

***SPECIAL ACCESSION PROGRAMME FOR AGRICULTURE AND  
RURAL DEVELOPMENT IN THE REPUBLIC OF BULGARIA***

***MULTIANNUAL FINANCING AGREEMENT***

*between*

***THE COMMISSION OF THE EUROPEAN COMMUNITIES ON  
BEHALF OF THE EUROPEAN COMMUNITY***

*and*

***THE REPUBLIC OF BULGARIA***

## MULTI-ANNUAL FINANCING AGREEMENT

The Commission of the European Communities, hereinafter referred to as "the Commission", acting for and on behalf of the European Community, hereinafter referred to as "the Community".

of the one part, and

the Republic of Bulgaria

of the other part,

hereinafter jointly referred to as "the Contracting Parties",

Whereas

- (1) A Special Pre-Accession Programme for Agriculture and Rural Development (hereinafter referred to as "SAPARD") providing for a Community financial contribution has been established by Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for Agriculture and Rural Development in the applicant countries of central and eastern Europe in the pre-accession period.<sup>1</sup>
- (2) The Republic of Bulgaria is eligible to be a beneficiary under SAPARD.
- (3) The Republic of Bulgaria has approved an Agricultural and Rural Development plan and submitted it to the Commission for approval as a Programme.
- (4) The plan was approved as an Agriculture and Rural Development Programme by a Decision taken in accordance with Article 4 (5) of Regulation (EC) No 1268/1999 on 20 October 2000. It is necessary to set out conditions for the execution of the Agriculture and Rural Development Programme, and any amendments thereof, in the Republic of Bulgaria.
- (5) The Programme should be executed on a decentralised basis following a Commission Decision conferring management of aid on an Agency in the Republic of Bulgaria taken in accordance with Article 12 (2) of Council Regulation (EC) No 1266/1999 of 21 June 1999 on co-ordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89,<sup>2</sup>

HAVE AGREED AS FOLLOWS:

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<sup>1</sup> OJ L 161, 26.6.1999, p. 87.

<sup>2</sup> OJ L 161, 26.6.1999, p.68.

## **Article 1**

### **Objective**

1. This Agreement lays down the technical, legal and administrative framework under which the Agriculture and Rural Development Programme and any amendments thereof, (hereinafter referred to as "the Programme") shall be executed in the Republic of Bulgaria. Reference to compliance with this Agreement shall be understood to also include compliance with the Programme, the Annual Financing Agreement(s) and the Commission Decision referred to in Article 3 (1) of Section A of the Annex.
2. The Republic of Bulgaria shall ensure the proper execution of the Programme in the Republic of Bulgaria on a decentralised basis in accordance with the provisions of this Agreement.
3. In case of conflict, the provisions of this Agreement shall prevail over those in the Programme.

## **Article 2**

### **Annual Financing Agreement**

1. Following the approval by the Commission of the Programme and conclusion of the present Agreement, an Annual Financing Agreement shall be concluded each year.
2. The financial commitment of the Community shall be set out in the Annual Financing Agreements. These are the only instruments that determine the financial commitment of the Community to the Republic of Bulgaria. Each Annual Financing Agreement shall set out:
  - (a) only for the year in question, the maximum Community financial commitment for the Republic of Bulgaria and the period of validity of that commitment,
  - (b) where appropriate, amendments to the provisions of this Agreement.
3. On accession to the European Union, the Republic of Bulgaria shall lose its entitlement to support under the Programme.

### **Article 3**

#### **Inspection and Audit**

1. The Commission, and the Court of Auditors of the European Communities (hereinafter referred to as "the Court of Auditors"), shall have the right concerning the execution of the Programme to send agents or duly authorised representatives, to carry out:

(a) technical or financial missions or audits in the Republic of Bulgaria;

(b) inspections for the purpose of detecting irregularities and fraud.

Such missions, audits and inspections may involve, in particular, an examination of systems and procedures, on-the-spot checks:

– of projects and beneficiaries, and

– of, in particular in respect of verification of the economic reality of quotations and receipts, as well as certificates of origin, suppliers of goods and services to beneficiaries aided under the Programme.

The Community shall give the authorities of the Republic of Bulgaria advance notice of such missions and audits.

2. The Republic of Bulgaria shall maintain records and accounts adequate to identify projects and, where appropriate, services financed by the Programme in accordance with sound accounting procedures, taking account of the requirements of this Agreement.

It shall ensure that the agents or representatives referred to in paragraph 1 have the right to inspect all relevant documentation, systems and accounts pertaining to projects and, where appropriate, services financed under the Programme.

It shall ensure that all beneficiaries are made aware no later than when their project is selected that the agents or representatives referred to in paragraph 1 have the right to carry out on-the-spot inspections.

3. The Republic of Bulgaria shall supply on request by the agents and representatives referred to in paragraph 1, all documents and information, including any created or stored in electronic form relating to commitments entered into and expenditure financed under the Programme. It shall take suitable action to facilitate the work of the aforementioned agents and representatives of the Community within the framework of this Agreement.

#### **Article 4**

##### **Dispute Settlement**

Disputes between the Contracting Parties relating to this Agreement shall be settled in accordance with Section G of the Annex.

#### **Article 5**

##### **Language**

1. Any communication between the Commission and the Republic of Bulgaria related to this Agreement shall be in English.
2. The Republic of Bulgaria shall ensure that for the Commission examination referred to Article 3 (1) of Section A of the Annex, relevant national legislation, written procedures manuals, guidelines, standard control check-lists, relevant administrative notices, standard documents and forms shall be available in English. Where documentation is needed for purposes other than for that examination, but is not available in English, the Republic of Bulgaria shall provide texts in English expeditiously following a request from the Commission.

#### **Article 6**

##### **Termination of Agreement**

1. The Commission and the Republic of Bulgaria shall each, according to their respective specific obligations, monitor execution of the Programme in the framework of this Agreement. Without prejudice to the rights and obligations set forth elsewhere in this Agreement, each of the Contracting Parties may terminate this Agreement if the other fails to perform any of its obligations relating to this Agreement. Where one party detects such a failure, it shall immediately inform the other party.

2. Where the Commission has detected non-compliance with the obligations of this Agreement, it:
- (a) shall notify the Republic of Bulgaria of its intentions, with justification(s), and,
  - (b) shall have the right, with regard to the Programme, but without prejudice to the Decisions referred to in Articles 11 and 12 of Section A of the Annex:
    - (i) to make financial corrections against the Republic of Bulgaria,
    - (ii) to cease to transfer monies to the Republic of Bulgaria,
    - (iii) to refrain from undertaking any new financial obligations on the part of the Community, and,
    - (iv) if appropriate, to terminate this Agreement with effect from the time non-compliance was first detected.

#### **Article 7 - Detailed Conditions**

Detailed conditions relating to the execution of this Agreement are set out in the Annex as follows:

- Section A: Financial Management,
- Section B: Management, Monitoring and Evaluation of the Programme,
- Section C: General Provisions,
- Section D: Quarterly and Annual Declarations of expenditure,
- Section E: Guidelines for Certifying Body,
- Section F: Text of Community legislation referred to in Regulation (EC) No. 2222/2000 on financial rules for SAPARD<sup>3</sup> adapted for this Agreement.
- Section G: Dispute settlement.

The Annex to this Agreement shall form an integral part thereof.

## **Article 8**

### **Contact Points**

Correspondence relating to any matter falling within the scope of this Multi-Annual Financing Agreement, and/or the scope of the Annual Financing Agreements provided for in Article 2, where appropriate stating the Programme's number and title, shall be addressed to the following:

*for the Community:*

Commission of the European Communities  
Directorate General Agriculture  
SAPARD Unit  
Rue de la Loi, 130, B - 1049 Brussels  
Telephone: 00 32 2 2967 337  
Fax: 00 32 2 29 51746  
E-MAIL: agri-sapard@cec.eu.int

*for the Republic of Bulgaria:*

Ministry of Finance  
Directorate National Fund,  
102, Rakovski Street  
Telephone: 00 359 2 9859 2781  
Fax: 00 359 2 980 68 63

## **Article 9**

### **Entry into Force**

This Agreement shall enter into force on the date when both Contracting Parties have notified each other of the completion of all necessary formalities for its conclusion.

## **Article 10**

### **Signature**

This Agreement shall be drawn up in duplicate in English and Bulgarian, only the English text being authentic.

Done at ....., this .....day of.....in the year two thousand .....

**For:**

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<sup>3</sup> OJ L 253, 7.10.2000, p. 5.



**Commission of the European Communities:**

.....

**For:**

**the Republic of Bulgaria:**

.....

**ANNEX**

**SECTION A**

**FINANCIAL MANAGEMENT**

**Section A**  
**Financial Management**

*Article 1*

*Scope*

This Section sets out the financial provisions for execution of the Programme. The execution of the Programme shall be subject to the adoption of a Commission Decision conferring management of aid on an Agency and to the content of that Decision.

*Article 2*

*Definitions*

For the purposes of this Agreement, the following definitions shall apply:

- (a) "**National Fund**" means the body appointed by the Republic of Bulgaria and placed under the responsibility of the National Authorising Officer which acts as the Competent Authority;
- (b) "**Competent Authority**" means the body in the Republic of Bulgaria which,
  - (i) issues, monitors and withdraws accreditation of the SAPARD Agency,
  - (ii) appoints a Certifying Body;
- (c) "**SAPARD Agency**" means the body established by the Republic of Bulgaria and operating under its responsibility which discharges an implementing function and a paying function. Only one SAPARD Agency may be accredited at any time in the Republic of Bulgaria;
- (d) "**Certifying Body**" means the body which is operationally independent of the SAPARD Agency and establishes a certificate of the accounts, reports on the management and control systems and verifies the co-financing elements;
- (e) "**SAPARD euro account**" means the account opened by the National Authorising Officer, on behalf of the Republic of Bulgaria, under their responsibility in a financial or treasury institution bearing interest under normal commercial conditions to receive payments referred to in Article 7 of this Section and used exclusively for SAPARD transactions, maintained in euro and not subject to any charges or taxes;

- (f) "**Financial year**" means the calendar year 1 January to 31 December;
- (g) "**Measure**" is the means by which a priority is implemented, which enables projects to be co-financed; a measure is assigned a contribution from the Community and the Republic of Bulgaria, as well as a set of specified targets;
- (h) "**Project**" means any operation carried out by the final beneficiaries under the Programme;
- (i) "**Final Beneficiary**" means the organisation or public or private undertakings responsible for conducting a project;
- (j) "**Community contribution**" means the part co-financed by the Community in relation to the total eligible public expenditure carried out under the Programme;
- (k) "**Public expenditure**" means Community plus other public expenditure from all public bodies in the Republic of Bulgaria.

### Article 3

#### Conferral of management of aid

1. The Republic of Bulgaria shall permit the Commission to verify compliance with the conditions of Item 1 and Item 3 of Section F, hereinafter referred to in this Section as "the conditions", and with Article 4, Article 5, Article 6 and Article 14 of this Section, prior to taking a Decision on conferral of management of aid on an Agency.

For the establishment of compliance with the conditions and with the Articles mentioned in the first subparagraph, the Commission shall:

- (a) examine the National Fund procedures and structures related to the implementation of the Programme and SAPARD Agency procedures and structures and, where appropriate, procedures and structures of other bodies to which tasks may have been delegated in accordance with Article 4 (3), Article 5 (3) and Article 6 (5) of this Section;
  - (b) carry out verifications on-the-spot.
2. The Republic of Bulgaria shall ensure that, at all times, the National Authorising Officer of the Republic of Bulgaria bears the full financial responsibility and liability for the funds resulting from the Community contribution. The National Authorising Officer

shall be the contact point for financial information sent between the Commission and the Republic of Bulgaria.

3. The Decision to confer management of aid on Agencies in the Republic of Bulgaria may be made on a provisional basis, provided that the conditions and Articles referred to in the first sub-paragraph of paragraph 1 are complied with.

#### Article 4

##### Tasks of the Competent Authority

1. The Republic of Bulgaria shall ensure that before accrediting the SAPARD Agency, the Competent Authority shall be satisfied that the administrative, accounting, payment and internal control arrangements of that Agency offer the following guarantees:
  - (a) the admissibility of claims and compliance with this Agreement are checked before payment is authorised;
  - (b) the commitments and payments effected are correctly and fully recorded in the accounts;
  - (c) the necessary documents are submitted within the time and in the form required;
  - (d) the eligibility of applications and compliance with this Agreement are checked before contracts with beneficiaries are signed and the commitment recorded.

The SAPARD Agency shall hold documents justifying the payments effected and documents concerning the carrying out of the prescribed administrative and physical controls. Where the relevant documents are held by the bodies responsible for authorising the expenditure, those bodies must transmit reports to the SAPARD Agency on the number of checks carried out, their content and the action taken in the light of the results.

2. The Republic of Bulgaria shall ensure that the decision of the Competent Authority to accredit the SAPARD Agency is taken on the basis of an examination covering the procedures and structures for the arrangements referred to in paragraph 1. The examination shall, in particular, include the arrangements adopted to protect the Community's interests,

in respect of transactions to be financed by the Programme, taking account of Article 5 and Article 14 of this Section namely:

- (a) the execution of payments,
  - (b) the safeguarding of the treasury,
  - (c) the security of computer systems,
  - (d) the maintenance of accounting records,
  - (e) the division of duties and the adequacy of internal and external controls,
  - (f) guarantees to be obtained,
  - (g) amounts to be collected,
  - (h) the selection of projects, tendering, contracting and
  - (i) the respect of procurement rules.
3. The examination referred to in paragraph 2 shall be conducted according to internationally accepted auditing standards.

The Competent Authority may delegate the conduct of the examination to other bodies. In all cases the National Authorising Officer, on behalf of the Republic of Bulgaria, retains overall responsibility

4. Accreditation may be provisionally granted for a period to be fixed in relation to the seriousness of the problem pending the implementation of any requisite changes to the administrative and accounting arrangements. In instances where such a provisional accreditation is envisaged, there must be satisfactory compliance with Article 5 and Article 14 of this Section, in particular with the following criteria:
- (i) written procedures,
  - (ii) segregation of duties,
  - (iii) pre-project approval and pre-payment checks,

- (iv) payment procedures,
- (v) accounting procedures,
- (vi) computer security,
- (vii) internal audit and, where appropriate, public procurement provisions.

5. The Competent Authority shall ensure that the SAPARD Agency accounting system meets internationally accepted accounting standards.
6. If the Competent Authority is satisfied that the SAPARD Agency examined complies with all relevant requirements, it shall proceed with its accreditation. Otherwise, it shall address to the SAPARD Agency instructions relating to the administrative and accounting arrangements, and in particular to any conditions the Agency is required to fulfil before accreditation may be granted.
7. The National Authorising Officer shall communicate to the Commission the following particulars of the SAPARD Agency accredited to carry out the tasks set out in Article 5:
  - (a) the name and statute of the SAPARD Agency;
  - (b) the administrative, accounting and internal control conditions under which payments are made relating to implementation of the Programme;
  - (c) the act of accreditation which shall consist of a written confirmation that the body meets the criteria for accreditation, and, when relevant, shall set out the instructions as to changes and the period set;
  - (d) information on the following:
    - (i) the responsibilities vested in it,
    - (ii) the allocation of responsibilities between its departments,

- (iii) its relationship with other bodies, public or private, which also hold responsibilities for executing measures under which it charges expenditure to the Programme,
- (iv) the procedures by which claims by beneficiaries are received, verified, and validated, and by which expenditure is authorised, paid and accounted for,
- (v) the provisions for internal audits.

