

ISPA Measure No:
2003 BG 16 P PA 004

FINANCING MEMORANDUM

of

**Agreed between the European Commission and
the Government of Bulgaria**

**Concerning the grant of assistance from the Instrument for Structural Policies for
Pre-accession to the following measure**

**Technical Assistance for Institutional Strengthening and Preparation of ISPA and
Cohesion Fund Projects in the Water and Solid Waste Sector in Bulgaria**

Article 3

Commitment

1. The maximum public or equivalent expenditure which may be taken into account for the purpose of calculating assistance shall be € 15 921 000;
2. The rate of Community assistance granted to the measure is fixed at 81 % of total public or equivalent expenditure as indicated in the financing plan in Annex II;
3. The maximum amount of assistance from the Instrument for Structural Policies for Pre-accession is fixed at € 12 896 000;
4. An amount of € 10 316 800 is committed from the 2004 budget under budgetary line 13.050101. Commitments in respect of subsequent instalments shall be based on the initial or revised financing plan for the measure, subject to the state of implementation of the measure and to budgetary availability.

Article 4

Payments

1. Community assistance shall cover payments on the measure for which legally binding commitments have been made by the beneficiary and for which the requisite finance has been specifically allocated. These payments must relate to the services described in Annex I.
2. Payments made before the date of signature of financing memorandum by the Commission shall not be eligible for assistance from the Instrument for Structural Policies for Pre-accession.
3. The measure described in Annex I and payments by the body responsible for the implementation of the measure shall be completed no later than 31 December 2008.
4. The report required for the payment of the final balance should be submitted not later than 6 months after this date.
5. The advance payment is fixed at € 5 158 400, which shall be transferred as follows:
 - An amount of € 2 579 200 is paid out after signature of this memorandum by the beneficiary;
 - The remainder is paid out following the signing of the first main technical assistance contract as well as after the fulfilment of the other conditions specified in Article 8 hereunder.

Article 10

The authentic text of this financing memorandum is the present document as signed hereunder.

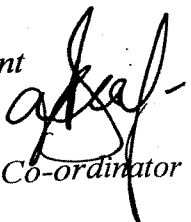
Done at

Done at Brussels,

12 AOUT 2004


For the recipient

*Milen Veltchev
National ISPA Co-ordinator*



For the Community

*Graham Meadows
Director General*



Description of measure
Technical Assistance for Institutional Strengthening and Preparation of ISPA and Cohesion Fund Projects in the Water and Solid Waste Sector in Bulgaria

Commission code No: 2003 BG 16 P PA 004

1. MEASURE TITLE

Technical Assistance for institutional strengthening and the preparation of ISPA and Cohesion fund projects in the water and solid waste sector in Bulgaria

2. AUTHORITY MAKING THE APPLICATION (National ISPA Co-ordinator)

- 2.1. Name: Ministry of Finance
 2.2. Address: 102 Rakovski Street, 1040 Sofia, Bulgaria
 E-mail: l.datzov@minfin.bg

3. AUTHORITY RESPONSIBLE FOR IMPLEMENTATION (as defined at Section II (2) of Annex III.2)

- 3.1. Name: Ministry of Environment and Waters (MOEW)
 Directorate "EU Funds for Environment"
 3.2. Address: 22 Maria Louisa Boulevard, 1000 Sofia, Bulgaria
 E-mail: marianasir@moew.government.bg

4. FINAL BENEFICIARIES (IN CASE IT IS A DIFFERENT BODY FROM THE AUTHORITY MENTIONED UNDER 3)

- 4.1. Name: Ministry of Environment and Waters
 Directorate "EU Funds for Environment"
 Address: 22 Maria Louisa Boulevard, 1000 Sofia, Bulgaria
 E-mail: marianasir@moew.government.bg
 4.2. Name: Ministry of Regional Development and Public Works (MRDPW)¹
 Directorate "PIU-ISPA programme"
 Address: 17-19 St. Kyril I Methodi Street, 1202 Sofia

¹ The Ministry of Regional Development and Public Works (MRDPW) will be the contracting authority for a group of water projects to be developed in agreement with the EC and EBRD, indicatively, Plovdiv, Bourgas, Stara Zagora and Dobrich (the first three are covered by an agreement between the Bulgarian authorities and the EBRD 19.10.2003). The MOEW will be the contracting authority for all other measures during the project preparation phase.

main needs of the ISPA stakeholders, regular training programmes and “on the job training” will be organised, if possible on a regional basis, for these actors, with a close involvement and participation of the Implementing Agency/ies concerned.

The main tasks will be divided in the groups described below.

6.1.1. *Technical Assistance (TA) for the ISPA Implementing Agencies*

The section of the TA focused on the two above cited implementing agencies will be aimed at the following tasks:

- support the review and improvement of the current ISPA Environment strategy, and general reinforcement of the programming capacity of the implementing agencies in terms of ISPA and future Cohesion Fund;
- support in the prioritisation of the ISPA and Cohesion Fund measures to be prepared;
- support in assessing the application forms and studies;
- support in establishing a sound financial system for the management of ISPA and future Cohesion Funds;
- support in reviewing the pre-feasibility and feasibility studies;
- support in reviewing the draft EIA studies and in incorporating the EIA resolution recommendations in the works tender dossier;
- carry out specialised studies with international benchmarks where appropriate on more general issues (e.g. disposal of sludge for agriculture, models to monitor infiltration, etc.);
- support in implementing contracts under ISPA measures, i.e. in monitoring and control of all works and services contracts under the ISPA measure; and
- support for any other activities directly aimed at the programming and implementation of ISPA measures.

6.1.2. *TA for the ISPA Stakeholders*

The section of the TA focused on the ISPA stakeholders (of particular importance in a context of transition from the existing centralised system) will be aimed at the following tasks:

- improve the ISPA stakeholders’ operational and financial performance through the development of quarterly training programmes;
- support the development and/or upgrading of the Municipal investment programmes in the water and or solid waste domain;
- support the ISPA stakeholders, in agreement with the Implementing Agencies, in identifying and developing measures which can be co-financed by ISPA with the IFIs;

The involvement of international financial institutions (IFI), from the beginning of the project cycle, will be an important selection criteria of the projects in order to maximise the leverage effect of grant funds and gain from their financial and technical capability.

The European Bank for Reconstruction and Development (EBRD) has negotiated with the Bulgarian authorities a parallel loan scheme for co-financing water sector investments for a maximum 60 million euro which will involve, indicatively, Bourgas, Plovdiv, Rousse, Sliven, Stara Zagora and Vratza regional water companies.

For the remaining projects, the EIB is negotiating with the Bulgarian authorities a framework loan to cover the main water investment needs.

The technical assistance will devote particular attention to the preparation of a financial and operation performance programme aimed at improving the capacity of the local actors which will be the beneficiaries, in the future, of ISPA and possibly, Cohesion Fund measures.

- a) For a first group of municipalities and regional water companies, the ISPA measure will include the identification of a priority programme and, in a second phase, the preparation of the ISPA application and the preparation of the relevant works tender documents. The indicative list for this group is Bourgas, Dobrich, Kyustendil, Rousse, Sliven and Vratza.
- b) For a second group of municipalities and regional water companies, the ISPA measure will only finance the elaboration of priority programmes, while the second phase will, if appropriate, be financed with a new ISPA TA in 2005 or 2006. The indicative list for this group is Blagoevgrad, Kurdzhaii, Pernik, Plovdiv, Stara Zagora, Vidin and Yambol.

The final list of Regional water companies will be subject to the approval of the Commission.

These RWCs cover a population between a maximum of 733.000 (Plovdiv) to a minimum of 118.000 (Kuystendil) The average cost of the proposed technical assistance for project preparation and supply will be approximately 800.000 euro per regional water company (to vary according to the size of the identified investment programme and phases to be implemented).

