

**Agreement between the European Commission,
the Government of the Russian Federation and
the Government of the Federal Republic of Germany
on the financial contribution
of the European Union and the Russian Federation
provided for the implementation of the
Transnational Cooperation Programme
"Interreg Baltic Sea Region 2014-2020"
in the Russian Federation
(Financing Agreement)**

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 Federal Republic of Germany, acting on behalf of the Federal Republic of Germany, hereinafter referred to as "**Germany**",

hereinafter collectively referred to as "**the Parties**"

have agreed as follows:

Article 1 – Purpose of this agreement

- (1) This Agreement sets out the conditions of financing and implementing the Transnational Cooperation Programme "Interreg Baltic Sea Region" in the meaning of point (a) of Article 2 of this Agreement (hereinafter referred to as "the Cooperation Programme") for the period of 2014 to 2020 in the Russian Federation with the financial contribution of the European Neighbourhood Instrument (hereinafter referred to as "ENI") and the Russian Federation.
- (2) Unless otherwise stated explicitly, all provisions in this Agreement shall apply in equal terms both to the funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation to the Cooperation Programme.

Article 2 – Definitions

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

- (a) "Cooperation Programme" means a programme supporting the cooperation between the participating countries, based on the whole of the following documents with regard to the Interreg Baltic Sea Region Programme for the 2014 to 2020 period which do not constitute an integral part of this Agreement:
- The Cooperation Programme document (CCI 2014TC16M5TN001) as approved by Commission Decision C(2014) 10146 of 18 December 2014 and as amended by Commission Decision C(2015) 9118 of 9 December 2015;
 - The "Agreement on Management, Financial and Control Systems";
 - The "Programme Manual";
 - The "Rules of Procedure for the Monitoring Committee of the Cooperation Programme";
 - The "Programme Communication Strategy".
- (b) "Participating countries" means the participating EU Member States, the Russian Federation and the Kingdom of Norway;
- (c) "Programme area" means the regions as defined in the Cooperation Programme document;
- (d) "Operation" means a project, contract or group of projects selected by the Monitoring Committee of the Cooperation Programme, or under its responsibility, that contributes to the objectives of a priority or priorities;
- (e) "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 and which shall contribute to the priorities identified in the Cooperation Programme document;
- (f) "Grant" means a direct financial contribution from the funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation to a Russian beneficiary in the Russian Federation in order to co-finance a project;
- (g) "Subsidy contract" means a contract concluded between the Managing Authority and the lead beneficiary for an approved project constituting the legally binding agreement between the project and the Cooperation Programme, also confirming the final commitment of the financial contribution of the ENI and of the financial contribution of the Russian Federation to a given project and setting out the obligations and rights of the contracting parties, including the specific requirements concerning the products or services to be delivered under the project, its financing plan, and the time-limit for its execution;

- (h) "Procurement contract" means a contract concluded between a lead beneficiary or another beneficiary with a contractor to implement a project;
- (i) "Beneficiary" means a legal entity responsible for initiating or initiating and implementing an operation and receiving financial contribution from the Cooperation Programme;
- (j) "Lead beneficiary" means the beneficiary designated by all beneficiaries participating in a given operation and representing the partnership towards the Managing Authority;
- (k) "Public entity" in the Russian Federation means a federal, regional or local authority of the Russian Federation;
- (l) "Closure" of the Cooperation Programme means the financial settlement of outstanding financial contribution from the EU through one of the following actions:
 - payment of the final balance due by the Commission to the Managing Authority; or
 - issuance of a recovery order by the Commission concerning sums unduly paid by it to the Managing Authority; and/or
 - de-commitment of the final balance of the budgetary commitment by the Commission.

Article 3 – Total estimated budget and financial contributions to the Cooperation Programme

- (1) The total budget of the Cooperation Programme is estimated at EUR 349 807 007.
- (2) The maximum EU financial contribution to the Cooperation Programme is set at EUR 272 630 658.

