

**BILATERAL ARRANGEMENT BETWEEN MONTENEGRO AND REPUBLIC OF  
KOSOVO**

**CONCERNING**

**THE IPA II 2014-2020 CROSS-BORDER COOPERATION PROGRAMME  
MONTENEGRO-KOSOVO**

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Montenegro and Kosovo, hereinafter referred to jointly as "the Parties",  
Having regarded to,

- the Commission Implementing Regulation (EU) No 447/2014 of 2 May 2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II), and in particular Article 52(5) thereof,
- The two separate Framework Agreements, concluded between Montenegro and the European Commission (hereinafter "the Commission") ratified on 26<sup>th</sup> February 2015 on the one hand and Kosovo and the European Commission on the other entered into effect on 16 April 2015

WHEREAS:

- (1) Common rules and procedures for the implementation of the European Union's instruments for financing external action are laid down in Regulation (EU) No 236/2014 of 11 March 2014.
- (2) The Instrument for Pre-accession Assistance II (IPA II) is established by Regulation (EU) No 231/2014 on 11 March 2014.
- (3) Subsidiary rules governing the implementation of IPA II are provided in Commission Implementing Regulation (EU) No 447/2014 of 2 May 2014.
- (4) The Framework Agreement between the Montenegro and the European Commission on the Arrangement for Implementation of Union Financial Assistance to the Montenegro under the Instrument for Pre-accession (IPA II) (hereinafter "Montenegrin Framework Agreement") was concluded on 26<sup>th</sup> February 2015, and entered into effect on 04<sup>th</sup> June 2015.
- (5) The Framework Agreement between Kosovo and the European Commission on the Arrangements for Implementation of Union Financial Assistance to Kosovo under the Instrument for Pre-accession (IPA II) (hereinafter "Kosovo Framework Agreement") was ratified by the President of Republic of Kosovo, and entered into effect on 16 April 2015.
- (6) The document (hereinafter "the Programme Document") setting out the IPA II 2014-2020 Cross-Border Cooperation programme "Montenegro-Kosovo" (hereinafter "the Programme") was adopted by the Commission on 11 December 2014 via Commission Implementing Decision C(2014) 9307.
- (7) The Commission shall commit funds to the Programme, technical assistance priority excluded, on an annual basis via Commission Implementing Decisions, the contribution from the budgetary year 2014 having already been committed via Commission Implementing Decision C(2014)9307 and the same will be done for the following years.
- (8) A single tri-lateral Financing Agreement shall be concluded between Montenegro and Kosovo on the one hand and the Commission on the other in relation to each annual commitment made by the Commission to the Programme, technical assistance priority excluded, resulting in a total of seven Financing Agreements over the Programme's lifetime. It shall specify a single Contracting Authority for the Programme, to be located in Montenegro.
- (9) The standard method of implementation for the Programme, technical assistance priority excluded, shall be indirect management, as per Article 7 of the Framework Agreements (hereinafter "Framework Agreements"), to be indicated for each annual allocation in the respective Commission Implementing Decision, and confirmed for each annual allocation with the conclusion of the respective Financing Agreement, whereby the Commission shall entrust budget implementation tasks to Montenegro.
- (10) Article 69 of the Framework Agreements establishes a legal requirement for Montenegro on the one hand and Kosovo on the other to conclude a Bilateral Arrangement governing their relations and respective responsibilities with regard to the Programme when under indirect management. The same Article lays down the minimum information such an Arrangement is to contain.

- (11) The competencies for the Montenegrin Ministry of European Affairs (MEA) and the Montenegrin CFCU being Directorate within the Ministry of Finance are laid down in the Decree on Organization of Indirect Management for Implementation of Union Financial Assistance under Instrument for Pre-Accession Assistance (IPA II) in force.
- (12) The competencies of the Kosovo Ministry of European Integration and the Kosovo Ministry of Local Government Administration with regard to the management of Cross-Border Cooperation, including the Programme, are set out in the Government Regulation no. 02/2011 on the areas of administrative responsibility of the office of the Prime minister and Ministries, Appendix 16 Ministry of European Integration (MEI) and Appendix 12 Ministry of Local Government Administration (MLGA) on the 22nd March 2011.

HAVE CONCLUDED THIS ARRANGEMENT:

## **SECTION I      GENERAL PROVISIONS**

### **Article 1 Interpretation**

- (1) Subject to express provision to the contrary, the terms used in this Arrangement shall bear the same meaning as attributed to them in the Framework Agreements, particularly with regard to the definitions outlined in Articles 1, 3 and 64 of the Framework Agreements.
- (2) Subject to express provision to the contrary, references to this Arrangement, legislation or other documentation are references to this Arrangement, legislation or other documentation as amended, supplemented or replaced as need occurs.
- (3) Headings in this Arrangement have no legal significance and do not affect its interpretation.

### **Article 2 Partial invalidity and unintentional gaps**

- (1) If a provision of this Arrangement becomes invalid or if this Arrangement contains unintentional gaps, this will not affect the validity of the other provisions of this Arrangement. The Parties will replace any invalid provision by a valid provision or understanding which best suits the purpose and intent of this Arrangement in compliance with the Framework Agreements, the Programme Document, and the related Financing Agreements. In the event of any inconsistency or conflict between, on the one hand, the provisions of this Agreement and, on the other hand, the provisions of the Framework Agreement, the Framework Agreement shall take precedence.

### **Article 3 Purpose and scope**

- (1) This Arrangement regulates relations between Montenegro and Kosovo, sets out their respective roles and responsibilities with regard to the management and implementation of the Programme when under indirect management, as per Articles 73(1) and 7(b) of the Framework Agreements. It is not applicable to Programme's technical assistance priority, as this shall be implemented under direct management. The Arrangement is drawn up in compliance with the provisions of Article 69 of the aforementioned Framework Agreements, including the specified minimum information such an Arrangement is to contain.
- (2) Provisions are restricted to those which clarify or are additional to the arrangements established in the Framework Agreements, the Programme Document and the related Financing Agreements, neither cancelling nor replacing the latter. Procedures laid down in this Arrangement, the aforementioned Framework Agreements, the Programme Document and the related Financing Agreements thereunder shall apply in their entirety.
- (3) This Arrangement may be supplemented by 1) detailed procedures applicable at programme level and binding on the public authorities concerned in both Montenegro and Kosovo; 2) as appropriate and necessary, secondary legislation, inter-institutional agreements and detailed procedures applicable at state level. The type, adequacy and proper implementation of detailed programme and state level procedures having effect on the programme implementation, shall be subject to review and approval by the National Authorising Officer in the Montenegro after consultations with all relevant bodies of the Programme.

## **SECTION II IMPLEMENTATION STRUCTURES, ROLES AND RESPONSIBILITIES**

### **Article 4 Implementation structures and authorities for the Programme**

- (1) The implementation structures and authorities for the Programme are specified in Article 74 of the Framework Agreements, and shall thus include the National IPA Coordinators of both countries; a National Authorising Officer and a Management Structure in Montenegro, where the Contracting Authority for the Programme is located; an Operating Structure in each country, to include the Contracting Authority for the Programme in the case of the Montenegrin Operating Structure; an Audit Authority, to be supported by a Group of Auditors composed of representatives of both countries; a Joint Monitoring Committee and a Joint Technical Secretariat. In Kosovo, the implementation structure, apart from the aforementioned Operating Structure, shall include the Control Body. Given that the Contracting Authority for the Programme shall be located in Montenegro, the National Authorising Officer, Management Structure and Audit Authority for the Programme shall be, respectively, the National Authorising Officer, Management Structure and Audit Authority appointed for IPA II by the Government of Montenegro.
- (2) The Government of Montenegro shall ensure that specific positions are nominated for the posts of the Montenegrin National IPA Coordinator, National Authorising Officer, and Head of the Montenegrin Operating Structure indicated in Articles 5, 6 and 7 and that specific institutions are designated for the constituent bodies of the Management Structure and Montenegrin Operating Structure indicated in Articles 6 and 7, as well as for the Audit Authority. In line with reference listed in Item 11 of Preamble of this Arrangement, the Government of Kosovo shall ensure that specific persons are nominated for the posts of the Kosovo National IPA Coordinator, and that specific institutions are designated for the constituent bodies of the Kosovo Operating Structure and Kosovo Control Body as stipulated in Article 7. The Government of Montenegro or the Government of Kosovo shall adopt legislation in the form of secondary legislation, such as Decree of Decision for such nominations. The Government of Montenegro or the Government of Kosovo further undertakes to keep such nominations and designations up to date, and to promptly inform each other of any changes.
- (3) Inter-institutional agreement may be concluded between posts and/or bodies indicated in the first paragraph of this Article and in Article 7 in cases where the provisions of Article 11(3) of the Montenegrin and Kosovo Framework Agreements apply - in the cases where the lines of responsibility and reporting are not established by the relevant legal acts. In particular, an inter-institutional agreement shall be concluded between the National Authorising Officer and the Head of the Montenegrin Operating Structure, while two further agreements, as required by Clause 4(3)(c) of Annex A to the Framework Agreements, may be concluded between 1) the bodies constituting the Montenegrin Operating Structure and 2) those constituting the Kosovo Operating Structure, if relevant. Such agreements shall neither cancel nor replace any provisions contained in this Arrangement; in case of inconsistencies, the Arrangement shall prevail.
- (4) Brief descriptions of the roles and responsibilities for each post and body indicated in the first paragraph of this Article and in Article 7 are presented in this Section; details on individual tasks per post and body are included under the relevant Articles in later Sections of this Arrangement. Provisions outlined shall be supplemented as appropriate by programme and/or state level procedures.
- (5) The set up and operation of all bodies indicated in this Section, as well as relations between them shall be subject to system level management verifications, as per Article 12. Detailed arrangements will be described in programme level procedures.

