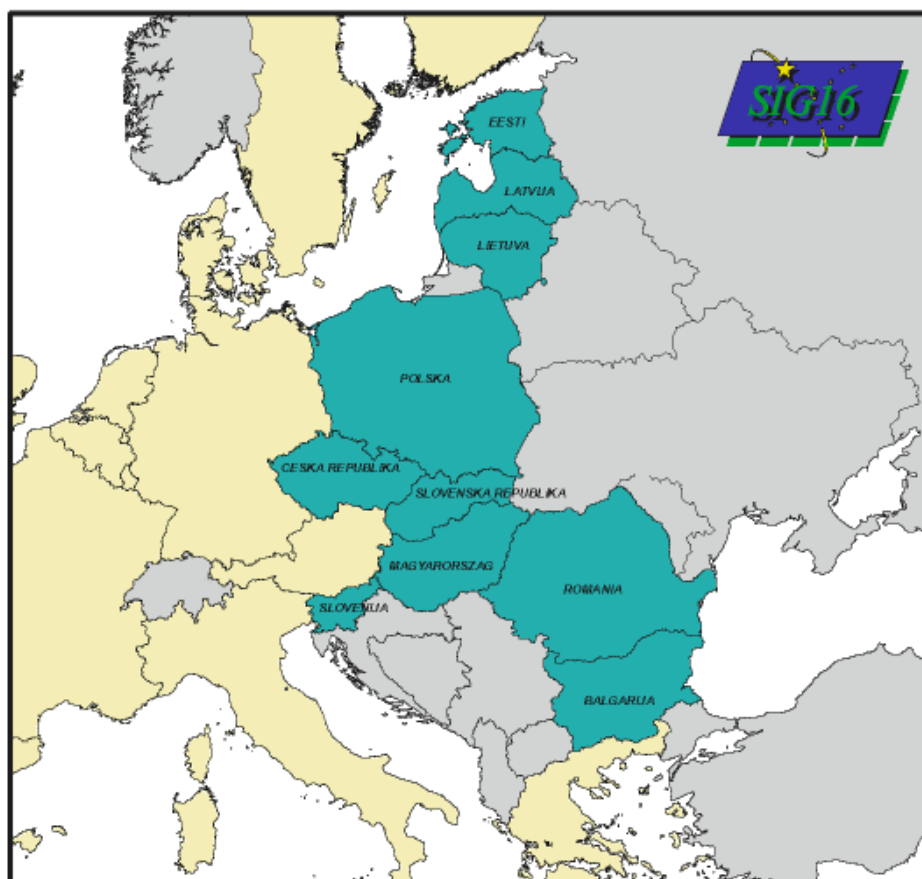


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ISPA Manual

Internal working document for discussion purposes



The "Instrument for Structural Policies for Pre-accession" (Isipa) is the European Community's financial instrument set up in order to assist the ten Central and East European candidate countries in the fields of environment and transport in view of their accession.

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PREFACE

The "Instrument for Structural Policies for Pre-accession", ISPA, is one of the European Community's financial instruments set up to assist the ten Central and East European candidate countries in view of their accession. ISPA provides financial support for investment in the areas of environment and transport in order to speed up the compliance in accession countries with the European legislation in force for these two sectors.

ISPA is hybrid in nature, as it is transitional from the financial support to third countries (cf. PHARE) to the financial support to Member States (cf. Cohesion Fund). This implies firstly, that ISPA has some characteristics of both types of assistance and secondly, that it will change over time, resembling more closely the Cohesion Fund as time evolves and the moment of accession comes nearer.

The purpose of the present manual is to ensure that ISPA programming and implementation are undertaken in an orderly manner and follow the same principles in the different countries. Various documents have already been developed and distributed to guide the programming and implementation of ISPA, such as the environment and transport framework papers, the ISPA application forms, the draft ISPA Financing Memorandum with its annexes etc.

This manual covers the whole project cycle, it should serve as a guide to national authorities. It interprets the ISPA and Co-ordination Regulations, it explains how the various documents already issued by the Commission hang together, and it aims to ensure coherence between them and to fill possible gaps. This manual cannot substitute for the ISPA regulation it merely attempts to give the Commission's best interpretation of the Regulation. In case of doubt the letters of the legal text have precedence and if appropriate the ISPA-Fund managing service, DG REGIO, may seek an opinion from the Commission's legal service.

The manual will be updated and complemented as needed in the light of experience gained in implementing ISPA in practice. The manual therefore has still a draft character and it is subject to possible modifications at irregular intervals. Updates will be made available on DG REGIO Inforegio website. Users are therefore kindly requested to regularly consult this site.

Marc Franco
Director
Directorate F
DG REGIO

I. INTRODUCTION

A. WHAT IS ISPA ?

1. DEFINITION AND OBJECTIVE

The "Instrument for Structural Policies for Pre-accession", ISPA, is the European Community's financial instrument set up in order to assist the ten Central and East European candidate countries in the fields of environment and transport in view of their accession. ISPA, which has a budget covering the period 2000-2006 (cf. section I.A.4 below), is managed by the European Commission.

According to the "ISPA Regulation" (Council Regulation (EC) N° 1267/1999 of 21 June 1999 establishing an Instrument for Structural Policies for Pre-accession¹):

"ISPA shall provide assistance to contribute to the preparation for accession to the European Union of the following applicant countries: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia (referred to as "beneficiary countries"), in the area of economic and social cohesion, concerning environment and transport policies [...]".

ISPA is guided by the Accession Partnerships and the National Programmes for the Adoption of the Acquis, follows an approach similar to that of the Cohesion Fund, and will operate in the fields of environment and transport.

It should be noted that, in contrast to the Cohesion Fund, ISPA will initially apply ex-ante approval by the Commission of tendering and contracting. This approach is, however, intended to be transitional and is foreseen to evolve towards full decentralisation of the implementation of ISPA assistance to the beneficiary countries.

The ISPA Regulation stipulates that:

"The Community assistance granted under ISPA shall contribute to the objectives laid down in the Accession Partnership for each beneficiary country and to corresponding national programmes for the improvement of the environment and of transport infrastructure sectors".

¹ See in Annex A the text of the ISPA Regulation .

2. ACTIVITIES BENEFITING FROM ISPA ASSISTANCE

2.1. Environment - bringing the candidate countries up to EU standards

Candidate countries will need to undertake very significant investments, in order to be able to fully implement the EU environmental legislation and meet the environmental standards of the Community.

ISPA will concentrate on the most "investment heavy" environmental directives, i.e. directives that are very costly to implement. These concern the following areas:

- drinking-water supply
- treatment of waste water
- management of solid waste and hazardous waste
- air pollution

The implementation of these directives is closely related to the improvement of the health and quality of life of citizens and have a direct positive impact on the economic and social cohesion of the beneficiary countries.

2.2. Transport: extending the Trans-European Transport Networks (TEN-T) to the candidate countries

There is an urgent need to build and rehabilitate transport infrastructure in the candidate countries and to link it to the Union's transport networks. This is a key element of the economic development strategies of the candidate countries, and will also be crucial in order to successfully integrate the candidates into the internal market and promote the effectiveness and efficiency of that market.

ISPA will give seek to promote projects, which encourage sustainable forms of moving people and goods. In particular projects which are of Community interest (identified at the Helsinki and Crete conferences) and projects which enable the countries concerned to meet the objectives of the Accession Partnerships will receive priority. This will include projects aimed at extending the Trans-European Transport Networks to provide good connections between the Union and the applicant countries and interconnections between national networks and links from these to the Trans-European Transport Networks. In this context, the TINA (Transport Infrastructure Needs Assessment) network will be an important reference for identifying projects.

2.3. Technical assistance

The ISPA budget may also be used to fund preparatory studies and technical assistance. A clear link must be shown between these measures and the investments funded by ISPA. Technical assistance will be very important in ensuring a high level of project quality, in terms of preparation, management and impact. (Cf. section II.A.2 on page 18.)

3. ELIGIBILITY OF MEASURES

Similarly to the Cohesion Fund ISPA will finance pre-identified measures. These have been defined as "projects", "stages of a project", "groups of projects" or "project schemes.

These measures must be of high quality and of a sufficient scale to have a significant impact in the field of environmental protection or improved transport networks.

(Cf. section II.A.2 below for definitions and further details on eligibility.)

4. FINANCIAL RESOURCES

Over the period 2000 to 2006, a total of EUR 1 040million per year (1999 prices) is to be divided in a balanced way between environmental and transport infrastructure projects. Up to 2 percent of the total resources can be used for technical assistance on behalf of the Commission.

