

**FINANCING AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF TURKEY**

**AND**

**THE COMMISSION OF THE EUROPEAN COMMUNITIES**

**CONCERNING THE MULTI-ANNUAL OPERATIONAL PROGRAMME**

**“REGIONAL COMPETITIVENESS”**

**FOR COMMUNITY ASSISTANCE FROM THE INSTRUMENT FOR PRE-  
ACCESSION ASSISTANCE UNDER THE “REGIONAL DEVELOPMENT”  
COMPONENT IN TURKEY**

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**The Government of The Republic of Turkey**  
**And**  
**The Commission of the European Communities**

Hereafter jointly referred to as "the Parties" or individually as "the Beneficiary", in the case of the Government of the Republic of Turkey, or "the Commission", in the case of the Commission of the European Communities

**Whereas**

- 1) On 17 July 2006, the Council of the European Union adopted Regulation (EC) No 1085/2006<sup>1</sup> establishing an instrument for pre-accession assistance (hereinafter referred to as "IPA Framework Regulation"). With effect from 1 January 2007, this instrument constitutes the single legal basis for the provision of financial assistance to candidate countries and potential candidate countries in their efforts to enhance political, economic and institutional reforms with a view to becoming members of the European Union;
- 2) On 12 June 2007, the Commission adopted Commission Regulation (EC) No 718/2007<sup>2</sup> implementing the IPA Framework Regulation, detailing applicable management and control provisions (hereinafter referred to as "IPA Implementing Regulation");
- 3) Turkey figures in Annex I of the IPA Framework Regulation, and should therefore have access to the 5 components established under Article 3(1) of the same Regulation, i.e. (a) Transition Assistance and Institution building; (b) Cross-Border Cooperation; (c) Regional Development; (d) Human Resources Development and (e) Rural Development;
- 4) In accordance with Article 155 of the IPA Implementing Regulation, the assistance under the Regional Development and Human Resources Development components should be implemented through multi-annual operational programmes;
- 5) On 6 June 2007 the Beneficiary submitted to the Commission a strategic coherence framework which, pursuant to Article 154(1) of the IPA Implementing Regulation, constitutes a reference document for the programming of the Regional Development and Human Resources Development components;
- 6) On 1 May 2007 the Beneficiary submitted to the Commission a proposal for a multi-annual operational programme for "Regional Competitiveness", hereinafter referred to as "the programme";
- 7) On 29 November 2007 the Commission adopted its Decision No. C(2007)5729 approving the programme for IPA co-financing, hereinafter referred to as "the Financing Decision";

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<sup>1</sup> OJ L210, 31.7.2006, p.82

<sup>2</sup> OJ L 170, 29.6.2007, p.1

- 8) According to Article 17 of the IPA Framework Regulation the Commission and the Beneficiary shall conclude framework agreements and subsidiary agreements concerning the implementation of the assistance;
- 9) On 11 July 2008 the Beneficiary and the Commission concluded a Framework Agreement setting out the rules for co-operation concerning EC financial assistance under IPA;
- 10) According to Article 8 of the IPA Implementing Regulation and Article 5 (3) of the Framework Agreement, where required by the financing decision, the Commission and the Beneficiary shall conclude a Financing Agreement which may take the form of a multi-annual agreement;
- 11) The Financing Agreement shall lay down: (a) provisions by which the Beneficiary accepts the assistance of the Community and agrees to the rules and procedures concerning disbursement related to such assistance; (b) the terms on which the assistance is managed, including the relevant methods and responsibilities for implementing the multi-annual programme and/or operations; (c) provisions relating to the establishment and regular updating, by the Beneficiary, of a roadmap with indicative benchmarks and time limits to achieve decentralisation without *ex-ante* controls by the Commission;
- 12) The programme, as adopted by the Commission Decision of 29 November 2007, should form an integral part of the Financing Agreement.

HAVE AGREED AS FOLLOWS:

## **CHAPTER I – GENERAL PROVISIONS**

### *Article 1* *Subject matter*

1. This Agreement is concluded between the Government of the Republic of Turkey and the Commission of the European Communities, pursuant to Article 8 of the IPA Implementing Regulation and Article 5(3) of the Framework Agreement.
2. This Agreement concerns the multi-annual operational programme "Regional Competitiveness" for Community assistance from the Instrument of Pre-Accession Assistance under the "Regional Development" component in Turkey, adopted by Commission Decision C(2007)5729 of 29 November 2007.
3. All documents and correspondence pertaining to the programme shall bear the reference CCI No: 2007TR16IPO003.
4. Without prejudice to the arrangements laid down in the IPA Implementing Regulation and in the Framework Agreement, this Agreement completes the technical, legal and administrative framework and includes detailed and specific provisions for the management, monitoring, evaluation and control under which the programme referred to in paragraph 2 and any amendments thereof shall be implemented.



*Article 2*  
*Objectives to be pursued*

1. In addition to Article 3 of the Framework Agreement, the objectives to be pursued under the programme shall be consistent with the overall aim to prepare the Republic of Turkey for the implementation and management of the Community's cohesion policy, with a view to EU membership.

2. Operations, projects, actions, and preparatory measures implemented under the programme shall follow a "learning by doing" approach with a view to preparing national authorities to achieve the aim expressed in paragraph 1, with due regard to the principle of proportionality, as expressed in the relevant legislation applicable to the Community's cohesion policy and its instruments.

*Article 3*  
*Conventional framework*

The provisions of the Framework Agreement concluded on 11 July 2008 between the Government of the Republic of Turkey and the Commission shall apply *mutatis mutandis* to this Agreement.

*Article 4*  
*Regulatory framework*

The regulatory framework applicable to pre-accession assistance, to be observed in the implementation of the programme, as it is provided/foreseen in the Framework Agreement includes *inter alia*:

- a.) Council Regulation (EC EURATOM) No 1605/2002 of 25 June 2002<sup>1</sup>, on the Financial Regulation applicable to the general budget of the European Communities, hereinafter referred to as "the Financial Regulation";
- b.) Council Regulation (EC) No 1085/2006 of 17 July 2006, establishing an Instrument for Pre-Accession Assistance (IPA)<sup>2</sup>;
- c.) Commission Regulation (EC, EURATOM) No 2342/2002 of 23 December 2002<sup>3</sup>, laying down detailed rules for the implementation of the financial regulation, hereinafter referred to as the "Implementing Rules of the Financial Regulation";
- d.) Commission Regulation (EC) No 718/2007 of 12 June 2007<sup>4</sup> implementing Council Regulation (EC) No 1085/2006;
- e.) Commission Decision C(2007)5729 of 29 November 2007 adopting the multi-annual operational programme "Regional Competitiveness" in Turkey, and any amendments thereto, as may be decided by the Commission until the final closure of the programme;

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<sup>1</sup> OJ L 248, 16.9.2002, p.1  
<sup>2</sup> OJ L 210, 31.7.2006, p.82  
<sup>3</sup> OJ L 357, 31.12.2002, p.1  
<sup>4</sup> OJ L 170, 29.6.2007, p 1

- f.) Commission Decision C(2009)5709 of 23 July 2009 conferring management powers on the Republic of Turkey concerning the management of the programme, and any amendments thereto as may be decided by the Commission until the final closure of the programme.

#### *Article 5*

##### *Compliance with applicable regulatory and conventional framework and with other Community legislation and policies*

1. The Beneficiary shall take all necessary steps to ensure the proper execution of all activities and to facilitate the implementation of the programme, in compliance with the regulatory and conventional framework referred to under Articles 3 and 4 of this Agreement.
2. The Commission and the Beneficiary shall endeavour to ensure that all activities and the objectives pursued with the implementation of the programme are consistent with the Community legislation and policies in force, as may be applicable to the relevant sector, and contribute to the progressive alignment with the standards and policies of the European Union, including where appropriate the *acquis communautaire*.

#### *Article 6*

##### *Interpretation*

1. The provisions of this Agreement shall be interpreted as supplementing and completing the provisions of the conventional and regulatory frameworks provided for under Articles 3 and 4 of this Agreement.
2. Where contradictions exist between the provisions in the main part of the Financing Agreement and in its annexes, including in particular the provisions in Chapter V of Annex XIX (the "Implementing Provisions" of the Operational Programme), the provisions contained in the main part of the Financing Agreement shall prevail.
3. Subject to any explicit provision to the contrary in this Agreement, the terms used in this Agreement shall bear the same meaning as attributed to them in the IPA Framework Regulation, in the IPA Implementing Regulation and in the IPA Framework Agreement.
4. Subject to any explicit provision to the contrary in this Agreement, references to this Agreement are references to such Agreement as amended, supplemented or replaced from time to time.
5. Any references to Community instruments are references to such instruments as amended, supplemented or replaced from time to time.
6. Headings in this Agreement have no legal significance and do not affect its interpretation.

#### *Article 7*

##### *Partial invalidity and unintentional gaps*

1. If a provision of this Agreement is or becomes invalid, or if this Agreement contains unintentional gaps, this will not affect the validity of the other provisions of this Agreement.

The Parties will replace any invalid provision by a valid provision which comes as close as possible to the purpose of, and intent of, the invalid provision.

2. The Parties will fill any unintentional gap by a provision which best suits the purpose and intent of this Agreement, in compliance with the IPA Framework Regulation, the IPA Implementing Regulation and the Framework Agreement.

#### *Article 8*

##### *Coordination, consistency and complementarity*

The Commission and the Beneficiary shall ensure adequate coordination, consistency and complementarity of the assistance provided under the programme with other forms of Community assistance, including but not limited to the other IPA components covered by the IPA Framework Regulation, as well as assistance financed by the European Investment Bank, other international financing institutions and bilateral donors.

#### *Article 9*

##### *Protection of the Community's financial interests*

1. In the implementation of Articles 28 and 29 of the Framework Agreement by the Beneficiary, Council Regulation (EC) No 2988/95 on the protection of the European Communities financial interest shall apply *mutatis mutandis*.

2. The Beneficiary shall adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Community, and particularly in order to:

a.) check the authenticity and compliance of operations financed by the Community;

b.) prevent and pursue irregularities;

c.) recover sums lost as a result of irregularities or negligence;

d.) report irregularities to the Commission by establishing a mechanism equivalent to that foreseen in section 4 "irregularities" (Articles 27-36) of Commission Regulation (EC) No 1828/2006<sup>1</sup>, setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund.

3. The Beneficiary shall inform the Commission of the provisions adopted and measures taken under paragraph 2 and the measures taken for management and control, in compliance with Community legislation concerning support for the programme, in order to protect the financial interests of the Community.

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<sup>1</sup> OJ L 371, 27.12.2006, p.g 4

## CHAPTER II – COMMUNITY FUNDING

### *Article 10 Programme Funding Sources*

1. The total cost of the programme, expressed in terms of eligible public expenditure as defined in Article 17(2) of this Agreement, is estimated at 186,933,338 euro. The breakdown of this amount is set out in the Financial Plan in Annex I.
2. Subject to budgetary availability, the Community undertakes to co-finance the programme by way of a grant from the budget of the European Communities, up to the maximum amount indicated in the Financial Plan in Annex I.
3. The Beneficiary undertakes to co-finance the programme by way of cash contributions, corresponding as a minimum to the national co-financing requirements indicated in the Financial Plan in Annex I. In all instances, the Beneficiary shall ensure that the financing requirements for each operation shall be fully met.
4. The Community contribution referred to in paragraph 2 shall not exceed the ceiling of 75% of the eligible expenditure at the level of each priority axis. In exceptional and duly justified cases this percentage may be increased to 85%, subject to the formal agreement of the Commission, approved by way of a Commission Decision.
5. The Community contribution to the co-financing of the programme and each operation is subject to the observance of the provisions of this Agreement, as well as the regulatory and conventional framework applicable to pre-accession assistance, namely as provided for under Articles 3 and 4 of this Agreement.

### *Article 11 Financial Plan*

1. The Financial Plan, expressed in euros, applicable to the Community and national public contributions to the programme in calendar years 2007, 2008 and 2009, at the level of each priority axis, is the Financial Plan indicated in Annex I.
2. Amendments or modifications to this Financial Plan require the formal agreement of the Commission and must be approved by way of an amending Commission Decision.
3. The Financial Plan may be extended, to include Community and national public contributions to the programme in calendar years 2010, 2011, 2012 and 2013, subject to the formal agreement of the Commission, approved by way of a Commission Decision.
4. In the event of the extension of the Financial Plan in accordance with paragraph 3, the programme indicators and other relevant strategic and operational elements shall be amended accordingly.

*Article 12*  
*Commitment of community funding*

1. The Community contribution to the programme, as expressed in Articles 10 and 17 of this Agreement, shall be split in yearly commitments in accordance with the Financial Plan in Annex I.
2. The amount(s) to be committed in year 2009 and in any subsequent years are subject to the approval of the necessary credits in the budget of the European Communities by the budgetary authority.
3. Nothing in this Agreement can be interpreted as implying a financial commitment of the Community in relation to credits which have not yet been approved by the budgetary authority.