### **Article 5 National IPA Coordinators**

- (1) With regard to the Programme, the Montenegrin National IPA Coordinator shall be appointed and perform duties in line with Articles 10, 11 and 75 of the Montenegrin Framework Agreement, as well as Clause 1 of its Annex A. The same shall apply to the Kosovo National IPA Coordinator, as stipulated to the Kosovo Framework Agreement.

### **Article 6 National Authorising Officer and Management Structure**

- (1) The National Authorising Officer shall be appointed and perform duties in relation to the Programme in line with Articles 10 and 11 of the Montenegrin Framework Agreement, together with Clause 2 of its Annex A. The National Authorising Officer shall, in particular, bear responsibility for 1) the financial management of the Programme, and 2) establishing and maintaining a sound management and control system for the Programme, as per Articles 13 and 14 of the Montenegrin Framework Agreement, and in compliance with its Annex B.

- (2) In line with Article 10(2) of the Montenegrin Framework Agreement, the Management Structure for the Programme shall comprise a National Fund and a Support Office for the National Authorising Officer; both shall be located in the Montenegrin Ministry of Finance and accountable to the National Authorising Officer. They shall be designated and perform their respective duties with regard to the Programme, in line with Articles 10 and 11 of the Montenegrin Framework Agreement, as well as Clause 3 of its Annex A. Tasks related to the financial management of the Programme shall be secured by the National Fund, while performance of those related to the Programme management and control system shall rest with the Support Office for the National Authorising Officer.

#### **Article 7 Operating Structures and Control Body**

- (1) The Montenegrin Operating Structure where the Contracting Authority is located shall comprise of the Cross-Border Cooperation Body (hereinafter "Montenegrin CBC Body") and Contracting Authority. The first shall be located at Ministry of European Affairs of Montenegro, and the last in the Ministry of Finance of Montenegro, Directorate for Finance and Contracting of the EU Assistance Funds (CFCU). The role of the Head of Operating Structure shall be performed by the Directorate in the Ministry of European Affairs.
- (2) The Kosovo Operating Structure for the Programme shall comprise of the Head of the Operating Structure, the Cross-Border Cooperation Body (hereinafter "Kosovo CBC Body"), while the Control Body will be part of the implementing structure. The role of the Head of the Operating Structure shall be performed by General Secretary of the Ministry of Local Government Administration. Furthermore, the Kosovo Control Body will be an integral part of the management and control system. The duties of the Kosovo Control Body will be discharged by the Ministry of Local Government Administration.
- (3) Personnel and institutions comprising both Operating Structures and Kosovo Control body shall be designated and jointly secure duties with regard to the Programme in line with Articles 10, 11, 76 and Clause 4 of Annex A of the Framework Agreements.
- (4) The Montenegrin and Kosovo CBC Bodies shall jointly ensure all tasks related to programming, including any amendments to the Programme Document; management of technical assistance under the Programme; 1 implementation at programme level (as opposed to contract level), including support to Head of Operating Structure of Montenegro in establishment and management of the Joint Technical Secretariat; monitoring, evaluation and reporting at programme level, including establishment and organisation of the Joint Monitoring Committee; availability of information on the Programme, as well as its publicity and visibility. They shall also secure regular and smooth communication between the Montenegrin and Kosovo Operating Structures.
- (5) The Contracting Authority shall be responsible for the selection of operations, signature of contracts with lead beneficiaries,<sup>2</sup> management verifications and making payments to the same; tasks shall be performed irrespective of whether potential or actual lead beneficiaries are located in Montenegro or in Kosovo. For the purposes of this Arrangement "operation" means a project, contract, action or group of projects selected by the Contracting Authority of the programme concerned, as defined in the Article 64 of the Framework Agreement. The Contracting Authority shall also secure, inter alia, the audit trail and the accounting function at contract and payment level.
- (6) In the context of management verifications of operations, the Kosovo Control Body placed in the Ministry of Local Government Administration of Kosovo shall control expenditures incurred by beneficiaries<sup>3</sup> registered in Kosovo particularly with regard to legitimacy and accuracy and in accordance with the applicable rules and procedure. Control body shall issue confirmation to the Contracting Authority on the eligibility of the expenditures. For these tasks, the Control Body will be responsible to the Contracting Authority in line with procedures developed in the programme level documents. The Control Body shall also ensure the appropriate audit trail.

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<sup>1</sup> Modalities applicable to such technical assistance are not specified in this Agreement, since the Programme's technical assistance priority shall be implemented under centralised management.

<sup>2</sup> In the meaning of Article 71(2) of the Framework Agreements

<sup>3</sup> In the meaning of Article 64(b) of the Framework Agreements

### **Article 8 Audit Authority and Group of Auditors**

- (1) The duties of the Audit Authority in relation to the Programme shall be performed in line with Articles 10, 11 and 77 of the Montenegrin Framework Agreement, together with Clause 5 of its Annex A. It shall be functionally and financially independent of all other bodies indicated in this Section II except for the Group of Auditors.
- (2) Since the Audit Authority's remit shall not apply within Kosovo, it shall be assisted by a Group of Auditors as per Article 77(3) of the Framework Agreements. The Group of Auditors shall comprise one suitably qualified representative each from Montenegro and Kosovo, to be nominated by the Audit Authority in Montenegro and Audit Authority (Central harmonization unit for internal audit within Ministry of Finance) of Kosovo respectively. It shall be chaired by the Audit Authority of Montenegro. Each country will cover the costs of the audit process on its territory.
- (3) Rules of Procedure for the Group of Auditors shall be drafted by the Audit Authority and agreed between it and Audit Authority (Central harmonization unit for internal audit within Ministry of Finance) of Kosovo. Inter alia, they shall set out the Group of Auditors' duties, the division of responsibilities between the Montenegrin and Kosovo representatives and the procedures to be followed by each, including access to information held by the other representative, the frequency of meetings, the procedure for arriving at decisions, and the minimum qualifications to be met by its members.
- (4) The group of Auditors shall be chaired by the Montenegrin Audit Authority. All documentation from Clause 5(3) of Annex A of the Montenegrin Framework Agreement is submitted by Audit Authority to Montenegrin National IPA Coordinator and/or the National Authorising Officer and copied to the Kosovo National IPA Coordinator.

### **Article 9 Joint Monitoring Committee**

- (1) In line with Article 78 of the Framework Agreements, a Joint Monitoring Committee shall be established for the Programme no later than six months from the entry into force of the first Financing Agreement. It shall be chaired by the Head of the Kosovo Operating Structure and shall meet at least twice a year. Each country shall have one vote, with decisions being taken on the basis of unanimity. In the case of need, each country may develop procedures, internal to itself, governing how its representatives decide among themselves on issues considered by the Joint Monitoring Committee. Institutions appointing representatives and substitutes shall be defined by Montenegrin CBC Body and Kosovo CBC Body for each country respectively, in line with the provisions of Article 78(3) of the Framework Agreements. The representatives and substitutes shall be required to sign Declarations of Impartiality and Confidentiality.
- (2) The duties of the Joint Monitoring Committee shall include those indicated in Article 78(8) of the Framework Agreements. In its role as a Sectoral Monitoring Committee, as per Article 74(2) and of Article 78 (9) of the Framework Agreements, the Joint Monitoring Committee shall report to the Montenegrin IPA Monitoring Committee with copy of the reports being sent to Kosovo National IPA Coordinator being the basis for discussions in the context of the Kosovo IPA Monitoring Committee.
- (3) Rules of Procedure for the Joint Monitoring Committee shall be drafted by the Montenegrin CBC Body and subsequently agreed with the Kosovo CBC Body, as well as with the , the bodies comprising the Management Structure, other institutions of both Operating Structures, and the Commission. Respecting the provisions of the Framework Agreements, the Programme Document and this Arrangement, they shall lay down, inter alia, the assignment of duties to programme or state level bodies, including those associated with the operation and organisation of the Joint Monitoring Committee, timelines for each task, the location and timing of Joint Monitoring Committee meetings, and procedures to be followed when the Joint Monitoring Committee takes decisions via written procedure; in the case that precise arrangements cannot be defined at the time of drafting, the Rules of Procedure shall indicate the mechanisms to be used for assigning duties, deciding timelines, etc. A template Declaration of Impartiality and Confidentiality, to be completed by all Joint Monitoring Committee members, shall be attached in annex; it shall specifically include a provision on Committee members recusing themselves from deliberations on operations where they have a conflict of interest, as per Article 17. The Rules of Procedures shall contain the Joint Monitoring Committee's responsibilities as foreseen by Article 78 of the Framework Agreement and therefore be responsible for:
  - a) identifying the thematic priorities, specific objectives, target beneficiaries and specific focus of each call for proposals;

- b) examine and provides an advisory opinion on the list of operations selected through calls for proposals before the grant award decision. The contracting authority shall adopt the final decision on the award of grants;
- c) review the progress made in relation to achieving the specific objectives, expected results and targets per thematic priority as set out in the cross-border cooperation programme, on the basis of the information provided by the operating structures of the participating countries. Progress shall be monitored against the indicators set up in the cross-border cooperation programme;
- d) examine relevant findings and conclusions as well as proposals for remedial follow-up actions stemming from the on-the-spot checks, monitoring and evaluations if available;
- e) approve any proposal to revise the cross-border cooperation programme. Whenever needed, it can make proposals to amend the cross-border cooperation programme as referred to in Article 68 of FWA, to ensure the achievement of the objectives of the cross-border cooperation programme and enhance the efficiency effectiveness, impact and sustainability of the IPA II assistance. The JMC can also make recommendations as to how to improve the implementation of the cross-border cooperation programme;
- f) examine and approves the communication and visibility plan for the cross-border cooperation programme;
- g) examine and approves the evaluation plan referred to in Article 57(2) of FWA;
- h) examine and approves the annual and final reports on implementation referred to in Article 80 of FWA

The JMC shall report to the IPA Monitoring Committee of the country where the Contracting Authority is located. The Rules of Procedure shall be adopted by the Joint Monitoring Committee at its first meeting.