The National Authorising Officer shall inform the Commission in advance of any proposed change in those particulars before those changes are implemented.

8. The Republic of Bulgaria shall ensure that the Competent Authority monitors accreditation and that, where there is a failure to meet any of criteria set out in paragraph 4 (i) to (vii) by the SAPARD Agency's operations, it shall immediately withdraw accreditation. The National Authorising Officer shall immediately inform the Commission.

#### Article 5

##### Implementation and payment tasks of the SAPARD Agency

1. The implementation task of the SAPARD Agency shall include:
- (a) call for applications and publicising terms and conditions for eligibility,
  - (b) project selection, including the application of ranking criteria,
  - (c) checking of applications for approval of projects against terms and eligibility conditions, and compliance with this Agreement, including, where appropriate, public procurement provisions,
  - (d) laying down contractual obligations in writing between the Agency and beneficiaries including information on possible sanctions in the event of non-compliance with those obligations and, where necessary, the issue of approval to commence work,
  - (e) execution of on-the-spot checks to establish eligibility both prior to and following project approval,



- (f) follow-up action to ensure progress of projects being implemented,
- (g) reporting of progress of measures being implemented against indicators,
- (h) ensuring that the beneficiary is made aware of the Community contribution to the project.

2. The payment task of the SAPARD Agency shall include:

- (a) checking of payment claims,
- (b) execution of on-the-spot checks to establish eligibility for payment,
- (c) authorisation of payment,
- (d) execution of payment,
- (e) accounting of commitments and payments,
- (f) where required by contractual obligations between the SAPARD Agency and the beneficiary or by provisions of the Programme, controls on beneficiaries after payment of aid to establish whether the terms and eligibility conditions of the grants continue to be respected.

3. Where functions of implementation and payment are not discharged within a single administrative structure, the SAPARD Agency may delegate them to other parties provided the conditions referred to in paragraphs 2.3.1 to 2.3.8 of Article 14 of this Section are complied with. However, in no case may the functions of execution of payment, and of accounting of commitment and payment set out in Article 14.1.2. and 14.1.3. of this Section, be delegated. The project approval, on-the-spot controls and payment processes must be based on an appropriate segregation of duties.

4. The Republic of Bulgaria shall ensure that any proposed changes in the implementing or paying arrangements of the SAPARD Agency after its accreditation are submitted by the Competent Authority to the Commission for examination in advance of their implementation.

5. The Republic of Bulgaria shall ensure that where the SAPARD Agency does not also discharge the functions of the Managing Authority provided for in Article 2 (c) of Section B,

the SAPARD Agency shall communicate to that Authority the information necessary for it to perform its functions.

6. In respect of investments in infrastructure projects of a type that would normally be expected to generate substantial net revenue, the SAPARD Agency shall assess, prior to entering into contractual arrangements with a potential beneficiary, whether the project is of this type. Where it can be concluded that it is, the Agency shall ensure that the public aid from all sources does not exceed 50% of total eligible cost.
7. In respect of investments in projects except those in infrastructure of a type not generating substantial net revenue, the SAPARD Agency shall ensure that the cumulation of public aid granted under the Programme from all sources does not exceed 50% of total eligible cost of any project. Measures for training are considered to be human capital and not investment for the purposes of this paragraph.

#### Article 6

##### Tasks of the Certifying Body

1. The Republic of Bulgaria shall ensure that the tasks of the Certifying Body shall comprise:
  - (a) delivery of a certificate on the annual account of the SAPARD Agency as well as the SAPARD euro account regarding the integrity, accuracy and veracity of those accounts,
  - (b) reporting on an annual basis on the adequacy of management and control systems of the SAPARD Agency as regards their capability to ensure conformity of expenditure with Article 7 (1) of this Section,
  - (c) verification of the existence and correctness of the national co-financing element referred to in Article 8 (2) of this Section.
2. The Certifying Body shall be a department or body which is operationally independent of the SAPARD Agency and which has an appropriate technical vocation.
3. The certificate referred to in paragraph 1 shall be based on an examination of procedures and of a sample of transactions. It shall cover compliance of payments with this Agreement as regards the capability of the SAPARD Agency's and National Fund's administrative structures to ensure that such compliance has been checked before a payment is made.

4. The report referred to in paragraph 1(b) shall state whether:
- (a) the SAPARD Agency's procedures, with particular regard to the criteria and functions in Article 4, Article 5 and Article 14 of this Section, are such as to give reasonable assurance that the operations charged to the Programme comply with this Agreement, and what recommendations have been made for the improvement of systems,
  - (b) the annual accounts referred to in Article 11 of this Section are in accordance with the books and records of the SAPARD Agency,
  - (c) the declarations of expenditure as provided for in Article 9 of this Section and Section D are a materially true, complete and accurate record of the operations charged to the Programme,
  - (d) the financial interests of the Community are properly protected as regards amounts to be collected and, where appropriate, guarantees obtained,
  - (e) recommendations on the improvement of systems addressed to the SAPARD Agency have been followed up,
  - (f) any exceptional transactions or technical difficulties have been experienced regarding the financial year concerned,
  - (g) any significant modification has been made since the previous report of the information.

The report shall be accompanied by information on the number and qualifications of staff undertaking the audit, on the work done, on the number of transactions examined, on the level of materiality and confidence obtained, on any weakness found and recommendations made for improvement, and on the operations of both the Certifying Body and other audit bodies, internal and external to the SAPARD Agency, from which all or part of the Certifying Body's assurance on the matters reported was gained.

5. The Certifying Body shall conduct its examination according to internationally accepted auditing standards and the guidelines set out in Section E. Where the body appointed is the Public Internal Financial Control Body or equivalent, it may delegate some or all of the examination tasks referred to in paragraph 3 provided the tasks are discharged effectively. The Certifying Body in all cases retains overall responsibility for the tasks.
6. The checks shall be undertaken both during and after the end of each financial year.
7. The National Authorising Officer shall ensure that the Certifying Body's certificate on the annual account and the audit report of its findings referred to in paragraph 1 shall in particular state whether it has gained reasonable assurance that the accounts to be transmitted to the Commission are true, complete and accurate, and that the internal control procedures have operated satisfactorily. The Certificate and the report shall be drawn up by 15 April at the latest of the year following the financial year concerned and communicated by the Competent Authority to the Commission by 30 April at the latest. The Monitoring Committee referred to in Article 7 of Section B shall receive a copy of the report.

#### Article 7

##### Commitments and payments from the Commission

1. Only SAPARD assistance granted in accordance with this Agreement shall be subject to co-financing by the Community.
2. Payment by the Commission of the Community contribution shall be made in accordance with the Annual Financing Agreement(s) referred to in Article 2 of this Agreement to the SAPARD euro account and provided that the verifications referred to in Article 9 of this Section have not indicated any problems.
3. Payments shall be posted to the earliest open commitment.

Community budget commitments for the Republic of Bulgaria shall be made in the Commission accounts on the basis of the Commission decision authorising signature of each Annual Financing Agreement.

Commitments shall as a general rule be effected annually. The first commitment in the Commission accounts for the Republic of Bulgaria shall be made when the Commission decision authorising signature of the Annual Financing Agreement has been taken. Subsequent commitments shall be effected each year by the Commission decision authorising signature of each Annual Financing Agreement. Each annual commitment shall be set out in the Annual Financing Agreement.

4. Unless provided otherwise in an Annual Financing Agreement, the Commission shall automatically decommit.

(a) the entire commitment relating to any year if signature of the Annual Financing Agreement has not been taken by the end of the following year;

(b) any part of a commitment which has not been settled by the payment on account or for which it has not received a payment application containing all elements to enable payment by the Commission pursuant to paragraph 6 by the end of the second year following the year of commitment.

5 Subject to available appropriations, the Commission shall make an initial payment on account to the SAPARD euro account. This payment, which may be made in more than one instalment, shall not exceed 49% of the annual commitment to the Republic of Bulgaria set out in the first Annual Financing Agreement. The payment shall be made after adoption of the Programme, on condition that the SAPARD Agency accreditation has been subject to the Decision referred to in Article 3 (1) of this Section, and after this Agreement and the first Annual Financing Agreement have been concluded. The payment shall be repaid in euro with all interest accrued if no acceptable payment application in accordance with Article 9 of this Section is received by the Commission within 18 months of the date of the initial instalment of that payment.

Where the payment on account made is less than the 49%, requests may be submitted to the Commission for additional payments on account within that overall limit, based on the sum of expenditure declarations referred to in Article 8 (1) (b) of this Section, but not yet settled. Subject to availability of appropriations, the Commission shall make further payments on account reflecting this anticipated need.

Throughout the lifetime of the Programme, the National Authorising Officer shall use the payment on account only to pay the Community contribution to expenditure in compliance with this Agreement. All interest earned on the payment on account shall be used exclusively for the Programme.

6. Interim payments, other than those on account, shall be made by the Commission to reimburse expenditure actually paid under the Programme as certified by the National Authorising Officer in accordance with Article 9 of this Section. Such payments shall be calculated and made at the level of measures contained in the financing plan of the Programme.

They shall be subject to the following conditions:

- (a) the latest annual implementation report due, containing the information specified in Article 8 (5) of Section B, must have been forwarded to the Commission;
- (b) the mid-term evaluation referred to in Article 10 of Section B when due, must have been forwarded to the Commission;
- (c) expenditure by measure must be consistent with the Programme including, where appropriate, flexibility between measures and within the limit of the Community contribution pursuant to the concluded Annual Financing Agreement;
- (d) any recommendations as referred to in Article 8 (3) of Section B must have been acted upon within the specified period, or where those recommendations are intended to remedy serious shortcomings in the monitoring or management system which undermine proper financial management of the Programme, reasons have been communicated by the Republic of Bulgaria to explain why no action has been taken; any requests for corrective action by the Commission must have been acted upon;
- (e) account must be taken of the financial consequences of any Decisions taken in accordance with Article 11 and Article 12 of this Section;

- (f) information requested by the Commission necessary to clarify any elements relevant to the payment application has been provided.

The Republic of Bulgaria and National Authorising Officer shall be informed immediately by the Commission if any of these conditions is not fulfilled. They shall take the necessary steps to remedy the situation before the payment application is accepted.

- 7. The combined total of the payments referred to in paragraphs 5 and 6 which are made in respect of the Programme, prior to the payment made in accordance with paragraph 8, shall not exceed 95% of the Community commitment for the Programme.
- 8. The final balance of the Programme shall be paid:
  - (a) if the National Authorising Officer submits to the Commission within six months of the deadline for payment laid down in the final Annual Financing Agreement, a certified statement of expenditure actually paid in accordance with Article 9 of this Section;
  - (b) the final report on implementation has been submitted to and approved by the Commission;
  - (c) when the Decisions referred to in Articles 11 and 12 of this Section have been adopted.

#### Article 8

##### Payments from the SAPARD Agency

- 1. The Republic of Bulgaria shall ensure that payments from the SAPARD Agency to the beneficiary are:
  - (a) made in national currency and debited as appropriate against the SAPARD euro account. The payable order(s) to the beneficiary(ies) or to their assignee(s) shall as a general rule be issued within 5 days of this debit,
  - (b) based on declarations of expenditure incurred by the beneficiary evidenced by original receipted invoices or other relevant documents where, according to the Programme,

aid is not a function of expenditure. Such declarations shall include only expenditure or, in the case where aid is not a function of expenditure, events occurring no earlier than the date the contract was concluded making the claimant a beneficiary under the Programme for the project concerned, except as regards that for feasibility and related studies, but in no case shall relate to projects selected, contracts concluded by or on behalf of the SAPARD Agency and beneficiaries, and expenditure paid earlier than the date(s) specified in the Commission Decision referred to in Article 3 (1) of this Section. Where original invoices or the other relevant documents referred to in this sub-paragraph are not retained by the SAPARD Agency following receipt, the SAPARD Agency shall ensure that copies shall be taken and arrangements made to ensure that the originals will be made available for audit and inspection purposes.

2. The SAPARD Agency shall ensure that the Community contribution is made simultaneously with expenditure by any other public bodies. However, in the case of beneficiaries in the public sector, the Community contribution may be made later than that by other public bodies. In no case may the Community contribution be made before the contributions by public bodies in the Republic of Bulgaria.
3. The SAPARD Agency shall ensure that total public expenditure by all public bodies in the Republic of Bulgaria for each measure and project is identifiable in the SAPARD Agency.
4. The SAPARD Agency shall maintain records of each payment which include at least the following information:
  - (a) the amount in national currency,
  - (b) the corresponding amount in euro.

The ratios of Community and national contributions to public expenditure, and of total public expenditure to total eligible costs, shall be determined in national currency.

5. The SAPARD Agency shall ensure that any amount(s) which it finds has been inadvertently paid in excess of the sum due, noted by it and which have been incorporated in expenditure declarations charged to the SAPARD euro account, are recorded within 5 days in the SAPARD euro account and deducted from the next application for payment to the Commission referred to in Article 9 of this Section.



6. The SAPARD Agency shall ensure timely treatment of payment requests by beneficiaries. In cases where the interval between receipt of the supporting documents needed to make the payment and issuing of the payment order exceeds three months, Community co-financing may be reduced.

#### Article 9

##### Application for payment from the Community

1. The SAPARD Agency shall, on a quarterly basis, present payment applications in accordance with the Form D-1 as set out in Section D, signed and certified, and transmitted by the National Authorising Officer, on behalf of the Republic of Bulgaria, to the Commission within one month of the end of each quarter. However, supplementary applications may be submitted only if justified on the basis of the risk of the net balance in the SAPARD euro account being exhausted before the next quarterly application has been processed.
2. The Commission shall verify the payment applications taking account of Article 7 of this Section.
3. Expenditure declared in the payment applications shall be reimbursed by the Commission within two months of an acceptable payment application being received by it provided that:
  - (a) the verifications in Article 7 (6) and where appropriate Article 7 (8) of this Section, have not indicated any problems;
  - (b) no suspension of payments has been decided concerning the measure(s) that is or are the subject of the application in question;
  - (c) appropriations are available.

#### Article 10

##### Exchange rate and interest

1. The Republic of Bulgaria shall ensure that the rate recorded for conversion between euro and national currency is that for the Republic of Bulgaria published by the European Central Bank on the Internet at 14.15 C.E.T.:

- (a) for payments by the SAPARD Agency, the rate on the last but one working day at the Commission in the month preceding the month during which the expenditure was recorded in the accounts of the SAPARD Agency. The date the payment order is issued to the beneficiary or their assignee shall be the date shown in the accounts;
- (b) for overpayments by the SAPARD Agency, the rate on the last but one working day at the Commission in the month preceding the month during which the overpayment was first noted;
- (c) for amounts fixed by the clearance of accounts and conformity clearance Decisions, the rate on the last but one working day at the Commission in the month preceding the month during which the Decision was taken;
- (d) for debts recovered in accordance with Article 14 2.8 of this Section, the rate on the last but one working day at the Commission in the month preceding on the month during which the debt was recovered;
- (e) for irregularities recovered in accordance with Article 13 of this Section, the rate on the last but one working day at the Commission in the month preceding the month during which the amount was recovered;
- (f) for interest earned on the SAPARD Agency account(s), the rate on the day the interest was credited to the account which must be at least monthly.

