

FINANCING AGREEMENT

BETWEEN

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

AND

**THE COMMISSION OF THE EUROPEAN COMMUNITIES**

CONCERNING THE NATIONAL PROGRAMME FOR 2007  
UNDER THE INSTRUMENT FOR PRE-ACCESSION  
ASSISTANCE

(TRANSITION ASSISTANCE AND INSTITUTION BUILDING  
COMPONENT, PART 1)

September 2007

(Centralised 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" 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 12 June 2007, the Commission has adopted Regulation (EC) No 718/2007 implementing the IPA Framework Regulation, detailing applicable management and control provisions.
- (b) 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 (currently Croatia, the former Yugoslav Republic of Macedonia and Turkey) and potential candidate countries (Albania, Bosnia and Herzegovina, Montenegro, and Serbia, including Kosovo according to United Nation Security Council Resolution 1244) in their efforts to enhance political, economic and institutional reforms with a view to their eventually becoming members the European Union.
- (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.
- (d) Community assistance for candidate countries should additionally focus on the adoption and implementation of the full *acquis communautaire*, and in particular prepare them for the implementation of the Community's agricultural and cohesion policy.
- (c) The Commission adopted on 10 July 2007 the *National Programme (Part 1) for the former Yugoslav Republic of Macedonia under the IPA Transition Assistance and*

*Institution Building Component for 2007* (hereafter: “the programme”). This programme is to be implemented by the Commission on a centralised basis.

- (d) 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 Community assistance, the rules and procedures concerning disbursement related to such assistance and the terms on which the assistance will be managed.
- (e) The Parties have the intention to conclude a Framework Agreement setting out the general rules for cooperation and implementation of the Community assistance under the instrument for Pre-Accession Assistance. However, the negotiations on such a Framework Agreement are still ongoing. Therefore, this Agreement comprises also the general minimum provisions for Community financial assistance which are to be laid down in such a Framework Agreement.

## **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: 2007/19129 (CRIS)

Title: National Programme (Part 1) for the former Yugoslav Republic of Macedonia under the IPA-Transition Assistance and Institution Building Component for 2007

### **2 IMPLEMENTATION OF THE PROGRAMME**

- (1) The programme 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 (EC, Euratom) 1995/2006 of 13 December 2006 (hereafter: "Financial Regulation").
- (2) The beneficiary country agrees to comply with the general rules on Community financing and the general rules for the implementation of the programme, as set out in Annex B to this Agreement.

### **3 STRUCTURES AND AUTHORITIES WITH RESPONSIBILITIES**

The Beneficiary shall designate a national IPA co-ordinator, who shall act as the representative of the Beneficiary vis-à-vis the Commission. He 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.

### **4 FUNDING**

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

- (a) The Community contribution for part 1 of the programme for the year 2007 is fixed at a maximum of €12 million, as detailed in 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 this programme shall be borne by the beneficiary country.

## **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 2 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 Community contribution if it has been incurred after the contracts and grants implementing such programme have been signed, except in the cases explicitly provided for in the Financial Regulation.
- (2) The following expenditure shall not be eligible for Community 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) any leasing costs;
  - (k) depreciation costs.
- (3) By way of derogation from paragraph 2 above, the Commission will decide on a case-by-case basis whether the following expenditure is eligible:
  - (a) operating costs, including rental costs, exclusively related to the period of co-financing of the operation;
  - (b) value added taxes, if the following conditions are fulfilled:
    - (i) the value added taxes are not recoverable by any means;
    - (ii) it is established that they are borne by the final beneficiary, and
    - (iii) they are clearly identified in the project proposal.
- (4) Expenditure financed under IPA shall not be the subject of any other financing under the Community budget.

## **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 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 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 to make 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 Community:*

Erwan Fouéré  
Head of Delegation  
EC Delegation  
MK-1000 Skopje



*For the Beneficiary*

Ms Gabriela Konevska Trajkovska  
Deputy Prime Minister, EU Affairs  
Ilindenska bb  
Government Building  
MK-1000 Skopje

## **18 ANNEXES**

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

## **19 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.

## **20 FINAL PROVISIONS**

When the Parties will have concluded a Framework Agreement on the rules for co-operation concerning EC Financial Assistance to the former Yugoslav Republic of Macedonia and the implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA), the programme will be implemented in accordance with that Framework Agreement, which shall replace the provisions of this Agreement which regulate the same subject. The Framework Agreement shall form integral part of this Agreement.