The financial contribution of the EU to the Cooperation Programme is provided under the European Regional and Development Fund (hereafter referred to as "ERDF") of EUR 263 830 658 and the ENI of EUR 8 800 000, whereof a maximum amount of EUR 4 400 000 will be spent for the participation of Russian beneficiaries in the Russian Federation and also for the technical assistance of the Cooperation Programme.

- (3) The financial contribution of the Russian Federation to the Cooperation Programme is set at EUR 4 400 000 and is provided under the Federal Budget of the Russian Federation. This also includes an amount of EUR 344 960 for technical assistance of the Cooperation Programme.
- (4) An amount of EUR 264 000 out of the EUR 4 400 000 of the financial contribution of the ENI and an amount of EUR 88 000 as national co-financing out of the EUR 4 400 000 of the financial contribution of the Russian Federation to the Cooperation Programme shall be used for the technical assistance budget of the Cooperation Programme.
- (5) The breakdown of the financial contributions to the Cooperation Programme is shown in the financing plan included in the Cooperation Programme document.

- (6) Following the signature of this Agreement, the Managing Authority shall send the requests for the transfer of the financial contributions of the Russian Federation to the Russian National Authority and to the Ministry of Finance of the Russian Federation. The Ministry of Finance of the Russian Federation shall transfer after each request within 90 days its financial contribution to the Cooperation Programme through the European Bank for Reconstruction and Development acting as a financial agent in three annual payments:
- In 2017, EUR 1 500 000.
 - In 2018, EUR 1 500 000.
 - In 2019, EUR 1 400 000.
- (7) Any interest gained on the Cooperation Programme's ENI account as well as on the account of the national contribution of the Russian Federation will be regarded as resource of the Cooperation Programme. The Monitoring Committee shall decide upon the use of the interest income for the benefit of the Cooperation Programme.

Article 4 – Implementation of the Cooperation Programme

- (1) The Cooperation 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 Cooperation Programme document and the other documents in the meaning of point (a) of Article 2 of this Agreement and the Declaration by the Russian Federation concerning its participation in the Cooperation Programme “Interreg Baltic Sea Region” for the funding period 2014–2020 and the management of corresponding funds of the Russian Federation, signed on 22 July 2016 by the Russian Federation and on 24 November 2016 by the Managing Authority.
- (2) Implementing provisions such as formal requirements towards beneficiaries, rules for project assessment, approval, contracting, and eligibility of expenditure as well as reporting and payment procedures are set out in the Programme Manual.

Article 5 – Cooperation Programme authorities and management bodies

- (1) The Cooperation Programme authorities and management bodies are:
- (a) The Managing Authority, i.e. Investitionsbank Schleswig-Holstein;
 - (b) The National Authority, i.e. Ministry of Economic Development of the Russian Federation;
 - (c) The Joint Secretariat, set up by the Managing Authority;
 - (d) The Control Contact Point;
 - (e) The Certifying Authority;
 - (f) The Audit Authority;

- (g) The Group of Auditors;
 - (h) The Monitoring Committee.
- (2) A description of the functions of the Cooperation Programme authorities and management bodies, as well as the composition of the Monitoring Committee and the Group of Auditors is laid down in the Cooperation Programme document and the other documents in the meaning of point (a) of Article 2 of this Agreement.
 - (3) The Cooperation Programme authorities and management bodies shall take all necessary measures to ensure efficient implementation of the Cooperation Programme.

Article 6 - Cooperation obligation

- (1) The Russian Federation 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 Cooperation Programme document and the other documents in the meaning of point (a) of Article 2 of this Agreement.
- (2) The Ministry of Economic Development of the Russian Federation as Russian National Authority assumes ultimate responsibility for the implementation of the Cooperation Programme in its own territory and assuring the cooperation with the Cooperation Programme authorities and management bodies and the Commission as set out in paragraph 1 of this Article.

The Monitoring Committee member from the Russian Federation representing the National Authority and its deputy shall be the main contact persons for the Cooperation Programme authorities and management bodies related to the implementation of the Cooperation Programme in the Russian Federation.

