

MEMORANDUM OF UNDERSTANDING ON THE UTILIZATION OF THE NATIONAL FUND FOR ISPA

Whereas the enhanced pre-accession strategy is intended to enable all the applicant States of Central and Eastern Europe eventually to become members of the European Communities and, to that end, to align themselves as far as possible on the Community acquis prior to accession;

Whereas the Accession Partnership is the key feature of the enhanced pre-accession strategy which will mobilise all forms of assistance to the applicant countries within a single framework;

Whereas the Memorandum of Understanding on establishment of the National Fund has been concluded between the Commission and each applicant State of Central and Eastern Europe for the PHARE programme;

Whereas the pre-accession strategy includes provisions for an Instrument for Structural Policies for pre-Accession (ISPA), which will be directed towards aligning applicant countries on Community infrastructure standards and providing a financial contribution for environmental measures and transport infrastructure measures;

Whereas Council Regulation 1267/99 establishing an instrument of Structural Policies of Pre-accession¹ has foreseen that in each beneficiary country a central entity, the National Fund, is to be designated through which Community Funds granted under ISPA is to be channelled;

Whereas the ISPA financing memorandum states that the responsibilities of the National Authorizing Officer are laid down in the Memorandum of Understanding concluded between the Commission and the beneficiary countries;

Whereas it is necessary to extend the application of the National Fund mechanism to cover ISPA, whilst taking into account the implementing procedures of this instrument,

Therefore

The European Community, represented by the European Commission, hereinafter referred to as "The Commission", on the one part, and

The Government of the Republic of Bulgaria, acting on behalf of the Republic of Bulgaria, hereinafter referred to as "The Recipient", on the other part,

have agreed as follows:

¹ OJ No. L 161 of 26.06.1999, page 73

Article 1 Definitions

Decentralised Implementation System

Implementation System where part of the management and responsibilities have been transferred to the beneficiary country whilst the Commission retains the final responsibility under the EC Treaties.

National ISPA Co-ordinator (NIC)

An official of the national administration in charge of the operational programming, implementation and monitoring of projects within the Recipient. The NIC also ensures a close link between the general accession process and the use of Community financial assistance and is responsible for the monitoring of ISPA projects.

National Authorizing Officer (NAO)

An official of the national administration heading the National Fund. The NAO has the overall responsibility for the financial management of ISPA funds in the Recipient.

National Fund (NF)

The Central treasury entity within the Ministry of Finance through which the ISPA funds are channelled towards the Recipient.

Sectoral Authorising Officer (SAO)

An official of the national administration normally heading an ISPA Implementing Agency. The SAO is responsible for the operation of the IA and for the sound financial management of the projects to be implemented. In accordance of the provisions of article 6 of this Memorandum of Understanding he/she may delegate some of its responsibilities for procurement or other matters to the final beneficiary.

Implementing Agency (IA)

An implementing body within the national administration in charge of tendering, contracting, payments and technical implementation of ISPA–assisted measures. This authority corresponds to the “body responsible for the implementation” as defined in Annex III.2, Section II, of the ISPA financing memorandum.

Final Beneficiary

A body, organisation or administration benefiting from the project. This body, organisation or administration has responsibilities for procurement or other matters whenever delegated by the Sectoral Authorizing Officer.

ISPA Monitoring Committee

The main monitoring body for the implementation of ISPA projects with participation of the Commission, the Recipient and International Financial Institutions. The Committee is chaired by the National ISPA Co-ordinator. Representatives of the Implementing Agencies, final beneficiaries as well as the National Authorising Officer also participate.

Article 2

National Fund and National Authorising Officer

1§

The scope and responsibilities of the National Fund and of the National Authorising Officer, already established in the context of Phare, are extended to ISPA.

2§

The National Fund as a central treasury entity under the responsibility of a National Authorising Officer (hereinafter the NAO) in the Ministry of Finance will manage the ISPA assistance allocated to the Recipient under the Decentralised Implementation System.

3§

The National Authorising Officer may not concurrently hold the office of National ISPA Co-ordinator. The National Authorising Officer may delegate his responsibilities to a maximum of two other officials, but he/she remain finally accountable for all the responsibilities vested in him/her in this Memorandum of Understanding.

Article 3

Responsibilities of National Authorising Officer

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The National Authorising Officer shall have overall responsibility for financial management of ISPA funds. He/she shall ensure that the ISPA rules and procedures pertaining to procurement, reporting and financial management are respected, and that a proper reporting and project information system is functioning. The National Authorising Officer shall have the full overall accountability for the ISPA funds allocated for a project until the Commission has paid the balance of the ISPA assistance.