Signed, for and on behalf of the  
Commission by

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

**Mr Erwan Fouéré**  
Head of Delegation  
EC Delegation, Skopje

**Ms Gabriela Konevska Trajkovska**  
Deputy Prime Minister, EU Affairs

Skopje,

Skopje,

Date:

Date:



**ANNEX A NATIONAL PROGRAMME (PART 1) FOR THE FORMER  
YUGOSLAV REPUBLIC OF MACEDONIA UNDER THE IPA  
TRANSITION ASSISTANCE AND INSTITUTION BUILDING  
COMPONENT FOR 2007 ESTABLISHED BY COMMISSION  
DECISION C/2007/3281 OF 10 JULY 2007**

**NATIONAL PROGRAMME (PART 1) FOR THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA  
UNDER THE IPA TRANSITION ASSISTANCE AND INSTITUTION BUILDING COMPONENT 2007  
(FINANCING PROPOSAL)**

**1. IDENTIFICATION**

Beneficiary	The former Yugoslav Republic of Macedonia
Programme	National Programme 2007 under IPA Component I - Part I
CRIS number	
Year	2007
Cost	EUR 12 million
Implementing Authority	<i>EUROPEAN COMMISSION ON BEHALF OF THE BENEFICIARY COUNTRY</i>
Final date for concluding the Financing Agreement	at the latest by 31 December 2008
Final date for contracting	2 years from the date of the conclusion of the Financing Agreement
Final date for execution	2 years from the final date for contracting These dates apply also to the national co-financing
Sector Code	15110, 15130
Budget lines	22.02.01
Programming Task Manager	Thomas GRUBER, DG ELARG.B2
Implementation Task Manager	Erwan FOUÉRE, Head of Delegation, Skopje

**2. PRIORITY AXES / (MEASURES) / PROJECTS**

**2.a Priority axes**

Part 1 of the proposed IPA Component I - 2007 National Programme for the former Yugoslav Republic of Macedonia continues to support the association process in the field of good governance and the rule of law. Building on previous CARDS achievements, the programme will provide support to the police reform, which has been given the highest priority. Support for programming needs of the country under five components of IPA is also envisaged. Other sectoral assistance is to be considered in the separate operational programme.

The programme's strategic reference is the Multi-Annual Indicative Planning Document (MIPD) 2007-2009.

As the MIPD outlines, given the candidate status of the country, pre-accession assistance is aimed at supporting the country's efforts to comply with the Copenhagen Criteria. Funds under IPA component 1 aim at providing for Institution Building which is needed to meet this objective. The MIPD envisages the following two major areas of intervention:

### Good governance and the rule of law

The MIPD states that it is necessary to support completing the implementation of the Action Plan for the Police Reform, to consolidate the progress made and to maintain the momentum. It states that the support to the Police Reform process should directly address the three pillars of the National Police Reform Strategy: (1) support to the organisational and institutional reform of the police services, (2) tactical level support to the development and functional consolidation of technical and management capacities, and (3) operational level support to the operational policing structures.

The annual Progress Report 2006 notes that the general level of security had steadily improved through increased operational capacity of the police. However, much of the implementing legislation still remains to be adopted and progress would need to be strengthened in the areas of implementation of the police reform strategy, de-concentration, human resource management, intelligence-led policing, customs, fight against organized crime and drugs and human trafficking, inter-agency cooperation, code of ethics and cooperation with the Ombudsman.

The projects directly address the SAA Article 74 (Reinforcement of institutions and rule of law) and Article 78 (Preventing and combating crime and other illegal activities).

The projects aim to fulfil following priorities of the European Partnership: continue to implement the Action Plan for the reform of the police; provide adequate funding and training; strengthen co-ordination and co-operation both among police bodies and between the police and other law enforcement agencies; develop and implement a comprehensive human resources and training strategy for the police, upgrade the equipment, particularly in specialised fields of investigation; complete the implementation of the Action Plan for the reform of the police; continue to upgrade equipment and enhance training and further develop the human resources management system.

### Programming support

The MIPD notes that for the preparation of projects and tenders a special facility shall ensure smooth programming and the maintenance of high quality in delivering IPA funds. Assistance may also include audit and evaluation activities.

## **2.b Description of projects grouped per priority axis**

The programme is summarized in the sections below, according to the headings outlined in the MIPD. Further details are provided in the attached project fiches. The project fiches also provide information concerning the relevance of the proposed actions for the cross-cutting issues of Equal Opportunity, Environment and Minorities.

