

FINANCING AGREEMENT  
BETWEEN THE GOVERNMENT OF THE RUSSIAN  
FEDERATION AND THE EUROPEAN COMMUNITY ON  
FINANCING AND IMPLEMENTING THE CROSS BORDER  
COOPERATION PROGRAMME "Estonia – Latvia - Russia"

Having regard to the Partnership and Cooperation Agreement of 24 June 1994, establishing a partnership between the Russian Federation, on the one part, and the European Communities and their Member States, on the other part, the Government of the Russian Federation (hereinafter, "Russian Party") and the European Community (hereinafter, "the Community") represented by the Commission of the European Communities, in common called further the "Parties", have agreed on the following:

ARTICLE 1 SCOPE OF THE  
AGREEMENT

This Agreement defines the modalities of co-financing and implementation of the cross-border cooperation programme "Estonia – Latvia – Russia" carried out in border regions of the Russian Federation and Member States of the Community to address issues in social and economic sphere, hereinafter called "Programme". The specification of the Programme is presented in a Joint Operational Programme Document that is Annex I to this Agreement.

ARTICLE 2

CM

## PROGRAMME MANAGEMENT AUTHORITIES

1. The Programme management authorities are: the Joint Managing Authority and the Joint Monitoring Committee.
2. The Programme is carried out by the Joint Managing Authority designated jointly by the participating countries, acting under the general supervision of the Joint Monitoring Committee.
3. Powers and structure of the Joint Managing Authority, and the Joint Monitoring Committee are defined in the Joint Operational Programme Document.

### ARTICLE 3

#### PROGRAMME PARTICIPANTS

Participants in the Programme are individual and legal entities engaged in the implementation of the Programme on the basis of contracts concluded according to the results of procurement procedures and calls for proposals with the Joint Managing Authority (hereinafter the "Programme participants"). In case the contract is awarded to a consortium, each of its members shall also be considered as Programme participants when explicitly mentioned in the contract.

### ARTICLE 4

#### PROGRAMME IMPLEMENTATION

1. Foreign citizens, taking part in the Programme implementation, and members of their families shall be granted rights and benefits not less favourable than those accorded under similar programmes implemented between the Russian Party and the Community.
2. Foreign citizens taking part in the Programme implementation, and members of their families shall be authorized to remain on the territory where the Programme is implemented as required by the nature of the contract, concluded in accordance

with the Programme, within the period defined for its execution in accordance to the respective legislations of the Russian Federation and the Member States of the Community.

3. The Parties will facilitate the granting of visas for Programme participants.

4. Goods, including vehicles, imported by Programme participants into the territory where the Program is implemented as part of contracts' performance and that are used to fulfil the contracts, are exempt from customs duties, taxes and charges.

Goods imported into the territory of the Russian Federation shall be exempt from customs duties, taxes and charges on the basis of the document confirming the recognition of such goods as imported to fulfil the contracts, which is issued by an authorized body in the manner prescribed by the legislation of the Russian Federation.

The Program participants, when importing goods including vehicles into the territory where the Programme is implemented for contracts performance, have the right to use the customs regime of temporary import with complete conditional exemption from customs duties, taxes and charges for the period of Program implementation.

When the goods are used for other purposes, in respect of such goods all customs payments stipulated by the legislation of the Russian Federation, the Community or the States in whose territory the Programme is implemented, should be paid.

5. Contracts financed under this Agreement shall not be subject to stamp or registration duties.

6. Foreign legal entities and citizens taking part in the Programme implementation are exempt from paying tax on the profit and individual income tax. The Programme participants are exempt from value added tax from the funds received under the Programme implementation.

7. Personal and household effects imported for personal use by foreign citizens, taking part in the implementation of the Programme, and members of their families shall be exempt from customs duties, taxes and charges.

Said personal and household effects shall be either re-exported or disposed of in accordance with the legislation of the Russian Federation, the Community or States on whose territory the Programme is implemented after termination of the contract.

8. The Parties agree that the rules on the award of contracts and grants, on the eligibility and on the rules of origin and nationality to be applied for the implementation of the Agreement are those as established by Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighborhood and Partnership Instrument and the Practical Guide to contract procedures for EC external actions (PRAG). The procedures of the procurement which is carried out on the territory of the Russian Federation by Russian public entities are regulated by the national legislation of the Russian Federation.

At the same time during the placement of orders for delivery of goods, execution of any work, rendering of services, the goods of Russian origin, works or services executed, rendered by Russian natural and legal persons can not prevail over the goods, coming from a foreign state or over work, services, performed, rendered by foreign natural and legal persons.

9. Should the fulfillment of any of the above provisions not be under its competence, the Community shall encourage its Member States on whose territory the Programme is implemented to take all measures aimed to provide legal entities and citizens of the Russian Federation involved in implementing the Programme with rights and benefits ensuring effective implementation of the Programme.

ARTICLE 5  
FINANCIAL CONTRIBUTIONS

1. The financial contribution of the Community under the Programme is 47 774 729 EURO.

2. The financial contribution of the Russian Party under the Programme is 15 909 000 EURO.

3. The Russian Party will co-finance the Programme through the European Bank for Reconstruction and Development as a financial agent. The modalities of the co-financing and its management will be stipulated in an agreement between the Russian Federation and the European Bank for Reconstruction and Development and in the Joint Operational Programme Document if necessary in compliance with the provisions of this Agreement.

4. Should a Party fail to carry out the Programme's financing obligations, the other Party will be entitled to suspend the financing of the Programme till the reason for which the financing has been suspended is cleared, notwithstanding the provisions of Article 12 of this Agreement.

5. The Financial contributions covered under this article may not be used to pay taxes, customs duties and other fiscal charges unless duly justified in exceptional cases.

ARTICLE 6  
EXECUTION PERIOD

1. The Programme execution period begins at the date of coming into force of this Agreement and ends no later than December 31, 2016.

2. The period of execution of the Agreement shall comprise the following phases:

(a) an implementation phase for the Programme starting from the day of entry into force of this Agreement and ending on 31 December 2013 at the latest. No call for

CM

tenders or call for proposals may be launched and no contract may be signed after this date, with the exception of audit and evaluation contracts;

(b) an implementation phase for projects financed by the Programme starting from the date of entry into force of this Agreement and ending on 31 December 2014 at the latest. All activities of projects financed by the Programme shall end by that date at the latest;

(c) a financial closure phase including the financial closure of all contracts concluded as part of the Programme, the ex-post evaluation of the Programme, the submission of the final report and the final payment or final recovery. This phase shall start on 1 January 2015 and end on 31 December 2016 at the latest.

3. Any balance remaining as of December 31, 2016 of the Russian Party and the Community joint financial contribution is reimbursed to the Parties in proportion to their financial contribution.

4. A contract which has not given rise to any payment within three years of its signature shall be automatically terminated and its funding cancelled.

## ARTICLE 7

### RECOVERY

1. In case of unjustified or ineligible expenditure that is defined in accordance with the Joint Operational Programme Document caused by the Programme participants that has been awarded the contract through the selection procedure approved by the Joint Monitoring Committee and when the Joint Managing Authority is unable to recover the debt within one year of issuing the recovery order, the Joint Managing Authority shall refer the case to the Parties. In this case, the Parties within their competences on the basis of a complete file, will encourage measures to recover the unjustified and ineligible expenditure incurred.

2. Contracts concluded by the Joint Managing Authority as part of the Programme shall contain clauses allowing the Parties to carry out recovery from a beneficiary, contractor or partner established in the territory of the Russian

Federation or the territory of the Community Member States accordingly where the claim is still open one year after the issue of the recovery order by the Joint Managing Authority.

3. The Parties commit themselves to cooperate fully with the Joint Managing Authority and support it in the recovery process.

## ARTICLE 8

### ALLOCATION OF AMOUNTS RECOVERED UNDER CONTRACTS

1. Amounts recovered from payments wrongly effected, from guarantees of pre-financing payments or from performance guarantees supplied on the basis of contracts financed under this Agreement, shall be allocated to the Programme implementation.

2. The financial penalties imposed by the Joint Managing Authority or other contracting authority on a candidate or tenderer who is in a case of exclusion in the context of a procurement contract, the calling upon of tender guarantees, as well as the damages granted to the Commission of the European Communities shall be repaid to the general budget of the European Communities for the financial contribution of the Community under the Programme.

3. The financial penalties imposed by the Joint Managing Authority or other contracting authority on a candidate or tenderer who is in a case of exclusion in the context of a procurement contract, the calling upon of tender guarantees, as well as the damages granted to the Russian Party shall be repaid to the Russian Party for the financial contribution of the Russian Party under the Programme.

4. The cases, extent and order for imposing the financial penalties set forth in paragraphs 2 and 3 of this Article shall be determined in accordance with the Joint Operational Programme Document.

## ARTICLE 9

## INFORMATION SUPPORT OF THE PROGRAMME IMPLEMENTATION

Information support for the Programme implementation is carried out in accordance with the information activities Plan approved in the framework of the Joint Operational Programme Document.

## ARTICLE 10

## PREVENTION OF IRREGULARITIES, FRAUD AND CORRUPTION

1. The Parties take measures required to prevent any irregularity, fraud and corruption during the Programme implementation in the territory of the Russian Federation and the territory of Community Member States accordingly.

2. The Parties immediately inform each other and the Programme management authorities defined in Article 2 of this Agreement, on cases of irregularity, fraud and corruption while implementing the Programme in the territory of the Russian Federation and the territory of Community Member States accordingly and any measure taken.

3. For the purpose of this Agreement, "Irregularity" shall mean any infringement of this Agreement, implementing contracts or legislation of the Russian Federation or the Community resulting from any act or omission by an economic operator, which has, or would have, the effect of prejudicing the budget of the Programme.

For the purpose of this Agreement, "fraud" shall mean any intentional act or omission concerning:

- the use or presentation of false, incorrect or incomplete, statements or documents which has as its effect the misappropriation or wrongful retention of funds from the budget of the European Communities or budgets managed by them, or on their behalf as well as from the budget of the Russian Federation or the budgets managed by it, or on its behalf;



- non-disclosure of information in violation of a specific obligation, with the same effect;

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

4. The Parties undertake to take every appropriate measure to remedy any practices of active or passive corruption whatsoever at any stage of the procedure for the award of contracts or grants or in the implementation of the related contracts. For the purpose 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 financial interests of the European Communities and/or of the Russian Federation. For the purpose of this Agreement "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 financial interests of the European Communities and/or of the Russian Federation.

## ARTICLE 11

### VERIFICATIONS AND CHECKS

1. The Parties agree that implementation of the Programme is subject to verifications and checks.

2. The Commission of the European Communities, European Anti-Fraud office (OLAF) and the Court of Auditors of the European Community may conduct documentary and on-the-spot checks on the use made of the Programme funding and may carry out a full audit, throughout the duration of this Agreement and for seven years after the date of the last payment.

3. The checks and audits described in paragraph 2 of this Article shall also apply to contractors and subcontractors who have received funding.

4. The Parties shall notify each other of relevant verifications and checks .

5. The Russian Party has the right to request the participation of the representatives of the Competent Authorities of the Russian Federation in relevant verifications and checks carried out on the territory of the Member States of the Community participating in the Programme. In this respect, the Competent Authorities of the Russian Federation shall, in cooperation with the European Community bodies mentioned in paragraph 2 of this Article, conduct documentary and on-the-spot checks on the use made of the Programme funding and shall carry out a full audit, in agreement with the Member States of the Community participating in the Programme, throughout the duration of this Agreement and for seven years after the date of the last payment.

6. The Commission of the European Communities encourages the Member States of the Community participating in the Programme on whose territory funding from the Programme is spent to grant the right to the Competent Authorities of the Russian Federation to conduct relevant documentary, on the spot checks and full audits on the use made of the Programme funding, as described in paragraph 5 above.

7. The Commission of the European Communities shall provide the Competent Authorities of the Russian Federation with the information about the results of the above mentioned verifications and checks.

## ARTICLE 12

### PERFORMANCE OF THE AGREEMENT

1. All questions arising between the Parties with regard to the performance or interpretation of the provisions of this Agreement are settled by negotiations between the Parties. The negotiations may lead to the amendment, suspension or termination of this Agreement.

2. In case of breach of obligations stipulated under this Agreement by one of the Parties, other Party, after consultations between the Parties on this issue, may suspend the implementation of the Programme.

3. The Party notifying of the suspension of the Programme implementation indicates as well its consequences on the ongoing contracts or contracts to be signed.

4. This Agreement may be suspended in cases of force majeure. "Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable, in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its obligations if it is prevented from, 'fulfilling them by force majeure. A Party faced with force majeure shall inform the other party without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimize the possible damage.

## ARTICLE 13

### TERMINATION OF THE AGREEMENT

1. If the issues which led to the suspension of this Agreement have not been resolved within a period of four months, either Party may terminate this Agreement with two months' notice.

2 When this Agreement has not given rise to any payment out of financial contributions of the Parties within three years of its signature, the Agreement will automatically be terminated upon the expiry of the stated period.

3. Either Party may terminate this Agreement by notifying the other Party six months prior to the envisaged date of termination. In this case, the Programme is suspended from the date of notification until the Parties agree on its renewal.

4. This Agreement can be terminated in case of early termination of the Programme implementation.

5. When notifying of termination of this Agreement the Party informs of the consequences on the ongoing contracts or contracts to be signed.

ARTICLE 14  
DISPUTES AND  
DISAGREEMENTS

Any disputes and disagreements between the Parties connected with the execution of this Agreement shall be solved by negotiations between the Parties.

ARTICLE 15  
COMMUNICATIONS

All communications concerning the implementation of this Agreement shall be in writing, refer expressly to the Programme and sent to the State body to be authorized by the Russian Party and the Commission of the European Communities.

ARTICLE 16  
ANNEXES

The Joint Operational Programme Document shall constitute Annex I to this Agreement.

A document containing obligations on behalf of the Joint Managing Authority regarding the endorsement of this Agreement shall constitute Annex II to this Agreement.

Annex I and Annex II do not constitute an integral part of the present Agreement.

*CM*


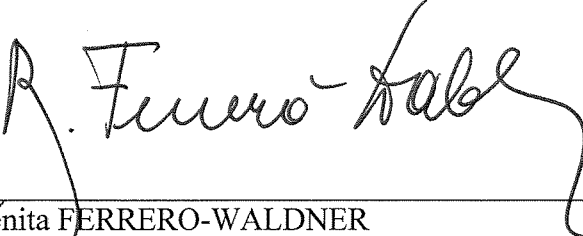
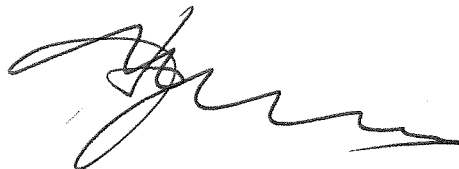
ARTICLE 17  
FINAL CLAUSE

1. This Agreement comes into force on the first day of the month following the day when the Parties notify each other about fulfillment of internal procedures required for this Agreement to enter into force.

2. This Agreement operates till December 31, 2016.

3. Any changes to this Agreement are made under the mutual written approval of the Parties. Changes become effective after mutual notification and fulfillment of the required internal procedures by the Parties.

Done in Stockholm, 18 November 2009 in duplicate, in Russian and English both having equal legal effect.

ON BEHALF OF THE COMMISSION OF THE EUROPEAN COMMUNITIES	ON BEHALF OF THE GOVERNMENT OF THE RUSSIAN FEDERATION
	
Marcus CORNARO Director - EuropeAid Co-operation Office	
	
Benita FERRERO-WALDNER Commissioner	Viktor F. BASARGIN Minister of Regional Development of the Russian Federation