The level of the investment needs of the RWCs in the environment sector is very high (estimated by the Bulgarian authorities at around 1.200 million euro). This section of the ISPA measure should be able to prepare future interventions in the water sector for an estimated value of 320 million euro covering a population of approximately 3.100.000 inhabitants (approximately 40% of the entire country).

Severe deficiencies exist in all cities both in water supply and treatment, and wastewater collection and treatment. In addition, their capacity in terms of project preparation is very low; hence the need for a considerable amount of technical assistance in order to arrive to the definition of a sound investment programme which could benefit from ISPA funding at a later stage.

Phase I

(i) Investment Programme

The Consultant should review and/or complete an investment programme after appropriate surveys and studies of the water cycle. The water and wastewater system of each RWC will be reviewed with a view to arriving at a definition of long-term phased investment programme to achieve full compliance with EC Directives in the water domain. The aim of this programme is to prioritise needs and investments taking into account affordability of the investment for the population as well as local implementation capacity. The Commission and IFIs will, on the basis of a Bulgarian proposal, define the scope and the co-financing scheme for each of the selected measures for, where appropriate, Phase II.

(ii) Institutional Analysis of RWC

The Consultant should assess the implementing capacity, the appropriateness of the institutional framework and the capacity of the final beneficiary to manage the water assets. The analysis should also include assessment of the capacity for full participation in the future investment project by the beneficiary, both in the management and the execution of the future investment project.

Phase II

(i) Feasibility Study

The feasibility study should review infrastructure and operational data, project definition, preliminary design and technical specifications, alternative solutions and should be based on the completed master plan or investment programmes, which would have prioritised the investments to be put forward in the ISPA application. Technical feasibility studies for rehabilitation or construction of new facilities should be done in compliance with the standards set by the EC Directives in the field of water and wastewater. This is particularly the case where feasibility studies already exist and need to be reviewed to ensure they comply with EC standards. The technical feasibility study should include a thorough analysis of alternatives to ensure the most cost-effective solution is chosen.

(ii) Financial and Economic Analysis

The analysis should demonstrate the financial sustainability of the project by checking the income and costs of the project, the financial indicators such as the net present value and internal rate of return. The selected Consultant should undertake a review of the tariff setting, socio-economic studies to determine affordability and need for phasing of the investment programme defined by the master plan, cost-benefit analysis, and financing structure of the project. The financial analysis should help assess the viability and affordability of the proposed investments and help determine the appropriate level of ISPA grant.

These regions include the following municipalities (which may be served by the proposed facilities):

1. **Bourgas** – Bourgas, Aitos, Kameno, Kamobat, Nessebar, Pomorie, Ruen, Sredetz, Sungurfare;
2. **Dobrich** – Dobrich, Dobrich-Selska, Tervel, Nikola Kozlevo, Krushari, Kavarna, Shabla, General Toshevo, Balchik;
3. **Provadia** - Provadia, Dalgopol, Valchi Dol, Avren, Vetrino, Suvorovo, Dolni Chiflik, Devnia, Beloslav, Novi Pazar;
4. **Pazardjik** - Pazardjik, Peshtera, Belovo, Lesichevo, Bratzigovo, Septemvri, Batak, Velingrad, Rakitovo;
5. **Pleven** - Pleven, Dolna Mitropolia, Dolni Dabnik, Iskar, Pordim, Guliantzi;
6. **Vidin** – Vidin, Bregovo, Bojnitza, Kula, Gramada, Nowo Selo, Dimovo, Rujintzi, Belogradchik, Chukrene, Makresh.

The measure covers populations ranging between a maximum of 390 000 (Bourgas region) to a minimum of 130 000 (Vidin region).

This section of the ISPA measure should be able to prepare interventions in the waste sector for an estimated value of 72 million euro covering a population of approximately 1.381.000 inhabitants.

The terms of reference for each technical assistance assignment are subject to the prior approval of the Commission. The Commission will receive reports at least every two months on the implementation of the individual assignments.

The Consultant selected under each individual Technical Assistance assignments shall undertake the following activities:

Phase I

(i) Review and Update of the Existing Documents

The Consultant should review and update the documents, mainly: the existing studies, plans and institutional arrangements for regional waste management, proposals or existing structures of the waste collection systems and short - and 20 years long-term investment plans for each of the 6 regions.

(ii) Technical analysis

The Consultant shall prepare waste generation forecasts for both urban and rural areas and divided into waste streams. The forecast shall be base for preparing the design and for determining the capacity of all facilities as well as for preparing the financial analysis. For the most likely forecast the Consultant shall develop and assess different technically, environmentally and financially liable waste management scenarios. For each scenario the Consultant shall propose the most feasible system for interim waste storage, collection of recyclables, waste

surveys/investigations that will be needed shall be identified and the Consultant shall prepare terms of reference for any additional necessary studies. Existing cost estimates shall be checked/revised and shall include the environmental mitigation components and contractor's administration and management costs.



(iii) Preparation of the Tender Documentation

Prepare procurement strategy for the proposed ISPA infrastructure measure and prepare terms of reference and tender dossier for tendering of detailed design and supervision of the construction works included in the ISPA application form for investment. These documents must follow the procedures set out in PRAG. The documents shall clearly explain that the works and supervision must be carried out in accordance with FIDIC rules.

This task will result in a complete set of service tender documents for each region.

7. OBJECTIVES

This measure has the following objectives:

- to reinforce the capacity of the Ministry of Environment and Waters and the Ministry of Regional Development and Public Works as programming and contracting authorities for ISPA measures in the water sector - reinforcing their coordination and collaboration in all stages of the ISPA project cycle;
- to reinforce the capacity of the "ISPA stakeholders" (Municipalities, Regional Water companies and solid waste collection companies), identifying local training needs and providing guidance to strengthen their management;
- to prepare a set of water projects to be financed by ISPA in 2005 and 2006 and the Cohesion Fund, if appropriate;
- to prepare a set of solid waste projects to be financed by ISPA in 2005 and 2006 and the Cohesion Fund, if appropriate;
- to co-finance technical support to assist Bulgaria in developing a phased investment programme in order to achieve full compliance with all of the EC Directives in the field of water and wastewater for the selected cities; in preparing applications to be submitted to the Commission for support from ISPA and to assist in the preparation of tender documents;
- to ensure that the information provided in the ISPA applications to be received are of sufficient quality, clarity and content to facilitate the evaluation of the project and to ensure optimal utilisation of ISPA funding.

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Provisional Procurement Plan

Tender N°	Description of works and services to be tendered	Type of contract (works, supplies or services)	Provisional month of launch of tender (month/ year)	Rate of reimburse of invoices relating to specific contract
1	Technical Assistance through FWC for the initiation of the measure (par. 6.1)	Services (FWC*)	June 2004	100 %
2	Technical Assistance through three FWCs for most advanced RWCs project (par. 6.2)	Services (FWC*)	June 2004	75 %
3	Technical Assistance for Institutional strengthening of the two implementing agencies and the ISPA stakeholders (par. 6.1)	Services	June 2004	100 %
4	Technical Assistance for project preparation in the water sector – Group A (par. 6.2)	Services	July 2004	75 %
5	Technical Assistance for project preparation in the water sector – Group B (par. 6.2)	Services	July 2004	75 %
6	Maintenance and monitoring equipment for RWCs (par. 6.2)	Supply	June 2004	75 %
7	Technical Assistance for preparation in the solid waste sector – Group 1 (Bourgas, Dobrich, Provadia) (par. 6.3)	Services	June 2004	75 %
8	Technical Assistance for preparation in the solid waste sector – Group 2 (Pazardjik, Pleven, Vidin) (par. 6.3)	Services	June 2004	75 %

* FWC : Framework Contractor or Competitive Negotiated Procedure

The specific terms for the award of contracts will be made available in the Official Journal of the European Communities and/or the Internet.