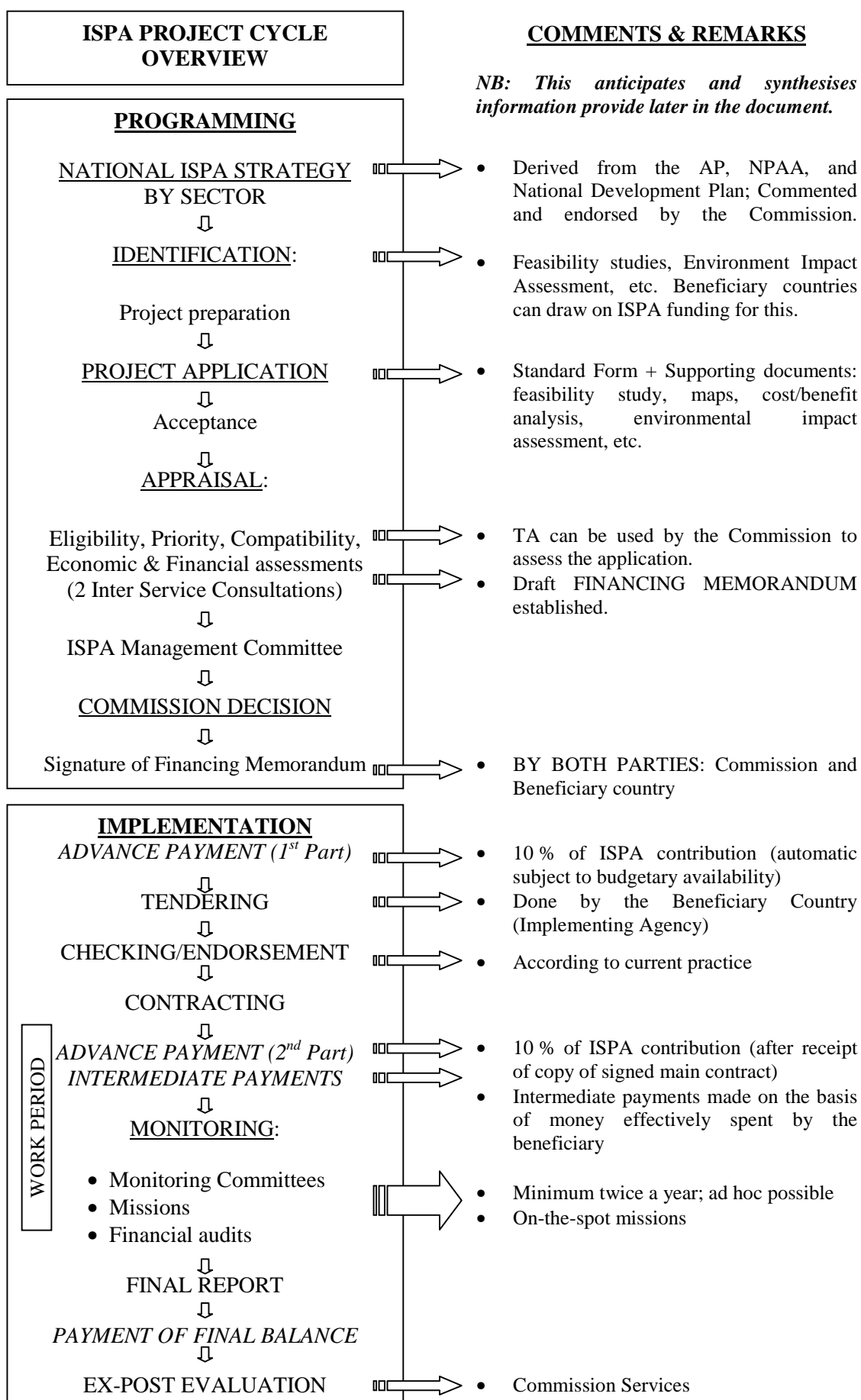
The allocation of ISPA resources among the beneficiary countries has been decided by the Commission, using the following three criteria: population size, per capita GDP (in purchasing power parity terms) and land surface area. In order to encourage the beneficiary countries to propose high quality projects and to have some flexibility in the management of ISPA funding, the allocations are given as ranges:

Bulgaria	8.0% - 12.0%
Czech Republic	5.5% - 8.0%
Estonia	2.0% - 3.5%
Hungary	7.0% - 10.0%
Lithuania	4.0% - 6.0%
Latvia	3.5% - 5.5%
Poland	30.0% - 37.0%
Romania	20.0% - 26.0%
Slovenia	1.0% - 2.0%
Slovakia	3.5% - 5.5%

Published in the Official Journal L72, 21 March 2000, p. 21.

The Commission is aiming to reach the middle of the range for each country over a period of several years. According to Article 15 of the ISPA Regulation *"on accession to the European Union, a country shall lose its entitlement to support under this Regulation. Resources made available as a result of an applicant country acceding to the European Union shall be reallocated to other applicant countries...based on applicant countries' need and capacity for absorbing assistance and on the criteria laid down in Article 4."*

B. THE ISPA PROJECT CYCLE (OVERVIEW)



NB: This anticipates and synthesises information provide later in the document.

WORK PERIOD

C. PRINCIPAL ACTORS & STRUCTURES IN THE PROGRAMMING AND IMPLEMENTATION OF ISPA (OVERVIEW)¹

Beneficiary country

- ☞ National ISPA Co-ordinator ⇔ *Monitoring Committee*
- ☞ National Authorising Officer ⇔ *National Fund*
- ☞ ISPA Sectoral Authorising Officer² ⇔ *Implementing Agency*
- ☞ Final beneficiary authority² ⇔ *Implementing Agency*

European Union

- ☞ Commission
- ☞ ISPA Management Committee

¹ The detailed definitions and responsibilities of some of these actors are to be found in section III.A.1.1 below.

² The exact distribution of responsibilities between the SAO and the final beneficiary authority may diverge between countries and measures.

II. PROGRAMMING OF ISPA PROJECTS

A. GENERAL ASPECTS

1. COMPLEMENTARITY AND CO-ORDINATION WITH OTHER COMMUNITY PRE-ACCESSION INSTRUMENTS

The Co-ordination Regulation (Council Regulation (EC) N° 1266/1999 of 21 June 1999 – OJ L161/60 of 26.6.99) aims to ensure complementarity and co-ordination between the three Community pre-accession instruments.

- The three pre-accession instruments have the following **complementary** areas of intervention:

PHARE

PHARE will focus on the main priorities for the adoption of the "acquis communautaire", i.e. building up the administrative and institutional capacities of the candidate countries and financing investments, except for the types of investments financed by SAPARD and ISPA. According to Art. 4.3 of the Co-ordination Regulation, PHARE funding may, however, be used *"to finance measures in the fields of environment, transport and agriculture and rural development, which form an incidental but indispensable part of integrated industrial reconstruction or regional development programmes."*

SAPARD

Will finance "measures to support agriculture and rural development".

ISPA

Will finance investment projects in the following areas:

- Environment measures enabling candidate countries to comply with the requirements of Community environmental legislation and with the objectives of the Accession Partnerships;
- Transport infrastructure measures which promote sustainable mobility, and in particular those that constitute projects of common interest based on the criteria of Decision 1692/96/EC of the European Parliament and of the Council of 23 July 1996¹ and those which enable the beneficiary countries to comply with the objectives of the Accession Partnership; this includes interconnection and interoperability of national networks and the Trans-European Transport Networks together with access to such networks.

The ISPA Regulation adds some further specifications:

- the minimum total cost of measures (≥ EUR 5 million);
- The need to strike a balance between measures in the fields of environment and transport;

¹ OJ L228 of 9 September 1996

- The possibility to finance technical assistance measures linked with project implementation.
- In accordance with Art. 9 of the Co-ordination Regulation, the **Commission**, assisted by the PHARE Management Committee (composed of representatives of the EU Member States), is in charge of overall **co-ordination** of the three pre-accession instruments.

The Commission produces a **general assistance document** for each of the candidate countries, setting out the **main financing priorities** for programming each of the three instruments.

In fact, since PHARE may also support measures in the fields of environment and transport, when such measures form a part of integrated industrial reconstruction or regional development programs, close co-ordination with ISPA must be ensured.

Coherence and co-ordination need to be ensured at three levels:

1. Pre-accession instruments and Community policies;
2. Between various forms of Community financing;
3. Between Community financial instruments and other sources of financing.

In order to have effective complementarity, it is important that co-ordination is implemented at an early stage of the programming cycle.

The PHARE **Joint Monitoring Committee**, which consists of representatives of various national stakeholders and the Commission, is responsible for co-ordinating the monitoring of the pre-accession instruments (PHARE, SAPARD and ISPA) and for assessing the overall progress of EU-funded assistance in the beneficiary country.

Good co-ordination also requires that at the implementation level, a well-functioning planning and reporting system on decentralised implementation exists. The National ISPA Co-ordinator is responsible for reporting to the Commission.

2. ELIGIBLE MEASURES

According to the ISPA Regulation, the eligible measures are as follows:

- PROJECTS
- STAGES OF A PROJECT (which are technically and financially independent, and may also cover preliminary feasibility and technical studies needed for carrying out the project),
- GROUPS OF PROJECTS
- PROJECT SCHEMES

in the fields of environment and transport.

- **Project:** a project is an economically indivisible series of works for a precise technical function and with identified objectives.
- **Stage of project:** a technically and financially independent stage shall be a stage which can be identified as operational in its own right.
- **Group of projects:** projects meeting the following three conditions may be grouped:
 - a) They must be located in the same area or situated along the same transport corridor;
 - b) They must be carried out under an overall plan for the area (catchment area) or corridor;
 - c) They must be supervised by a single body responsible for co-ordination and monitoring.
- **Project schemes:** these are mentioned in the ISPA Regulation, but do not exist in the context of the Cohesion Fund. As the Regulation does not allow for a more precise definition of the content of these schemes, the Commission will define this concept more precisely at a later stage. In the meantime, this type of measure will not be supported by ISPA.