In the event that a rate for a day is not published, the rate for the most recent previous working day of publication shall be used.

2. Where the time-limits in the Decisions taken pursuant to Article 11 and 12 of this Section are not complied with, any outstanding amount shall generate interest at a rate equal to the Euribor rate for three month deposits published by the European Central Bank plus 1.5% points. That rate shall be the monthly average of the month in which those Decisions were taken.
3. The Republic of Bulgaria shall ensure that interest earned on the SAPARD euro account is used exclusively for the Programme. Accounts related to SAPARD funds held by the SAPARD Agency shall bear interest under normal commercial conditions. Interest earned

on those accounts attributable to the Community contribution shall also be used exclusively for the Programme and shall not be subject to any charges or taxes. All interest attributable to the Community contribution shall be additional to the amounts included in the Annual Financing Agreements and shall be counted as a further contribution by the Community. Appropriate Programme changes shall be made pursuant to Article 7 of Section B.

### Article 11

#### *Clearance of accounts Decision*

1. The Republic of Bulgaria shall ensure that the National Authorising Officer shall submit to the Commission, by 30 April at the latest of the year following the financial year concerned, the annual accounts of the SAPARD Agency accompanied by the information referred to in Article 6 (1) of this Section, concerning the SAPARD Agency and the National Fund, and relating to transactions financed under the Programme.
2. The accounts referred to in paragraph 1 shall be submitted using Form D2 as set out in Section D.
3. Expenditure declared in respect of a given month must relate to payments made less any receipts.

The relevant date for payments shall be the date on which the SAPARD Agency has sent the payment order to a financial institute or beneficiary or their assignee. The relevant date for receipts shall be the date on which the amount was recorded in the account.

Expenditure declared may include corrections to data reported for previous months in the same financial year.

For a given financial year, all transactions recorded in the accounts of the SAPARD Agency in that year shall be taken into consideration.

4. Where payments due under the Programme are encumbered by claims, they shall be deemed to have been made in their entirety within the meaning of the first subparagraph of paragraph 3:

- on the date of the payment of the sum still due to the beneficiary, if the claim is less than the expenditure settled,
- on the date of the settlement of the expenditure, if the latter is less than or equal to the claim.

5. Payment orders not executed and payments debited to the account and then re-credited shall be shown in Form D 2 as deductions from expenditure in respect of the month during which the failure to execute or the cancellation is reported to the SAPARD Agency.
6. The Commission shall, by 30 September at the latest of the year following the financial year concerned, on the basis of the information referred to in paragraph 1, take a Decision to clear the account of the SAPARD Agency (hereinafter referred to as "the clearance of accounts Decision").

The clearance of accounts Decision shall cover the integrity, accuracy and veracity of the accounts submitted and shall not prejudice the adoption of a subsequent conformity clearance Decision, pursuant to Article 12 of this Section.

The clearance of accounts Decision shall also cover the clearance of the SAPARD euro account and amounts to be credited to that account in accordance with Article 13 (2) and Article 14 (2.8) of this Section.

7. The Commission shall communicate to the Republic of Bulgaria the results of its verifications of the information supplied, together with any amendments it proposes, by 15 July at the latest following the end of the financial year. If, for reasons attributable to the Republic of Bulgaria, the Commission is unable to clear the accounts of the Republic of Bulgaria by 30 September at the latest, the Commission shall notify the Republic of Bulgaria of further enquiries it proposes to undertake.
8. The amount fixed by the clearance of accounts Decision shall normally be added to or deducted from the next payment(s) due from the Commission to the Republic of Bulgaria. However, where the amount to be deducted fixed by the clearance of accounts Decision exceeds the level of possible subsequent payments, the National Authorising Officer, on behalf of the Republic of Bulgaria, shall ensure that the amount not covered by the balance shall be credited to the Commission in euro within two months of

notification of that Decision. The Commission may however, on a case by case basis, decide that any amount to be credited to it shall be offset against payments due to be made by the Commission to the Republic of Bulgaria under any Community instrument.

## Article 12

### Conformity clearance Decision

1. The Commission shall take a Decision (hereinafter referred to as "the conformity clearance Decision") on the expenditure to be excluded from Community co-financing where it finds that expenditure has not been effected in compliance with this Agreement.
2. When, as a result of any enquiry, the Commission considers that expenditure has not been effected in compliance with this Agreement, it shall, before a conformity clearance Decision is taken, notify in writing the National Authorising Officer of the results of its checks and indicate the corrective action to be taken to ensure future compliance. The communication shall make reference, as appropriate, to the relevant articles of this Multi-annual Financing Agreement, the Programme, the Decision referred to in Article 3 (1) of this Section and the Annual Financing Agreement(s).
3. The National Authorising Officer shall reply in writing within two months, and the Commission may modify its position in consequence. In justified cases, the Commission may agree to extend that period for reply.

After expiry of the period for reply, the Commission shall invite the Republic of Bulgaria to a bilateral discussion, and both parties shall endeavour to reach an agreement as to the action to be taken and on an evaluation of the gravity of the infringement and the financial loss to the Community. Following that discussion and any deadline after the discussion fixed by the Commission for the provision of further information or, where the Republic of Bulgaria does not accept the invitation to the meeting before the deadline set by the Commission, after that deadline has passed, the Commission shall formally communicate its conclusions to the Republic of Bulgaria.

If no agreement is reached, the National Authorising Officer, on behalf of the Republic of Bulgaria, may ask for a procedure provided for in Item 9 of Section F to be initiated, with a view to mediating between the respective positions within a period of four months. The results of that procedure shall be set out in a report drawn up by the

Conciliation Body taking account of the provisions laid down in Item 9 of Section F. The report shall be sent to and examined by the Commission before a conformity clearance Decision is taken.

4. The Commission shall evaluate the amounts to be excluded having regard in particular to the degree of non-compliance found. The Commission shall take into account the nature and gravity of the infringement and the extent of the risk of financial loss to the Community.
5. A refusal to finance may not involve expenditure for a measure in respect of which the final payment was effected prior to 24 months preceding the Commission's written communication of the results of the checks referred to in paragraph 2 to the National Authorising Officer. This shall not apply to the financial consequences of irregularities as referred to in Article 13 of this Section. Where texts necessary for the performance of those checks are not available in English this period shall be extended by the length of time between the Commission requesting documents in English and their receipt.
6. In cases where controls have not been correctly established or executed by the SAPARD Agency, a financial correction may be applied which may include application of flat rate corrections the level of which shall be proportionate to the risk of financial loss for the Community.
7. The amount to be recovered in accordance with the conformity clearance Decision, shall be communicated to the National Authorising Officer who shall, on behalf of the Republic of Bulgaria, ensure that the amount is credited to the SAPARD euro account within two months of the date the conformity clearance Decision was taken and deducted from the next application for payment to the Commission. The Commission may, however, on a case by case basis, decide that any amount to be credited to it shall be offset against payments due to be made by the Commission to the Republic of Bulgaria under any Community instrument.
8. The amount to be recovered in accordance with the conformity clearance Decision shall not be reallocated to the Programme.

Article 13

Irregularity and control provisions

1. The Republic of Bulgaria shall without prejudice to the provisions of this Agreement, in accordance with national provisions laid down by law, regulation or administrative action take the actions necessary to:
  - (a) satisfy itself that transactions financed by the Programme are actually carried out and executed correctly;
  - (b) prevent and deal with irregularities;
  - (c) recover sums lost as a result of irregularities or negligence.

The Republic of Bulgaria shall inform the Commission of actions taken for those purposes and in particular of the state of the administrative and judicial procedures.

2. Sums recovered as referred to in paragraph 1 (c) relating to the Community contribution shall be paid to the accredited SAPARD Agency and deducted by it from the expenditure which has been financed by the Programme.
3. The Republic of Bulgaria shall make available to the Commission all information required for the proper working of the Programme and shall take all suitable action to facilitate the supervision which the Commission considers necessary within the framework of the management of Community financing, including inspections on-the-spot.
4. Authorised representatives appointed by the Commission to carry out inspections on-the-spot shall have access to the books and all other documents, including information created or stored in electronic form, relating to expenditure financed by the Programme.

They may, in particular, check:

- (a) whether administrative practices are in accordance with this Agreement;

- (b) whether the requisite supporting documents exist and tally with the transactions financed by the Programme;
- (c) the conditions under which transactions financed by the Programme are carried out and checked.

The Commission shall give due notice before the inspection is carried out to the Republic of Bulgaria. Officials of the Republic of Bulgaria may take part in the inspection.

- 5. At the request of the Commission and with the agreement of the Republic of Bulgaria, inspections or inquiries concerning the transactions referred to in this Agreement may be carried out by the authorities of the Republic of Bulgaria.

Officials of the Commission may also participate in those inspections or inquiries.

- 6. Without prejudice to paragraphs 1 to 5, the Republic of Bulgaria shall apply the provisions of Item 4, Item 5, Item 6 and Item 7 of Section F, concerning irregularities and the organisation of an information system in this field.

#### Article 14

#### FUNCTIONS AND CRITERIA FOR ACCREDITATION AS A SAPARD AGENCY

The Republic of Bulgaria shall ensure the SAPARD Agency executes the following:

### **1. FUNCTIONS**

- 1.1. Authorisation of commitments and payments: the objective of this function is the establishment of the amount that shall be paid to a claimant or to their assignee(s) in compliance with this Agreement, in particular those concerning the eligibility of applications for approval and claims for payment, compliance with commitments



entered into concerning project approvals, tendering and contracting procedures, and verification of the work carried out or services supplied.

- 1.2. Execution of payments: the objective of this function is the issuing of an instruction to the Agency's bankers, or, in appropriate cases, a governmental payments office, to pay the authorised amount to the claimant (or their assignee(s)).
- 1.3. Accounting for commitments and payments: the objective of this function is the recording of the commitment and payment in the Agency's separate books of accounts of SAPARD expenditure, which will normally be in the form of an electronic data processing system, and the preparation of periodic summaries of expenditure, including the periodic and annual declarations to the Commission. The books of account shall also record details of debts to be recovered.
- 1.4. Control: the objective of this function is to verify the facts on which applications and claims are based in order to review their compliance with this Agreement and the terms and conditions of the commitment between the SAPARD Agency and the beneficiary. Controls shall, where appropriate, include pre-project selection checks, remeasurement, checks on quantity and quality of goods or services delivered, an analysis or a sample control, pre-payment checks and any special provisions for implementing this Agreement as to the eligibility of the expenditure. In order to establish eligibility, controls shall include, where appropriate, examinations of a technical nature, which can involve economic financial assessments and checks of a specific agricultural, technical or scientific nature.
- 1.5. Reporting: the objective of this function is to ensure that progress of the individual projects and measures is reported in a way which helps to ensure the effective and efficient implementation of the measure.

## **2. CRITERIA**

- 2.1. The SAPARD Agency's administrative structure shall provide for the separation of the three functions of authorisation, execution and accounting. Each of those functions shall be the responsibility of a separate administrative sub-unit whose responsibilities shall be defined in an organisation chart.

2.2. The SAPARD Agency shall adopt the following procedures or those offering equivalent guarantees:

2.2.1. The SAPARD Agency shall lay down detailed written procedures for the receipt, recording and processing of applications for project approval, claims, invoices and supporting documents and control reports including a description of all documents to be used.

These procedures shall ensure that only claims for payment or projects selected which comply with the project selection criteria are processed and shall ensure the maintenance of a project file with all relevant documentation to audit the project.

2.2.2. The division of duties shall be such that no official has responsibility at any time, for any project, for more than one of the responsibilities for approving projects, authorising payment, paying or accounting for sums. The work of each official performing one of those tasks shall be supervised by a second official. The responsibilities of each official shall be defined in writing, and financial limits shall be set to their authority. Staff training shall be appropriate, and staff in sensitive positions shall be rotated or subject to increased supervision.

2.2.3. Each official responsible for authorisation shall have at their disposal a detailed checklist of the verifications required to be undertaken, and in the supporting documents of the claim shall attest that these checks have been performed. This attestation may be made by electronic means subject to the control requirements referred to in point 2.2.6.

There shall be evidence of review of the work by a more senior member of staff. The analysis, the appraisal and approval of the projects shall be evidenced in writing. The analysis of the project shall be guided by the principles of sound financial management.

2.2.4. An application or claim shall be authorised only after sufficient checks have been made to verify that it complies with this Agreement. The checks shall include those required by the provisions governing the specific measure under which aid is claimed, and those required to prevent and detect fraud and irregularity with particular regard to the risks presented.

As part of the authorisation function, applications shall be subject to checks which include establishment of adherence to terms and conditions, eligibility, completeness of documents, correctness of supporting documents, date of receipt.

All checks to be undertaken shall be specified in a check-list, and their performance shall be attested for each application and claim, or for each batch of applications or claims.

As regards the services or goods delivered, the control shall consist of:

- Documentary control: to ensure that data on quantity, quality and price of the goods or services on the invoice reconcile with those ordered;
- Physical control: to ensure that the quantity and quality of the goods or services match those mentioned in the invoice or claim form.

This control of services or goods can also be performed on a continuous basis during delivery that is to say, when initial or interim payments are made.

2.2.5. Procedures shall ensure that payment is made only to the claimant, to their bank account or to their assignee. The payment shall be executed by the Agency's banker, or, as appropriate, a governmental payments office, or the cheque mailed, as a general rule, within 5 days of the date of debit against the SAPARD euro account.

All payments for which transfers are not executed, shall be re-credited to the SAPARD euro account within 5 days of notification of their non-execution.

Amounts arising from cheques not cashed within the period of their validity, shall be credited to the SAPARD euro account within 5 days of notification of their non-execution.

No payments shall be made in cash. The approval of the authorising official and supervisor may be made by electronic means, provided an appropriate level of security is ensured, and the identity of the signatory is entered in the electronic records.

2.2.6. Where applications, claims or invoices are processed using a computer system, access to the computer system shall be protected and controlled in such a way that:

- (a) all information entered into the system is properly validated to ensure that input errors are detected and corrected and submitted to logical checks to detect inconsistent or extraordinary data,
- (b) no data may be entered, modified, or validated, except by authorised officials to whom individual passwords are attributed,

- (c) the identity of each official entering, or modifying, data or programmes is recorded in an operations log,
- (d) passwords shall be changed regularly to avoid misuse,
- (e) hard and software changes shall be tested, and approved before implementation, that is, subject to a change management procedure,
- (f) computer systems shall be protected from unauthorised access by physical controls, and the data shall be backed up by copies stored in a separate, safeguarded location,
- (g) all data entry shall be checked by logical checks aimed at detecting inconsistent or extraordinary data,

A comprehensive information technology security policy shall be developed on the basis of an approved strategy for information and communication technology to ensure confidentiality, integrity and availability of all data.

2.2.7. Procedures shall ensure that changes in rates of aid or terms and conditions for the grant of aid are recorded and the instructions, databases and checklists up-dated in good time.

2.3. Part or all of the authorisation and the control function may be delegated to other bodies provided that the following conditions are fulfilled:

2.3.1. The responsibilities and obligations of the other bodies, in particular concerning the control and verification of compliance with this Agreement shall be clearly defined.