*Article 13*  
*Automatic decommitment (n+3)*

1. Pursuant to Article 166 of the Financial Regulation, the Commission shall automatically decommit any portion of a budget commitment for the programme where, by 31 December of the third year following year *n* being the one in which the budget commitment was made:
  - (i) it has not been used for the purpose of pre-financing; or
  - (ii) it has not been used for making intermediate payments; or
  - (iii) no declaration of expenditure has been presented in relation to it.
2. That part of budget commitments still open on 31 December 2017 for which a declaration of expenditure has not been made by 31 December 2018 shall be automatically decommitted.

**CHAPTER III – GENERAL PRINCIPLES OF IMPLEMENTATION**

*Article 14*  
*Implementation principles*

1. The implementation of the programme shall be carried out by the Beneficiary, on the basis of decentralised management, in accordance with Article 5 of the Framework Agreement.
2. The conditions for the conferral of management powers are set out in Section III, Articles 9, 10, 11 and 12 of the Framework Agreement.
3. In addition to the conditions referred to in paragraph 1, the Beneficiary shall ensure strict observance of the principles and conditions laid down in Article 56 of the Financial Regulation.
4. If the conditions and principles referred to in paragraphs 2 and 3 cease to be met, the Commission may suspend or terminate the implementation of this Agreement.

5. The Beneficiary undertakes to pursue the achievement of decentralisation without *ex-ante controls*, as provided for under Article 30 of this Agreement and Article 16 of the Framework Agreement.

6. All investments receiving Community financing under the programme must fully respect compliance with sustainable development principles and meet relevant environmental norms, such as directives on EIA<sup>1</sup>, Habitats<sup>2</sup> and Birds<sup>3</sup> (in order to avoid negative impacts on potential Natura 2000 sites) as appropriate.

#### *Article 15* *Final beneficiary and operations*

1. In accordance with the provisions of Article 2(8) of the IPA Implementing Regulation, for the purpose of this Agreement, the term "final beneficiary" shall designate any body or firm, whether public or private, responsible for initiating or initiating and implementing operations. In the context of aid schemes, final beneficiaries are public or private firms carrying out an individual project and receiving public aid.

2. To the extent that the Operating Structure retains direct responsibility for the implementation of the operations under the programme, namely for all contracting arrangements and financial transactions associated thereto, the term "final beneficiary" shall be deemed to refer to the Operating Structure, or any body which has been specifically designated in the decision of conferral of management.

3. For the purpose of this Agreement, operations shall comprise a project or a group of projects, initiated or initiated and implemented by one or more final beneficiaries, allowing for the achievement of the goals of the measure and/or the priority axis to which they relate.

#### *Article 16* *Co-financing*

In addition to the principles stated in Article 4 of the Framework Agreement, the following principles shall also apply to the implementation of the programme:

- a.) all operations receiving assistance under the programme shall require national and Community contribution;
- b.) the Community contributions to each operation shall be made available at the same time as the corresponding contribution from national sources;
- c.) the Community contribution to each operation shall be subject to the fulfilment of the obligations and conditions set out in the Framework Agreement and in this Agreement.

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<sup>1</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

<sup>2</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

<sup>3</sup> Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds

*Article 17*  
*Aid intensity*

1. In line with the provisions of Article 149 of the IPA Implementing Regulation, the Community contribution to the programme shall be calculated on the basis of public expenditure.
2. For the purpose of this article "public expenditure" is any public contribution to the financing of operations whose origin is the European Community or the budget of public authorities of the beneficiary country and any contribution to the financing of operations whose origin is the budget of public law bodies or associations of one or more regional or local authorities or public law bodies.
3. The maximum amount of the Community contribution at the level of each priority axis under the programme is as set in the Financial Plan in Annex I.

In accordance with the provisions of Article 10(4), in exceptional and duly justified cases, these percentages may be increased up to a maximum of 85%, subject to a prior decision by the Commission.

4. No operation shall benefit from a higher co-financing rate than the one relating to the priority axis concerned.

*Article 18*  
*Treatment of receipts*

1. In line with the provisions of Article 35 of the IPA Implementing Regulation, revenue earned by an operation during the period of its co-financing shall be deducted from the amount of eligible expenditure under that operation. In this deduction, account shall be taken of the running costs of the operation and the need to ensure its sustainability. Proof of the deduction made shall be kept and declared to the Commission.
2. For the purpose of this article, the period of co-financing shall be counted from the date of the first payment made to the operation concerned, until three years after the final payment of Community funding to that operation, or the closure of the programme, whichever comes earlier.
3. The revenue earned includes sales, rentals, services, enrolment fees, intellectual property or other equivalent receipts.
4. The following revenues shall not be considered as revenues earned by the operation and are excluded therefore from the application of this article:
  - a.) Receipts generated through the economic life of the co-financed investments in the case of investments in firms;
  - b.) Receipts generated within the framework of a financial engineering operation, including venture capital and loan funds, guarantee funds, leasing;
  - c.) Where applicable, contributions from the private sector to the co-financing of operations, as shown in the financial tables of the programme, or as taken into account for the calculation of the total cost of the operation.

- d.) Revenue generated by infrastructure, which is taken into account in accordance with Article 19 of this Agreement.

*Article 19*  
*Revenue generating projects*

1. Pursuant to the provisions of Article 150 of the IPA Implementing Regulation, for the purposes of this Agreement, a revenue-generating project means any operation proposed for financing under the programme involving an investment in infrastructure, the use of which is subject to charges borne directly by users and which generates revenues, or any operation involving the sale or rent of land or buildings.
2. Public expenditure for revenue-generating projects, used for calculating the Community contribution to those projects in accordance with Article 17 of this Agreement, shall be equal to the discounted value of the investment cost of the proposed project, less the discounted value of the net revenue, calculated by deducting the operating costs from the global revenues from the investment over the appropriate reference period, depending on the project's financial features.
3. Where not all the investment cost is eligible for co-financing, the net revenue shall be allocated *pro rata* to the eligible and non-eligible parts of the investment cost.
4. In the calculation, the Operating Structure shall take account of the reference period appropriate to the category of investment concerned, the category of project, the profitability normally expected of the category of investment concerned, the application of the polluter-pays principle and, if appropriate, considerations of affordability, in particular in the environment sector.
5. Where, at the latest three years after the closure of the operational programme, it is established that an operation has generated revenue that has not been taken into account in accordance with this article, such revenue shall be refunded to the general budget of the European Union, in proportion to the net contribution received from the programme.
6. For the purpose of this Article, the methodology for carrying out the cost-benefit analysis, including the indicative discount rate to be applied and investment reference period, shall be as indicated in Working Document no. 4, or any additional or complementary guidance issued by the Commission's Directorate General for Regional Policy on this matter.

*Article 20*  
*Involvement of IFIs*

1. Pursuant to Article 19(8) of the IPA Framework Regulation, operations co-financed by the Community under the programme may also receive financing from other international organisations, a Member State, a third country or a regional organisation.
2. Where the situation foreseen in paragraph 1 occurs, notwithstanding the provisions of Chapter VIII of this Agreement regarding public procurement, contracting and grants, the Commission may decide to use such procurement and grant procedures as may be agreed among donors, in accordance with Article 56(2) of the Financial Regulation. The Commission must satisfy itself that the Operating Structure is capable of applying such procurement and



grant procedures, in a way that satisfies the conditions laid down in Article 56 (1) of the Financial Regulation.

3. For the purpose of this Agreement, eligibility of expenditure for operations co-financed in accordance with this article begins from the moment when:

- a.) the Operating Structure concerned has been accredited for the use of the IFIs procurement procedures;
- b.) the Commission has conferred the decentralised management of such procedures to the Operating Structure.

4. IFI contribution may also be implemented by parallel co-financing. This means that the funds provided by the various funding sources are dedicated to separate contracts from those covered under IPA.

*Article 21*  
*Polluter pays principle*

1. When calculating the rate of Community assistance to be provided to a project, due regard must be taken in relation to the application of the polluter pays principle<sup>1</sup>.

2. The Polluter Pays Principle implies that those who cause environmental damage should bear the costs of avoiding it or compensating for it. Therefore, public financing of environmental policy is in most cases to be avoided, as it should be financed by the polluters themselves as far as they can be identified.

*Article 22*  
*Affordability*

When calculating the tariffs to be applied on a project, due account must be taken of the end users' ability to pay.

*Article 23*  
*Intellectual property rights*

1. The Beneficiary and the implementing bodies responsible for the implementation of the programme and any associated projects shall ensure that they acquire all necessary intellectual property rights with regard to information technology, studies, drawings, plans, publicity and any other material made for planning, implementation, monitoring and evaluation purposes.

2. The Beneficiary shall guarantee that the Commission, or any body or person authorised by the Commission, shall have access and the right to use such a material. The Commission will only use such material for its own purposes.

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<sup>1</sup> Council Recommendation 75/436/Euratom, ECSC, EEC and attached communication



*Article 24*  
*Permits and authorisations*

Any type of permit and/or authorisation required for the implementation of the programme and its operations shall be provided in due time by the competent authorities of the beneficiary country, in accordance with national law and, where applicable, in compliance with the *acquis communautaire*, having regard, in this case, to the principle of proportionality referred to in Article 2(2) of the Agreement.

**CHAPTER IV – MANAGEMENT STRUCTURE AND AUTHORITIES**

*Article 25*  
*Structures and authorities common to other programmes*

1. In compliance with Article 6 of the Framework Agreement, the following structures and authorities, common to all IPA components, have been designated by the Beneficiary:
  - a.) The National IPA Coordinator: Secretary General, Secretariat General for European Union Affairs
  - b.) The Competent Accrediting Officer: State Minister in Charge of the Treasury
  - c.) The National Authorising Officer: Undersecretary of Treasury, Undersecretariat of Treasury
  - d.) The National Fund: Director of the National Fund, Undersecretariat of Treasury
  - e.) The Audit Authority: Chairman of the Board of Treasury Controllers
2. The Strategic Co-ordinator is Undersecretary, Undersecretariat of State Planning Organisation (this structure is common to the Regional Development Component and the Human Resources Development Component).
3. The functions and responsibilities of the above-mentioned structures and authorities are set out in Article 8 and Annex A to the Framework Agreement.

*Article 26*  
*Structures and authorities specific to the programme*

1. In accordance paragraph 6 a) of Annex A of the Framework Agreement, the bodies constituting the Operating Structure for the programme are:
  - Ministry of Industry and Trade, Regional Competitiveness Programme Coordination And Implementation Centre
  - Central Finance and Contracts Unit.

The Beneficiary has appointed The Deputy Undersecretary, Ministry of Industry and Trade, as Head of the Operating Structure, with responsibility for the tasks described in paragraph 6c) of Annexe A to the Framework Agreement.

2. The functions and responsibilities of the Operating Structure are set out in Article 8 and paragraph 6 b) of Annex A of the Framework Agreement.

3. In addition to the above-mentioned functions and responsibilities, the Head of the Operating Structure shall also be responsible for:

- a.) Managing the secretariat of the Sectoral Monitoring Committee;
- b.) Co-chairing the Sectoral Monitoring Committee;
- c.) Ensuring the interim evaluation of the operational programme.

*Article 27*  
*Delegation of tasks*

1. Within the overall framework defined by the conferral of management powers, the Head of the Operating Structure may delegate some or groups of tasks to specific bodies, within or outside the Operating Structure. This grouping and assignation shall respect the principles of segregation of duties imposed by the Financial Regulation. The relevant arrangements shall be made in writing between the Head of the Operating Structure and the body(ies) concerned. The final responsibility for the tasks delegated shall remain with the Head of the Operating Structure.

2. Such agreements shall clearly identify the functions to be performed by the delegated body or authority and the type of supporting documents and reports to be sent to the Head of the Operating Structure.

3. Such agreements shall also provide for access, by duly authorised agents or representatives of the Community or the Operating Structure, to information held by the delegated bodies/authorities, and for investigations by such authorised agents or representatives, of any operations financed under the programme, including the carrying out of checks on individual projects and recipients of aid.

4. The Beneficiary shall enable the Head of the Operating Structure to exercise the duties associated with his responsibilities, even where no hierarchical link exists between the Head of the Operating Structure and the bodies and authorities involved in the implementation of the programme.

5. The Beneficiary shall ensure that a system of deputising is in place, to ensure the continuity of the functions assigned to the relevant authorities.

*Article 28*  
*Communication and information*

1. Any communication in connection with this Agreement shall be made in writing and in the English language. Each communication must be signed and must be supplied as an original document.

2. Any communication in connection with this Agreement must be sent to the following addresses:

*For the Commission:* Directorate General for Regional Policy

Postal Address: 200 rue de la Loi, B1049 Brussels, Belgium  
Fax: +32 2 2920139

*For the Beneficiary:* *Sanayi ve Ticaret Bakanl    (Ministry of Industry and Trade)*, Regional Competitiveness Programme Coordination and Implementation Centre

Postal Address: Eskisehir Yolu 7. km No 154 Kat 1  
Fax: + 90 312 219 68 07

3. Any other communications to the structures and authorities involved in the management of the operational programme must be sent to the address specified in Annex V. The National IPA Coordinator shall communicate in writing to the Commission of the European Communities any modification of the appointed institutions or of their addresses.

## **CHAPTER V – DECENTRALISED MANAGEMENT**

### *Article 29 Conferral of management*

1. In accordance with Article 5 of the Framework Agreement, decentralised management shall apply to assistance granted under the programme. The conferral of management powers by the Commission is therefore a precondition to the signing of this Agreement.