In light of the experience with the Cohesion Fund, and in particular to avoid disproportionate administrative burdens, projects should have a minimum total measure cost of EUR 5 million¹. The Commission intends, however, to support, to the extent possible, projects significantly larger than this minimum size.

¹ This minimum total cost will not apply to technical assistance measures.

Projects are to be selected and approved on the basis of national ISPA strategies for transport or environment, which must be coherent with the Accession Partnerships and the National Programmes for the Adoption of the Acquis.

- **Technical assistance**

According to the ISPA Regulation, assistance may also be granted to finance technical assistance, in particular:

- *Preliminary studies*
 - *Technical support measures, including information and publicity actions*
 - (i) *Horizontal measures*
 - (ii) *Appraisal, monitoring, evaluation and control, as well as ensuring co-ordination and consistency with the Accession Partnerships*
 - (iii) *Ensuring effective project management and implementation*
- a) **Beneficiary country may contract Technical Assistance measures.** These should mainly aim at building up the project pipeline through strategy studies, project preparation, assistance for implementing agencies etc. However, also information & publicity measures can be financed in this way. Within the national allocation each year a reasonable part (as an indicative guideline 5%) will be earmarked for this purpose. There may be reasons to dedicate a larger share of the national allocations to technical assistance in the early years of the implementation of ISPA, in order to develop a strong project pipeline.
- b) **Technical assistance may be contracted by the Commission on its own initiative,** in order to support the Commission in its monitoring and supervisory role and for information and publicity measures. Such assistance will in principle be of two kinds:
1. Technical assistance measures proper (appraisal, technical expertise etc.);
 2. Reinforcement of Commission delegations to deal with increased workload.

The ISPA Regulation states that total expenditure carried out at the Commission's initiative or on behalf of the Commission may not exceed 2 % of the total allocation of ISPA (art 6.4 of the ISPA Regulation)

The technical assistance to be contracted at the initiative of the Commission is grouped in one Framework document presented each year at a meeting of the ISPA Management Committee. Towards the end of each calendar year, an update will be given to the ISPA Management Committee on the effective use of the planned technical assistance.

A specific institution building support scheme for implementing agencies may be set-up in the near future for beneficiary countries which need it. This scheme will be co-ordinated with twinning arrangements made through the PHARE-financed Special Preparatory Programme (SPP) or other relevant programmes. (Cf. also section III.C.3 below). This issue will become more important in the context of decentralisation. Appropriate and more concrete guidelines will be issued at a later stage.

B. THE PROGRAMMING CYCLE FOR ISPA PROJECTS

1. NATIONAL ISPA STRATEGIES

Although ISPA is an instrument financing projects, it is evident that effective project identification requires a **strategy**, defining the **priority objectives** and the **ways and means** of realising these. Each beneficiary country needs, therefore, to define a national **ISPA transport strategy** and a national **ISPA environment strategy**. These strategies, which constitute a framework for ISPA assistance to the beneficiary country, can be reviewed and revised as appropriate.

The Commission has prepared **framework documents for ISPA funding** in the fields of environment and transport, in order to specify the field of intervention of ISPA (e.g. on investment-heavy directives for the environment sector), and to guide the drafting of the national ISPA strategies. For the Commission the key orientations in this context are the following:

- Community dimension of investments;
- Systematic approaches (no isolated ad hoc interventions);
- Concentration on projects with impact on a maximum number of people;
- Maximum financial leverage.

Using the framework documents as “grids”, the purpose of the National ISPA strategies is to define the priority objectives in the transport and environment sectors, and to identify the ways and means of realising these. The national ISPA strategies provide the framework for project identification and set out the criteria to be used to select and appraise proposed projects.

The national ISPA strategies concentrate on the investment planning. They should tackle the programming exercise from three angles:

- Sector and sub-sector priorities;
- Geographical priorities (transport bottlenecks, environmental black spots, etc);
- Financial engineering (best use of grants in combination with other resources).

The national ISPA strategies should be based on and make reference to the Accession Partnerships and on the National Programmes for the Adoption of the Acquis, and they should also draw on relevant national planning documents. The documents must furthermore be consistent with the National Development Plans and can be regarded as an Annex to these documents, focusing on specific infrastructure needs falling within the scope of ISPA. The ISPA strategies remain a national responsibility, but they must take full account of EU priorities and legislation. They should also be coherent with the position papers on environment and transport presented by the respective candidate country in the framework of its accession negotiations with the EU.

The national ISPA strategies are not intended to be legal documents, but should rather be seen as tools to guide the selection of ISPA projects. In order to perform this role in a coherent way, they need to be based on a strong and detailed analysis, linking the objectives and priorities identified to specific project proposals, with their possible financing. Before finalising the document, discussion needs to take place between the national authorities and the Commission, leading to an agreement on a final draft.

The ISPA transport strategy and the ISPA environment strategy will have to be prepared by the competent bodies (normally ministerial departments, whether implementing agencies or not) and transmitted to the Commission **through the National ISPA Co-ordinator**.

The Commission will present the national ISPA strategy documents to the ISPA Management Committee for information, in order to provide the context within which individual projects are proposed. The intention is to give members of the Committee a better understanding of the transport and environment needs of the beneficiary countries and of the determination of the various ISPA priorities.

The Commission's agreement to the ISPA strategies does not imply its approval of all the projects identified within these documents. All measures have to be individually proposed and submitted to the Commission for consideration under the normal procedures. In all cases, project proposals will be submitted by the Commission to the ISPA Management Committee for its opinion before a Commission financing decision is taken.

2. PROJECT IDENTIFICATION

Based on the national ISPA sector strategy, "project identification" is a joint process between the beneficiary country and the Commission services. On the side of the beneficiary country all relevant services concerned with technical or/and financial aspects of ISPA will be involved.

The Commission will work on the basis of project ideas proposed by the national authorities but can also take a more proactive role, if it considers that certain important potential projects have not been considered.

Beneficiary countries introduce formal applications for projects identified, through the National ISPA Co-ordinator.

3. SUBMISSION OF THE ISPA PROJECT APPLICATION FORM

Through the formal submission of the completed ISPA project application form to the Commission, and its acceptance by the Commission, the project (or project stage or group of projects) is formally recognised as a candidate for ISPA financing. The data contained in the application form (and its annexes) is the basis for the appraisal of the project. The form presently exists¹ in three versions:

- application form for transport projects;
- application form for environment projects;
- application form for technical assistance.

The project application consists of the completed form supplemented by a number of annexes and supporting documents.

¹ **Application forms exist in electronic form and should be filled and transmitted in this way to facilitate processing and ease possible modifications.**

The application form includes information on the essential administrative, technical, economic and financial aspects of the project. It should be signed and submitted by the National ISPA Co-ordinator directly to the Commission.

Receipt will then be acknowledged by means of a first standard letter.

The acceptance by the Commission of the application form is determined, on the one hand, by the coherence of the project with the priorities defined in the Accession partnership and the national ISPA transport or environment strategy, and, on the other hand, by the completeness of the information transmitted.

When the application form has been screened and is considered “acceptable”, i.e. that the application form contains sufficient information to begin the project assessment process, (normally within a period of 3 weeks), the Commission will send a second **standard letter** confirming acceptability of the application form. This standard letter will have been assigned a unique reference number. After this an internal procedure of inter-service consultations will start.

In the event that the application is not considered acceptable, a letter explaining this will be sent to the national authorities, giving reasons for the non-acceptance.

The essential information to be transmitted in the application form, is determined in the ISPA Regulation (art 7 and Annex 1).

In this context, special attention needs to be paid to:

- Coherence of the project proposed with the **national ISPA environmental/transport strategy**. This is of course of the utmost importance as it will determine from the start the acceptability of the project by the Commission services;
- The **cost-benefit analysis**: resulting in an economic rate of return. This analysis should be carried out following a recognised “state of the art” methodology. As a guideline, a handbook on cost-benefit analysis developed by the Commission services can be found in **Annex B** of this manual. For environmental projects, either the standard cost-benefit analysis can be used (stating the assumptions underlying the calculation) or a “cost-effectiveness” methodology can be used. This requirement does not apply to technical assistance projects;
- The **financial analysis**: assessing the financial viability of the project, its revenue generating capacity and the need for grant assistance :

Financial analysis leads to a net present value and an internal financial rate of return different from the rates established by the socio-economic cost benefit analysis. The financial IRR and the financial NPV are exclusively based on investment cost and the anticipated cash flows of a measure over the lifetime the investment. In line with Article 6 (2) b of CR 1267/99 the Commission may, however, take account of the revenue generation capacity in assessing the future cash flow.

Since the financial analysis takes full account of the initial investment cost imputed items such as capital depreciation over the lifetime of project must not enter the cash flow analysis. In a similar way also sunk cost (i.e. expenditure already dispersed in the measure before the ISPA application) will not be taken to consideration.

