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EUROPEAN COMMISSION

Brussels, 15.2.2011
C(2011) 862 final

COMMISSION DECISION

of 15.2.2011

**approving, on behalf of the European Union, a
MEMORANDUM OF UNDERSTANDING
on the participation of the former Yugoslav Republic of Macedonia in the Civil
Protection Financial Instrument and the Community Civil Protection Mechanism**

COMMISSION DECISION

of 15.2.2011

approving, on behalf of the European Union, a MEMORANDUM OF UNDERSTANDING on the participation of the former Yugoslav Republic of Macedonia in the Civil Protection Financial Instrument and the Community Civil Protection Mechanism

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, on a Framework Agreement between the European Community and the former Yugoslav Republic of Macedonia on the general principles for the participation of the former Yugoslav Republic of Macedonia in Community programmes signed on 22 November 2004¹, and in particular Article 5 thereof,

Whereas:

- (1) Article 1 (2) of the Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, on a Framework Agreement between the European Community and the former Yugoslav Republic of Macedonia on the general principles for the participation of the former Yugoslav Republic of Macedonia in Community programmes, which was signed on 22 November 2004 and entered into force on 29 June 2005, provides for the possibility for the former Yugoslav Republic of Macedonia to participate in Community programmes which contain an opening clause, leaving the Commission and the competent authorities of the former Yugoslav Republic of Macedonia to determine specific terms and conditions, including the financial contribution, with regard to such participation in each particular programme.
- (2) The Civil Protection Financial Instrument, established by Council Decision 2007/162/EC, Euratom of 5 March 2007², provides that participation in the Financial Instrument shall be open to candidate countries.
- (3) The Community Civil Protection Mechanism, established by Council Decision 2007/779/EC, Euratom of 8 November 2007³, provides that participation in the Mechanism shall be open to candidate countries.

¹ OJ L 192, 22.7.2005, p. 23.

² OJ L 71, 10.3.2007, p. 9.

³ OJ L 314, 1.12.2007, p. 9.

- (4) The former Yugoslav Republic of Macedonia has requested to be allowed to participate in the Civil Protection Financial Instrument and the Community Civil Protection Mechanism.
- (5) This Decision should replace Decision C(2009) 8308 final of 26 November 2009,

HAS DECIDED AS FOLLOWS:

Article 1

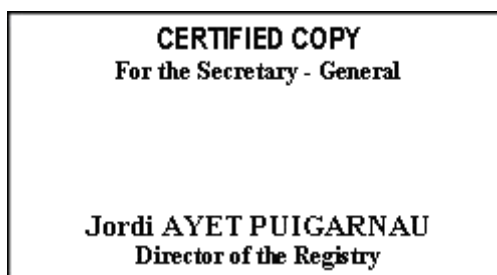
The Memorandum of Understanding between the European Union and the former Yugoslav Republic of Macedonia on the participation of the former Yugoslav Republic of Macedonia in the Civil Protection Financial Instrument and the Community Civil Protection Mechanism, attached to this Decision is hereby approved.

Article 2

Decision C(2009) 8308 final of 26 November 2009 is repealed.

Done at Brussels, 15.2.2011

For the Commission
Kristalina GEORGIEVA
Member of the Commission



ANNEX

MEMORANDUM OF UNDERSTANDING

**between the European Union and the former Yugoslav Republic of Macedonia
on the participation of the former Yugoslav Republic of Macedonia in the Civil Protection
Financial Instrument and the Community Civil Protection Mechanism**

**THE EUROPEAN COMMISSION, hereinafter referred to as “the Commission”, on behalf of
the European Union,**

of the one part, and

**THE GOVERNMENT OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, on
behalf of the former Yugoslav Republic of Macedonia**

of the other part,

Whereas:

1. The Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, on a Framework Agreement between the European Community and the former Yugoslav Republic of Macedonia on the general principles for the participation of the former Yugoslav Republic of Macedonia in Community programmes was signed on 22 November 2004¹ and entered into force on 29 June 2005, leaving the Commission and the competent authorities of the former Yugoslav Republic of Macedonia to determine specific terms and conditions, including the financial contribution, with regard to such participation in each particular programme,
2. The Civil Protection Financial Instrument was established by Council Decision 2007/162 EC, Euratom of 5 March 2007² and provides that participation in the Financial Instrument shall be open to candidate countries, and
3. The Council Decision establishing a Community Civil Protection Mechanism (recast) was adopted on 8 November 2007 (2007/779 EC, Euratom)³ and provides that participation in the Mechanism shall be open to candidate countries,

HAVE AGREED AS FOLLOWS:

Article 1 Programme

The former Yugoslav Republic of Macedonia shall participate in the Civil Protection Financial Instrument and the Community Civil Protection Mechanism (hereinafter called "the Programme"), in accordance with the conditions laid down in the Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, on a Framework Agreement between the European Community and the former Yugoslav Republic of Macedonia on the general principles for the participation of the former Yugoslav Republic of Macedonia in Community programmes of 22

¹ OJ L 192, 22.07.2005, p. 23.

