

Na osnovu člana 95 tačka 3 Ustava Crne Gore donosim

**U K A Z**  
**O PROGLAŠENJU ZAKONA O POTVRĐIVANJU OKVIRNOG**  
**SPORAZUMA IZMEĐU CRNE GORE KOJU PREDSTAVLJA**  
**VLADA CRNE GORE I EVROPSKE KOMISIJE O PRAVILIMA**  
**ZA SPROVOĐENJE FINANSIJSKE POMOĆI UNIJE CRNOJ**  
**GORI U OKVIRU INSTRUMENTATA PRETPRISTUPNE**  
**PODRŠKE (IPA II)**

Proglašavam **Zakon o potvrđivanju Okvirnog sporazuma između Crne Gore koju predstavlja Vlada Crne Gore i Evropske komisije o pravilima za sprovođenje finansijske pomoći Unije Crnoj Gori u okviru instrumenata pretpristupne podrške (IPA II)**, koji je donijela Skupština Crne Gore 25. saziva, na petoj sjednici prvog redovnog (proljećnjeg) zasijedanja u 2015. godini, dana 14. maja 2015. godine.

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Podgorica, 18.05.2015.

  
**PREDSJEDNIK CRNE GORE**  
Filip Vučanović

Na osnovu člana 82 stav 1 tačka 17 Ustava Crne Gore i Amandmana IV stav 1 na Ustav Crne Gore, Skupština Crne Gore 25. saziva, na petoj sednici prvog redovnog (proljećnjeg) zasijedanja u 2015. godini, dana 14. maja 2015.godine, donijela je

## **ZAKON**

### **O POTVRĐIVANJU OKVIRNOG SPORAZUMA IZMEĐU CRNE GORE KOJU PREDSTAVLJA VLADA CRNE GORE I EVROPSKE KOMISIJE O PRAVILIMA ZA SPROVOĐENJE FINANSIJSKE POMOĆI UNIJE CRNOJ GORI U OKVIRU INSTRUMENTA PRETPRISTUPNE PODRŠKE (IPA II)**

#### **Član 1**

Potvrđuje se Okvirni sporazum između Crne Gore koju predstavlja Vlada Crne Gore i Evropske komisije o pravilima za sprovođenje finansijske pomoći Unije Crnoj Gori u okviru instrumenta pretpristupne podrške (IPA II), potpisan u Briselu 30. januara 2015. godine i u Podgorici 26. februara 2015. godine, u originalu na engleskom jeziku.

#### **Član 2**

Tekst Okvirnog sporazuma iz člana 1 ovog zakona, u originalu na engleskom jeziku i u prevodu na crnogorski jezik, glasi:

FRAMEWORK AGREEMENT

BETWEEN

**MONTENEGRO**

*REPRESENTED BY*

**THE GOVERNMENT OF MONTENEGRO**

AND

**THE EUROPEAN COMMISSION**

ON

**THE ARRANGEMENTS FOR IMPLEMENTATION OF UNION FINANCIAL ASSISTANCE TO  
MONTENEGRO UNDER THE INSTRUMENT FOR PRE-ACCESSION ASSISTANCE (IPA II)**

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- ANNEX B: Internal control framework
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- ANNEX I: Thematic priorities for assistance
- ANNEX J: Thematic priorities for assistance for territorial cooperation

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

on the one part,

and

the Government of Montenegro, acting on behalf of Montenegro, hereinafter referred to as **"the IPA II beneficiary"**

on the other part,

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

Whereas

- (1) On 11 March 2014, the European Parliament and the Council adopted Regulation (EU) No 231/2014 establishing an instrument for pre-accession assistance<sup>1</sup> (hereinafter referred to as the "IPA II Regulation"). This instrument constitutes the legal basis for the provision of financial assistance to the beneficiaries listed in Annex I to the IPA II Regulation (hereinafter referred to as the "IPA II beneficiaries") to support them in adopting and implementing the political, institutional, legal, administrative, social and economic reforms required by those beneficiaries in order to comply with the Union's values and to progressively align to the Union's rules, standards, policies and practices, with a view to Union membership.
- (2) On 11 March 2014, the European Parliament and the Council adopted Regulation (EU) No 236/2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action<sup>2</sup> (hereinafter referred to as the "Common Implementing Regulation").
- (3) On 2 May 2014, the Commission adopted a Commission Implementing Regulation (EU) No 447/2014 on the specific rules for implementing Regulation (EU) 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA II)<sup>3</sup>, (hereinafter referred to as the "IPA II Implementing Regulation") setting out the applicable management and control provisions.
- (4) The IPA II beneficiary is eligible under IPA II as provided for in the IPA II Regulation.
- (5) Article 8 of the IPA II Regulation requires that the Commission and the IPA II beneficiaries conclude Framework Agreements on the implementation of assistance.
- (6) It is therefore necessary to set out the rules for implementation of Union financial assistance under IPA II,

HAVE AGREED AS FOLLOWS:

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1.1.1.1. <sup>1</sup> Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15 March 2014, p. 11).

1.1.1.2. <sup>2</sup> Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (OJ L 77, 15 March 2014, p. 95).

1.1.1.3. <sup>3</sup> Commission Implementing Regulation (EU) No 447/2014 on the specific rules for implementing Regulation (EU) 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 132, 3 May 2014, p. 32).



## SECTION I GENERAL PROVISIONS

### Article 1 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 II Regulation, the Common Implementing Regulation and the IPA II 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 Regulations of the European Parliament and of the Council or to Commission Regulations are references to such regulations as amended, supplemented or replaced from time to time.
- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.