The financial analysis has, however, if appropriate take into account the possible opportunity cost related to a measure of parts of it. (A sewerage treatment plant should not be constructed on a highly priced site just for the argument that this site is already in public hand. The sale of the site and the purchase of a new site could be more cost-effective solution). As general rule for all investment projects it should be demonstrated that a proposed investment or technology is cost effective.

An important element in any financial analysis, as well as in cost benefit analysis, is a sensitivity or scenario analysis. This means the robustness of the results has to be checked by altering individual parameters or a whole set of parameters. In this context it is standard practice to analyse how the financial NPV reacts to variations in the discount rate. The Commission recommends using as general rule discount rates of 4, 6 and 8%. Future costs and revenues and assumptions of income development should be presented in real terms.

The appraisal of the financial viability of a measure will also take account of information on arrangements for ensuring efficient use and maintenance. This is linked with the “viability” of the project mentioned in the application form. Apart from the necessary resources to operate and maintain the equipment, information needs to be given on the organisational aspects of the operation and maintenance.

- The **institutional capacity** of the project promoter;
- **Environment integration measures:** for projects falling under the scope of the EU Environmental Impact Assessment Directive (85/337/EEC as amended by 97/11/EC) a similar procedure to the EU standards is required. It is important to note that the construction of main transport and environmental infrastructure eligible for ISPA is covered by Annex I (EIA is compulsory) or Annex II (national authorities have to decide if a full EIA is necessary or not on the basis of pre-defined criteria). An important requirement of the EU Environment Impact Assessment Directives is the consultation of the population concerned. The Commission will from the start insist on some minimum standards in this respect. Moreover, for those projects not covered by the EIA Directive, and in order to safeguard those areas identified as sensitive from the point of view of nature conservation, the responsible environmental authorities need to submit the corresponding certificates included in Annex I of the ISPA application form.
- The **compatibility of the measures with Community policies**, in particular compliance with competition and public procurement rules. This means respect of the principles concerning “state aids” and of tendering rules (equal treatment of competitors, fair competition). In this context, the principles as laid down in the provisions of “Title IX” of the Financial Regulation¹ apply, in the absence of the transposition and application of the relevant “acquis communautaire” in the legislation of the beneficiary country. These provisions also apply to other Community policies (compliance with EU environmental standards, transport and Trans-European Networks etc.).
- The **financing plan** - The plan proposed by the national authorities in the application presents the total financing of the measure over its period of implementation according to the source of funds: this means information on the anticipated supply of ISPA funds, the national counterpart funds, as well as the

¹ See Title IX of the Financial Regulation in Annex B.

amount and terms of co-financing sought from other sources (EIB, EBRD, IBRD etc.), including private sources.

The Commission takes the suggested co-financing from ISPA only as a proposal. Co-financing from the Community budget of 75 % should rather be seen as an exception since the Commission has to reduce the rate of assistance taking into account (Article 6 (2) CR 1267/99)

- The availability of co-financing
- The measures capacity to generate revenues and
- Appropriate application of the polluter-pays principle.

The amount of financial assistance and the financing plan together with all provisions and conditions necessary for implementation of measures are determined in the Commission decisions approving measures (Art. 7 (5) CR 1267/99).

The financing plan finally proposed by the Commission in the decision relates to the commitments from the Community budget. (for details cf. section II B 7)

For the Commission to correctly determine the financing plan in the decision it is a prerequisite that it is informed on the forecast payments flow during implementation of the project. The financing plan submitted by the beneficiary country in the application relates therefore exclusively to the estimated future payments flow. This financing plan constitutes then in the implementation phase the baseline for the payment claims and the monitoring reports. (Cf. annex III. 3 - Model for Payment Claims, for reporting on financial and physical progress and request for modification – of the Financing Memorandum). (It is also the primary information source for establishing the Commission's proposal for the annual payment appropriations in the Community budget)

- The **procurement plan** – The procurement plan, which is an additional essential information of financial character in the application, has to give an overview of the different types of contracts to be tendered and entered in by the implementing authority. The information to be presented relates to the
 - type of tender - restricted or with pre-qualification,
 - type of contract - services, supplies, works,
 - timing of tender publications,
 - estimates for the financial envelopes of the different contracts.

It goes without saying that the total of estimated contract cost has to add up the total (eligible) cost of a measure presented in the financing plan.

Information provided in the financial analysis, in the financing plan and in the procurement plan will then be used by the Commission in its appraisal and is the basis for a proposition of the ISPA rate of assistance and for the commitment plan relating to the Community budget.

4. PROJECT APPRAISAL

If an ISPA project application is considered to be acceptable, the Commission carries out a thorough appraisal of the project, in order to assess the measure's compliance with detailed criteria. The project appraisal will be carried out following the procedure established for the Cohesion Fund.

- The project application is submitted to a first inter-service consultation, to give the Commission services concerned the opportunity to make their fundamental remarks about the proposal. This will lead to further analysis and discussion with the authorities in the beneficiary country, in order to clarify some aspects of the project or to modify the project concept. This will result in a draft Financing Memorandum, which forms the basis of the second inter-service consultation.
- This second inter-service consultation will be launched to ensure agreement of all Commission services concerned. The document submitted to the second inter-service consultation will consist of a draft Commission Decision with Annexes 1 and 2 and a draft Financing Memorandum with Annexes 1 and 2.

Important considerations during the appraisal of the project are:

1. Priorities established in the Accession Partnership and national strategies for the respective sectors.
2. Contribution to implementation of Community legislation and policies on environment and Trans-European Transport Networks and of common transport policies.
3. Appropriate balance between environment and transport.
4. Economic and social benefits (taking account of leverage effects).
5. Sustainability of the project, including provisions for adequate maintenance after completion.
6. Effective project management.
7. Consideration of possible alternative forms of financing

During the appraisal process, and before the second inter-service consultation is launched, the Commission will formulate its proposal for the **ISPA contribution** to the project.

5. DETERMINATION AND STRUCTURING OF ISPA'S FINANCIAL CONTRIBUTION TO THE PROJECT

5.1. Forms of ISPA assistance

According to Art 6.1 of the ISPA Regulation "*Community assistance under ISPA may take the form of non-repayable direct assistance, repayable assistance or any other form of assistance*". Assistance repaid to the implementing agency or to another public authority shall be reapplied for the same project or the same type of project. The detailed provisions on this matter shall be clearly indicated in the Financing Memorandum.

5.2. Rate of assistance from ISPA

According to article 6.2 of the ISPA Regulation the rate of Community assistance granted under ISPA may be up to 75 % of public or equivalent expenditure, including expenditure by bodies whose activities are undertaken within an administrative or legal framework by virtue of which they are regarded as equivalent to public bodies. In some cases the rate of assistance can be increased up to 85 %, in particular where the Commission considers that a higher rate than 75 % is required for realising projects essential for achieving the general objectives of ISPA.

Except in the case of repayable assistance or when there is a substantial Community interest in the project, the rate of assistance shall be reduced from the maximum rate mentioned above, taking into account:

- the availability of co-financing;
- the capacity of the project to generate revenues (cf. section II.B.5.5 below); and
- the application of the polluter-pays principle (cf. section II.B.5.6 below).

Taking into account the above mentioned elements, the contribution of ISPA to a project cannot be higher than:

- 75 % (85 %) of the eligible public or equivalent expenditure of the project;
- the amount of eligible expenditure which cannot be covered by contributions from other sources of financing; and
- the amount of eligible expenditure not expected to be covered by revenues to be generated by the project.

It is the lowest of the three amounts listed above that will determine the ISPA contribution to the project.

However, preliminary studies and technical support measures may be financed exceptionally at 100 % of the total cost.

5.3. Eligible expenditure and calculation of total ISPA contribution

The ISPA assistance rate is applied to the amount of *eligible expenditure* of the project, in order to calculate the total ISPA contribution to the project.

As several categories of expenditure are excluded from ISPA support, ISPA's share of the total project cost may differ significantly from the ISPA assistance rate applied to the project.

The most important types of expenditure ineligible for ISPA financing are identified in the ISPA Financing Memorandum. These are *land purchase, taxes* and, as a general rule, *expenditure incurred before the Commission's signature of the Financing Memorandum.*

(Cf. further section III, Annex III.2 of the ISPA Financing Memorandum.)

5.4. Co-financing

The Co-ordination Regulation (Art 7) indicates that *beneficiary states shall contribute to the financing of investments*. This national contribution can be financed in several ways, namely:

- by national public sources;
- by loans from the European Investment Bank (EIB) or an International Financial Institution (IFI) (whether a public loan with state guarantee or a commercial loan to a public company);
- by commercial sources of funds.

Funding from national public sources can be made available by the national, regional or local authorities. It can also be made available by a public company, beneficiary of the project. The contribution can be financed directly by the budget of the public authorities or the public company or by funds obtained by these authorities from other sources.

In the case of funding being provided by municipalities particular care will be taken to ensure that such funding will indeed be available as and when needed for the project concerned.

In addition to the ISPA contribution and the national contribution, there may also be additional co-financing provided for the project by the EIB, an IFI or a commercial source (cf. sections 5.4.1. below on co-financing structures).

Commercial sources of funds can be integrated in the project's financing scheme. They can be counted as the beneficiary's own contribution. Their participation must, however, not restrict the procurement of works, services or supplies during project implementation.