ISPA Financial Implementation Provisions

**Section I
Forms and rate of assistance**

- (1) Community assistance under ISPA may take the form of non-repayable direct assistance, repayable assistance or any other form of assistance.

Assistance repaid to the managing authority or to another public authority shall be reapplied for the same purpose.

- (2) The rate of Community assistance granted under ISPA may be up to 75% of public or equivalent expenditure, including expenditure by bodies whose activities are undertaken within an administrative or legal framework by virtue of which they are regarded as equivalent to public bodies. The Commission may propose to increase this rate to up to 85%, in particular where it considers that a rate higher than 75% is required for realising measures essential for achieving the general objectives of ISPA.

The rate of assistance and the maximum amount of the ISPA grant shall be specified in the financial memorandum relating to a measure.

Save in the case of repayable assistance or when there is a substantial Community interest, the rate of assistance shall be reduced to take into account:

- (a) The availability of co-financing;
- (b) The measure's capacity to generate revenues; and
- (c) An appropriate application of the polluter-pays principle.

- (3) Measures which generate revenues in accordance with paragraph 2(b) shall be those concerning:

- (a) Infrastructure the use of which involves fees borne by users;
- (b) Productive investments in the environment sector.

Guidelines for application of the polluter pays principle have been elaborated by the Commission.

- (4) Preliminary studies and technical support measures may be financed exceptionally at 100% of the total cost.
- (5) Measures covered by a financing memorandum are to be implemented by the beneficiary country in close collaboration with the Commission, which will retain responsibility for the utilisation of appropriations.

Section III Payments

- (1) Payments may take the form of either advance payments, intermediate payments or payments of the final balance.

Intermediate payments and payments of the balance shall relate to expenditure actually certified and paid, which must be supported by receipted invoices or accounting documents of equivalent probative value.

- (2) Advance payments

As a general rule an advance payment of up to 20% of total assistance from ISPA as initially decided shall be paid to the designated authority as defined in (9).

The advance payment is as a general rule transferred in the following ways:

- A first instalment of up to half of the advance is paid when the beneficiary country signs the financing memorandum;
- The remainder is paid out following the signing of the first contract, normally the first works contract.

Deviations from the general rule have to be approved by a Commission decision in the financing memorandum relating to the measure.

All or part of an advance payment shall be repaid by the designated authority referred to in paragraph (2) if no payment application is sent to the Commission within 12 months from the date on which the advance payment is paid. The amount of the advance to be repaid will be determined by the Commission on the basis of eligible expenditure effectively paid. Repayment of the advance does not lead to the cancellation of the Community assistance.

- (3) Intermediate payments

Intermediate payments are made by the Commission to the designated authority on request and provided that the measure is progressing satisfactorily towards completion and shall be made to refund the expenditure certified and actually paid, subject to the following conditions:

- The beneficiary country has submitted a report describing the progress of the measure in terms of its physical and financial indicators and its conformity with the financing memorandum, including where appropriate any specific conditions attached to the assistance,
- The observations and recommendations of the national and/or Community inspection authorities have been acted upon,
- Any technical, financial and legal problems that have arisen and the measures taken to correct them have been indicated,

and that all conditions specified in the financing memorandum have been complied with.

- (7) If the final report referred to above is not sent to the Commission within 6 months of the final date for completion of the works and payments as specified in the financing memorandum, that part of the assistance representing the remaining balance for the measure should be cancelled.
- (8) Requests for interim and final payment presented by a beneficiary country are accompanied by a declaration of the National Authorising Officer that declared payments only relate to expenditure supported by receipted invoices or accounting documents of probative value and which comply with the provisions governing eligibility of expenditure for projects assisted by ISPA as specified in Annex III. 2.
- (9) All payments of aid granted by the Commission under this financing memorandum shall be made to a central entity, the National Fund, designated by the beneficiary country to receive such payments. As a general rule, payments shall be made by the Commission to a single bank account designated by the beneficiary country no later than two months after receipt of a valid and complete application for payment. The National Fund shall transfer as quickly as possible and in full the ISPA contribution to the body responsible for the implementation.
- (10) The National Fund, as headed by the National Authorising Officer, is to have overall responsibility for the management of the funds within the beneficiary country concerned. This officer shall also be responsible for refunding any overpaid or unduly amounts to the Commission.

The responsibilities of the National Authorising Officer are laid down in the Memorandum of Understanding concluded between the Commission and the beneficiary countries.

Section IV Use of the Euro

- (1) The amounts in the applications for assistance, together with the relevant financing plan, shall be expressed in Euro.
- (2) The amounts of assistance and the financing plans approved by the Commission shall be expressed in Euro.
- (3) Declarations of expenditure in support of the corresponding payment applications shall be expressed in Euro.

The conversion rate to be used shall be the Commission's financial accounting rate applicable for the month in which the declaration of expenditures are registered in the accounting documents of the responsible authorities in charge of the financial management of the project. The monthly conversion rate is fixed according to the provision mentioned in Article 7 (2) of the Commission Regulation (EC, Euratom) n° 2342/2002 of 23 December 2002 laying down

to take account of this but may not exceed the maximum amount stated in the financing memorandum.

A change in the rate of community assistance from the initially granted rate or of the maximum of the grant will require a modification of the financing memorandum in accordance with the procedure described in paragraph (3).

- (2) If, when the financing plan for a project is amended, the Community commitments and/or payments already made exceed the amounts entered in the amended financing plan, the Commission shall, when authorising the first financial operation (commitment or payment) after that amendment, make an adjustment to take account of the amount over-committed or over-paid.
- (3) Any amendments to the financing memorandum shall be made in accordance with the following procedures:
 - (a) Amendments which entail a substantial change in the objectives or characteristics of the project, or a substantial change in the financing plan or schedule of expenditure, shall be made by means of a financing memorandum taken in response to a request by the beneficiary country or at the initiative of the Commission after consultation with the beneficiary country. The definition of a "substantial" change is given within the provisions governing eligibility of expenditure.
 - (b) In the case of other amendments, the beneficiary country shall send to the Commission a proposal for amendment. The Commission shall make its comments or signify its agreement within twenty working days of receipt of the proposal. The amendments shall be adopted when the Commission has given its agreement. The ISPA management Committee is informed of such amendments.
 - (c) Any change in annual expenditure of less than 25% of the total expenditure planned for the project shall not be regarded as a substantial change of the financing plan and of the schedule of expenditure.

Section VII

Financial Management and Control

- (1) The Beneficiary countries shall:
 - (a) establish as from 1 January 2000 and in any event not later than 1 January 2002, management and control systems which ensure:
 - The proper implementation of the assistance granted under this Memorandum in accordance with the principles of sound financial management,
 - The separation of the functions of management and control,

indicators will relate to the specific character of the project and its objectives. They will be arranged in such a way as to show the stage reached in the measure in relation to the plan and objectives originally laid down and the progress achieved on the management side and any related problems.

- (3) (a) For each measure, the National ISPA Coordinator is to submit progress reports to the Commission within three months of the end of each full year of implementation.
- (b) For the meetings of the monitoring committees the National ISPA Coordinator is to submit progress reports according to the standard model provided by the Commission. The report has to be in the hands of the Commission 15 working days ahead of the scheduled meeting.
- (4) On the basis of the results of monitoring and taking account of the comments of the monitoring committee, the Commission is to adjust the amounts and conditions for granting assistance as initially approved, as well as the financing plan envisaged, if necessary on a proposal by the beneficiary countries.

The Commission will define the appropriate arrangements for these adjustments differentiating them according to their nature and importance.