- (3) The Russian Federation shall appoint a Control Contact Point that will support the Managing Authority in its control tasks.
- (4) The Russian Federation shall appoint a representative in the Group of Auditors that will support the Audit Authority with its audit tasks (second level audits).
- (5) The Russian Federation shall appoint up to three representatives and their deputies in the Monitoring Committee.

Article 7 - Execution period and eligibility period

- (1) The execution period of this Agreement shall start as of the entry into force of this Agreement and end five years after the closure of the Cooperation Programme, as defined in point (l) of Article 2 of this Agreement.
- (2) In the Russian Federation, expenditure shall be eligible for funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation if it has been incurred by a beneficiary and paid between 1 January 2014 and 31 December 2023.

Article 8: Cooperation Programme beneficiaries

- (1) The lead beneficiary as defined in point (j) of Article 2 of this Agreement shall sign the subsidy contract with the Managing Authority.
- (2) 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 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.
- (3) The lead beneficiary and the other 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 between them.
- (4) For the purposes of this Agreement, funds received under the financial contribution of the ENI and under the financial contribution of the Russian Federation by Russian beneficiaries in the Russian Federation shall not be considered as foreign financing as defined in the national legislation of the Russian Federation.

Article 9: Procurement

- (1) Procurement award procedures by beneficiaries established in the Russian Federation other than public entities and other legal entities which are subject to public procurement legislation of the Russian Federation, shall be subject to the Annex to this Agreement (Award of procurement contracts by beneficiaries established in the Russian Federation other than public entities as defined in point (k) of Article 2 of this Agreement and other legal entities which are subject to public procurement legislation of the Russian Federation).
- (2) Where the beneficiary is a public entity established in the Russian Federation as defined in point (k) of Article 2 of this Agreement or a legal entity which is subject to public procurement legislation of the Russian Federation, it shall apply the legislation of the Russian Federation provided that the following principles are observed.

The procurement 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 and 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 10 of this Agreement.

Failure to comply with the above shall render the related expenditure ineligible.

Article 10: Rules of nationality and origin

- (1) Participation in the award of procurement procedures referred to in Article 9 of this Agreement shall be open on equal terms to all natural persons who are nationals of, and legal persons which are effectively established in all participating countries and in accordance with the applicable legislation of each participating country.
- (2) All supplies purchased under a procurement contract referred to in Article 9 of this Agreement shall originate from a participating country in accordance with paragraph 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.
- (3) National preferences are prohibited, except for procurement 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 11: Visa facilitation

- (1) The Russian Federation shall facilitate the issuing of visas to the personnel of the Cooperation Programme authorities and management bodies listed in Article 5(1) of this Agreement and to the beneficiaries in terms of point (i) of Article 2 of this Agreement for travel related with the implementation and management of the Cooperation Programme. Visas shall be granted as speedily as possible.
- (2) The same principle shall apply, where relevant, to other natural persons and persons representing legal persons participating in implementing operations.
- (3) The Commission shall encourage the participating countries to facilitate in equal terms the issuing of visas to all actors referred to in paragraphs 1 and 2 of this Article from the Russian Federation for travel related with the implementation of the Cooperation Programme.

Article 12 - Foreign Exchange provisions and transfer of funds

- (1) The Russian Federation shall apply to the exchange, import and purchase of foreign currency its national regulations in a non-discriminatory manner. In case of procedures in currencies other than Euro, the amount shall be converted into Euro using the exchange rate method mentioned in the Cooperation Programme document.
- (2) The Russian Federation shall undertake measures to facilitate any beneficiary or contractor, in its own territory, where applicable, to:
 - (a) Receive funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation for the purposes of the Cooperation Programme and open specific bank accounts, including accounts in Euro;
 - (b) Make payments as per procurement or subsidy 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.

If the measures undertaken cannot facilitate a beneficiary or contractor to implement the actions under points (a) to (c) of this paragraph, the Parties shall hold consultations.