### **2.b.1 Institution building (EUR 9.0 million)**

#### **2.b.1.1 Good governance and the rule of law (EUR 9.0 million)**

### **2.b.1.1.1 Support to the implementation of the Police Reform Strategy (EUR 9.0 million)**

The project consists of three mutually inter-related activities:

- Activity 1 - Advisory services to support the implementation of the Police Reform Strategy: Support the overall planning and implementation of the Police Reform on Strategic, Tactical and Operational level.
- Activity 2 - Advisory services to improve the capacities of the relevant parties in the fight against organized crime, with focus on trafficking in human beings: Providing technical capacity by the International Organisation of Migration (IOM) to train relevant national authority staff in the implementation of the National Migration Strategy elements related to Trafficking in Human Beings.
- Activity 3 - Ensure the appropriate infrastructure: Addressing the selected priorities for investment. For example a number of regional and local police facilities (buildings and premises) should be upgraded to appropriate standards.

Activity 1 is to be implemented by means of a grant arrangement with a Member State institution to implement the total programme under Activity 1. A call for proposals will be launched and subsequently evaluated according the appropriate procedures. It is expected that the total value of the grant arrangement will be EUR 7.5 million euro. The grant will cover 100% of all eligible expenditure. It is expected that a successful candidate will start deployment one month after signature of the grant agreement. The essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for EC external actions. The call for proposals is expected to be launched in June 2007. The grant agreement will be engaged for a period of 24 – 36 months, depending on the budget.

Activity 2 will be implemented – in line with Art. 168(c) of the IR, which allows for grants to be awarded without a call for proposal to bodies with a de facto monopoly – through a direct award of a grant with the IOM. The total value of the grant is expected to be 300.000 Euro. The EC contribution is expected to be 100%. The implementation period of the grant will be approximately one year. The direct award will be granted within 12 months after the signing of the Financing Agreement.

Activity 3 is intended to be implemented, depending on the nature and scope of the works to be done, through three supply/works contracts and one service contract for supervision and to assist with the preparation of the tender dossiers. The tendering of these contracts is expected to start by mid 2008. It is expected that each works contract will have an operational period of approximately one year. It is expected that the value of the supply/works contracts will be EUR 1.6 million (including the Government parallel co-financing contribution of 25%).

### **2.b.1.2 Programming Support (EUR 3 million)**

#### **2.b.1.2.1 Project Preparation Facility, Audit and Evaluation (EUR 3 million)**

The main purpose of the Project Preparation Facility (PPF) - is to allow project preparation to proceed in a quick and effective manner. The PPF will support the preparation and early implementation of activities under the five IPA components. Actions to be supported are likely to include: recruitment of short-term technical assistance for activities typically including feasibility studies, inputs to terms of reference and specifications, and tender evaluations, project preparatory and start-up actions, and environmental impact assessment and other studies relating to investment projects and programmes.

The PPF will consist of funds covering the financing of short term or long term technical assistance (framework contractors or others) generally amounting to 50.000 – 200.000 EUR per single project, or above if duly justified in case of more complex project preparation activities.

Furthermore, where necessary, assistance may involve audits, monitoring and evaluations with regard to project implementation.

## **2.c Overview of past and on going assistance (EU / IFI / Bilateral assistance) including lesson learned.**

EU assistance in the area of policing has been continuously provided since 2002. Under the past programmes, the EU has provided direct support to the development and implementation of the National Police Reform Strategy, and policing elements of the National Integrated Border Management Strategy. This assistance is targeted at different levels: strategic, operational, institutional and educational. The EU assisted the Ministry of Interior to develop its Police Reform Strategy and Action Plan, which is the guiding document of the police reform process in the country.

The assistance to the police reform process has since March 2002 contained strong provision of EU Member State advisory support. In addition, a range of practical Police Development assistance has been provided, including reconstruction and equipment supply, the adoption of key strategies and numerous legal instruments, the implementation of organisational improvements and providing for an appropriate material working environment according to European standards, leading to improved performance standards which is reflected by respective reports.

However, a number of challenges remain:

- Legal Reform in the sector: A major law that was seriously delayed is the Law on Police, a priority of the European Partnership. The delays in the adoption of this law and in its implementation had significant impact on the planning and delivery of police reform projects.
- Enforcement: The capacity to enforce the new laws still needs to be strengthened.
- Sustaining the momentum of police reform: Police reform requires constant effort to sustain the momentum. Based on observations from earlier reform processes within the Member States, it is important to maintain realistic expectations for the duration of the police reform process. A change of mentality and operational culture takes time.

