



EUROPEAN UNION

OFFICE OF THE EUROPEAN UNION SPECIAL REPRESENTATIVE
DELEGATION OF THE EUROPEAN COMMISSION

РЕПУБЛИКА МАКЕДОНИЈА
ВЛАДА НА РЕПУБЛИКА МАКЕДОНИЈА
СЕКРЕТАРИЈАТ ЗА ЕВРОПСКИ ПРАШАЊА
Скопје

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Орг. единица	Број	Прилог	Вредност
11	936/9		

Skopje, 14 August 2008

DT 521

Dear Deputy Prime Minister,

Subject: Financing Agreement - IPA CBC Programme with Bulgaria

Please find attached two signed copies of the Financing Agreement for the "Bulgaria - the former Yugoslav Republic of Macedonia IPA cross-border programme", which sets out your country's participation in the programme.

I kindly request that you sign the two copies of the Agreement and that you return one to my services.

Yours sincerely,

Dieter THIEL
Chargé d'Affaires a.i.

Mr Ivica Bocevski
Deputy Prime Minister for European Integration
Skopje

FINANCING AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

AND

**THE COMMISSION OF THE EUROPEAN
COMMUNITIES**

CONCERNING THE "BULGARIA-THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA IPA CROSS-
BORDER PROGRAMME" UNDER THE
INSTRUMENT FOR PRE-ACCESSION ASSISTANCE

(Shared Management)

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FINANCING AGREEMENT

THE GOVERNMENT OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

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 the former Yugoslav Republic of Macedonia, 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 assistance¹ (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 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 implementing the IPA Framework Regulation, detailing applicable management and control provisions² (hereafter: "the 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.

Community assistance for candidate countries should additionally focus on the adoption and implementation of the full *acquis communautaire*, and in

¹ OJ L 210, 31.7.2006, p. 82.

² OJ L 29.6.2007, p. 1.

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particular prepare them for the implementation of the Community's agricultural and cohesion policy.

- (d) The Parties have concluded on 30 October 2007 a Framework Agreement setting out the general rules for cooperation and implementation of the Community assistance under the Instrument for Pre-accession Assistance (hereafter: "the Framework Agreement").
- (e) The Commission adopted on 14 December 2007 the Bulgaria-the former Yugoslav Republic of Macedonia IPA Cross-border Programme³ (hereafter: "the Programme") supporting cross-border co-operation between Bulgaria and the former Yugoslav Republic of Macedonia (hereafter "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 Communities⁴ (hereafter: "the Financing 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 Community 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 007

Title: "Bulgaria - the former Yugoslav Republic of Macedonia IPA Cross-Border 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 the IPA Implementing Regulation

³ Commission Decision C(2007) 6298.

⁴ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Council Regulation (EC, Euratom) No 1525/2007, OJ L 343, 27.12.2007, p. 9.

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(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(2007)6298 of 14 December 2007 approving the "Bulgaria - the former Republic of Macedonia IPA Cross-Border Cooperation Programme".

- (3) The participating countries shall endeavour to ensure that all activities and objectives pursued with the implementation of the Programme are consistent with Community 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 Community instruments.
- (2) The beneficiary country shall set up a control system as described, pursuant to Article 108 of the IPA Implementing Regulation, in Chapter 5 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 Community contribution is fixed at a maximum of €6,592,632, as detailed in Chapter 4 of 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 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 Financing 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 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.

7 ELIGIBILITY OF EXPENDITURE

- (1) Expenditure under the Programme shall be eligible for Community 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 Community contribution under the 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;
 - (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 above 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 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;
- (g) the purchase of land for an amount exceeding 10% of the eligible expenditure of the operation concerned.

(4) In addition to the technical assistance for the Programme referred to in Article 94 and in accordance with Article 89(4) of the IPA Implementing 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.

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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 Bulgarian territory and on the territory of the former Yugoslav Republic of Macedonia, shall follow the provisions of Chapter 3 of Part 2, Title IV of the Financial Regulation and Chapter 3 of Part 2, Title III, of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002⁵, as well as Commission Decision C(2007)2034 on the 'Rules and procedures for services, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries'. However Section II.8.2 of Commission Decision C(2007) 2034 shall not apply to public administration bodies of Bulgaria.

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.

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, paragraphs 2 to 7 of that 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 references to Council or Commission Regulations are made to the version of those regulations as indicated. If required, modifications of these regulations shall be transposed into this Agreement by means of amendments.
- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.

⁵ OJ L 31.12.2002, p. 1. Regulation as last amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007, OJ L 111, 28.4.2007, p. 13.

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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 Article 56 of that 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.

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.

Handwritten signature

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 Policy
B-1049 Brussels
Belgium
Fax : +32 2296 3290

For the Beneficiary Country

Secretariat for European Affairs
Government Building
Ilindeska bb
1000 Skopje
Former Yugoslav Republic of Macedonia
Fax : +389 23113 710

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

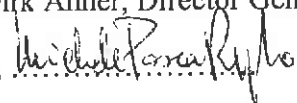
Signed, for and on behalf of the
Commission by

Signed, for and on behalf of the
Government of the former Yugoslav
Republic of Macedonia by

By Mr Dirk Ahner, Director General

Mr Ivica Bocevski, Deputy Prime Minister

Brussels,



Skopje,

for the Director General absent,
Michele Pasca-Raymondo
Deputy Director General

08 AUG 2008

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**ANNEX A BULGARIA – THE FORMER YUGOSLAV REPUBLIC OF
MACEDONIA IPA CROSS-BORDER PROGRAMME FOR
COMMUNITY ASSISTANCE FROM THE INSTRUMENT FOR
PRE-ACCESSION FOR THE CROSS-BORDER
COOPERATION COMPONENT ADOPTED BY COMMISSION
DECISION C(2007) 6298**