(3) The Commission shall encourage the participating countries to take similar measures as set out in paragraphs 1 and 2 of this Article.

Article 13 - Use of studies

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

Article 14 - Disclosure of information

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

(2) The Parties shall hold consultations before publicly disclosing such information.

(3) Personal data of natural persons participating in the Cooperation Programme shall be collected, recorded, stored and transferred, with their consent, in databases of the Cooperation Programme authorities and management bodies. Upon justified request, such data shall be transferred to the EU control bodies indicated in Article 17(7) of this Agreement. The Parties as well as Cooperation Programme authorities and management bodies shall ensure data security in accordance with their respective legislation.

(4) The Commission shall encourage the participating countries to take similar measures as set out in paragraphs 1 to 3 of this Article with regard to documents or data generated in their respective countries.

Article 15 – Visibility

(1) The Cooperation Programme and any project financed by the Cooperation Programme shall be subject to appropriate communication and information measures.

(2) These communication and information measures shall follow the Programme Communication Strategy.

Article 16 – Record keeping and reporting obligations

- (1) All Cooperation Programme authorities, management bodies and beneficiaries shall keep all documents related to the Cooperation Programme or a project for three years after closure of the Cooperation 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 Cooperation Programme (including all documents relating to the procurement contract award) and projects.
- (2) Notwithstanding paragraph 1 of this Article, records pertaining to audits, appeals, litigation or pursuit of claims arising from the Cooperation Programme or project performance shall be retained until such audits, appeals, litigation or claims have been completed.
- (3) The reporting procedures of the Cooperation Programme authorities and management bodies to the Parties are described in the Cooperation Programme document and the other documents in the meaning of point (a) of Article 2 of this Agreement.

Article 17 – Verifications and checks

- (1) The Parties agree that implementation of the Cooperation Programme is subject to verifications and checks. The Russian Federation shall cooperate and support the responsible authorities to conduct these verifications and checks.
- (2) Therefore, the Russian Federation agrees to the general arrangements for management verifications (also referred to as "first level control") as set out in the Cooperation Programme document and the other documents in the meaning of point (a) of Article 2 of this Agreement.
- (3) The costs for the management verifications will be paid by the beneficiaries.

However, costs for the first level control of expenditure related to technical assistance shall be paid from the technical assistance budget of the Cooperation Programme.

- (4) 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 funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation. They may also carry out a full audit (also referred to as "second level audit"), if necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the Cooperation Programme as a whole or of projects, throughout the duration of this Agreement and for the period of record-keeping.
- (5) The Commission, the European Anti-Fraud Office (OLAF) and the European Court of Auditors and any external auditor authorised 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 funds provided

under the financial contribution of the ENI and under the financial contribution of the Russian Federation. They may also 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 Cooperation Programme/projects, throughout the duration of this Agreement and for the period of record-keeping.

- (6) The Russian Federation shall grant the authorities mentioned in paragraphs 4 and 5 of this Article 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.
- (7) The Russian Federation 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.

Article 18 – Prevention of irregularities, fraud and corruption

- (1) The Russian Federation shall take appropriate measures to prevent irregularities and fraud.

"Irregularity" shall mean any infringement of this 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 Cooperation 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 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.

- (2) The Russian Federation undertakes 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.

- (3) If the Russian Federation does not take appropriate measures to prevent fraud, irregularities and corruption within the Cooperation Programme, the Managing Authority may adopt precautionary measures.

Those precautionary measures may include:

- Additional first level controls (FLC) or second level audits;
 - Special trainings/renewal of training for first level controllers or second level auditors;
 - FLC seminar or special guidance on relevant topics for the country/project partners in question;
 - Correction report linked to the project's progress report based on findings to avoid the same errors in the future;
 - Part-termination of the subsidy contract to exclude the project partners in question.
- (4) The Russian Federation shall immediately inform the Managing Authority and the Commission of any element brought to its attention which arouses suspicions of irregularities, fraud or corruption and of any measure taken or planned to deal with them.
- (5) The Managing Authority and the Commission shall immediately inform the Russian Federation 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 in case such irregularities, fraud or corruption may affect interests of the Russian Federation and Russian beneficiaries in the Russian Federation while implementing the Cooperation Programme.
- (6) The rights and obligations of Germany, as country hosting the Managing Authority, with regard to the prevention of irregularities, fraud and corruption are set out in the Cooperation Programme document and the other documents in the meaning of point (a) of Article 2 of this Agreement which are legally binding for Germany.