2.3.2. The bodies shall have effective systems for ensuring that they fulfil their responsibilities in a satisfactory manner.

2.3.3. The bodies shall confirm to the Agency that they in fact fulfil their responsibilities and describe the means employed.

2.3.4. The SAPARD Agency shall be informed on a regular and timely basis of the results of controls effected, so that the adequacy of the controls may always be taken into account before a claim is authorised or settled or an invoice is paid. The work performed shall be described in detail in a report accompanying each application and claim, batch of applications and claims or, when appropriate, in a report covering one year. The report shall be accompanied by an attestation of the eligibility of the approved applications and

claims and of the nature, scope and limits of the work done. The report shall identify physical and administrative checks performed, the method described, the results of all inspections and the action taken in respect of discrepancies and irregularities reported upon. The supporting documents submitted to the Agency shall be sufficient to provide assurance that all the required checks on the eligibility of the claims or invoices authorised for payment have been performed.

2.3.5. The SAPARD Agency must be satisfied, before the project is approved and before the aid is granted, that the other bodies have followed procedures which comply with the criteria set out in this Article.

2.3.6. Criteria for assessing applications and their order of priority shall be clearly defined and documented.

2.3.7. Where documents relating to the claims authorised, expenditure committed and controls effected as well as those relating to projects not selected are retained by other bodies, both these bodies and the Agency shall set up procedures to ensure that the location of all such documents that are relevant to specific payments made by the Agency is recorded, and that these documents shall be made available for inspection at the Agency's offices at the request of the persons and bodies who would normally have the right to inspect such documents, including:

- (i) the Agency's staff who deal with the claim,
- (ii) the Agency's internal audit service,
- (iii) the Certifying Body that attests the Agency's annual declaration,
- (iv) duly authorised agents or representatives of the Community.

2.3.8. Written agreements shall be concluded between the SAPARD Agency and bodies to which functions of the SAPARD Agency have been delegated. Such agreements shall clearly identify the functions to be performed by the delegated body and the type of supporting documents and reports to be sent to the SAPARD Agency within specified time limits. The overall system, including the delegated functions performed by other bodies, shall be set out in an organisation chart.

The agreement shall provide for access by duly authorised agents or representatives of the Community to information held by these delegated bodies and for the investigation by such officials of applications including the carrying out of checks on projects and recipients of aid.

- 2.4. Accounting procedures shall ensure that declarations of expenditure to the Commission are complete, accurate and timely, and that any errors or omissions are detected and corrected, in particular through checks and reconciliation performed at intervals of not more than three months. A full audit trail for every item entered into the accounts shall be provided.

The SAPARD Agency's accounting procedures shall ensure that the accounting system can produce, in euro and national currency, for each regional office, and for each project, contract or measure and sub-measure, the total cost, the committed expenditure, part payments and balance payments. Deadlines shall be set for the cancellation of commitments where work has not been completed within an agreed timetable. Such cancellations shall be appropriately recorded in the accounting system.

- 2.5. The SAPARD Agency shall ensure the existence of an internal audit or equivalent service to ensure that the Agency's system of internal control operates effectively. The internal audit service shall be independent of the Agency's other departments and shall report directly to the Agency's top management. The internal audit service shall verify that procedures adopted by the Agency are adequate to ensure that compliance with this Agreement is verified, and that accounts are accurate, complete and timely. Verifications may be limited to selected measures and sub-measures and to samples of transactions provided that an audit plan ensures that all significant areas, including the departments and bodies responsible for authorisation and those departments and bodies to which functions have been delegated, are covered over a period not exceeding three years. The internal audit service's work shall be performed according to internationally accepted auditing standards, shall be recorded in working papers and shall result in reports and recommendations addressed to the Agency's top management. The audit plans and reports shall be made available to the Certifying Body and to duly authorised agents or representatives of the Community to undertake financial audits and for the sole purpose of appraising the effectiveness of the internal audit function.
- 2.6. The rules for the procurement by public bodies of services, works and supplies in the Republic of Bulgaria shall be consistent with the rules set out in the Commission manual

entitled "Service, Supply, and Work Contracts concluded within the Framework of Community Co-operation for the Third Countries". However, the requirement for ex-ante approval by the Commission included therein shall not apply.

- 2.7 For procurement other than that provided for in point 2.6, the following must originate in the Community or in the countries referred to in Item 8 of Section F:
- (i) Services, works, machinery and supplies procured;
  - (ii) Supplies and equipment purchased by a contractor for works or service contracts if the supplies and equipment are destined to become the property of the project once the contract has been completed.
- 2.8. The Agency shall set up, in respect of the Programme, a system for the recognition of all amounts due and for the recording in a debtors ledger of all such debts, including irregularities prior to their receipt. The debtors ledger shall be inspected at regular intervals with the aim of taking action to collect debts that are overdue, in particular in the case of forfeited guarantees and reimbursed payments. Without prejudice to Article 8 (5) of this Section or any national provisions concerning recovery of debts, any financial contribution charged to the Community in respect of these sums including irregularities shall be written off at the end of the second year following its registration in the debtors ledger and deducted from the next application for payment as provided for in Article 9 of this Section. Any interest recovered by the SAPARD Agency attributable to the Community contribution in respect of debts recovered shall be recorded in the SAPARD Agency account(s) and used exclusively for the Programme. The SAPARD Agency shall ensure that any amounts recovered are credited to the SAPARD euro account within 5 days of the date of recovery.
- 2.9 The SAPARD Agency shall ensure that adequate publicity is given to the availability of support. This publicity shall make reference to Community co-financing and be directed towards all potential project managers and operators so as to obtain as wide as possible a selection of potential project managers and operators. Standard application forms with clear guidelines for completion and conditions for eligibility shall be drawn up in advance of the launch of the scheme. No charges shall be imposed on potential beneficiaries or on beneficiaries for information, including application forms, relating to the Programme. This provision is without prejudice to the application of charges levied generally in the rest of the economy.

- 2.10. The SAPARD Agency shall process applications from beneficiaries in a timely manner.
- 2.11. The SAPARD Agency shall install an appropriate system to report on progress of each project and measure towards pre-defined indicators. Where appropriate these indicators shall, with the approval of the Monitoring Committee and subject to Commission approval, be revised.
- 2.12. Where delays arise in meeting pre-defined targets, action shall be taken including where appropriate, withdrawal of approval of a project. Proper records shall be kept of all action taken.
- 2.13. An appropriate management information system shall be used for the speedy generation of appropriate reports on the projects and measures. These reports shall be made available to the Managing Authority, the Monitoring Committee and the Commission on request.

Article 15

Record keeping

The SAPARD Agency and the National Fund shall keep all documents including those relating to projects that have not been selected, at the disposal of the Commission until expiry of the 24 month period referred to in Article 12 (5) of this Section. However as regards irregularities referred to in Article 12 (5) and Article 13, documents shall be at the disposal of the Commission until completion of all follow-up work.

The Agency and the National Fund shall ensure that if they do not hold those documents themselves, the documents are kept at the disposal of the Commission for that period.



## **SECTION B**

### **MANAGEMENT, MONITORING AND EVALUATION OF THE PROGRAMME**

## **SECTION B Management, Monitoring and Evaluation of the Programme**

### Article 1

#### Scope

This Section sets out the provisions for the management, monitoring and evaluation of the Programme. The Republic of Bulgaria shall ensure that it applies these provisions.

### Article 2

#### Definitions

For the purposes of this Agreement:

- (a) **"priority"** means one of the principal needs recognised as requiring assistance to attain the objectives of the strategy adopted in the Programme;
- (b) **"sub-measure"** means the components making up a measure that may also be subject to specific objectives;
- (c) **"Managing Authority"** means the public or private authority or body or unit or section designated by the Republic of Bulgaria, [which may or may not be within the SAPARD Agency], to gather the information on monitoring and evaluation of the Programme and to report this information to the Monitoring Committee and the Commission.

### Article 3

#### Partnership

1. The Programme shall be implemented in close collaboration between the Commission and the Republic of Bulgaria, together with the authorities and bodies designated by the Republic of Bulgaria namely:
  - (a) any relevant regional and local authorities and other competent public authorities,
  - (b) the economic and social partners,
  - (c) any other relevant competent bodies.

2. The collaboration shall be conducted in full compliance with the respective institutional, legal and financial powers of the authorities and bodies designated in accordance with paragraph 1.

In designating the most representative partnership at national, regional, local or other level, the Republic of Bulgaria shall create a wide and effective involvement of all the authorities and relevant bodies, according to national rules and practice, taking account of the need to promote equality between men and women and sustainable development through the integration of environmental protection requirements.

All the designated parties, hereinafter referred to as "the partners", shall pursue the objectives of the Programme.

3. Partnership shall cover the financing, implementing, monitoring and evaluation of the Programme. The Republic of Bulgaria shall ensure the involvement of the relevant partners for the duration of the Programme.

#### Article 4

##### Eligibility of expenditure

1. Expenditure shall be eligible for Community support under SAPARD only, if in addition to being in conformity with this Agreement, the use of SAPARD assistance is also in accordance with the principles of sound financial management and, in particular, of economy and cost-effectiveness.

Costs explicitly provided for in the standard draft contrac(s) per measure issued by the SAPARD Agency to the beneficiaries shall apply. The Commission shall inform the Republic of Bulgaria of its acceptance or otherwise of the proposed rules within three months of their receipt but no later than the Commission Decision conferring management of aid provided for in Article 3 (1) of Section A is taken and without prejudice to that Decision.

2. Unless the Commission expressly and explicitly decides otherwise, the following expenditure is not eligible for Community co-financing under the Programme:
  - (a) Purchase, rent or leasing of land and existing buildings irrespective of whether the lease results in ownership being transferred to the lessee;

- (b) Taxes, customs and import duties which
  - (i) are recoverable, refunded or offset by any means whatsoever,
  - (ii) do not form part of the general taxation system in the Republic of Bulgaria,
  - (iii) bear disproportionately on any part of the Programme;
- (c) Operating costs including maintenance and rental costs;
- (d) Leasing, except where the lease results in ownership being transferred to the lessee;
- (e) The costs of any services, supplies and works costing more than 10 000 euro equivalent in national currency for which the beneficiary has not obtained quotations from at least three suppliers, the originals of these being included in the declaration of expenditure referred to in Article (8) (b) of Section A;
- (f) Bank charges, costs of guarantees and similar charges;
- (g) Conversion costs, charges and exchange losses associated with the SAPARD euro account;
- (h) Costs incurred by public administration, including the SAPARD Agency and, in particular, overheads, rentals and salaries of staff employed on activities of management, implementation, monitoring and control;
- (j) That part of costs, of architects', engineers' and consultants' fees, legal fees, feasibility studies, acquisition of patents and licences, for preparing and or implementing a project, directly related to the measure, which exceeds 12% of the total eligible cost of the project;
- (k) Expenditure related to the products or services that do not respect the provisions referred to in paragraphs 2.6 and 2.7 of Article 14 of Section A;
- (l) Expenditure on projects which have generated user or participant fees prior to project completion without the amounts concerned having been deducted from eligible costs;
- (m) Promotion costs, other than in the collective interest.

3. The following expenditure may be eligible only on the basis of a Decision taken by the Commission following a case-by-case examination which shall be issued within three months of submission of a complete reasoned request to the Commission by the Republic of Bulgaria:
  - (a) Payment in kind,
  - (b) Expenditure to purchase second-hand equipment,
  - (d) Expenditure, not involving infrastructure nor human capital, incurred by a beneficiary where more than 25% of their capital is held by a public body or bodies.
  
4. Where specified in the Programme, the Republic of Bulgaria shall ensure, for a given measure, that a project remains eligible for Community co-financing only if it does not, within five years from the date of the final payment by the SAPARD Agency, undergo a substantial modification. Substantial modifications to a project are those which:
  - (a) affect its nature or its implementation conditions or give to a firm or public body an undue advantage; and
  - (b) result either from a change in the nature of ownership in an item of infrastructure or a cessation or change in location in the productive activity co-financed.

Where any such modification is detected by the Republic of Bulgaria, it shall immediately inform the Commission.

5. No project for which the authorities of the Republic of Bulgaria, including the SAPARD Agency, have made any deduction, retention or further charge specific to SAPARD, which would reduce amounts payable or paid to the beneficiary, shall be eligible for co-financing. However, the SAPARD Agency may deduct from payments due:
  - (a) amounts relating to outstanding overpayments under the Programme by it to beneficiaries,
  - (b) amounts owed by beneficiaries for failing to respect conditions attached to payments made previously to them under the Programme by the SAPARD Agency.

## Article 5

### Managing Authority

1. The Republic of Bulgaria shall designate a Managing Authority which, without prejudice to Section A, shall be responsible for the efficiency and correctness of co-ordination and reporting on the monitoring and evaluation of the Programme. The Managing Authority shall consult the SAPARD Agency on all issues relating to implementation.
2. The Managing Authority shall in pursuance of Articles 6 to 11 of this Section, set up a system to gather financial and statistical information on progress of the Programme, if the setting up of such a system is not undertaken by the SAPARD Agency, and shall forward this data to the Monitoring Committee, in accordance with arrangements agreed between the Republic of Bulgaria and the Commission, using where possible computer systems permitting the exchange of data with the Commission.
3. The Managing Authority shall propose adjustment of the Programme to the Commission after consultation with the SAPARD Agency, [where it is not within that Agency], and following agreement by the Monitoring Committee.
4. The Managing Authority shall draw up and, following consultation with the SAPARD Agency, [where it is not within that Agency] and after obtaining the approval of the Monitoring Committee, submit to the Commission the annual implementation report.
5. The Managing Authority shall organise, in co-operation with the Commission and the Republic of Bulgaria, the mid-term evaluation referred to in Article 10 of this Section.
6. The Managing Authority shall be the body responsible for ensuring that the relevant authorities are informed of the need to make appropriate administrative changes when such changes are required following a Decision by the Commission to amend the Programme.
7. The Managing Authority shall each year consult and inform the Commission, having taken advice from the Monitoring Committee, of the initiatives taken and those to be taken, with regard to informing the general public about the role played by the Community in the Programme and its results.

## Article 6

### Monitoring and Monitoring Indicators

1. The SAPARD Agency and the Managing Authority, [whether or not the latter is within the SAPARD Agency], shall ensure effective monitoring of implementation of the Programme and shall report to the Monitoring Committee on progress of the measures and where applicable, sub-measures. The Commission shall review these reports and where appropriate, make recommendations for improvements.
2. Monitoring shall be carried out by reference to physical, environmental and financial indicators and include data to demonstrate that Community funds have not replaced funding available in the Republic of Bulgaria. These monitoring indicators, concerning the inputs and the outputs of the Programme, shall relate to the specific character of the assistance concerned, its objectives and the socio-economic, structural and environmental situation of the Republic of Bulgaria.

### Article 7

#### Monitoring Committee

1. A Monitoring Committee shall be set up by the Republic of Bulgaria, in agreement with the Managing Authority and [if the Managing Authority is not within] the SAPARD Agency, [the latter] and after consultation with the partners referred to in Article 3 of this Section, to supervise the Programme.

The Monitoring Committee shall as a general rule be set up within three months after the approval of the Programme.

