

AGREEMENT
on financing and implementation of
Cross Border Cooperation Programme
"Latvia-Russia" 2014-2020

Preamble

The European Commission, hereinafter referred to as "the Commission", acting on behalf of the European Union, hereinafter referred to as "the EU",

the Government of the Russian Federation, acting on behalf of the Russian Federation, hereinafter referred to as "the Russian Federation",

and

the Government of the Republic of Latvia, acting on behalf of the Republic of Latvia, hereinafter referred to as "the Member State"

hereinafter collectively referred to as "the Parties"

have agreed as follows:

Special Conditions

Article 1

Purpose of this Agreement

This Agreement sets out the conditions for financing and implementation of the Cross Border Cooperation Programme "Latvia-Russia" 2014-2020, hereinafter referred to as "the Programme", as described in the Joint Operational Programme adopted by the Commission (CRIS Decision number: 2015/039-067).

Article 2

Total Estimated Budget and Financial Contributions to the Programme

2.1 The total budget of the Programme is estimated at EUR 24,812,082, which corresponds to the EU financial contribution, the financial contribution of the Russian Federation and the Member State's financial contribution. Further financing will be provided by the beneficiaries at project level.

2.2 The maximum EU financial contribution to the Programme is set at EUR 15,875,028.

The EU financial contribution to the Programme is provided under the European Neighbourhood Instrument and the European Regional Development Fund.

2.3 The financial contribution of the Russian Federation to the Programme is set at EUR 7,937,514.

The financial contribution of the Russian Federation to the Programme is provided under the Federal Budget of the Russian Federation.

2.4 The maximum financial contribution of the Member State to the Programme is set at EUR 999,540.

The financial contribution of the Member State to the Programme is provided under the State Budget of the Member State.

2.5 The annual breakdown of the Parties' financial contributions is shown in the budget included in the Joint Operational Programme.

2.6 The Russian Federation shall transfer its financial contribution to the Programme through the European Bank for Reconstruction and Development hereinafter referred to as EBRD. The modalities of transfer to the Programme shall be stipulated in an agreement between the Russian Federation and EBRD, in compliance with Article 2 of Annex I (General Conditions).

Article 3

Implementation

This Programme shall be implemented under shared management in accordance with the terms and the conditions set out in this Agreement, the Parties' applicable legislation, the Joint Operational Programme and the document describing the Management and Control Systems.

Article 4

Execution Period

The period of execution of this Agreement as defined in Article 5 of Annex I (General Conditions) shall commence on the entry into force of this Agreement and end at 31 December 2024 at the latest.

Article 5

Communications

All communications concerning the implementation of this Agreement shall be in writing, shall refer expressly to this Programme as identified in Article 1 of this Agreement (Special Conditions) and shall be sent to the following addresses:

a) for the Commission

European Commission
Directorate-General Neighbourhood and Enlargement Negotiations – (DG NEAR)
Mr. Mathieu Bousquet
Head of Unit Georgia, Moldova & Neighbourhood Cross-Border Cooperation (C1)
Office L-15 04/058
Avenue du Bourget, 1
B-1049 Brussels
Belgium

b) for the Russian Federation

Ministry of Economic Development of the Russian Federation
Department for Interregional and Cross Border Cooperation Development
1-ya Tverskaya-Yamskaya
D.1,3, Moscow
125993, GSP-3, A-47, Moscow
Russian Federation

c) for the Member State

Ministry of Environmental Protection and Regional Development of the Republic of Latvia
Mr. Sandis Cakuls
Head of the Managing Authority of the Latvia-Russia Cross Border Cooperation Programme 2014-2020
Peldu iela 25
Riga, LV1494
Latvia

Article 6

Cooperation with OLAF

For the purposes of Article 17 of Annex I (General Conditions), the contact point of the Russian Federation to cooperate with the European Anti-Fraud Office (OLAF) in order to facilitate OLAF's operational activities shall be: Russian National authority.

Article 7

Annexes

7.1 This Agreement is composed of:

- (a) these Special Conditions;
- (b) Annex I: General Conditions;
- (c) Annex II: Award of procurement contracts by Russian private beneficiaries.

7.2. In the event of a conflict between, on the one hand, the provisions of the Annexes and, on the other hand, the provisions of this Agreement (Special Conditions), the latter shall take precedence. In the event of a conflict between the provisions of Annex I and those of Annex II, the provisions of Annex I shall take precedence.

Article 8

Provisions derogating from or supplementing Annex I (General Conditions)

The following shall supplement Annex I (General Conditions):

The Russian Federation and the Member State may conduct additional checks on the use of Programme financing under this Agreement each on its respective territory.

Article 9

Consultations

9.1 The Parties shall consult each other in order to resolve any disagreement relating to the implementation or interpretation of this Agreement.

9.2 Where any of the Parties becomes aware of problems in carrying out procedures relating to management of this Agreement, it shall establish all necessary contacts with the other Parties and the Managing Authority to remedy the situation and may take any steps that are necessary.