Article 19 – Recovery

- (1) Where the Managing Authority assisted by the Joint Secretariat in accordance with the Cooperation Programme document and the other documents in the meaning of point (a) of Article 2 of this Agreement suspects or was informed about the irregular use of funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation by a Russian beneficiary in the Russian Federation it shall apply appropriate follow-up actions, such as suspension of the reimbursement of the financing related to the lead beneficiary or another beneficiary and expenditure under examination, withdrawal or reduction of the funds granted, or recovery of the funds granted.
- (2) Once it has been established by the Managing Authority that a financial irregularity has occurred and an amount has been unduly paid, that ineligible expenditure will be either deducted as set out in paragraph 3 of this Article or recovered as set out in paragraphs 4 to 10 of this Article.
- (3) The ineligible expenditure of funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation by a Russian beneficiary in the Russian Federation shall be deducted from future payments of the same financial source to the lead beneficiary in case there is still a progress report that has not been paid out and the irregular amount can be covered from it.

The irregular amount shall be deducted from the project's progress report through a correction report signed by the lead beneficiary.

The Managing Authority shall be responsible for the recovery of the amounts from the lead beneficiary and sends out the pre-filled correction report to the lead beneficiary.

- (4) The ineligible expenditure of funds provided under the financial contribution of the ENI and under the financial contribution of the Russian Federation by a Russian beneficiary in the Russian Federation shall be recovered from the lead beneficiary in case there are no or not enough open project's payment claims of the same financial source to recover the irregular amount.

The Managing Authority shall be responsible for the compilation of the documentation giving a basis for the recovery. The Managing Authority shall be responsible for the recovery process including the order for recovery letter to the lead beneficiary.

- (5) The lead beneficiary shall transfer the repayment amount to the Cooperation Programme's account, specified in the recovery letter, within one calendar month following the date of the letter of the Managing Authority asserting the repayment claim. The order for the recovery letter shall contain the exact recovery date.
- (6) The lead beneficiary shall recover the amount from the respective Russian beneficiary in the Russian Federation in accordance with an established system agreed in the partnership agreement as defined in Article 8(3) of this Agreement.

In case the lead beneficiary does not succeed in securing repayment of the irregular amount from the respective Russian beneficiary in the Russian Federation by the deadline specified in the recovery letter, the lead beneficiary shall inform the Managing Authority without delay. This information shall include a proof that the lead beneficiary has undertaken all necessary steps of recovery in accordance with the partnership agreement as defined in Article 8(3) of this Agreement.

- (7) Upon this proof and in case the lead beneficiary does not pay back the irregular amount by the deadline specified in the recovery letter, the Managing Authority shall inform the Russian National Authority by sending a written request setting out a complete file.
- (8) For amounts from funds under the financial contribution of the ENI that could not be recovered, the Russian National Authority shall guarantee by its financial contribution to the Cooperation Programme the recovery of respective irregularly spent amounts.
- (9) The Russian National Authority shall be entitled to claim the unduly paid funds from the Russian beneficiary in the Russian Federation concerned by all legal means.

If the Russian National Authority and the Russian beneficiary in the Russian Federation do not come to an agreement, the dispute shall be referred to an appropriate court of the Russian Federation.

- (10) Where the recovery from the Cooperation Programme by the Commission relates to systemic deficiencies in the management and control of the Cooperation Programme by the Cooperation Programme authorities and management bodies listed in Article 5(1) of this Agreement, the Parties will hold necessary consultations in order to resolve the situation with due regard to the apportionment of liabilities among the participating countries as laid down in the Cooperation Programme document and the other documents, and as defined in point (a) of Article 2 of this Agreement.
- (11) Recovered amounts may be reused by the Cooperation Programme.

