



Brussels, **XXX**
C.3 Moldova Agreement
[...](2014) **XXX** draft

ANNEX 1

ANNEX

to the

Commission Decision

**on approval and signature of the Agreement between the European Union and Moldova
on the participation of Moldova in the Union programme "Horizon 2020 - the
Framework Programme for Research and Innovation (2014-2020)"**

AGREEMENT

between the European Union and the Republic of Moldova on the participation of the Republic of Moldova in the Union programme Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)

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

of the one part, and

THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA, on behalf of the Republic of Moldova, hereinafter referred to as “Moldova”,

of the other part, hereinafter jointly referred to as “the Parties”.

WHEREAS:

- (1) The Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part, on a Framework Agreement between the European Union and the Republic of Moldova on the general principles for the participation of the Republic of Moldova in Union programmes (hereinafter referred to as “the Protocol”), stipulates in Article 5 that the specific terms and conditions, including the financial contribution, with regard to such participation in each particular programme shall be determined by the Commission and the competent authorities of Moldova¹.

The Protocol entered into force on 1st May 2011.

- (2) The European Parliament and the Council adopted on 11/12/2013, Regulation N° 1291/2013/EU, establishing the new Union programme for research and innovation "Horizon 2020 - Framework Programme for Research and Innovation" (2014-2020)² (hereinafter referred to as “the Programme”).
- (3) The Programme aims at contributing to achieving the European Research Area and the Innovation Union.
- (4) Pursuant to Article 7 of Regulation No 1291/2013/EU, the specific terms and conditions regarding the participation of an associated country in the Programme, including the financial contribution, which should be based on the gross domestic product of the associated country, shall be determined by an international agreement between the Union and the associated country³.

¹ OJ L 14, 19/01/2011, p. 2.

² Regulation of the European Parliament and of the Council establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-20) (OJ L 347, 20.12.2013, p.104).

³ In the context of this Agreement the Parties consider the term “Agreement” as meaning “Memorandum of Understanding” provided for in Article 5 of the Protocol.

HAVE AGREED AS FOLLOWS:

Article 1
Scope - the Programme

1. Moldova shall participate as associated country in the Programme including the specific programme and the rules of participation as defined below:

Regulation No 1291/2013/EU, establishing the Horizon 2020 Framework Programme for Research and Innovation (2014-2020)⁴;

Regulation No 1290/2013/EU of the European Parliament and of the Council of 11 December 2013⁵ laying down the rules for the participation and dissemination in Horizon 2020 including delegated acts and any other subsequent rules;

Decision No 743/2013/EU of the Council establishing the Specific Programme implementing Horizon 2020⁶ and any other rule pertaining to the implementation of the Horizon 2020 programme.
2. Regulation N° 294/2008/EC of the European Parliament and of the Council as amended by the Regulation (EU) No 1292/2013 of the European Parliament and of the Council establishing the European Institute of Innovation and Technology shall apply to participation of Moldovan entities in Knowledge and Innovation Communities⁷.

Article 2
Terms and conditions of participation in the Programme

1. Moldova shall participate in the activities of the Programme in accordance with the terms and conditions specified in this Agreement, in particular legal acts referred to in Article 1, and the annexes thereto.
2. Legal entities of Moldova shall participate in indirect actions of the Programme under the same conditions as those applicable to legal entities of Member States of the European Union, subject to the terms and conditions established by, or referred to in this Agreement.
3. Legal entities of Moldova shall participate in the activities of the Knowledge and Innovation Communities.
4. Where the Union makes provisions for the implementation of Article 185 and 187 of the Treaty on the Functioning of the European Union, Moldova shall be allowed to participate in the legal structures created under these provisions, in conformity with the decisions and regulations that have been or will be adopted for the establishment of these legal structures.

⁴ Regulation of the European Parliament and of the Council establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-20) (OJ L 347, 20.12.2013, p.104).

⁵ Regulation of the European Parliament and of the Council laying down the rules for the participation and dissemination in Horizon 2020 (OJ L 347, 20.12.2013, p.81).

⁶ Council Decision establishing the Specific Programme (OJ L 347, 20.12.2013, p.965) No 743/2013/EU

⁷ Regulation (EU) No 1292/2013 of the European Parliament and of the Council of 11 December 2013 amending Regulation (EC) No 294/2008 establishing the European Institute of Innovation and Technology (OJ L 347, 20.12.2013, p.174).

5. Legal entities of Moldova shall participate in the direct actions of the Joint Research Centre of the Programme under the same conditions as those applicable to legal entities of the Member States of the European Union.
6. To participate in the Programme Moldova shall pay its financial contribution to the general budget of the European Union in accordance with Article 3 hereunder and Annex II.
7. Representatives of Moldova shall be allowed to participate, as observers, in the committee referred to in Article 10.1 of Decision No 743/2013/EU establishing the Specific Programme implementing Horizon 2020 responsible for monitoring the implementation of the Programme for points which concern Moldova.

This committee shall meet without the presence of the representatives of Moldova at the time of voting. Moldova 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 from Member States of the European Union.
8. Travel and subsistence costs incurred by representatives and experts of Moldova for the purposes of taking part as observers in the work of the committee referred to in Article 10.1 of Decision No 743/2013/EU establishing the Specific Programme implementing Horizon 2020, or other meetings related to the implementation of the Programme, shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for representatives of the Member States of the European Union.
9. Representatives of Moldova shall participate as observers in the Board of Governors of the Joint Research Centre.

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 from Member States of the European Union.
10. English, as one of the official languages of the European Union, shall be used for the procedures related to requests, grant agreements and reports, as well as for other legal and administrative aspects of the Programme.

Article 3

Financial contribution

1. Moldova shall pay for each year of participation in the Programme a financial contribution to the general budget of the European Union.

The financial contribution of Moldova shall be added to the amount earmarked each year in the general budget of the European Union for commitment appropriations to meet the financial obligations arising out of different forms of measures necessary for the implementation, management and operation of the Programme.

2. Part of the financial contribution of Moldova may be financed under the relevant Union external aid instrument, if Moldova so requests. In such case, modalities will be defined in the relevant financing decisions.
3. The rules governing the financial contribution of Moldova are set out in Annex II of this Agreement.

Article 4

Reporting and evaluation

1. Without prejudice to the responsibilities of the Commission and the Court of Auditors of the European Union in relation to monitoring and evaluation of the Programme, the participation of Moldova in the Programme shall be continuously monitored on a partnership basis involving the Commission and Moldova.
2. The rules concerning the financial control, recovery and other antifraud measures are laid down in Annex III of this Agreement.

Article 5

EU-Moldova Committee

1. The European Union – Moldova Research and Innovation Committee (hereinafter referred to as “the Joint Committee”) shall be established under this Agreement.
2. The functions of the Joint Committee shall include:
 - Ensuring reviewing and evaluating implementation of this Agreement;
 - Examining any measure of a nature to improve and develop cooperation.
3. The work of the Joint Committee shall be complementary to and consistent with the work of the relevant bodies established under the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part, and under the future Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part.
4. The Joint Committee shall be composed of the representatives of the European Union and Moldova.
5. The Joint Committee shall meet at the request of either of the Parties.
6. The Joint Committee shall adopt its rules of procedure.

Article 6

Entry into force and provisional application

This Agreement shall be provisionally applied upon its signature. Following the signature, it shall enter into force on the date when Moldova notified the Commission of the completion of its internal procedures for that purpose.

Article 7

Final provisions

1. This Agreement shall apply as from 1 January 2014 and for the entire duration of the Programme.
2. This Agreement can be terminated by either Party at any time during the duration of the Programme by a written notice informing of the intent to terminate participation in the Programme.