9.3 The consultation may lead to the amendment, suspension or termination of this Agreement.

Article 10

Amendment of this Agreement

10.1 Any amendment of this Agreement shall be made in writing, including the possibility of an exchange of letters upon agreement of the Parties.

10.2 The Party requesting the amendment shall submit the request to the other Parties at least three months before the amendment is intended to enter into force, except in cases which are duly justified by the requesting Party and accepted by the others.

Article 11

Suspension of this Agreement

11.1 The Agreement may be suspended in the following cases:

- Each Party may suspend the implementation of this Agreement if one of the other Parties breaches an obligation under this Agreement.

- Each Party may suspend this Agreement in case of breach of an international legal obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption as defined in Article 18.3 of Annex I (General Conditions).

- This Agreement may be suspended in cases of force majeure, as defined below.

"Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure.

A Party faced with force majeure shall inform the other Parties without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage.

- None of the Parties shall be held liable for breach of its obligations under this Agreement if it is prevented from fulfilling them by force majeure, provided that it takes measures to minimise any possible damage and that the other Parties are duly informed.

11.2 Each Party may take any appropriate precautionary measure before suspension takes place.

11.3 When the suspension is notified, the consequences for the ongoing procurement and grant contracts and for such contracts to be signed shall be indicated.

11.4 Irrespective of the Parties' right to suspend the Agreement, each Party that co-finances the Programme may suspend all or part of their payments in duly justified cases after having given the Managing Authority the opportunity to present its observations.

11.5 Each Party shall resume the implementation of the Agreement once the conditions allow with prior mutual written approval. This is without prejudice to any amendments to this Agreement which may be necessary to adapt the action to the new implementing conditions, including, if possible, the extension of the implementation period, or the termination of this Agreement in accordance with Article 12 of this Agreement (Special Conditions).

Article 12

Termination of this Agreement

12.1 If the issues which led to the suspension of this Agreement have not been resolved within a maximum period of 180 days, each Party may terminate this Agreement at 30 days' notice.

12.2 When the termination is notified, the consequences for the ongoing procurement and contracts and for such contracts to be signed shall be indicated.

12.3 Where the Programme cannot be implemented due to problems arising in relations between Participating Countries and in other duly justified cases, the Commission may decide to discontinue the Programme before the expiry date of the period of execution at the request of the Joint Monitoring Committee or on its own initiative after having consulted the Joint Monitoring Committee.

Article 13

Entry into force

This Agreement shall enter into force on the first day of the second month following the date on which the Commission receives the last notification from the Russian Federation or the Member State confirming the completion of the internal procedures necessary for its entry into force. The Commission shall inform the Russian Federation and the Member State of the date of receipt of this notification.

Done in three copies, each in Russian and English, one for each Party, all the texts having equal legal effect.

FOR THE
COMMISSION

FOR THE
GOVERNMENT OF THE
RUSSIAN FEDERATION

FOR THE
GOVERNMENT OF THE
REPUBLIC OF LATVIA

Lawrence Meredith
Director Neighbourhood
East

Alexander Tsybulskiy
Deputy Minister of
Economic Development of
the Russian Federation

Kaspars Gerhards
Minister of Environmental
Protection and Regional
Development of the
Republic of Latvia



Signature

20 DEC. 2016

Date:



Signature

Date:



Signature

22 December, 2016

Date:

General Conditions

Article 1

Definitions

For the purpose of this Agreement the following definitions are used:

- (a) “participating countries” means the Russian Federation, the Member State and any other participating country where applicable;
- (b) “joint operational programme” means the document covering a Cross Border Cooperation Programme, comprising multiannual measures that pursue a consistent set of priorities, and which has been adopted with due consideration of the legislation of the Parties;
- (c) “Programme area” means core regions, adjoining regions and major social, economic or cultural centres and other territorial units as defined in the Joint Operational Programme;
- (d) “project” means a series of activities defined and managed in relation to the objectives, outputs, results and impacts which it aims at achieving within a defined time-period and budget. The objectives, outputs, results and impacts shall contribute to the priorities identified in the Joint Operational Programme;
- (e) “contract” means any procurement contract or grant contract concluded within the framework of the Programme;
- (f) “lead beneficiary” means a beneficiary designated to represent the partnership. The lead beneficiary shall *inter alia* sign the grant contract on behalf of the other beneficiaries and receive the financial contribution from the Managing Authority;
- (g) “beneficiary” means a natural or legal person with whom a grant contract has been signed;
- (h) “contractor” means a natural or legal person with whom a procurement contract has been concluded;

(i) “grant” means a direct financial contribution, by way of donation, from the Programme budget in order to finance a project;

(j) “intermediate body” means any public or private body which acts under the responsibility of a Managing Authority, or which carries out duties on behalf of such and in relation to beneficiaries implementing projects;

(k) “large infrastructure projects” means projects comprising a set of works, activities or services intended to fulfil an indivisible function of a precise nature pursuing clearly identified objectives of common interest for the purposes of implementing investments delivering a cross-border impact and benefits and where a budget share of at least EUR 2,5 million is allocated to acquisition of infrastructure;

(l) “public entity” in the Russian Federation means federal, regional or local authority of the Russian Federation.