The involvement of private finance in the development of infrastructure is an important objective of Community policy, reflected in the Treaty. In this context, considerations include the need to ensure a larger capital base for infrastructure development and a greater efficiency in investment and operation in public utilities. In all cases, some form of contract needs to be concluded between the government and the private operator specifying the terms on which the private sector ensures the fulfilment of the public function. As a natural monopoly is often involved, careful regulation and supervision of the way in which the private sector fulfils the public function is required.

Whenever it is being considered to use ISPA resources in the context of a public-private partnership the existence of an appropriate legal framework and of appropriate regulatory conditions will need to be verified, including as regards the following aspects:

- Equality of opportunity between all relevant companies in the same sector;
- Respect of competition rules for awarding the concession;

- Respect of competition rules for awarding the investment contracts;
- Respect of the concession conditions (service to consumers, maintenance, etc.);
- Absence of more than normal remuneration on capital.

Private sector involvement can take various forms, ranging from management contracts, minority stakes, and up to private ownership of utility companies. As indicated above, ISPA is open to participate in mixed public-private ventures. ISPA will consider financing projects involving bodies whose activities are undertaken within an administrative or legal framework by virtue of which they are regarded as equivalent to public bodies

If a public-private partnership already exists, it could be considered eligible for ISPA financing when an International Financial Institution is involved and it can be demonstrated that the selection of the private partner has been done while respecting all the above-mentioned principles.

In the future, ISPA's role vis-à-vis other types of public-private partnerships will be explored.

It should be noted that ISPA assistance *cannot* be combined with other Community pre-accession assistance (PHARE or SAPARD) for the same stage of a project (cf. Co-ordination Regulation¹ art 5).

5.4.1. Co-financing structures

- Joint co-financing

In the case of the national contribution being financed directly by the budget of public authorities or a public company, there will normally be joint co-financing between this contribution and the ISPA contribution, i.e. the funds will be managed in a fully integrated fashion in accordance with identical rules and with common supervision and control arrangements during implementation of the project.

This type of co-financing structure is also possible, where part of the financing is provided by the EIB or an IFI. However, this requires agreement between the Commission and the financial institution concerned on all relevant modalities of implementation.

- Parallel co-financing

In cases where it is not necessary or possible to arrive at common implementation modalities, the EIB or IFI contribution can be structured in parallel to the ISPA contribution. This means that the funds provided by the various funding sources are dedicated to separate components or contracts within the overall project in order to avoid overlapping. However, common supervision should, if possible, take place also in this co-financing structure.

¹ See the text of the Co-ordination Regulation in Annex B of this manual.

5.5. Revenue generation

When revenue is generated by the project it should pay for the operating costs and may also contribute to some of the capital costs of the project. This could mean that the project has the capacity to attract other sources of finance. Indeed, the resources generated can serve to reimburse the loans obtained from International Financial Institutions or from commercial institutions. The present value of the future cash flow will be taken into account in the calculation of the total ISPA contribution as it reduces the need for public grant finance.

It is important to note that the regulation uses the concept “capacity to generate income”. This means that, starting from the proposed tariff policy, an analysis needs to be made – and a dialogue with the authorities needs to take place – to determine what the optimal tariff policy (and its evolution over time) should be. In the case of divergence between actual and preferred tariff policy, a theoretical (shadow) revenue could be taken into account, higher than the actual one, for the calculation of the present value. The ISPA contribution would then be reduced accordingly.

5.6 Application of the “Polluter pays” principle

A declaration made by the Commission and the Council states that it is the intention to follow the same approach for ISPA in regard to the “**polluter pays principle**”¹ as applied in the Cohesion Fund and the structural funds.

The application of the “polluter pays” principle will be decided in close co-operation with the beneficiary countries. The details are set out in the document attached in Annexe B to this manual. As a starting point the Commission will propose to use the limits applied to operations with substantial revenues (cf. art. 29 of Regulation 1260/99).

When charging systems are in place and where it can be shown that these do not provide revenue above and over that required to cover operation (ex: for economic and social cohesion reasons, social acceptance,...) maintenance and depreciation costs, the rates of assistance could be increased in relation to above-mentioned limits within the overall limits laid down in Article 7 of the Cohesion Fund Regulation, and Article 6 of the ISPA Regulation.

6. DECISION PROCEDURES

6.1. ISPA Management Committee & Commission Decision

On the basis of the project appraisal, the Commission services may decide to put forward a measure for approval. The Draft Financing Memorandum prepared for the second inter-service consultation is then submitted to the ISPA Management Committee for its opinion.

The documents regarding the measure submitted for decision are the following:

¹ See the document covering the application of the polluter pays principle for the Cohesion Fund, Structural Funds and ISPA, in Annex B.

- **A draft Financing Memorandum including:**
 - A main text to be signed;
 - A description of the measure (beneficiary country, name of the measure, location of the measure, maximum eligible expenditure, rate of assistance, maximum amount of assistance, amount of advance payment, date of completion);
 - A financing plan (Annex II to the Financing Memorandum).

Within a certain time frame the Committee will deliver its opinion on the proposal, after which, in the case of a favourable opinion, the Commission will adopt the measure covered by the application. The draft Financing Memorandum adopted will be turned into a final Financing Memorandum.

6.2. ISPA Financing Memorandum

The ISPA Financing Memorandum (composed of the main text to be signed and three Annexes¹ as indicated above) will in principle be signed by the Commissioner on behalf of the Commission. This signature can also be made by the Director-General for Regional Policy.

On the side of the beneficiary country, as the signature of the Financing Memorandum entails financial responsibilities, it should normally be signed by the National Authorising Officer, the National ISPA co-ordinator or an appointed government representative of similar rank having ISPA responsibilities. In addition, line ministry representatives may sign the document to confirm their commitment to the project concerned.

Only when the Financing Memorandum has been signed by the Commission will incurred expenditure be eligible for ISPA assistance.

The official closure of ISPA projects will be subject to specific rules and regulations to be defined at a later stage.

Amendments to a Financing Memorandum are possible but, in the case of substantial amendments, as defined in the annexes to the Financing Memorandum, require the agreement of both parties by means of a formal addendum to be presented to the ISPA Management Committee by the Commission.

¹ Detailed implementation provisions are indicated in a third Annex and form part of the Decision; however, as the ISPA Management Committee has already been consulted on this Annex, only Annexes I and II are to be submitted again.

7. COMMITMENTS

The Financing Memorandum will indicate the sequence of budgetary commitments to be made by the Commission to the project.

For projects where the duration is less than two years, or where ISPA funding does not exceed EUR 20 million, the Commission will commit a maximum of 80% of the total assistance indicated in the Financing Memorandum at the time the latter is signed. The remainder will be committed subject to the state of implementation of the project.

For other projects the Commission will make its budgetary commitments on an annual instalment basis. As is the practice in the Cohesion Fund, the annual instalments thus committed will be calculated in order to cover the ISPA contribution to anticipated expenditure (payments) in the beneficiary country. In such cases, the annual breakdown included in the financing plan reflects this anticipated expenditure (i.e. as presented in the project application).

However, where necessary in order to take account of the budgetary procedures of the beneficiary country, the Commission may determine the amount of annual instalments in such a way as to cover the highest amount possible of the ISPA contribution to legal commitments (normally contracts) to be entered into by the contracting authority before they are entered into. In such cases, the annual distribution indicated in the financing plan annexed to the Financing Memorandum will be determined on the basis of contracting forecasts.

III. IMPLEMENTATION OF ISPA PROJECTS

A. IMPLEMENTATION STRUCTURES, ACTORS AND PROCEDURES

1. STRUCTURES, ACTORS AND GENERAL PROCEDURES

1.1. Structures and actors

As a rule, best use should be made of effective existing implementing structures, or alternatively to replicate structures which have proved to work effectively in the past (i.e. PHARE, International Financial Institution structures etc).

The technical and financial/tendering/contracting functions can be dealt with either by the same structures, or by separate ones. In the first case, it will be important to keep the functions well defined and separated, in different services for example. In any case any conflict of interest should be avoided.

The following actors have been defined together with their minimum responsibilities:

☞ National ISPA Co-ordinator – Monitoring Committee

National ISPA Co-ordinator

He or she is a senior official acting as the main “manager” of the ISPA projects in the candidate country. He/she is the main interlocutor of the Commission for programming, implementation and evaluation issues.

Programming: submits the national ISPA strategies and individual applications to the Commission. Together with the Commission, he or she ensures an appropriate balance between environment and transport. In cases where this responsibility is not given to the National Authorising Officer or to another senior official with ISPA responsibilities, he or she signs the Financing Memorandum.

Implementation: is responsible for the monitoring of the implementation of each ISPA project through physical and financial indicators specifically tailored to the character of the project and its objectives.

Ensures that each project achieves the objectives laid down in accordance with the Financing Memorandum.

Chairs the ISPA Monitoring Committees.

Supervises publicity and dissemination of information for each project.

He or she submits progress reports on activities to the Commission on a regular basis - in accordance with the rules laid down in the Financing Memorandum.

ISPA Monitoring Committee

The Monitoring Committee is the main monitoring body for the implementation of the ISPA projects, the main forum for discussing and deciding on implementation issues (progress reports are discussed there). It can make recommendations to the Commission on adjustments to be made to projects.