Subject to the provisions hereunder, termination shall take effect three calendar months after the date at which the written notice reaches its addressee.

The expiry and/or termination of this Agreement shall not affect:

- (a) Any projects or activities in progress;
- (b) The implementation of any contractual arrangements applying to these projects and activities.

In case of termination of this Agreement, the Union shall reimburse to Moldova the part of its contribution to the general budget of the European Union that will not be spent because of the termination.

3. The Annexes form an integral part of this Agreement.
4. This Agreement may only be amended in writing by common consent of the Parties.
5. Moldova's participation as an associated country in the subsequent Union framework programme for research and innovation, if Moldova so requests, shall be the subject of a new agreement to be concluded between the Parties.

Done inon , in the year two thousand and XX, in two originals, in English and in Romanian, each of these texts being equally authentic.

*For the Government of the Republic of Moldova,
on behalf of the Republic of Moldova*

*For the European Commission,
on behalf of the European Union*

Annex I
Terms and conditions for the participation of legal entities of Moldova
in the Programme

1. For the purpose of the participation of Moldova in the Programme a legal entity of Moldova is defined as any natural person or any legal person established in Moldova under national law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations. In the case of natural persons, references to establishment are deemed to refer to habitual residence.
2. Participation of legal entities of Moldova in the Programme shall follow the conditions laid down for legal entities being established in an “associated country” as specified in the rules for participation.

Legal entities established in Moldova shall be eligible, under the same conditions as legal entities established in the Member States, for financial instruments established under the Programme.

A legal entity established in another associated country enjoys the same rights and obligations under this Agreement as legal entities that are established in a Member State provided that this associated country in which the entity is established has also agreed to award legal entities from other associated countries the same rights and obligations.

3. Legal entities of Moldova shall be taken into consideration, alongside Union ones, for the selection of independent experts for the tasks, and under the conditions foreseen in the rules for participation.
4. The Parties will make every effort, within the framework of the existing provisions, to facilitate the free movement and residence of research workers participating in the activities covered by this Agreement and to facilitate cross-border movement of goods and services intended for use in such activities.
5. Moldova will take all necessary measures, as appropriate, to ensure that goods and services, purchased in Moldova or imported into Moldova, which are partially or entirely financed pursuant to the grant agreements and/or contracts concluded for the realization of the activities under this Agreement are exempted from customs duties, import duties and other fiscal charges, including the VAT, that are applicable in Moldova.

Annex II

Rules governing the financial contribution of Moldova to the Programme (2014-2020)

I. Calculation of Moldova's financial contribution

1. The financial contribution of Moldova to the Programme shall be established on a yearly basis in proportion to, and in addition to, the amount available that year in the general budget of the European Union for commitment appropriations needed for the implementation, management and operation of Programme.
2. The proportionality factor governing the contribution of Moldova shall be obtained by establishing the ratio between the gross domestic product of Moldova, at market prices, and the sum of gross domestic products, at market prices, of the Member States of the European Union.

This ratio shall be calculated on the basis of the latest statistical data pertaining to the same year from the Statistical Office of the European Communities (Eurostat), available at the time of publication of the draft budget of the European Union. However, for the years following the first year of participation to the Programme the gross domestic product of Moldova will be calculated at the same growth rate as the gross domestic product of the Member States of the European Union.
3. In order to facilitate its participation in the Programme, the contribution of Moldova will be implemented for the respective financial years as follows:
 - Financial year 2014: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0.25;
 - Financial year 2015: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0.25;
 - Financial year 2016: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0.25;
 - Financial year 2017: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0.25;
 - Financial year 2018: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0.25;
 - Financial year 2019: contribution according to the proportionality factor fixed in accordance with paragraph 2, multiplied by 0.25;
 - Financial year 2020: contribution according to proportionality factor fixed in accordance with paragraph 2, multiplied by 0.25.
4. In the fourth year after this Agreement becomes applicable, the Parties shall review the proportionality factor governing the financial contribution of Moldova, on the basis of the data concerning participation of legal entities of Moldova in indirect and direct actions under the Programme in the years 2014-2016.
5. The Commission shall communicate to Moldova, as soon as possible and at the latest on 1 September of the year before each financial year, the following information together with relevant background material:

- the amounts in commitment appropriations in the statement of expenditure of the draft budget of the European Union corresponding to the Programme;
- the estimated amount of the contributions derived from the draft budget, corresponding to the participation of Moldova in the Programme according to the above paragraphs 1, 2, and 3.

Once the general budget has been finally adopted, the Commission shall communicate to Moldova, in the statement of expenditure corresponding to Moldova's participation, the final amounts referred to in the first subparagraph.

II. Payment of Moldova's financial contribution

1. The Commission shall issue, at the latest on 30 January and on 15 June of each financial year, a call for funds to Moldova corresponding to its contribution under this Agreement.
2. These calls for funds shall provide, respectively, for the payment of:
 - six-twelfths of Moldova's contribution not later than 15 March; and
 - six-twelfths of Moldova's contribution not later than 20 July.

However, the six-twelfths to be paid not later than 15 March shall be calculated on the basis of the amount set out in the statement of expenditure of the draft budget: the regularisation of the amount thus paid shall be made with the payment of the six-twelfths not later than 20 July.

For the first year of implementation of this Agreement, the Commission shall issue a first call for funds with retro-active effect, within 30 days of the signature of the Agreement. Should this call be issued after 15 June, it shall provide for the payment of twelve-twelfths of Moldova's contribution within 30 days, calculated on the basis of the amount set out in the statement of expenditure of the budget.

3. In the last year of the Programme the full amount of Moldovan contribution shall be paid no later than 20 July of 2020.
4. The contribution of Moldova shall be expressed and paid in Euros.
5. Payment by Moldova shall be credited to the Union programmes as budget receipts allocated to the appropriate budget heading in the statement of revenue of the general budget of the European Union. The Financial Regulation applicable to the general budget of the European Union shall apply to the management of the appropriations.
6. Moldova shall pay its contribution under this Agreement as specified in point II, 2 of Annex II.

Any delay in the payment of the contribution shall give rise to the payment of default interest by Moldova 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.

In case the delay in the payment of the contribution is such that it may significantly jeopardise the implementation and management of the Programme, participation of Moldova in the Programme will be suspended by the Commission following the

absence of payment 20 working days after a formal letter of reminder, without prejudice to the Union's obligations according to grant agreements and/or contracts already concluded pertaining to the implementation of selected indirect actions.

7. At the latest on 30 June of the year following a financial year, the statement of appropriations for the Programme of that financial year, shall be prepared and transmitted to Moldova for information, according to the format of the Commission's revenue and expenditure account.
8. The Commission, at the time of the closure of the accounts relating to each financial year, within the framework of the establishment of the revenue and expenditure account, shall proceed to the regularisation of the accounts with respect to the participation of Moldova.

This regularisation shall take into consideration modifications which have taken place, either by transfer, cancellations, carry-overs, de-commitments, or by supplementary and amending budgets during the financial year.

This regularisation shall occur at the time of the second payment for the next financial year, and for the last year in July 2021. Further regularisation shall occur every year until 2023.

Annex III

Financial control of Moldovan participants in the Programme

I. Direct Communication

The Commission shall communicate directly with the participants in the Programme established in Moldova and with their subcontractors. They may submit directly to the Commission all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Agreement and of the grant agreements and/or contracts concluded to implement them.