### Article 2 Partial invalidity and unintentional gaps

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

### Article 3 Definitions

For the purposes of this Agreement the following definitions shall apply:

- (a) "Programme" means an action programme, individual, special or support measures provided for in Articles 2 and 3 of the Common Implementing Regulation;
- (b) "Sectoral Agreement" means an arrangement concluded between the Commission and an IPA II beneficiary relating to a specific IPA II policy area or programme, setting out the rules and procedures to be respected which are not contained in this Agreement or Financing Agreements;
- (c) "Financing Agreement" means an annual or multi-annual agreement concluded between the Commission and an IPA II beneficiary, for implementing the Union's financial assistance through an action falling within the scope of the IPA II Implementing Regulation;
- (d) "Participating countries" means the IPA II beneficiaries alone or the IPA II beneficiaries together with the Member State(s) or with the countries falling within the scope of the European Neighbourhood Instrument<sup>4</sup> participating in a multi-annual programme for cross-border cooperation jointly drawn up by the participating countries;
- (e) "Recipient" means a grant beneficiary (including a twinning contractor), contractor under service, supply or works contract, a beneficiary under cross-border cooperation programmes, a contracting party to a delegation agreement

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1.1.1.4. <sup>4</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15 March 2014, p. 27).

under indirect management or any natural or legal person that receives IPA II assistance;

- (f) "Financial year" means the period from 1 January to 31 December of one given year.

#### **Article 4 Purpose and scope**

- (1) In order to promote co-operation between the Parties and to assist the IPA II beneficiary in its progressive alignment with the standards and policies of the Union, including the *acquis*, with a view to Union membership, the Parties agree to implement actions in the following policy areas as applicable to the IPA II beneficiaries with a view of achieving the objectives as set out in Articles 1 and 2 of the IPA II Regulation:
- (a) reforms in preparation for Union membership and related institution- and capacity building;
  - (b) socio-economic and regional development;
  - (c) employment, social policies, education, promotion of gender equality, and human resources development;
  - (d) agriculture and rural development;
  - (e) regional and territorial cooperation.
- (2) The actions shall be financed and implemented within the legal, administrative and technical framework laid down in this Agreement and as further detailed in Sectoral Agreements and/or Financing Agreements, if any.
- (3) Where the European Regional Development Fund contributes to programmes or measures established under the IPA II Regulation for cross-border cooperation between IPA II beneficiaries and Member States pursuant to Article 9(2) of the IPA II Regulation, such assistance shall be implemented according to the IPA II Implementing Regulation.
- (4) Where IPA II assistance contributes to transnational and interregional cooperation programmes or measures established under Regulation (EU) No 1299/2013 of the European Parliament and the Council<sup>5</sup> pursuant to Article 9(3) of the IPA II Regulation, such assistance shall be implemented according to that Regulation.
- (5) Where IPA II assistance contributes to cross-border cooperation programmes or measures established under Regulation (EU) No 232/2014 of the European Parliament and the Council<sup>6</sup> and pursuant to Article 9(4) of the IPA II Regulation, such participation shall be implemented according to that Regulation.
- (6) Where appropriate, IPA II assistance may contribute to programmes or measures which are introduced as part of a macro-regional strategy.
- (7) The IPA II beneficiary's administration shall take all necessary steps to facilitate the implementation of the related programmes.

#### **Article 5 General principles for financial assistance**

- (1) The following principles shall apply to Union financial assistance under IPA II:

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1.1.1.5. <sup>5</sup> Regulation (EU) No 1299/2013 of the European Parliament and of the Council of 17 December 2013 on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ L 347, 20 December 2013, p. 259).

1.1.1.6. <sup>6</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council establishing the European Neighbourhood instrument (OJ L 77, 15.3.2014, p. 27)

- (a) It shall respect the principles of coherence, complementarity, coordination, partnership and concentration;
  - (b) It shall be consistent with Union policies and shall support progressive alignment to the *acquis*;
  - (c) It shall comply with the budgetary principles laid down in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>7</sup> (hereinafter referred to as the "Financial Regulation") and Commission Delegated Regulation (EU) No 1268/2012 (hereinafter referred to as the "Rules of Application of the Financial Regulation")<sup>8</sup>;
  - (d) It shall be consistent with the needs identified in the enlargement process and the absorption capacities of the IPA II beneficiary. It shall also take account of lessons learned under previous assistance;
  - (e) The ownership of the programming and implementation of assistance by the IPA II beneficiary shall be strongly encouraged and adequate visibility of IPA II assistance shall be ensured;
  - (f) Actions shall be planned, with clear and verifiable objectives, which are to be achieved within a given period; the results obtained should be assessed through specific, measurable, agreed, realistic and time related (SMART) indicators;
  - (g) Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prevented during the implementation of assistance;
  - (h) The objectives of pre-accession assistance shall be consistent with the principle of sustainable development, including climate change mitigation and adaptation.
- (2) Assistance to the IPA II beneficiary shall be provided in accordance with the enlargement policy framework defined by the European Council and the Council and shall take due account of the Communication on the Enlargement Strategy and the Progress Reports comprised in the annual enlargement package of the Commission, as well as of the relevant resolutions of the European Parliament.

In accordance with the specific objectives set out in Article 2(1) of the IPA II Regulation, the thematic priorities for providing assistance according to the needs and capacities of the IPA II beneficiaries are set out in Annex I to this Agreement. Each of those thematic priorities may contribute to the attainment of more than one specific objective.