2§

The National Authorising Officer shall maintain a financial reporting system for all ISPA funds. He/she shall be accountable to the Commission for the use of the funds. In carrying out these responsibilities, the National Authorising Officer shall be responsible for the following tasks:

- (i) requesting and managing the funds from the Commission;
- (ii) appointing Sectoral Authorising Officer in each Implementing Agency (IA), after consulting the National ISPA Co-ordinator;
- (iii) concluding the Financing Agreements which he/she will sign with each of the Implementing Agencies;
- (iv) ensuring the flow of national and other co-financing resources as set out in Financing Memoranda for ISPA-assisted measures;
- (v) ensuring that a financial reporting system for ISPA funds is regularly updated and that reporting procedures are properly respected by the IA;
- (vi) transferring funds to Implementing Agencies (IA) according to the mechanism set out in the Financing Agreement;
- (vii) participating with the Commission and National ISPA Co-ordinator in the ISPA Monitoring Committee;

- (viii) recovering non-used funds from the IA on completion of the ISPA measures and funds unduly paid.

3§

The technical and administrative issues of ISPA measures implementation, including tendering and contracting will be the full responsibility of the Implementing Agency.

4§

Failure to carry out any of responsibilities set out in this Memorandum of Understanding may lead to reimbursement of ISPA funds to the Commission.

Article 4 **Request of funds from the Commission**

1§

A first instalment of the advanced payment will be transferred by the Commission to the National Fund after the signature of the Financing Memorandum by the Recipient, provided that the conditions included in Article 13 (bank accounts) have been fulfilled. This first payment may not exceed 10 % of the total assistance to the measure. The remainder is paid out following the signing of the first contract, normally the first work contracts. As a general rule the advance payment is up to 20% of the ISPA assistance.

2§

The request for intermediate and final payments, to be certified and approved by the National Authorising Officer, is submitted to the Commission for approval and transfer. Payment claims together with information on invoices supporting the application and information on checks and controls carried out, as described in the ISPA Financing Memorandum, must be used. Requests for intermediate payments should be submitted as a general rule three times a year by 1 March, 1 July and 1 November at the latest.

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The NAO must submit to the Commission an application for the final payment within six months of the deadline for completion of the work laid down in the Financing Memorandum.

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The Commission retains the right to request additional information in support of transfers of funds.

5§

The precise provisions and conditions for the transfer of funds by the Commission will be laid down in the Financing Memorandum.

6§

The National Fund shall keep account of all intermediate and final payments received from the Commission for the benefit of implementing individual ISPA-assisted measures.

Article 5

Transfer of funds to Implementing Agencies

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The Financing Agreement to be concluded between the National Fund and the Implementing Agency will make detailed provisions for the transfers of funds from the National Fund to the sub-accounts of the Implementing Agencies. However, no transfers of funds should take place prior to nomination of the Sectoral Authorising Officer and signature of the Financing Agreement with the Implementing Agency.

2§

The National Fund and NAO shall be held ultimately responsible to the Commission that the transfers are made properly and based on correct information.

3§

The National Fund shall keep account of all transfers made for the benefit of implementing individual ISPA-assisted measures.

Article 6

Financing Agreements

1. The National Authorising Officer shall conclude Financing Agreements with each Sectoral Authorising Officer heading or co-ordinating the activities of the Implementing Agencies responsible for ISPA. These agreements may cover all measures co-financed from ISPA in the sector of the Implementing Agency in question.

2. The Financing Agreements shall identify a Sectoral Authorising Officer (SAO) appointed by the National Authorising Officer, after consultation with the National ISPA Co-ordinator and specify the authorities to which certain responsibilities of Authorising Officer may be delegated.

3. The Financing Agreements shall establish the responsibilities of the Sectoral Authorising Officer for the following:

- (i) the sound administrative, financial and technical management and monitoring of ISPA projects;
- (ii) signature of contracts;
- (iii) implementation of projects on the basis of the procurement rules laid down in the Practical Guide;
- (iv) verification of invoices prior to payment to contractors;
- (v) maintaining a viable technical and financial reporting system;
- (vi) maintaining of a separate accounting system or adequate accounting codification of all transactions concerned for each measure co-financed by ISPA;

- (vii) transmission and verification on a regular basis to the National Fund of information on financial and physical progress necessary for the latter to submit payment requests to the Commission in accordance with the requirements of the Financing Memorandum;
- (viii) declaring to the National Fund that the above information is accurate and can be substantiated by original documentation held by the Implementing Agency;
- (ix) maintaining the aforesaid documentation for a period of five years following the last payment in the respect of the project.

4. The Sectoral Authorising Officer remains at all time responsible for the submission of information on financial and physical progress to the National Fund as defined under points (vii) and (viii) of paragraph 3 above. Where other responsibilities have been delegated, the information on financial and physical progress should be first submitted to the SAO by the authorities concerned. The SAO should maintain a sufficient degree of supervision over these authorities and should receive sufficient information substantiated by original documentation so that he/she can declare that the information is accurate.

5. The Financing Agreement shall also lay down detailed provisions for the transfer of funds and bank account structure in application of Article 5 and 13 of this Memorandum of Understanding.