Section IX **Transparency in the award of contracts**

- (1) The procedure to be followed for the award of works, supply or service contracts will respect the key principles enshrined in Title IV of the Financial Regulation (external actions) applicable to the general budget of the European union.
- (2) (a) Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of application of the Treaty and to all natural and legal persons in the beneficiary countries of ISPA and from Cyprus, Malta and Turkey.

The specifications shall therefore require tenders to state their nationality and to present the supporting evidence normally acceptable under their own law.
- (b) In duly justified cases such as co-financing with International Financing Institutions and after early examination by the ISPA Management Committee, the Commission may allow nationals of third countries to tender for contracts.
- (3) (a) The beneficiary countries shall take the necessary measures to guarantee as wide a participation as possible. To this end and when required by the value of the contracts, they shall ensure an advance publication of invitation to tender in the Official Journal of the European Communities and the official gazette in the beneficiary country.

Annex III.2

Provisions governing eligibility of expenditure for measures assisted by ISPA

Section I Domain of expenditure

The ISPA provides assistance for the following measures:

- (1) Environmental projects enabling the beneficiary countries to comply with the requirements of Community environmental law and with the objectives of the Accession Partnerships;
- (2) Transport infrastructure projects which promote sustainable mobility and in particular those that constitute projects of common interest based on the criteria of Decision N° 1692/96/EC⁴ and those which enable the beneficiary countries to comply with the objectives of the Accession Partnerships; this includes interconnection and interoperability of national networks as well as with the Trans-European Networks together with access to such networks;
- (3) Preliminary studies, appraisals, and technical support measures including information and publicity actions related to eligible projects. This includes technical and administrative assistance to the mutual benefit of the Commission and the beneficiary countries which do not fall within the standing remit of the national public administration, covering the identification, preparation, management, monitoring, audit and supervision of projects.

The rules specified in sections II to XII below relate to projects listed under items 1 and 2 above they are, however, applied by analogy to decisions for projects listed under item 3.

Section II Basic definitions and concepts.

(1) Concept of project, stage of a project and group of projects

For the purpose of this document, the following definitions shall apply:

- a) a "project" shall be an economically indivisible series of works fulfilling a precise technical function and with clearly identified aims.
- b) a "technically and financially independent stage" shall be a stage which can be identified as operational in its own right.

A stage may also cover preliminary, feasibility and technical studies needed for carrying out a project.

⁴ Decision N° 1692/96/EC of the European Parliament and the Council of 23 July 1996 on Community guidelines for the development of the Trans-European Transport network.

- (b) The financing memorandum can apply to one or several of the above stages.
- (c) The implementation period of a project concerns, as a general rule, the period necessary for the completion of the above stages until the point in time at which a project becomes fully operational and at which the physical object described in the financing memorandum has been completed.

(5) Transparency and documentary evidence.

Any expenditure declared to the Commission should be based on legally binding agreements and/or documents. Appropriate documentary evidence is imperative.

In order to maximize transparency and to permit the audit of expenditure by the Commission and/or by the competent national financial control authority, each beneficiary country must ensure that any body involved into the management and the implementation of projects has set up a separate accounting record covering the project described in the financing memorandum.

(6) Expenditure

Expenditure must relate to payments certified and actually made by the body responsible for implementation, supported by receipted invoices or accounting documents of equivalent probative value.

“Accounting document of equivalent probative value” means any document submitted by the authority defined in point 2 of this section to prove that the book entry gives a true and fair view of the actually implied transactions in accordance with standard accountancy practices. Prior agreement of the Commission is necessary when accounting document of equivalent probative value are used.

**Section III
Main categories of eligible expenditure**

As a general rule expenditure relating to

- feasibility studies,
- planning and design including environmental impact assessment,
- site preparation,
- building and construction,
- plant and machinery permanently installed in the project,
- testing and training,
- project management,

- this provision must not be used to circumvent community public procurement procedures.

Section V **Site preparation and construction**

- (1) In those cases where the body responsible for implementation is executing site preparation or construction works, or parts thereof, on its own account, costs have to be imputed by means of a transparent and separate project accounting system based on accounting documents or documents of equivalent probative value.

In cases where public administration employees are involved the provisions specified in section IV, point 2, apply.

- (2) Eligible costs shall include only costs actually borne after the dates specified in section X, point 1, and related directly to the project. Eligible cost may include all or any of the following categories:

- labour costs (gross wages and salaries);
- charges for using durable equipment during construction;
- cost of products used for the implementation of the project;
- overheads and other cost items, if specifically justified; they are to be allocated in an equitable manner, in accordance with generally recognised accounting standards.
- imputed overheads are not eligible in the case where the body mentioned under (a) above is a public administration.

- (3) As a general rule, cost should be valued at market prices.

Section VI **Purchase, lease of equipment and intangible assets.**

- (1) **Durable equipment that is part of capital expenditure of the project**

- (a) Expenditure on purchase or production of plant and equipment that is to be permanently installed and fixed in the project is eligible, provided that it is placed under inventory of durable equipment of the body specified under Section II (2) and that it is treated as capital expenditure in accordance with standard accounting conventions.

- (b) Without prejudice to Section IX (3), the lease of such equipment is considered as part of the operation cost and is not eligible.

- (2) **The purchase of intangible assets**

(3) Durable equipment used for the implementation of a project

- (a) In the cases where the body responsible for implementation is executing site preparation or construction works, or parts thereof on its own account, expenditure on the purchase or production of durable equipment that is employed during the implementation phase of a project is not eligible. This concerns heavy construction machines as well as office and other types of equipment.
- (b) Durable equipment that is expressly purchased or produced for implementing a project can be considered eligible if it is without economic value or scrapped after use and if so specified in the financing memorandum.

(4) Durable equipment used by public administrations

- (a) Expenditure on the purchase and leasing of durable equipment used by public administration is not eligible.
- (b) Without prejudice to Section VIII (2) and (3), expenditure on equipment and leasing charges for equipment used by a public administration in the pursuit of its monitoring and supervision task can be eligible with the agreement of the Commission.

**Section VII
Land purchase and Value Added Tax**

Land purchase and value Added tax (VAT) are not eligible.

**Section VIII
Administrative expenditure**

(1) General principle

As a general rule, expenditure incurred by public administrations, including salaries of national, regional and local statutory employees are not eligible for assistance (including technical assistance) except for dully documented expenditure arising from the obligation to carry out financial checks, financial and physical monitoring, evaluation and prevention of irregularities and expenditure entered into under the obligation to recover amounts lost.

With the exception of the National Fund, costs including salaries linked to the temporary employment, at the initiative of the Commission, of staff whether temporary civil servants or staff from the private sector for work involving management, follow up, evaluation and control are eligible under the technical support measure as defined in Section I (3).

Equipment for monitoring purposes may be eligible if specifically allowed by a technical assistance measure mentioned within the financing memorandum.

Without prejudice to point 2, financing techniques, which do not necessarily imply an immediate transfer of asset ownership, can be considered eligible, if justified and approved in the financing memorandum.

The beneficiary country has to demonstrate through a risk analysis that the technique used is economically more advantageous than outright acquisition of an asset.

(4) Operating expenditure, running costs of assisted projects

- (a) Any type of operating cost incurred after the completion of a project is not eligible.
- (b) Notwithstanding point (a) above training of operating personnel and testing of a project and of its equipment may be taken into consideration as eligible expenditure for a necessary period defined in a financing memorandum.
- (c) The principles defined in points (a) and (b) above hold also for a completed individual part of a project or a grouped project, albeit the total project has not yet been completed.

(5) Publicity and information measures

Expenditure for measures undertaken pursuant to the provisions of Annex III.6 on information and publicity is eligible.

