

INTERNATIONAL AGREEMENT**between the European Union, of the one part, and Montenegro, of the other part, on the participation of Montenegro in the Union programme Horizon Europe – the Framework Programme for Research and Innovation**

The European Commission (hereinafter referred to as ‘the Commission’), on behalf of the European Union,
of the one part,

and

the Government of Montenegro (hereinafter referred to as ‘Montenegro’),

of the other part,

hereinafter referred to as ‘the Parties’,

WHEREAS the Protocol 8 to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, on the general principles for the participation of Montenegro in Community programmes ⁽¹⁾ stipulates that the specific terms and conditions regarding the participation of Montenegro in each particular programme, in particular the financial contribution payable, will be determined by agreement, in the form of a Memorandum of Understanding ⁽²⁾ between the Commission, acting on behalf of the Community and Montenegro;

WHEREAS the European Union programme Horizon Europe - the Framework Programme for Research and Innovation was established by Regulation (EU) 2021/695 of the European Parliament and of the Council ⁽³⁾ (hereinafter referred to it as ‘Horizon Europe Programme’);

CONSIDERING the European Union’s efforts to lead the response by joining forces with its international partners to address global challenges in line with the plan of action for people, planet and prosperity in the United Nations Agenda ‘Transforming our World: the 2030 Agenda for Sustainable Development’, and acknowledging that research and innovation are key drivers and essential tools for innovation-led sustainable growth, for economic competitiveness and attractiveness;

RECOGNISING the general principles as set out in Regulation (EU) 2021/695;

ACKNOWLEDGING the objectives of the renewed European Research Area to build a common scientific and technological area, create a single market for research and innovation, foster and facilitate the cooperation between universities and the exchange of best practices and attractive research careers, facilitate cross-border and inter-sectoral mobility of researchers, foster free movement of scientific knowledge and innovation, promote the respect of academic freedom and freedom of scientific research, support science education and communication activities, and encourage competitiveness and attractiveness of participating economies, and that associated countries are key partners in this endeavor;

EMPHASISING the role of the European Partnerships addressing some of Europe’s most pressing challenges through concerted research and innovation initiatives contributing significantly to those European Union’s priorities in the area of research and innovation that require critical mass and long-term vision and the importance of associated countries’ involvement in those Partnerships;

CONSIDERING that research and innovation have proven instrumental in the Western Balkan region for cooperation and funding of joint research and innovation projects enabling mutual access to excellence, knowledge, innovation, network and research resources. It has provided valuable opportunities for human development, amplifying the chances of success in finding joint solutions to regional and global challenges;

⁽¹⁾ OJ L 108, 29.4.2010, p. 1.

⁽²⁾ This Agreement constitutes and has the same legal effects as the Memorandum of Understanding stated under the Protocol 8 to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, on the general principles for the participation of Montenegro in Union programmes.

⁽³⁾ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013, OJ L 170, 12.5.2021, p. 1.

SEEKING to establish mutually advantageous conditions in order to create decent jobs, to strengthen and support innovation ecosystems of the Parties by helping enterprises to innovate and scale up in the markets of the Parties and facilitating the uptake as well as deployment and accessibility of innovation, including capacity building activities;

RECOGNISING that reciprocal participation in each other's research and innovation programmes should provide mutual benefits; while acknowledging that the Parties reserve their right to limit or condition participation in their research and innovation programmes including in particular for actions related to their strategic assets, interests, autonomy or security;

CONSIDERING that the common goals, values and strong links of the Parties in the field of research and innovation, established in the past through the Association Agreements to the subsequent Framework Programmes, and recognising the common desire of the Parties to further develop, strengthen, stimulate and extend their relations and cooperation therein,

HAVE AGREED AS FOLLOWS:

Article 1

Scope of the association

1. Montenegro shall participate as an associated country in and contribute to all parts of the Horizon Europe Programme - the Framework Programme for Research and Innovation (the Horizon Europe Programme) referred to in Article 4 of Regulation (EU) 2021/695 and implemented through the specific programme established by Decision (EU) 2021/764 ⁽⁴⁾, in their most up to date versions, and through a financial contribution to the European Institute of Innovation and Technology.
2. Regulation (EU) 2021/819 of the European Parliament and of the Council ⁽⁵⁾, and Decision (EU) 2021/820 ⁽⁶⁾, in their most up to date versions, shall apply to the participation of Montenegro legal entities in Knowledge and Innovation Communities.