#### **Article 10      Joint Technical Secretariat**

- (1) In line with Article 79 of the Framework Agreements, a Joint Technical Secretariat shall be established for the Programme, with the main office located in Podgorica Montenegro, with an Antenna Office in Pristina, Kosovo. Its role shall be to support the Joint Monitoring Committee and both Operating Structures, particularly with regard to ensuring a truly cross-border approach vis-a-vis potential applicants, beneficiaries and operations selected for funding under the Programme. Main duties of the Joint Technical Secretariat are outlined in Article 79(6) of the Framework Agreements, and shall include, inter alia, supporting potential applicants and beneficiaries, monitoring operations selected, gathering reliable data at operation level and aggregating it at programme level, providing input to the Operating Structures as appropriate and necessary (for example, in relation to the Annual and Final Implementation Reports due for the Programme), and designing and implementing information, publicity and visibility activities related to the Programme. In addition, through support and monitoring of operations Joint Technical Secretariat shall provide relevant information to Contracting Authority indicating necessity for potential corrective measures with regards to the operation itself in line with its duties. A detailed list of duties, together with the procedures to be followed when performing those duties, shall be laid down in a manual of procedures to be used by the Joint Technical Secretariat (hereinafter, the Joint Technical Secretariat Manual); this shall be developed by the Montenegrin Operating Structure and agreed with the Kosovo CBC Body and Kosovo Control Body in consultation with the other institutions comprising the Operating Structures.
- (2) Costs for the Joint Technical Secretariat shall be covered under the Programme's technical assistance priority, to be implemented under direct management; as appropriate, service contracts shall be concluded between the Montenegrin Ministry of European Affairs and the European Union Delegation to Montenegro. As such, the Joint Technical Secretariat as a whole shall be managed and monitored by the Montenegrin Operating Structure. An Partnership agreement shall be concluded between the Montenegrin Ministry of European Affairs and the Kosovo Ministry of Local Government Administration (MLGA) specifying which management and monitoring tasks, including ensuring adequate staffing of the Joint Technical Secretariat, are to be secured by the Montenegrin CBC Body and which by the Kosovo CBC Body. This agreement shall also lay down the budgets associated with management tasks, the modalities for transfer of funds from the Montenegrin Ministry of European Affairs to the Kosovo Ministry of Local Government Administration (MLGA) and vice versa.
- (3) On the basis of input received from the Joint Technical Secretariat and the Kosovo CBC Body, and in line with Article 76(3)(l) of the Montenegrin Framework Agreement, the Montenegrin CBC Body shall draft a work plan for the year N+1 for the Joint Technical Secretariat. The work plan shall be agreed with the Kosovo CBC Body in consultation with the other institutions comprising the Operating Structures, and then submitted to the Joint Monitoring Committee for examination and approval.

### **SECTION III      SECURING THE MANAGEMENT AND CONTROL SYSTEM**

#### **Article 11      Requesting entrustment of budget implementation tasks**

- (1) The Commission shall entrust budget implementation on tasks to Montenegro for each annual Commission Implementing Decision committing funds to the Programme (hereinafter "entrustment"), such entrustment being confirmed with the signature of the related Financing Agreement, and allowing for it to be implemented under indirect management.
- (2) The National Authorising Officer of Montenegro where the CA is located shall be responsible for requesting entrustment from the Commission, and shall ensure, before such requests are submitted, that all requirements as set out in Article 13(2) of the Montenegrin Framework Agreement are met by the Programme's Management and Operating Structure in Montenegro.
- (3) The National Authorising Officer shall gain assurance that the requirements indicated in the previous paragraph are met via verifications comprising, inter alia, the examination of questionnaires and/or self-assessments completed by all posts and bodies in the Montenegrin Management Structure and Operating Structure and analysis of relevant documentation, including any relevant secondary legislation, inter-institutional agreements and programme and state level procedures; and consultations with the bodies comprising the Montenegrin Management Structure and Operating Structure and interviews conducted with relevant staff to establish that duties as laid down in documentation are performed effectively and efficiently. Confirmation of fulfilment of the necessary requirements may have to be accompanied by an audit opinion supplied by an external auditor independent of the Montenegrin Management Structure and Operating Structure, while the National Authorising Officer shall also draw on the findings of relevant internal audit reports (see Article 29). From the second request for entrustment onwards, assurance shall, insofar as possible, be based on the results of analogous procedures for the monitoring of entrustment already granted, as per Article 12.

#### **Article 12      Monitoring of system of management and control**

- (1) The National Authorising Officer shall monitor all entrustments previously granted by the Commission in relation to the Programme. To this end, the National Authorising Officer shall gain assurance, for each entrustment granted, that all requirements as set out in Article 14 (1) of the Montenegrin Framework Agreement continue to be met by the Programme's Management and Operating Structures in Montenegro.
- (2) The modalities, responsibilities and procedures including the system level management verifications and internal audit for gaining assurance on the system will be based on issuance of annual management guarantee by bodies within Kosovo Operating Structure and Control Body. Annual management guarantee template to apply accompanied with detailed instructions and arrangements will be contained in programme level procedures and will be binding on the bodies comprising the Kosovo Operating Structures and Control Body. The Head of Kosovo Operating Structure and the Head of Kosovo Control Body shall submit annual management guarantee to the Head of Montenegrin Operating Structure through the Head of Kosovo Operating Structure. The Kosovo Control Body will be responsible to the Contracting Authority and Head of the Montenegrin Operating Structure in line with their responsibilities. Relevant arrangements defined in programme procedures shall foresee that system level management verifications cover all extant Financing Agreements at the same time, rather than being performed separately for each one.
- (3) The fact that all requirements remain in place for an entrustment shall be confirmed in the Management Declarations issued by the National Authorising Officer to the Commission as per Article 59(2)(b) of the Montenegrin Framework Agreement. In the case that system level management verifications reveal that requirements are not being met, or if there has been a substantial change to the management and control system, the National Authorising Officer shall inform the Commissions soon as reasonably possible, copying the Montenegrin and Kosovo National IPA Coordinators as well as the Audit Authority in the process. S/he shall also ensure that appropriate follow-up actions are taken to safeguard Programme funds and renew fulfilment of the requirements necessary for entrustment.

### **Article 13 Resources - staff, premises, equipment and other facilities**

- (1) Each body comprising the Management Structure and both Operating Structures and Kosovo Control Body shall conduct a review of the resources anticipated as necessary for the duties to be ensured in the upcoming year/s with regard to the Programme. Such needs shall include staff, premises, equipment, and any other facilities deemed necessary.
- (2) The review indicated in the previous paragraph shall incorporate a work load analysis, and shall take account of possible conflicts of interest and sensitive posts, as well as any restrictions placed on or anticipated for the state budget. Where there are relevant established procedures in place covering the whole portfolio of a body or the organisation of which it is a part, they should, in principle, be followed. Where such procedures do not exist or where they are deemed inadequate, specific modalities shall be laid down.
- (3) Upon conclusion of reviews, management of each body comprising the Management Structure and both Operating Structures and Kosovo Control Body shall proceed to take and implement related decisions, including amending systematisations, recruiting new staff, organising larger premises, purchasing equipment, etc. In the case that key posts become vacant, management shall ensure that the duties associated with such posts continue to be performed, for example, by arranging for temporary cover.
- (4) The reviews indicated above, including work load analyses, shall be subject to system level management verifications as per Articles 11 and 12.

### **Article 14 Risk management**

- (1) Each body comprising the Management Structure and both Operating Structures and Kosovo Control Body shall manage risk attendant on implementation of the Programme in line with the point 2 of Annex B to the Framework Agreements, and shall ensure, in particular, that objectives set are sufficiently clear to allow for assignment of resources.
- (2) Where risk management procedures, having been established in line with public internal financial control principles, cover the whole portfolio of a body or the organisation of which it is a part, they should, in principle, be followed with regard to the Programme, objectives being set and risks identified, assessed and responded to as an integral part of the risk management exercise conducted for the body, or the organisation of which it is a part, as a whole. Where such procedures do not exist, or where they are deemed inadequate, specific modalities shall be laid down for managing risks attendant on implementation of the Programme. In either case, procedures shall be laid down in writing and shall be binding upon the body in question.