Internal and external monitoring as well as supervision reports indicate as lessons learned that support to the police reform did only function properly where inter-activity between strategic planning and strategy implementation has been enforced through stronger co-ordination. Thus, it is important that activities in the area of police reform are connecting the operational level to the strategic level and ensure appropriate inter-activity between strategy planning and implementation, including legal instruments. Another conclusion which can be drawn from the lessons learned is that time-planning of the support programme should be sufficiently long to allow for continuous reflection on the principles of the support to and monitoring of the progress realised.

Various bilateral agencies, in particular from EU member states, have provided support to the police reform. Important police development actions, focusing on operational capacities, have been undertaken under bilateral assistance with France and the UK. The UK Government has delivered training and advisory assistance to the Police Rapid Deployment Unit (RDU) to develop the unit in line with the Police Reform Strategy. The EC complements this bilateral advisory/training assistance by provision of adequate equipment to the RDU, with a value of around EUR 2 million. This model of CARDS-bilateral co-operation was successfully utilised to implement another component of the police reform under the CARDS 2005 Programme, where advisory, training and material assistance was provided to the Police Special Tasks Unit, in partnership with French bilateral assistance.

EUPOL-Proxima and EUPAT missions have also provided support to the police at the operational level. OSCE has been assisting with the consolidation of community policing concepts and development of policing education components.

The Commission, through the European Agency for Reconstruction (EAR), coordinates closely with international donors while encouraging beneficiary institutions to become more involved in donor coordination. A series of monthly sectoral meetings have been jointly organised by the EAR and the government's Secretariat for European Affairs. On each occasion, the government presented its key strategies and plans for the particular sector. The meetings were jointly hosted by the relevant Ministry and a key international donor agency. Further strengthening of coordination is expected through regular 'operational' sectoral meetings run by the relevant ministry with the key donors involved, in addition to a yearly high-level coordination meeting in which the government presents their policy documents.

## **2.d Cross cutting issues**

- Equal opportunities and non-discrimination

The principles of equal opportunity will be respected in two different manners:

- a) Equal opportunities for women
- b) Equal opportunities for minorities (see further below)

Gender equality will be ensured by the project as follows:

- in open application procedures for staff the application by women will be encouraged
- continuous attention for gender in reviewing legal, strategic and operational issues. Each evaluation will have a specific section concerning gender
- organisation of specific activities for police staff to raise awareness of the gender issue

- Support to minority and vulnerable groups

The equal opportunities of minorities will be addressed in three different manners:

- a) Participation in the administrative service by minorities as stipulated in the Equal Representation Strategy, following up on the Ohrid Framework Agreement
- b) The use of the minority language in the police service
- c) Particular requirements of dealing with minority issues in strategic, tactical and operational matters



- Environmental protection

The project is expected to have a neutral impact on environment. While for construction and refurbishing works contracts will be engaged, environmentally sound construction methods will be encouraged.

- Good governance, with particular attention to fight corruption

Good governance is a core element of the programme. The police reform not only touches the overall organisation of the police services, it also addresses the essential elements of confidence building of police services with the general public. The fight against corruption equally is part of the overall police reform strategy.

## **2.e Conditionality**

Formal endorsement of the projects described in the fiches.

## **2.f Benchmarks**

	2008	2009	2010
Tenders launched	4		
Call for proposals launched	1		
Direct award of grant	1		
Contracting Rate	100%		

## **2.g Roadmap for the decentralisation of the management of EU funds without *ex ante* controls by the Commission:**

A roadmap with indicative benchmarks and time limits to achieve decentralisation without *ex ante* controls by the Commission (EDIS) will be developed once the Commission has conferred the management powers to the national authorities.

Concerning the indicative roadmap for decentralisation with *ex-ante* control (DIS), the situation is the following: The establishment of the management and control system was decided by the Government in December 2006. The Central Contracting and Financing Unit (CFCU) and the National Fund (NF) were established, the Programme Authorising Officer (PAO), the Competent Accrediting Officer (CAO) and the Senior Programme Officers (SPOs) have been nominated. As a first step, in 2005 a gap assessment related to the decentralisation of the management of EU funds was initiated and the results have been presented to the Commission. An update of the gap assessment to comply with the new IPA Implementing Regulation will be prepared in the first half 2007. In a subsequent step, gap plugging will be done during the second half 2007, followed by a compliance assessment. Following the accreditation of the system we then expect the Competent Accrediting Officer (CAO) to submit the application to the Commission for conferral of management.