Article 2

Terms and conditions of participation in the Horizon Europe Programme

1. Montenegro shall participate in the Horizon Europe Programme in accordance with the conditions laid down in the Protocol 8 to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, on the general principles for the participation of Montenegro in Community programmes, and under the terms and conditions set forth in this Agreement, in the legal acts referred to in Article 1 of this Agreement, as well as in any other rules pertaining to the implementation of the Horizon Europe Programme, in their most up to date versions.
2. Unless otherwise provided for in the terms and conditions referred to in paragraph 1 of this Article, including in implementation of Article 22(5) of Regulation (EU) 2021/695, legal entities established in Montenegro may participate in indirect actions of the Horizon Europe Programme under conditions equivalent to those applicable to legal entities established in the European Union, including respect for the European Union restrictive measures ⁽⁷⁾.
3. Before deciding on whether legal entities established in Montenegro are eligible to participate in an action related to European Union's strategic assets, interests, autonomy or security under Article 22(5) of Regulation (EU) 2021/695, the Commission may request specific information or assurances, such as:
 - a) information whether reciprocal access has been or will be granted to legal entities established in the European Union to existing and planned programmes, projects, actions, activities or parts thereof of Montenegro equivalent to the Horizon Europe action concerned;

⁽⁴⁾ Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU (OJ L 167 I, 12.5.2021, p. 1).

⁽⁵⁾ Regulation (EU) 2021/819 of the European Parliament and of the Council of 20 May 2021 on the European Institute of Innovation and Technology (recast) (OJ L 189, 28.5.2021, p. 61.).

⁽⁶⁾ Decision (EU) 2021/820 of the European Parliament and of the Council of 20 May 2021 on the Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT) 2021-2027: Boosting the Innovation Talent and Capacity of Europe and repealing Decision No 1312/2013/EU (OJ L 189, 28.5.2021, p. 91.).

⁽⁷⁾ The EU restrictive measures are adopted pursuant to Article 29 of the Treaty on the European Union or Article 215 of the Treaty on the Functioning of the European Union.

- b) information whether Montenegro has in place a national investment screening mechanism and assurances that authorities of Montenegro will report on and consult the Commission on any possible cases where in application of such a mechanism they have become aware of planned foreign investment/takeover by an entity established or controlled from outside Montenegro of a Montenegrin legal entity, which has received Horizon Europe funding in actions related to European Union's strategic assets, interests, autonomy or security, provided that the Commission supplies Montenegro with the list of the relevant legal entities established in Montenegro following the signature of grant agreements with these entities; and
- c) assurances that none of the results, technologies, services and products developed under the concerned actions by entities established in Montenegro shall be subject to restrictions on their export to EU Member States during the action and for four years after the end of the action. Montenegro will share an up-to-date list of subjects of national export restrictions on annual basis, during the action and for four years after the end of the action.

4. Legal entities established in Montenegro may participate in the activities of the Joint Research Centre (JRC) under terms and conditions equivalent to those applicable to legal entities established in the European Union unless limitations are necessary to ensure consistency with the scope of participation stemming from the implementation of paragraph 2 and 3 of this Article.

5. Where the European Union implements the Horizon Europe Programme through the application of Articles 185 and 187 of the Treaty on the Functioning of the European Union, Montenegro and Montenegrin legal entities may participate in the legal structures created under those provisions, in conformity with the European Union legal acts that have been or will be adopted for the establishment of those legal structures.

6. Representatives of Montenegro shall have the right to participate as observers in the committee referred to in Article 14 of Decision (EU) 2021/764, without voting rights and for points which concern Montenegro.

These committees shall meet without the presence of representatives of Montenegro at the time of the voting. Montenegro will be informed of the result.

Participation as referred to in this paragraph shall take the same form including procedures for receipt of information and documentation, as that applicable to representatives of Member States of the European Union.

7. Montenegro rights of representation and participation in the European Research Area Committee and its subgroups shall be those applicable to associated countries.

8. Representatives of Montenegro shall have the right to participate as observers in the Board of Governors of the JRC, without voting rights. Subject to that condition, such participation shall be governed by the same rules and procedures as those applicable to representatives of Member States of the European Union, including speaking rights and procedures for receipt of information and documentation in relation to a point that concerns Montenegro.

9. Montenegro may participate in a European Research Infrastructure Consortium (ERIC) in accordance with Council Regulation (EC) No 723/2009 ⁽⁸⁾, in its most up to date version, and with the legal act establishing the ERIC.

10. Travel costs and subsistence expenses incurred by representatives and experts of Montenegro for the purposes of taking part as observers in the work of the committee referred to in Article 14 of Decision (EU) 2021/764, or in other meetings related to the implementation of the Horizon Europe Programme, shall be reimbursed by the European Union on the same basis as and in accordance with the procedures in force for representatives of the Member States of the European Union.