### **Article 15 Irregularities, including suspected fraud**

- (1) The National Authorizing Officer shall take the final decision on the cases of suspected irregularities based on the preliminary assessment performed by the relevant authority of the country of which the person/organisation suspected of committing the irregularity is a citizen/is registered.
- (2) All cases of suspected irregularities related to the Programme, including suspected fraud,<sup>4</sup> shall be reported to the relevant authority of the country of which the person/organisation suspected of committing the irregularity is a citizen/is registered. The relevant authority in Montenegro is NAO Support Office. The relevant authority in Kosovo will be the Head of Operating Structure and Head of Control Body. All relevant authorities shall appoint an Irregularity Officers.
- (3) These authorities shall ensure assessment and examination of suspected irregularities, as well as follow-up in the case of confirmation; such follow-up may constitute disciplinary action, recovery of funds, as per Article 27(7), or bringing legal proceedings; in the case that such investigation or follow-up involves activities exceeding the competence of the relevant authority, it shall refer the case to the appropriate state authority. All authorities shall transfer the decision on the assessment including all relevant documentation to National Authorising Officer and Montenegrin Head of Operating Structure for further proceedings as soon as the assessment is concluded.

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<sup>4</sup> The terms "irregularity" and "fraud" are to be understood in the meaning of Article 51(5) of the Framework Agreements.

- (4) The Kosovo Head of Operating Structure and Head of Kosovo Control Body shall maintain both a register of suspected and a register of confirmed irregularities regarding suspected or confirmed irregularities committed by person/organization registered in Kosovo, in line with Article 51(2) of the Kosovo Framework Agreement. The Kosovo Head of Operating Structure and Head of Kosovo Control Body shall report on suspected irregularity as well as follow-up steps regarding confirmed irregularity to the NAO with copy to the Head of the Montenegrin Operating Structure. The National Authorising Officer shall, in turn, draw up and transmit reports to the Commission in line with Article 51(2) of the Montenegrin Framework Agreement.
- (5) State level procedures governing modalities related to investigating and following-up suspected or confirmed irregularities and suspected fraud in-country are to be legally binding for all bodies comprising the Operating Structure in that country and Kosovo Control Body, and the Management Structure in the case of the Montenegro. Detailed arrangements regarding reporting by the Kosovo Head of Operating Structure and Head of Kosovo Control Body to the NAO with copy to the Montenegrin Head of Operating Structure shall be included in the programme level control procedures for which the Joint Monitoring Committee may be consulted.
- (6) Controls to be performed in relation to the prevention, detection and correction of irregularities and fraud, as per Article 51(1) of the Montenegrin Framework Agreement, shall comprise a part of the management verifications of operations outlined in Article 22
- (7) In Montenegro, the role of the Anti-Fraud Coordination Service, as per Article 50(2) of the Montenegrin Framework Agreement, shall be performed by Ministry of Finance, while the role of the service to assist the European Anti-Fraud Office (OLAF) in conducting investigations, as per 50(5) of the same Agreement, shall be ensured by Ministry of Finance. In Kosovo the contact point for European Anti-Fraud Office (OLAF) will be ensured by the Secretary General of the Ministry of European Integration/ NIPAC Office.

#### **SECTION IV      PROGRAMME AMENDMENT AND IMPLEMENTATION**

##### **Article 16      Article 16 Programme amendment**

- (1) In certain cases, the Programme as set out in the Programme Document may be subject to amendment, though the general rules on programming contained in Articles 66, 67 and 68 of the Framework Agreements shall be respected.<sup>5</sup> Reasons for such amendment shall include those indicated in Articles 17(2), 68(8) and 70(3) of the same Agreements.
- (2) Amendments may be initiated by either of the Montenegrin or the Kosovo Head of Operating Structure, as well as by the Commission. In the former case, responsibility for substantiating a proposed amendment, setting out its expected impact, and revising the Programme Document (as per Article 68(8) of the Framework Agreements) shall rest with the CBC Body at whose initiative the amendment is being put forward; once agreement has been secured from the other Operating Structure, relevant documentation shall be submitted to the Joint Monitoring Committee for consideration, comments and approval, after which it shall be dispatched to the Commission by the Montenegrin National IPA Coordinator. When amendments are initiated by the Commission, they shall equally be subject to consideration, comments and approval by the Joint Monitoring Committee.

##### **Article 17      Selection of operations**

- (1) All operations<sup>6</sup> financed under the Programme shall respect the requirements outlined in Article 70(1) and 70(4) of the Framework Agreements; as a rule, they shall be selected by the Contracting Authority via calls for proposals covering the whole Programme area, as per Article 70(2) of the same Agreements.
- (2) The thematic priorities, specific objectives, target beneficiaries and specific focus of each call shall be developed by the Montenegrin CBC Body, in conjunction with that of Kosovo; on reaching agreement, the Head of the Montenegrin Operating Structure shall submit a proposal to the Joint Monitoring Committee for consideration, comments and approval (as per Article 78(8)(a) of the Framework Agreements), prior to subsequent endorsement by the Commission.

<sup>5</sup> Duties of the posts and bodies indicated in Section II with regard to programming are not laid down in this Agreement, since the programming process was finalised with the Commission's adoption of the Programme on 10 December 2014.

<sup>6</sup> In the meaning of Article 64(a) of the Framework Agreements

- (3) Respecting the thematic priorities, specific objectives, target beneficiaries and specific focus agreed, calls for proposals shall be further developed, launched and managed (including evaluation, grant award and contracting) by the Contracting Authority in line 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 (PRAG), and with any further guidance provided by the Commission.
- (4) The drafting of relevant documentation to launch a call for proposal (which shall include, guidelines for applicants and application forms) shall be ensured by the Contracting Authority; both Montenegrin and Kosovo CBC Bodies shall be closely involved, and shall provide all relevant information regarding to technical aspects and any specific provisions which might need to be incorporated in the guidelines for applicants, application forms or draft contracts due to the nature of the Programme. Such specific provisions can include, but shall not necessarily be limited to:
  - a) Requiring applicants to include and set targets for programme level indicators in their proposals, information on such indicators to be aggregated at programme level by the Joint Technical Secretariat for monitoring purposes;
  - b) Requiring lead beneficiaries to submit progress reports on a regular basis to the Joint Technical Secretariat (in addition to the reports they have to submit to the Contracting Authority together with requests for payment).
  - c) Requiring expenditure verification reports for all grant contracts, irrespective of grant size, and for all interim financial reports.
  - d) Information on arrangements for subtracting from the future payments against due amounts in case unduly paid amounts are not reimbursed by the lead beneficiary via recovery procedure
- (5) Documentation for calls for proposals shall be agreed by both Montenegrin and Kosovo CBC Bodies prior to submission to the Joint Monitoring Committee for consideration and comments; final approval shall rest with the Contracting Authority.
- (6) After the publication of calls for proposals, dissemination of information on upcoming and ongoing calls for proposals shall primarily be ensured by the Contracting Authority with the support of Joint Technical Secretariat where applicable; it shall also be responsible for providing support to potential applicants and duties and relevant modalities shall be included in the Joint Technical Secretariat Manual.
- (7) In line with Article 76(4)(a) of the Framework Agreements, voting members for evaluation committees, of whom there shall be an odd number, shall be nominated by the Head of the Montenegrin CBC Body to the Contracting Authority after consultation with both the Montenegrin and Kosovo HOS ; there shall be one more voting member from Kosovo than from Montenegro. The chair and secretary for evaluation committees shall be nominated by the Contracting Authority. Prior to nomination, it shall be confirmed that all voting and non-voting members are 1) suitably qualified (including a reasonable command of English and sufficient technical know-how to give an informed opinion on applications), and 2) available for the period scheduled for an evaluation. Final approval of the composition of the evaluation committee rests with the CA. In addition, if deemed necessary, CA may engage external assessors for the purposes of evaluation of project proposals.
- (8) In line with Article 78(8)(b) of the Framework Agreements, the Contracting Authority shall submit the preliminary list of operations to be selected (i.e. before the final decision on grant award) to the Joint Monitoring Committee for an advisory opinion. Any member of the Joint Monitoring Committee who has a conflict of interest with an operation included in the list shall recuse him or herself from deliberations on that operation; this provision shall be specifically included in the Declarations of Impartiality and Confidentiality to be signed by each Joint Monitoring Committee member.
- (9) The Contracting Authority shall finalise the list of operations to be selected taking into consideration advisory opinion of the Joint Monitoring Committee and issue decisions on grant award. It shall subsequently conclude grant contracts with the lead beneficiaries of the operations selected.
- (10) As allowed for by Article 70(3) of the Framework Agreements, operations may exceptionally be selected outside calls for proposals, in which case they shall be clearly identified in the Programme itself; relevant modalities are outlined in section 5 of the Programme Document. Once such an operation has been identified by the Operating Structures and approved by the Joint Monitoring Committee the Programme would have to be amended appropriately, as per Article 16. Related contract would then be concluded between the Contracting Authority and the contract partner.