### 3. BUDGET (amounts in EUR mn)

#### 3.1. Indicative budget table

	EU – IPA assistance			Total Co-financing of Project (indicative)	Total (IPA plus Co-financing)
	Institution Building	Investment	Total (IB and INV)		
<b>Priority axe 1</b> Good governance and the rule of law	7.8	1.2	9.0	0.4	9.4
<u>Project 1</u> Police reform	7.8	1.2	9.0	0.4	9.4
<b>Priority axe 2</b> Programming support	3.0		3.0		3.0
<u>Project 1</u> Programming support	3.0		3.0		3.0
<b>TOTAL</b>	10.8	1.2	12.0	0.4	12.4

#### 3.2 Principle of Co-Financing applying to the projects funded under the programme

The Government commits 400.000 Euro as co-financing to the Police Reform project. The works activities to be carried out amount to a total of EUR 1.6 million, out of which 25% will be financed by the Government and 75% under the present programme.

The above mentioned actions will be financed in full in accordance with Article 169 Financial Regulation and Article 253(1)(d) of the Implementing Rules which authorises the financing in full of an action resulting from the implementation of financing agreements with third countries.

### 4. IMPLEMENTATION ARRANGEMENTS

#### 4.1 Method of implementation

The programme will be implemented on a centralised basis by the European Commission following Article 53.1(a) of Council Regulation (EC, Euratom) Nr. 1605/2002 on the

Financial Regulation applicable to the general budget of the European Communities<sup>1</sup> (the Financial Regulation: FR) as further detailed in the rules for the implementation of that Council Regulation (Implementing Rules: IR).<sup>2</sup>

#### **4.2 General rules for procurement and grant award procedures**

Procurement shall follow the provisions of Part 2, Title IV of the FR and Chapter 3 of Part 2, Title III of its IR as well as the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries adopted by the Commission on 24 January 2006 (C(2006)117).

Grant award procedures shall follow the provisions of Part 1, Title VI of the FR and Part 1, Title VI of its IR.

The Commission shall also use the procedural guidelines and standard templates and models facilitating the application of the above rules provided for in the "Practical Guide to contract procedures for EC external actions" ("Practical Guide") as published on the EuropeAid website<sup>3</sup> at the date of the initiation of the procurement or grant award procedure.

#### **4.3 Implementation Principles for Twinning Projects**

Twinning projects shall be set up in the form of a grant agreement, whereby the selected Member State administrations agree to provide the requested public sector expertise against the reimbursement of the expenses thus incurred.

The agreement may in particular provide for the long-term secondment of an official assigned to provide full-time advice to the administration of the beneficiary country as resident twinning advisor.

The twinning grant agreement shall be established in accordance with relevant provisions of Part One, Title VI on grants of Regulation (EC, Euratom) No 1605/2002 and Commission Regulation (EC, Euratom), No 2342/2002<sup>4</sup>.

#### **4.4 Environmental Impact Assessment and Nature Conservation**

The procedures for environmental impact assessment as set down in the EIA-directive<sup>5</sup> fully apply to all investment projects under IPA. If a project falls within the scope of annex 1 or annex 2 of the EIA-directive, the implementation of the EIA-procedure must be documented<sup>6</sup>.

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats Directive must be documented<sup>7</sup>.

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<sup>1</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1), as last amended by Council Regulation (EC, Euratom) 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006, p. 1).

<sup>2</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euroatom) No 1605/2002 (OJ L 357, 31.12.2002, p. 1), as last amended by Commission Regulation No 1248/2006 of 7 August 2006 (OJ L 227, 19.8.2006, p. 3).

<sup>3</sup> Current address: [http://ec.europa.eu/europeaid/tender/gestion/index\\_en.htm](http://ec.europa.eu/europeaid/tender/gestion/index_en.htm)

<sup>4</sup> OJ L357, 31.12.2002, p.1

<sup>5</sup> DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

<sup>6</sup> in Annex EIA to the corresponding investment project fiche.

All investments will be carried out in compliance with the relevant Community environmental legislation.

## **5. MONITORING AND EVALUATION**

### **5.1 Monitoring**

The Commission may undertake any actions it deems necessary to monitor the programmes concerned.

### **5.2 Evaluation**

Programmes shall be subject to *ex ante* evaluations, as well as interim and, where relevant, *ex post* evaluations in accordance with Articles 57 and 82 of Regulation (EC) 478/2007 (IPA IR), with the aim of improving the quality, effectiveness and consistency of the assistance from Community funds and the strategy and implementation of the programmes.