11. The Parties shall make every effort, within the framework of the existing provisions, to facilitate the free movement and residence of scientists participating in the activities covered by this Agreement and to facilitate cross-border movement of goods and services intended for use in such activities.

⁽⁸⁾ Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC) (OJ L 206, 8.8.2009, p. 1.).

12. Montenegro shall take all necessary measures, as appropriate, to ensure that goods and services, purchased in Montenegro or imported into Montenegro, which are partially or entirely financed pursuant to the grant agreements and/or contracts concluded for the realisation of the activities in accordance with this Agreement, are exempted from customs duties, import duties and other fiscal charges, including the VAT, that are applicable in Montenegro.

Article 3

Financial contribution

1. Participation of Montenegro or Montenegrin legal entities in the Horizon Europe Programme shall be subject to Montenegro contributing financially to the Programme and the related management, execution and operation costs under the general budget of the European Union (hereinafter referred to as the 'Union budget').

2. The financial contribution shall take the form of the sum of:

a) an operational contribution; and

b) a participation fee.

3. The financial contribution shall take the form of an annual payment made in two instalments, and shall be due at the latest in May and July.

4. The operational contribution shall cover operational and support expenditure of the Programme and be additional both in commitment and payment appropriations to the amounts entered in the Union budget definitively adopted for the Horizon Europe Programme, including any appropriations corresponding to decommitments made available again as referred to in Article 15(3) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁹⁾, in its most up to date version (hereinafter referred to as 'the Financial Regulation'), and increased by external assigned revenue that does not result from financial contributions to the Horizon Europe Programme from other donors ⁽¹⁰⁾.

For external assigned revenue allocated to the Horizon Europe Programme under Article 3.1 of Council Regulation (EU) 2020/2094 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis ⁽¹¹⁾, this increase shall correspond to annual appropriations indicated in the documents accompanying the Draft Budget with regard to the Horizon Europe Programme.

5. The initial operational contribution shall be based on a contribution key defined as the ratio of the Gross Domestic Product (GDP) of Montenegro at market prices to the GDP of the European Union at market prices. The GDPs at market prices to be applied shall be determined by the dedicated Commission services based on the most recent statistical data available for budget calculations in the year prior to the year in which the annual payment is due. By derogation, for 2021, the initial operational contribution shall be based on the GDP of the year 2019 at market prices. Adjustments to this contribution key are laid down in Annex I.

6. The initial operational contribution shall be calculated applying the contribution key, as adjusted, to the initial commitment appropriations entered in the European Union budget definitively adopted for the applicable year for financing the Horizon Europe Programme, increased in accordance with paragraph 4 of this Article.

7. The participation fee shall be 4 % of the annual initial operational contribution as calculated in accordance with paragraph 5 and 6 of this Article and shall be phased in as set out in Annex I. The participation fee shall not be subject to retrospective adjustments or corrections.

8. The initial operational contribution for a year N may be adjusted upwards or downwards retrospectively in one or more subsequent years on the basis of the budgetary commitments made on the commitment appropriations of that year N, increased in accordance with paragraph 4 of this Article, their implementation through legal commitments and their de-commitments. The detailed provisions for the implementation of this Article are set out in Annex I.

⁽⁹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1.).

⁽¹⁰⁾ This includes notably the resources from the European Union Recovery Instrument established by Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23.).

⁽¹¹⁾ OJ L 433 I, 22.12.2020, p. 23.

9. The European Union shall provide Montenegro with information in relation to its financial participation as included in the budgetary, accounting, performance and evaluation related information provided to the European Union budgetary and discharge authorities concerning the Horizon Europe Programme.

That information shall be provided having due regard to the European Union's and Montenegro's confidentiality and data protection rules and shall be without prejudice to the information which Montenegro is entitled to receive under Annex III.

10. All contributions of Montenegro or payments from the European Union, and the calculation of amounts due or to be received shall be made in euro.

Article 4

Automatic correction mechanism

1. An automatic correction mechanism of the initial operational contribution of Montenegro for year N, as adjusted in accordance with Article 3(8), shall apply and shall be calculated in year N+2. It shall be based on the performance of Montenegro and Montenegrin legal entities in the parts of the Horizon Europe Programme which are implemented through competitive grants financed from commitment appropriations from the year N, increased in accordance with Article 3(4).

The amount of the automatic correction shall be calculated based on the difference between:

- a) the initial amounts of the legal commitments for competitive grants actually entered into with Montenegro or Montenegrin legal entities financed from commitment appropriations of the year N, increased in accordance with Article 3(4); and
- b) the corresponding operational contribution of the year N paid by Montenegro as adjusted pursuant Article 3(8), excluding non-intervention costs financed from commitment appropriations from the year N, increased in accordance with Article 3(4).