- (11) Where ex ante controls of steps in calls for proposals and grant award are to be performed by the European Union Delegation to Montenegro, in line with Article 50(1)(a) of the Montenegrin Framework Agreement and as per provisions contained in the Financing Agreement or Agreements funding a given call for proposals, the Contracting Authority shall be the sole point for dispatch of official documentation to and receipt of official comments from the Delegation. It shall keep the relevant bodies of the Management Structure and both Operating Structures informed as appropriate; in turn, they shall provide prompt support in the case that their input is required to address Delegation comments.

#### **Article 18            Technical assistance**

- (1) The technical assistance provided for in the Programme is not subject to this Arrangement since it shall be implemented under direct management. A dedicated Partnership Agreement shall be completed between the parties for the management of the Technical Assistance under IPA CBC Programme Montenegro-Kosovo.

#### **Article 19            Procurement**

- (1) Procurement of services, supplies or works under the Programme when under indirect management by any other constituent body of the Management Structure or Operating Structures, including the Contracting Authority may be possible under strategic projects.
- (2) Services, supplies and works under grant contracts concluded between the Contracting Authority and the lead beneficiaries of operations selected shall be procured in line with the provisions contained within those contracts signed between CA and lead beneficiaries.

#### **Article 20            Implementation of operations, exemption of taxes, applicable law**

- (1) Operations selected shall be implemented by beneficiaries in line with the related grant contracts; the lead beneficiary for each operation shall bear full responsibility vis-a-vis the Contracting Authority for its proper management, including financial management. In order to clarify the tasks flowing from contractual obligations, the Contracting Authority shall develop and issue step by step instructions for beneficiaries under each call for proposals, such instructions to be prepared, in principle, at the same time as documentation related to calls for proposals, and to undergo the same approval circuit as indicated in Article 17. Input for these instructions shall be supplied by the Joint Technical Secretariat and both Montenegrin and Kosovo CBC Bodies.
- (2) Expenditure incurred under grant contracts awarded for selected operations shall be exempt from all taxes, customs duties and other fiscal charges indicated in Article 28 of the Framework Agreements; this shall apply to operations' budgets in their entirety, including any co-financing secured or provided by beneficiaries. Legal provision has already been made in both Montenegro and Kosovo for exempting expenditure incurred under IPA II. Detailed step by step procedures setting out how beneficiaries are to secure exemptions, including when a beneficiary from one country needs to obtain exemptions in the other, shall be drafted by the Contracting Authority for Montenegro and by Ministry of Local Government Administration (MLGA) for Kosovo; they shall be incorporated in or attached to the instructions for beneficiaries indicated in the previous paragraph.
- (3) In line with the procedures and standard documents laid down and published by the Commission for the implementation of external actions,<sup>7</sup> grant contracts financing operations shall be governed by the law of Montenegro. The competent court in Montenegro in the first instance shall be in charge of any legal disputes between the Contracting Authority and lead beneficiaries from any from two participating countries.

#### **Article 21            Monitoring of operations**

- (1) Monitoring of operations shall be performed by the Joint Technical Secretariat, based on a result oriented monitoring (ROM) method and reporting against criteria of relevance, efficiency, effectiveness, impact and sustainability. Result-oriented monitoring of operations shall be performed by the Joint Technical Secretariat, and

<sup>7</sup> See Article 13.1 of Annex e3h2 (grant contract General Conditions) of the Practical Guide valid at 15 July 2015.

- shall include 1) analysis of progress reports to be submitted by each lead beneficiary (in addition to the reports they have to submit to the Contracting Authority together with requests for payment),<sup>8</sup> and 2) monitoring visits to lead beneficiaries, to other beneficiaries, and to locations where an operation's activities are being performed - at a minimum, operations shall be visited once per year of implementation. Precise modalities shall be laid down in the Joint Technical Secretariat Manual, which shall detail the regularity with which monitoring activities are performed; the procedures for deciding which operations should be visited in which order and how often (including risk analysis if deemed necessary); whether a single operation shall be monitored by one member of staff, to cover all beneficiaries and activities irrespective of where they are located or implemented, or by two, each one to cover all beneficiaries and activities in a single country<sup>9</sup>; how and when to report to bodies in one or both of the Operating Structures; possible follow-up activities to be proposed or undertaken in the light of monitoring findings; and any templates to be used.
- (2) In certain instances (for example, when an operation is considered important or risky), one or both CBC Bodies may decide to visit operations for monitoring purposes. As a general rule, visits to Montenegrin and Kosovo beneficiaries shall be conducted by, respectively, the Montenegrin CBC Body and the Kosovo CBC Body; in either case, staff of the CBC Body conducting the visit may be accompanied by personnel from the other. If existing procedures do not cater for such monitoring activities on the part of one or both of the CBC Bodies, staff shall follow the Joint Technical Secretariat Manual *mutatis mutandis*.

## **Article 22 Management verifications of operations and verification of expenditure**

- (1) As per Clause 4(3)(b)(x) of Annex A to the Framework Agreements, management verifications ensuring that expenditure incurred by beneficiaries under their grant contracts is legal and regular shall be ensured for the Programme by the Contracting Authority in Montenegro and Control Body in Kosovo.
- (2) In line with the procedures and standard documents laid down and published by the Commission for the implementation of external actions, expenditure verifications may be performed in relation to grant contracts directly by the Contracting Authority (supported by the Kosovo Control body) or by an external body authorised by the same; if the latter is an external auditor, it shall be approved or chosen by the Contracting Authority. In the case of the Programme, a first set of management verifications of operations shall be performed by such external auditors, with related costs being covered under operations' budgets. A second set of verifications shall be ensured by the Operating Structure of Montenegro.
- (3) Expenditure verifications shall be conducted by external auditors in relation to each final financial report prepared by lead beneficiaries, such reports to be submitted by them to the Contracting Authority (with a copy to Kosovo Control Body) together with requests for payment. These verifications shall cover expenditure incurred under the administrative, financial, technical and physical aspects of each operation over the whole Programme area, and shall be arranged and performed in line with the conditions stipulated in each grant contract, as per the procedures and standard documents laid down and published by the Commission for the implementation of external actions; *inter alia*, they shall ensure that legislation applicable to the beneficiary in question (including state legislation) has been respected, together with the provisions of the grant contract, and shall also involve on-the-spot-checks. The Contracting Authority shall, for each grant contract, either approve or select external auditors to perform such expenditure verifications.
- (4) Management verifications performed by the Montenegrin Operating Structure and Kosovo Control Body shall cover the administrative, financial, technical and physical aspects of operations, and shall relate to compliance with applicable legislation (including state legislation), the Programme, grant contracts and any other relevant conditions; the delivery of goods and services, and the eligibility of expenditure incurred and declared to the Contracting Authority. They shall involve full examination of supporting documentation related to the commitments entered into or payments made or due on the part of the Contracting Authority vis-a-vis lead beneficiaries. Such documentation shall be submitted to the Contracting Authority by lead beneficiaries together with requests for payment, including interim and final narrative reports, interim and final financial reports, progress reports and expenditure verifications reports; it shall be supplemented by statements of non-objection on interim and final

<sup>8</sup> The grant contracts concluded with lead beneficiaries shall include a specific provision concerning the obligation to submit such monitoring reports.

<sup>9</sup> If single operations are to be monitored by two members of staff, the Joint Technical Secretariat shall describe how they shall coordinate to ensure monitoring of operations as a whole, rather than as two separate sets of beneficiaries and activities

narrative reports provided by the Joint Technical Secretariat. Verifications shall also involve scheduled or ad-hoc on-the-spot checks conducted by Operating Structure and Kosovo Control Body. Responsibility for examination of documentation and conducting such on-site visits related to expenditure incurred by Montenegrin beneficiaries shall rest with the Contracting Authority and for the Kosovo beneficiaries with the Ministry of Local Government Administration (MLGA). For each management verification it performs, the Kosovo Control Body shall issue confirmation to the Contracting Authority detailing expenditure found to be eligible and outlining reasons for any expenditure found to be ineligible.

- (5) In the context of verifications of operations, the Control Body placed in the Ministry of Local Government Administration (MLGA) shall support Contracting Authority (CA) Montenegro in performing verification tasks, as specified in the Clause 4(3)(b)(x) of Annex A of Framework Agreement, for the beneficiaries<sup>[1]</sup> registered in Kosovo. The Control Body shall also ensure the appropriate audit trail. Verification process on both side of the border should be done according to the procedures established by the CA MNE, in cooperation with the Control Body. Verification process, i.e. detailed control activities in relation to cross-border cooperation programme Montenegro-Kosovo will be defined in the Guidelines for Control Activities. Modalities laid down in the MoP shall apply in their entirety and simultaneously. Contracting Authority will perform, on a regular basis, management verification checks of the Kosovo Control Body, i.e. performing tasks of verification of operations.
- (6) Modalities governing the organisation and performance of management verifications and applicable to Operating Structures shall be laid down in the programme level control procedures. Inter alia, they shall cover arrangements for approving or choosing external auditors, the flow of documents between the institutions concerned, approval circuits, timelines for the performance of control activities, reporting duties, and templates; if deemed necessary at programme level, the procedures shall also detail a mechanism for deciding on which operations are to be subject of on-the-spot checks and when, together with the frequency and scope of such visits.