Article 7 Reporting

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The National Authorising Officer shall ensure that the NF and the IAs maintain a viable technical and financial reporting system for all ISPA-assisted measures including funds transferred to the Implementing Agencies.

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In addition, the National ISPA Co-ordinator, supported by the National Fund and the Sectoral Authorising Officer, shall compile regular progress reports on the financial status of the measures, on schedules for upcoming tenders, effected tender evaluations and contracts awarded, how the project is implemented, problems encountered (if any), perspectives for the future, and any other necessary information requested by the Commission.

Article 8 Undue payments and irregularities

1. The National Fund shall be responsible for repaying to the Commission any sum wrongly or unduly paid, in accordance with the Financing Memorandum.
2. The National Fund shall be responsible for submitting to the Commission the information required under the Agreement with respect to irregularities, recovery of sums wrongly received under ISPA and on-the-spot checks annexed to the Financing Memorandum.

Article 9
Use of the Euro

1. The National Fund is responsible for ensuring the correct use of the euro in declarations of expenditure submitted to the Commission.
2. The conversion rate to be used shall be the Commission's financial accounting rate applicable for the month in which the expenditure declared is registered in the accounting documents of the responsible authorities in charge of the financial management of the project.

Article 10
Staff

The Recipient shall ensure at its own cost the necessary human resources are available for the timely and correct execution of the tasks entrusted to the National Fund.

Article 11
Location, Facilities

The Recipient shall provide at its own cost necessary premises, office furniture and other facilities for the National Fund within the Ministry of Finance.

Article 12
Operational costs of the National Fund

Operational costs of the National Fund shall be covered by the Recipient.

Article 13
Bank Accounts

1§

The National Fund shall open up a bank account in the Central Bank or in a Government guaranteed bank account for each sector (transport and environment). These bank accounts shall have sub-accounts corresponding to each measure from which the authorising officer of an implementing agency is entitled to execute payments. In cases where this system cannot be implemented, specific arrangements can be agreed between the Commission services and the National Fund. These accounts shall, in principle, be interest-generating. Additional guidance will be provided by the Commission as regards the use of the interest income.

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The bank accounts and the sub-account shall be operated on the basis of double signature system. The appointment of persons empowered to sign requires the agreement of the NAO as regards the bank accounts and the agreement of the SAO as regards the sub-account.

3§

The National Fund shall communicate to the Commission all relevant information on the accounts at the National Funds. Relevant information encompasses i.e. name and address of the bank, account number, name(s) of account holders, interest rates, and any other information the Commission deems appropriate.

Article 14 Procurement

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Procurement will be carried out according to the Practical Guide ensuring free access, fair competition and transparency as provided for in Annex III.1, Section XI, of the ISPA financing memoranda.

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On a case by case basis, the Commission may approve the derogation to the Practical Guide rules after examination by the ISPA Management Committee.

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The Implementing Agency shall ensure that the relevant procurement rules and procedures are respected. The sectoral and national authorising officer may exert the control function.

Article 15 Financial Control, Accounting and Audits

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Appropriate financial control shall be carried out by the competent National Financial Control Authority in accordance with the provisions of the financing memorandum. Each year an audit plan and a summary of the findings of the audits carried out shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

2§

The accounts and operations of all relevant implementation structures may be checked at regular intervals by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Court of Auditors, as referred to in the ISPA financial implementation provisions of the Financing Memorandum.

3§

The National Fund shall operate a double entry or analytical accounting system covering all contractual and other financial operations pertaining to all ISPA-assisted measures in the Republic of Bulgaria.

4§

Written records of the entire financial management, tendering and contracting shall be stored for five years after the closure of the project.

Article 16 Settlement of disputes

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Any question related to the execution or interpretation of this Memorandum of Understanding shall be the subject of consultation between the Recipient and the Commission, leading, where necessary, to an amendment of the Memorandum of Understanding.

2§

Where there is a failure to carry out an obligation set out in this Memorandum of Understanding and no sufficient remedial measures have been taken in due time, the Commission may suspend the financing of the measures implemented through the system introduced by this Memorandum of Understanding, after consultation with the Recipient and ask for reimbursement of ISPA funds.

3§

If the consultation does not lead to amicable settlement, the parties may resort to the arbitration as set out in Annex B in the General Conditions related to Financing Memorandum annexed to the Framework Agreement concluded between the Republic of Bulgaria and the Commission 1990.

Article 17 Final provisions

This Memorandum of Understanding may only be amended in writing by common consent of the parties.

This Memorandum of Understanding shall enter into force on the date of the signature by both parties.

Done at:

Done at:

For the Government of Bulgaria

For the European Community

Evgeny Chachev

Jacques Wunenburger

Minister of Regional Development and
Public Works
National ISPA Co-ordinator

Head of Delegation

Date:

Date:

Muravey Radev

Minister of Finance
National Authorising Officer

Date: