requirements.
- (f) Procedures for monitoring delivery of co-financing
 - ensuring that these Commission requirements are fulfilled.
- (g) Budgetary procedures to ensure availability of funds (including funds necessary to maintain implementation if Commission funding is delayed or refused)
 - ensuring that the National Authority can fulfil its local contractual commitments regardless of delays or interruptions in funding from Commission.
- (h) Procedures for continuity of operations
 - ensuring that significant risks to continuity (e.g. concerning loss of data, absence of individuals etc) are identified and contingency plans put in place where possible.
- (i) Accounting procedures
 - ensuring full and transparent accounting following accepted accounting principles.
- (j) Reconciliation procedures
 - ensuring that wherever possible accounting balances are reconciled against 3rd party information.
- (k) Reporting of exceptions, *inter alia*, exceptions to normal procedures approved at appropriate level, unapproved exceptions and control failures whenever identified
 - ensuring variations to normal practices are always recorded and logged and reviewed at appropriate levels.
- (l) Security procedures (IT and otherwise)
 - ensuring that assets and data are kept secure from interference or physical damage.
- (m) Archiving procedures
 - ensuring that documents will be available - at least for Commission review throughout the required periods for which they must be kept.
- (n) Segregation of duties
 - ensuring that different tasks in the life of the same transaction are allocated to different staff to ensure some automatic cross-checking controls
- (o) Reporting of internal control weaknesses
 - ensuring that the registration of any internal control weakness identified from any source and that management responses are recorded and followed-up.

4. **Monitoring Activities (supervision of interventions)**

- (a) Internal audit including handling of audit reports and recommendations (NB: distinct from control activities and management supervision)
 - ensuring that top managers are provided with some independent reviews of the functioning of their systems at subordinate levels. May involve some ex-post transaction checking but should be more focussed on effectiveness and efficiency of system and organisation design.
- (b) Evaluation
 - ensuring that top managers are provided with information concerning the assessment of impacts of interventions (in addition to the other information they receive about legality, regularity and operational procedures).

5. Communication (ensuring all actors receive information necessary to fulfil their role)

Regular coordination meetings between different bodies to exchange information on all aspects of planning and implementation e.g.:

- (i) Regular reporting on status of planning of programmes and projects
- (ii) Regular reporting on project implementation compared to implementation plan
 - Contracting processes (inter alia)
 - Progress of each tendering process against plan
 - Systematic analysis of errors reported at any level (e.g. by verifiers, ex-ante controllers, auditors etc)
 - Implementation of contracts
 - Costs of controls against benefits
- (iii) Regular reporting at all appropriate levels on efficiency and effectiveness of internal control
 - ensuring all staff at all levels receive adequate regular information in order to fulfil their accountabilities.

ANNEX II - Expenditure eligible under the IPA Regulation for Component II

	Cross-Border Cooperation
General rules: <u>Article 34</u>	(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 the IPA Regulation prior to the conferral of management on the concerned structures and authorities by the Commission, unless otherwise provided in paragraph 2. The final date for the eligibility of expenditure shall be laid down in Part II or in the financing agreements where necessary.
	(2) Technical assistance to support the setting up of management and control systems may also be eligible prior to the initial conferral of management, for expenditure incurred after 1 January 2007. Launch of calls for proposals or calls for tenders may also be eligible prior the initial conferral of management and after 1 January 2007, 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, except for the rural development component, subject to the 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.
	(4) Expenditure financed under this Regulation shall not be the subject of any other financing under the Community budget.
Eligible expenditure	<u>Article 89</u> : Expenditure under this component shall be eligible if it has actually been paid between 1 January 2007 and 31 December of the third year following the last budgetary commitment, for operations or part of operations implemented within Member States, and incurred after the signature of the financing agreement for operations or part of operations implemented within beneficiary countries.
	In addition to the technical assistance for the cross-border programme referred to Article 94, 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.
Article 34(3): the following expenditure shall not be eligible:	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. Without prejudice to the provisions of paragraphs 1 to 4 (Article 89), further rules on eligibility of expenditure may be laid down by the participating countries in the cross-border programme.
	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;* ELIGIBLE UNDER RURAL DEVELOPMENT
	d) fines, financial penalties and expenses of litigation;
	e) operating costs, except where otherwise provided for under framework agreements with international organisations;
	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.
In addition to the rules set out in	a) interest on debt;

Article 34(3), the following expenditure shall not be eligible:	
Derogation from Article 34(3): the following expenditure shall / may be eligible:	a) charges for transnational financial transactions; (Article 89)
	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,
	(iii) they are clearly identified in the project proposal. (Articles 66 & 89)
	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 Community 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. (Article 89)