2. Where the amount referred to in paragraph 1, whether that amount is positive or negative, exceeds 8 % of the corresponding initial operational contribution as adjusted pursuant to Article 3(8), the initial operational contribution of Montenegro for year N shall be corrected. The amount due by or to be received by Montenegro as an additional contribution or reduction of Montenegro's contribution under the automatic correction mechanism shall be the amount exceeding this 8 % threshold. The amount below this threshold of 8 % will not be taken into account in calculating the additional contribution due or compensated.

3. Detailed rules on the automatic correction mechanism are laid down in Annex I.

Article 5

Reciprocity

1. Legal entities established in the European Union may participate in programmes, projects, actions, activities or parts thereof of Montenegro equivalent to the Horizon Europe Programme, in accordance with Montenegro's laws and regulations.

2. The non-exhaustive list of the equivalent programmes, projects, actions, activities or parts thereof of Montenegro is provided in Annex II.

3. Funding by Montenegro of legal entities established in the Union shall be subject to Montenegro's laws and regulations governing the operation of research and innovation programmes, projects, actions, activities or parts thereof. Where funding is not provided, legal entities established in the Union may participate with their own means.

Article 6

Open Science

The Parties shall mutually promote and encourage open science practices in their programmes, projects, actions, activities or parts thereof in accordance with the rules of the Horizon Europe Programme and Montenegro's laws and regulations.

*Article 7***Monitoring, Evaluation and Reporting**

1. Without prejudice to the responsibilities of the Commission, the European Anti-Fraud Office (OLAF) and the Court of Auditors of the European Union in relation to monitoring and evaluation of the Horizon Europe Programme, the participation of Montenegro in that Programme shall be continuously monitored on a partnership basis involving the Commission and Montenegro.
2. The rules concerning sound financial management, including the financial control, recovery and other antifraud measures in relation to European Union funding under this Agreement are laid down in Annex III.

*Article 8***EU-Montenegro Joint Research and Innovation Committee**

1. The EU-Montenegro Joint Research and Innovation Committee is hereby established (hereinafter referred to as 'EU-Montenegro Joint Committee'). The tasks of the EU-Montenegro Joint Committee shall include:
 - a) assessing, evaluating and reviewing the implementation of this Agreement, in particular:
 - (i) the participation and performance of the legal entities of Montenegro in the Horizon Europe Programme;
 - (ii) the level of (mutual) openness to the legal entities established in each Party to participate in programmes, projects, actions, activities or parts thereof of the other Party;
 - (iii) the implementation of the financial contribution mechanism and the automatic correction mechanism in accordance with Article 3 and 4;
 - (iv) information exchange and examining any possible questions on the exploitation of results, including intellectual property rights;
 - b) discussing upon request of either Party restrictions applied or planned by the Parties on access to their respective research and innovation programmes, including in particular for actions related to their strategic assets, interests, autonomy or security;
 - c) examining how to improve and develop cooperation;
 - d) discussing jointly the future orientations and priorities of policies related to research and innovation and research planning of common interest; and
 - e) exchanging information, inter alia, on new legislation, decisions or national research and innovation programmes that are relevant for the implementation of this Agreement.
2. The EU-Montenegro Joint Committee, which shall be composed of representatives of the European Union and of Montenegro, shall adopt its Rules of Procedure.
3. The EU-Montenegro Joint Committee may decide to set up any working party/advisory body on an ad hoc basis at expert level that can assist in carrying out the implementation of this Agreement.
4. The EU-Montenegro Joint Committee shall meet at least once a year, and, whenever special circumstances so require, at the request of any of the Parties. The meetings shall be organised and hosted alternately by the European Union and by the National Authority of Montenegro in charge of Science and Research.
5. The EU-Montenegro Joint Committee shall work on an on-going basis through an exchange of relevant information by any means of communication, in particular in relation to the participation/performance of the legal entities of Montenegro. The EU-Montenegro Joint Committee may in particular conduct its tasks in writing whenever the need arises.

*Article 9***Final provisions**

1. This Agreement shall enter into force on the date on which the Parties have notified each other of the completion of their internal procedures necessary for that purpose.
2. This Agreement shall apply from 1 January 2021. It shall remain in force for as long as is necessary for all the projects, actions, activities or parts thereof financed from the Horizon Europe Programme, all the actions necessary to protect the financial interests of the European Union and all the financial obligations stemming from the implementation of this Agreement between the Parties to be completed.
3. The European Union and Montenegro may apply this Agreement provisionally in accordance with their respective internal procedures and legislation. The provisional application shall begin on the date on which the Parties have notified each other of the completion of their internal procedures necessary for that purpose.
4. Should Montenegro notify the Commission acting on behalf of the European Union that it will not complete its internal procedures necessary for the entry into force of this Agreement, this Agreement shall cease to apply provisionally on the date of receipt of this notification by the Commission, which shall constitute the cessation date for the purposes of this Agreement.
5. The application of this Agreement may be suspended by the European Union in case of partial or full non-payment of the financial contribution due by Montenegro under this Agreement.