**Section X
Period of Eligibility**

(1) Initial time limit on eligibility

The initial time limit on eligibility is assessed differently according to the two following situations:

- (a) when project selection, tendering and contracting by applicant countries is subject to ex-ante approval by the Commission⁵, expenditure is eligible for assistance from the date the financing memorandum related to this project is signed by the Commission.

In exceptional cases and when project funding is made up of a combination of loan either from the EIB or another financial institution and ISPA grant, expenditure is eligible for assistance from the date of the agreement of the EIB or of the other financial institution on the particular project. As a general rule this date should not be earlier than 6 months from the date mentioned under the first sub paragraph. The following conditions are a prerequisite:

⁵ See Article 12, (1), of Council Regulation (EC) n° 1266/99 of 21 June 1999.

- (b) The final date relates to payments made by the body responsible for implementation.
- (c) The final date of eligibility is laid down in the relevant financing memorandum. After that date has expired the beneficiary state disposes of a period of six months to submit to the Commission the final payment claim together with the final report and a statement as specified in Section III (6) of Annex III.1 and in Annex III. 4.C to the financing memorandum.
- (d) The Commission cannot extend this six -months period.

Section XI Payment claims

Payment claims presented to the Commission by beneficiary countries are based on declarations of expenditure actually paid out as defined in section II point 6.

In the case of work undertaken by a concessionaire or equivalent body, the responsible government authority must certify the correctness of the expenditure.

Payment claims must be registered and certified by the National Authorising Officer. Claims are then forwarded to the Commission via the Commission Delegation.

Section XII Other items not specifically specified.

- (1) Whenever questions arise which are not specifically dealt with in these principles governing eligibility of expenditure in the framework of projects assisted by ISPA the matter shall be discussed with the Commission. The Commission will endeavor to handle open questions in the spirit enshrined in these principles and with due reference to the principles established for the Cohesion Fund.
- (2) In case of a conflict between these principles and those under national eligibility rules the above-mentioned principles shall take precedence.

2.

BRIEF CHRONOLOGICAL DESCRIPTION OF ACTIVITIES/WORKS CARRIED OUT

3.

SPECIFIC CONDITIONS RELATED TO THE MEASURE (ARTICLE 8 OF FINANCING MEMORANDUM FM)

Refer to specific conditions, if any, and state how they have been complied with as well as the date of fulfilment (the reference of the Commission correspondence acknowledging fulfilment of those conditions already complied with).

(***) For the contracts under preparation, please give some details about the stage of preparation of the tender documents.

EN

EN

6. ADVANCED INFORMATION SHEET FOR PHYSICAL & FINANCIAL EXECUTION (*)

Categories of eligible expenditure (*)	Physical execution					Financial execution					
	Physical indicators (*)		Physical execution since last monitoring committee (cut-off date)	Physical execution up to this monitoring committee (cut-off date)	Rate of physical execution %	Financial Indicators		Expenditure since last monitoring committee (cut-off date)	Expenditure up to this monitoring committee (cut-off date)	Rate of financial execution %	contribution to physical progress
	Unit	Quantity				Estimated eligible cost (€)	% of cost				
		(1)	(2)	(3)	$4 = \frac{(3)}{(1)} (\%)$	(5)	(6)	(7)	(8)	$9 = \frac{8}{5}$	$10 = \frac{8}{6} / 100 \%$
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
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					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
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					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
					#DIV/0!		#DIV/0!			#DIV/0!	#DIV/0!
TOTAL						0	#DIV/0!	0	0	#DIV/0!	#DIV/0!
										Overall financial progress	Overall physical progress

(*) coverage of 100% of the total eligible cost

7. REASON FOR DIFFERENCES (IF ANY) BETWEEN PHYSICAL & FINANCIAL EXECUTION EXPLANATION FOR DELAYS (IF APPROPRIATE)

8. TECHNICAL, FINANCIAL OR LEGAL PROBLEMS (ANNEX III.1 OF FM)

Refer to any problems that have arisen in the implementation of the measure, including departures from the original financial plan, and explain what action has been taken to correct them.

Refer to any suspension, Financial correction and/or irregularity.

9. OBSERVATIONS AND RECOMMENDATIONS OF NATIONAL AND/OR COMMUNITY INSPECTION AUTHORITIES (ANNEX III.1 OF FM)

Give summary observations or recommendations, if any, (with full reference to source), and state how they have been complied with.

10. MEASURES ADOPTED TO ADVERTISE COMMUNITY ASSISTANCE (ANNEX III.6 OF FM)

Billboards erected at the site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Billboards erected at the site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Billboards erected at the site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Media used to inform the public of the measure in hand:		
Press <input type="checkbox"/>	Television <input type="checkbox"/>	Radio <input type="checkbox"/>

MODEL FOR INTRODUCING MODIFICATION

ISPA MODIFICATION PROPOSAL

Body responsible for implementation:

1. MEASURE IDENTIFICATION

Name of measure:

Body responsible for implementation:

ISPA Measure Code:

Financing Memorandum No:

Date:

Rate of ISPA assistance:

2. CHANGE OF COMPLETION DATE

Current completion date:

Proposed date for completion:

3. PROPOSED CHANGES TO THE FINANCIAL PLAN (*)

UNIT: €

	Total eligible expenditure according to current FM	Eligible expenditure spent or total expenditure forecast
2000		
2001		
2002		
2003		
2004		
2005		
2006		
After 2006		
Total		

Application for increase in Assistance

Yes No

Amount of increase requested (where applicable) €

(*) attach modified financial plan

Annex III.4

Management and control systems for assistance granted from ISPA and the procedure for making financial corrections

Section I

This Annex lays down detailed rules as regards the management and control systems for assistance granted from ISPA and as regards the procedure for making financial corrections to such assistance.

Section 2

Management and control systems

1. Each Beneficiary Country shall ensure that:
 - (i) the National ISPA Co-ordinator,
 - (ii) the National Fund and the National Authorising Officer,
 - (iii) the Implementing Agencies and the Sectoral Authorising Officers, and
 - (iv) the Final Beneficiaries

as defined in the ISPA Memorandum of Understanding on the utilisation of the National Fund for ISPA receive adequate guidance on the provision of management and control systems necessary to ensure the sound management of ISPA in accordance with generally accepted principles and standards, and in particular to provide adequate assurance of the correctness, regularity and eligibility of claims on ISPA assistance but also to ensure that measures are carried out in accordance with the terms of the Financing Memorandum and with the objectives assigned to the measure.

2. For the purposes of this Annex, the "implementing agencies" shall include bodies others than the final beneficiaries to which the implementation of measures assisted by ISPA is delegated by the implementing agency or sectoral authorising officer (hereinafter called "delegated bodies").
3. For the purposes of this Annex, except where otherwise stated "measures" mean individual projects, stages of projects or groups of projects falling within Annex III.2, section II (1) which is the subject of a Financing Memorandum.

Section 3

1. The management and control systems of the National ISPA Co-ordinator, the National Fund, the implementing agencies, the delegated bodies and the final beneficiaries shall, subject to proportionality in relation to the volume of assistance administered, provide for:

- (a) a clear definition, a clear allocation and, insofar as it is necessary for sound management, an adequate separation of functions within the organisation concerned;
- (b) effective systems for ensuring that the functions are performed in a satisfactory manner;
- (c) in the case of delegated bodies and final beneficiaries, reporting to the authority responsible on the performance of their tasks and the means employed.

Section 4

1. The management and control systems referred to Section 3 shall include procedures to verify the authenticity of the expenditure claimed and execution of the measure from its preparatory stage through to the entry into service of the financed investment in accordance with the terms of the relevant Financing Memorandum, with the objectives assigned to the measure, and with applicable national and Community rules on, in particular, the eligibility of expenditure for support from ISPA, protection of the environment, transport (including trans-European networks), competition and the award of public contracts.