Article 2

Additional provisions concerning the financial contribution of the Russian Federation

2.1 The financial contribution of the Russian Federation shall be used for the financing of the projects and technical assistance in accordance with the provisions of the Joint Operational Programme.

2.2 The Managing Authority shall submit to the Russian National Authority annually a payment request based on the Joint Operational Programme’s financial table. The Russian National Authority shall instruct EBRD to transfer the annual payment to the Managing Authority within 90 days from the date of receipt of the payment request by the Russian National Authority.

2.3 Article 8 of the Special Conditions may contain specific provisions concerning the financial contributions of the Parties.

Article 3

Programme authorities and management bodies

3.1 The Programme authorities and management bodies are:

(a) the Joint Monitoring Committee, composed of one or more representatives appointed by each Participating Country. Representatives shall be appointed on a functional basis and not on a personal basis. Other persons may be appointed as observers by the Joint Monitoring Committee. The Joint Monitoring Committee shall follow the Programme implementation and progress towards its priorities using the objectively verifiable indicators and related target values defined in the Joint Operational Programme. It shall decide on the selection of the projects, examine all issues affecting the Programme's performance and may issue recommendations to the Managing Authority regarding Programme implementation and evaluation. It shall monitor actions undertaken as a result of its recommendations;

(b) the Managing Authority, selected by the Participating Countries, responsible for managing the Programme in accordance with the principle of sound financial management, which includes implementing the decisions of the Joint Monitoring Committee and ensuring that these decisions comply with the applicable legislation of the Parties and the rules set out in the Joint Operational Programme and this Agreement;

(c) the National Authority, appointed by each Participating Country bearing the ultimate responsibility for supporting the Managing Authority in the implementation of the Programme on its own territory in accordance with the principle of sound financial management. The National Authority shall inter alia be responsible for the set up and effective functioning of management and control systems at national level, ensure the overall coordination of the institutions involved at national level in the Programme implementation, represent its country in the Joint Monitoring Committee;

(d) the Control Contact Points, appointed by the Participating Countries to support the Managing Authority in the control of the Programme, in accordance with Article 17 of this Annex;

(e) the Joint Technical Secretariat, set up by the Participating Countries if needed, to assist the Managing Authority, the Joint Monitoring Committee and, where relevant, the Audit Authority, in carrying out their respective functions. In particular, it shall inform potential beneficiaries about funding opportunities under the Programme and shall assist beneficiaries in the project implementation;

(f) the Branch Offices, set up in the Participating Countries if needed, working under the responsibility of the Managing Authority. Their role is described in the Joint Operational Programme and may include communication, information, assistance to the Managing Authority in the project evaluation and implementation follow-up. The Branch Offices located in the Russian Federation shall also monitor the Programme implementation in the territory of the Russian Federation, summarize experience, and prepare reports on the implementation of the Programme in the territory of the Russian Federation at the request of the Russian National Authority. In no event, may the branch office be entrusted with a task involving exercise of public authority or the use of discretionary powers of judgment regarding projects. The Branch Offices located in the Russian Federation are established in accordance with the applicable legislation of the Russian Federation;

(g) the Audit Authority, appointed by the Participating Countries. It is functionally independent from the Managing Authority and situated in the Member State hosting the Managing Authority. The Audit Authority ensures that audits are carried out on the management and control systems, on an appropriate sample of projects and on the annual accounts of the Programme;

(h) the Group of Auditors, comprising representatives of each Participating Country and chaired by the Audit Authority. The Group of Auditors shall assist the Audit Authority in its functions.

3.2 A detailed description of the functions of the Programme authorities and management bodies, as well as the composition of the Joint Monitoring Committee and the Group of Auditors is laid down in the Joint Operational Programme, as well as in the document describing Programme management and control systems.

3.3 The Programme authorities and management bodies shall take all necessary measures to ensure efficient implementation of the Programme.

Article 4

Programme participants

4.1 The Programme participants are beneficiaries and contractors as defined in Article 1 of this Annex as well as subcontractors.

4.2 Each project shall designate a lead beneficiary, who will represent the partnership and sign the grant contract with the Managing Authority. The lead beneficiary shall assume responsibility for ensuring the implementation of the entire project. All beneficiaries shall actively cooperate in the development and implementation of projects. In addition, they shall cooperate in the staffing and/or financing of projects. Each beneficiary shall be legally and financially responsible for the activities that it is implementing and for the share of the project budget that it receives.

4.3 Beneficiaries shall conclude a partnership agreement. The partnership agreement shall guarantee the sound financial management of the funds allocated to the project and regulate inter alia the recovery of unduly paid funds.