In case of non-payment which may significantly jeopardise the implementation and management of the Horizon Europe Programme, the Commission shall send a formal letter of reminder. Where no payment is made within 20 working days after the formal letter of reminder, suspension of the application of this Agreement shall be notified by the Commission to Montenegro by a formal letter of notification and shall take effect 15 days following the receipt of this notification by Montenegro.

In case the application of this Agreement is suspended, legal entities established in Montenegro shall not be eligible to participate in award procedures not yet completed when the suspension takes effect. An award procedure shall be considered completed when legal commitments have been entered into as a result of that procedure.

The suspension does not affect the legal commitments entered into with the legal entities established in Montenegro before the suspension took effect. This Agreement shall continue to apply to such legal commitments.

The European Union shall immediately notify Montenegro once the entire amount of the financial contribution due has been received by the European Union. The suspension shall be lifted with an immediate effect upon this notification.

As of the date when the suspension is lifted, legal entities of Montenegro shall be again eligible in award procedures launched after this date and in award procedures launched before this date, for which the deadlines for submission of applications has not expired.

6. Either Party may terminate this Agreement at any time by a written notification informing of the intent to terminate it. The termination shall take effect three calendar months after the date on which the written notification reaches its addressee. The date on which the termination takes effect shall constitute the termination date for the purposes of this Agreement.
7. Where this Agreement ceases to apply provisionally in accordance with paragraph 4 of this Article or is terminated in accordance with paragraph 6 of this Article, the Parties agree that:
 - (a) projects, actions, activities or parts thereof in respect of which legal commitments have been entered into during the provisional application and/or after the entry into force of this Agreement, and before this Agreement ceases to apply or is terminated shall continue until their completions under the conditions laid down in this Agreement;

- (b) the annual financial contribution of the year N during which this Agreement ceases to apply provisionally or is terminated shall be paid entirely in accordance with Article 3. The operational contribution of the year N shall be adjusted in accordance with Article 3(8) and corrected in accordance with Article 4 of this Agreement. The participation fee paid for the year N shall not be adjusted or corrected; and
- (c) following the year during which this Agreement ceases to apply provisionally or is terminated, the initial operational contributions paid for the years during which this Agreement applied shall be adjusted in accordance with Article 3(8) and shall be automatically corrected in accordance with Article 4 of this Agreement.

The Parties shall settle by common consent any other consequences of termination or cessation of provisional application of this Agreement.

This Agreement may only be amended in writing by common consent of the Parties. The entry into force of the amendments will follow the same procedure as that applicable for the entry into force of this Agreement.

8. The Annexes to this Agreement shall form an integral part of this Agreement.

This Agreement shall be drawn up in duplicate in English and Montenegrin, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

Done at Brussels, this 6th day of December, and at Podgorica, this 3rd day of December in the year 2021.

*For the Commission,
on behalf of the European Union,
Mariya GABRIEL
Commissioner for Innovation,
Research, Culture, Education and Youth*

*For the Government
of Montenegro,
Vesna BRATIĆ
Minister of Education, Science,
Culture and Sports*

ANNEX I

Rules governing the financial contribution of Montenegro to the Horizon Europe Programme (2021-2027)**I. Calculation of Montenegro's financial contribution**

1. The financial contribution of Montenegro to the Horizon Europe Programme shall be established on a yearly basis in proportion to, and in addition to, the amount available each year in the Union budget for commitment appropriations needed for the management, execution and operation of the Horizon Europe Programme, increased in accordance with Article 3(4) of this Agreement.

2. The participation fee referred to in Article 3(7) of this Agreement shall be phased in as follows:

— 2021: 0,5 %;

— 2022: 1 %;

— 2023: 1,5 %;

— 2024: 2 %;

— 2025: 2,5 %;

— 2026: 3 %;

— 2027: 4 %.

3. In accordance with Article 3(5) of this Agreement, the initial operational contribution to be paid by Montenegro for its participation in the Horizon Europe Programme will be calculated for the respective financial years by applying an adjustment to the contribution key.

The adjustment to the contribution key shall be:

$$\text{Contribution Key Adjusted} = \text{Contribution Key} \times \text{Coefficient}$$

The coefficient used for the above calculation to adjust the contribution key shall be 0,18.