2. A representative (or representatives) of the Commission shall participate in the work of the Monitoring Committee in an advisory capacity.
3. The Monitoring Committee shall, in consultation with the Managing Authority, the SAPARD Agency and the Commission, draw up its own rules of procedure. These rules of procedure shall be adopted by the Monitoring Committee at its first meeting. These may be changed by the Monitoring Committee as the need arises. Such changes shall be communicated in advance to the Commission.

The Chairman of Monitoring Committee shall be designated by the Republic of Bulgaria. The person designated shall not hold a position in the SAPARD Agency.

4. The Monitoring Committee shall satisfy itself as to the effectiveness and quality of implementation of the Programme in order to attain the specific objectives.
5. The Monitoring Committee shall consider and give an opinion on the criteria for selecting and for ranking the projects under each measure. If that opinion is not given in time for it to be taken into account in the Commission Decision referred to in Article 3 (1) of Section A, that Decision may be revised to take account of the opinion of the Monitoring Committee which shall be given and communicated to the Commission either within one month of that Decision being taken or within one month of the setting up of the Committee, whichever is the later.
6. The Monitoring Committee shall periodically review progress made towards achieving the objectives set out in the Programme. For this purpose, it shall be given the following:
  - (a) information on any sectors where difficulties are experienced in finding normal market outlets at the Community level,
  - (b) information on the results of controls carried out, and,
  - (c) the list and characteristics of approved projects and those not so approved.
7. The Monitoring Committee shall examine the results of the Programme in particular the achievement of the targets set for the different measures and the progress on utilisation of the financial allocations to those measures and allocations to sub-measures within measures where the Programme includes such allocations. In this regard, the Managing Authority shall ensure that all relevant information on the progress of measures and, as appropriate, sub-measures, is made available to the Monitoring Committee.
8. The Monitoring Committee shall examine the mid-term evaluation referred to in Article 10 of this Section.
9. The Monitoring Committee shall consider and approve the annual and final implementation reports before they are sent to the Commission.



10. The Monitoring Committee shall consider and approve, where appropriate, any proposal to the Commission to amend the Programme.
11. The Monitoring Committee may propose to the Commission via the Managing Authority any amendment or review of the Programme which is likely to facilitate the attainment of the objectives of the Programme.
12. The Monitoring Committee may, following consultation with the Managing Authority, the SAPARD Agency [where it is not within that Agency] and the Competent Authority, propose to the Commission any amendment or review of the Programme to improve the implementation of the Programme.
13. When required by the Programme to give an opinion on any matter, the Monitoring Committee shall act accordingly.

### Article 8

#### Annual and Final reports

1. The Republic of Bulgaria shall ensure that, following consultation with the SAPARD Agency, the Managing Authority [where it is not within that Agency], and within six months of the end of each full calendar year of implementation submits to the Commission an annual implementation report.

The annual implementation report shall be examined and approved by the Monitoring Committee before being sent to the Commission.

2. Once the Commission has received an annual implementation report, it shall indicate, within a period of two months, if the report is considered unsatisfactory, giving its reasons; otherwise, the report shall be deemed to be accepted. In the case of the final report, the Commission shall respond within five months of its receipt.
3. Every year, when the annual implementation report is submitted, the Commission and the Managing Authority and, where appropriate, the SAPARD Agency, shall review the main outcomes of the previous year. The Commission shall consult with the Managing Authority and, where appropriate, the SAPARD Agency, on the arrangements to be defined for such a review.

If, after this review, the Commission makes comments to the Republic of Bulgaria, it shall inform the Commission of the action taken on these comments. Where the Commission,

without prejudice to the Decisions to be taken pursuant to Articles 11 and 12 of Section A, makes recommendations to the Republic of Bulgaria for adjustments aimed at improving the effectiveness of the monitoring or management arrangements for the Programme, the Republic of Bulgaria shall subsequently demonstrate the steps taken to improve the monitoring or management arrangements or it shall explain why it has not so acted.

4. A final report shall be submitted to the Commission, at the latest, six months after the final date of eligibility of expenditure under the Programme.
5. All annual and final implementation reports shall include the following information:
  - (a) any change in general conditions of relevance to the implementation of the Programme, in particular the main socio-economic trends, changes in national, regional or sectoral policies and, where applicable, their implications for the consistency between SAPARD assistance and that from other Community financial instruments;
  - (b) the progress in the implementation of priorities and measures in relation to the attainment of the objectives of the Programme, their specific targets in the Programme, with a quantification, wherever and whenever they lend themselves to quantification, of the physical indicators and indicators of results and of impact, in the Programme;
  - (c) the steps taken by the Managing Authority, the SAPARD Agency where appropriate, and the Monitoring Committee to help to ensure the quality and effectiveness of implementation, in particular:
    - (i) monitoring and evaluation measures, including data collection arrangements;
    - (ii) a summary of any significant problems encountered in implementing the Programme and any action taken, including that on recommendations for adjustments made pursuant to paragraph 3;
    - (iii) the use made of technical assistance;
    - (iv) the steps taken to ensure publicity for the Programme;
  - (d) the steps taken to ensure co-ordination of all the Community pre-accession assistance referred to in Article 1 of Section C;

- (e) Financial tables showing the expenditure per measure and, where appropriate, per sub-measure.

### Article 9

#### Evaluation principles

1. In order to gauge its effectiveness, the Programme shall be the subject of mid-term and ex-post evaluation to appraise its impact with respect to the objectives set out in the Programme, and to analyse its structural effects.
2. The effectiveness of the measures of the Programme shall be assessed on the basis of their overall impact on:
  - (a) contributing to the implementation of the *acquis communautaire* concerning the Common Agricultural Policy and related policies;
  - (b) solving priority and specific problems for the sustainable adaptation of the agricultural sector and rural areas in the Republic of Bulgaria;
  - (c) the objectives in the Programme.
3. The Republic of Bulgaria shall assemble the appropriate resources and collect the data required to ensure that this evaluation can be carried out in the most effective manner. In this connection, evaluation shall make use of the various particulars that the monitoring arrangements may yield, supplemented where necessary, by the gathering of information to improve its relevance.
4. Evaluations shall be performed by independent evaluators.
5. Mid-term and ex-post evaluations shall respond to common evaluation questions defined by the Commission in consultation with the Republic of Bulgaria and shall, as a general rule, be accompanied by achievement related criteria and indicators. In addition, evaluations may be required to answer specific questions related to the objectives of the Programme.
6. The evaluation reports shall explain the methodologies applied and include an assessment of the quality of the data and the findings.

7. The quality and implications of evaluations shall be assessed by the Managing Authority, the Monitoring Committee and the Commission.

#### Article 10

##### Mid-term evaluation

1. The Republic of Bulgaria shall, taking account of Article 9 of this Section, ensure that a mid-term evaluation examines the initial results of the Programme, their consistency with the ex-ante appraisal, the relevance of the targets and the extent to which they have been attained. It shall also assess the quality of monitoring and implementation.
2. The mid-term evaluation shall be carried out under the responsibility of the Managing Authority, in co-operation with the Commission and the Republic of Bulgaria. It shall be submitted to the Monitoring Committee in accordance with Article 7 (8) of this Section and shall be sent to the Commission three years after the date of approval of the Programme but by 31 December 2003 at the latest.
3. In addition to the assessment referred to in Article 9 (7) of this Section, the Commission shall consider the implications of the evaluation with a view to reviewing the Programme.
4. The mid-term evaluation shall, where appropriate, be up-dated and submitted to the Commission by 31 December 2005 at the latest.
5. The Managing Authority shall inform the Commission about the follow up to the recommendations in the evaluation report, including any possible up-dates.

#### Article 11

##### Ex-post evaluation

An ex-post evaluation shall be carried out by the Republic of Bulgaria in consultation with the Commission under the responsibility of the Managing Authority. On the basis of the evaluation results already available, and taking account of Article 9 of this Section, as well as questions relevant to the Programme, the ex-post evaluation shall cover the utilisation of resources and the effectiveness and efficiency of the Programme, its impact and its consistency with the ex-ante evaluation. It shall cover factors contributing to the success or failure of implementation, the achievements of the Programme and results, including their sustainability.

The ex-post evaluation shall draw conclusions relevant to the Programme.

It shall be completed not later than the end of the fourth year following the conclusion of the final Annual Financing Agreement

## **SECTION C**

### **GENERAL PROVISIONS**

## SECTION C                      GENERAL PROVISIONS

### Article 1

#### Co-ordination with other instruments

The Commission and the Republic of Bulgaria shall ensure co-ordination of assistance between the Programme, the Instrument for Structural Policy for Pre-Accession (ISPA), Phare and assistance from the European Investment Bank (EIB) and other international financial instruments.

The Republic of Bulgaria shall ensure in particular that where a SAPARD project, due to its nature, could also be potentially eligible in full or in part for assistance under one of the other instruments referred to in the first sub-paragraph, any risk of expenditure being aided more than once shall be avoided. For all such projects, and independent of any other action taken by the Republic of Bulgaria, all receipted invoices referred to in Article 8 (b) of Section A, must be clearly stamped “SAPARD” by an authorised official before being the subject of a payment from the SAPARD Agency.

### Article 2

#### General Privileges

The Republic of Bulgaria shall ensure that expatriate personnel specifically engaged by the authorities of the Republic of Bulgaria for the purposes of the Programme and members of their immediate family shall be accorded no less favourable benefits, privileges and exemptions than those usually accorded to expatriates employed in the Republic of Bulgaria under any other

bilateral or multinational agreement or arrangements for economic assistance and technical co-operation programmes and to members of their immediate families. The provisions of this Article do not confer diplomatic status on such personnel.

### Article 3

#### Establishment, installation, entry and residence facilities

The Republic of Bulgaria shall ensure that in the case of works, supply, or service contracts, natural or legal persons eligible to participate in tendering procedures and the technical staff needed to carry out preparatory studies shall be entitled to temporary installation and residence. They shall enjoy that right from the time an invitation to tender is issued until within one month after the contractor is designated.

The Republic of Bulgaria shall permit personnel taking part in works, supplies or services contracts under the Programme and members of their immediate family, to enter the Republic of Bulgaria to establish themselves in that State, to work there and to leave that State, as the nature of the contract so justifies.

### Article 4

#### Import and re-export of equipment

The Republic of Bulgaria shall grant, in a timely manner and without any discriminatory charge, the permits necessary for the importation and subsequent re-export of equipment required to execute the Programme. This is without prejudice to the right of natural or legal persons importing the equipment to benefit from the system of temporary admission in respect of the said equipment.

### Article 5

#### Imports and exchange controls

1. For the execution of the Programme, the Republic of Bulgaria undertakes without discrimination between the Member States and the countries listed in Item 8 of Section F to grant import authorisations and authorisations for the acquisition of the foreign exchange, and to apply national exchange control regulations.
2. The Republic of Bulgaria shall grant permits necessary, in a timely manner and without any discriminatory charge, to repatriate funds received in respect of the Programme in

accordance with the foreign exchange control regulations in force in the Republic of Bulgaria.

#### Article 6

##### Taxation and customs

1. The Republic of Bulgaria shall ensure that imports under supply contracts concluded by the authorities of the Republic of Bulgaria and co-financed under the Programme shall be allowed to enter the Republic of Bulgaria without being subject to customs duties, import duties, taxes or fiscal charges having equivalent effect.

The Republic of Bulgaria shall ensure that the imports concerned shall be released from the point of entry of delivery as required by the provisions of the contract and for immediate use to the contractor as required for the normal implementation of the contract without regard to any delays or disputes over the settlement of those duties, taxes or charges.

2. The Republic of Bulgaria shall ensure that personal and household effects imported for personal use by natural persons (and members of their immediate families) other than those recruited locally, engaged in carrying out tasks defined in technical assistance contracts, shall be exempt from customs duties, import duties, taxes and other fiscal charges having equivalent effect. Those personal and household effects shall be either re-exported or disposed of in the Republic of Bulgaria in accordance with the regulations in force in the Republic of Bulgaria after termination of the contract.

#### Article 7

##### National legal proceedings

In the event of suspected or proven failure by a beneficiary to respect obligations in relation to the Programme as well as attempts to secure from the SAPARD Agency payments for which there is no entitlement, the Republic of Bulgaria will pursue all such failures and attempts under national legal procedures in a manner no less rigorous than in instances involving national public funds.



## **SECTION D**

# **QUARTERLY AND ANNUAL DECLARATIONS** **OF EXPENDITURE**

**Form: D-1**

**European Commission –SAPARD - Declaration of expenditure and payment application**

**(to be sent to the European Commission, DG AGRI, Rue de la Loi 130 (SAPARD) B – 1049 Brussels)**

Name of Programme .....

Commission Decision N°.....of ..... (as last modified by Decision N° ..... of .....)

Commission reference number.....

The undersigned, ..... as the National Authorising Officer representing the Republic of Bulgaria as provided for in the Multi-annual Financing Agreement concluded between the Republic of Bulgaria and the Commission, hereby declares that the total eligible expenditure in accordance with the programme, incurred from (day/month/year.. to ...day/month/year...) amounts to ..... (national currency), .....(euro, converted from national currency at the rate(s) indicated in the tables attached, as provided for in Article 10 of Section A, of the Annex to the Multi-annual Financing Agreement).

Details relating to this expenditure are set out in the Tables annexed hereto and form an integral part of this declaration.

I also declare that the measures are progressing at a satisfactory rate in accordance with the objectives laid down in the Programme, and that the supporting documents are, and will remain, available as provided for in Article 3 of the Multi-annual Agreement and Article 15 of Section A of the Annex to that Agreement.

I declare that:

1. The listing of expenditure is exact. It is based on accounts at the level of individual projects and supported by documentary evidence. The listing and corresponding supporting documents are open to verification and will be remain available in accordance Article 3 of the Multi-annual Financing Agreement and Article 15 of Section A of the Annex thereto.
2. *Either* The listing includes details of debts to be collected amounting to (... national currency) (.... euro), of which total amounts per measure are attached, including the breakdown of national public and Community contribution; *or* There are no debts to be collected - (*strike out as appropriate*). The declaration also includes all debts since the previous declaration which have been registered for more than two years, and which are subtracted from this expenditure declaration.
3. The volume of Community funds in the SAPARD euro account as at the date of the last debit at the end of the quarter to which this declaration refers (or in the case of a supplementary declaration, the date specified in that declaration) amounts to .... euro.

The payment should be made to the SAPARD euro account:

Beneficiary:	
Bank:	
Account number:	
Account holder (if different from beneficiary)	

This expenditure declaration contains ..... numbered pages.

This declaration has been established by: ..... *Date, stamp and signature of the Head of the SAPARD Agency.*

The declaration has been established on the basis of financial amounts provided by me ..... *Date and Signature of the: Accountant of the SAPARD Agency*

*Certified by .....: Date, stamp and signature of the National Authorising Officer on behalf of the Republic of Bulgaria.*

*Done at .....(date).*

**Form: D-1**

**DECLARATIONS TO BE PRESENTED WITH ALL PAYMENT APPLICATIONS**

**IT IS HEREBY CONFIRMED THAT :**

- (a) The SAPARD Agency has checked that the expenditure declared eligible has been carried out in compliance with the Programme, the Multi-annual Financing Agreement, the Commission Decision referred to in Article 3 (1) of Section A of the Annex to the Multi-annual Financing Agreement, and the Annual Financing Agreement(s).
- (b) The expenditure is real, regular and was incurred from the date(s) in the Commission Decision N° .... conferring management on the SAPARD Agency.
- (c) Payments to the final beneficiaries were made without any specific charge, deduction or withholding of any amount which might reduce the amount of financial assistance to which they are entitled.
- (d) The amounts recovered in respect of sums wrongly paid and debts registered in the debtors ledger for more than two years have been deducted from the declared expenditure; the Commission has been informed of any irregularities in accordance with Article 13 of Section A of the Annex to the Multi-annual Financing Agreement on irregularities and the recovery of sums wrongly paid within the framework of the financing of the SAPARD programme.
- (e) The aid granted by the Republic of Bulgaria remains within the limits by measure laid down in the Programme.