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

- (1) In line with Articles 24 and 76(3)(k) of the Framework Agreements, the Montenegrin CBC Body shall develop a Communication and Visibility Plan (or equivalent document) for the whole lifetime of the Programme and covering the whole Programme area. The Kosovo CBC Body and the Joint Technical Secretariat shall provide close support. Once agreed by both CBC Bodies and the Contracting Authority, it shall be submitted by the Head of the Montenegrin Operating Structure to the Joint Monitoring Committee for consideration, comments and approval; this shall be followed by endorsement from the side of the Commission, as required by Article 24(1) of the Framework Agreements.
- (2) The Communication and Visibility Plan shall respect the principle of transparency indicated in Article 23(1) of the Framework Agreements, and shall follow any provisions laid down in Financing Agreements. It shall outline activities ensuring 1) the proper dissemination of information (e.g. to potential applicants through a Programme website and events), 2) Programme publicity (e.g. concerning Programme achievements), and 3) visibility (e.g. of European Union funding); target groups, budgets and responsibilities shall be defined for each activity. Indicators and arrangements for monitoring shall be included at the appropriate levels (for example, per activity or target group). Implementation of the Plan shall mostly be ensured by the Joint Technical Secretariat, with activities being covered under the Programme's technical assistance budget. Monitoring of and reporting on the Plan shall be performed annually in the context of monitoring and reporting at programme level, as per Articles 25 and 26. In the case that such monitoring reveals weaknesses in design or implementation, proposals for revision of the Communication and Visibility Plan shall be put forward; responsibilities for developing and approving such revisions shall follow the same circuits as for the original version of the Plan.
- (3) Responsibility for publishing information on recipients of IPA II assistance, as per Article 23(2) of the Montenegrin Framework Agreement, shall rest with the Contracting Authority.

#### **Article 24 Remedial measures in case of implementation difficulties**

- (1) Implementation difficulties at programme level may be identified via system level management verifications (for requesting and monitoring entrustments), risk management, monitoring and evaluation at programme level, internal audit, reporting, external audit, and external verifications;<sup>10</sup> in addition, findings from monitoring and control activities performed at the level of operations may indicate implementation difficulties at programme level.<sup>11</sup>

<sup>10</sup> See Articles 11, 12, 23, 24, 27, 29, 31, and 32.

<sup>11</sup> See Articles 14 on irregularities, 19 on monitoring of operations, and 20 on management verifications of operations.

In each case, relevant procedures shall foresee that suitable remedial measures are defined and agreed at an appropriate level of authority, assigned to the bodies and/or staff responsible, implemented by the deadlines set, and monitored. In certain instances, pre-defined remedial actions shall be triggered automatically when particular circumstances arise (for example, arranging for bridging financing when Programme funds are not received from the Commission in time to honour outstanding liabilities).<sup>12</sup>

- (2) At the level of operations, implementation difficulties may be identified by the beneficiaries concerned, by the Joint Technical Secretariat in the context of monitoring, as per Article 21, and by the Contracting Authority or Control Body when performing management verifications, as per Article 22; in the latter two cases, lead beneficiaries shall be notified of implementation difficulties by the Contracting Authority. In all instances, the responsibility for ensuring that remedial measures are defined, assigned and implemented shall rest with lead beneficiaries.

## **SECTION V PROGRAMME MONITORING AND EVALUATION**

### **Article 25 Monitoring at programme level**

- (1) Progress at programme level shall be formally monitored twice a year by the Joint Monitoring Committee. The Committee shall consider documentation prepared and/or submitted by the Montenegrin Head of Operating Structures, and shall adopt decisions on any remedial actions to be taken (including by whom such actions are to be taken, and by when) in light of weaknesses in Programme design and/or implementation identified during the monitoring process. The programme level documentation to be considered by the Joint Monitoring Committee shall include Annual Implementation Reports, the Final Implementation Report and evaluation reports. Implementation of decisions taken by the Joint Monitoring Committee shall be monitored by the Montenegrin and Kosovo HOSs and CBC Bodies in their respective countries.
- (2) Annual Implementation Reports and the Final Implementation Report for the Programme shall be drafted in line with the provisions contained in the Framework Agreements (see its Article 80) and Financing Agreements, and shall include, inter alia, information on progress towards meeting Programme objectives and indicators, implementation of previous Joint Monitoring Committee decisions, performance in relation to the Communication and Visibility Plan, contracting and disbursement rates, significant challenges experienced (including a synthesis of any implementation difficulties identified via the processes listed in Article 241)), and remedial actions proposed to address such challenges or otherwise improve programme design and implementation (possibly to include amending the Programme).
- (3) Responsibility for the preparation of Annual Implementation Reports and the Final Implementation Report shall rest with the Montenegrin CBC Body, though with strong support from the Kosovo CBC Body, the Joint Technical Secretariat (to supply technical information, for instance, on progress towards Programme objectives and targets), and the Contracting Authority (to provide financial information). After reports have been agreed by both HOSs and the Contracting Authority, they shall be submitted by the Head of the Montenegrin Operating Structure to the Joint Monitoring Committee for examination; they shall subsequently be dispatched by the Head of the Montenegro Operating Structure to Montenegrin National IPA Coordinator and National Authorising Officer; the former shall in turn send the reports on to the Kosovo National IPA Coordinator, the Audit Authority, and the Commission.
- (4) For meetings of the Joint Monitoring Committee which are not scheduled to consider Annual Implementation Reports or the Final Implementation Report (since they are to be drafted on a yearly basis, while the Joint Monitoring Committee is to meet twice annually), appropriately abbreviated reports shall be drawn up, to contain similar but less detailed information than the Annual Implementation Reports and the Final Implementation Report. Responsibilities for their preparation shall be the same as those outlined in the previous paragraph.
- (5) Any contributions (over and above the reports indicated in this Article) requested for the Montenegrin IPA Monitoring Committee or any IPA level reports shall be provided by the Montenegrin CBC Body.
- (6) The Programme shall be monitored continuously by the Joint Technical Secretariat through their everyday work. To this end, data supplied on the progress of individual operations by lead beneficiaries in their monitoring, interim and final reports shall be aggregated; information to be supplied by lead beneficiaries shall be determined with reference to Programme objectives and targets and the key issues to be followed in such monitoring; relevant

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<sup>12</sup> See Article 25(3).

obligations shall be included in grant contracts .Specific tasks to be performed by the Joint Technical Secretariat shall be detailed in the Joint Technical Secretariat Manual.

#### **Article 26 Evaluation at programme level**

- (1) Subject to confirmation by the Commission on the precise obligations with regard to evaluation, a single interim evaluation of the Programme shall be commissioned, to be performed once there are sufficient results from the first call for proposals to allow for meaningful lessons to be drawn, but in time for such lessons to feed into the design and implementation of later calls for proposals. In line with Article 57(2) of the Framework Agreements, an evaluation plan shall be drafted by the Montenegrin Operating structure and agreed with the Kosovo Operating Structure and the Contracting Authority; once agreed, it shall be submitted by the Head of the Montenegrin Operating Structure to the Joint Monitoring Committee for consideration, comments and approval.
- (2) The interim evaluation shall be conducted by a natural or legal person who is independent of all bodies indicated in Section II and is free from any other conflict of interest (such as prior involvement in programming or implementation of the Programme); the general principles governing the evaluation of IPA II assistance, as per Article 55 of the Framework Agreements, shall be respected, with special attention being paid to Article 55(9) of the same Agreements. Terms of reference, together with an estimated budget, shall be drafted; responsibilities and approval circuits shall be the same as for the evaluation plan indicated in the previous paragraph. In principle, costs related to the evaluation shall be covered under the technical assistance budget for the Programme.
- (3) The work of the evaluator hired shall be managed by the Montenegrin CBC Body, though a working group (or equivalent) may be established to involve the Kosovo CBC Body, the Contracting Authority and the Joint Technical Secretariat in the process. The draft report shall be circulated by the Montenegrin CBC Body to the institutions concerned for comments; once these have been incorporated issued and debriefed to all bodies comprising both Operating Structures and the Joint Technical Secretariat., The final version of the report shall be examined by the Joint Monitoring Committee, which shall decide on any follow-up actions which would require its authorisation (for instance, possible amendment to the Programme) and shared with EC for comments. Relevant evaluation reports produced by the Commission, in line with Article 56 of the Framework Agreements, shall also be presented to the Joint Monitoring Committee.

### **SECTION VI FINANCIAL MANAGEMENT AND CONTROL**

#### **Article 27 General provisions for financial management**

- (1) All duties related to financial management shall be performed in line with Articles 31 to 46 of the Montenegrin Framework Agreement, as well as the provisions of the Financing Agreements concluded for the Programme. Related tasks, apart from those laid down in Article 28of this Arrangement, shall be ensured in their entirety by the National Fund and the Contracting Authority; as a result, no Programme funds shall be transferred from any of the Montenegrin bodies indicated in Section II to the Kosovo institutions mentioned in the same Section, or, with the exception of Article 28vice versa. Responsibilities of the National Fund and/or the Contracting Authority shall include, inter alia, ensuring an audit trail and providing for accounting systems that meet the requirements of the Montenegrin Framework Agreement. In line with Articles 18(4) and 33 of the Montenegrin Framework Agreement, as well as the relevant provisions of the Financing Agreements, the National Fund shall draw up and dispatch forecasts of likely payment requests and payment requests themselves, including a statement of expenditure for interim payments.
- (2) Any co-financing of the Programme additional to funds from European Union sources shall be provided at the level of individual operations selected, being ensured or supplied by beneficiaries. No such co-financing, therefore, shall be reserved in or delivered from the Montenegrin or Kosovo state budgets by any of the bodies indicated in Section II.
- (3) In line with Article 33(8) of the Montenegrin Framework Agreement, in the case of delays in requesting funds or receiving payment from the Commission, the National Authorising Officer shall ensure, from the Montenegrin state budget in order to honour any outstanding or upcoming liabilities.