4. In line with Article 3(8) of this Agreement, the first adjustment pertaining to the budget implementation of year N shall be made in year N+1 when the initial operational contribution of year N shall be adjusted upwards or downwards by the difference between:

a) an adjusted contribution calculated by applying the contribution key adjusted of year N to the sum of:

i. the amount of budgetary commitments made on commitment appropriations authorised for year N under the European Union voted budget and on commitment appropriations corresponding to decommitments made available again; and

ii. any commitment appropriations based on external assigned revenue that do not result from financial contributions to the Horizon Europe Programme from other donors and that were available at the end of year N ⁽¹⁾. For external assigned revenue allocated to Horizon Europe under Article 3(1) of Council Regulation (EU) 2020/2094 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis ⁽²⁾, the annual indicative amounts in the MFF programming shall be used for the purpose of calculating the adjusted contribution.

⁽¹⁾ This includes notably the resources from the European Union Recovery Instrument established by Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23.).

⁽²⁾ OJ L 433 I, 22.12.2020, p. 23.

b) and the initial operational contribution of year N.

Starting in year N+2, and each subsequent year, until all the budgetary commitments financed under commitment appropriations originating from year N, increased in accordance with Article 3(4) of this Agreement, have been paid or decommitted, and at the latest 3 years after the end of the Horizon Europe Programme, the Union shall calculate an adjustment of the operational contribution of year N by reducing Montenegro's operational contribution by the amount obtained by applying the contribution key adjusted of year N to the decommitments made each year on commitments of year N financed under the Union budget or from decommitments made available again.

If the amounts stemming from external assigned revenue of year N (to include commitment appropriations, and, for amounts under Council Regulation (EU) 2020/2094, the annual indicative amounts in the MFF programming) that do not result from financial contributions to the Horizon Europe Programme from other donors are cancelled, the operational contribution of Montenegro shall be reduced by the amount obtained by applying the contribution key adjusted of year N to the amount cancelled.

II. Automatic correction of Montenegro's operational contribution

1. For the calculation of the automatic correction as referred to in Article 4 of this Agreement, the following modalities shall apply:

- a) 'competitive grants' means grants awarded through calls for proposals where the final beneficiaries can be identified at the time of the calculation of the automatic correction. Financial support to third parties as defined in Article 204 of the Financial Regulation is excluded;
- b) where a legal commitment is signed with a consortium, the amounts used to establish the initial amounts of the legal commitment shall be the cumulative amounts allocated to beneficiaries that are Montenegrin entities in accordance with the indicative budget breakdown of the grant agreement;
- c) all amounts of legal commitments corresponding to competitive grants shall be established using the European Commission electronic system eCorda and be extracted on the second Wednesday of February of year N+2;
- d) 'non-intervention costs' means costs of the Programme other than competitive grants, including support expenditure, programme-specific administration, other actions ⁽³⁾;
- e) amounts allocated to international organisations as legal entities being the final beneficiary ⁽⁴⁾ shall be considered as non-intervention costs.

2. The mechanism shall be applied as follows:

- a) Automatic corrections for year N in relation to the execution of commitment appropriations for year N, increased in accordance with Article 3(4) of this Agreement, shall be applied based on data on year N and year N+1 from e-Corda referred to in point c) of paragraph (1) of point (II) of this Annex in year N+2 after any adjustments in accordance with Article 3(8) of this Agreement have been applied to Montenegro's contribution to the Horizon Europe Programme. The amount considered will be the amount of competitive grants for which data is available, at the time of the calculation of the correction.
- b) Starting in year N+2 and up until 2029, the amount of the automatic correction shall be calculated for year N by taking the difference between:
 - i. the total amount of the competitive grants apportioned to Montenegro or Montenegrin legal entities as commitments made on budget appropriations of year N; and

⁽³⁾ Other actions include notably procurement, prizes, financial instruments, direct actions of the Joint Research Centre, Subscriptions (OECD, Eureka, IPEEC, IEA, ...), experts (evaluators, monitoring of projects) etc.

⁽⁴⁾ International organisations would only be considered as non-intervention costs if they are final beneficiaries. This will not apply where an international organisation is a coordinator of a project (distributing funds to other coordinators).

ii. the amount of Montenegro's adjusted operational contribution for year N multiplied by the ratio between:

- A. the amount of competitive grants made on commitment appropriations of year N, increased in accordance with Article 3(4) of this Agreement; and
- B. the total of all the authorised budgetary commitment appropriations of year N, including non-intervention costs.