² OJ L 71, 10.3.2007, p. 9.

³ OJ L 314, 01.12.2007, p. 9

November 2004 and under the terms and conditions defined in Articles 2 to 4 of this Memorandum of Understanding.

Article 2

Terms and conditions with respect to participation in the Programme

1. The former Yugoslav Republic of Macedonia shall participate in the activities of the Programme in conformity with the objectives, criteria, procedures and deadlines defined in Council Decision 2007/162 EC, Euratom and Council Decision 2007/779 EC, Euratom.
2. The terms and conditions applicable to the submission, assessment and selection of applications by eligible institutions, organisations and individuals of the former Yugoslav Republic of Macedonia shall be the same as those applicable to eligible institutions, organisations and individuals of the Member States of the European Union.
3. To participate in the Programme, the former Yugoslav Republic of Macedonia shall pay every year a financial contribution to the General Budget of the European Union in accordance with Article 3 below. The financial contribution of the former Yugoslav Republic of Macedonia in respect of its participation and implementation of the Programme shall be added to the amount earmarked each year in the General Budget of the European Union for commitment appropriations to meet the financial obligations arising out of different forms of measures necessary for the execution, management and operation of the Programme.
4. One of the official languages of the European Union shall be used for the procedures related to requests, contracts and reports, as well as for other administrative aspects of the Programme.

Article 3

Financial contribution

The rules governing the financial contribution of the former Yugoslav Republic of Macedonia are set out in Annex I.

Part of that financial contribution may be financed under the relevant Union external aid instrument, if the former Yugoslav Republic of Macedonia so requests. In such a case, the financing out of EU pre-accession funds will be specified in the Financing Memorandum on the Annual Programme regarding this assistance.

Article 4

Reporting and evaluation

Without prejudice to the responsibilities of the Commission and the Court of Auditors of the European Union in relation to the monitoring and evaluation of the Programme, the participation of the former Yugoslav Republic of Macedonia in the Programme shall be continuously monitored on a partnership basis involving the Commission and the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia shall submit to the Commission relevant reports and take part in other specific activities provided for by the Union in that context.

In accordance with Regulations (EC, Euratom) No 1605/2002 of 25 June 2002 and (EC, Euratom) No 2342/2002 of 23 December 2002 and with the other rules referred to in this Memorandum of Understanding, the contracts concluded with beneficiaries of the programmes established in the former Yugoslav Republic of Macedonia shall provide for financial or other audits, on the basis of documents and on the spot, to be conducted at any time by Commission agents or by other persons mandated by the Commission.

Commission agents and other persons mandated by the Commission shall have appropriate access to documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts concluded to implement the

instruments referred to in this Memorandum. The Court of Auditors shall have the same rights as the Commission.

Article 5 **Final provisions**

This Memorandum of Understanding shall apply for the duration of the Programme. Nevertheless, should the European Union decide to extend the application of the Community Civil Protection Financial Instrument without any substantial change within the Programme, this Memorandum would also be extended correspondingly and automatically if no Party denounces it within one month following the extension decision.

Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in this Memorandum of Understanding, as well as the contractual arrangements applying to these projects and activities and the provisions of Annex II.

The annexes form an integral part of this Memorandum of Understanding.

This Memorandum of Understanding may only be amended in writing by common consent of the parties.

This Memorandum of Understanding shall enter into force on the day on which the former Yugoslav Republic of Macedonia informs the Commission through diplomatic channels that its internal ratification has been completed.

Done at on

For the Government of the
former Yugoslav Republic of Macedonia

Done at on

For the European Commission,
on behalf of the European Union

Annex I

Rules governing the financial contribution of the former Yugoslav Republic of Macedonia in the Civil Protection Financial Instrument and the Community Civil Protection Mechanism

1. The financial contribution to be paid by the former Yugoslav Republic of Macedonia to the General Budget of the European Union to participate in the Programme is calculated following the formula hereafter, as a percentage of the annual indicative budget of the Civil Protection Financial Instrument, in accordance with the procedures currently in force for representatives of the Member States of the European Union.

Annual fee calculation:

$$\left[\frac{AMB \times CCh}{EUh} \right] \times \left[\frac{GDP_{cc}}{GDP_{eu}} \right]^4$$

2. The contribution of the former Yugoslav Republic of Macedonia shall cover costs related to the preparation, feasibility, development and execution of the projects of common interest, as well as for the development and implementation of horizontal measures as foreseen in the Programme.