- (4) Payments in euro shall be made by the Contracting Authority to lead beneficiaries of selected operations on the basis of fulfilment of the relevant conditions in their grant contracts. The accounts opened by lead beneficiaries for the purposes implementation of a given contract shall also be in euro.
- (5) In the case that funds related to the Programme are to be recovered to the Commission on the basis of Articles 41 or 43 of the Montenegrin Framework Agreement, the necessary and appropriate steps shall be ensured by the National Authorising Officer in accordance with Article 41(2) and within the tasks defined in Article 42 of Montenegrin Framework Agreement. If the amounts in question can be, but have not yet been recovered from lead beneficiaries, they shall be borne temporarily by the Montenegrin state budget until such time as they are received from lead beneficiaries in accordance with the deadline prescribed by the NAO. Where funds recovered to the Commission cannot be recovered from lead beneficiaries, the shortfall shall be borne either by the Montenegrin state budget or the Kosovo state budget or both, taking into account the division of liabilities between the state budgets of both countries and shall be determined in line Article 28 of this arrangement.
- (6) At the level of individual operations, funds shall be recovered by the Contracting Authority from lead beneficiaries, and as per the relevant modalities set out in individual grant contracts. Reasons for such recoveries shall include overpayment (for example, when final expenditure incurred under a grant is less than the advance received from the Contracting Authority); ineligible expenditure (identified, for instance, in the context of management verifications of operations); and confirmed irregularities, including fraud. In the case that the Contracting Authority experiences difficulties recovering funds from Kosovo lead beneficiaries, the bodies comprising the Kosovo Operating Structure and Kosovo Control Body shall provide it with all reasonable support and shall do its utmost to support the CA in the recovery process on its territory including through operational, legal, administrative and judicial proceedings.
- (7) A lead beneficiary shall recover funds from the other beneficiaries of an operation in line with the formal agreement or agreements concluded between or amongst themselves. Any such amounts due from other beneficiaries but already subject to recovery from the lead beneficiary by the Contracting Authority shall be borne temporarily by the lead beneficiary until such time as they are received from other beneficiaries. In the case that a lead beneficiary experiences difficulties recovering funds from another beneficiary, the bodies comprising the Operating Structures of the country of the other beneficiary and Kosovo Control Body shall provide the lead beneficiary with all reasonable support.
- (8) Detailed procedures supplementing the financial management provisions of the Montenegrin Framework Agreement, the Financing Agreements and this Arrangement shall be developed at state level, but only for Montenegro; related duties incumbent on Kosovo are established by the Arrangement alone.

**Article 28                      Division of liabilities between state budgets**

- (1) In cases where funds recovered to the Commission cannot in turn be recovered from lead beneficiaries, an appropriate division of the associated liabilities between the Montenegrin and Kosovo state budgets shall be determined and agreed. Such situations shall arise when lead beneficiaries cannot repay necessary amounts and when sums recovered to the Commission cannot be related to a particular operation, as in the case of certain financial corrections, as per Article 43 of the Montenegrin Framework Agreement.
- (2) Discussions on division of liabilities in the situations outlined in the previous paragraph shall be initiated and managed by the National Authorising Officer and shall be attended by all bodies comprising both Operating Structures and Kosovo Control Body. Where sums can be clearly associated with a particular operation, and thus with one or more of its beneficiaries, liabilities shall be divided in line with the responsibilities assigned in Article 22 (for management verifications of operations) to Operating Structure bodies and other relevant institutions. Thus, amounts linked to expenditure incurred by the Montenegrin beneficiaries and verified by the Contracting Authority shall be covered from the Montenegrin state budget; similarly, sums connected to Kosovo beneficiaries' expenditure checked by the Control Body shall be recovered from the Kosovo state budget. In cases where amounts cannot be related to a particular operation, discussions shall be concerned with determining a fair and equitable division of liabilities fully reflecting the assignation of responsibilities per country in this Arrangement. Final decisions on the division of liabilities shall in each case be agreed in writing by all posts and bodies party to discussions.
- (3) Where it is agreed that Kosovo shall cover all or a portion of the liabilities, a debit note (or equivalent document) shall be issued by the Montenegrin National Authorising Officer to the Kosovo Head of Operating Structure; the

debit note shall indicate, inter alia, the amount to be paid, the account to which it is to be sent in EUR, the currency in which it is to be received.

#### **Article 29 Provisions for control including internal control**

- (1) The internal control framework<sup>13</sup> for the Programme shall be laid down in the following legally binding documents: the Framework Agreements, the Financing Agreements, this Arrangement, state legislation or equivalent, inter-institutional agreements, and programme level or state level procedures. Cumulatively they shall ensure that the requirements of Annex B to the Framework Agreements are incorporated in the Programme's management and control system, and that tasks are clearly defined and assigned to posts and/or bodies. In cases where procedures applicable to bodies indicated in Section II have been introduced as part of the general public internal financial control agenda, such procedures, provided deemed sufficient and appropriate, should be followed instead of developing new ones specifically for IPA II or the Programme; examples might include procedures relating to planning and managing resources or managing risk.
- (2) An integral part of the internal control framework shall be the existence and operation of the internal control functions; this shall be ensured for each body comprising the Management Structure and Operating Structures, in line with Clause 4(3)(b)(xi) of Annex A to the Framework Agreements, and shall be performed according to state legislation. In the case that such bodies do not possess an internal control unit or staff, the function shall be secured externally, for instance, by concluding an agreement with the relevant Ministry of Finance that its internal control shall secure the relevant roles and responsibilities. All internal control reports relevant to the Programme shall be copied to the National Authorising Officer and the Head of the Montenegrin Operating Structure.
- (3) The proper set up and functioning of the Programme's internal control framework shall be established via system level management verifications performed in the context of requesting and monitoring entrustments, as per Articles 11 and 12. Eligibility of expenditure incurred at the level of grant contracts shall be subject to management verifications of operations, as per Article 22, while any irregularities suspected or confirmed shall be managed in line with Article 15. Detailed provisions for such management verifications and irregularity management shall be laid down in programme level and state level control procedures as appropriate; cumulatively, these shall set out the arrangements for guaranteeing the sound financial management of the funds allocated to the Programme, in line with Article 69(f) of the Framework Agreements.

### **SECTION VII COMMUNICATION, REPORTING AND INFORMATION MANAGEMENT**

#### **Article 30 Communication, including meetings**

- (1) Communication within and between the bodies comprising the Management Structure and Operating Structures, and Kosovo Control Body as well as Joint Technical Secretariat,<sup>14</sup> shall be conducted primarily by e-mail in order to ensure swift response, whilst preserving a record of such communication. Where documents need official signature, they shall be scanned and sent by e-mail; receipt of such e-mails shall be accepted as official receipt of the documents they contain. The same principles shall govern communication between Operating Structure bodies and the Joint Technical Secretariat, and beneficiaries.
- (2) In addition to any meetings held between the bodies indicated in the previous paragraph on specific issues, general management meetings for the Programme shall be convened by the Head of the Montenegrin CBC Body in close cooperation with Kosovo CBC Body. In principle, they shall be held whenever deemed necessary by any of the parties involved and attended by each of the bodies comprising the Management Structure and both Operating Structures and Kosovo Control Body, as well as by the Joint Technical Secretariat. Such meetings shall be held in Montenegro and in Kosovo on rotation basis and have agendas and be minuted, with follow-up actions being clearly defined, together with responsibilities and deadlines; implementation of actions agreed shall be monitored in the context of the following management meeting.

<sup>13</sup> The term "control" in this Agreement is to be understood as corresponding to internal control – i.e. checks performed by posts or bodies comprising the Management Structure or Operating Structures; this excludes, for example, audits performed by the Audit Authority

<sup>14</sup> The term "communication" in this Article refers to information exchange between or among bodies comprising the Management Structure and the Operating Structures, the Joint Technical Secretariat and beneficiaries. It therefore excludes communication with target groups for the purposes of information, publicity and visibility as per Article 21

### **Article 31      Reporting**

- (1) In line with Article 59(1) and (2) of the Montenegrin Framework Agreement, the Montenegrin National IPA Coordinator and the National Authorising Officer shall report officially to the Commission on the implementation of the Programme during the previous financial year. For the Montenegrin National IPA Coordinator, such reporting shall comprise forwarding the Annual Implementation Reports, as per Article 25,<sup>15</sup> while the National Authorising Officer shall submit financial reports or statements, Management Declarations, and summaries of internal audit reports and controls performed which underpin such Management Declarations.<sup>16</sup>
- (2) Modalities similar to those described in the previous paragraph shall apply to the reporting duties of the Audit Authority; as per Article 59(3) of the Montenegrin Framework Agreement, it shall provide the Commission with an annual audit opinion and an annual audit activity report covering the previous financial year by 15 March of the following year. It shall in addition, supply an opinion on the final statement of expenditure issued for the Programme by the National Authorising Officer, as per Clause 5(3)(b)(iii) of Annex A to the Montenegrin Framework Agreement.
- (3) All reports shall be drafted in line with the provisions contained in Financing Agreements, including any templates. By default, they shall be copied to both National IPA Coordinators, the National Authorising Officer, the Audit Authority, and the heads of all the bodies comprising the Management Structure and both Operating Structures.
- (4) Formal reporting of the Joint Monitoring Committee to the Montenegrin IPA Committee shall solely comprise the Annual Implementation Reports and the Final Implementation Report, while reporting at lower levels shall be performed, as appropriate, in line with inter-institutional agreements, the Joint Technical Secretariat Manual, or grant contracts. No specific modalities additional to the provisions outlined in this Arrangement are foreseen for reporting by the Kosovo Operating Structure and Kosovo Control Body to the Montenegrin Operating Structure or the Management Structure except of what will be specified in the Partnership Agreement for the management of the Technical Assistance.