Prior to the conferral of management powers on the beneficiary country, both interim and *ex-post* evaluations shall be carried out. These shall be performed by the Commission. After the conferral of management powers, the responsibility for carrying out interim evaluations shall lie with the beneficiary country, without prejudice to the Commission's rights to perform any *ad hoc* interim evaluations of the programmes it deems necessary.

Ex post evaluation shall remain a prerogative of the Commission even after the conferral of management powers to the beneficiary country.

The results of *ex ante* and interim evaluation shall be taken into account in the programming and implementation cycle.

The Commission may also carry out strategic evaluations.

## **6. AUDIT AND FINANCIAL CONTROL, AUDIT TRAIL, ANTI-FRAUD MEASURES AND CORRECTIVE ACTIONS**

### **6.1 Audit and Financial control**

The accounts and operations of all activities carried out under the programme are subject to supervision and financial control by the Commission (including the European Anti-Fraud Office) and audits by the European Court of Auditors. This includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Beneficiary Country once the decentralised management applies

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96<sup>8</sup>.

The controls and audits described above are applicable to all contractors and subcontractors who have received Community funds.

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<sup>7</sup> in Annex Nature Conservation to the corresponding investment project fiche

<sup>8</sup> Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2

## **6.2 Audit trail**

The Commission shall ensure that all the relevant information is available to ensure at all times a sufficiently detailed audit trail. This information shall include documentary evidence of the authorisation of payment applications, of the accounting and payment of such applications, and of the treatment of advances, guarantees and debts.

## **6.3 Antifraud measures and corrective actions**

If the Commission finds that expenditure under the programme has been incurred in a way that has infringed applicable rules, it shall decide what amounts are to be excluded from Community financing.

The calculation and establishment of any such corrections, as well as the related recoveries, shall be made by the Commission by cancelling all or part of the Community contribution to a programme.

The former Yugoslav Republic of Macedonia shall inform the Commission services without delay of any element of information indicating the possible existence of irregularities or fraud.

Irregularity shall mean any infringement of applicable rules and contracts resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.

Fraud shall mean any intentional act or omission relating to:

- i. The use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,
- ii. Non-disclosure of information in violation of a specific obligation, with the same effect;
- iii. The misapplication of such funds for purposes other than those for which they are originally granted.

The procedures foreseen in Commission Regulation N°1681/1994 of 11 July 1994 on the communication in case of irregularities and the putting in place of a system to administrate the information in this field shall apply.

The applicability of the FR includes the application of administrative and financial sanctions, as provided for in Articles 93 to 96 and 114 of the FR, and Article 133 of the IR.

## **7. VISIBILITY AND PUBLICITY**

### **7.1 Publicity**

Information on programmes and operations shall be provided by the Commission, with the assistance of the national IPA co-ordinator as appropriate

In accordance with Article 90 of Regulation (EC, Euratom) No 1605/2002, the Commission shall publish the relevant information on the contracts. The Commission shall publish the results of the tender procedure in the *Official Journal of the European Union*, on the EuropeAid website and in any other appropriate media, in accordance with the applicable contract procedures for Community external actions.

## **7.2 Visibility**

The Commission and the relevant national, regional or local authorities of the former Yugoslav Republic of Macedonia shall agree on a coherent set of activities to make available, and publicise, in the beneficiary countries, information about assistance under the IPA Regulation. Implementation of these activities shall be the responsibility of the final beneficiaries, and shall be funded from the amount allocated to the relevant programmes or operations.

## **8. LIMITED CHANGES**

Limited changes in the implementation of this programme affecting essential elements listed under Article 90 of the Implementing Rules to the Financial Regulation, which are of an indicative nature<sup>9</sup>, may be undertaken by the authorising officer by delegation (AOD), or by the authorising officer by sub-delegation (AOSD), in line with the delegation of powers conferred upon him by the AOD, in accordance with the principles of sound financial management without an amending financing decision being necessary.

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<sup>9</sup> These essential elements of an indicative nature are, for grants, the indicative amount of the call for proposals and, for procurement, the indicative number and type of contracts envisaged and the indicative time frame for launching the procurement procedures.