- Composition (minimum):
- Commission
 - Candidate country (ISPA Co-ordinator, representative of the National Fund, Ministries of Transport and Environment, Implementing Agencies if different from the Ministries, final beneficiaries, possibly some private enterprises involved in project implementation)
 - International Financial Institution(s)

The Monitoring Committee holds regular sessions at least twice a year; it can also meet in ad-hoc sessions at the request of its Chairman and agreement of the Commission, or vice-versa. The National ISPA Co-ordinator normally acts as chairman of the Committee and designates the secretary to the Committee.

There will normally be one ISPA Monitoring Committee in each beneficiary country. However, if needed sub-committees for transport and environment could be envisaged.

National Authorising Officer - National Fund

National Authorising Officer

He/she is the head of the National Fund, and a high-level official acting as financial “counterweight” to the National ISPA Co-ordinator.

Has the overall responsibility for the financial management of ISPA funds.

Is responsible for the establishment and management of rules linking the National Fund to the Implementing Authorities.

Is responsible for ensuring the flow of national and other forms of co-financing.

In cases where this responsibility is not given to the National ISPA Co-ordinator or to another senior official with ISPA responsibilities, he or she signs the Financing Memorandum.

Signs and certifies payment claim applications and submits these to the Commission.

National Fund

The National Fund is the “single entity” (central treasury entity under the responsibility of the Ministry of Finance) through which all Community funds granted under ISPA are to be channelled.

A separate bank account should be established for ISPA operations, with a sub-account for each implementing agency responsible for a sector (transport and environment).

The responsibilities of the National Fund will be laid down in a Memorandum of Understanding (MoU) covering ISPA to be concluded between the Commission and each beneficiary country. This text will in particular establish the following: the principles to be respected in the financing agreements to be signed between the National Authorising Officer (NAO) and ISPA Sectoral Authorising Officers, including those related to the transfer of funds to Implementing Agencies, bank account structures, technical and financial reporting systems and request of funds from the Commission.

It is intended that the financing agreements to be signed with Implementing Agencies will be concluded on the basis of the principles enshrined in the above-mentioned MoU on the responsibility of the NAO. These agreements will not be subject to prior endorsement by the Commission, but should be submitted to the Commission for information. Implementation of the financing agreements may be verified by the Commission in the course of ex-post controls.

ISPA Implementing Agency – ISPA Sectoral Authorising Officer

An Implementing Agency should normally be established to cover each of the two ISPA sectors, namely transport and environment.

These Implementing Agencies should be a part of the national administration, e.g. the line ministries or national agencies responsible for the sector in question.

Other bodies, including those previously established for implementation of the PHARE programme, such as the Central Financing and Contracting Units (CFCU), may act as Implementing Agency for a sector where they possess experience and resources trained in international tendering for works contracts, which is not available in line ministries or national agencies.

The Head of the Implementing Agency is known as the Sectoral Authorising Officer (SAO). It is this person that signs the financing agreement with the National authorising Officer (see above).

Final Beneficiary

This is the body, organisation or administration benefiting from the project.

In the transport sector, the final beneficiary is likely to be a railway company, or road, port or airport authority.

In the environment sector the final beneficiary will in most cases be a municipality.

Division of responsibilities between Implementing Agency and final beneficiary.

The responsibilities of the SAO, as described in the MoU on the National Fund include the following:

- procurement matters, including signature of contracts;
- administrative, financial and technical management and monitoring of projects in the sector;
- verification of invoices;
- maintaining technical and financial reporting and accounting systems;
- transmission of regular information to the National Fund on financial and physical progress.

It is important to stress that the MoU on the National Fund allows for some of these responsibilities to be delegated to the final beneficiary. As in many cases the final beneficiary will be the contracting authority, it will be responsible for contract signature and technical implementation.

The above arrangements thus allow for flexibility in the implementing structure to be applied, i.e. between a centralised and decentralised approach. The model applied may vary from sector to sector within the same country, depending on the nature and capacity of the final beneficiary.

However, the Sectoral Authorising Officer in all cases remains responsible vis-à-vis the National Authorising Officer, and when submitting information to the latter on financial and physical progress must declare that the information is accurate, as well as be in a position to substantiate the information by original documentation.

The Implementing Agency should therefore maintain a sufficient degree of supervision over the final beneficiary, where responsibilities have been delegated (e.g. through checking of tendering procedures, technical supervision, verification of invoices prior to payment to contractors) so that such a declaration of accuracy can be made.

The responsibilities for transmission of information to the National Fund as well as for the maintenance of technical and financial reporting and accounting systems for the sector cannot by their nature be delegated. By exercising these responsibilities, the Sectoral Authorising Officer should maintain an overall view of financial and physical implementation within the sector.

1.2. General procedures

Precise requirements exist concerning the rules and procedures to be followed in the management of ISPA funding. The minimum requirements in the field of financial control are listed in Annex III.4. of the ISPA Financing Memorandum.

The Commission requires each country:

- a. To establish management and control systems which ensure:
 1. The proper implementation of the assistance granted under this Regulation in accordance with the principles of sound financial management;

2. The separation of the functions of management and control;
 3. That expenditure declarations presented to the Commission are accurate and emanate from accounting systems based on supporting documents, which are open to verification.
- b. To verify on a regular basis that the measures financed by the Commission have been properly carried out.
 - c. To prevent irregularities and take action against them.
 - d. To recover any amounts lost as a result of irregularity or negligence.

As far as sound management and control are concerned, Annex III of the ISPA Regulation fixes precise criteria. The beneficiary country has to demonstrate the capacity of its institutions to implement the projects according to the principles of sound financial management taking into account the above-mentioned criteria.

(Cf. also ISPA project cycle in section I.B. above and detailed rules for financial implementation in the ISPA Financing Memorandum).

2. TENDERING AND CONTRACTING PROCEDURES

The detailed procedures for tendering and contracts will be found in the commission Practical Guide to PHARE, ISPA and SAPARD.

This Practical Guide covers all forms of procurement, namely services, supplies and works and supersedes the provisions currently to be found in the procurement section of the DIS Manual developed for the PHARE programme.

The Commission will notify beneficiary countries of the text of the Practical Guide and the date of its entry into force. Until such time the provisions of the procurement section of the DIS Manual (1997 edition, together with notified amendments) will apply by analogy to ISPA.

Until full decentralisation is applied (see section III C), tendering and contracting procedures will be subject to ex-ante approval (endorsement) by the Commission¹. The Practical Guide sets out the relevant steps for each form of procurement and procedure followed (e.g. tender dossier, evaluation procedure, evaluation report, contract etc).

The following points are highlighted:

Service contracts

As a rule, a restricted tender is required for contracts above €200,000.

Below this threshold, framework contracts or simplified procedures may be applied.

Supply contracts

¹ Endorsement by the Commission refers to the correctness of procedures applied. The funds committed by the Commission towards the co-financing of the project are stated in the Financing Memorandum.

As a rule, an open international tender is required for contracts above €150,000. Open local tenders apply between €30,000 and €150,000, with simplified procedures for lower amounts.

Works contracts

Contracts above €5,000,000 require either an open procedure (international open invitation to tender following publication of a procurement notice) or a restricted procedure (pre-qualification following publication of the procurement notice).

The most suitable procedure should be followed in each case.

Contracts between €300,000 and €5,000,000 are subject to open local tender, while simplified procedures may be followed for contracts under €300,000.

The procedures of the Practical Guide should be applied in conjunction with the related rules and regulations of the International Federation of Consulting Engineers (FIDIC). The choice of colour of FIDIC books should be made on the basis of the nature of the works concerned and the necessary risk allocation.

Language

Tendering and contracting documentation shall be established in English. Authorised translations in the official language of the beneficiary country may be established. This issue will be reviewed whenever full decentralisation is introduced and ex-ante approval by the Commission is waived.

Tendering prior to signature of Financing Memorandum

If an invitation to tender is issued before the corresponding Financing Memorandum is signed between the Commission and the recipient, publication must take place of a procurement notice containing explicit reference to a suspension clause stating that the award of the contract is subject to the conclusion of the Financing Memorandum and the provision of funding.

If no Financing Memorandum is concluded (i.e. because the project has not been approved by the Commission), the invitation to tender should be cancelled.

Nationality rules

The nationality rules laid down in Title IX of the Financial Regulation will be applied in the following manner:

In the case of works contracts, the main contractor must fully meet the nationality criteria. The same applies to joint venture partners, members of consortia participating in tenders or other principal actors. The position of sub-contractors, however, will be assessed on a case-by-case basis. They will, as a general rule, only be required to meet the nationality rules if they account for a significant amount of the work proposed.

The procurement of supplies within a works contract is primarily a matter for the commercial judgement of the contractor involved. However, the Commission may intervene in the case of equipment or supplies which account for a significant proportion of the contracted work.

Standards

A question arising in the context of public procurement relates to the role played by standards and technical specifications. Public procurement rules and procedures are limited in their scope and they focus on the requirements needed to ensure transparency and non-discrimination in the award of public procurement contracts, as stipulated under Title IX, section III, of the Financial Regulation.

The Commission in implementing ISPA will as a rule request that all relevant European legislation in the areas of environment and of transport be respected as far as technical specifications and environmental quality standards are concerned.