III. Payment of Montenegro's financial contribution, payment of the adjustments made on Montenegro's operational contribution, and payment of the automatic correction applicable to Montenegro's operational contribution

1. The Commission shall communicate to Montenegro, as soon as possible and at the latest when issuing the first call for funds of the financial year, the following information:

- a. the amounts in commitment appropriations in the Union budget definitively adopted for the year in question for the budget lines covering participation of Montenegro, in Horizon Europe Programme increased, if relevant, in accordance with Article 3(4) of this Agreement;
- b. the amount of the participation fee referred to in Article 3(7) of this Agreement;
- c. from year N+1 of implementation of the Horizon Europe Programme, the implementation of commitment appropriations corresponding to budgetary year N, increased in accordance with Article 3(4) of this Agreement and the level of decommitment;
- d. for the part of the Horizon Europe Programme where such information is necessary to calculate the automatic correction, the level of commitments entered into in favour of Montenegrin legal entities broken down according to the corresponding year of budgetary appropriations and the related total level of commitments.

On the basis of its Draft Budget, the Commission shall provide an estimate of information for the following year under points (a) and (b) as soon as possible, and, at the latest, by 1 September of the financial year.

2. The Commission shall issue, at the latest in April and in June of each financial year, a call for funds to Montenegro corresponding to its contribution under this Agreement.

Each call for funds shall provide for the payment of six-twelfths of Montenegro's contribution not later than 30 days after the call for funds is issued.

For the first year of implementation of this Agreement, the Commission shall issue a single call for funds, within 60 days following the date on which this Agreement starts producing legal effects.

3. Each year starting in 2023, the calls for funds shall also reflect the amount of the automatic correction applicable to the operational contribution paid for year N-2.

The call for funds issued at the latest in April may also include adjustments of the financial contribution paid by Montenegro for the implementation, management and operation of the previous Framework Programme(s) for Research and Innovation in which Montenegro participated.

For each of the financial years 2028, 2029 and 2030, the amount resulting from the automatic correction applied to the operational contributions paid in 2026 and 2027 by Montenegro or from the adjustments made in accordance with Article 3(8) of this Agreement will be due to or from Montenegro.

4. Montenegro shall pay its financial contribution under this Agreement in accordance with part III of this Annex. In the absence of payment by Montenegro by the due date, the Commission shall send a formal letter of reminder.

Any delay in the payment of the financial contribution shall give rise to the payment of default interest by Montenegro on the outstanding amount from the due date.

The interest rate for amounts receivable not paid on the due date shall be the rate applied by the European Central Bank to its principal 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 one and half percentage points.

ANNEX II

Non-exhaustive list of the equivalent programmes, projects, actions, activities or parts thereof of Montenegro

The following non-exhaustive list shall be regarded as Montenegrin programmes, projects, actions and activities equivalent to the Horizon Europe Programme:

- Centres of Excellence Programme;
 - Grants for financing scientific research projects;
 - Collaborative programme for innovation 2019-2024;
 - Pre-acceleration programme for start-ups.
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ANNEX III

Sound Financial Management

Protection of financial interests and recovery

*Article 1***Reviews and audits**

1. The European Union shall have the right to conduct, in accordance with the applicable acts of one or more Union institutions or bodies and as provided in relevant agreements and/or contracts, technical, scientific, financial, or other types of reviews and audits on the premises of any natural person residing in or any legal entity established in Montenegro and receiving European Union funding, as well as any third party involved in the implementation of Union funds residing or established in Montenegro. Such review and audits may be carried out by the agents of the institutions and bodies of the European Union, in particular of the European Commission and the European Court of Auditors, or by other persons mandated by the European Commission.
2. The agents of the institutions and bodies of the European Union, in particular of the European Commission and the European Court of Auditors, and the other persons mandated by the European Commission, shall have appropriate access to sites, works and documents (both in electronic and paper versions) and to all the information required in order to carry out such audits, including the right of obtaining a physical/electronic copy of, and extracts from, any document or the contents of any data medium held by the audited natural or legal person, or by the audited third party.
3. Montenegro shall not prevent or raise any particular obstacle to the right of entrance in Montenegro and to the access to the premises of the agents and other persons referred to in paragraph 2 on the grounds of the exercise of their duties referred to in this Article.
4. The reviews and audits may be carried out, also after the suspension of application of this Agreement pursuant to its Article 9(5), the cessation of provisional application or its termination, on the terms laid down in the applicable acts of one or more European Union institutions or bodies and as provided in relevant agreements and/or contracts in relation to any legal commitment implementing the European Union budget entered into by the European Union before the date on which the suspension of application of this Agreement pursuant to its Article 9(5), the cessation of provisional application or termination of this Agreement takes effect.

