

## AGREEMENT

**between the European Commission and the Government of Ukraine**

**on the participation of Ukraine in "Creative Europe": the Union programme for the cultural and creative sectors, and on cooperation between the European Union and Ukraine in the MEDIA Sub-programme of "Creative Europe"**

THE EUROPEAN COMMISSION, hereinafter referred to as "the Commission", on behalf of the European Union,

of the one part, and

THE GOVERNMENT OF UKRAINE,

of the other part,

Whereas:

- (1) The Association Agreement between the European Union, the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Association Agreement') was signed in Brussels on 21 March 2014 and 27 June 2014 and is applied on a provisional basis between the Union and Ukraine as of 1 November 2014 on the parts indicated in the Council Decision 2014/295 and Council Decision 2014/668, as amended by Council Decision 2014/691.
- (2) Together with the Association Agreement, its Protocol III on a Framework Agreement between the European Union and Ukraine on the General Principles for the Participation of Ukraine in Union Programmes ('Protocol III') is also applied on a provisional basis.
- (3) Article 5 of Protocol III provides that the specific terms and conditions regarding the participation of Ukraine in each particular programme, in particular the financial contribution payable and reporting and evaluation procedures, is to be determined in a Memorandum of Understanding between the Commission and the competent authorities of Ukraine on the basis of the criteria established by the programmes concerned.
- (4) "Creative Europe": the Union programme for the cultural and creative sectors was established by Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013<sup>1</sup> (hereinafter, the "Regulation 1295/2013").
- (5) Cooperation between the European Union and Ukraine on certain actions of the MEDIA Sub-programme, based on Article 8(5) of the Regulation, will be limited to training measures, trade events and markets, festivals and audience development in accordance with Article 10 (a), (e), (i) and (j) of Regulation 1295/2013.
- (6) Entities established in Ukraine should be entitled to participate in recurrent activities which need to start before the entry into force of this Agreement. As a consequence, costs incurred for such activities, the implementation of which starts in 2016, may be considered eligible under the same conditions as those applicable to costs incurred by entities established in Member States provided that this Agreement enters into force before the end of the action concerned.

HAVE AGREED AS FOLLOWS:

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<sup>1</sup> OJ L 347, 20.12.2013, p.221.

## **Article 1**

### **Programme**

1. Ukraine shall participate in the Culture Sub-programme and the Cross-sectoral Strand of "Creative Europe": the Union programme for the cultural and creative sectors, (hereinafter called "the Programme"), in accordance with the conditions laid down in the Framework Agreement between the European Union and Ukraine on the General Principles for the Participation of Ukraine in Union Programmes, and under the terms and conditions referred to in Articles 2-5 of the present Agreement.
2. The European Union and Ukraine shall also cooperate on certain actions of the MEDIA Sub-programme under the terms and conditions referred to in Articles 2-5 of this Agreement.

## **Article 2**

### **Terms and conditions of participation and cooperation in the Programme**

1. Ukraine shall participate:
  - (a) in the Culture Sub-programme;
  - (b) in the Cross-sectoral Strand of the Programme, with the exception of the Cultural and Creative Sectors Guarantee Facility, as mentioned in article 14 and in accordance with article 8(4) of Regulation (EU) No 1295/2013;
  - (c) in the MEDIA sub-programme from the first day following the written confirmation from the responsible Commission service(s) that Ukraine meets the conditions set out in Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 and in accordance with article 8 of Regulation 1295/2013.
2. Until the moment that the conditions in paragraph (c) are met, the European Union and Ukraine shall cooperate in the following actions of the MEDIA Sub-programme:
  - (d) training measures, trade events and markets, festivals and audience development in accordance with Article 10 (a), (e), (i) and (j) of Regulation (EU) No 1295/2013.
3. The participation of and cooperation with Ukraine in the activities of the Programme shall be in conformity with the objectives, criteria, procedures and deadlines defined in Regulation (EU) No 1295/2013.
4. The terms and conditions applicable for the submission, assessment and selection of applications, and for the implementation of actions by eligible entities from Ukraine shall be the same as those applicable to eligible entities from the Member States of the European Union.
5. Notwithstanding paragraph 4, given that the EU does not recognise the illegal annexation of Crimea and Sevastopol, public entities established in the Autonomous Republic of Crimea or the city of Sevastopol are not eligible to participate. Should the illegal annexation of the Autonomous Republic of Crimea and the City of Sevastopol end, this clause will be revised.
6. Ukraine shall establish the appropriate structures and mechanisms at national level and shall adopt all other necessary measures for national coordination and organisation of activities to implement the Programme in accordance with the relevant provisions in the Regulation establishing this programme. In particular, Ukraine undertakes to establish a Creative Europe Desk in accordance with article 16 of Regulation 1295/2013 and the guidance provided by the Commission.