2. Based on the requirements and procedures set out in Articles 9 to 12 of the Framework Agreement, the Commission adopted on 23 July 2009 its Decision No C(2009)5709 conferring management powers on the Republic of Turkey, for the implementation of the programme. The specific conditions attached to this Decision, including the list of *ex-ante* controls by the Commission, form an integrant part of this Agreement (Annex VI).

3. The provisions of Articles 13 to 15 of the Framework Agreement regarding withdrawal or suspension of the accreditation of the National Authorising Officer, the National Fund and the Operating Structure, as well as regarding the withdrawal or suspension of conferral of management powers, shall apply.

### *Article 30 Waiving of ex-ante controls*

1. Decentralisation without *ex-ante* controls by the Commission is an objective for the implementation of the operational programme. Indicative benchmarks and time limits to achieve decentralised management without *ex-ante* controls by the Commission, are set out in the Roadmap referred to in Article 31 of this Agreement.

2. Before dispensing with the *ex-ante* controls laid down in the Commission Decision on conferral of management powers, the Commission shall satisfy itself of the effective functioning of the management and control system concerned, in accordance with the relevant Community and national rules. In particular, the Commission shall monitor the implementation, by the Beneficiary, of the Roadmap referred to in Article 31 of this Agreement and as laid down in Article 8(4)(c) of the IPA Implementing Regulation. The

Commission shall take due account of the results achieved by the Beneficiary in this context, in particular in the implementation of assistance and in the negotiation process.

*Article 31*  
*Roadmap to the waiving of ex-ante controls*

1. In accordance with Article 8 (4) (c) of the IPA Implementing Regulation, the Beneficiary is required to provide a detailed Roadmap with indicative benchmarks and time limits, to achieve decentralised management without *ex-ante* controls by the Commission, in accordance with the requirements of Annex VII.
2. The minimum criteria and conditions for the waiving of *ex-ante* controls are presented as follows, with the preparation of the Roadmap addressing each of the issues listed:
  - a.) there must be a well-defined system within the Operating Structure for managing the funds of the programme with full internal rules of procedure, as well as clear institutional and personal responsibilities;
  - b.) the Beneficiary shall set up a benchmarking system which includes both quantitative and qualitative aspects;
  - c.) the frequency of the reporting on benchmarking shall be on a quarterly basis;
  - d.) there must have been a sustained and noticeable downward trend as regards the rejection rate due to the *ex-ante* controls by the Commission.

*Article 32*  
*Statement of assurance by the National Authorising Officer*

The provisions of Article 17 of the Framework Agreement and Annex B thereto, regarding the presentation of an annual statement of assurance by the National Authorising Officer, shall apply.

*Article 33*  
*Reports and opinions by the Audit Authority*

Reports and opinions by the Audit Authority are to be prepared in accordance with the requirements of Article 18 of the Framework Agreement.

**CHAPTER VI – ELIGIBILITY OF EXPENDITURE**

*Article 34*  
*Eligibility period*

1. Notwithstanding the provisions of Article 19 of the Framework Agreement, contracts and addenda signed, expenditure incurred and payments made by national authorities between the date of the signature of the Financing Agreement by both parties and 31 December 2017 are eligible for Community co-financing under the programme.

2. In the case of major projects, in the sense of Article 53 of this Agreement, the starting date of eligibility, in the sense of paragraph 1, shall be either the date of the signature of the Financing Agreement or the date of the Commission Decision approving the major project, whichever occurs later.

3. Expenditure related to calls for proposals or calls for tenders may also be eligible prior the initial conferral of management and after 1 January 2007, subject to this initial conferral of management being in place within the limits defined in a reserve clause to be inserted in the operations or calls concerned, and subject to prior approval of the documents concerned by the Commission. The calls for proposal or calls for tender concerned may be cancelled or modified, depending on the decision on conferral of management.

4. Contracts and addenda signed, expenditure incurred and payments made by national authorities, outside the time periods indicated in paragraphs 1 to 3, are not eligible for Community co-financing under the programme.

#### *Article 35* *Eligible Expenditure*

1. Expenditure incurred in the implementation of the programme shall be eligible for Community co-financing if:

- a.) it has been actually incurred and paid within the eligibility period indicated in Article 34 of this Agreement and is supported by receipted invoices or accounting documents of equivalent probative value;
- b.) if the operations and activities giving rise to such expenditure are consistent with the operations and activities eligible for financing under one or more measures foreseen to be implemented under the programme, as adopted by the Commission (Annex XIX);
- c.) if the operations and activities giving rise to such expenditure have been selected in accordance with the selection criteria and procedures foreseen in the programme and in this Agreement;
- d.) if the rules and procedures regarding *ex ante* controls by the Commission have been respected;
- e.) if the expenditure has been incurred in accordance with the principles of sound financial management and, in particular, of economy and cost-effectiveness.

2. In accordance with Article 26 of the IPA Framework Agreement, taxes, customs and import duties and levies and/or taxes of equivalent effect are not eligible under IPA.

3. In addition to paragraph 2, the following expenditure shall not be eligible for funding under the programme:

- a.) purchase, rent or leasing of land and existing buildings;
- b.) fines, financial penalties and expenses of litigation;
- c.) operating costs;
- d.) second hand equipment;

- e.) bank charges, costs of guarantees and similar charges;
- f.) conversion costs, charges and exchange losses associated with any of the component specific euro accounts, as well as other purely financial expenses;
- g.) contributions in kind;
- h.) maintenance and rental costs;
- i.) depreciation costs for the infrastructures.

4. The Commission reserves the right to declare other items ineligible, which it deems not relevant to the aims of a particular project, or unnecessary for the purposes of its implementation. In the event that there may be doubt as to the eligibility of a particular item or action, clarification must be sought from the Commission as to its status, prior to that item or action being implemented.

*Article 36*  
*Management staff*

1. Statutory or temporary civil servants or staff specifically recruited or assigned to the management, implementation and follow-up of the programme, including evaluation and control, financial and physical monitoring and prevention of irregularities, are eligible for Community co-financing under the technical assistance priority of the programme, provided that the following conditions are met:

- a.) the staff is directly recruited in the Operating Structure, by duly-documented decisions of the competent authority/authorities;
- b.) the tasks to be executed must be clearly described and contractually formalised;
- c.) the expenditures must be charged in a transparent manner (e.g. by means of time sheets);
- d.) the period of secondment, or employment does not exceed the final date of eligibility of expenditure under the programme;
- e.) the selection of staff is made in line with the principles of transparency, non discrimination and proportionality;
- f.) the salaries and allowances are in line with prevailing market conditions, including those related to public services.

2. In the case where employees from other services of the public administration are recruited or assigned to perform the activities mentioned in paragraph 1, the following conditions must be met:

- a.) the employee must have temporarily left his statutory employment in his/her parent service of public administration;
- b.) the staff is seconded to the Operating Structure by a duly-documented decision of the competent authority in his/her parent service;
- c.) the period of secondment does not exceed the final date of eligibility of the programme.

### *Article 37*

#### *Expenditure incurred with the organisation of Monitoring Committees*

1. Expenditure incurred with the organisation of the sectoral monitoring committees and any sub-committees designated by the sectoral monitoring committee is eligible under the technical assistance priority.
2. Eligible costs may, as a general rule, include one or more of the following categories: interpretation services, *ad-hoc* hiring of meeting rooms and audio-visual and other necessary equipment, provision of documentation and related facilities, fees for the participation of experts and travel expenditure in accordance with EC rules<sup>1</sup>. The Head of the Operating Structure shall define the modalities applicable in agreement with the Commission services.
3. Salaries and allowances of the sectoral monitoring committee and sub-committees members, incurred in the context of their participation in such committees, are not eligible.

### *Article 38*

#### *Expenditure incurred with the organisation of ad-hoc meetings*

The rules specified in Article 37 may be applied by analogy for the organisation of *ad-hoc* meetings organised upon the request of or with the approval of the Commission services.

### *Article 39*

#### *Expenditure regarding information and publicity*

Expenditure for measures undertaken pursuant the provisions of this Agreement and in the relevant chapter of the programme regarding information and publicity, is eligible.

### *Article 40*

#### *Site preparation and construction*

In the case where public authorities are executing site preparation or construction works, or parts thereof, under their own accounts or under contractual arrangements other than those foreseen in Article 44 of this Agreement, the related expenditures are not eligible.

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<sup>1</sup> [http://ec.europa.eu/europeaid/work/procedures/implementation/per\\_diems/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/implementation/per_diems/index_en.htm)



*Article 41*  
*Durable equipment*

Expenditure relating to the purchase of equipment forming an essential part of the project, in order to allow the adequate operation of the investments (either permanently installed and fixed in the project, or mobile) is eligible, provided that it is listed in the inventory of durable equipment of the responsible body or authority and that it is treated as capital expenditure in accordance with standard accounting conventions. This provision refers *inter alia* to laboratory and surveying equipment, computer hardware and software related to the operation of the investment, surveying equipment and vehicles with dedicated purposes.

*Article 42*  
*Intangible assets*

The purchase and use of intangible assets, as for example patents, are eligible if they are necessary for the implementation of the project.

*Article 43*  
*Completion of operations*

1. Without prejudice of Article 34, all operations approved for Community co-financing under the programme must have a completion date not later than 31 December of the third year following the latest commitment year indicated in the Financial Plan in force (Annex I). Operations approved for Community co-financing before the first extension of the Financial Plan may have their completion date extended, if necessary, by two additional years. In the event the Financial Plan is extended until 2013, in accordance with the provisions of Article 11(3) of this Agreement, the completion date of operations shall be set not later than 31 December 2017. Expenditure incurred after the completion date of the operation is not eligible.

2. Notwithstanding paragraph 1, training of operating personnel and testing of a project and of its equipment and auditing may be taken into consideration as eligible expenditure after completion, provided that it falls within the eligibility period indicated in Article 34 of this Agreement.

**CHAPTER VII – PUBLIC PROCUREMENT, CONTRACTS AND GRANTS**

*Article 44*  
*Procurement rules and procedures*

The award of contracts for services, supplies and works co-financed with Community funding under the programme, is subject to the provisions of:

- a.) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (and in particular Articles 56, 88 to 103, 167 and 168 thereof);
- b.) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation, (and in particular Articles 116 to 159 and 235 to 252 thereof);

- c.) Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance, and in particular Article 19 thereof;
- d.) Commission Decision C(2007)2034 of 24 May 2007 laying down the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries;
- e.) The Framework Agreement signed between the Commission and the Republic of Turkey.

*Article 45*  
*Grants*

The award of grants co-financed with Community funding under the programme, is subject to the provisions of:

- a.) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (and in particular Articles 108 to 120, 169 and 169a thereof);
- b.) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation, (and in particular Articles 160 to 184a and 253 thereof);
- c.) Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance, and in particular Article 19 thereof;
- d.) Commission Decision C(2007)2034 of 24 May 2007 laying down the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries;
- e.) The Framework Agreement signed between the Commission and the Republic of Turkey.

*Article 46*  
*Contract procedures*

1. Except as provided in paragraphs 2 and 3 of this article, or if otherwise agreed by the Commission, the procedural guidelines and standard documents for the award and performance of supply, works and service contracts and grants are those as specified in the "Practical Guide to Contract Procedures for EC external actions" and its annexes.
2. Notwithstanding paragraph 1, the general conditions of contracts to be used for works contracts, are those published (latest version) by the International Federation of Consulting Engineers (FIDIC), as appropriate to the type of works required.
3. All works contracts must be executed through the appointment of an independent supervising engineer. Contract procedures for the selection of supervising engineers shall not include selection criteria that unduly restrict competition and are not proportionate to the objectives pursued. Experience with any particular Conditions of Contract will not be an eliminatory professional requirement.

4. Small scale works contracts may require the use of the FIDIC Short Form of Contract for small (value) works contracts. However, in this event, specific prior approval must be obtained from the Commission services to waive the requirement for a supervising engineer.

*Article 47*

*Eligible costs for the performance of services, works and supply contracts*

Services, works and supply contracts which implement operations, projects and activities foreseen under the programme may cover all the necessary material inputs forming part of the normal performance of a contract, in accordance with the relevant professional standards and practice, provided that they are directly related and strictly necessary for the implementation of the contract. These inputs may include, *inter alia*, the costs of site preparation, the provision of office space, plant and equipment which are the property of the contractor or are purchased for the performance of the contract.

*Article 48*

*Rules of Origin*

The rules of participation in the award of procurement and grant contracts and on the origin of supplies and materials purchased through a contract financed with IPA resources under the programme are as laid down in Article 19 of the IPA Framework Regulation. Derogations from these rules are subject to the prior authorisation by the Commission, in accordance with the provisions of Article 19(6) of the aforementioned Framework Regulation.

**CHAPTER VIII – PROGRAMME IMPLEMENTATION**

*Article 49*

*Selection of operations by final beneficiaries other than national public bodies*

1. Pursuant to Article 158 of the IPA Implementing Regulation, all operations which are not major projects and which are implemented by final beneficiaries other than national public bodies shall be selected through call for proposals. The selection criteria shall be drawn up by the Operating Structure and shall be published with the call for proposals.