4.4 For the purposes of this Agreement, Programme funds received by Programme participants in the Russian Federation shall not be considered as foreign financing as defined in the national legislation of the Russian Federation.

Article 5

Execution Period

5.1 The execution period of this Agreement shall comprise the following phases:

(a) a project implementation phase starting from the day of entry into force of this Agreement ending at 31 December 2022 at the latest. Contracts for large infrastructure projects selected through direct award shall be signed and contributions to

financial instruments shall be provided before 30 June 2019. Contracts for all other projects shall be signed before 31 December 2021. All project activities financed by the Programme shall end by 31 December 2022 at the latest;

(b) a technical assistance phase ending at 30 September 2024. All technical assistance activities financed by the Programme shall end by that date at the latest.

(c) a closure phase, including financial closure of all contracts concluded under the Programme, the payment or reimbursement of the final balance and the de-commitment of remaining appropriations. The closure phase shall start on 1 January 2023 and end on 31 December 2024 at the latest, without prejudice to the Commission's right to undertake, at a later stage, financial corrections vis-à-vis the Managing Authority or the beneficiaries if the final amount of the programme or the projects has to be readjusted as a result of controls or audits carried out after the closure date. Activities linked to the closure of the Programme may be carried out until 30 September 2024. The Managing Authority shall submit a final report approved by the Joint Monitoring Committee by 30 September 2024.

5.2 Notwithstanding paragraph 1 of this Article, pending the entry into force of this Agreement, only preparatory actions financed under the technical assistance budget of the Programme, may be implemented on the Russian Federation's territory.

5.3 The Commission and Russian Federation shall automatically de-commit any portion of its financial contribution to the Programme that, by 31 December of the fifth year following that of the budgetary commitment, has not been used for the purpose of pre-financing or making final payments and in any case no later than 30 September 2024.

5.4 Notwithstanding paragraph 3 of this Article, the amount concerned by de-commitment shall be reduced by the amounts that the Managing Authority has not been able to declare to the Commission and Russian Federation because of:

(a) projects suspended by a legal proceeding or by an administrative appeal having suspensory effect;

(b) reasons of force majeure seriously affecting the implementation of all or part of the Programme;

(c) in case of interruption of the payment deadline or suspension of payments.

5.5 Any final balance of the joint financial contribution of the Parties that co-finance the Programme including the interest accrued, is reimbursed to the Parties in proportion to their financial contribution to the Programme before the closure of the Programme and as quickly as possible.

Article 6

Procurement

6.1 Procurement award procedures by beneficiaries established in the Russian Federation, which are private entities, shall be subject to Annex II of this Agreement (Award of procurement contracts by Russian private beneficiaries).

6.2. Where the beneficiary is a Public Entity established in the Russian Federation in accordance with Article 1 or a legal entity established in the Russian Federation which is subject to national procurement legislation, it shall apply the legislation of the Russian Federation. The contract shall be awarded to the tender offering best value for money or as appropriate to the tenderer offering the lowest price. The beneficiary shall avoid any conflict of interests and respect the principles of equal treatment, non-discrimination, fair competition, transparency. The Russian Federation ensures that services, works and goods that are not originating from the Russian Federation receive the same treatment as compared to its own services, works and goods in accordance with Article 7 of this Annex. Failure to comply with the above shall render the related expenditure ineligible.

6.3 The same rules laid down in paragraphs 1 and 2 of this Article shall apply if the implementation of the annual plan for the use of the technical assistance budget requires procurement by an entity established in the Russian Federation. Procurement by branch offices shall be limited to ordinary running costs and costs for communication and visibility activities.

6.4 Where the beneficiary is a contracting authority or a contracting entity established in an EU Member State, it may apply national procurement laws, regulations

and administrative provisions adopted in connection with Union legislation. The same rules apply if the implementation of the annual plan for the use of technical assistance budget requires procurement by a contracting authority or a contracting entity established in a Member State.

Article 7

Rules of nationality and origin

7.1 Participation in procurement procedures referred to in Article 6 of this Annex is open on equal terms to all natural and legal persons effectively established in countries eligible under the applicable legislation of the Parties.

7.2 All supplies purchased under a procurement contract referred to in Article 6 of this Annex shall originate from an eligible country in accordance with paragraph 7.1 of this Article, except when the cost of these supplies is below EUR 100 000. In this case, supplies may originate from any country.

7.3 National preferences are prohibited, except for contracts with a value not exceeding EUR 20 000 in order to promote local capacities, markets and purchases. Failure to comply with this principle shall render the related expenditure ineligible.

Article 8

Visa facilitation

8.1 The Russian Federation and the Member State shall facilitate the issuing of visas to the personnel of the Programme authorities and management bodies as defined in Article 3 and to the Programme participants as defined in Article 4.1 of this Annex for travel related to the implementation and management of the Programme. Visas shall be granted as speedily as possible.

8.2 The same principle shall apply, where relevant, to other natural persons and persons representing legal persons participating in procurement and grant award procedures.

