

Agres (2011) G3/221
10 JUNE 2011

FINANCING AGREEMENT

BETWEEN

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

AND

THE EUROPEAN COMMISSION

**CONCERNING THE CROSS-BORDER PROGRAMME
BETWEEN GREECE AND THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA UNDER THE INSTRUMENT
FOR PRE-ACCESSION ASSISTANCE (IPA) CROSS-
BORDER CO-OPERATION COMPONENT, FOR THE YEAR
2010**

Dated

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FINANCING AGREEMENT

THE GOVERNMENT OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

and

THE EUROPEAN COMMISSION

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 European Commission .

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 and potential candidates 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 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 EU *acquis*, and in particular prepare them for the implementation of the European Union's agricultural and cohesion policy.

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- (d) The Parties have concluded on 30 October 2007 a Framework Agreement setting out the general rules for cooperation and implementation of the European Union assistance under the Instrument for Pre-accession Assistance.
- (e) The Commission adopted on 3d of December 2010 the revised "Greece-the former Yugoslav Republic of Macedonia", fixing the European Union contribution granted to the former Yugoslav Republic of Macedonia for the years 2010–2011 under the IPA-Cross-border Co-operation component (hereafter: "the programme"). The part of this programme concerning the former Yugoslav Republic of Macedonia 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 European Union 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: 2010/022-619 (CRIS)

Title: Commission Decision C(2010) 8770 adopting the Cross-border programme Greece- the former Yugoslav Republic of Macedonia under the IPA Cross-Border Co-operation component, for the years 2010 and 2011

2 IMPLEMENTATION OF THE PROGRAMME

- (1) The part of this programme concerning the former Yugoslav Republic of Macedonia 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 (EU) 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 EU Financial Assistance to the former Yugoslav Republic of Macedonia and the implementation of the Assistance under the Instrument for Pre-accession Assistance (IPA) concluded between the Parties on 30 October 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/she 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 country's participation in the relevant cross-border programmes as well as in the transnational, interregional or sea basins programmes under other European Union instruments.
- (3) The beneficiary country shall establish an operating structure for the part of the programme concerning its territory. Its functions and responsibility are defined in the cross-border programme, to the exclusion of tendering, contracting and payments, which are the responsibility of the Commission.
- (4) The operating structure shall co-operate closely in the implementation of this programme with the Managing Authority located in Greece.

4 FUNDING

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

- (a) The European Union contribution for the year 2010 is fixed at a maximum of EUR 1 495 361 for the part of the programme concerning former Yugoslav Republic of Macedonia as detailed in Appendix A1 of Annex A to this Agreement. 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 this 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 Annex A to this Agreement.

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 two 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 European Union contribution if it has actually been incurred after the signature of this Agreement.
- (2) The following expenditure shall not be eligible for European Union 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) interest on debt;
- (3) By way of derogation from paragraph 2 above, the following expenditure shall be 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 European 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 cross-border programme referred to in Article 94 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 in the cross-border programme in Annex A to this Agreement.

10 RETENTION OF DOCUMENTS

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

11 ROADMAP FOR DECENTRALISATION WITHOUT EX-ANTE CONTROLS

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

12 INTERPRETATION

- (1) Subject to any express provision to the contrary in this Agreement, the terms used in this Agreement shall bear the same meaning as attributed to them in the IPA Framework Regulation and the IPA Implementing Regulation.
- (2) Subject to any express provision to the contrary in this Agreement, references to this Agreement are references to such Agreement as amended, supplemented or replaced from time to time.
- (3) Any references to Council or Commission Regulations are made to the version of those regulations as indicated. If required, modifications of these regulations shall be transposed into this Agreement by means of amendments.

- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.

13 PARTIAL INVALIDITY AND UNINTENTIONAL GAPS

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

14 REVIEW AND AMENDMENT

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

15 TERMINATION

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

16 SETTLEMENT OF DIFFERENCES

- (1) Differences arising out of the interpretation, operation and implementation of this Agreement, at any and all levels of participation, will be settled amicably through consultation between the Parties.
- (2) In default of amicable settlement, either Party may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of this Agreement.
- (3) The language to be used in the arbitration proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The

Arbitrator's decision shall be binding on all Parties and there shall be no appeal.

17 NOTICES

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

For the Commission:

Director DG Enlargement
Directorate B

B-1049 Brussels
Belgium

For the Beneficiary Country

Deputy Prime Minister for EU
Affairs
Government Building
Ilinden B.B.
1000 Skopje

18 NUMBER OF ORIGINALS

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

19 ANNEXES

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

20 ENTRY INTO FORCE

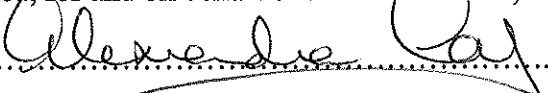
This Agreement shall enter into force upon its signature by the latter of the two Parties by way of Exchange of Letters.

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

by **Mr. Vasko Naumovski,**

Deputy Prime Minister for EU Affairs

Signed, for and on behalf of the Commission, at Brussels

by..........

Mrs Alexandra Cas Granje

Director DG Enlargement, Directorate B for Croatia, the former Yugoslav Republic of Macedonia, Turkey, Iceland

ANNEX A CROSS-BORDER PROGRAMME GREECE - THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA UNDER THE IPA CROSS-BORDER CO-OPERATION COMPONENT, FOR THE YEAR 2010, ADOPTED BY COMMISSION DECISION C(2010) 8770

APPENDIX A1: Financing proposal for the years 2010-2011 of the revised Cross-Border Programme Greece - the former Yugoslav Republic of Macedonia, as adopted by Commission Decision C(2010) 8770.

APPENDIX A2: IPA revised Cross-border programme 2007-2013 Greece - the former Yugoslav Republic of Macedonia as adopted by Commission Decision modifying Decision C(2008)1065 as last amended by Commission Decision C(2010) 8770.

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