2. The Operating Structure shall set up a selection committee for each call for proposals, which shall analyse and select proposals, and recommend results to the Operating Structure.

The Operating Structure shall decide whether to approve the results of the selection procedure and state the reasons for its decision.

The composition of the selection committee and its functioning modalities are set out in Annex XI to this Agreement.

*Article 50*

*General principles for selecting operations*

1. The following groups or categories of operations may be selected without recourse to calls for proposals, subject to prior information of the Sectoral Monitoring Committee and the agreement by the Commission services:

- a) operations initiated or initiated and implemented by national public bodies, namely:
  - state structures forming part of the central government structure;
  - central government agencies which perform public governance functions;
  - public authorities or entities set up under public law, by the state, or one of its authorities, acting on behalf of the state with regard to and within the limits of their specific areas of competence and covering the whole territory of the beneficiary country and
  - national or international public-sector bodies, or bodies governed by private law with a public-service mission covering the whole territory of the beneficiary country, providing that they offer adequate guarantees regarding the nature of their mission.
- b) operations, implemented by national public bodies, which co-finance existing national measures, provided that additionality is fully demonstrated;
- c) operations selected and prepared for implementation prior to the entry into force of this Financing Agreement, with a view to permit the early start of the implementation of the programme.

2. Major projects included in the indicative list of major projects of the Operational Programme approved by the Commission, or as may otherwise be subsequently proposed by the Operating Structure and decided by the Commission, may also be selected without recourse to calls for proposals.

3. Operations not falling within the scope of paragraphs 1 and 2 of this Article, and where relevant in the case of a wide range of potential recipients and having regard to the principle of proportionality referred to in Article 2(2) of this Financing Agreement, shall be selected through calls for proposals. Calls for proposals must be organised in such a way as to permit the preparation of a permanent pipeline of operations which can be implemented within the programme's lifespan and which will absorb fully the funds available. Accordingly, the Operating Structure shall organise a timetable of calls for proposals in accordance with the operational and financial management needs of the programme.

4. The selection procedures shall satisfy the principles of transparency, equal treatment and non discrimination. They shall prevent any conflict of interest and ensure stakeholders involvement and public access to information.

5. Pursuant to Article 167 (4) (a) of the IPA Implementing Regulation the Sectoral Monitoring Committee shall consider and approve the general criteria for selecting the operations within six months of the entry into force of this Financing Agreement and approve any revision of those criteria in accordance with programming needs.

6. The Operating Structure shall ensure that operations are selected for funding and approved in accordance with the criteria and mechanisms applicable to the programme, and that they comply with the relevant Community and national rules.

7. Where relevant, the Operating Structure shall be assisted by a selection committee, whose role is to advise the Operating Structure in the selection of operations. However, the

final decision on the approval of operations shall be taken by the Operating Structure, in consultation with the Commission services.

#### *Article 51*

##### *Eligible Actions and beneficiaries*

1. The Beneficiary shall ensure that all actions selected for financing under the programme demonstrate a positive contribution to the achievement of the expected outputs and results under each measure.
2. Only those final beneficiaries or categories or groups specifically identified under each measure of the programme shall be considered. Financing of operations by final beneficiaries which have not been specifically foreseen under each measure of the programme should only be considered after prior consultation with and the approval of the Commission services.
3. Each operation financed under the programme shall be covered by an agreement, signed between the Operating Structure and the end recipient of assistance.

#### *Article 52*

##### *Operation identification sheet*

1. The Operating Structure shall establish an operation identification sheet for each operation selected for Community co-financing under the programme.
2. The operation identification sheet must contain *inter alia* the following elements:
  - identification of the operation and the organisation responsible for its implementation;
  - a summary description of the operation and the demonstration of its compatibility with the programme;
  - implementation arrangements, risks and assumptions;
  - expected outputs, results and impact, including contributions to horizontal themes;
  - links with other IPA programmes;
  - financing arrangements and estimated budget and
  - procedures foreseen for tenders and contracts.

The template for the operation identification sheet is provided in Annex X.

3. The Operating Structure shall transmit a copy of the operation identification sheet to the Commission for information.
4. In the case of projects falling within the definition of major projects in accordance with Article 53 of this Agreement, or where the nature of the project justifies it, the requirements of this article will be covered with the preparation of application forms, in accordance with the template included in Annex VIII to this Agreement.

## CHAPTER IX – MAJOR PROJECTS

### *Article 53 Specific rules*

In accordance with Article 157 of the IPA Implementing Regulation a major project comprises a series of works, activities or services which is intended, in itself, to accomplish a definite and indivisible task of a precise economic or technical nature, which has clearly identified goals and whose total cost exceeds € 10 million.

### *Article 54 Major project applications*

1. Major projects shall be submitted to the Commission for approval by the Operating Structure. The Decision approving the project shall define the physical object and the eligible expenditure to which the co-financing rate for the priority axis applies. It shall be followed by a bilateral agreement with the Beneficiary, laying out the individual elements and requirements that are specific to the project.

2. According to Article 157 of the IPA Implementing Regulation, as a minimum, the following information shall be provided when making an application for major project funding:

- a.) information on the body responsible for implementation;
- b.) information on the nature of the investment and a description of its financial volume and location;
- c.) results of feasibility studies;
- d.) an implementation timetable for the project;
- e.) an assessment of the overall socio-economic impact of the project, based on a cost benefit analysis and including a risk assessment, and an assessment of the impact on the sector concerned, on the socio-economic situation of the beneficiary country and, where the project involves a transfer of activities from a region in a Member State, the socio-economic impact on that region. The methodology adopted for the analysis must be consistent with that provided in the *"Guide to Cost Benefit Analysis of Major Projects"* as well as *"Guidance on the Methodology for Carrying out Cost-Benefit Analysis, Working Document N° 4"* published by DG Regional Policy, as amended from time to time;
- f.) an environmental impact assessment, carried out in accordance with Directive 85/337/EEC, including the results of a full public consultation procedure. A non technical summary of the conclusions of the authority reviewing the EIA should be attached to the project application;
- g.) a financing plan, showing the total financial contributions expected and the planned IPA contribution, as well as other Community and other external financing. The financing plan shall substantiate the required IPA grant contribution through a financial viability analysis.

3. Major Project funding applications shall be submitted to the Commission using the major project application form (see Annex VIII) appropriate for the sector. Aside from the information required in paragraph 2 all the additional information required in the standard project application form must also be provided.

*Article 55*  
*Bilateral Project Agreement*

Bilateral agreements for major projects, referred to in paragraph 1 of Article 54, must, as a minimum, contain the following information:

- a.) the project name and CCI number;
- b.) identification of the project location;
- c.) a concise description of the project, broken down, as necessary, into individual components;
- d.) details of the authority responsible for the project application, the body responsible for implementation, the contracting authority, the final beneficiary and the end recipient;
- e.) details of any IFIs or other donors involved in the project;
- f.) specific project objectives;
- g.) a summary of the main results of the economic and social cost benefit analysis;
- h.) a summary of the financial analysis;
- i.) a summary of the main findings of the environmental impact assessment;
- j.) the total estimated value of the project, as well as an indicative breakdown of the value of individual project elements;
- k.) the estimated total eligible and non-eligible project costs, total public expenditure in the meaning of Article 17(2) of this Agreement, the Community's financial contribution and the co-financing rate applicable to the total public expenditure;
- l.) any specific conditions related to the project;
- m.) an indicative procurement schedule indicating the specific types and estimated values of contracts to be tendered out and, in case of parallel co-financing with IFIs, the identification of the contracts to be financed by the IFIs, as well as an indication of the date of the start of the tender procedure;
- n.) an indicative implementation schedule;
- o.) an indicative list of key indicators to be used to demonstrate the achievement of the aims of the project;
- p.) the date from which expenditure is eligible.

The template for a Bilateral Project Agreement is attached as Annex IX.

*Article 56*  
*Major project modifications*

Modifications of approved major projects are subject to the limitations and conditions set out in the Bilateral Project Agreement.

**CHAPTER X – FINANCIAL ENGINEERING**

*Article 57*  
*Financial Engineering Instruments*

1. Pursuant to Article 159 of the IPA Implementing Regulation, the Community contribution under the programme may finance expenditure related to an operation comprising contributions to support financial engineering instruments for enterprises, such as venture capital funds, guarantee funds and loan funds. In the context of the programme such funds may finance only small and medium enterprises (SMEs), including micro-enterprises, as defined in Commission Recommendation 2003/361/EC<sup>1</sup>.

2. For the purpose of the programme:

- a.) venture capital funds means investment vehicles established specifically to provide equity or other forms of risk capital to SMEs;
- b.) loan funds means investment vehicles established specifically to provide loans to SMEs;
- c.) guarantee funds means financing instruments that guarantee venture capital, loan funds and other SME risk financing schemes against losses arising from their investments in small and medium enterprise;
- d.) guarantee funds may also guarantee loans taken out by SMEs with financing institutions under prevailing market conditions.

3. Financial engineering instruments co-financed under the programme shall invest only in small and medium enterprises (SMEs), including micro-enterprises. Such investments may be made only at the establishment, in the early stages, including seed capital, or on expansion of those enterprises, and only in activities which the managers of the financial engineering instruments judge potentially economically viable. They shall not invest in firms in difficulty within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty<sup>2</sup>.

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<sup>1</sup> OJ L 124, 20.5.2003, p. 36

<sup>2</sup> OJ C244, 1.10.2004, p.2



*Article 58*  
*Contribution from the programme*

1. The contribution of the programme to the funds may take the form of:
  - a.) participation in existing funds, or setting-up new funds wholly or partially supported by national or regional public or private institutions, international financial institutions or other bilateral donors;
  - b.) participation in publicly-supported mutual funds subscribed by SMEs or in commercially-run funds set-up by private partners; or
  - c.) a combination of both forms.
  
2. Pursuant to Article 159 of the IPA Implementing Regulation, contributions from the programme to venture capital, loan and guarantee funds shall be treated as expenditure actually paid and may be included in the statements of expenditure provided for under Article 66 of this Agreement, covering the period in which such contributions were made

*Article 59*  
*General requirements*

1. When the Community co-financing is used to finance operations comprising financial engineering instruments, a business plan shall be submitted by the co-financing partners or shareholders or by their duly authorised representative. The business plan shall specify at least the following:
  - a.) the targeted market of enterprises and the criteria, terms and conditions for financing them;
  - b.) the operational budget of the financial engineering instrument;
  - c.) the ownership of the financial engineering instrument;
  - d.) the co-financing partners or shareholders;
  - e.) the by-laws of the financial engineering instrument;
  - f.) the provisions on professionalism, competence and independence of the management;
  - g.) the justification for, and intended use of, the contribution from Community co-financing;
  - h.) the exit policy of the financial engineering instrument from investments in enterprises;
  - i.) the winding-up provisions of the financial engineering instruments, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured, attributable to the contribution from the operational programme.
  
2. The business plan shall be assessed and its implementation monitored by, or under the responsibility of, the Operating Structure.

3. The assessment of the economic viability of the investment activities of the financial engineering instruments shall take into account all sources of income of the enterprises concerned.
4. Financial engineering instruments shall be set up as independent legal entities governed by agreements between the co-financing partners or shareholders or as a separate block of finance within a financial institution.
5. Where the financial engineering instrument is established within a financial institution, it shall be set up as a separate block of finance, subject to specific implementation rules within the financial institution, stipulating, in particular, that separate accounts are kept which distinguish the new resources invested in the financial engineering instrument, including those contributed by the operational programme, from those initially available in the institution.
6. The Commission may not become a co-financing partner or shareholder in financial engineering instruments.
7. Management costs may not exceed any one of the following ceilings, whichever is lowest:
  - 3% of the paid-up capital on a yearly average for the duration of the operation unless, after a competitive tender, a higher percentage proves necessary.
  - 10% of the total Community contribution to the operation, including investment capital and management costs.
8. The terms and conditions for contributions from operational programmes to financial engineering instruments shall be set out in a funding agreement, to be concluded between the duly mandated representative of the financial engineering instrument and the Operating Structure.
9. The funding agreement referred to in paragraph 8 shall include at least:
  - a.) the investment strategy and planning;
  - b.) monitoring of implementation in accordance with applicable rules;
  - c.) an exit policy for the contribution from the operational programme out of the financial engineering instrument;
  - d.) the winding-up provisions of the financial engineering instrument, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured that are attributable to the contribution from the operational programme.
10. The Beneficiary shall take precautions to minimise distortion of competition in the venture capital or lending markets.
11. Returns from equity investments and loans, less a *pro rata* share of the management costs and performance incentives, may be allocated preferentially to investors operating under the market economy investor principle up to the level of remuneration laid down in the by-laws of the financial engineering instruments, and they shall then be allocated proportionally among all co-financing partners or shareholders.

*Article 60*  
*Winding up of the operation*

1. At the winding up of the fund or at the partial or final closure of the programme, whichever is earlier, eligible expenditure for the purpose of the programme shall be the total part of the programme's contribution to the fund which has been effectively used for:

- a.) any payments for investments in SMEs from each of the funds mentioned in Articles 57 and 58 of this Agreement;
- b.) any guarantees provided, including amounts committed as guarantees by guarantee funds; and
- c.) eligible management costs.