7. To participate in the Programme and to take part in the cooperation actions of the MEDIA Sub-programme, Ukraine shall pay every year a financial contribution to the General Budget of the European Union in accordance with Article 3 below.

8. The financial contribution of Ukraine in respect of its participation, cooperation 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.

9. 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 Ukraine are set out in Annex I.

### **Article 4**

#### **Reporting and evaluation**

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

2. The rules concerning financial control, recovery and other antifraud measures are laid down in Annex II.

### **Article 5**

#### **Final provisions**

1. This Agreement shall apply for the duration of the Programme.

2. The Commission and Ukraine may terminate activities under this agreement at any time upon twelve months' notice in writing or upon one month's notice when the reason for terminating the agreement lies in the amount of the entry ticket. Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in this Agreement, as well as the contractual arrangements applying to these projects and activities and the provisions of the Annexes.

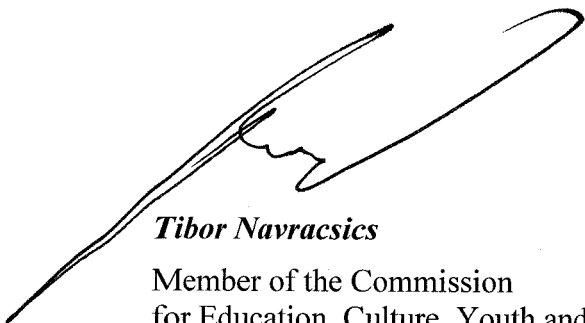
3. The Annexes shall form an integral part of this Agreement.

4. This Agreement may only be amended in writing by common consent of the parties.

5. This Agreement shall enter into force on the date of the written notification by which Ukraine notifies the Commission through diplomatic channels that its internal legal requirements for its entry into force have been fulfilled. It shall take effect from 1 January 2016.

Done in Kyiv on 19 November in the year two thousand and fifteen, in duplicate, in English and in Ukrainian.

For the Commission,  
on behalf of the European Union,



***Tibor Navracsics***  
Member of the Commission  
for Education, Culture, Youth and Sport

For the Government of Ukraine,



***Vyacheslav Kyrylenko***  
Vice Prime Minister – Minister of Culture  
of Ukraine

## ANNEX I

### **RULES GOVERNING THE FINANCIAL CONTRIBUTION OF UKRAINE TO "CREATIVE EUROPE": THE UNION PROGRAMME FOR THE CULTURAL AND CREATIVE SECTORS**

The annual financial contribution for the first year to be paid by Ukraine to the General Budget of the European Union to participate in the Culture Sub-programme and the Cross-sectoral Strand of the Programme (with the exception of the Cultural and Creative Sectors Guarantee Facility as mentioned in article 14 and in accordance with article 8(4) of Regulation 1295/2013 and to cooperate in the training measures, trade events and markets, festivals and audience development actions of the MEDIA Sub-programme shall be EUR 1.

Ukraine's financial contribution for the subsequent years will be reassessed and may be amended by the European Commission on a yearly basis.

Travel costs and subsistence costs incurred by representatives and experts of Ukraine for the purposes of taking part as observers in the work of the committee referred to in Article 23 of Regulation 1295/2013 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.

The maximum amount of financial support to be allocated by the Programme to the activities of the Creative Europe Desk shall not exceed 50 percent of the total budget for those activities, and will not exceed two thirds of the financial contribution of the country as specified in this Annex I. For the first year, the financial support by the Programme to the activities of the Creative Europe Desk shall be set at EUR 0 (zero). For subsequent years, it will be reassessed and may be amended by the European Commission on a yearly basis and subject to the rules here specified.

Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the General Budget of the European Union shall apply to the management of the contribution of Ukraine.

When this Agreement enters into force and at the beginning of each subsequent budgetary year, the Commission shall send Ukraine a call for funds corresponding to its contribution of the costs covered by this Agreement.

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

Ukraine shall pay its contribution to the annual costs no later than three months after the date of the call, provided that the call for funds is sent by the Commission before 1 March, or at the latest one month after the call for funds if it sent later. Any delay in the payment of the contribution shall give rise to the payment of default interest by Ukraine 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 months in which the deadline falls, increased by 3.5 percentage points. If 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 Ukraine, participation of Ukraine in the Programme for the relevant year will be suspended.

## ANNEX II

### FINANCIAL CONTROL, RECOVERY AND OTHER ANTIFRAUD MEASURES

#### I. CONTROLS AND ANTIFRAUD MEASURES BY THE 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 Agreement, the contracts and grant agreements concluded with beneficiaries of the Programme established in Ukraine shall provide for financial or other audits to be conducted at any time during the implementation of the contract or the grant agreement and for a period of 5 years, starting from the date of payment of the balance, except for grants of an amount equal or lower than EUR 60 000 for which this period shall be limited to 3 years. The financial or other audits shall be conducted on the premises of the contractors and their subcontractors and on the premises of the beneficiaries and their contractors and subcontractors by Commission agents or by other persons mandated by the Commission.
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 and grant agreements concluded to implement the instruments referred to in this Agreement. The European Court of Auditors shall have the same rights as the Commission.
3. Within the framework of this Agreement, the Commission/OLAF (the European Anti Fraud Office) shall be authorised to carry out on-the-spot checks and inspections on territory of Ukraine, in accordance with the procedural provisions of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996<sup>2</sup>.

These checks and inspections shall be prepared and conducted in close collaboration with the competent authorities of Ukraine designated by the authorities of Ukraine, 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 authorities of Ukraine concerned so wish, the on-the-spot checks and inspections may be carried out jointly with them.

Where the participants in the Programme resist an on-the-spot check or inspection, the authorities of Ukraine, 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.

The Commission/OLAF shall report as soon as possible to the authorities of Ukraine 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 the Commission/OLAF shall be required to inform the above-mentioned authority of the result of such checks and inspections.

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<sup>2</sup> OJ L 292, 15.11.1996, p.2.

## **II. INFORMATION AND CONSULTATION**

1. For the purposes of proper implementation of this Annex, the competent authorities of Ukraine and European Union authorities shall regularly exchange information and, at the request of one of the Parties, shall conduct consultations.
2. The competent authorities of Ukraine 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 and grant agreements concluded in application of the instruments referred to in this Agreement.

## **III. ADMINISTRATIVE MEASURES AND PENALTIES**

Without prejudice to application of the criminal law of Ukraine, 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 Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Ukraine. 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 enforcement order 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 Ukraine 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 delivered by the Court of Justice of the European Union pursuant to an arbitration clause in a contract and a grant agreement within the scope of this Agreement shall be enforceable on the same terms.

## **V. DIRECT COMMUNICATION**

The Commission shall communicate directly with the participants in "Creative Europe", the Union programme for the cultural and creative sectors established in Ukraine. They may submit directly to the Commission all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Agreement and of the contracts and grant agreements concluded to implement them.

## **SIDE LETTER**

**to the**

### **Agreement between the European Commission and the Government of Ukraine on the participation of Ukraine in "Creative Europe": the Union programme for the cultural and creative sectors, and on cooperation between the European Union and Ukraine in the MEDIA Sub-programme of "Creative Europe"**

The European Commission and the Government of Ukraine together confirm that Article 5(5) of the Agreement should be understood as follows:

The date of entry into force of the Agreement will be on the date of the written notification by which Ukraine notifies the Commission through diplomatic channels that it has fulfilled the necessary internal legal requirements to that end.

Upon such notification the Agreement will take effect, retroactively, as of 1 January 2016. The Parties do not intend to apply the Agreement provisionally.

19 November 2015

For the Commission,

For the Government of Ukraine,



***Tibor Navracsics***

Member of the Commission  
for Education, Culture, Youth and Sport



***Vyacheslav Kyrylenko***

Vice Prime Minister - Minister of Culture  
of Ukraine