In accordance with the specific objective set out in point (d) of Article 2(1) of the IPA II Regulation, assistance shall support cross-border cooperation, both between the IPA II beneficiaries and between them and Member States or countries under the European Neighbourhood Instrument, with a view to promoting good neighbourly relations, fostering Union integration and promoting socio-economic development. The thematic priorities for assistance for territorial cooperation are set out in Annex J to this Agreement.

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1.1.1.7. <sup>7</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26 October 2012, p. 1).

1.1.1.8. <sup>8</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31 December 2012, p. 1).

- (3) IPA II assistance shall be provided on the basis of country or multi-country indicative strategy papers (hereafter referred to as the "strategy papers"), established for the duration of the Union's multiannual financial framework for the period from 2014 to 2020, by the Commission in partnership with the IPA II beneficiaries.
- (4) The provision of IPA II assistance shall be subject to the fulfilment of the IPA II beneficiary's obligations under this Agreement and under Sectoral Agreements and Financing Agreements, if any.

#### **Article 6 Principle of ownership**

- (1) The ownership of the programming and implementation of IPA II assistance lies primarily with the IPA II beneficiary.
- (2) The IPA II beneficiary shall appoint a National IPA Co-ordinator (NIPAC), who shall be the main counterpart of the Commission for the overall process of: strategic planning, coordination of programming, monitoring of implementation, evaluation and reporting of IPA II assistance.

The NIPAC shall:

- (a) ensure coordination within the IPA II beneficiary's administration and with other donors and a close link between the use of IPA II assistance and the general accession process;
  - (b) co-ordinate the participation of IPA II beneficiaries in the relevant territorial cooperation programmes, namely cross-border cooperation programmes referred to in Article 27 of the IPA II Implementing Regulation as well as, if appropriate, transnational or interregional cooperation programmes established and implemented under Regulation (EU) No 1299/2013 and cross-border cooperation programmes established and implemented under Regulation (EU) No 232/2014. The NIPAC may delegate this coordination task to a territorial cooperation co-ordinator or operating structure as appropriate;
  - (c) endeavour that the IPA II beneficiary's administration takes all necessary steps to facilitate the implementation of the related programmes.
- (3) The NIPAC shall be a high-ranking representative of the government or the national administration of the IPA II beneficiary with the appropriate authority.
  - (4) To provide a strengthened basis for the management of pre-accession assistance and national funds, the Commission and the IPA II beneficiary shall engage in a dialogue on public financial management. In this respect, the Commission shall assess the level of compliance of the administration of the IPA II beneficiary with the principles of an open and orderly public financial management system. Where the administration complies with those requirements only in part, the IPA II beneficiary and the Commission shall agree on the necessary measures to address the identified deficiencies.

#### **Article 7 Methods of Implementation**

IPA II assistance in Montenegro shall be implemented by the Commission as provided for in the Financial Regulation under:

- (a) direct management by the Commission departments, including its staff in Union Delegations and/or through executive agencies as defined in point (a) of Article 58(1) of the Financial Regulation;

- (b) indirect management, whereby the Commission entrusts budget implementation tasks of certain programmes or actions to the IPA II beneficiary as defined in point (i) of point (c) of Article 58(1) of the Financial Regulation while retaining overall final responsibility for general budget implementation in accordance with Article 58(2) of the Financial Regulation;
- (c) indirect management with entities other than IPA II beneficiaries as defined in points (ii), (iii), (v) to (vii) of point (c) of Article 58(1) of the Financial Regulation;
- (d) shared management with Member States as defined in point (b) of Article 58(1) of the Financial Regulation for cross-border cooperation programmes involving Member States of the European Union and implemented in accordance with the IPA II Implementing Regulation.

## **Article 8      Financing Agreements**

- (1) Where required by the related financing decision, the Commission and the IPA II beneficiary shall conclude a Financing Agreement in accordance with Article 6 of the IPA II Implementing Regulation.
- (2) Financing Agreements shall provide, *inter alia*, the terms on which the IPA II assistance shall be managed, including the applicable methods of implementation, aid intensities, implementation deadlines as well as the rules on eligibility of expenditure.
- (3) Where programmes are implemented under indirect management by the IPA II beneficiary, Financing Agreements shall include the required provisions of Article 40 of the Rules of Application of the Financial Regulation and shall lay down the provisions defining *ex-ante* controls on key grant award and procurement procedures, if any, to be performed by the Union Delegation or the Commission as well as controls and supervision, if any, to be conducted by the Union Delegation or the Commission.
- (4) For cross-border cooperation programmes between IPA II beneficiaries or IPA beneficiaries and countries under the European Neighbourhood Instrument, a single Financing Agreement may be signed by the Commission and all the participating countries in a particular programme.
- (5) The rules for implementation of cross-border cooperation programmes between one or more Member States and one or more IPA II beneficiaries shall be set out in the Financing Agreement for a given cross-border cooperation programme to be signed between the IPA II beneficiary, the Commission and, where applicable, the Member State hosting the managing authority of that cross-border cooperation programme.
- (6) In accordance with Article 26 of Regulation (EU) No 1299/2013, the programme implementation conditions governing the financial management as well as the programming, monitoring, evaluation and control of the participation of third countries, through a contribution of IPA II resources to transnational and interregional cooperation programmes established and implemented under that Regulation between Member States and one or more IPA II beneficiaries, shall be established in the relevant cooperation programme and also, where necessary, in the financing agreement between the Commission, the governments of the third countries concerned and the Member State hosting the managing authority of the relevant cooperation programme while ensuring that those conditions are consistent with the Union's cohesion policy rules.
- (7) This Framework Agreement shall apply to all Sectoral and Financing Agreements concluded between the Parties for financial assistance under IPA II. Where they exist, Sectoral Agreements related to a given policy area or a programme shall apply to all

Financing Agreements concluded under that policy area or programme. Where there is no Financing Agreement, the rules included in this Agreement shall apply.