Article 9

Tax and customs provisions

9.1 The Russian Federation and the Member State shall apply to procurement and grant contracts financed by the Programme the most favoured tax and customs regime as allowed by the applicable legislation of each Party.

9.2 Value added tax paid by the Programme participants in the framework of procurement and grant contracts financed by the Programme, where it is not recoverable under the applicable national law, shall be treated as an eligible cost. In such case, the Programme participants shall demonstrate that they are unable to reclaim such tax.

Article 10

Foreign Exchange provisions and transfer of funds

10.1 The Russian Federation shall apply to the exchange, import and purchase of foreign currency necessary its national regulations in a non-discriminatory manner. In case of procedures in currencies other than Euro, the amount shall be converted to Euro using the exchange rate method mentioned in the Joint Operational Programme.

10.2 The Russian Federation and the Member State shall undertake measures to facilitate any beneficiary (public or private), or contractor, in their respective territories, where applicable, to:

- (a) receive Programme funds for the purposes of the Programme/project and open specific bank accounts, including accounts in Euro;
- (b) make payments as per grant contract requirements for the implementation of all activities necessary for the implementation of the project, including the possibility of the lead beneficiary to redistribute the grant amount to the other beneficiaries;
- (c) return unspent funds to the Managing Authority.

Article 11

Use of studies

Any contract related to studies financed under this Agreement shall include the right for the Russian Federation, the Commission and the Member State to use the study, to publish it or to disclose it to third parties.

Article 12

Cooperation obligation

12.1 The Russian Federation and the Member State shall fully cooperate with the Managing Authority, the Audit Authority and the Commission and support the efficient functioning of the management and control systems as described in the Joint Operational Programme.

12.2 The Russian Federation and the Member State shall appoint one or more representatives in the Joint Monitoring Committee.

12.3 The Russian Federation and the Member State shall appoint a National Authority assuming ultimate responsibility for the implementation of the Programme in its own territory. The National Authority shall fully cooperate with the Managing Authority and the Commission and support the management and control systems as described in the Joint Operational Programme.

12.4 The Russian Federation and the Member State shall appoint a control contact point that will support the Managing Authority in its control tasks.

12.5 The Russian Federation and the Member State shall appoint a representative in the Group of Auditors.

Article 13

Disclosure of information

13.1 Without prejudice to Article 17 of this Annex, the Parties shall preserve from disclosure any document, information or other material directly related to the implementation of this Agreement received from the other Parties in accordance with the applicable legislation of each Party.

13.2 The Parties shall hold consultations before publicly disclosing such information.

13.3 Personal data of natural persons participating in the Programme shall be collected, recorded, stored and transferred, with their consent, in databases of the Programme authorities and management bodies. Upon justified request, such data shall be transferred to the EU control bodies indicated in Article 17.3. Parties shall ensure data security in accordance with national legislation.

Article 14

Visibility

14.1 The Programme and any project financed by the Programme shall be subject to appropriate communication and information measures.

14.2 These communication and information measures shall follow the communication strategy included in the Joint Operational Programme and the annual information and communication plan carried out by the Managing Authority.

Article 15

Record keeping and reporting obligations

15.1 The Managing Authority and the Programme participants shall keep all documents related to the Programme or a project for five years from the date of payment of the balance for the Programme. In particular they shall keep reports,

supporting documents, as well as accounts, accounting documents and any other document relating to the financing of the Programme (including all documents relating to the contract award) and projects.

15.2. Notwithstanding paragraph 15.1 of this Article, records pertaining to audits, appeals, litigation or pursuit of claims arising from the Programme or project performance shall be retained until such audits, appeals, litigation or claims have been completed.

15.3. The reporting procedures of the Programme authorities and management bodies to the Parties are described in the Joint Operational Programme and in the document describing the management and control systems.

Article 16

Recoveries

16.1 The Managing Authority shall take all appropriate measures to recover funds unduly spent together with any interest on late payment from any beneficiary by any means, including by offsetting. The Russian Federation and the Member State commit to cooperate fully with the Managing Authority and the Audit Authority and to support them in the recovery process.

16.2 Where the recovery relates to a claim against a beneficiary, which is a Public Entity established in the Russian Federation, and the Managing Authority is unable to recover the debt, the Russian National Authority shall provide the reimbursement of funds unduly spent in accordance with its national procedures on the basis of a complete file of the Managing Authority. Where the request of the Managing Authority did not succeed in recovery, the Commission has the right to file such a request to the Russian National Authority.

16.3 Without prejudice to the responsibility of the Managing Authority to recover funds unduly spent from any beneficiary established in the Russian Federation, except for Public Entities, and after the Managing Authority has undertaken all possible measures to recover, the Commission may proceed to the recoveries on behalf of the

Managing Authority by any means, including by offsetting and by forced recovery before the competent courts.