- (f) Conversions between national currency and euro have been carried out in conformity with the provision of Article 10 of Section A of the Annex to the Multi-annual Financing Agreement.
- (g) The supporting documents for this declaration are and will remain available under the terms of Article 3 of the Multi-annual Financing Agreement and Article 15 of Section A of the Annex thereto.
- (h) Measures receiving Community financial assistance have been the subject of adequate publicity directed at public opinion and potential and actual beneficiaries.

Done at ....., ..... (date)

Established by:..... *Signature and stamp of the Head of the SAPARD Agency*

The declaration has been established on the basis of financial amounts provided by .....*Signature and stamp of the Accountant of the SAPARD Agency*

Certified by:.....*Signature and stamp of the National Authorising Officer on behalf of the Republic of Bulgaria*



Name of Programme: .....

Commission Decision N°.....of .....(as last modified by Decision n°..... of .....

Commission reference number: .....

Declaration n°.....covering the period from start of programme .....to .....(date) inclusive.

Priority axis  Name  Measure	National currency				euro			
	Public expenditure		Private funding	Total eligible cost	Public expenditure		Private funding	Total eligible cost
	EC	National			EC	National		
(1)	(2)	(3)	(4)	(2) + (3) + (4) = (5)	(6)	(7)	(8)	(6) + (7) + (8) = (9)
<b>1. Priority 1</b> Measure 1 Measure 2 Measure n <b>Total Priority 1</b>								
<b>n. Priority n</b> Measure 1 Measure 2 Measure n <b>Total Priority n</b>								
<b>Grand Total</b>								

In the event of differences in relation to a previous declaration these are identified by ""\*"" and explained on pages ..... to .....

The rates of exchange used for national currency/euro conversion are as follows: Rate: .....;Date:.....

**Annual Declaration of Account for financial year: ( \_\_\_\_\_ )**

**(to be sent together with the attestation and audit report required under Article 6 of Section A of the Annex to the Multi-annual Financing Agreement to the European Commission, DG AGRI, Rue de la Loi 200 – (SAPARD,) B – 1049 Brussels)**

Name of Programme .....

Commission Decision N°.....of ..... (as last modified by Decision N° ..... of.....)

Commission reference number.....

The undersigned, .....as the National Authorising Officer representing the Republic of Bulgaria as provided for in the Multi-annual Financing Agreement concluded between the Republic of Bulgaria and the Commission (.....),hereby declares that the total eligible expenditure in accordance with the programme incurred from (1/1/year.. to ..31/12/year..) amounts to .....(national currency), .....(euro, converted from national currency at the rate(s) indicated in the table attached as provided for in Article 10 of Section A, of the Annex to the Multi-annual Financing Agreement.)

Details relating to this expenditure are set out in the Table annexed hereto and form an integral part of this declaration.

I also declare that the measures are progressing at a satisfactory rate in accordance with the objectives laid down in the Programme, and that the supporting documents are, and will remain, available as provided for in Article 3 of the Multi-annual Financing Agreement and Article 15, of Section A of the Annex thereto.

I declare that :

- 1 The listing of expenditure is exact. It is based on accounts at the level of individual projects and supported by documentary evidence. The listing and corresponding supporting documents are open to verification and will remain available in accordance with Article 3 of the Multi-annual Financing Agreement and Article 15 of Section A of the Annex thereto.

2. *Either* The listing includes details of debts to be collected amounting to (...national currency) (...euro), of which total amounts per measure are attached including the breakdown of national public and Community contribution; *or* There are no debts to be collected. (*strike out as appropriate*). The declaration also includes all debts since the previous annual declaration which have been registered for more than two years, and which are subtracted from this expenditure declaration.
  
3. The volume of Community funds in the SAPARD euro account as at the end of the year to which this declaration refers amounts to .... euro.

This expenditure declaration contains ..... numbered pages.

This declaration was established by: .....*Date, stamp and signature of the Head of the SAPARD Agency*

The declaration has been established on the basis of financial amounts provided by me.....*Date and Signature of the Accountant of the SAPARD Agency.*

Certified: .....*Date, stamp and signature of the National Authorising Officer on behalf of the Republic of Bulgaria.* .....Done at ....., .....(date)

The Attestation and Audit Report of the Certifying Body is included with this declaration.



Form: D-2

**DECLARATIONS TO BE PRESENTED WITH ANNUAL DECLARATION OF ACCOUNT  
IT IS HEREBY CONFIRMED THAT :**

- (a) The SAPARD Agency has checked that the expenditure declared eligible has been carried out in compliance with the Programme, the Multi-annual Financing Agreement, the Commission Decision referred to in Article 3 (1) of Section A of the Annex to the Multi-annual Financing Agreement, and the Annual Financing Agreement(s).
- (b) The expenditure is real, regular and was incurred from the date(s) in the Commission Decision N° .... conferring management on the SAPARD Agency.
- (c) Payments to the final beneficiaries were made without any specific charge, deduction or withholding of any amount which might reduce the amount of financial assistance to which they are entitled.
- (d) The amounts recovered in respect of sums wrongly paid and debts registered in the debtors ledger for more than two years have been deducted from the declared expenditure. The Commission has been informed of any irregularities in accordance with Article 13 of Section A of the Annex to the Multi-annual Financing Agreement on irregularities and the recovery of sums wrongly paid within the framework of the financing of the SAPARD programme.
- (e) The aid granted by the Republic of Bulgaria remains within the limits by measure laid down in the Programme.
- (f) Conversions between national currency and euro have been carried out in conformity with Article 10 of Section A of the Annex to the Multi-annual Financing Agreement.
- (g) The supporting documents for this declaration are and will remain available under the terms of Article 3 of the Multi-annual Financing Agreement and Article 15 of Section A of the Annex thereto.
- (h) Measures receiving Community financial assistance have been the subject of adequate publicity directed at public opinion and potential and actual beneficiaries.

Done at ....., ..... (date)

Established by: Date stamp and Signature of the Head of the SAPARD Agency

The declaration has been established on the basis of financial amounts provided by  
me.....*Date and Signature of the Accountant of the SAPARD Agency*

Certified by:.....*Signature and stamp the National Authorising Officer on behalf the Republic of Bulgaria.*

**Form D-2 Table A STATEMENT OF ELIGIBLE EXPENDITURE ACTUALLY INCURRED FOR YEAR (.....)- ALL BENEFICIARIES**

Name of Programme: .....

Commission Decision N°.....of .....(as last modified by Decision n°..... of .....)

Commission reference number: .....

Declaration n°.....covering the period from (1/1/Year).....to .....(31/12/Year) inclusive

Priority axis  Name  Measure	National currency				euro			
	Public expenditure		Private funding	Total eligible cost	Public expenditure		Private funding	Total eligible cost
	EC	National			EC	national		
(1)	(2)	(3)	(4)	(2) + (3) + (4) = (5)	(6)	(7)	(8)	(6) + (7) + (8) = (9)
<b>1. Priority 1</b> Measure 1 Measure 2 Measure n <b>Total Priority 1</b>								
<b>n. Priority n</b> Measure 1 Measure 2 Measure n <b>Total Priority n</b>								
<b>Grand Total</b>								

In the event of differences in relation to a previous declaration, these are identified by ""\*"" and explained on pages ..... to .....

The rates of exchange used for national currency/euro conversion are as follows: Rate: .....Date:.....

**SECTION E**

**GUIDELINES FOR CERTIFYING BODY**

## GUIDELINES FOR THE ANNUAL CERTIFICATION OF THE SAPARD AGENCY

**Subject: Guideline referred to in Article 6 (5) of Section A of the Annex to the Multi-annual Financing Agreement - The form, scope and contents of the certificate and report of the body performing the certification of the SAPARD Agency.**

### Introduction

1. The object of this paper is to set out guidance regarding requirements of the certification of the account provided for in Article 6 of Section A of the Annex to the Multi-annual Financing Agreement.
2. The subject of the certification and hence the audit certificate and audit report, is the SAPARD Agency and all the decentralised and delegated bodies, that is. the processes from registration of the application through to commitment and from registration of the invoice through to payment.

### The Audit Certificate

3. The audit certificate should be a brief, clear and explicit statement of the overall conclusions of the body nominated as Certifying Body. Examples of audit certificates are presented in the Appendix to this Section.

### The Audit Report

4. The scope of the audit report is broader than that of the audit certificate comprising, in addition, statements on whether:
  - I) the Certifying Body has gained reasonable assurance that the internal control procedures are theoretically sound and that they operate satisfactorily in practice;
  - II) the procedures, with particular reference to the accreditation criteria of significant relevance (written procedures, segregation of duties, pre-project and pre-payment checks, procurement, commitment and payment procedures, accounting procedures, computer security, internal audit), give reasonable assurance that the projects charged to SAPARD comply with the Multi-annual

Financing Agreement;

- III) all the accreditation criteria of significant relevance continue to be fulfilled as required for the Commission conferral of management of aid in Article 3(1) of Section A of the Annex to the Multi-annual Financing Agreement; and
- IV) the financial interests of the Community are properly protected.

The report should also set out any recommendations and indicate the extent to which, and how, they (and those of previous years, as appropriate) have been addressed.

## 5. Content of report

### I) Internal control procedures

The report should set out the evidence obtained by the Certifying Body that throughout the period under audit, the internal controls have operated in practice as well as in theory; have applied to all the transactions intended; and have resulted in the correction of errors. The report should include a statement on internal control procedures which should draw attention to any serious weaknesses found in the design or operation of the controls, with particular reference to factors that may diminish the effectiveness of internal control procedures such as:

- the potential for controls to be overridden by the responsible official;
- incorrect application of controls due to wrong interpretation or carelessness; and
- the development of non-standard procedures.

The internal audit function is a key element of the internal control environment. As such it merits a specific chapter in the audit report. The report should consider the independence, competence and effectiveness of internal audit, and the following, in particular: the scope of responsibilities; rights of access to the Head of the SAPARD Agency and to all records, personnel and premises (including decentralised and delegated bodies); the exclusion of members of the internal audit unit from day to day operational actions; staffing (competence, training and experience); planning (needs assessments, risk based approach, cycle of audit coverage); documentation (will the rationale for tests and conclusions be adequately recorded, are supporting papers held); audit evidence (will arrangements ensure it is sufficient, relevant and reliable); are there adequate arrangements for quality assurance; reports (are they adequate in conception and will the procedures ensure they will be timely) and conclusions as to the audit plan.

II) Procedures for ensuring compliance with the Multi-annual Financing Agreement.

This point concerns authorisation. Transactions processed by SAPARD Agencies are governed by complex rules. The inherent risk arising requires the SAPARD Agency to establish mitigating controls including the use of written procedures, checklists and detailed re-performance or review by another official.

The report should include a statement on procedures for ensuring compliance with the Multi-annual Financing Agreement (by measure and if applicable, sub-measures) for each procedure stating whether the relevant controls have proved sufficiently robust for reliance to be placed upon them during the period under audit. Where it is concluded that a procedure has not provided the necessary assurance, the important elements of the control failure should be noted.

III) Accreditation criteria of significant relevance

The report should state the extent to which the SAPARD Agency and decentralised and delegated bodies have fulfilled all the accreditation criteria of significant relevance (written procedures, segregation of duties, pre-project and pre-payment checks, procurement, commitment and payment procedures, accounting procedures, computer security, internal audit) as required for the Commission conferral of management of aid in Article 3(1) of Section A of the Annex to the Multi-annual Financing Agreement and what action (and its timing and duration), if any, is to be undertaken by the SAPARD Agency or decentralised/delegated body to address any shortcomings.

IV) The protection of the financial interests of the Community

This point concerns, in particular, the amounts to be collected (debtors). The pertinent key control objectives include the correct and timely posting of all debtors' transactions to a debtors' ledger; debt offset from other SAPARD payments to beneficiaries which are in debt; and the correct posting of all receipts from debtors.

In general, the report should also include a statement on the protection of the financial interests of the Community stating for each procedure whether the relevant controls have proved sufficiently robust for reliance to be placed upon them. Where it is concluded that a procedure has not provided the necessary assurance, the important elements of the control failure should be noted.

## (V) Recommendations

Any recommendations for improvements should be classified by reference to the level of importance, which the Certifying Body believes should be attributed to each situation. For ease of presentation the following classification is proposed:

- Major: recommendations which require immediate attention by the Head of the SAPARD Agency;
- Intermediate: recommendations which are significant in the context of the control environment of the SAPARD Agency and which require immediate attention by Senior Management;
- Minor: recommendations for which action should be taken to ensure full compliance with the accreditation criteria.

The report should set out for each recommendation, the procedure and policy questions requiring attention and the reply of the SAPARD Agency.

## 6. Report outline

It would assist the Commission in its processing of the reports on certification if a standard outline were followed such as indicated below.

*Executive Summary: comprising the opinion, summary statements on each of the points I, II, III & IV mentioned above, and sections on major and intermediate recommendations.*

*General Introduction.*

*I Internal control procedures: an assessment of the main controls; the internal audit function; statement on internal control procedures, together with evidence.*

*II Procedures for ensuring compliance with the Multi-annual Financing Agreement: an assessment of the key controls; statement on procedures for ensuring compliance with the Multi-annual Financing Agreement, together with evidence.*

*III Accreditation criteria of significant relevance: an assessment of the extent to which the SAPARD Agency fulfils all the accreditation criteria of significant relevance (written procedures, segregation of duties, pre-project and pre-payment checks, procurement, commitment and payment procedures, accounting procedures, computer security, internal audit) as required by the Article 14 of Section A of the Annex to the Multi-annual Financing Agreement.*

*IV Procedures for the protection of the financial interests of the Community: an assessment of the key controls; statement on procedures for the protection of the financial interests of the Community, together with evidence.*

*General conclusions.*

*Recommendations.*

*Annexes*

For each measure / sub-measure and common function (e.g. Accounts, Inspection Service, Internal Audit, IT), the annex should set out the work done for each control objective including a description of the control objective, the control mechanism, the file structure (to determine if it comprised the required primary evidence/documents necessary to support the claim), findings, evaluation, conclusion and detailed recommendations.

A list of recommendations should be prepared with at least the following information: report reference/ recommendation / status/ action.



## APPENDIX to Section E

### EXAMPLES OF AUDIT CERTIFICATES TO BE ISSUED BY THE CERTIFYING BODY<sup>4</sup>

#### Opinion matrix:

	<i>No objections</i>	<i>Limited objections</i>	<i>Negative conclusion</i>
<i>No scope limitation</i>	Unqualified (A)	Qualified (B)	Adverse (E)
<i>Scope limitation</i>	Qualified (C)	Disclaimer (D)	-

#### **A. UNQUALIFIED**

We have audited the annual accounts of expenditure declared to the Commission as expenditure incurred for the Programme for the 200x financial year by [*name and address of SAPARD Agency*]. Our responsibility, acting as Certifying Body, is to express an opinion on the annual accounts based on our audit.