### **Article 32      Management of information – filing, archiving, retention of documentation**

- (1) In line with Article 25, 26 and 49 of the Framework Agreements on data protection, confidentiality and the retention of documents respectively, each body comprising the Management Structure and the Operating Structures and Kosovo Control Body shall ensure:
  - a) That an adequate physical filing and archiving system exists to hold and retain information related to the Programme, to guarantee security of information and appropriate access rights to confidential information;
  - b) That documentation, whether electronic or in hard copy, is retained in accordance with Article 49 of the Framework Agreements, relevant provisions of Financing Agreements, and any requirements stemming from the procedures and standard documents laid down and published by the Commission for the implementation of external actions;<sup>17</sup> Compliance with any freedom of information legislation at state level.

All bodies involved in implementation process including beneficiaries must ensure proper audit trail.

<sup>15</sup> The National IPA Coordinator shall also be responsible for submitting the Final Implementation Report for the Programme to the Commission after approval by the JMC, as per Article 23.

<sup>16</sup> Such controls shall comprise the system level management verifications outlined in Article 12.

<sup>17</sup> See 2.3.5 of the Practical Guide valid at 30 April 2015.

## SECTION VIII AUDIT AND EXTERNAL VERIFICATIONS

### Article 33 Audit

- (1) In line with Article 77 of the Montenegrin Framework Agreement, external audit of the Programme<sup>18</sup> shall be ensured by the Audit Authority, to be supported by a Group of Auditors as per Article 8. Audits shall be conducted in line with a rolling three year strategy, and shall examine the Programme from both the financial and system perspective. Audit opinions and audit activity reports shall be submitted to the Commission annually and copied to relevant bodies, as per Article 31. Tasks shall be performed in line with the provisions contained in the Montenegrin Framework Agreement, particularly its Annex A Financing Agreements, any further guidance issued by the Commission, the Rules of Procedure agreed for the Group of Auditors and modalities governing the work of the Audit Authority.
- (2) Financial or system level audits may also be performed on the Programme by the Commission or the European Court of Auditors; they may also be commissioned by the National Authorising Officer.

### Article 34 External verifications

- (1) Verifications additional to those outlined in Articles 11, 12 and 20 may be performed by bodies external to the Management Structure and Operational Structures and Kosovo Control Body, including the Commission and the European Anti-Fraud Office (OLAF), in line with Article 50(1) of the Framework Agreements. Again, these may be financial and related to particular operations, as with ex ante controls performed by the European Union Delegation in the Montenegro on steps in calls for proposals and grant award or investigation of irregularities by OLAF (see Articles 15 and 17); or they may relate to the programme level and look at the robustness of the management and control system.

### Article 35 Cooperation and access to information, sites, premises and staff

- (1) During the performance of the audits and external verifications, posts and bodies indicated in Section II shall, in line with Article 50 (3) of the Framework Agreement and any relevant provisions of Financing Agreements, ensure full cooperation with all duly authorized agents or representatives, including technical assistance, of the Audit Authority, the Group of Auditors, the Commission, the European Court of Auditors, the National Authorising Officer and the European Anti-Fraud Office (OLAF). Such agents or representatives shall have full access to information, documentation, sites, premises and staff.

### Article 36 Commenting on and following up audits and external verifications

- (1) All posts and bodies indicated in Section II shall ensure:
  - a) That draft audit and verification reports received are circulated to all persons and institutions that they concern (unless such reports are deemed confidential as in the case of investigations of fraud) in order to allow for comments;
  - b) That they provide comments on all draft audit and verification reports received or circulated to them;
  - c) That follow-up actions in response to findings and recommendations in final audit and verification reports which fall under their responsibility are clearly defined, together with responsibilities and deadlines, and that the implementation of such follow-up actions is monitored. This shall apply in particular to audits produced by the Audit Authority and any audits or verifications concerning the Programme management and control system produced by the Commission.

## SECTION IX FINAL PROVISIONS

### Article 37 Consultation, settlement of differences, applicable law

- (1) Any question relating to the execution or interpretation of this Arrangement shall be subject to consultation between the Parties leading, where necessary, to an amendment of this Arrangement.
- (2) Differences arising out of the interpretation or execution of this Arrangement shall be settled amicably through consultation as provided for in the previous paragraph. The Parties shall communicate their positions and any

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<sup>18</sup> The term "audit" in this Section corresponds to external audit of the Programme; neither the internal audit function, as per Article 27, nor expenditure verifications of operations performed by auditors, as per Article 20, are therefore covered here.

solution that they consider possible in writing. A Party shall reply to a request sent by the other Party for an amicable settlement within 30 days. Upon expiry of this period, or if an attempt to reach an amicable settlement has not led to an agreement within 60 days since the first request, either of the Parties may notify the other one that it considers the procedure of amicable settlement have failed.

- (3) This Arrangement shall be governed by the laws of Montenegro. Where no amicable settlement can be reached, the Parties shall submit themselves to the exclusive competence and Jurisdiction of the courts in Montenegro in the first instance.

#### **Article 38            Notices**

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

For Montenegro :

Ambassador Aleksandar Andrija PEJOVIĆ  
Minister of European Affairs, NIPAC  
Ministry of European Affairs of Montenegro  
Stanka Dragojevića 2, Montenegro, Podgorica  
Fax: +382 20 416 344  
E-mail: [aleksandar.pejovic@mfa.gov.me](mailto:aleksandar.pejovic@mfa.gov.me)

For Kosovo :

Mr. Demush Shasha  
Secretary General, NIPAC  
Ministry of European Integration  
New Government building, floor 9, office No.905  
Str. Mother Teresa No. 14,  
10000 Pristina, Kosovo  
Tel: +381 38 200 27 080  
E-mail: [demush.shasha@rks-gov.net](mailto:demush.shasha@rks-gov.net)

#### **Article 39            Entry into force and duration**

- (1) This Arrangement shall enter into force on the first day of the receipt of the last notification via diplomatic channels that the contracting parties have completed the internal legale procedures Unless terminated this Arrangement shall remain in force until the closure of the programme

#### **Article 40            Amendment and termination**

- (1) Any amendments agreed by the Parties shall be in writing and will form part of this Arrangement. Minor changes shall be formalised via notification letter (or equivalent document) from one Party to the other, and shall take effect on receipt of the notification letter by the second Party. Major changes shall be subject to revision of this Arrangement as per the procedures followed for its initial adoption, and shall come into effect in accordance with the procedure set out in Article 39 . Decision on what constitutes a minor and major change shall rest with the National Authorising Officer.
- (2) This Arrangement may be terminated by either Party by written notification, termination taking effect three months after the date of written notification. In such a case, the Parties agree to continue to perform their duties, as described in this Arrangement, related to all extant legally binding commitments between the Contracting Authority and lead beneficiaries until such time that all such commitments have been honoured in full. Ongoing calls for proposals and grant award procedures under the Programme shall either be suspended by the Contracting Authority pending a new Arrangement, or terminated by the same.
- (3) Unless terminated by the Parties as provided for in the previous paragraph, this Bilateral Arrangement shall terminate at the date of closure of the Cross-Border Programme Montenegro-Kosovo 2014-2020.
- (4) The Head of the Operating Structure of Montenegro shall inform the Head of the Operating Structure of Kosovo about the Programme's closure within two months from the notice received by the European Commission.

**SECTION X**

**SIGNATURES**

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

**For the Montenegro**

Ambassador Aleksandar Andrija Pejović

Minister of European Affairs and National IPA  
Coordinator (NIPAC)

Ministry of European Affairs

**For the Republic of Kosovo**

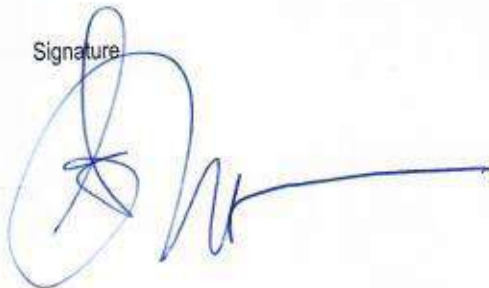
Ambassador Skender Durmishi

Ambassador of the Republic of Kosovo  
In Montenegro

Ministry of Foreign Affairs

Date 10.02.2017

Signature



Date 10.02.2017

Signature