16.4 Without prejudice to paragraph 16.2 of this Article, contracts concluded by the Managing Authority as part of the Programme shall contain a clause allowing the Commission to recover from any beneficiary established in the Russian Federation, except for Public Entities, any unduly spent amounts due to the Managing Authority which the latter was not able to recover. Where a beneficiary is a Public Entity established in the Russian Federation, contracts shall contain a clause allowing the Russian National Authority to recover from the beneficiary.

16.5 Where the recovery relates to systemic deficiencies in the management and control of the Programme by the Programme authorities and management bodies as defined in Article 3 of this Annex, the Parties will hold necessary consultations in order to resolve the situation with due regard to the Joint Operational Programme.

16.6 In cases related to a breach of legal obligations on the part the Managing Authority, where it is responsible for the reimbursement of funds to the Commission under the relevant EU legislation, it shall also be responsible for reimbursing corresponding financial contributions of the other Parties that co-finance the Programme to their respective National Authorities.

16.7 Recovered amounts by the Managing Authority may be reused by the Programme.

Article 17

Verifications and checks

17.1 The Parties agree that implementation of the Programme is subject to verifications and checks. The Russian Federation and the Member State shall cooperate and support the responsible authorities to conduct these verifications and checks.

17.2 The Managing Authority and the Audit Authority, with the support of the Group of Auditors, may conduct documentary and on-the-spot checks on the use made of the Programme/projects financing under this Agreement and carry out a full audit, if

necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the Programme/projects, throughout the duration of this Agreement and for the period of record-keeping.

17.3 The Commission, the European Anti-Fraud office (OLAF) and the European Court of Auditors and any external auditor authorized by these institutions and bodies, with the support of the Group of Auditors and in cooperation with competent national authorities may conduct documentary and on-the-spot checks on the use made of the Programme/projects financing under this Agreement and carrying out a full audit, if necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the Programme/projects, throughout the duration of this Agreement and for the period of record-keeping.

17.4 The Russian Federation and the Member State shall grant the authorities mentioned in paragraphs 17.2 and 17.3 and their authorised agents access to sites and premises at which operations financed under this Agreement are carried out, including their computer systems, and to any documents and computerised data concerning the technical and financial management of those operations, and to take every appropriate measure to facilitate their work. Access shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject. Documents must be accessible and filed in a manner permitting easy inspection, the national Parties being bound to inform the competent authorities of the exact location at which they are kept.

17.5 The checks and audits described in paragraphs 17.2, 17.3 and 17.4 of this Article shall also apply to the Programme participants. To this end, the Russian Federation and the Member State shall ensure through contractual provisions and any other means at their disposal that these persons are legally bound by the same obligations toward the competent authorities, as well as to themselves, and that its own documentation can remedy any shortcoming to the effective enforcement of the said obligations.

17.6 The Russian Federation, the Member State and the Managing Authority, where relevant, shall be notified of on-the-spot missions by agents or external auditors appointed/authorised by the Managing Authority, the Audit Authority, the Commission, OLAF or the European Court of Auditors.

17.7 The Russian Federation and the Member State may conduct additional checks on the use of the Programme financing under this Agreement. The Parties shall notify each other of relevant verifications and checks. The conditions and modalities of these checks shall be set out in Article 8 of the Special Conditions of this Agreement.

Article 18

Prevention of irregularities, fraud and corruption

18.1 The Russian Federation and the Member State shall immediately inform the Managing Authority and the Commission of any element brought to their attention which arouses suspicions of irregularities, fraud or corruption and of any measure taken or planned to deal with them.

18.2 The Russian Federation and the Member State shall ensure and check regularly through appropriate national procedures that the operations financed with the Programme funds have been properly implemented. They shall take appropriate measures to prevent irregularities and fraud and, upon request of the Managing Authority or the Commission, bring prosecutions to recover funds unduly paid.

"Irregularity" shall mean any infringement of the Agreement, implementing contracts, EU or national law resulting from an act or omission by anyone who has, or would have, the effect of prejudicing the funds of the Programme.

"Fraud" shall mean any intentional act or omission concerning:

- the use or presentation of false, incorrect or incomplete, statements or documents which has as its effect the misappropriation or wrongful retention of Parties' financial contributions;
- non-disclosure of information in violation of a specific obligation, with the same effect;

- the misuse of such funds for purposes other than those for which they are originally granted.

18.3 The Russian Federation and the Member State undertake to take every appropriate measure to prevent, detect and punish any practices of active or passive corruption during the implementation of this Agreement.

"Passive corruption" shall mean the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the Parties' financial interests.

"Active corruption" shall mean the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the Parties' financial interests.

18.4 If the Russian Federation and/or the Member State do not take appropriate measures to prevent fraud, irregularities and corruption within the Programme, the Parties that co-finance the Programme may adopt precautionary measures.