3. Travel costs and subsistence costs incurred by representatives and experts of the former Yugoslav Republic of Macedonia for the purposes of taking part as observers in the work of the committee referred to in Article 13 of Council Decision 2007/162 EC, Euratom, or other meetings related to the implementation of the Programme shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for representatives of the Member States of the European Union.

4. The Financial Regulation applicable to the General Budget of the European Union shall apply to the management of the contribution of the former Yugoslav Republic of Macedonia.

5. When this Memorandum of Understanding enters into force and at the beginning of each subsequent budgetary year, the Commission shall send to the former Yugoslav Republic of Macedonia a call for funds corresponding to its contribution calculated according to the second sub-paragraph of paragraph 1.

6. That contribution shall be paid in Euro to a Euro denominated bank account of the Commission.

7. The former Yugoslav Republic of Macedonia shall pay its contribution to the annual costs in accordance with the call for funds request no later than three months after the date of the call. Any delay in the payment of the contribution shall give rise to the payment of default interest by the former Yugoslav Republic of Macedonia on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the due date falls, increased by 3.5 percentage points. In case the delay in the payment of the contribution is such that it may significantly jeopardise the implementation and management of the programme, and in the absence of payment 20 working days after a formal letter of reminder has been sent by the Commission to the former Yugoslav Republic of Macedonia, participation of the former Yugoslav Republic of Macedonia in the Programme for the concerned year will be suspended.

⁴ AMB – Annual commitment appropriations for the Civil Protection Financial Instrument as proposed by the Commission in its Draft Budget;
CCh – Number of inhabitants in the Candidate Country under consideration;
GDP_{cc} in PPS – relative GDP per capita in the Candidate Country considered;
EUh – number of inhabitants in the European Union;
GDP_{eu} in PPS – relative average GDP per capita in the European Union.

Annex II

FINANCIAL CONTROL, RECOVERY AND OTHER ANTIFRAUD MEASURES

I. CONTROLS AND ANTIFRAUD MEASURES BY THE EUROPEAN UNION

1. In accordance with the Financial Regulation applicable to the general budget of the European Union and with the other rules referred to in this Memorandum of Understanding, the contracts concluded with beneficiaries of the programmes established in the former Yugoslav Republic of Macedonia shall provide for financial or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Commission agents or by other persons mandated by the Commission⁵.
2. Commission agents and other persons mandated by the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts concluded to implement the instruments referred to in this Memorandum. The European Court of Auditors shall have the same rights as the Commission.
3. Within the framework of this Memorandum, the Commission/OLAF (the European Anti Fraud Office) shall be authorised to carry out on-the-spot checks and inspections on the territory of the former Yugoslav Republic of Macedonia, in accordance with the procedural provisions of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996.

These checks and inspections shall be prepared and conducted in close collaboration with the competent authorities of the former Yugoslav Republic of Macedonia or those designated by the authorities of the former Yugoslav Republic of Macedonia, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help.

If the concerned authorities of the former Yugoslav Republic of Macedonia so wish, the on-the-spot checks and inspections may be carried out jointly with them.

Where the participants in the programmes resist an on-the-spot check or inspection, the authorities of the former Yugoslav Republic of Macedonia, acting in accordance with national rules, shall give Commission/OLAF inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

Commission/OLAF shall report as soon as possible to the authorities of the former Yugoslav Republic of Macedonia any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event Commission/OLAF shall be required to inform the above-mentioned authority of the result of such checks and inspections.

⁵ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248, 16.9.2002, p. 1. The European Anti-Fraud Office (OLAF) is to be considered as the Commission service responsible for carrying out administrative investigations to combat fraud.

II. INFORMATION AND CONSULTATION

1. For the purposes of proper implementation of this Annex, the competent authorities of the former Yugoslav Republic of Macedonia and the Union shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.
2. The competent authorities of the former Yugoslav Republic of Macedonia shall inform the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts concluded in application of the instruments referred to in this Memorandum.

III. ADMINISTRATIVE MEASURES AND PENALTIES

Without prejudice to application of criminal law of the former Yugoslav Republic of Macedonia, administrative measures and penalties may be imposed by the Commission in accordance with the Financial Regulation applicable to the general budget of the European Union.

IV. RECOVERY

Decisions taken by the Commission within the scope of this Memorandum which impose a pecuniary obligation on persons other than States shall be enforceable in the former Yugoslav Republic of Macedonia. The enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of the former Yugoslav Republic of Macedonia shall designate for this purpose and shall make known to the Commission. When these formalities have been completed on application by the Commission, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority. The legality of the Commission decision shall be subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause in a contract within the scope of this Memorandum shall be enforceable on the same terms.