Verifications shall cover all aspects, whether of a financial, technical or administrative nature, that determine the effective utilisation of the assistance committed.

2. The procedures shall require the recording of verifications of measures 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.

Section 5

1. The Beneficiary Country shall inform the Commission, within three months of the entry into force of the Financing Memorandum, of the organisation of the National ISPA Co-ordinator, the National Fund, the implementing agencies and delegated bodies responsible for ISPA measures as identified in Section 2, of the management and control systems in place in these authorities or bodies and of improvements planned pursuant to the guidance referred to in Section 2 (1).
2. The communication shall contain the following information in respect of the National ISPA Co-ordinator, the National Fund, implementing agencies and delegated bodies:
 - (a) the functions vested in them,

- (b) the allocation of functions between or within their departments,
 - (c) the procedures for the inspection and acceptance of works and by which claims for reimbursement of expenditure are received, verified and validated, and by which payments to beneficiaries are authorised, executed and accounted for, and
 - (d) the provisions for the audit of management and control systems.
3. The Commission shall, in co-operation with the Beneficiary Country, satisfy itself that the management and control systems presented under paragraphs 1 and 2 meet the standards required by this Annex, and shall make known any obstacles which they present to the transparency of checks on the operation of ISPA and to the Commission's discharge of its responsibilities. Reviews of the operation of the systems shall be undertaken on a regular basis.

Section 6

1. The management and control systems for measures shall provide a sufficient audit trail.
2. An audit trail shall be considered sufficient where it permits:
 - (a) reconciliation of the summary amounts certified to the Commission with the individual expenditure records and supporting documents held at the various administrative levels, by the implementing agencies and the final beneficiaries;
 - (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 measure in accordance with the terms of the Financing Memorandum granting the assistance and the objectives assigned to the measure.
3. An indicative description of the information requirements for a sufficient audit trail is given in Annex III.4 A.
4. The Beneficiary Country shall satisfy itself on the following points:
 - (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 measure, and which are required for a sufficient audit trail, are held in accordance with the requirements of Section X of Annex III.1 and with Annex III.4 A;
 - (b) that a record is maintained of the body holding them and its location;

requirements of Sections III (3) and (6), VII of Annex III.1 and observed the terms of the Financing Memorandum;

- (b) the statement of expenditure includes only expenditure:
- (i) that has been actually effected within the eligibility period laid down in the Financing Memorandum granting the assistance and can be supported by receipted invoices or accounting documents of equivalent probative value,
 - (ii) relating to works that had not been essentially completed at the time the application for assistance was lodged,
 - (iii) that are justified by the progress or completion of the measure in accordance with the terms of the Financing Memorandum granting the assistance and to the objectives assigned to the measure.

3. So that the sufficiency of the control systems and the audit trail can always be taken into account before a statement of expenditure is presented to the Commission, the Beneficiary Country shall ensure that the National Fund is kept informed of the procedures operated by the National ISPA Co-ordinator, by the implementing agencies and by delegated bodies to:

- (a) verify the authenticity of expenditure claimed and execution of the measure in accordance with the terms of the Financing Memorandum and the objectives assigned to the measure;
- (b) ensure compliance with the applicable rules; and
- (c) maintain the audit trail.

Section 9 Sample checks

1. The Beneficiary Country shall organise checks on measures on an appropriate sampling basis, designed in particular to:

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

2. The checks carried out for the period covered by ISPA assistance shall cover at least 15 % of the total eligible expenditure incurred on measures approved during that period. This percentage may be reduced in proportion to the expenditure incurred before the 1 January 2003. The checks shall be based on a representative sample of transactions, taking account of the requirements of paragraph 3.

identify the causes of such situations, any further examination which may be required and the necessary corrective and preventive action.

Section 16

If the presence of important management or control weaknesses, or the high frequency of irregularities encountered or doubts about whether the measure has been properly implemented does not allow the provision of a positive overall assurance as to the validity of the request for payment of the final balance and the final certificate of expenditure, the declaration shall refer to these circumstances and shall estimate the extent of the problem and its financial impact.

In such a case the Commission may ask that a further check be carried out with a view to the identification and rectification of irregularities within a specified period of time.

Section 17

Accounting information to be held and communicated to the Commission on request

1. The accounting records on measures referred to in Annex III.4.A shall as far as possible be held in computerised form. Such records shall be made available to the Commission on specific request for the purpose of carrying out documentary and on-the-spot checks, without prejudice to the requirements to supply progress reports under Section VIII of Annex III.1.
2. At the written request of the Commission, the Beneficiary Country shall deliver to the Commission the records referred to in paragraph 1 within 10 working days of receipt of the request. A different period may be agreed between the Commission and the Beneficiary Country, particularly where the records are not available in computerised form.
3. The Commission shall ensure that the information forwarded by the Beneficiary Country or collected by it in the course of on-the-spot inspections is kept confidential and secure.
4. Subject to the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following controls carried out under this Annex and to the data held, including those stored in computer systems.

Section 18

Financial corrections

1. If, after completing the necessary verifications, the Commission concludes that:
 - (a) the implementation of a measure does not justify either part or the whole of the assistance granted to it, including a failure to comply with one of the conditions in the Financing Memorandum to grant assistance and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission's approval has not been sought, or

- (b) in the case of a flat rate, it shall assess the importance of the infringement of rules and the extent and financial implications of any shortcomings in the management and control system that have led to the irregularity established.
3. Where the Commission bases its position on the facts established by auditors other than those of its own services, it shall draw its own conclusions regarding their financial consequences, after examining the measures taken by the Beneficiary Country concerned under Section VII of Annex III.1, Sections 18 (1) and (2) of this Annex, the reports supplied under Annex III.5 and any replies from the Beneficiary Country.

Section 20

1. The period of time within which the Beneficiary Country concerned may respond to a request under Section 18.(1), submit its comments and, where appropriate, make corrections, shall be two months, except in duly justified cases where a longer period may be agreed by the Commission.
2. Where the Commission proposes financial corrections on the basis of extrapolation or at a flat rate, the Beneficiary Country shall be given the opportunity to demonstrate, through an examination of the files concerned, that the actual extent of irregularity was less than the Commission's assessment. In agreement with the Commission, the Beneficiary Country may limit the scope of this examination to an appropriate proportion or sample of the files concerned.

Except in duly justified cases, the time allowed for this examination shall not exceed a further period of two months after the two-month period referred to in paragraph 1. The results of such examination shall be examined in the manner specified in the second subparagraph of Section 18 (1). The Commission shall take account of any evidence supplied by the Beneficiary Country within the time limits.

3. Whenever the Beneficiary Country objects to the observations made by the Commission and a hearing takes place under the second subparagraph of Section 18 (1), the three-month period within which the Commission may take a decision shall begin to run from the date of the hearing.