Annex II

Award of procurement contracts by Russian private beneficiaries

1. General principles

Where implementation of the Programme/project requires the award of a procurement contract by beneficiaries established in the Russian Federation, which are private entities, the following principles shall be complied with:

(a) The contract shall be awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests;

(b) For contracts with a value of more than EUR 60 000, the following rules shall also apply:

(i) an evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;

(ii) sufficient transparency, fair competition and adequate *ex-ante* publicity must be ensured;

(iii) equal treatment, proportionality and non-discrimination shall be ensured;

(iv) tender documents must be drafted according to best international practice;

(v) deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;

(vi) candidates or tenderers shall be excluded from participating in a procurement procedure if they fall within one of the situations described in paragraph 2.2 of Article 2 of this Annex. Candidates or tenderers must certify that they are not in one of these situations. In addition, contracts may not be awarded to

candidates or tenderers which, during the procurement procedure fall within one of the situations referred to in paragraph 2.3 of Article 2 of this Annex;

(vii) procurement procedures set out in Article 3 of this Annex shall be followed.

2. Eligibility for contracts

2.1 Rules of nationality and origin

In all cases, the rules of nationality and origin set forth in Article 7 of Annex I (General Conditions) shall apply.

2.2 Grounds for exclusion from participation in procurement

A tenderer shall be excluded from participating in procurement procedures where:

(a) The tenderer is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations of the Russian Federation;

(b) It has been established by a final judgment or a final administrative decision that the tenderer is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;

(c) It has been established by a final judgment or a final administrative decision that the tenderer is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the tenderer belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:

(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;

(ii) entering into agreement with other tenderers with the aim of distorting competition;

(iii) violating intellectual property rights;

(iv) attempting to influence the decision-making process of the contracting authority during the procurement procedure;

(v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;

(d) It has been established by a final judgment that the tenderer is guilty of any of the following:

(i) fraud and corruption as defined in Article 18 of Annex I (General Conditions);

(ii) participation in a criminal organisation;

(iii) money-laundering or terrorist financing;

(iv) terrorist-related offences or offences linked to terrorist activities;

(v) child labour or other forms of trafficking in human beings;

(e) The tenderer has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by the Commission, OLAF or the Court of Auditors;

(f) It has been established by a final judgment or final administrative decision that the tenderer has committed an irregularity.

The beneficiary shall exclude the tenderer where a person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the tenderer is in a situation listed in points c), d), e) or f) of paragraph 2.2 of this Article. This applies also where a natural or legal person that assumes unlimited liability for the debts of that tenderer is in a situation listed in points a) or b) of paragraph 2.2 of this Article.

Point a) of paragraph 2.2 of this Article does not apply to the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities or from liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law of the Russian Federation.

The beneficiary shall not exclude any tenderer where it can demonstrate that adequate measures have been adopted which ensure its reliability, except in the cases listed in point d) of paragraph 2.2 of this Article, where it is indispensable for the continuity of the service for a limited duration and pending the adoption of remedial measures, where the exclusion would be disproportionate.

2.3 Exclusion from award of contracts

A contract for a given procurement procedure shall not be awarded to a tenderer who:

(a) Is in an exclusion situation established in accordance with paragraph 2.2 of this Article;

(b) Has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;

(c) Was previously involved in the preparation of procurement documents where this entails a distortion of competition that cannot be remedied otherwise.

3. Procurement procedures

3.1 Procurement procedures for service contracts

Service contracts with a value of EUR 300 000 or more shall be awarded by means of an international restricted tender procedure following publication of a procurement notice. The procurement notice shall be published in all appropriate media beyond the programme area, stating the number of candidates which will be invited to submit tenders within a range of four to eight candidates and ensuring genuine competition.

Service contracts with a value of more than EUR 60 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three service providers of its choice and negotiate the terms of the contract with one or more of them.

3.2 Procurement procedures for supply contracts

Supply contracts with a value of EUR 300 000 or more shall be awarded by means of an international open tender procedure following publication of a procurement notice, which shall be published in all appropriate media beyond the programme area.

Supply contracts with a value of EUR 100 000 or more but less than EUR 300 000 shall be awarded by means of an open tender procedure published in the programme area. Any eligible tenderer must be provided with the same opportunities as local firms.

Supply contracts with a value of more than EUR 60 000 but less than EUR 100 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three suppliers of its choice and negotiate the terms of the contract with one or more of them.

3.3 Procurement procedures for works contracts

Works contracts with a value of EUR 5 000 000 or more shall be awarded by means of an international open tender procedure, or in view of the specific characteristics of certain works by means of a restricted tender procedure, following

publication of a procurement notice which shall be published in all appropriate media beyond the programme area.

Work contracts with a value of EUR 300 000 or more but less than EUR 5 000 000 shall be awarded by means of an open tender procedure published in the programme area. Any eligible tenderer must be provided with the same opportunities as local firms.

Work contracts with a value of more than EUR 60 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three contractors of its choice and shall negotiate the terms of the contract with one or more of them.