The co-financing rate foreseen under the specific measure and operation concerned shall be applicable *pro rata* to the programme's contribution to the eligible expenditure paid by the beneficiary.

2. That part of the contribution of the programme to the fund which has not been used for the purposes indicated in paragraph 1 shall be returned to programme. The corresponding statement of expenditure shall be corrected accordingly.

3. Interest generated by payments from the programme to the funds, as defined in Article 57 of this Agreement, shall accrue to the contribution of the programme to be taken into account at the winding up of the operation or partial or final closure of the programme.

4. Resources returned to the operation from investments undertaken by the funds as defined in Article 57 of this Agreement or left over after all guarantees have been honoured, which are attributable to the Community contribution to the operation, shall be accrued to the national public contribution to the operation and shall be used exclusively for the benefit of small and medium-sized enterprises.

**CHAPTER XI – FINANCIAL MANAGEMENT**

*Article 61*  
*Transparency in accounting and reporting*

The Beneficiary shall ensure that, for the operation to which the programme relates, all public or private bodies involved in the management and implementation of the operations maintain either a separate accounting system or an adequate accounting codification of all transactions concerned which will facilitate the verification of expenditure by the Community and by national control authorities. They must also ensure that all expenditure is correctly attributed to the operation or project concerned.

*Article 62*  
*Bank Account*

1. In accordance with Article 5 of Annex A of the Framework Agreement, all payments by the Commission shall be made to an interest bearing euro account, opened by the National

Fund in a financial or treasury institution, on behalf of the Beneficiary and under the National Fund's responsibility.

2. The account to be used to receive payments from the Commission under the programme shall be communicated by the Head of the National Fund to the Commission no later than 15 days following the signature of the Financing Agreement.

3. This account shall be used exclusively for transactions related to the programme covered by this Agreement.

4. The sole authority authorised to request funds from the Commission and to authorise transfers of funds from this account to the Operating Structure, or any final beneficiary as may be designated by the Operating Structure, is the Head of the National Fund.

5. In case of suspension or withdrawal of the accreditation of the National Authorising Officer, the National Fund, or the Operating Structure, and in case of withdrawal or suspension of conferral of management powers by the Commission, this account shall be blocked and the Commission will cease to make transfers of funds to the Beneficiary. In this event and until the reinstatement of the accreditation, no payment made from this account shall be considered eligible for Community funding.

#### *Article 63*

#### *Payments from the Commission*

1. Only assistance under the programme which has been granted in accordance with the provisions of the Financing Agreement shall be subject to co-financing by the Community.

2. In line with the provisions of Articles 40 and 160 of the IPA Implementing Regulation, the following provisions shall apply to payments made by the Commission under the programme:

a.) payment by the Commission of the Community contribution shall be made within the limits of the funds available and according to the Financial Plan at the level of the priority axis;

b.) payments shall take the form of pre-financing, interim payments and payment of the final balance;

c.) by 28 February each year, the Beneficiary shall send to the Commission a forecast of its likely payment applications for the financial year concerned and for the subsequent financial year, in relation to the programme. The Commission services may ask for an update of the forecast as appropriate;

d.) exchange of information concerning financial transactions between the Commission and the national authorities and structures regarding the programme shall, where appropriate, be made by electronic means through the "SFC system" managed by the Commission. For the period until the "SFC system" is fully accessible by the Beneficiary, information regarding financial transactions may be transmitted by electronic means through normal word processing and data processing files, together with signed original documents in paper format in accordance with the model in Annexes II and XVI;

- e.) the combined total of pre-financing and interim payments shall not exceed 90 % of the Community contribution as set out in the financial table in Annex I;
- f.) when the ceiling referred to in sub-paragraph e) is reached, the National Authorising Officer shall continue transmitting to the Commission any certified statements of expenditure, as well as information about amounts recovered;
- g.) the amounts set out in certified statements of expenditure, in payment applications and in expenditure mentioned in the implementation reports, shall be denominated in euro. The Beneficiary shall convert the amounts of expenditure incurred in national currency into euro, using the monthly accounting rate of the euro calculated in accordance with Article 70 of this Agreement ;
- h.) payments by the Commission to the National Fund shall be made to the euro account identified in Article 62 of this Agreement ;
- i.) in the event that the final beneficiary is accredited to perform financial transactions for the relevant priority of measure, the Beneficiary shall ensure that the final beneficiaries receive the total amount of the public contribution in due time and in full. No specific charge or other charge with equivalent effect shall be levied which would reduce these amounts for the final beneficiaries. The National Authorising Officer, the National Fund and the Operating Structure shall ensure the timely treatment of payment requests by final beneficiaries (and from final beneficiaries to the recipient of the assistance);
- j.) the expenditure may be covered by Community financing only if it has been incurred and paid by the final beneficiary;
- k.) expenditure paid by final beneficiaries shall be substantiated by receipted invoices or accounting documents of equivalent probative value or other relevant documents;
- l.) expenditure must be certified by the National Authorising Officer;
- m.) expenditure declared in respect of a period may contain corrections to data declared in respect of the preceding payment application. These corrections are to be declared to the Commission.

*Article 64*  
*Pre-financing*

1. In order for the Commission to approve a payment application for a pre-financing payment to the National Fund, the following minimum requirements as set out in Article 42(1) of the IPA Implementing Regulation must be fulfilled:
  - a.) the National Authorising Officer has notified the Commission of the opening of the euro account concerned;
  - b.) the accreditations delivered by the competent accrediting officer and the National Authorising Officer are in force and the conferral of management by the Commission remains valid; and
  - c.) this Agreement has entered into force.

2. Pre-financing payments shall amount to 30% of the Community contribution for the first three years of the programme. If necessary and having regard to the budget availability, the pre-financing may be made in two instalments.

3. The total amount paid as pre-financing shall be reimbursed to the Commission with all interest accrued if no payment application for the programme concerned is sent within 15 months of the date on which the Commission pays the first pre-financing amount. The Community contribution to the programme shall not be affected by such reimbursement.

4. The total pre-financing amount shall be cleared at the latest when the programme is closed. Throughout the lifetime of the programme, the National Authorising Officer shall use the pre-financing payment only to pay the Community contribution to expenditure which is eligible for financing in compliance with this Agreement.

5. The pre-financing amount may be used to pre-finance operations and to reimburse the expenditure incurred and declared by the final beneficiaries and accepted by the National Fund.

*Article 65*  
*Property of interest*

Any interest earned on the programme-specific euro account remains the property of the Beneficiary. It shall be posted exclusively to the operational programme concerned, being regarded as a resource of the Beneficiary in the form of a national public contribution to the programme. Interest shall be declared to the Commission with each payment declaration and at the time of the final closure of the operational programme.

*Article 66*  
*Applications for payment*

1. Applications for payment shall certify that all requirements laid down in this article and in Article 67 of this Agreement are fulfilled.

2. Applications for payment shall be drawn up in accordance with the models in Annex II (interim payments) and XVI (final payment).

3. The National Authorising Officer shall send to the Commission with each application for payment the following elements:

a.) a certificate of expenditure, signed by the National Authorising Officer, certifying that the expenditure declared complies with applicable Community and national rules and has been incurred in respect of operations selected for funding in accordance with the criteria applicable to the programme and complying with relevant Community and national rules, and that the statement of expenditure is accurate, results from reliable accounting systems and can be supported by receipted invoices or accounting documents of equivalent probative value;

b.) a certified statement of expenditure, drawn up by priority axis and measure;

- c.) a computerised listing of operations by measure and the corresponding expenditure, including contribution under the IPA Regulation, national public and, when applicable, private contributions;
  - d.) details of amounts recoverable following cancellation of all or part of the Community contribution for an operation;
  - e.) the volume of Community funds in the component-specific euro account at the date of the last debit to which this statement refers and the interest earned;
  - f.) revenues generated, calculated in accordance with Article 18 of this Agreement;
  - g.) any corrections made in accordance with Articles 67(4), 68(2) and 76 of this Agreement.
4. A payment application cannot be accepted if payments have been suspended in accordance with Article 72 of this Agreement.
5. An application for payment which does not meet the requirements listed in paragraph 2 of this article and in Article 67 of this Agreement, shall be considered as unacceptable by the Commission and shall not be taken into account under any of the provisions of this Agreement.

*Article 67*  
*Interim payments*

1. In order for the Commission services to approve a payment application for an interim payment, the minimum requirements to be fulfilled are the following:
- a.) the National Authorising Officer must have sent to the Commission an application for payment, together with the elements listed in Article 66(3) of this Agreement;
  - b.) the ceilings for Community assistance under each priority axis as indicated in Article 17(3) of this Agreement have been respected;
  - c.) the sectoral annual implementation reports as referred to in Article 85 of this Agreement, including the most recent one due, have been sent to the Commission;
  - d.) the Audit Authority has sent to the Commission, in accordance with the first and second indent of Article 29 (2)(b) of the IPA Implementing Regulation, the most recent annual audit activity report and opinion on the conformity of the management and control systems in place with the requirements of the IPA Implementing Regulation and those set out in this Agreement;
  - e.) the accreditations delivered by the Competent Accrediting Officer and the National Authorising Officer are in force, and the conferral of management by the Commission remains valid.
2. The National Fund shall ensure that applications for interim payments under the operational programme are sent to the Commission at least three times a year. For a payment to be made by the Commission in a given year, the application for payment shall be submitted not later than 31 October of that year.

3. With a view to meeting the level of expenditure necessary to avoid automatic de-commitment, applications for payment may be submitted until 31<sup>st</sup> December of each year, provided that they are accompanied by adequate evidence of transmission to the Commission (postal stamp or other equivalent evidence) by that date. Payment shall take place in accordance with the time limits indicated in Article 71 of this Agreement.

4. If one or more of the conditions mentioned in paragraph 1 are not met, the Beneficiary shall, when so requested and within the time limit fixed by the Commission services, take the necessary steps to remedy the situation before the payment is made.

5. If it appears that the applicable rules have not been complied with or that Community funds have been improperly used, the Commission may reduce interim payments to the Beneficiary, temporarily interrupt payments, or suspend payments, in accordance with Articles 71 and 72 of this Agreement. If any of these situations arises the Commission services shall inform the Beneficiary accordingly.

#### *Article 68 Calculation of Payments*

1. Payments shall be calculated on the basis of the Community contribution to the financing of the operations concerned, up to the amount obtained by applying the co-financing rate laid down for each priority axis in the Financial Plan in Annex I to the eligible expenditure, subject to the maximum Community contribution attached to each priority axis.

2. Amounts resulting from the financial adjustments carried out in accordance with Article 76 of this Agreement, which may be re-used for the programme, shall be added to or deducted from the amount of the Community contribution at the time of the next declaration.

3. Without prejudice to the ceiling of 90% as provided for in Article 63(2)(e) of this Agreement, where the combined total of declarations of expenditure exceeds the total programmed for a given priority axis, the amount to be paid shall be capped at the amount programmed for that priority axis in the financing plan in force. Expenditure excluded as a result of this capping may be taken into account in a subsequent declaration of expenditure, provided that an adjusted financing plan has been submitted by the Beneficiary and approved by the Commission.

#### *Article 69 Payment of the final balance*

1. In accordance with Article 166 (3) b) of the Financial Regulation the ultimate deadline for the submission of declarations of expenditure to the Commission under the programme is 31 December 2018.

2. The minimum requirements for the Commission to approve the application for the payment of the final balance are the following:

a.) the National Authorising Officer has sent to the Commission the final payment application together with the elements listed in Article 66 of this Agreement;

b.) the Operating Structure has sent to the Commission the sectoral final report for the Programme, as referred to in Article 102 of this Agreement;



- c.) the Audit Authority has sent to the Commission its opinion on the final statement of expenditure, supported by a final activity report, in accordance with paragraph 7.c) of Annex A to the Framework Agreement;
  - d.) the accreditations delivered by the Competent Accreditation Officer and the National Authorising Officer are in force, and the conferral of management by the Commission, remains valid.
3. The Commission shall inform the Beneficiary of its conclusions on the content of the Audit Authority opinion referred to in paragraph c) above. This opinion shall be deemed accepted by the Commission in the absence of observations by the Commission within five months from the date of its receipt.
  4. In addition to the requirements indicated in paragraph 2 the provisions of Article 67 of this Agreement are also applicable.
  5. The Beneficiary shall ensure that the requirements regarding the retention of documents, as provided for under Article 104 of this Agreement, are fully observed. In this regard the Beneficiary shall set up a system which allows it to follow-up on the requirements regarding retention of documents, shall identify the responsible body and shall inform the Commission of the practical arrangements concerning the transfer of responsibilities to this body.

*Article 70  
Exchange rate*

The conversion between euro and national currency or any other currency shall be made using a monthly accounting exchange rate of the euro. The monthly accounting exchange rate shall be the exchange rate published by the Commission in the internet site <http://ec.europa.eu/budget/inforeuro/> regarding the month in which the expenditure was registered in the accounts of the Operating Structure or, in the case of recoveries, the month in which the recovery takes place. In the event that a rate for a specific month is not published, the rate for the most recent previous month of publication shall be used.

*Article 71  
Payment deadlines and interruption of payments*

1. Subject to available funding, the Commission shall make interim payments no later than two months after the date on which an application for payment meeting all the conditions referred in Articles 66 and 67 of this Agreement is registered with the Commission, except as provided otherwise under paragraph 3.
2. Having regard that the amounts claimed under interim payments have been pre-financed in accordance to Article 64 of this Agreement, payments effected within longer periods shall not give rise to payment of interest.
3. The payment deadline referred to under paragraph 1 may be interrupted by the authorising officer by delegation of the Commission, with the meaning of the Financial Regulation if:

- a.) in a report of a national or Community audit body there is evidence to suggest a significant deficiency in the functioning of the management and control systems; or
- b.) the authorising officer by delegation in the Commission has to carry out additional verifications following information coming to his attention alerting him that expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected; or
- c.) clarifications are needed regarding the information contained in the statement of expenditure.

The National IPA Coordinator and the National Authorising Officer shall be informed immediately of the reasons for the interruption. The interruption shall be ended as soon as the necessary measures to remedy the deficiency, irregularity or lack of clarity have been taken by the Beneficiary.

*Article 72*  
*Suspension of payments*

1. Notwithstanding the provisions of Article 71, all or part of the payments may be suspended by the Commission where any of the following situations may occur:

- a.) there is a serious deficiency in the management and control system of the Programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or
- b.) expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected; or
- c.) clarifications are needed regarding the information contained in the declaration of expenditure;

2. In addition to paragraph 1, the following situations may lead to the suspension of payments by the Commission:

- a.) the accreditations delivered by the Competent Accrediting Officer and/or the National Authorising Officer are suspended or withdrawn;
- b.) the conferral of management decision by the Commission is suspended or withdrawn;
- c.) the most recent annual audit activity reports and audit opinions due have not been sent to the Commission, in accordance with Article 18 of the Framework Agreement;
- d.) the National Authorising Officer has not sent to the Commission the annual statements of assurance as referred to in Article 17 of the Framework Agreement, including the most recent one due.

3. The Beneficiary shall be given the opportunity to present its observations within a period of 2 months, before the Commission decides on a suspension, in accordance with paragraphs 1 and 2 of this Article.

4. The Commission shall end the suspension when the Beneficiary has taken the necessary measures to remedy the deficiency, irregularity, or lack of clarity, referred to in paragraphs 1 and 2 of this Article.

5. If those measures have not been taken by the Beneficiary, the Commission may decide to cancel all or part of the Community contribution to the Programme, in accordance with Article 73 of this Agreement.

#### *Article 73*

##### *Financial corrections, repayment and re-use of Community contribution*

The provisions of the IPA Implementing Regulation, namely its Articles 49 to 54 and of Articles 30 to 35 of the Framework Agreement, shall apply in the event of financial corrections, repayments to the general budget of the European Union and re-use of Community contributions. Financial corrections may also take place in the case of past non-compliance with the requirements for conferral of management powers, namely as provided for under Articles 15 to 17 of the IPA Implementing Regulation.

#### *Article 74*

##### *Supervision, control and audit by the Commission and the European Court of Auditors*

The provisions of Article 27 of the Framework Agreement shall apply *mutatis mutandis* to the programme and to all operations and contracts which receive Community funding under the programme covered by this Agreement.

#### *Article 75*

##### *Prevention of irregularity and fraud, measures against corruption*

The provisions of Articles 28 of the Framework Agreement shall apply *mutatis mutandis* to all operations, contracts and grants which receive Community funding under the programme covered by this Agreement.

#### *Article 76*

##### *Financial adjustments*

The National Authorising Officer, who bears in the first instance the responsibility for investigating irregularities, shall make the financial adjustments where irregularities or negligence are detected in the management and implementation of the programme or any operations or contracts financed under the programme. He/she shall do so by cancelling all or part of the Community contribution to the operations concerned or the programme. The National Authorising Officer shall take into account the nature and gravity of the irregularities and the financial loss to the Community contribution.

*Article 77*  
*Recovery of funds in case of irregularity or fraud*

The provisions of Article 29 of the Framework Agreement shall apply *mutatis mutandis* to the programme and all operations, contracts and grants which receive Community funding under the programme covered by this Agreement

**CHAPTER XII – MANAGEMENT AND CONTROL SYSTEMS**

*Article 78*  
*General principles of Management and Control Systems*

1. The management and control systems of the operational programme set up by the Beneficiary shall provide for:

- a.) a clear definition of the functions of the bodies concerned in management and control and the allocation of functions within each body;
- b.) compliance with the principle of segregation of duties and tasks between and within such bodies;
- c.) procedures for ensuring the correctness and regularity of expenditure declared under the operational programme;
- d.) reliable accounting, monitoring and financial reporting systems shall as far as possible be held in computerised forms;
- e.) arrangements for auditing the functioning of the systems;
- f.) systems and procedures to ensure an adequate audit trail;
- g.) reporting and monitoring procedures for irregularities and for the recovery of amounts unduly paid;
- h.) the proper execution of the measures co-financed by the Community contribution in accordance with the terms of the Financing Agreement and with the obligations assigned to the measure;
- i.) in the case of delegation of tasks, reporting to the authority responsible on the performance of their tasks and means employed.

2. The Beneficiary shall ensure that adequate guidance on the provision of management and control systems necessary to ensure sound financial management of the IPA assistance with generally accepted principles and standards is given to:

- the body(ies) responsible for the selection of operations in accordance with the established selection criteria;
- the body(ies) responsible for dealing with public procurement, contracts and grants;
- the body(ies) responsible for the implementation of operations and projects to be carried out in accordance with the terms and objectives of the funding decisions;

- the authorities or bodies or individuals responsible for certifying statements of expenditure for which payments are claimed under IPA;
- the authorities responsible for the general management and coordination of the IPA operations which are identified in Article 25 of this Agreement.

3. The Commission services and the Beneficiary shall cooperate to coordinate audit strategies and plans, methods and implementation, so as to maximise the usefulness of the actions carried out. They shall exchange the results of the checks carried out.

At least once a year the following shall be examined and evaluated:

- a.) the results of the checks carried out by the Beneficiary and the Commission or the European Court of Auditors;
- b.) any comments made by other national or Community Control bodies or institutions;
- c.) the financial impact of the irregularities noted, the steps taken or still required to correct them and, when necessary, adjustments to the management and control systems.

4. Following the above examination and evaluation and without prejudice to the measures taken immediately by the Beneficiary, the Commission services may make observations on the management and control systems and in particular the financial impact of any irregularities detected. These observations shall be communicated to the National IPA Coordinator and the National Authorising Officer. The observations shall be accompanied, where necessary, by a request for corrective measures to remedy the management and control shortcoming found and to correct those irregularities detected which have not been corrected. The Beneficiary shall have the opportunity to comment on these observations.

#### *Article 79*

#### *Management verifications*

1. The management and control systems put in place shall include procedures to verify whether assets of a relevant operation as well as activities thereof are used in accordance with the objectives of the programme, that expenditure declared has actually been incurred in accordance with applicable rules, the products and services have been delivered in accordance with the approval decision and the payment requests by the final beneficiary are correct. These verifications shall cover administrative, financial, technical, physical and performance aspects of operations, as appropriate.

2. The procedures shall require the recording of verifications on the spot. The records shall state the work done, the results of the verification and the measures taken in respect of discrepancies. Where any physical or administrative verifications are not exhaustive, but performed on a sample of works or transactions, the records shall identify the works or transactions selected and describe the sampling method.

3. The checks shall establish whether any problems encountered are of (a) a one-off character, or (b) of a systemic character, entailing a risk for other or all measures carried out by the same implementing bodies in the beneficiary country. They shall also identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

4. The Commission services may require the Beneficiary to carry out on the spot checks, to verify the correctness of one or more operations and the legality and regularity of the related transactions.

*Article 80*  
*Checks carried out by the Commission*

1. The Commission in its responsibility for the implementation of the Community budget shall verify that the Beneficiary has smoothly functioning management and control systems so that Community funds are efficiently and effectively used.

To that end, without prejudice to checks carried out by the Beneficiary, Commission officials or servants may carry out on-the-spot checks on the management and control systems and on the operations financed by IPA.

2. The Commission services shall try as much as possible to ensure that any checks that they carry out are performed in a coordinated manner so as to avoid repeating checks in respect of the same subject matter during the same period. The Beneficiary and the Commission services shall exchange any relevant information concerning the results of the checks carried out.

3. On-the-spot checks carried out in order to protect the financial interest of the Community against irregularities, may be prepared and conducted by the Commission services, or the European Court of Auditors, in close co-operation with the competent authorities of the beneficiary country concerned, which shall be notified in good time of the object and purpose of the checks, so that they can provide all the requisite help.

4. If the Beneficiary wishes, on-the-spot checks and inspections may be carried out jointly, subject to prior agreement of the relevant EC control body.

5. Commission officials shall have access, under the same conditions as national administrative inspectors and in compliance with national legislation, to all the information and documentation on the operations concerned, which are required for the proper conduct of the on-the-spot checks and inspections. They may avail themselves of the same inspection facilities as national administrative inspectors and in particular copy relevant documents.

6. In carrying out on the spot checks, the Commission services may call on outside experts and bodies, acting under their responsibility, to provide technical assistance. The Commission shall ensure that the aforementioned officials and bodies give every guarantee as regards technical competence, independence and observance of professional confidentiality.

7. The Beneficiary shall make available to the Commission any appropriate national control reports on the programme and projects concerned.

8. On-the-spot checks and inspections may be carried out by the Commission services also on economic operators. In order to make it easier for the Commission services to carry out such checks and inspections, economic operators shall be required to grant access to premises, land, means of transport or other areas, used for business purposes.

9. Where the economic operators resist an on-the-spot check or inspection, the Beneficiary acting in accordance with national rules, shall give Commission officials such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot

check or inspection. It shall be for the Beneficiary to take any necessary measures in conformity with national law.

10. The Commission services shall report as soon as possible to the Beneficiary 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.

#### *Article 81*

##### *Checks carried out by the Beneficiary*

1. Without prejudice to the Commission's responsibility for implementing the Community Budget, the Beneficiary shall take responsibility for the financial control of projects. To that end, the measures it will take shall include:

- a.) verifying that management and control systems have been set up and are being implemented in such a way as to ensure that Community funds are being used efficiently and correctly;
- b.) providing the Commission with a description of these arrangements prior to the conferral of management and at any time that a significant change is introduced in the management and control systems;
- c.) ensuring that operations and projects are managed in accordance with all applicable Community rules and that funds placed at their disposal are used in accordance with the principles of sound financial management;
- d.) certifying that the declarations of expenditure presented to the Commission are accurate and guaranteeing that they result from accounting systems based on verifiable supporting documents;
- e.) preventing and detecting irregularities, notifying these to the Commission, in accordance with the rules, and keeping the Commission informed of the progress of administrative and legal proceedings;
- f.) recovering any amounts lost as result of an irregularity detected and where appropriate charging interest on late payments.

#### *Article 82*

##### *Audits of a sample of operations or transactions*

1. The Beneficiary shall organise audits on operations and transactions on an appropriate sampling basis, aimed to:

- a.) verify the effectiveness of the management and control systems in place and
- b.) verify selectively, on the basis of risk analysis or any other appropriate methodology, expenditure declarations made at the various levels concerned.

2. In the case of a selection made on the basis of risk analysis, the checks shall take into account:

- a.) the need to check an appropriate mix of type and size of projects;

- b.) any risk factors which have been identified by national or Community checks; and
- c.) the need to ensure that the different types of bodies involved in the management and implementation of projects are satisfactorily checked.

In the event of any other appropriate methodology, this should be clearly described and the checks shall be determined on the basis of it.

3. Through the checks the Beneficiary shall verify the following:

- a.) the practical application and effectiveness of the management and control systems;
- b.) the execution of operations and projects in accordance with the terms of the funding decisions and the objectives assigned to the projects;
- c.) for an adequate number of accounting records, the correspondence of those records with supporting documents held by the various bodies, including the National Fund;
- d.) the presence of a sufficient audit trail;
- e.) for an adequate number of expenditure items that the nature and timing of this expenditure complies with the eligibility criteria and correspond to the specifications of the project and works actually executed;
- f.) that the appropriate national co-financing has in fact been made available and
- g.) that the co-financed operations and projects have been implemented in accordance with the Community policies.

## **CHAPTER XIII – MONITORING AND EVALUATION**

### *Article 83 Monitoring principles*

1. In accordance with Article 59 of IPA Implementing Regulation, a Sectoral Monitoring Committee shall be set up to assist the Beneficiary in the achievement of the objectives of the programme. At its first meeting after the entry into force of the Financing Agreement, the Sectoral Monitoring Committee shall review and approve the decisions taken by a "shadow" Sectoral Monitoring Committee.

2. The Sectoral Monitoring Committee shall satisfy itself as to the effectiveness and quality of the implementation of the programme in order to attain the programme's objectives.

3. The Sectoral Monitoring Committee shall meet at least twice a year, at the initiative of the Beneficiary or the Commission.