**ANNEX B MINIMUM PROVISIONS ENUMERATED IN ARTICLE 7(3) OF REGULATION (EC) No 718/2007 of 12 JUNE 2007 (IPA IMPLEMENTING REGULATION)**

**1 GENERAL RULES FOR COMMUNITY FINANCIAL ASSISTANCE**

- (1) The following principles shall apply to financial assistance under the programme in Annex A:
  - (a) Assistance shall respect the principles of coherence, complementarity, co-ordination, partnership and concentration;
  - (b) Assistance shall be coherent with EU policies and shall support alignment to the *acquis communautaire*;
  - (c) Assistance shall comply with the budgetary principles laid down in Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter referred to as the Financial Regulation);
  - (d) Assistance shall be consistent with the needs identified in the enlargement process and absorption capacities of the Beneficiary. It shall also take account of lessons learned;
  - (e) The ownership of the programming and implementation of assistance by the Beneficiary shall be strongly encouraged and adequate visibility of EU intervention shall be ensured;
  - (f) Operations shall be properly prepared, with clear and verifiable objectives, which are to be achieved within a given period; the results obtained should be assessed through clearly measurable and adequate indicators;
  - (g) Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prevented during the various stages of implementation of assistance;
  - (h) The objectives of pre-accession assistance shall be pursued in the framework of sustainable development and the Community promotion of the goal of protecting and improving the environment.
- (2) Assistance for the Beneficiary shall be based on the priorities identified in the existing documents, i.e. the European Partnership, the national programme for the adoption of the *acquis communautaire*, the reports and strategy paper contained in the annual enlargement package of the Commission, the Stabilisation and Association Agreement and the negotiation framework.
- (3) All activities receiving assistance under the programme in Annex A shall in principle require co-financing by the Beneficiary and the Community, unless otherwise agreed upon in this Financing Agreement. Where the execution of activities depends on financial commitments from the Beneficiary's own resources or from other sources of funds, the funding of the Community shall become available at such time as the financial commitments of the Beneficiary and/or the other sources of funds themselves become available.

- (4) The provision of Community financing under the programme in Annex A shall be subject to the fulfilment by the Beneficiary's obligations under this Financing Agreement.

## **2 GRANTING OF FACILITIES FOR THE IMPLEMENTATION OF PROGRAMMES AND EXECUTION OF CONTRACTS**

- (1) In order to ensure the effective implementation of the programme in Annex A, the Beneficiary shall take all necessary measures to ensure:
- a) that, in the case of service, supplies or works tender procedures, natural or legal persons eligible to participate in tender procedures pursuant to Article 19 of Council Regulation 1085/2006 of 17 July 2006 shall be entitled to temporary installation and residence where the importance of the contract so warrants. This right shall be acquired only after the invitation to tender has been launched and shall be enjoyed by the technical staff needed to carry out studies and other preparatory measures to the drawing up of tenders. This right shall expire one month after the decision of contract award;
  - b) that personnel taking part in Community financed activities and members of their immediate family are accorded no less favourable benefits, privileges and exemptions than those usually accorded to other international staff employed in the former Yugoslav Republic of Macedonia, under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation;
  - c) that personnel taking part in Community financed activities and members of their immediate family are allowed to enter the former Yugoslav Republic of Macedonia, to establish themselves in the former Yugoslav Republic of Macedonia, to work there and to leave the former Yugoslav Republic of Macedonia, as the nature of the underlying contract so justifies;
  - d) the granting of all permits necessary for the importation of goods, above all professional equipment, required for the execution of the underlying contract, subject to existing laws, rules and regulations of the Beneficiary;
  - e) that imports carried out under IPA will be exempted from customs duties, import duties and other fiscal charges;
  - f) the granting of all permits necessary for the re-export of the above goods, once the underlying contract has been fully executed;
  - g) the granting of authorisations for the import or acquisition of the foreign currency necessary for the implementation of the underlying contract and the application of national exchange control regulations in a non-discriminatory manner to contractors, regardless of their nationality or place of establishment;
  - h) the granting of all permits necessary to repatriate funds received in respect of the activity financed under IPA, in accordance with the foreign exchange control regulations in force in the former Yugoslav Republic of Macedonia.
- (2) The Beneficiary shall ensure full co-operation of all relevant authorities. It will also ensure access to state-owned companies and other governmental institutions, which are involved or are necessary in the implementation of a programme or in the execution of the contract.