3.4 Low-value contracts

A low value contract not exceeding EUR 60 000 may be awarded in accordance with the national rules of the Russian Federation applicable to the beneficiary, complying with the rules of nationality and origin set out in paragraph 2.1 of Article 2 of this Annex. In absence of such national rules of the Russian Federation, the negotiated procedure may be used.

3.5 Use of Negotiated Procedure

Regardless of the value of the contract, the beneficiary may decide to use negotiated procedure on the basis of a single tender in the following cases:

- (a) In case of service contracts:
 - i) where strictly necessary, for reasons of extreme urgency brought about by events which the beneficiary could not have foreseen and are not attributable to it, making impossible to comply with the ordinary time limits for the procedures;
 - ii) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature (ie. services directly linked to the statutory mission of the body) or designed to provide assistance to people in the social field;

iii) for the extension of an ongoing contract through the repetition of similar services entrusted to the original contractor, provided that the initial contract had been awarded following publication of a contract notice, and the latter referred to the possibility of using the negotiated procedure for new services for the project as well as the relevant estimated cost;

iv) where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the beneficiary may negotiate with one or more tenderers of its choice from among those that took part in the invitation to tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and that the principle of fair competition is observed;

v) where the contract consists of the acquisition of a plan or design selected by a jury following a design contest and must, under the rules applying, be awarded to the winner or to one of the winners, in which case, all successful candidates shall be invited to participate in the negotiations;

vi) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider, with no reasonable alternative or substitute existing, and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement;

vii) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the Russian Federation so requires, provided the essential interests concerned cannot be guaranteed by other measures (eg. requirements to protect confidential information in the procurement procedure);

viii) where a new contract has to be concluded after early termination of an existing contract;

ix) for legal services such as: representation and advice related to arbitration, conciliation or judicial proceedings; arbitration and conciliation services; document certification and authentication services which must be provided by notaries;

x) for financial services and loans;

xi) for the purchase of electronic communication services;

xii) where a service contract is to be implemented by an international organisation which cannot participate in competitive procedures according to its statute or act of establishment.

(b) In case of supply contracts:

i) where strictly necessary, for reasons of extreme urgency brought about by events which the beneficiary could not have foreseen and are not attributable to it, making impossible to comply with the ordinary time limits for the procedures;

ii) where the supplies can only be provided by a single supplier because: I
i-1) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

ii-2) competition is absent for technical reasons;

ii-3) the protection of exclusive rights including intellectual property rights must be ensured (e.g., where performance of the contract is exclusively reserved for the holders of patents or licences to use patents).

The exceptions in points 2) and 3) of point (ii) of paragraph 3.5 of this Article shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement;

iii) for additional deliveries by the original supplier intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the beneficiary to acquire supplies having different technical characteristics which would result in

either incompatibility or disproportionate technical difficulties in operation and maintenance;

iv) where the tender procedure has been unsuccessful, i.e. where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and the principle of equal treatment is observed;

v) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or where the protection of the essential interests of the European Union or the Russian Federation so requires, provided the essential interests concerned cannot be guaranteed by other measures (such as requirements to protect the confidential nature of information which the beneficiary makes available in the procurement procedure);

vi) for contracts in respect of supplies quoted and purchased on a commodity market;

vii) for contracts in respect of purchases of supplies on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law;

viii) where a new contract has to be concluded after early termination of an existing contract;

ix) where the products are manufactured purely for the purpose of research, experimentation, study or development; however such contracts shall not include quantity production to establish commercial viability or to recover research and development costs;

x) for the purchase of public communication networks.

- (c) In case of work contracts:
- i) where strictly necessary, for reasons of extreme urgency brought about by events which the beneficiary could not have foreseen and are not attributable to it, making impossible to comply with the ordinary time limits for the procedures;
 - ii) for new works consisting in the repetition of similar works entrusted to the original contractor, provided that the initial contract had been awarded after publication of a contract notice which referred to the possibility of using the negotiated procedure for the new works, their extent, the conditions under which they would be awarded, as well as their estimated cost;
 - iii) where the tender procedure has been unsuccessful, that is to say where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and the principle of equal treatment is observed;
 - iv) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the Russian Federation so requires, provided the essential interests concerned cannot be guaranteed by other measures (such as requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure);
 - v) for the purchase of public communication networks;
 - vi) for the renting of buildings already constructed, after prospecting the local market;
 - vii) where a new contract has to be concluded after early termination of an existing contract;

viii) where the works can only be provided by a single tenderer for any of the following reasons:

- 1) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
- 2) competition is absent for technical reasons;
- 3) the protection of exclusive rights including intellectual property rights must be ensured (e.g., where performance of the contract is exclusively reserved for the holders of patents or licences to use patents).

The exceptions in the points 2) and 3) of point (viii) of paragraph 3.5 of this Article shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

For all procedures, a negotiation report must be produced, explaining how participant(s) in the negotiations were chosen, how the price was set and the grounds for the award decision.

Eligibility rules under Article 2 of this Annex shall be duly complied with.