Section 21

1. Any repayment due to be made to the Commission pursuant to Section 18.3 shall be effected before the due date indicated in the request sent to the National Authorising Officer. This due date shall be the last day of the second month following the date of transmission of the request for repayment.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date referred to in paragraph 1 and ending on the date of actual payment. The rate of such interest shall be one and a half

INDICATIVE DESCRIPTION OF INFORMATION REQUIREMENTS FOR A SUFFICIENT AUDIT TRAIL (Section 6)

A sufficient audit trail, as referred to in Section 6(2), is present when, for a given measure, including individual projects within a group of projects:

1. Accounting records kept at the appropriate management level provide detailed information about expenditure actually incurred in the co-financed measure by the implementing agency, including where the latter is not the final recipient of funding, the bodies and firms involved in the implementation of the measure, whether as concession-holders, delegates or otherwise. The accounting records show the date they were created, the amount of each item of expenditure, the nature of the supporting documents and the date and method of payment. The necessary documentary evidence (e.g., invoices) is attached.
2. For items of expenditure relating only partly to the co-financed measure, the accuracy of the allocation of the expenditure between the co-financed measure and the rest is demonstrated. The same applies to types of expenditure that are considered eligible only within certain limits or in proportion to other costs.
3. The technical specifications and financial plan of the measure, progress reports, documents concerning tendering and contracting procedures, and reports on inspections of the execution of the measure in accordance with Section 4 are also kept at the appropriate management level.
4. For declaring expenditure actually incurred in the co-financed measure to the National Fund, the information referred to in paragraph 1 is aggregated into a detailed statement of expenditure broken down by category. The detailed statements of expenditure constitute supporting documents for the accounting records of the National Fund and are the basis for the preparation of declarations of expenditure to the Commission.
5. Where there is one or more delegated bodies between the implementing agency or the bodies or firms involved in implementation of the measure and the National Fund, each delegated body for its area of responsibility requires detailed statements of expenditure from the body below it as supporting documentation for its own accounting records, from which it provides at least a summary of the expenditure incurred on the measure to the body above it.
6. In the case of computerised transfer of accounting data, all the authorities and bodies concerned obtain sufficient information from the lower level to justify their accounting records and the sums reported upwards, so as to ensure a sufficient audit trail from the total summary amounts certified to the Commission down to the individual expenditure items and the supporting documents at the level of the implementing agency and the other bodies and firms involved in the implementation of the measure.

and is an integral part of this certificate, as is the accompanying report on progress of the measure compared with plans/final report.

I also certify that the measure is making satisfactory progress towards completion/has been completed in accordance with the objectives and that the information given in the progress report/final report is correct.

I further certify that the measure is being/has been implemented in accordance with the terms of the Financing Memorandum, in particular as regards:

- (1) compliance with the rules on protection of the environment, transport (including trans-European networks), competition, and the award of public contracts (Practical Guide to Phare, ISPA and Sapard);
- (2) application of management and control procedures to the measure, in particular to verify the reality of expenditure claimed and the proper execution of the measure in accordance with Section 4 and to prevent, detect and correct irregularities, pursue fraud, and recover unduly paid amounts (Annex III.5 thereto).

In accordance with Section X of Annex III.1, the supporting documents are and will continue to be available for a minimum period of five years following payment of the balance by the Commission.

I certify that:

- (1) the statement of expenditure is accurate and results from accounting systems based on verifiable supporting documents;
- (2) the statement of expenditure and the application for payment take account of any recoveries made and interest received thereon;
- (3) details of the underlying transactions are recorded, where possible, on computer files and are available on request to the Commission departments responsible

Date

		2	0		
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 (dd/mm/yyyy)

Name in capitals, stamp, position and signature of competent authority

Annex to statement of expenditure: recoveries effected since the last certified statement of expenditure and included in the present statement of expenditure

<i>Amount ordered to be recovered</i>	
<i>Debtor</i>	
<i>Date of issue of recovery order</i>	
<i>Authority which issued recovery order</i>	
<i>Date of recovery</i>	
<i>Amount recovered</i>	

INDICATIVE MODEL FOR THE DECLARATION AT THE WINDING UP OF A MEASURE¹²
(Section 14)

To the European Commission, Directorate-General for Regional Policy

INTRODUCTION

1. I, (state name in capitals, title and department), have examined the final statement of expenditure for (name and CCI reference number of ISPA measure) and the application to the Commission for payment of the balance of the Community aid.

SCOPE OF THE EXAMINATION

2. I conducted the examination in accordance with the provisions of Section 14, 15 and 16 of Annex III.4. I planned and performed the examination with a view to obtaining reasonable assurance about whether the final statement of expenditure and application for payment of the balance of the Community aid and the final report are free of material misstatement, particularly as regards the execution of the measure¹³ in accordance with the terms and conditions of the decision and the objectives assigned to it. The procedure followed and the information used in the examination, including the conclusions of checks carried out in previous years, are summarized in the attached report.

OBSERVATIONS

3. The scope of the examination has been limited by the following:
 - (a)
 - (b)
 - (c), etc.

(Indicate any obstacles encountered in the examination, for example systemic problems, management weaknesses, lack of audit trail, lack of supporting documentation, cases under legal proceedings, etc.; estimate the amounts of expenditure affected by these obstacles and the corresponding Community aid).

4. The examination, together with the conclusions of other national or Community controls to which I have had access, revealed a low/high (indicate as appropriate; if high, explain) frequency of errors/irregularities. The errors/irregularities reported have been satisfactorily dealt with by the

¹² In the case of a group of projects subject to a single decision, the declaration covers the group of projects.

¹³ Including the individual projects within a group of projects.

Date, signature

- the provision which has been infringed, the nature and amount of the expenditure; in cases where no payment has been made, the amounts which would have been wrongly paid had the irregularity not been discovered, except where the error or negligence is detected before payment and does not result in any administrative or judicial penalty,
 - the total amount and its distribution between the different sources of financing,
 - the period during which, or the moment at which, the irregularity was committed,
 - the practices employed in committing the irregularity,
 - the manner in which the irregularity was discovered,
 - the national authorities or bodies which drew up the official report on the irregularity,
 - the financial consequences, the suspension if any of payments and the possibilities of recovery,
 - the date and source of the first information leading to suspicion that an irregularity was in evidence, the date on which the official report on the irregularity was drawn up, where appropriate, the beneficiary country and the third countries involved,
 - the identity of the natural and legal persons involved, save in cases where such information is of no relevance in combating irregularities on account of the character of the irregularity concerned.
- (2) Where some of the information referred to in paragraph 1, and in particular that concerning the practices employed in committing the irregularity and the manner in which it was discovered, is not available, beneficiary countries shall as far as possible supply the missing information when forwarding subsequent quarterly reports of irregularities to the Commission.
- (3) If national provisions provide for the confidentiality of investigations, communication of the information shall be subject to the authorisation of the competent court of tribunal.

Section 5

Each beneficiary country shall forthwith report to the Commission and, where necessary, to the member states concerned, any irregularities discovered or supposed to have occurred, where it is feared that:

- They may very quickly have repercussions outside its territory and/or,
- They show that a new mal-practice has been employed.

information obtained pursuant to Sections 4, 5 and 6, and pursuant to paragraph 1 of this Section, in particular with regard to the lessons to be learned therefrom in connection with irregularities, preventive measures and legal proceedings.

- (4) At the request of a beneficiary country or of the Commission, the beneficiary countries and the Commission shall consult each other for the purpose of closing any loopholes prejudicial to Community interests, which become apparent in the course of the enforcement of provisions in force.

Section 10

The Commission shall regularly inform the beneficiary countries, in the framework of fraud prevention, of the order of magnitude of the funds involved in the irregularities, which have been discovered and of the various categories of irregularity, broken down by type and counted up.

Section 11

- (1) Beneficiary countries and the Commission shall take all necessary precautions to ensure that the information, which they exchange, remains confidential.
- (2) The information referred to in this agreement may not, in particular, be sent to persons other than those in the beneficiary countries or within the Community institutions whose duties require that they have access to it, unless the beneficiary countries supplying it has expressly so agreed.
- (3) The names of natural or legal persons may be disclosed to another beneficiary countries or Community institution only where this is necessary in order to prevent or prosecute an irregularity or to establish whether an alleged irregularity has taken place.
- (4) Information communicated, or acquired in any form whatever pursuant to this agreement shall be covered by professional confidentiality and be protected in the same way as similar information is protected by the national legislation of the beneficiary countries that received it and by the corresponding provisions applicable to the Community institutions.

In addition, that information may not be used for any purposes other than those provided for in this agreement unless the authorities that have provided it have given their express consent, and provided that the provisions in force in the beneficiary countries in which the recipient authority is to be found do not prohibit such communication or use.