4. The Sectoral Monitoring Committee shall be co-chaired by the head of the Operating Structure and a representative of the Commission. Its composition shall be decided by the Operating Structure, in agreement with the Commission services. It shall include representatives of the Commission, the National IPA Coordinator, the Strategic Coordinator for the regional development and the human resources development components and the Operating Structure of the programme. Where applicable it shall also include representatives



from civil society, socio-economic partners and environmental NGO's. A representative of the International Financing Institutions (IFIs) may participate in an advisory capacity for those operational programmes to which it makes a contribution.

5. The Sectoral Monitoring Committee shall draw up its rules of procedure, in compliance with the mandate set out by the Commission services, and within the institutional, legal and financial framework of the beneficiary country concerned. It shall adopt these rules of procedure in agreement with the Operating Structure and the IPA Monitoring Committee.

6. The Sectoral Monitoring Committee shall report to the IPA monitoring committee. It shall provide the IPA monitoring committee in particular with information relating to:

- a.) the progress made in implementing the programme, by priority axis and, where relevant, by measures or operations; this shall include the results achieved, financial implementation indicators and other factors, and shall be established with a view to reviewing and improving the implementation of the programmes;
- b.) any aspects of the functioning of the management and control systems raised by the Audit Authority, the National Authorising officer or the competent accrediting officer.

7. The Sectoral Monitoring Committee shall:

- a.) consider and approve the general criteria for selecting the operations within six months of the entry into force of the Financing Agreement on the programme and approve any revision of those criteria in accordance with programming needs;
- b.) review at each meeting progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the Operating Structure;
- c.) examine at each meeting the results of implementation, particularly the achievement of the targets set for each priority axis and measures and interim evaluations; it shall carry out this monitoring by reference to specified indicators;
- d.) examine the sectoral annual and final reports on implementation, prior to their transmission to the Commission, the National IPA Coordinator and the Strategic Coordinator;
- e.) be informed of the annual audit activity report referred to in Article 29(2)(b) of the IPA Implementing Regulation, or of the part of the report referring to the operational programme concerned, and of any relevant comments the Commission may make after examining that report or relating to that part of the report;
- f.) examine any proposal to amend the Financing Agreement of the programme and/or the programme itself;
- g.) be informed of audit activities being carried out and the opinion given by the audit authorities and the EC concerning the implementation of the programme;
- h.) consider and approve the Communication Action Plan referred to in Article 99 of this Agreement as well as any subsequent updates of the plan; and
- i.) propose periodical meetings at a technical level if needed.

8. The Sectoral Monitoring Committee may propose to the Operating Structure any revision or examination of the programme likely to make possible the attainment of the programme's objectives or to improve its management, including its financial management.

9. The Sectoral Monitoring Committee may also make proposals to the Commission and the National IPA Coordinator, with a copy to the National Authorising Officer, for decisions on any remedial measures to ensure the achievement of the programme's objectives and enhance the efficiency of the assistance provided.

*Article 84*  
*Monitoring sheets*

The Operating Structure shall maintain monitoring sheets for each operation, prepared in accordance with the templates and guidance provided by the Commission services, as may be deemed necessary. The monitoring sheets will be presented to the Sectoral Monitoring Committee and will constitute the core part of the Annual Implementation Report, prepared in accordance with Article 85.

*Article 85*  
*Sectoral annual report on implementation*

1. The Operating Structure shall submit a sectoral annual report in relation to the programme concerned to the Commission, the National IPA Coordinator and the Strategic Coordinator by 30 June each year and for the first time by 30 June 2008.

2. The reports shall be sent to the National IPA Coordinator, the National Authorising Officer and the Commission, after examination by the sectoral monitoring committee.

3. Sectoral reports shall include the following:

a.) the quantitative and qualitative progress made in implementing the operational programme, priority axes, measures and, where relevant, operations or groups of operations, in relation to their specific, verifiable targets, with quantification, when possible, using indicators at the appropriate level. Where relevant under the human resources development component, the statistics shall be broken down by sex:

b.) the financial implementation of the operational programme, detailing for each priority axis and measure:

– the total expenditure paid out by reference to each beneficiary and included in payment applications sent to the Commission by the National Fund;

– the total expenditure actually committed and paid out by the National Fund, with the corresponding public or public and private contribution: this shall be accompanied by computerised forms listing the operations, so that they can be followed through the from budgetary commitment by the Beneficiary to final payments;

the total payments received from the Commission.

Where appropriate, financial implementation may be presented through the major areas of intervention and the regions where assistance is concentrated.

- c.) for information purposes, the indicative breakdown of the allocation under the IPA Regulation shall be given by categories, in accordance with the detailed list included in Annex XIII;
- d.) the steps taken by the Operating Structure or the Sectoral Monitoring Committee to ensure the quality and effectiveness of implementation, in particular:
  - the monitoring and evaluation measures, including data collection arrangements;
  - a summary of any significant problems encountered in implementing the operational programme and any subsequent measures taken;
  - the use made of technical assistance;
- e.) the activities to provide information on and publicise the programme;
- f.) where appropriate, for the regional development component, the progress and financing of major projects;
- g.) where appropriate, under the human resources development component, a synthesis of the implementation of :
  - gender mainstreaming as well as of any gender-specific action;
  - action to increase the participation of migrants in employment and thereby strengthening their social integration;
  - action to strengthen integration in employment and thereby improve the social inclusion of disadvantaged persons;
  - action to strengthen integration in employment and social inclusion of other disadvantaged groups, including people with disabilities.

4. The sectoral report shall be considered admissible only if it contains all the appropriate information listed in paragraph 3. The National IPA Coordinator, the Strategic Coordinator and the Operating Structure shall be informed by the Commission services of the admissibility of the sectoral annual report within 10 working days from the date of its receipt.

5. The National IPA Coordinator, the Strategic Coordinator and the Operating Structure shall also be informed of the Commission's opinion on the content of an admissible sectoral annual report within two months from the date of receipt.

6. The monitoring sheets prepared in accordance with templates and guidance provided by the Commission services will be attached to the report.

*Article 86*  
*Interim evaluation*

1. During the period of implementation the Beneficiary shall carry out evaluations linked to the monitoring of the programme, in particular where this monitoring reveals a significant

departure from the goals initially set or where proposals are made for the revision of the programme. At least one interim evaluation shall be carried out during the period of implementation of the programme. The results of the evaluation shall be sent to the Sectoral Monitoring Committee and to the Commission.

2. Evaluations shall be carried out by internal or external experts or bodies, functionally independent of the authorities referred to in Article 21 of the IPA Implementing Regulation. The results shall be published according to the applicable rules on access to documents.

*Article 87*  
*Ex-post evaluation*

*Ex-post* evaluations are the responsibility of the Commission. The Commission services and the National IPA Coordinator shall decide whether *ex-post* evaluations should be carried out at the level of the programme or for a group of programmes or for IPA assistance as a whole.

#### **CHAPTER XIV – AUDIT**

*Article 88*  
*Audit principles*

Audits are to be carried out in line with Sections III, IV and V of the Framework Agreement and Title VIII, Chapter I, of the Financial Regulation. They shall be carried out in accordance with internationally accepted audit standards.

*Article 89*  
*Audit Authority*

1. The functions and responsibilities of the Audit Authority are those indicated in Annex A to the Framework Agreement.
2. Where the audits referred to in Article 88 of this Agreement are carried out by a body other than the Audit Authority, the Audit Authority shall ensure that such bodies have the necessary functional independence.
3. If weaknesses in management or control systems, or the level of irregular expenditure detected do not allow the provision of an unqualified opinion for the annual opinion referred to in Article 18 paragraph 1 point (b) of the Framework Agreement, or in the closure declaration referred to in paragraph 1 point (c), the Audit Authority shall give the reasons and estimate the scale of the problem and its financial impact.

*Article 90*  
*Audit trail*

1. In accordance with Article 21 of the Framework Agreement the management and control system for the programme shall provide a sufficiently detailed audit trail.
2. For the purposes of this agreement an audit trail shall be considered sufficient where it permits:

- a.) the aggregate amounts certified to the Commission to be reconciled with the detailed accounting records and supporting documents held at the various administrative levels, by the Operating Structure and the final beneficiaries with regard to operations co-financed under the operational programme;
  - b.) verification of the allocation and transfer of the available Community and national funds;
  - c.) verification of the correctness of the information supplied on the execution of the programme in accordance with the terms of the Financing Agreement granting the assistance and the objectives assigned to the programme;
  - d.) verification of the selection criteria established for the operational programme, and
  - e.) in respect of each operation, as appropriate, the technical specifications and financing plan, documents concerning the grant approval, documents relating to public procurement procedures, progress reports and reports on verifications and audits carried out.
3. An indicative description of the information requirements for a sufficient audit trail is given in Annex XIV.
4. The Beneficiary shall satisfy itself that the following points have been addressed:
- a.) that there are procedures to ensure that documents that are relevant to specific items of expenditure incurred, payments made, works undertaken and verification of them carried out in connection with the programme, and which are required for a sufficient audit trail, are held in accordance with the requirements of Annex XIV;
  - b.) that a record is maintained of the body holding them and its location; and
  - c.) that the documents are made available for inspection by the persons and bodies who would normally have the right to inspect such documents.
5. The persons and bodies referred to in paragraph 4 (c) shall be:
- a.) the staff of the National Fund, Operating Structure and specific bodies who process payment applications;
  - b.) the services undertaking audits of management and control systems;
  - c.) the National Authorising Officer as person responsible for certifying interim and final payment applications and the person or department which issues declarations for the winding up of measures; and
  - d.) mandated officials of national audit institutions and of the Community.

They may require that extracts or copies of the documents or accounting records referred to in paragraph 4 be supplied to them.

*Article 91*  
*Audits of operations*

1. The audits referred to in Article 88 of this Agreement shall be carried out each twelve-month period from 1 October of the year following the adoption of the programme, on a sample of operations selected by a method established or approved by the Audit Authority. The audits shall be carried out on-the-spot on the basis of documentation and records held by the beneficiary.
2. The audits shall verify that the following conditions are fulfilled:
  - a.) the operation meets the selection criteria for the operational programme, has been implemented in accordance with the approval decision and fulfils any applicable conditions concerning its functionality and use or the objectives to be attained;
  - b.) the expenditure declared corresponds to the accounting records and supporting documents held by the beneficiary;
  - c.) the expenditure declared by the beneficiary is in compliance with Community and national rules;
  - d.) the public contribution has been paid to the beneficiary in accordance with Article 40 (9) of IPA Implementing Regulation.
3. Where problems detected appear to be systemic in nature and therefore entail a risk for other operations under the operational programme, the Audit Authority shall ensure that further examination is carried out, including additional audits where necessary, to establish the scale of such problems. The necessary preventive and corrective action shall be taken by the relevant authorities.

*Article 92*  
*Documents presented by the Audit Authority and follow-up*

1. The annual audit activity report and the annual opinion referred to in Article 29.2(b) of the IPA Implementing Regulation shall be based on the systems audits and audits of operations carried out and shall be drawn up in accordance with the models set out in Annex C to the Framework Agreement.
2. The opinion on the final statement of expenditure referred to in Article 29.2(b) of the IPA Implementing Regulation shall be based on all the audit work carried out by, or under the responsibility of the Audit Authority, in accordance with the annual work plan. The opinion on the final statement of expenditure shall be drawn up in accordance with the model set out in Annex E to the Framework Agreement.
3. If there is a limitation in the scope of examination or if the level of irregular expenditure detected does not allow the provision of an unqualified opinion for the annual opinion referred to in paragraph 1 or in the opinion on the final statement of expenditure referred to in paragraph 2, the Audit Authority shall give the reasons and estimate the scale of the problem and its financial impact.
4. Following the receipt of the reports and opinions by the Audit Authority, the National Authorising Officer shall:

a.) decide whether any improvements to the management and control systems are required, record the decisions in that respect and ensure the timely implementation of those improvements;

b.) make any necessary adjustments to the payment applications to the Commission.

5. The Commission services may decide either to take follow-up action itself in response to the reports and opinions, for example by initiating a financial correction procedure, or to require the beneficiary country to take action, while informing the National Authorising Officer and the Competent Accrediting Officer of their decision.

*Article 93*  
*Availability of documents*

1. For the purposes of this Agreement, the Beneficiary shall ensure that a record is available of the identity and location of bodies holding the supporting documents relating to expenditure and audits, which includes all documents required for an adequate audit trail.

2. The Beneficiary shall ensure that the documents referred to in paragraph 1 are made available for inspection and that extracts or copies thereof are supplied to persons and bodies entitled to have access to them, including at least authorised staff of the Beneficiary, National Fund, Audit Authority and authorised officials of the Community and their authorised representatives.

3. The following, at least, shall be considered commonly accepted data carriers:

a.) photocopies of original documents;

b.) microfiches of original documents;

c.) electronic versions of original documents;

d.) documents existing in electronic version only.

4. The procedure for certifying the conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

5. Where documents exist in electronic version only, the computer systems used must meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

6. The Commission services shall ensure that the information forwarded by the Beneficiary, or collected by them in the course of on-the-spot inspections, is kept confidential and secure.