We conducted our audit in accordance with internationally accepted auditing standards and Article 6 of Section A of the Annex to the Multi-annual Financing Agreement. We planned and performed the audit to obtain reasonable assurance about whether the accounts transmitted to the Commission are free of material misstatement. The audit included examination, on a test basis, of evidence supporting the information in the annual accounts, the records of commitments, an examination of procedures and of a sample of transactions. The audit covered compliance of payments with the Multi-annual Financing Agreement only as regards the capability of the SAPARD Agency's administrative structures to ensure that such compliance has been checked before payment is made. Our audit provides a reasonable basis for our opinion.

In our opinion the accounts to be transmitted to the Commission for the 200x financial year (dated *DD/MM/YYYY*) are true, complete and accurate.

Our audit was conducted between *DD/MM/YYYY* and *DD/MM/YYYY*. A report on our findings is delivered at the same date as the date of this certificate.

*[date of issue + signature, name and position + name and address of Certifying Body]*

## ***B. QUALIFIED - DETECTED DIFFERENCES***

We have audited the annual accounts of expenditure declared to the Commission as expenditure incurred for the Programme for the 200x financial year by [*name and address of SAPARD Agency*]. Our responsibility, acting as Certifying Body, is to express an opinion on the annual accounts based on our audit.

We conducted our audit in accordance with internationally accepted auditing standards and Article 6 of Section A of the Annex to the Multi-annual Financing Agreement. We planned and performed the audit to obtain reasonable assurance about whether the accounts transmitted to the Commission are free of material misstatement. The audit included examination, on a test basis, of evidence supporting the information in the annual accounts, the records of commitments, an examination of procedures and of a sample of transactions. The audit covered compliance of payments with the Multi-annual Financing Agreement only as regards the capability of the SAPARD Agency's administrative structures to ensure that such compliance has been checked before payment is made. Our audit provides a reasonable basis for our opinion.

Differences were detected between the annual accounts and the books and records of the SAPARD Agency for the following measures/sub-measures (reference: audit report page P):

<i>[Measure/sub-measure</i>	<i>Difference (+/-) in national currency &amp; Euro</i>
<i>Farm machinery</i>	<i>-23.000 CCC / 100 € ]</i>

In our opinion, except for the differences described in the preceding paragraph, the accounts to be transmitted to the Commission for the 200x EAGGF financial year (dated *DD/MM/YYYY*) are true, complete and accurate.

Our audit was conducted between *DD/MM/YYYY* and *DD/MM/YYYY*. A report on our findings is delivered at the same date as the date of this certificate.

*[date of issue + signature, name and position + name and address of Certifying Body]*

## ***C. QUALIFIED OPINION - LIMITATION ON SCOPE***

We have audited the annual accounts of expenditure declared to the Commission as expenditure incurred for the Programme for the 200x financial year by [*name and address of SAPARD Agency*]. Our

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<sup>4</sup> Cf. International Standard on Auditing and Related Services No. 13 (ISA 13) issued by the International Federation of Accountants (IFAC).

responsibility, acting as Certifying Body, is to express an opinion on the annual accounts based on our audit.

Except as discussed in the following paragraph, we conducted our audit in accordance with internationally accepted auditing standards and Article 6 of Section A of the Annex to the Multi-annual Financing Agreement. We planned and performed the audit to obtain reasonable assurance about whether the accounts transmitted to the Commission are free of material misstatement. The audit included examination, on a test basis, of evidence supporting the information in the annual accounts, the records of commitments, an examination of procedures and of a sample of transactions. The audit covered compliance of payments with the Multi-annual Financing Agreement only as regards the capability of the SAPARD Agency's administrative structures to ensure that such compliance has been checked before payment is made. Our audit provides a reasonable basis for our opinion.

Owing to [*for example*] the nature of the records of the SAPARD Agency/Delegated Body etc., we were unable to satisfy ourselves as to [cite nature of problem] even by recourse to other audit procedures (reference: audit report page *P*).

In our opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had we been able to satisfy ourselves as to [cite nature of problem], the accounts to be transmitted to the Commission for the 200x EAGGF financial year (dated *DD/MM/YYYY*) are true, complete and accurate.

Our audit was conducted between *DD/MM/YYYY* and *DD/MM/YYYY*. A report on our findings is delivered at the same date as the date of this certificate.

*[date of issue + signature, name and position + name and address of Certifying Body]*

#### ***D. DISCLAIMER OF OPINION - LIMITATIONS ON SCOPE***

We have audited the annual accounts of expenditure declared to the Commission as expenditure incurred for the Programme for the 200x financial year by [*name and address of SAPARD Agency*]. Our responsibility, acting as Certifying Body, is to express an opinion on the annual accounts based on our audit.

Except as discussed in the following paragraph, we conducted our audit in accordance with internationally accepted auditing standards and Article 6 of Section A of the Annex to the Multi-annual Financing Agreement. We planned and performed the audit to obtain reasonable assurance about whether the

accounts transmitted to the Commission are free of material misstatement. The audit included examination, on a test basis, of evidence supporting the information in the annual accounts, the records of commitments, an examination of procedures and of a sample of transactions. The audit covered compliance of payments with the Multi-annual Financing Agreement only as regards the capability of the SAPARD Agency's administrative structures to ensure that such compliance has been checked before payment is made. Our audit provides a reasonable basis for our opinion.

We were not able to examine procedures underlying payments effected by bodies with delegated responsibilities due to limitations placed on the scope of our work by the SAPARD Agency (reference: audit report page *P*).

Because of the significance of the matters discussed in the preceding paragraph we do not express an opinion on whether the accounts to be transmitted to the Commission for the 200x EAGGF financial year (dated *DD/MM/YYYY*) are true, complete and accurate.

Our audit was conducted between *DD/MM/YYYY* and *DD/MM/YYYY*. A report on our findings is delivered at the same date as the date of this certificate.

*[date of issue + signature, name and position + name and address of Certifying Body]*

#### ***E. ADVERSE OPINION***

We have audited the annual accounts of expenditure declared to the Commission as expenditure incurred for the Programme for the 200x financial year by *[name and address of SAPARD Agency]*. Our responsibility, acting as Certifying Body, is to express an opinion on the annual accounts based on our audit.

We conducted our audit in accordance with internationally accepted auditing standards and Article 6 of the Section A of the Annex to the Multi-annual Financing Agreement. We planned and performed the audit to obtain reasonable assurance about whether the accounts transmitted to the Commission are free of material misstatement. The audit included examination, on a test basis, of evidence supporting the information in the annual accounts, the records of commitments, an examination of procedures and of a sample of transactions. The audit covered compliance of payments with the Multi-annual Financing Agreement only as regards the capability of the SAPARD Agency's administrative structures to ensure that such compliance has been checked before payment is made. Our audit provides a reasonable basis for our opinion.

The expenditure declared by the SAPARD Agency does not agree with payments and receipts effected during the period (reference: audit report page *P*).

In our opinion, because of the effects of the matters described in the preceding paragraph, the accounts to be transmitted to the Commission for the 200x EAGGF financial year (dated *DD/MM/YYYY*) are not true, complete and accurate.

Our audit was conducted between *DD/MM/YYYY* and *DD/MM/YYYY*. A report on our findings is delivered at the same date as the date of this certificate.

*[date of issue + signature, name and position + name and address of Certifying Body]*

## **SECTION F**

**TEXT OF COMMUNITY LEGISLATION REFERRED TO IN  
REGULATION (EC) NO. 2222/2000 ON FINANCIAL RULES FOR  
SAPARD ADAPTED FOR THIS AGREEMENT.<sup>5</sup>**

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<sup>5</sup> OJ L 253, 7.10.2000, p. 5.

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
1	A	3	1	<p>The Commission may decide on the basis of a case-by-case analysis of national and sectoral programme/project management capacity, financial control procedures and structures regarding public finance, to waive the ex-ante approval requirement referred to in Item 2 and confer on implementing agencies in applicant countries management of aid on a decentralised basis. Such a waiver shall be subject to:</p> <ul style="list-style-type: none"> <li>- the minimum criteria for assessing the ability of implementing agencies in applicant countries to manage aid and minimum conditions applicable to such agencies as set out in Item 3;</li> <li>- and specific provisions concerning, inter alia, invitations to tender, scrutiny and evaluation of tenders, the award of contracts and the implementation of Community public procurement directives, which shall be laid down in financing agreements with each beneficiary country.</li> </ul>
2	F	Item 1		Project selection, tendering and contracting shall be subject to ex-ante approval by the Commission.
3	A	Article 3 and Item 1	1.	<p>Minimum criteria and conditions for decentralising management to Implementing agencies in applicant countries</p> <p>1. Minimum criteria for assessing the ability of implementing agencies in applicant countries to manage aid.</p> <p>The following criteria shall be applied by the Commission in assessing which Implementing agencies in partner countries are able to manage aid on a decentralised basis:</p> <ul style="list-style-type: none"> <li>(i) there should be a well-defined system for managing the Programme with full internal rules of procedure, clear institutional and personal responsibilities;</li> <li>(ii) the principle of separation of powers must be respected so that there is no risk of conflict of interest in procurement and payment;</li> </ul>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>(iii) adequate personnel must be available and assigned to the task. They must have suitable auditing skills and experience, language skills and be fully trained in implementing Community Programmes.</p> <p>2. Minimum conditions for decentralising management to implementing agencies in applicant countries.</p> <p>Decentralisation to applicant countries with ex-post control by the Commission may be considered for an implementing agency where the following conditions are met:</p> <p>(i) demonstration of effective internal controls including an independent audit function and an effective accounting and financial reporting system which meets internationally accepted audit standards;</p> <p>(ii) a recent financial and operational audit showing effective and timely management of Community assistance or national measures of similar nature;</p> <p>(iii) a reliable national financial control system over the implementing agency;</p> <p>(iv) procurement rules which are endorsed by the Commission as meeting the requirements of Title IX of the Financial Regulation applicable to the general budget of the European Communities (see Article 14. 2.6. of Section A of the Annex to this Agreement);</p> <p>(v) Commitment by the National Authorising Officer to bear the full financial responsibility and liability for the Programme.</p> <p>This approach shall not prejudice the right of the Commission and the Court of Auditors to check the expenditure.</p>