II. Audits

1. In accordance with European Parliament and Council Regulation (EU, Euratom) No 966/2012⁸ (hereinafter referred to as the 'Financial Regulation' and to Commission Delegated Regulation (EU) No 1268/2012⁹ (hereinafter referred to as the 'Rules of Application') and with the other rules referred to in this Agreement, the grant agreements and/or contracts concluded with participants in the Programme established in Moldova may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the participants and of their subcontractors by Commission agents or by other persons mandated by the Commission.
2. Commission agents, the European Court of Auditors and other persons mandated by the Commission shall have appropriate access to sites, works and documents (both electronic and paper versions) and to all the information required in order to carry out such audits subject to the inclusion of this right of access that shall be stated explicitly in the grant agreements and/or contracts concluded to implement the instruments referred to in this Agreement with participants from Moldova. The non-provision of such rights would be regarded as a failure to substantiate costs and, consequently, as a potential breach of the grant agreements.
3. The audits may be conducted after the Programme or this Agreement expire, on the terms laid down in the grant agreements and/or contracts in question. Any audit performed after the expiration of either of the Programme or this Agreement shall be conducted in accordance with the terms set forth in this Annex.

III. On The-Spot Checks by the Commission (OLAF)

1. Within the framework of this Agreement, the Commission and more particularly the European Anti-Fraud Office (OLAF) shall be authorised to carry out on-the-spot checks and inspections in the premises of participants and their subcontractors from Moldova, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96¹⁰.
2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close collaboration with the competent Moldovan authority designated by the Moldovan government.

⁸ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (OJ L 298, 26.10.2012).

⁹ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012).

¹⁰ OJ L292, 15.11.1996, p. 2.

For the purposes of this paragraph in Annex III the designated Moldovan authority shall be the Audit Service of the Academy of Sciences of Moldova. 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 they can provide assistance. To that end, the officials of the competent Moldovan authorities may participate in the on-the-spot checks and inspections.

3. If the Moldovan authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and them.
4. Where the participants in the Programme resist an on-the-spot check or inspection, the Moldovan authorities, acting in accordance with national rules and regulations, shall assist the Commission inspectors, to a reasonable extent as needed to allow them to fulfil their duty in carrying out an on-the-spot check or inspection.
5. The Commission shall report as soon as possible to the competent Moldovan authority any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any case the Commission shall be required to inform the abovementioned authority of the result of such checks and inspections.

IV. Information and Consultation

1. For the purposes of proper implementation of this Annex, the competent Moldovan and Union authorities shall regularly exchange information, unless forbidden or unauthorized by national rules and regulations and, at the request of one of the Parties, shall conduct consultations.
2. The competent Moldovan authorities shall inform the Commission within reasonable time of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the grant agreements and/or contracts concluded in application of the instruments referred to in this Agreement.

V. Confidentiality

Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Moldovan law and by the corresponding provisions applicable to the Union's institutions. Such information may not be communicated to persons other than those within the Union's institutions or in the Member States or Moldova whose functions legally require them to know it, nor may it be used for purposes other than to ensure effective protection of the Parties' financial interests¹¹.

¹¹ OJ L 312, 23.12.1995, p. 1.

VI. Administrative Measures and Penalties

Without prejudice to application of Moldovan criminal law, administrative measures and penalties may be imposed by the Commission in accordance with Regulations (EU, Euratom) No 966/2012, (EU) No 1268/2012 and (EC, Euratom) No 2988/95¹².

VII. Recovery and Enforcement

Decisions taken by the Commission under the Programme covered by this Agreement which impose a pecuniary obligation on persons other than States shall be enforceable in Moldova. If so requested by the Commission, the authority designated by the Government of Moldova shall commence proceedings for the enforcement of the decision on behalf of the Commission. In this case, the decision of the Commission shall be submitted to the Moldovan Court, without other formality than verification of the authenticity of the decision by the authority designated for this purpose by the Government of Moldova, which shall inform the Commission thereof. Enforcement shall take place in accordance with the Moldovan law and rules of procedure.

The relevant enforcement provisions shall be incorporated in the grant agreements and/or contracts with participants from Moldova. The Court of Justice of the European Union shall have jurisdiction to review the legality of the decision of the Commission and suspend its enforcement. Moreover, the courts of Moldova shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

¹² Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995).