*Article 2***Fight against irregularities, fraud and other criminal offences affecting the financial interests of the Union**

1. The European Commission and the European Anti-Fraud Office (OLAF) shall be authorised to carry out administrative investigations, including on-the-spot checks and inspections, on the territory of Montenegro. These investigations shall be carried out in accordance with the terms and conditions established by applicable acts of one or more Union institutions.
2. The competent authorities of Montenegro shall inform the European Commission or OLAF within reasonable time of any fact or suspicion which has come to their notice relating to an irregularity, fraud or other illegal activity affecting the financial interests of the Union.
3. On-the-spot checks and inspections may be carried out on the premises of any natural person residing in or legal entity established in Montenegro and receiving Union funds, as well as of any third party involved in the implementation of Union funds residing or established in Montenegro.
4. On-the-spot checks and inspections shall be prepared and conducted by the European Commission or OLAF in close collaboration with the competent Montenegrin authority designated by the Montenegrin government. The designated authority shall be notified a reasonable time in advance of the object, purpose and legal basis of the checks and inspections, so that it can provide assistance. To that end, the officials of the competent Montenegrin authorities may participate in the on-the-spot checks and inspections.
5. Upon request by the Montenegrin authorities, the on-the-spot checks and inspections may be carried out jointly with the European Commission or OLAF.

6. Commission agents and OLAF staff shall have access to all the information and documentation, including computer data, on the operations concerned, which are required for the proper conduct of the on-the-spot checks and inspections. They may, in particular, copy relevant documents.

7. Where the person, entity or another third party resists an on-the-spot check or inspection, the Montenegrin authorities, acting in accordance with national rules and regulations, shall assist the European Commission or OLAF, to allow them to fulfil their duty in carrying out an on-the-spot check or inspection. This assistance shall include taking the appropriate precautionary measures under national law, in particular in order to safeguard evidence.

8. The European Commission or OLAF shall inform the Montenegrin authorities of the result of such checks and inspections. In particular, the European Commission or OLAF shall report as soon as possible to the competent Montenegrin authority any fact or suspicion relating to an irregularity which has come to their notice in the course of the on-the-spot check or inspection.

9. Without prejudice to application of Montenegro's criminal law, the European Commission may impose administrative measures and penalties on legal or natural persons of Montenegro participating in the implementation of a programme or activity in accordance with European Union legislation.

10. For the purposes of proper implementation of this Article, the European Commission or OLAF and the Montenegrin competent authorities shall regularly exchange information and, at the request of one of the parties to this Agreement, consult each other.

11. In order to facilitate effective cooperation and exchange of information with OLAF, Montenegro shall designate a contact point.

12. Information exchanged between the European Commission or OLAF and the Montenegrin competent authorities shall take place having due regard to the confidentiality requirements. Personal data included in the exchange of information shall be protected in accordance with applicable rules.

13. The Montenegrin authorities shall cooperate with the European Public Prosecutor's Office to allow it to fulfil its duty to investigate, prosecute and bring to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the European Union in accordance with the applicable legislation.

Article 3

Recovery and enforcement

1. Decisions adopted by the European Commission imposing a pecuniary obligation on legal or natural persons other than States in relation to any claims stemming from the Horizon Europe Programme shall be enforceable in Montenegro. The order for enforcement shall be appended to the decision, without any other formality than a verification of the authenticity of the decision by the national authority designated for this purpose by the government of Montenegro. The government of Montenegro shall make known its designated national authority to the Commission and the Court of Justice of the European Union. In accordance with Article 4, the European Commission shall be entitled to notify such enforceable decisions directly to persons residing and legal entities established in Montenegro. Enforcement shall take place in accordance with the Montenegro's law and rules of procedure.

2. Judgments and orders of the Court of Justice of the European Union delivered in application of an arbitration clause contained in a contract or agreement in relation to Union programmes, activities, actions or projects shall be enforceable in Montenegro in the same manner as European Commission decisions referred to in paragraph (1).

3. The Court of Justice of the European Union shall have jurisdiction to review the legality of the decision of the Commission referred to in paragraph 1 and to suspend its enforcement. However, the Courts of Montenegro shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

*Article 4***Communication and exchange of information**

The European Union institutions and bodies involved in the implementation of Horizon Europe Programme, or in controls over that programme, shall be entitled to communicate directly, including through electronic exchange systems, with any natural person residing in or legal entity established in Montenegro and receiving Union funds, as well as any third party involved in the implementation of Union funds residing or established in Montenegro. Such persons, entities and parties may submit directly to the European Union institutions and bodies all relevant information and documentation which they are required to submit on the basis of the European Union legislation applicable to the Union programme and of the contracts or agreements concluded to implement that programme.