- (5) Paragraphs 1 to 4 shall not impede the use, in any legal actions or proceedings subsequently instituted for non-compliance with Community rules in the area of pre-accession aid, of information obtained pursuant to this agreement. The competent authority of the beneficiary countries, which supplied this information, shall be informed forthwith of such use.

beneficiary country as national experts on secondment may assist in such checks and inspections.

Commission inspectors shall exercise their powers on production of a written authorisation showing their identity and position, together with a document indicating the subject-matter and purpose of the on-the-spot check or inspection.

Subject to the Community law applicable, they shall be required to comply, with the rules of procedure laid down by the law of the beneficiary country concerned.

- (2) Subject to the agreement of the beneficiary country concerned, the Commission may seek the assistance of officials from the beneficiary countries as observers and call on outside bodies acting under its 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 secrecy.

Section 16

- (1) Commission inspectors 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.

On-the-spot checks and inspections may concern, in particular:

- professional books and documents such as invoices, lists of terms and conditions, pay slips, statements of materials used and work done, and bank statements held by economic operators,
- computer data,
- production, packaging and dispatching systems and methods,
- physical checks as to the nature and quantity of goods or completed operations,
- the taking and checking of samples,
- the progress of works and investments for which financing has been provided, and the use made of completed investments,
- budgetary and accounting documents,
- the financial and technical implementation of subsidised projects.

Section 17

- (1) Information communicated or acquired in any form under this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by the national legislation of the beneficiary country that received it and by the corresponding provisions applicable to the Community institutions.

Such information may not be communicated to persons other than those within the Community institutions or in the beneficiary country whose functions require them to know it nor may it be used by Community institutions for purposes other than to ensure effective protection of the Communities' financial interests in all beneficiary countries. Where a beneficiary country intends to use for other purposes information obtained by officials participating under its authority as observers in on-the-spot checks and inspections, it shall seek the agreement of the beneficiary country where that information was obtained.

- (2) The Commission shall report as soon as possible to the competent authority of the country within whose territory an on-the-spot check or inspection has been performed any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission shall be required to inform the aforementioned authority of the result of such checks and inspections.
- (3) Commission inspectors shall ensure that in drawing up their reports account is taken of the procedural requirements laid down in the national law of the beneficiary country concerned. The material and supporting documents as referred to in Section 16 shall be annexed to the said reports. The reports thus prepared may be used as (admissible) evidence in administrative or judicial proceedings of the beneficiary country in which their use proves necessary, in the same way and under the same conditions as administrative reports drawn up by national administrative inspectors. They shall be subject to the same evaluation rules as those applicable to administrative reports drawn up by national administrative inspectors and shall be of identical value to such reports. Where an inspection is carried out jointly, the national inspectors who took part in the operation shall be asked to countersign the report drawn up by the Commission inspectors.

Section 18

Where the economic operators referred to in Section 14 resist an on-the-spot check or inspection, the beneficiary country concerned, acting in accordance with national rules, shall give Commission inspectors 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 country to take any necessary measures in conformity with national law.

3. *Guidelines for information and publicity activities*

Notwithstanding the detailed rules laid down under point 4, the following principles shall be applied in accordance with all information and publicity measures:

3.1 **The media**

The body responsible shall inform the media in the most appropriate manner about actions co-financed by ISPA. European Community participation shall be fairly reflected in this information.

To this end, the formal launch of projects and important phases in their implementation shall be the subject of information measures, particularly in respect of regional media (press, radio, and television). Appropriate collaboration must be ensured with the Commission delegations in the beneficiary countries concerned.

3.2 **Information events**

The organisers of information events such as conferences, seminars, fairs and exhibitions in connection with the implementation of projects part-financed by ISPA shall make explicit the participation of the European Community. The opportunity should be taken of displaying the European Community flag in meeting rooms and the European Community emblem on documents. The Commission delegations in the beneficiary countries shall assist, if necessary, in the preparation and implementation of such events.

3.3 **Information material**

Publications (such as brochures and pamphlets) about projects or similar measures should contain on the title page a clear indication of the European Community emblem where the national, regional or local emblem is used.

Where publication includes a preface, it should be signed by both the person responsible in the beneficiary country and, for the Commission, the responsible Member of the Commission or a designated representative, to ensure that European Community participation is made clear. Such publications shall refer to the body responsible for informing interested parties.

The above-mentioned principles shall also apply to audio-visual and web-site material.

4. *Obligations of the beneficiary countries*

Information and publicity shall be the subject of a coherent set of measures defined by the body responsible in collaboration with the Commission for the duration of the project. Beneficiary countries shall ensure that representatives of the Commission including its delegations are duly involved in the most important public activities connected with ISPA.

- Appropriate arrangements shall also be made, in collaboration with the Commission and its delegations in the beneficiary countries, when important events, such as high level meetings or inaugurations, are held.

6. *Final provisions*

The Commission may initiate specific additional measures as deemed appropriate after discussion with the National ISPA co-ordinator and the body responsible.

The body responsible may, in any event, carry out additional measures. It shall consult the Commission and inform it of the initiatives it takes so that the Commission may participate adequately in their realisation.

In order to facilitate the implementation of these provisions, the Commission may provide suitable assistance and may issue guidelines.

- EXAMPLE -

Title of the Project			
Location			
European emblem			
Financed by:			
	European Union (grant)	... €	... (local currency)
	IFI (loan)	... €	... (local currency)
Implementing authority:	{ Ministry of ... } { Agency of ... }		
Owner:	{ Name of the owner }		
Supervision and management:	{ Name of the Company }		
Contractor:	{ Name of the contractor }		

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EUROPEAN COMMISSION

DIRECTORATE-GENERAL
REGIONAL POLICY

Programmes and projects in France, Poland, Portugal and Slovenia; ISPA

The Director

Brussels, 21-09-2004
REGIO G4/SM/nmc D(2004) 8128

Dear Mr. Veltchev,

Subject: Signature of Financing Memorandum for ISPA Measure 2003 BG 16 P PA 004 – Technical Assistance for Institutional Strengthening and Preparation of ISPA and Cohesion Fund projects in the Water and Solid Waste Sector in Bulgaria

I have examined your letter dated 10 September 2004, regarding the above mentioned ISPA measure in detail.

I note you suggest amending the Financing Memorandum (FM) in order to modify the lists of “first group” and “second group” of municipalities and regional water companies which should benefit from assistance under the component entitled “preparation of the integrated water management projects” as defined in page 11 of the FM.

However my analysis is that there is no need to go through a lengthy procedure to amend the FM in this regard as the FM clearly states that these lists are “indicative” and that “the final list of regional water companies will be subject to the approval of the Commission” (page 11 of the FM).

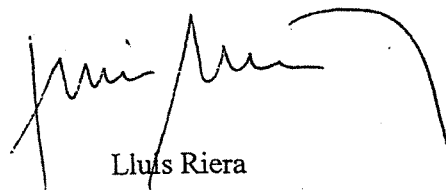
My understanding is that the final list you propose is the following:

- First group: Bourgas, Gabrovo, Kyustendil, Rousse, Sliven and Vratza
- Second Group: Blagoevgrad, Dobrich, Kurdzhali, Pernik, Plovdiv, Stara Zagora and Yambol

I am then pleased to inform you that the Commission can approve your proposal.

Mr Veltchev
National ISPA Co-ordinator
Ministry of Finance
102 Rakovski Street
B-1000 Sofia
Bulgaria

I would therefore invite you to sign the FM as it is and only attach the written approval of the final list if you think it is necessary.



Lluís Riera

Cc.: Erich Unterwurzacher, DG Regional Policy G4
Ruud van Enk, EC Delegation to Sofia, Bulgaria