## **Article 9 Sectoral Agreements**

Further details concerning rural development programmes under the policy area agriculture and rural development complementing this Agreement will be laid down in the respective Sectoral Agreements, which will, among other aspects, set out measures through which assistance will be implemented.

## **SECTION II RULES FOR INDIRECT MANAGEMENT BY THE IPA II BENEFICIARY**

### **TITLE I MANAGEMENT AND CONTROL SYSTEMS**

#### **Article 10 Establishment of structures and authorities for indirect management by the IPA II beneficiary**

- (1) The following structures and authorities shall be established by the IPA II beneficiary in the event of indirect management:
  - (a) the National IPA Co-ordinator (NIPAC);
  - (b) the National Authorising Officer (NAO);
  - (c) the operating structures.

The operating structure for rural development programmes under the policy area agriculture and rural development shall consist of the following separate authorities, operating in close cooperation:

- (i) the Managing Authority, being a public body acting at national level, to be in charge of preparing and implementing the programmes, including selection of measures and their publicity, the coordination, evaluation, monitoring and reporting of the programme concerned and managed by a senior official with exclusive responsibilities; and
    - (ii) the IPA Rural Development (IPARD) Agency with functions of a similar nature as a paying agency in the Member States being in charge of publicity, selection of projects as well as authorisation, control and accounting of commitments and payments and the execution of payments.
- (2) The NAO shall establish a management structure composed of a National Fund and a support office for the NAO.
- (3) The IPA II beneficiary shall provide for an audit authority.
- (4) The IPA II beneficiary shall ensure adequate segregation of duties between and within the structures and authorities referred to in paragraphs (1) to (3). Duties are segregated when different tasks related to a transaction are allocated to different staff, thereby helping to ensure that each separate task has been properly undertaken.

#### **Article 11 Functions and responsibilities of the structures and authorities**

- (1) The structures and authorities mentioned in Article 10 shall be assigned functions and responsibilities as set out in Annex A to this Agreement and shall comply with the internal control framework of Annex B to this Agreement.

The IPA II beneficiary shall immediately inform the Commission of any substantial changes concerning the structures and authorities mentioned in Article 10.

- (2) Policy area or programme specific assignments of functions and responsibilities may be set out in Sectoral or Financing Agreements in line with the basic approach chosen for the assignment of functions and responsibilities as set out in Annex A to this Agreement.
- (3) Where under indirect management by the IPA II beneficiary specific persons and/or entities have been given responsibility for an activity in relation to the management, implementation, control, supervision, monitoring, evaluation, reporting or audit of programmes, the IPA II beneficiary shall enable such persons and/or entities to exercise the duties associated with that responsibility. This includes, in particular, the cases where there is no hierarchical link between such persons and/or entities and the bodies participating in that activity. The IPA II beneficiary shall, in particular, provide those persons and/or entities with the authority to establish:
  - (a) formal working arrangements between them and the bodies concerned;
  - (b) an appropriate system for the exchange of information between them and the bodies concerned, including the power to require information and a right of access to documents and staff on the spot, if necessary;
  - (c) the standards to be met and the procedures to be followed.

## **TITLE II SPECIFIC PROVISIONS RELATING TO ENTRUSTING THE IPA II BENEFICIARY WITH BUDGET IMPLEMENTATION TASKS**

### **Article 12 Conditions for entrusting the IPA II beneficiary with budget implementation tasks**

- (1) The Commission entrusts budget implementation tasks to the IPA II beneficiary by concluding a Financing Agreement.
- (2) When managing IPA II funds, the IPA II beneficiary shall respect the principles of sound financial management<sup>9</sup>, transparency and non-discrimination, and shall ensure the visibility of IPA II assistance. The IPA II beneficiary shall guarantee a level of protection of the financial interests of the European Union equivalent to that required under the Financial Regulation when managing IPA II funds, with due consideration for:
  - (a) the nature of the tasks entrusted to them and the amounts involved;
  - (b) the financial risks involved;
  - (c) the level of assurance stemming from their systems, rules and procedures together with the measures taken by the Commission to supervise and support the implementation of the tasks entrusted to them.
- (3) In order to protect the financial interests of the Union, the IPA II beneficiary shall:
  - (a) set up and ensure the functioning of an effective and efficient internal control system;

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1.1.1.9. <sup>9</sup> The principle of sound financial management comprises the principles of economy, efficiency and effectiveness. The principle of economy requires that the resources used shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of efficiency concerns the best relationship between resources employed and results achieved. The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

- (b) use an accounting system that provides accurate, complete and reliable information in a timely and regular manner clearly distinguishing costs accepted and payments made;
  - (c) provide for that the structures and authorities referred to in Article 10(1) and (2) are subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit authority functionally independent of the structures and authorities concerned;
  - (d) apply appropriate rules and procedures for providing financing from IPA II assistance through grants, procurement and financial instruments.
- (4) The IPA II beneficiary shall further:
- (a) ensure, in accordance with Article 23, the *ex-post* publication of information on recipients of IPA II assistance;
  - (b) ensure a reasonable protection of personal data as laid down in Directive 95/46/EC of the European Parliament and the Council<sup>10</sup> and Regulation (EC) No 45/2001 of the European Parliament and the Council<sup>11</sup>.
- (5) Where substantial changes are made to the systems or rules of the IPA II beneficiary or to the procedures that relate to the management entrusted to the IPA II beneficiary of Union funds, the IPA II beneficiary shall inform the Commission thereof without delay. The Commission shall review the financing agreements concluded with the IPA II beneficiary in order to ensure continued fulfilment of the requirements set out in paragraph 3.

#### **Article 13 Entrusting budget implementation tasks**

- (1) The NAO, on behalf of the IPA II beneficiary, shall be responsible for submitting to the Commission a request for being entrusted with budget implementation tasks under a given programme or measure.
- (2) Before submitting the request referred to in paragraph 1, the NAO shall ensure that the management structure and the relevant operating structure(s) satisfy the requirements of points (a), (b) and (d) of Article 12(3) and those of Annex B to this Agreement. In doing so the NAO may rely on results of an *ex-ante* assessment carried out with regard to a national accreditation decided pursuant to Council Regulation (EC) No 1085/2006<sup>12</sup> or a previous Financing Agreement.

When the NAO cannot rely on a previous *ex-ante* assessment the request shall be supported by an audit opinion on the management structure and the operating structure(s), drawn up by an external auditor independent from the structures and authorities under Article 10(1) and (2) and be based on examinations conducted according to internationally accepted auditing standards.

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<sup>10</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23 November 1995, p. 31).

1.1.1.10.<sup>11</sup> Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12 January 2001, p. 1).

1.1.1.11.<sup>12</sup> Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an instrument for pre-accession assistance (IPA) (OJ L 210, 31 July 2006, p. 82).



- (3) The request shall be accompanied by a confirmation made by the NAO, the NIPAC and the head of the audit authority that they are ready to carry out the functions and responsibilities assigned to them in Annex A to this Agreement.
- (4) Before the Commission entrusts budget implementation tasks of IPA II assistance, it shall review the request referred to in paragraph 1 of this Article and the established structures and authorities referred to in Article 10 and shall, for the purposes of the *ex-ante* assessment pursuant to Article 61(1) of the Financial Regulation, obtain evidence that the requirements set out in points (a) to (d) of Article 12(3) and those of Annex B to this Agreement are fulfilled. This review may include on-the-spot verifications by the Commission.

For entrusting budget implementation tasks of IPA II assistance, the Commission may rely on an *ex-ante* assessment carried out with regard to an earlier Financing Agreement with the IPA II beneficiary or an *ex-ante* assessment carried out with regard to the conferral of management powers decided under Regulation (EC) No 1085/2006. On the request of the Commission, the IPA II beneficiary shall provide additional evidence if those assessments do not address all the requirements.

**Article 14 Measures in case of non-compliance of management structure and operating structures with points (a), (b) and (d) of Article 12(3) and Annex B to this Agreement**

- (1) After the Commission has entrusted budget implementation tasks, the NAO shall monitor the continued fulfilment by the management structure and operating structure(s) of the applicable requirements set out in points (a), (b) and (d) of Article 12(3) and Annex B to this Agreement. In case of failure to satisfy these requirements, the NAO shall inform the Commission with copy to the NIPAC without delay and shall take any appropriate safeguard measures regarding payments made or contracts signed.
- (2) In addition, the NAO shall take all necessary steps in order to ensure the renewed fulfilment of the requirements referred to in paragraph 1.

**Article 15 Suspension or termination of parts of the Financing Agreement concerning the entrusted budget implementation tasks**

- (1) The Commission shall monitor the compliance with Articles 12(3) and 51(1) and may take appropriate remedial measures, including the suspension or termination of parts of the Financing Agreement at any time, if the requirements are no longer fulfilled.
- (2) Where the Commission suspends or terminates parts of the Financing Agreement concerning the entrusted budget implementation tasks, the following provisions shall apply:
  - (a) the Commission may interrupt transfers of funds to the IPA II beneficiary;
  - (b) new legal commitments made by the operating structure concerned after the notification of the suspension or termination shall not be considered eligible for IPA II assistance;
  - (c) without prejudice to any other financial corrections, the Commission may make financial corrections as laid down in Article 43 on the transactions affected by previous non-compliance with the requirements for entrusting budget implementation tasks.
- (3) The Sectoral or Financing Agreement may lay down further provisions concerning the suspension or termination of those parts concerning entrusted budget implementation tasks.

## **SECTION III            RULES FOR PROGRAMMING**

### **Article 16    Programming of the assistance**

- (1) IPA II assistance shall be provided on the basis of strategy papers, established for the duration of the Union's Multi-annual Financial Framework by the Commission in partnership with the IPA II beneficiary. That assistance shall be implemented through programmes and measures as referred to in Articles 2 and 3 of the Common Implementing Regulation. Implementation shall, as a rule, take the form of annual or multi-annual, country specific or multi-country programmes, as well as cross-border co-operation programmes established in accordance with the strategy papers and drawn up by the IPA II beneficiary and/or the Commission, as appropriate, and adopted by the Commission.
- (2) Annual or multi-annual, country or multi-country programmes shall be based on action documents save for where otherwise provided for in this agreement. The action documents shall be prepared at national level by the relevant authorities designated by the IPA II beneficiary save for multi-country programmes which are prepared by the Commission in consultation with the IPA II beneficiaries. The NIPAC shall ensure that the objectives set out in the actions or programmes proposed by the IPA II beneficiary are coherent with the objectives in the country strategy papers and take due account of the relevant macro-regional and sea basin strategies. Where programming documents are prepared by the IPA II beneficiary, the NIPAC shall coordinate the preparation of the documents and submit them to the Commission.
- (3) In accordance with Article 5(6) of the IPA II Regulation, the Commission shall encourage coordination among the relevant stakeholders when preparing assistance. In accordance with the principle of ownership of Article 6 of this Agreement, the IPA II beneficiary shall ensure that relevant stakeholders, including civil society organisations and local authorities are or have been duly consulted and have timely access to relevant information allowing them to play a meaningful role in the programming process, in cooperation with the Commission where appropriate.
- (4) Assistance may be granted to support the participation of the IPA II beneficiary in Union programmes and Union agencies. The participation of the IPA II beneficiary in Union programmes shall follow the specific terms and conditions set out for each such programme in an agreement concluded between the Commission and the IPA II beneficiary, in accordance with the agreements establishing the general principles for participation of the IPA II beneficiaries in Union programmes.
- (5) The IPA II assistance under rural development programmes in the policy area agriculture and rural development shall be provided on the basis of relevant priorities set out in the country strategy papers, through a pre-defined set of measures further specified in the Sectoral Agreement. The implementation shall take the form of multi-annual rural development programmes with split commitments in accordance with Article 189(3) of the Financial Regulation, drawn up at national level and covering the entire period of the IPA II implementation. The programme shall be prepared by the Managing Authority as specified in point (i) of Article 10(1)(c) of this Agreement to be submitted to the Commission after consulting the appropriate interested parties.
  - (1) Assistance under the rural development programmes shall contribute to achieving the following objectives:
    - (a) In view of Union priorities for rural development, by means of developing human and physical capital, to increase the food-safety of the IPA II beneficiary and the ability of the agri-food sector to cope with competitive pressure as well as to progressively align the sector with Union standards, in

particular those concerning hygiene and environment, while pursuing balanced territorial development of rural areas.

- (b) Channelling investment support through management and control systems which are compliant with good governance standards of a modern public administration and where the relevant country structures apply standards equivalent to those in similar organisations in the Member States of the European Union.

#### **Article 17 Adoption and amendments of programmes**

- (1) After the adoption of the programme, the programme may, if necessary, be amended in accordance with Article 2 of the Common Implementing Regulation in order to take into account new information and results relating to the implementation of the actions concerned, including the results of monitoring and evaluation, as well as the need to adjust the amounts of assistance available. Any proposal for amendments submitted by the IPA II beneficiary shall be duly substantiated and shall include at least the following information: the text of the amended programme, the reasons for the proposed amendment, the expected effects of the amendment and the amended financial and action/activity/measure tables, where the proposed amendments are of a financial nature.
- (2) The IPA II beneficiary shall propose amendments to programmes whenever necessary to reflect changes in the relevant Union legislation or where changes in conditions for implementation so require.
- (3) The detailed provisions for preparation, adoption and amendments of the programmes as provided in the relevant documents and instructions prepared by the Commission shall be applied.

### **SECTION IV RULES FOR IMPLEMENTATION**

#### **TITLE I GENERAL RULES AND PRINCIPLES FOR IMPLEMENTATION**

##### **Article 18 Rules on procurement and award of grants**

- (1) Assistance under all IPA II policy areas shall be managed in accordance with the rules for external action contained in Title IV of Part Two of the Financial Regulation and its Rules of Application.
- (2) All service, supplies, and work contracts and grant agreements shall be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external actions, in force at the time of the launch of the procedure in question, unless otherwise provided for in Sectoral or Financing Agreements.
- (3) Results of tender procedures as well as grant and prize awards shall be published in accordance with the rules referred to in paragraph 1 and as further specified in Article 23.
- (4) In case of indirect management by the IPA II beneficiary, within one month after the entry into force of the respective Financing Agreement, the NAO shall provide a procurement plan/financial forecasts for the programme or action implemented under the Financing Agreement to the Commission. This obligation shall not apply to IPA II assistance under rural development programmes in the policy area agriculture and rural development.

- (5) As regards procurement, the national law of the IPA II beneficiary transposing Directive 2014/24/EU shall be considered equivalent to the rules applied by the Commission in accordance with the Financial Regulation. The Commission may accept such national law to be applied for the implementation of IPA II assistance subject to the terms of the relevant provision in the Financing Agreement.

**Article 19 Rules on nationality and origin for public procurement, grant and other award procedures**

- (1) Participation in the award of procurement contracts, grants and other award procedures for actions financed under IPA II shall be open to all natural persons who are nationals of, and legal persons which are effectively established in the following countries (hereafter referred to as "eligible countries"), and to International Organisations<sup>13</sup>:
- (a) Member States, IPA II beneficiaries, contracting parties to the Agreement on the European Economic Area and partner countries covered by the European Neighbourhood Instrument; and
  - (b) countries for which reciprocal access to external assistance is established by the Commission. Reciprocal access may be granted, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the Union and from countries eligible under IPA II. Before the Commission decides on the reciprocal access and on its duration, it will consult the IPA II beneficiary.

Legal persons may include civil society organisations, such as non-governmental non-profit organisations and independent political foundations, community based organisations and private sector non-profit agencies, institutions and organisations and networks thereof at local, national, regional and international level as long as they are capable of having legal rights and duties in accordance with the respective national laws.

- (2) If actions are jointly co-financed with a partner or other donor, or through a trust fund established by the Commission, countries which are eligible under the rules of that partner, other donor or Member State or determined in the trust fund constitutive act shall also be eligible.

If actions are implemented in indirect management through one of the entrusted bodies listed in points (ii) to (viii) of Article 58(1)(c) of the Financial Regulation, the countries which are eligible under the rules of that body shall also be eligible.

If actions are jointly financed by IPA II and by another instrument for external action, including the European Development Fund, the countries identified under both IPA II and the other instrument shall be considered eligible for the purpose of those actions.

In case of actions of a global, regional or cross-border nature financed by IPA II, the countries, territories and regions covered by the action may be considered eligible for the purpose of that action.

- (3) All supplies purchased under a procurement contract, or in accordance with a grant agreement, financed under IPA II shall originate from an eligible country.

However, they may originate from any country when the amount of the supplies to be purchased is below the threshold for the use of the competitive negotiated procedure. For

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<sup>13</sup> International Organisations are international public-sector organisations set up by intergovernmental agreements, specialised agencies set up by such organisations and other non-profit organisations assimilated to international organisations by a Commission decision.

the purposes of this article, the term "origin" is defined in Article 23 and 24 of Council Regulation (EEC) N°2913/92<sup>14</sup>.

- (4) The rules under this article do not apply to, and do not create nationality restrictions for natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, subcontractor.
- (5) In order to promote local capacities, markets and purchases, priority shall be given to local and regional contractors when the Financial Regulation provides for award on the basis of a single tender. In all other cases, participation of local and regional contractors shall be promoted in accordance with the relevant provisions of the Financial Regulation.
- (6) Eligibility as defined in this article may be further restricted in the Financing Agreement with regard to the nationality, geographical location or nature of applicants, where such restrictions are required by the specific nature and the objectives of the action and where they are necessary for its effective implementation, in particular to participation in award procedures in case of cross-border cooperation actions as referred to in Article 63.
- (7) Tenderers, applicants and candidates from non-eligible countries or goods from non-eligible origin may be accepted eligible by the Commission in case of urgency or of unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where application of the eligibility rules would make the realisation of a project, programme or action impossible or exceedingly difficult.
- (8) Natural and legal persons who have been awarded contracts shall comply with applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards<sup>15</sup>.

## **Article 20 Participation in Union programmes and agencies**

In case of participation in Union programmes and agencies, implementation shall consist of payment to the programme or agency budget by the IPA II beneficiary. The respective country or multi-country programme may foresee contributions to the cost of the IPA II beneficiaries' participation in Union programmes and agencies.

## **Article 21 Implementation principles for budget support to the IPA II beneficiary**

- (1) The Commission may decide to grant budget support to the IPA II beneficiary. Such support shall be implemented under direct management. Complementary support accompanying budget support can be provided under direct management, under indirect management with the IPA II beneficiary or under indirect management with other entities than the IPA II beneficiary, as applicable.
- (2) Disbursement of budget support shall be conditional on satisfactory progress being made towards achieving the objectives agreed with the IPA II beneficiary and provided for in the Financing Agreement.
- (3) The detailed provisions concerning the eligibility criteria covering stable macro-economic framework, sound public financial management, transparency and oversight of the budget and national/sector policies and reforms as well as risk assessment and preparation, implementation and follow-up of budget support are provided in the relevant documents

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1.1.1.12.<sup>14</sup> Council Regulation (EEC) N°2913/92 of 12 October 1992 establishing the Community Customs Code and other Community legislation governing non-preferential origin (OJ L 302, 19 October 1992, p. 1).

1.1.1.13.<sup>15</sup> The ILO core labour standards, conventions on freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in respect of employment and occupation and the abolition of child labour.

and instructions prepared by the Commission which are applicable for the purposes of implementing IPA II assistance through budget support.

## **Article 22 Implementation principles for twinning**

- (1) Actions may be implemented through twinning whereby the selected Member State administrations agree to provide the requested public sector expertise. Twinning shall be set up in the form of a grant to cover the reimbursement of the expenses incurred by the Member State(s) involved and may in particular provide for the long term secondment of a pre-accession advisor assigned to provide full time counsel to the administration of the IPA II beneficiary, hereinafter referred to as resident twinning advisor (RTA). The IPA II beneficiary shall make available adequate office facilities to the RTA.

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

- (2) A twinning manual, applicable to all twinings, has been established by the Commission and is updated regularly.

## **TITLE II TRANSPARENCY AND VISIBILITY**

### **Article 23 Information, publicity and transparency**

- (1) The IPA II beneficiary commits towards increased transparency and accountability in the delivery of assistance, including by publicly disclosing information on assistance volume and allocation, ensuring that data is internationally comparable and can be easily accessed shared and published. Any actor implementing IPA II assistance shall fulfil the requirements on information, publicity and transparency, and ensure the appropriate EU visibility of the actions.
- (2) In case of indirect management by the IPA II beneficiary, the operating structures shall be responsible for publishing information on recipients of IPA II assistance in the following way:
  - (a) The publication shall be made according to a standard presentation, in a dedicated and easily accessible place of the IPA II beneficiary's internet site. If such internet publication is impossible, the information shall be published by any other appropriate means, including the official journal of the IPA II beneficiary;
  - (b) Publication shall take place no later than 30 June of the year following the financial year in which the funds were awarded;
  - (c) The IPA II beneficiary shall communicate to the Commission the address of the internet site where the information was published. If the information is published by any other appropriate means, the IPA II beneficiary shall give the Commission full details of the means used. Reference shall be made to this location in the dedicated place of the internet site of the Commission;
  - (d) The operating structures shall ensure that the recipient is informed that it will be included in the published list of recipients. Any personal data included in this list shall be processed in accordance with the requirements of Regulation (EC) No 45/2001, and with due observance of the requirements of confidentiality and security.