As far as technical norms and standards are concerned the following applies: As a general rule in public procurement in the European Union purchasers cannot reject products conforming to relevant standards for reason of non-compliance with technical requirements. The task of developing and adopting the standards necessary for reference is entrusted to standardisation bodies. European standards, which have priority status in EU legislation, are drafted by one of the recognised European standardisation bodies (CEN, CENELEC and ETSI). (CEEC can become members of these bodies before enlargement).

In the context of investment supported by ISPA this means that the Commission will insist that tender documents are drafted in a way that technical specifications are expressed using European standards whenever possible, in order that all natural and legal persons in the Union and the recipient states can participate on an equal footing. Where European standards have not been developed international standards have priority. Relevant information can be found on the following web sites:

<http://simap.eu.int/en>

<http://europa.eu.int/comm/enterprise/newapproach/standardization/harmstds/index.html>

<http://www.cenorm.be/>

<http://www.cenelec.be>

<http://www.etsi.org>

3. REPORTING DURING PROJECT IMPLEMENTATION

3.1. Financial reporting

The Financing Memorandum specifies that all public or private bodies involved in the management and implementation of measures must maintain either a separate accounting system or an adequate accounting codification of all transactions concerned.

Reporting systems that provide regular, standardised outputs for each measure financed by ISPA must be put in place by the beneficiary country to monitor progress in the implementation of the measure, to provide a basis for making payment claims to the Commission, and to facilitate the verification of expenditure by Community and national control authorities. A computer-based reporting system will be made available by the Commission.

Particular attention in setting up such systems should be given to the requirements for making intermediate and final payment claims to the Commission as set out in the Financing Memorandum (Annex III.1 and 3A). Such claims must be based on declarations of expenditure incurred on the measures, i.e. payments certified and actually made by the body responsible for implementation, supported by receipted invoices or accounting documents of equivalent probative value. The systems must provide the basis for the declarations required from the responsible Ministry and National Authorising Officer when submitting claims.

The financial reporting systems must cover all eligible costs of a measure (project, stage of project or group of projects) for which assistance has been granted from ISPA as identified in the Financing Memorandum, including all contracts needed for its implementation regardless of source of financing.

3.2. Technical reporting

The monitoring indicators identified in the application forms, or subsequently agreed between the Commission and the beneficiary country, will form the basis for regular monitoring of the technical progress of projects. The same information will be used in the progress reports to be submitted to the ISPA Monitoring Committee, in the reports required when making payment claims, and in possible ad hoc technical reports requested on a case by case basis by the Commission.

4. PAYMENT SYSTEM

4.1. Payment system

Payments for ISPA measures will take the form of **advance payments, intermediate payments** and **payments of balances** in respect of expenditure certified and actually paid.

The first advance payment will be made by the Commission to the National Fund following receipt of the Financing Memorandum signed by both parties and all relevant information from the National Fund concerning the bank account or sub-account to be used for the project (i.e. the names and samples of signatures of the authorised signatories for the double signature system to be established, the rules of delegation of signature for the account(s), interest rate, etc.).

The details of the payment mechanism are to be specified in each Financing Memorandum.

- The **National Fund** set up in the context of PHARE will be used for the channelling of payments. The National Fund will then transmit the funds to the implementing agency, the contractor, or the final beneficiary (if agreed by the National Authorising Officer, and the Commission being informed of this).
- The National Fund should not allow access to ISPA funds by Implementing Agencies prior to the conclusion of the relevant financing agreement and nomination of the ISPA Sectoral Authorising Officer.

- The payment procedure foresees the payment of a **first advance payment** (normally 10% of the total ISPA allocation) after signature of the Financing Memorandum by both parties, and a **second advance payment** after signature of the relevant contract as specified in the Financing Memorandum (normally the first works contract), a copy of which should be sent to the Commission.
- The Advance Payment will generate interest income, which should be used according to guidelines determined by the Commission (see section III.A.4.2 below).

The advance payments will **not be deducted** from the further payment claims. They constitute therefore a **permanent cash advance** for the beneficiary country, until 80% of the ISPA allocation is reached (see below).

- **Intermediate payments** (maximum three times a year) on the basis of money effectively spent; a maximum of advance plus intermediate payments of **80 % of the total ISPA contribution to the project**. The Commission may increase this amount to 90% in justified cases.
- **Intermediate payments** requests to be submitted by the National Authorising Officer should include declarations of expenditure covering all eligible expenditure on the project. The Commission will reimburse this expenditure on the basis of the ISPA participation rate indicated in the Financing Memorandum. Each declaration will have to mention the contract (financed by ISPA, national contribution, EIB or an IFI) to which the expenditure is related.
- In the case of projects involving parallel¹ co-financing between ISPA and the EIB or an IFI, the Commission may make intermediate payments on the basis of reimbursement - applying the ISPA participation rate - of total declared expenditure (including expenditure covered by the EIB or IFIs), only when the first declaration of expenditures, related to the contracts representing the financing element of ISPA or the national contribution (not covered by the EIB or the IFIs), are submitted to the Commission. Moreover, in these cases a close monitoring system will be required to follow the progress of the project in terms of physical and financial indicators in order to monitor the actual execution of the different contracts as compared to planned execution.

Payment of the balance will be made after approval by the Commission of the final report and after all other conditions specified in the Financing Memorandum (Annex III.1, section III, § 6) have been fully met.

For those contracts with funds retained for a warranty period extending beyond the completion date indicated in article 4.3. of the Financing Memorandum, the overall total as calculated by the SAO and established by the Commission, will be paid before closure of the project. The Implementing Agency (IA) assumes full responsibility of depositing the funds until final payment is due and for ensuring that the said funds will only be used to make payments related to the retention clauses. The IA further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Interests accrued on the funds deposited will be paid to the Commission after final payment to the contractors. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the

¹ Cf. discussion of parallel co-financing in section II.B.5.4.1. above.

Commission. An overview of the use of the funds deposited on warranty accounts - and notably of the payments made out of them - and of interests accrued will annually be provided by the NAO to the Commission.

4.2. Use of interest income

The Commission considers that the following principles should apply to the use of interest income:

- Advance payments to the National Fund must be deposited into a trust account. Any balance on the trust account not required to meet immediate payment obligations shall be invested in interest bearing EURO deposit accounts in accordance with good banking practice;
- Except in cases where, for institutional reasons, the production of interests is not foreseen, the National Fund will produce each year a detailed annual statement indicating interest earned. This statement should be broken down by projects;
- The statement will be examined by the ISPA Monitoring Committee. The Committee will make a proposal to the Commission concerning the allocation of interest proceeds on the basis of one of the following possibilities:
 - a) allocation of the interest earned to the measure as defined in the Financing Memorandum and deduction of the amount of the interest income, net of bank charges, when the final payment is made;
 - b) allocation of these amounts for training actions in favour of public officials in charge of the implementation of ISPA projects in the Transport and Environment ministries and related public bodies. The precise amount allocated for transport and for environment training actions will be decided on the basis of the respective projects approved in each of these sectors. The nature of the training actions will be endorsed by the Commission.

5. INFORMATION AND PUBLICITY

The beneficiary countries must ensure that adequate publicity is given to measures financed by ISPA with a view to:

- a) Making the general public aware of the role played by the Community in relation to the measures
- b) Making potential beneficiaries and other interested parties aware of the possibilities offered by the measures.

This will be done by ensuring, in particular, that clearly visible display panels are erected showing that the measures are being co-financed by the Community, with the Community logo, and that representatives of the Community institutions are involved in the most important public activities connected with Community assistance granted under ISPA. The beneficiary countries shall inform the Commission annually of the initiatives taken in this respect.

For more details, see the Information and Publicity Requirements in Annex III.6. of the Financing Memorandum.

6. LANGUAGES

All documents have to be produced at least in English. Translation into the national language can be done on an ad hoc basis according to the needs, the costs of translation being incurred by the beneficiary.

More systematic translation into the national languages will be an issue to consider at the time of full decentralisation of the implementation of ISPA. This matter will be the object of more precise guidelines at a later stage.

B. MONITORING AND CONTROL OF PROJECT IMPLEMENTATION

The beneficiary country and the Commission have the responsibility to ensure that the implementation of ISPA projects is properly monitored and controlled.

1. MONITORING OF THE PROJECTS

1.1. ISPA Monitoring Committees

(Cf. also principal actors and their responsibilities in section III.A.1.1.)

An ISPA Monitoring Committee will be set up for each beneficiary country and, if necessary, by major type of intervention (sub-monitoring committees). The committee(s) will meet at least twice a year and provide the opportunity for a detailed and comprehensive discussion of the projects under implementation. The Monitoring Committee will examine the physical and financial indicators of implementation as well as other aspects, such as the achievement of objectives and the respect of implementation conditions.

Decision to modify a project will only be taken by the Commission after a meeting of the Monitoring Committee concerned.

The activities of the ISPA Monitoring Committee will be co-ordinated with the “Monitoring sub-committees” to be set up for PHARE-financed measures and with the Joint Monitoring Committee, which has a general co-ordination role for Community pre-accession assistance.

The Commission will issue additional guidelines on the role and functioning of the ISPA Monitoring Committees.