However, those amounts may not be reused for any operation that was the subject of the correction or, where a financial correction is made for a systemic irregularity or deficiency in terms of paragraph 10 of this Article, for any operation affected by the systemic irregularity or deficiency.

Article 20 – Cooperation with OLAF

For the purposes of Article 17 of this Agreement, 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 The Russian National Authority.

Article 21 – De-commitment of the contribution from the ENI

- (1) The Commission shall de-commit any part of the contribution from the ENI to the Cooperation Programme that has not been used for payment of the pre-financing and interim payments by 31 December of the third financial year following the year of budget

commitment under the Cooperation Programme or for which a payment application has not been submitted by the relevant deadline.

However, with regard to the contribution from the ENI for the year 2015, the Commission shall de-commit that part that has not been used for payment of the pre-financing and interim payments by 31 December of the fourth financial year following 2015 or for which a payment application has not been submitted by the relevant deadline.

- (2) Notwithstanding paragraph 3 of this Article, the amount of the contribution concerned by de-commitment shall be reduced by the amounts that the Managing Authority has not been able to declare to the Commission because of:
 - (a) Projects suspended by a legal proceeding or by an administrative appeal having suspensory effect;
 - (b) Reasons of *force majeure*, as defined in Article 28(1) of this Agreement, seriously affecting the implementation of all or part of the Cooperation Programme;
 - (c) In case of interruption of the payment deadline or suspension of payments.
- (3) That part of commitments still open on 31 December 2023 shall be de-committed if any of the relevant closure documents has not been submitted to the Commission by 15 February 2025.

Article 22 – Reimbursement of the contribution from the Russian Federation

The Managing Authority shall reimburse to the Russian Federation after the closure of the Cooperation Programme and as soon as possible any balance remaining of the financial contribution from the Russian Federation that co-finances the Cooperation Programme.

Article 23 – Arrangements for Cooperation Programme closure

- (1) The closure of the Cooperation Programme shall be carried out in compliance with the relevant EU legislation. The Managing Authority will liaise with the Audit Authority to ensure a smooth Cooperation Programme closure.
- (2) The closure of the Cooperation Programme will be prepared as much as possible within the eligibility period of the Cooperation Programme in order to speed up the process and to limit the closure activities and costs to be financed either by the participating countries or a possible successor Cooperation Programme after the end of the final date of eligibility (31 December 2023).

Article 24 – Components of this Agreement

The Annex (Award of procurement contracts by beneficiaries established in the Russian Federation other than public entities as defined in point (k) of Article 2 of this Agreement and other legal entities which are subject to public procurement legislation of the Russian Federation) shall form an integral part of this Agreement.

Article 25 – Communications

The working language of the Cooperation Programme shall be English.

All communications concerning the implementation of this Agreement shall be in writing, shall refer expressly to the Cooperation Programme and shall be sent to the following addresses:

a) for the EU

European Commission
Directorate General for Regional and Urban Policy
1049 Brussels
Belgium

b) for the Russian Federation

Ministry of Economic Development of the Russian Federation
ul. 1-ya Tverskaya-Yamskaya, D. 1,3
125993, GSP-3, A-47, Moscow
Russian Federation

c) for Germany

Interreg Baltic Sea Region Managing Authority/Joint Secretariat
IB.SH - Investitionsbank Schleswig-Holstein
Grubenstrasse 20
18055 Rostock
Germany

Article 26 – Consultations between Parties

- (1) The Parties shall consult each other in order to resolve any disagreement relating to the implementation or interpretation of this Agreement.
- (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.
- (3) The consultation may lead to the amendment, suspension or termination of this Agreement.