The IPA II beneficiary shall publish the name and locality of the recipient, the amount awarded and the nature and purpose of the awarded contract. The locality of a legal person shall be its address. The locality of a natural person shall be a region at NUTS 2 level<sup>16</sup>.

The information referred to in the second sub-paragraph shall only be published for prizes, grants and contracts which have been awarded as a result of contests, grant award procedures or public procurement procedures. The information shall not be published for contracts below the threshold referred to Article 137(2) of the Rules of Application of the Financial Regulation.

As far as data referring to natural persons are concerned, the names shall be replaced by "natural person" two years after the end of the financial year in which the funds were awarded. The same shall apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.

Publication of names of natural persons shall be waived if such publication risks violating their fundamental rights or damaging their commercial interests.

The IPA II beneficiary shall present a list of data to be published concerning natural persons with justification for proposed waivers of publication to the Commission which must grant prior approval to this list. Where necessary, the Commission shall complete the locality of the natural person limited to a region at NUTS 2 level.

Publication of contracts may be waived if such publication risks harming the commercial interests of contractors or grant beneficiaries. The IPA II beneficiary shall present a list with such justifications to the Commission which must grant prior approval to such publication waiver.

- (3) In case of indirect management by the IPA II beneficiary, the relevant bodies shall, in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external actions, in force at the time of the launch of the procedure in question, prepare a contract award notice, once the contract has been signed, and send it to the Commission for publication unless otherwise provided for in the Financial Regulation and further specified in Sectoral Agreements. The contract award notice may also be published by the IPA II beneficiary in the relevant media.
- (4) The strategy papers and programmes as well as any revision thereof, shall be public documents, where applicable, and shall be made available to the general public and civil society.

#### **Article 24 Visibility and communication**

- (1) The Commission and the IPA II beneficiary shall agree on a coherent plan of visibility and communication activities to make available, and actively publicise information about programmes and actions under IPA II assistance in Montenegro. The procedures for implementing such activities shall be specified in the Sectoral or Financing Agreements.
- (2) In case of direct management, implementation of the activities referred to in paragraph 1 shall be the responsibility of the Commission with the assistance of the IPA II beneficiary.
- (3) In case of indirect management by the IPA II beneficiary, and for cross-border cooperation programmes referred to in points (b) and (c) of Article 63(2), implementation of the

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<sup>16</sup> NUTS means Nomenclature of territorial units for statistics and NUTS 2 level means the class of administrative units with an average size of population between 800 000 and 3 million.

activities referred to in paragraph 1 shall be the responsibility of the operating structure(s) of the IPA II beneficiary(ies).

- (4) Visibility and communication activities shall demonstrate how the particular action contributes to the agreed programme objectives and the accession process and shall be aimed at strengthening general public awareness as well as support of actions financed and of the objectives pursued. The visibility and communication activities shall aim at highlighting to the relevant target audiences the added value and impact of the Union programmes and actions. Visibility activities shall also promote transparency and accountability on the use of funds.
- (5) The IPA II beneficiary shall report on its visibility and communication activities to the IPA monitoring committee and the sectoral monitoring committees.

### **TITLE III DATA PROTECTION AND CONFIDENTIALITY**

#### **Article 25 Data protection**

- (1) The IPA II beneficiary shall ensure a reasonable protection of personal data. Personal data means any information related to a natural person. Any operation performed upon personal data, such as collection, recording, organisation, storage, adaption or alteration, retrieval, consultation, use, disclosure, erasure or destruction, shall be based on rules and procedures of the IPA II beneficiary and shall only be done as far as it is necessary for the implementation of the IPA II assistance.
- (2) In particular, the IPA II beneficiary shall take appropriate technical and organisational security measures concerning the risks inherent in any such operation and the nature of the information relating to the natural person concerned, in order to:
  - (a) Prevent any unauthorised person from gaining access to computer systems performing such operations, and especially unauthorised reading, copying, alteration or removal of storage media; unauthorised data input as well as any unauthorised disclosure, alteration or erasure of stored information;
  - (b) Ensure that authorised users of an IT system performing such operations can access only the information to which their access right refers;
  - (c) Design its organisational structure in such a way that it meets the above requirements.

#### **Article 26 Confidentiality**

- (1) The IPA II beneficiary agrees that the documents possessed by an entity referred to in points (ii) to (iii) of Article 58(1)(c) of the Financial Regulation to which the Commission entrusted budget implementation tasks may be forwarded to the Commission by that entity for the sole purpose of monitoring the execution of those tasks. The Commission shall respect confidentiality arrangements agreed between the IPA II beneficiary and that entity in accordance with the provisions of this Agreement.
- (2) Without prejudice to Article 50, the IPA II beneficiary and the Commission shall preserve the confidentiality of any document, information or other material directly related to the implementation of the IPA II assistance that is classified as confidential.
- (3) The Parties shall obtain each other's prior written consent before publicly disclosing such information.
- (4) The Parties shall remain bound by the confidentiality until five years after the end of the execution period.