1.2. On-the-spot verifications

The Commission services can perform “on the spot” **technical verifications** on some aspects of projects or the functioning of the implementing authorities. This is meant to allow rapid detection of serious difficulties delaying project implementation..

Controls can also take the form of **financial audits**, performed by the Commission services, the Court of Auditors or auditors contracted by the Commission for this purpose.

1.3. Final reports

The ISPA Regulation requires the submission of “*a final report within six months of completion of the measure or stage of project*”. A detailed list of the content of this final report can be found in Annex IV of the ISPA Regulation.

1.4. Annual progress reports

The ISPA Regulation states that progress reports are to be submitted to the Commission “*within three months of the end of each full year of implementation*”.

The annual progress reports have to be approved by the ISPA Monitoring Committee before being submitted to the Commission.

2. FINANCIAL CONTROL AND CORRECTION OF IRREGULARITIES

- While internal and external financial controls are to be performed by the relevant institutions of the beneficiary countries and results communicated to the Commission, the Commission services, as well as the Court of Auditors, may perform their own controls with the co-operation of the national authorities.
- The ISPA Financing Memorandum also includes provisions for correction of irregularities.

In the case of doubts on irregularities in the implementation of measures for which ISPA is providing assistance, the Commission will perform detailed examinations. The beneficiary authorities, after commenting on such examination, could be asked to proceed to corrective measures following instructions by the Commission.

These irregularities, or failure to proceed to the required corrective measures, could lead to the reduction, suspension or cancellation of the ISPA assistance in respect to the measures concerned, and/or to the recovery of sums paid.

C. DECENTRALISATION OF THE IMPLEMENTATION OF ISPA

1. LEGAL BASIS

As a rule, the Commission carries out “ex-ante” approval of project selection, tendering and contracting performed by the applicant countries.(Co-ordination Regulation Art 12).

The Community Financial Regulation also mentions that:

“Projects covered by a financing agreement shall be implemented by the recipient in close co-operation with the Commission, which shall retain responsibility for utilisation of the appropriations”.

“[...] in particular it shall approve the terms of the invitation to tender before it is issued, be apprised of the results of the examination of the tenders and approve the proposal for the award of the contract.”

(Art. 107 & 108 of the Financial Regulation)

However, under certain conditions and on a case by case basis, the legal base for ISPA envisages the possibility of waiving the ex ante approval requirement for tendering and contracting and for conferring on implementing agencies the responsibility of management of aid on a decentralised basis. In this case the beneficiary country is responsible for implementation of ISPA projects. The Co-ordination Regulation (Regulation 1266/99, article 12.2) opens the possibility for waiving the ex ante approval requirement and for conferring on implementing agencies the responsibility of managing pre-accession assistance on a decentralised basis. Such a transfer of responsibilities will, however, only be decided case by case on the basis of an analysis of the management capacity, financial control procedures and structures regarding public finance. This decision will require that minimum criteria, specified in the annex to the Co-ordination Regulation, are fulfilled and financial agreements with the beneficiary countries contain specific implementation provisions. It is important to note that decentralisation will take place on a *case-by-case basis*, country by country, sector by sector, sub-sector by sub-sector. Also, there will be no decentralisation of project selection.

2. CONDITIONS & CRITERIA

On the basis of the criteria listed in the annex to the Co-ordination Regulation, the beneficiary countries should ensure that the following conditions are met:

- “(i) Demonstration of effective internal control including an independent audit function and an effective accounting and financial reporting system, which meets internationally accepted audit standards;*
- (ii) A recent financial and operational audit showing effective and timely management of Community assistance or national measures of similar nature;*
- (iii) A reliable national financial control system over the Implementing Agency;*

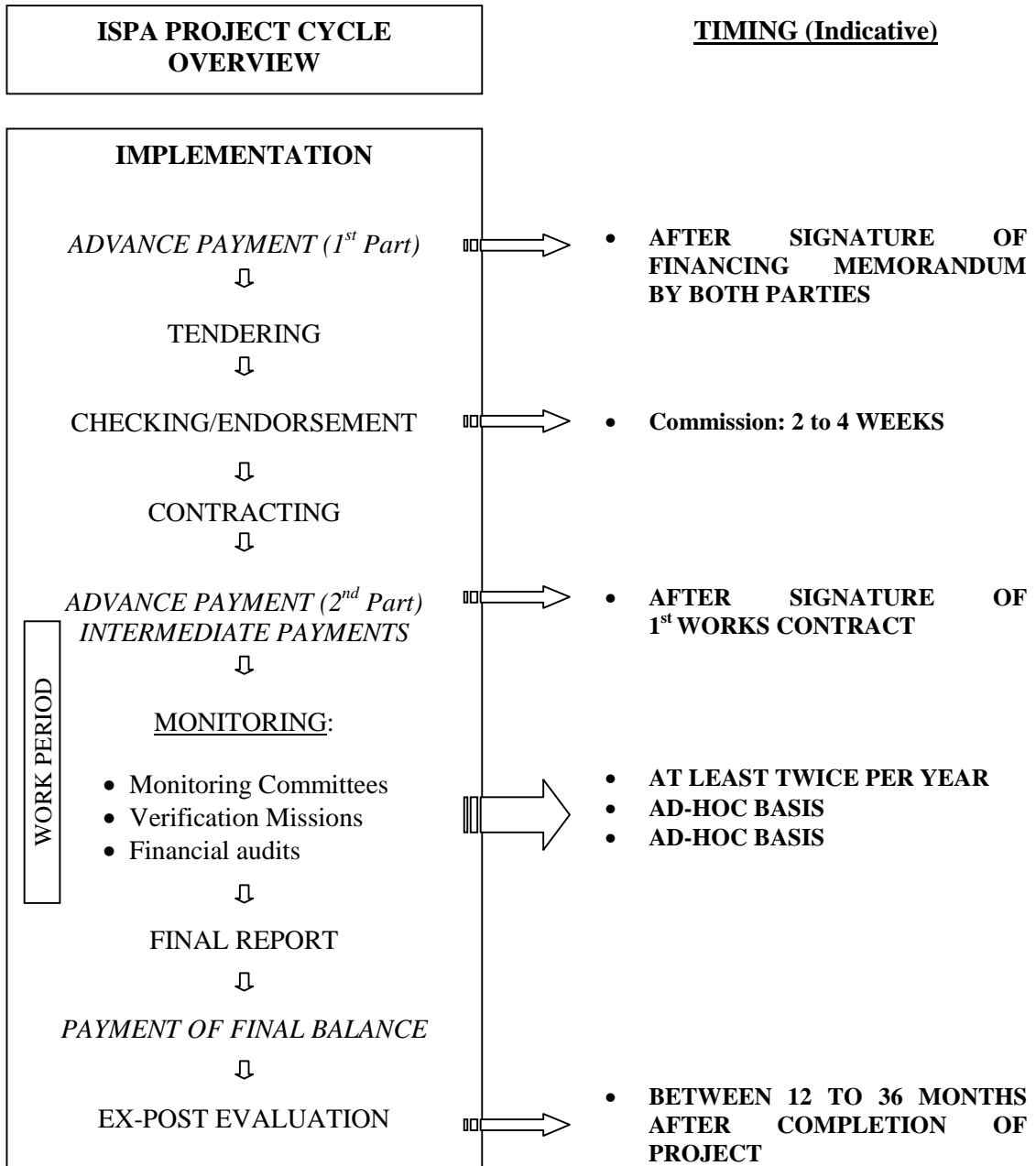
- (iv) *Procurement rules which are endorsed by the Commission as meeting requirements of Title IX of the Financial Regulation applicable to the general budget of the European Communities;*
- (v) *Commitment by the National Authorising officer to bear the full financial responsibility and liability for the funds."*

3. SUPPORT MEASURES (INSTITUTION BUILDING)

In order to speed up the process of acquiring the relevant and necessary project management capacity, a programme for institution building and reinforcement of the implementing agencies may be set up. This programme could be based on the assessment of the institutional capacities carried out by the Commission.

Such activities would be co-ordinated with the support provided under the Special Preparatory Programme (SPP) and the various institutions building measures financed by PHARE. (Cf. section II.A.2 above on technical assistance.)

E. TIMING ELEMENTS OF THE ISPA IMPLEMENTATION CYCLE



IV. EX-POST EVALUATION OF ISPA PROJECTS

Ex-post evaluation will consist of detailed assessment of the results of a project/group of projects, be they positive achievements or failures, and identification of their causes. The main objectives will be to be able to report to the European taxpayers on the use made of their money, but also to learn lessons from the past and try to use them for the design and implementation of future projects.

An ex-post evaluation programme will be implemented by the Commission services and implemented for all ISPA funded activities.

The time-frame for performance of these evaluations will vary according to the sector concerned (a longer time-frame might be necessary for evaluating Environmental projects), and to the nature of the project.

ANNEXES

A. Legal framework

A1 ISPA Regulation

A2 Co-ordination Regulation

B. Programming

B1 Pre-accession aid guidelines

B2 Title IX of the Financial Regulation

B3 Financing Memorandum

B4 Application of the “Polluter pays” principle

B5 EIA - guideline

B6 Guide to Cost-Benefit analysis