(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
4	A	Article 13	6	<p>Item 4</p> <p>The provisions of this Item shall not effect the applications in the Republic of Bulgaria of rules relating to criminal proceedings or judicial co-operation between the applicant countries listed at Item 8 and the Member States.</p> <p>Sub-item 4.1</p> <p>Where the Commission decides to carry out on-the-spot checks and inspections under this Item, it shall ensure that similar checks and inspections are not being carried out at the same time in respect of the same facts with regard to the economic operators concerned (see item 6).</p> <p>In addition, it shall take into account the inspections in progress or already carried out in respect of the same facts with regard to the economic operators concerned, by the Republic of Bulgaria on the basis of its legislation.</p> <p>Sub-item 4.2</p> <p>On-the-spot checks and inspections shall be prepared and conducted by the Commission in close co-operation with the authorities of the Republic of Bulgaria, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the Republic of Bulgaria may participate in the on-the-spot checks and inspections.</p> <p>In addition, if the Republic of Bulgaria so wishes, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Republic of Bulgaria's responsible authorities.</p> <p>Sub-item 4.3</p> <p>On-the-spot checks and inspections shall be carried out by the Commission on economic operators to whom administrative measures and penalties may be applied pursuant to Item 6, where there are reasons to think that irregularities have been committed.</p> <p>In order to make it easier for the Commission to carry out such checks and inspections, economic operators shall be required to grant access to premises, land, means of transport or other areas, used</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>for business purposes.</p> <p>Where strictly necessary in order to establish whether an irregularity exists, the Commission may carry out on-the-spot checks and inspections on other economic operators concerned, in order to have access to pertinent information held by those operators on facts subject to on-the-spot checks and inspections.</p> <p>Sub-item 4.4  4.4.1. On-the-spot checks and inspections shall be carried out on the Commission's authority and responsibility by its officials or other servants, duly empowered, hereinafter called 'Commission inspectors'. Persons placed at the disposal of the Commission as national experts on secondment may assist in such checks and inspections.</p> <p>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.</p> <p>Subject to respect of this Agreement, they shall be required to comply with the rules of procedure laid down by the law of the Republic of Bulgaria.</p> <p>4.4.2 Subject to respect of this Agreement, the Commission may, with the agreement of the Republic of Bulgaria seek the assistance of officials from the other applicant countries listed at Item 8 as observers and call on outside bodies acting under its responsibility to provide technical assistance.</p> <p>The Commission shall ensure that the aforementioned officials and bodies give every guarantee as regards technical competence, independence and observance of professional secrecy.</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>Sub-item 4.5</p> <p>4.5.1. Commission inspectors shall have access, without prejudice to the provisions of this Agreement and 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.</p> <p>On-the-spot checks and inspections may concern, in particular:</p> <ul style="list-style-type: none"> <li>- 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,</li> <li>- computer data,</li> <li>- production, packaging and dispatching systems and methods,</li> <li>- physical checks as to the nature and quantity of goods or completed operations,</li> <li>- the taking and checking of samples,</li> <li>- the progress of works and investments for which financing has been provided, and the use made of completed investments,</li> <li>- budgetary and accounting documents,</li> <li>- the financial and technical implementation of subsidised projects.</li> </ul> <p>4.5.2. Where necessary, it shall be for the Republic of Bulgaria, at the Commission's request, to take the appropriate precautionary measures under national law, without prejudice to this Agreement, in particular in order to safeguard evidence.</p> <p>Sub-item 4.6</p> <p>4.6.1. Information communicated or acquired in any form under this Item shall be covered by professional secrecy and protected in the same way as similar information is protected by the national legislation of the country that received it and by the corresponding provisions applicable</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>to the Community institutions. Such information may not be communicated to persons other than those within the Community institutions or in the Republic of Bulgaria 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 the applicant countries and Member States. Where the Republic of Bulgaria intends to use for other purposes information obtained by officials participating under its authority as observers, in accordance with Sub-item 4.4. 2, in on-the-spot checks and inspections, it shall seek the agreement of the country where that information was obtained.</p> <p>4.6.2 The Commission shall report as soon as possible to the relevant authority of the State 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.</p> <p>4.6.3. Commission inspectors shall ensure that, without prejudice to the provisions of this Agreement, in drawing up their reports account is taken of the procedural requirements laid down in the national law of the Republic of Bulgaria. The material and supporting documents as referred to in Sub-item 4.5 shall be annexed to the said reports. Where an inspection is carried out jointly, pursuant to the second subparagraph of Sub-item 4.2, the national inspectors who took part in the operation shall be asked to countersign the report drawn up by the Commission inspectors.</p> <p>4.6.4. The Commission shall ensure that, when implementing this Item, its inspectors comply with Community and national provisions on the protection of personal data.</p> <p>4.6.5 Where the economic operators referred to in Sub-item 4.3 resist an on-the-spot check or inspection, the Republic of Bulgaria, acting in accordance with national rules and without prejudice to the provisions of this Agreement, 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.</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				It shall be for the Republic of Bulgaria to take any necessary measures, in conformity with national law.
5	A	Article 13	1(b)	'Irregularity` shall mean any infringement of a provision of this Agreement resulting from an act or omission by an economic operator (see Item 6), which has, or would have, the effect of prejudicing of the Community or by an unjustified Item of expenditure.
6	A	Item 4 and 5		Administrative measures and penalties may be applied to the economic operators namely all natural or legal persons or other bodies recognised by national law (private individuals, enterprises, public establishments or State regional and local authorities), where their activity may have led them via an irregular application of this Agreement to attempt or harm the Community contribution and also the natural or legal persons who have been involved in the commission of the irregularity or who are expected to answer for an irregularity to avoid it being committed.
7	A	Article 13	6	<p>Sub-item 7.1 7.1.1 Notification of irregularities arising out of Community financing shall be given in accordance with the provisions laid down in this Item. These provisions shall not affect the applications in the Republic of Bulgaria of rules relating to criminal proceedings or judicial co-operation between the applicant countries listed at Item 8 and Member States in criminal matters.</p> <p>Sub-item 7.2. 7.2. 1. The Republic of Bulgaria shall communicate to the Commission within three months of conclusion of the Multi-annual Financing Agreement: - the provisions laid down by law, regulation or administrative action for the application of the measures under Article 13 (1) of Section A of the Annex to this Agreement, - the list of authorities and bodies responsible for the application of the measures under the said Article 13 (1) Section A of the Annex to this Agreement,</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>- the main provisions relating to the role and functioning of those authorities and bodies and to the procedures which they are responsible for applying.</p> <p>7.2.2. The Republic of Bulgaria shall communicate forthwith to the Commission any amendments to the information supplied in pursuance of Sub-item 7.2.1.</p> <p>7.2.3. The Commission shall study the Republic of Bulgaria's communications and shall inform them of the conclusions, which it intends to draw therefrom. It shall remain in contact with the Republic of Bulgaria to the extent necessary for the application of the provisions of this Item.</p> <p>Sub-item 7. 3</p> <p>7.3.1. During the two months following the end of each quarter, the Republic of Bulgaria shall report to the Commission any irregularities, which have been the subject of initial administrative or judicial investigations.</p> <p>To this end they shall as far as possible give details concerning:</p> <ul style="list-style-type: none"> <li>- the provision which has been infringed,</li> <li>- 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,</li> <li>- the total amount and its distribution between the different sources of financing, <ul style="list-style-type: none"> <li>- the project and measure concerned,</li> </ul> </li> <li>- the period during which, or the moment at which, the irregularity was committed,</li> <li>- the practices employed in committing the irregularity,</li> <li>- the manner in which the irregularity was discovered,</li> <li>- the national authorities or bodies which drew up the official report on the irregularity, <ul style="list-style-type: none"> <li>- the financial consequences, the suspension of any of payments and the possibilities of recovery,</li> </ul> </li> <li>- the date and source of the first information leading to suspicion that an irregularity was in evidence,</li> <li>- the date on which the official report on the irregularity was drawn up,</li> <li>- where appropriate, the Republic of Bulgaria and the other countries involved,</li> </ul>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>- 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.</p> <p>7.3.2 Where some of the information referred to in Sub-item 7.3.1, and in particular that concerning the practices employed in committing the irregularity and the manner in which it was discovered, is not available, the Republic of Bulgaria shall as far as possible supply the missing information when forwarding subsequent quarterly reports of irregularities to the Commission.</p> <p>Sub-item 7.4 The Republic of Bulgaria shall forthwith report to the Commission any irregularities discovered or supposed to have occurred, where it is feared that (a) they may very quickly have repercussions outside its territory, and/or (b) they show that a new fraudulent mal-practice has been employed. Such a report shall, where necessary, be sent simultaneously to the other relevant applicant countries and Member States.</p> <p>Sub-item 7.5 7.5.1. During the two months following the end of each quarter, the Republic of Bulgaria shall inform the Commission, with reference back to any previous report made under Sub-item 7.3., of the procedures instituted following all irregularities previously notified and of important changes resulting therefrom, including: - the amounts which have been, or are expected to be, recovered, - the interim precautionary measures taken by the Republic of Bulgaria to safeguard recovery of sums wrongly paid, - the judicial and administrative procedures instituted with a view to recovering sums wrongly paid and to imposing sanctions, - the reasons for any abandonment of recovery procedures; the Commission shall, as far as possible, be notified before a decision is taken,</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>- any abandonment of criminal prosecutions.</p> <p>The Republic of Bulgaria shall notify the Commission of administrative or judicial decisions, or the main points thereof, concerning the termination of these procedures.</p> <p>7.5.2. Without prejudice to Article 14. 2.8 of Section A of the Annex to this Agreement, where the Republic of Bulgaria considers that an amount cannot be totally recovered, or cannot be expected to be totally recovered, it shall inform the Commission, in a special report, of the amount not recovered.</p> <p>7.5.3 In the eventuality referred to in 7.5.2, without prejudice to the Article 14.2.8 of Section A, the Commission may expressly request the Republic of Bulgaria to continue the recovery procedure.</p> <p>7.5.4 Where the authorities of the Republic of Bulgaria decide, at the express request of the Commission, to initiate or continue legal proceedings with a view to recovering amounts wrongly paid, the Commission, without prejudice to the Article 14.2.8 of Section A, may undertake to reimburse to the Republic of Bulgaria all or part of the legal costs and costs arising directly from the legal proceedings, on presentation of documentary evidence, even if the proceedings are unsuccessful.</p> <p>Sub-item 7.6</p> <p>Should there be no irregularities to report in the reference period, the Republic of Bulgaria shall inform the Commission of this fact within the same time limit as is set out in Sub-item 7.3. 1.</p> <p>Sub-item 7.7</p> <p>7.7. 1. The Commission shall maintain appropriate contacts with the Republic of Bulgaria for the purpose of supplementing the information supplied on the irregularities referred to in Sub-item 7.3 on the procedures referred to in Sub-item 7.5, and, in particular, on the possibility of recovery.</p> <p>7.7.2. Independently of the contacts mentioned in Sub-item 7.7.1. the Commission shall inform the Republic of Bulgaria where the nature of the irregularity is such as to suggest that identical or similar practices could occur in other countries.</p>



(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>7.7.3. The Commission shall organise information meetings for representatives of the applicant countries listed in Item 8 in order to examine with them the information obtained pursuant to Sub-items 7.3., 7.4. and 7.5., and pursuant to Sub-item 7.7., in particular with regard to the lessons to be learned therefrom in connection with irregularities, preventive measures and legal proceedings.</p> <p>7.7.4 At the request of the Republic of Bulgaria or of the Commission, the Republic of Bulgaria 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.</p> <p>Sub-item 7.8</p> <p>7.8.1. The Republic of Bulgaria and the Commission shall take all necessary precautions to ensure that the information which they exchange remains confidential.</p> <p>7.8.2. The information referred to in this Item may not, in particular, be sent to persons other than those in the Republic of Bulgaria or within the Community institutions whose duties require that they have access to it, unless the country supplying it has expressly so agreed.</p> <p>7.8.3. The names of natural or legal persons may be disclosed to another applicant country listed in Item 8, Member State 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.</p> <p>7.8.4. Information communicated, or acquired in any form whatever pursuant to this Item shall be covered by professional confidentiality and be protected in the same way as similar information is protected by the national legislation of the country that received it and by the corresponding provisions applicable to the Community institutions.</p> <p>In addition, that information may not be used for any purposes other than those provided for in this Item unless the authorities that have provided it have given their express consent, and provided that the provisions in force in the country in which the recipient authority is to be found do not prohibit such communication or use.</p> <p>7.8.5. Sub-items 7.8.1. to 7.8.4 shall not impede the use, in any legal actions or proceedings subsequently instituted for non-compliance with this Agreement, of information obtained pursuant to this Item. The relevant authority of the country which supplied this information, shall be</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>informed forthwith of such use.</p> <p>7.8.6. Where the Republic of Bulgaria notifies the Commission that a natural or legal person whose name has been communicated to the Commission pursuant to this Item proves on further inquiry not to be involved in any irregularity, the Commission shall forthwith inform all those to whom it disclosed that name pursuant to this Item of that fact. Such person shall thereupon cease to be treated, by virtue of the earlier notification, as a person involved in the irregularity in question.</p> <p>Sub-item 7.9 The amounts recovered shall be shared by the Republic of Bulgaria and the Community in proportion to the expenditure already incurred by them provided the debt has not been written off in accordance with the rule in Article 14.2.8 of Section A of the Annex to this Agreement.</p> <p>Sub-item 7.10 7.10.1. Where the irregularities relate to sums of less than 4 000 euro equivalent in national currency charged to the Community budget, the Republic of Bulgaria shall not forward to the Commission the information provided for in Sub-items 7.3 and 7.5, unless the latter expressly requests it.</p>
8	A	Article 14	2.6	Republic of Bulgaria, the Czech Republic, Republic of Estonia, Republic of Hungary, Republic of Latvia, Republic of Lithuania, Republic of Poland, Romania, Republic of Slovakia and Republic of Slovenia
9	A	Article 12	3	<p>Sub-item 9.1 9.1.1 The tasks of the Conciliation Body shall be:</p> <p>(a) to examine any matter referred to it by the Republic of Bulgaria which, following findings pursuant to Article 12 of Section A of the Annex to this Agreement and bilateral discussion of those findings, receives formal notification from the Commission, with reference to Article 12 of Section A and this Item of this Section, of the conclusion that certain items of expenditure incurred by the Republic of Bulgaria are not chargeable to the Programme,</p>

(a)	(b)	(c)	(d)	(e)
Item No.	Section	Article (or item no.)	Paragraph	Provisions to be applied by the Republic of Bulgaria as provided for in the Agreement
				<p>(b) to try to reconcile the divergent positions of the Commission and the Republic of Bulgaria, and (c) at the end of its investigations, to draw up a report on the outcome of its efforts at reconciliation, making any remarks it deems useful should all or some of the points of dispute remain unresolved.</p> <p>9.1.2. For the purposes of the subsequent stages of the clearance of accounts procedure:</p> <p>(a) the position of the Body shall be without prejudice to the Commission's final Decision on the clearance of the accounts;</p> <p>(b) the fact of not referring a matter to the Body shall not be prejudicial to the country which receives notification from the Commission within the meaning of Sub-item 9.1.1 (a).</p> <p>Sub-item 9.2</p> <p>9.2.1. The Republic of Bulgaria must refer a matter to the Body within thirty working days of its receipt of notification as referred to in Sub-item 9.1 1 (a), by sending a reasoned request for conciliation to the Secretariat of the Conciliation Body, the address of which will be notified to the Republic of Bulgaria in that Communication.</p> <p>9.2.2 A request for conciliation is admissible only where the financial adjustment recommended by the Commission in respect of a measure:</p> <p>either,</p> <ul style="list-style-type: none"> <li>- exceeds EURO 0,5 million; or</li> <li>- represents more than 25 % of the Republic of Bulgaria's total annual expenditure under the measure concerned.</li> </ul> <p>In addition, if, during the bilateral discussions referred to in Sub-item 9.1.1. (a), the Republic of Bulgaria claims, and demonstrates, that the matter is one of principle relating to the application of Community rules, the Chairman of the Body may declare a request for conciliation to be admissible.</p> <p>9.2.3. The Secretariat of the Body shall acknowledge receipt of the request for conciliation.</p> <p>9.2.4. The Body shall conduct its investigations as informally and promptly as possible, basing itself on the evidence in the dossier and on a fair hearing of the Commission and national</p>

(a)	(b)	(c)	(d)	(e)
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				<p>authorities concerned. At the end of its investigations it shall send them the report referred to in Sub-item 9. 1. 1. (c).</p> <p>9.2.5. Where, within four months of a case being referred to it, the Body has failed to reconcile the positions of the Commission and the Republic of Bulgaria, the conciliation procedure is deemed to have failed. The report referred to in Sub-item 9. 1.1. (c) shall state the reasons why the positions could not be reconciled.</p> <p>9.2.6. The report drawn up within the stipulated limit shall be sent:</p> <ul style="list-style-type: none"> <li>- to the country which referred the matter to the Body;</li> <li>- to the other applicant countries; and</li> <li>- to the Commission when the clearance of accounts Decision is proposed.</li> </ul> <p>Sub-item 9.3</p> <p>9.3.1. The Body shall meet at the headquarters of the Commission. The secretariat of the Body shall be provided by Commission staff.</p> <p>9.3.2. No member may take part in the work of the Body or sign a report if, in an earlier office, they have been personally involved in the matter at issue.</p> <p>9.3. 3. Without prejudice to Sub-item 9.3.2, reports must be adopted by an absolute majority of members present, the quorum being three.</p> <p>The reports shall be signed by the Chairman and members who have taken part in the deliberations. They shall be registered by the secretariat.</p> <p>Sub-item 9.4</p> <p>9.4.1. The members of the Body shall carry out their duties independently, neither seeking nor accepting instructions from any government or body.</p> <p>9.4.2. The members of the Body may not disclose any information acquired by them in the course of their work for the Body. Such information is confidential and covered by the obligation of professional secrecy.</p>
10	A	Article 14	2.7	Public Bodies covered by the award of public works contracts shall be the State, regional or local

(a)	(b)	(c)	(d)	(e)
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				<p>authorities, bodies, governed by public law, associations formed by one or several of such authorities or bodies governed by public law; A body governed by public law means any body:</p> <ul style="list-style-type: none"> <li>- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and</li> <li>- having legal personality, and</li> <li>- financed, for the most part, by the State, or regional or local authorities, or other bodies governed by public law, or subject to management supervision by those bodies, or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.”</li> </ul>

**SECTION G**

**DISPUTE SETTLEMENT**

Section G  
Dispute Settlement - SAPARD

1. Any dispute between the Contracting Parties concerning this Agreement which **is** not settled between the Contracting Parties shall be decided following arbitration by an Arbitration Tribunal in accordance with points 2 to 7 of this Section.
2. Each contracting party has the right to invoke the Dispute Settlement procedure. Each party shall nominate its arbitrator within three months of the initiation of the procedure
3. The Arbitration Tribunal constituted for each individual case shall consist of three arbitrators appointed as follows:
  - one arbitrator shall be appointed by the Republic of Bulgaria;
  - one arbitrator shall be appointed by the Commission;
  - one arbitrator shall be appointed by agreement of the parties or, if they cannot agree, by the President of the Court of Justice of the European Communities.
4. If either Contracting Party fails to appoint its arbitrator within a period of three months of the receipt of the request for arbitration, that arbitrator shall be appointed by the President of the Court of Justice of the European Communities.
5. Should any arbitrator resign, die or become unable to act, another arbitrator shall be appointed in accordance with points 2, 3 and 4 and shall have all the powers and duties of the original arbitrator.
6. The Arbitration Tribunal shall take account of the relevant case law of the European Court of Justice.
7. All decisions shall be made by majority vote of the Arbitration Tribunal. The arbitration procedure shall be fixed by the Tribunal. Its decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs of its own arbitrator and its representations in the arbitration proceedings; the remaining costs shall be borne in equal parts by the Contracting Parties.