Article 27 – Amendment of this Agreement

- (1) Any amendment of this Agreement shall be made in writing, including the possibility of an exchange of letters upon agreement of the Parties.
- (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 28 – Suspension of this Agreement

- (1) This Agreement may be suspended in the following cases:
 - Each Party may suspend the implementation of this Agreement if one of them breaches an obligation under this Agreement.
 - Each Party may suspend this Agreement in case of breach of an international legal obligation relating to the respect of human rights, democratic principles and the rule of law and in serious cases of corruption as defined in Article 18(2) of this Agreement.
 - 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 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 to be 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 facing *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.
- (2) Each Party may take any appropriate precautionary measure before the suspension takes place.
- (3) When the suspension is notified, the consequences for the ongoing procurement contracts and subsidy contracts, as defined in points (g) and (h) of Article 2 of this Agreement, already signed and for such contracts still to be signed shall be communicated to the Managing Authority.
- (4) Irrespective of the Parties' right to suspend this Agreement, each Party that co-finances the Cooperation Programme may suspend all or part of the payments in duly justified

cases after having given the Managing Authority the opportunity to present its observations.

- (5) Each Party shall resume with prior mutual written approval the implementation of this Agreement once the conditions allow it. This is without prejudice to any amendments of this Agreement which may be necessary in order 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 29 of this Agreement.

Article 29 – Termination of this Agreement

- (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 a 30 days' notice.
- (2) When the termination is notified, the consequences for the ongoing procurement contracts and subsidy contracts and for such contracts still to be signed shall be communicated to the Managing Authority.
- (3) Where the Cooperation Programme cannot be implemented due to problems arising in relations between participating countries and in other duly justified cases, the Commission may decide, at the request of the Monitoring Committee or on its own initiative after having consulted the Monitoring Committee, to discontinue the contribution from the ENI for the participation of Russian beneficiaries in the Russian Federation in the Cooperation Programme before the expiry date of the period of execution.
- (4) Where the Cooperation Programme cannot be implemented due to problems arising in relations between participating countries and in other duly justified cases, the Russian Federation may decide, at the request of the Monitoring Committee or on its own initiative after having consulted the Monitoring Committee, to discontinue its contribution for the participation of Russian beneficiaries in the Russian Federation in the Cooperation Programme before the expiry date of the period of execution.

Article 30 – Depositary

The Commission shall be the Depositary of this Agreement.

Article 31 – Entry into force

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

Done in three original copies, one for each Party, each in English and Russian, both are equally authentic.

FOR THE EUROPEAN
COMMISSION

FOR THE
GOVERNMENT OF
THE RUSSIAN
FEDERATION

FOR THE
GOVERNMENT OF
THE FEDERAL
REPUBLIC OF
GERMANY

Marc Lemaître

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Reinhard Silberberg

Director-General,
Directorate General for
Regional and Urban
Policy

Deputy Minister of
Economic Development
of the Russian Federation

Ambassador,
Permanent Representative
of the Federal Republic of
Germany to the European
Union

Signature
Date:
Place:

Signature
Date:
Place:

Signature
Date:
Place:

Annex

Award of procurement contracts by beneficiaries established in the Russian Federation other than public entities as defined in point (k) of Article 2 of the Agreement and other legal entities which are subject to public procurement legislation of the Russian Federation

1. General principles

Where implementation of the Cooperation Programme/project requires the award of a procurement contract by beneficiaries established in the Russian Federation other than public entities as defined in point (k) of Article 2 of the Agreement and other legal entities which are subject to public procurement legislation of the Russian Federation, 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 Article 2(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 Article 2(3) 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 10 of the Agreement 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;

(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 the Agreement;

- (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 European 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 this paragraph. 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 this paragraph.

Point (a) of this paragraph 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.

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 this paragraph, 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 Article 2(2) of this Annex;
- (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 applicable to the beneficiary, complying with the rules of nationality and origin set out in Article 2(1) of this Annex. In absence of such national rules, 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 peoples 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 announced 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 in 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:
 - (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 sub-points (2) and (3) of this point 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 EU 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 announced 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 EU 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 sub-points (2) and (3) of this point 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.