*Article 94*

*Supervision, control and audit by the Commission and the European Court of Auditors*

Supervision, control and audit by the Commission and by the European Court of Auditors will be carried out in line with Section IV Articles 27 to 35 of the Framework Agreement and Title VIII, Chapter I of the Financial Regulation.

**CHAPTER XV – INFORMATION AND VISIBILITY**

*Article 95*

*Personal Data*

According to Article 24(2)(d) of the Framework Agreement, the provisions of Regulation (EC) No 45/2001 of the European Parliament and the European Council on the protection of individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and with due observance of the requirements of security, shall apply.

*Article 96*

*Electronic Exchange of Data*

1. The Beneficiary shall provide to the Commission an original paper version of the documents, dated and signed by a duly authorised official. The date taken into account shall be the date on which the paper document has been officially sent to the Commission.
2. Apart from the submission of paper documents by the Beneficiary to the Commission, the Beneficiary shall endeavour, whenever possible, to submit an electronic version of those documents.
3. In the event of divergence between the paper and electronic versions of the documents, the original paper document will be considered as the authentic document.
4. All documents and correspondence pertaining to the programme shall bear the CCI reference number indicated by the Commission.

*Article 97*

*Information and publicity*

1. The Beneficiary shall provide information on, and publicise the programme and operations, in accordance with Article 24 of the Framework Agreement. The information shall be addressed to the citizens and beneficiaries, with the aim of highlighting the role of the Community and ensuring transparency.
2. In accordance with Article 90 of the Financial Regulation the Commission shall publish the relevant information on contracts and grants. The Commission shall publish the results of tender and call for proposal procedures in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media, in accordance with the applicable contract procedures for Community external actions.



*Article 98*  
*Publication of information on beneficiaries of Community funding*

1. In accordance with Article 24.2 of the Framework Agreement, the Beneficiary shall publish the following information in relation to beneficiaries of Community financing:

- a.) the names and addresses of the final beneficiaries and end recipients;
- b.) the names of the operations;
- c.) the amount of Community funding allocated to the operations.

2. The information referred to in paragraph 1 shall be published according to a standard presentation, in a dedicated and easily accessible place of the Beneficiary's internet site. If such internet publication is impossible, the information shall be published by any other appropriate means, including the national official journal.

3. The publication shall take place during the first half of the year following the closure of the budget year in respect of which the funds were attributed to the Beneficiary.

4. The Beneficiary shall communicate to the Commission the address of the place of publication and reference shall be made to this address in the dedicated place of the internet site of the Community institutions referred to in Article 97(2) of this Agreement. If the information is published otherwise, the Beneficiary shall give the Commission full details of the means used.

*Article 99*  
*Visibility*

1. Activities to make available and publicise in the beneficiary country information about assistance under the IPA, as referred to by Article 24(4) of the Framework Agreement, will be implemented based on a Communication Action Plan (CAP) prepared in accordance with the chapter on Implementing Provisions of the programme. The CAP shall be reviewed by the Sectoral Monitoring Committee and shall set out:

- a.) the aims of the information and publicity;
- b.) the target group;
- c.) the content and the strategy of the resulting communication and information measures;
- d.) the indicative budget;
- e.) the administrative departments responsible for implementation;
- f.) the criteria for evaluating the measures carried out.

2. Funding for information and publicity may be provided from the technical assistance priority of the programme.

3. At the meetings of the Sectoral Monitoring Committee, the Operating Structure shall report on progress in implementing the CAP and provide the Committee members with examples of such measures.

4. When the implementation of the present article implies specific information and publicity activities at operation level, such activities shall be the responsibility of the final beneficiaries, and shall be funded from the amount allocated to the relevant subject.

5. The Operating Structure shall ensure that operations financed in the framework of the programme respect the EU visibility guidelines for external actions<sup>1</sup>.

## CHAPTER XVI – PROGRAMME CLOSURE

### *Article 100* *Closure principles*

1. Programme closure implies the financial settlement of outstanding Community commitments, through the payment of the final balance, or the issue of a recovery note, or the de-commitment of appropriations by the Commission. To this end, a final payment application should be submitted to the Commission.

2. The Commission will inform the Beneficiary about the date of the closure of the programme.

3. The programme closure does not prejudice the Commission's right to carry out audits or undertake financial corrections.

4. Notwithstanding the results of any audits carried out by the Commission services or the European Court of Auditors, the final balance paid or the amount to be recovered by the Commission may be amended within nine months of the date on which the final payment is made, or of the date on which the recovery note is issued.

5. In accordance with the provisions of Article 45 of the IPA Implementing Regulation, for the closure of the programme, the following documents should be submitted to the Commission by the Beneficiary by 31 December 2018 at the latest, in order to successfully close the Community assistance:

- an application for the final payment issued by the National Authorising Officer;
- a final report submitted by the Operating Structure;
- a winding up declaration on the final statement of expenditure supported by a final activity report issued by the Audit Authority;
- an audit opinion on the final statement of expenditure.

6. A precondition for the successful closure of the programme is that the accreditation provisions foreseen in chapter II of the IPA Implementing Regulation are in force and the conferral of management by the Commission remains valid.

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<sup>1</sup> [http://ec.europa.eu/europeaid/work/visibility/index\\_en.htm](http://ec.europa.eu/europeaid/work/visibility/index_en.htm).

*Article 101*  
*Winding up declaration*

1. The winding up declaration sets out the opinion of the independent Audit Authority, designated under Article 29 of the IPA Implementing Regulation, on the final statement of expenditure submitted to the Commission by the National Authorising Officer.
2. The submission of the winding up declaration is a prerequisite for the programme closure. It will be submitted to the Commission and to the Competent Accrediting Officer at the same time as the final statement of expenditure.
3. The basis for forming the opinion expressed in the winding up declaration has to be clearly explained. The Audit Authority is required to declare that the final statement of expenditure and application for the payment of the balance issued by the National Authorising Officer are free of misstatements. The Audit Authority shall address in particular the following:
  - correct presentation and compilation of the documents;
  - correctness and accuracy of the calculations;
  - reconciliation of the final statement presented to the Commission with the statements presented by the implementing bodies to the National Authorising Officer;
  - consistency with the financial information, including information on irregularities, provided in the final report;
  - the legality and regularity of the underlying financial transactions, in accordance with the eligibility criteria and the procurement directives;
  - audits carried out by the Commission services, the European Court of Auditors or the Audit Authority on the National Fund and the National Authorising Officer, the Operating Structure as well as the contracting authorities, by summarising any weakness found in the management and control systems or in the financial transaction findings. The corrective measures put in place to remedy any weakness found in the management and control systems including any financial corrections imposed should be provided;
  - sample of financial transactions audited, including information on the total public expenditure and the error percentage, if any.
4. An indicative model of the winding up declaration is contained in Annex E of the Framework Agreement.

*Article 102*  
*Final report*

1. The Operating Structure shall draw up a sectoral final report on the implementation of the programme. It shall cover the whole period of implementation and may include the latest annual report.

2. After examination by the Sectoral Monitoring Committee, the Operating Structure shall submit the final sectoral report to the National IPA Coordinator, the Strategic Coordinator, the National Authorising Officer and to the Commission, at the latest six months after the final date of eligibility of expenditure.

3. The requirements for the content of the final sectoral report are set out in Article 169 of the IPA Implementing Regulation. This report shall include:

- a.) the quantitative and qualitative progress made in implementing the programme, by priority and measure, in relation to their specific targets, with quantification of the physical indicators, including results and impact indicators;
- b.) the financial implementation of the programme, summarising for each priority axis and measure, the total expenditure actually paid out and included in the payment applications submitted to the Commission by the National Fund, as well as a record of the total payments received from the Commission and the total expenditure actually committed and paid out by the National Fund, with the corresponding public or public and private contribution, accompanied by a list of the operations carried out;
- c.) the indicative breakdown of the allocations under the IPA Regulation, by category, in accordance with the detailed list included in Annex XIII;
- d.) the steps taken by the Operating Structure and/or the Sectoral Monitoring Committee, to ensure the quality and effectiveness of implementation and in particular:
  - i) the monitoring and evaluation measures, including data collection arrangements;
  - ii) a summary of any significant problems encountered in implementing the programme, including any corrective measures put in place;
  - iii) the use made of technical assistance;
- e.) the measures taken to provide information and publicity of the programme;
- f.) where appropriate, the progress and financing of major projects;
- g.) a list of projects implemented and whether these have been completed and are operational.

4. A final report shall be considered admissible if it contains all the information required in paragraph 3 above. The Commission services shall inform the National IPA Coordinator, the Strategic Coordinator and the Operating Structure of the admissibility of the final report within 10 working days from the date of its receipt.

5. The Commission's opinion on the content of an admissible final sectoral report shall be provided to National IPA Coordinator and the Operating Structure within five months from the date of receipt of the admissible report.

*Article 103*  
*Final application for payment*

1. A final application for payment, including a certificate of expenditure and a statement of expenditure, shall be drawn up in the form set out in Annex XVI to the Financing Agreement.
2. Expenditure declared should relate to expenditure actually incurred and paid out by the National Fund. This expenditure should correspond to payments effected supported by receipted invoices or accounting documents of equivalent probative value. Expenditure must have been certified by the National Authorising Officer.
3. The conditions to be checked by the National Authorising Officer in certifying the expenditure are set out in the form prescribed in Annex XVII.
4. The final statement of expenditure should be accompanied by the appendix on recoveries referred to in Annex XVI to this Agreement.
5. The pre-financing paid to the Beneficiary for the programme, pursuant to Article 64 of this Agreement, has to be justified by payments effected by the final beneficiaries at the latest when the final balance of the assistance is claimed.
6. The Beneficiary shall inform the Commission of recoveries made between the submission of the final declaration of expenditure and the final payment by the Commission, so that the Commission can deduct them. The Beneficiary should also inform the Commission of recoveries effected after the submission of the final declaration of expenditure and after closure of the programme and repay the IPA contribution to the Commission.

*Article 104*  
*Retention of documents*

1. The responsible body and authorities of the Beneficiary shall keep available for the Commission all documents related to the programme, including documents related to the authorisation of payment applications, of the accounting and payment of such applications and of the treatment of advances, guarantees and debts, for a period of at least three years following the closure of the programme.
2. For revenue generating projects, the period indicated in paragraph 1 shall be extended to five years following the date of the final payment to the project or three years after the closure of the programme, whichever comes later.
3. Written records of the entire procurement, grant award and contracting procedure shall be retained by the Operating Structure for a period of at least seven years from the payment of the balance of the contract.
4. The periods referred in paragraphs 1, 2 and 3 shall be interrupted in the case of legal proceedings, financial corrections or at the duly substantiated request of the Commission services.

## CHAPTER XVII – FINAL PROVISIONS

### *Article 105 Consultation*

1. Any question relating to the execution or interpretation of this Agreement shall be the subject of consultation between the Contracting Parties, leading where necessary to an amendment of this Agreement.
2. Where there is a failure to carry out an obligation set out in this Agreement which has not been the subject of remedial measures taken in due time, the Commission may suspend the financing of activities under IPA after consultation with the Beneficiary.
3. The Beneficiary may renounce in whole or in part to the implementation of activities under IPA. The Contracting Parties shall set out the details of the said renunciation in an exchange of letters.

### *Article 106 Settlement of differences, arbitration*

The provisions of Article 42 of the Framework Agreement shall apply *mutatis mutandis* to this Agreement.

### *Article 107 Disputes with third parties*

The provisions of Article 43 of the Framework Agreement shall apply *mutatis mutandis* to this Agreement.

### *Article 108 Annexes*

The Annexes shall form an integral part of this Agreement.

### *Article 109 Validity*

1. This signed Agreement shall enter into force on the date on which the Beneficiary notifies the Commission that all internal procedures in the Republic of Turkey necessary for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall continue to be in force until the final date for the retention of documents related to the programme as provided for under Article 104 of this Agreement.
3. In case of legal proceedings or of any duly motivated situation agreed between the parties, the Financing Agreement shall remain in force until the final settlement of the situation that gives rise to the extension of validity.

*Article 110*  
*Review and amendment*

1. The implementation of this Agreement will be subject to periodic reviews at times arranged between the Parties.
2. Any amendment agreed to by the Parties will be in writing and will form part of this Agreement. Such an amendment shall enter into force on the date determined by the Parties.
3. If the request for an amendment comes from the Beneficiary, the latter shall submit that request to the Commission at least six months before the amendment is intended to enter into force, except in cases which are duly substantiated by the Beneficiary and accepted by the Commission.

*Article 111*  
*Termination*

1. This Agreement may be terminated by either Party by giving written notice to the other Party. Such termination shall take effect six calendar months from the date of the written notice.
2. The termination of this Agreement shall not preclude the possibility for the Commission to make financial corrections in accordance with Articles 49 to 54 of the IPA Implementing Regulation.

*Article 112*  
*Language*

This Agreement is drawn up in duplicate in the English language.

Signed, for and on behalf of the Government of the Republic of Turkey,

at (place) *Ankara* on (date) *03/09/2009*

by (name and title of the signatory) *Opuz Demirealp NIPAC*

.....*Opuz Demirealp*.....

Signed, for and on behalf of the Commission of the European Communities,

at (place) *Brussels* on (date) *24/07/2009*

by *Dirk Ahner, Director General*

*Dirk Ahner*