### **3 DETAILED RULES ON TAXES, CUSTOMS DUTIES AND OTHER FISCAL CHARGES**

- (2) Safe where otherwise provided for in this Financing Agreement, taxes, customs and import duties or other charges having an equivalent effect are not eligible under IPA.
- (3) The following detailed provisions shall apply:
  - (a) Customs duties, import duties, taxes or other fiscal charges having equivalent effect in the case of the import of goods under a Community financed contract are not eligible under IPA. The imports concerned shall be released from the point of entry into (country) for delivery to the contractor, as required by the provisions of the underlying contract and for immediate use as required for the normal implementation of the contract, without regards to any delays or disputes over the settlement of the above mentioned duties, taxes or charges;
  - (b) Community financed contracts for services, supplies or works carried out by contractors registered in the former Yugoslav Republic of Macedonia or by external contractors shall not be subject in the former Yugoslav Republic of Macedonia to value added tax, documentary stamp or registration duties or fiscal charges having equivalent effect, whether such charges exist or are to be instituted. EC contractors shall be exempted from VAT for services rendered, goods supplied and/or works executed under EC contracts with the right of the contractors to offset or deduct input VAT paid in connection with the services rendered, the goods supplied and/or the works executed against any VAT collected by them for any of their transactions. Should the EC contractors not be able to make use of this possibility, they shall be able to obtain VAT refund directly from the tax authorities upon submission of a written request accompanied by the necessary documentation required under the national/local law for refund and by a certified copy of the underlying EC contract.
  - (c) For the purposes of this Financing Agreement, the term "EC contractor" shall be construed as natural and legal persons, rendering services and/or supplying goods and/or executing works and/or executing a grant under an EC contract. The term "EC contractor" shall also cover pre-accession advisors, also known as resident twinning advisors, and experts included in a twinning covenant or contract. The term "EC contract" means any legally binding document through which an activity is financed under IPA and which is signed by the EC or the Beneficiary.
  - (d) At least the same procedural privileges shall apply to such contractors as applicable to contractors under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation.
  - (e) Profit and/or income arising from EC contracts shall be taxable in the former Yugoslav Republic of Macedonia in accordance with the national/local tax system. However, natural and legal persons, including expatriate staff, from the Member States of the European Union or other countries eligible under IPA, executing Community financed contracts shall be exempted from those taxes in the former Yugoslav Republic of Macedonia.

- (f) Personal and household effects imported for personal use by natural persons (and members of their immediate families), other than those recruited locally, engaged in carrying out tasks defined in technical co-operation contracts, shall be exempted from customs duties, import duties, taxes and other fiscal charges having equivalent effect, the said personal and household effects being re-exported or disposed of in the state, in accordance with the regulations in force in the former Yugoslav Republic of Macedonia after termination of the contract.

#### **4 CLOSURE OF A PROGRAMME**

- (1) A programme is closed when all the contracts and grants funded by the programme in Annex A have been closed.
- (2) After a final payment application has been received, a contract or grant is considered closed as soon as one of the following events occurs:
  - (a) payment of the final balance due by the Commission;
  - (b) issuance of a recovery order by the Commission;
  - (c) de-commitment of appropriations by the Commission.
- (3) The closure of a programme or grant does not prejudice the Commission's right to undertake a financial correction at a later stage.

#### **5 CONSULTATION**

- (1) Any question relating to the execution or interpretation of this Financing Agreement shall be the subject of consultation between the Contracting Parties leading, where necessary, to an amendment of this Financing Agreement.
- (2) Where there is a failure to carry out an obligation set out in this Financing Agreement which has not been the subject of remedial measures taken in due time, the Commission may suspend the financing of activities under IPA after consultation with the Beneficiary.

#### **6 DISPUTES WITH THIRD PARTIES**

- (1) Without prejudice to the jurisdiction of the court designated in a contract as the competent court for disputes arising out of that contract between the parties to it, the European Community shall enjoy in the territory of the former Yugoslav Republic of Macedonia immunity from suit and legal process with respect to any dispute between the European Community and/or the Beneficiary and a third party, or between third parties, which directly or indirectly relates to the provision of Community Assistance to the Beneficiary under this Financing Agreement, except in so far as in any particular case the European Community has expressly waived its immunity.
- (2) The Beneficiary shall in any legal or administrative proceedings before a court, tribunal or administrative instance in the former Yugoslav Republic of Macedonia defend this immunity and take a position which takes duly account of the interests of the European Community. Where necessary, the Beneficiary and the European Commission shall proceed with consultations on the position to take.

## **7 INFORMATION, PUBLICITY AND VISIBILITY**

- (1) Information on programmes and operations shall be provided by the Commission with the assistance of the national IPA co-ordinator as appropriate.

The information shall be addressed to the citizens and beneficiaries, with the aim of highlighting the role of the Community and ensuring transparency.

- (2) The Commission and the relevant national, regional or local authorities of the Beneficiary shall agree on a coherent set of activities to make available, and publicise, in the former Yugoslav Republic of Macedonia information about assistance under IPA.
- (3) Implementation of the activities referred to in paragraph 2 shall be the responsibility of the final beneficiaries, and might be funded from the amount allocated to the relevant programmes or operations.