

FINANCING AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF TURKEY

AND

THE EUROPEAN COMMISSION

**CONCERNING THE PROGRAMME ON FINANCING THE
PARTICIPATION OF TURKEY IN THE EUROPEAN
NEIGHBOURHOOD AND PARTNERSHIP INSTRUMENT (ENPI)
BLACK SEA BASIN PROGRAMME UNDER THE IPA CROSS-
BORDER COOPERATION COMPONENT, FOR THE YEAR 2010**

(Decentralised Management)

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FINANCING AGREEMENT

THE GOVERNMENT OF THE REPUBLIC OF TURKEY

and

THE EUROPEAN COMMISSION

hereafter jointly referred to as "the Parties" or individually as "the beneficiary country", in the case of the Government of the Republic of Turkey, or the Commission, in the case of the European Commission.

Whereas

- (a) On 1 August 2006, the Council of the European Union adopted Regulation (EC) No 1085/2006 establishing an instrument for pre-accession assistance (hereafter: the "IPA Framework Regulation"). With effect from 1 January 2007, this instrument constitutes the single legal basis for the provision of financial assistance to candidate countries and potential candidates in their efforts to enhance political, economic and institutional reforms with a view to their eventually becoming members of the European Union.
- (b) On 12 June 2007, the Commission has adopted Regulation (EC) No 718/2007 implementing the IPA Framework Regulation, detailing applicable management and control provisions (hereafter: the "IPA Implementing Regulation").
- (c) European Union assistance under the instrument for pre-accession assistance should continue to support the beneficiary countries in their efforts to strengthen democratic institutions and the rule of law, reform public administration, carry out economic reforms, respect human as well as minority rights, promote gender equality, support the development of a civil society and advance regional cooperation as well as reconciliation and reconstruction, and contribute to sustainable development and poverty reduction.

European Union assistance for candidate countries should additionally focus on the adoption and implementation of the full *acquis communautaire*, and in particular prepare them for the implementation of the European Union's agricultural and cohesion policy.

- (d) The Parties have concluded on 11 July 2008 a Framework Agreement setting out the general rules for cooperation and implementation of the European Union assistance under the instrument for Pre-Accession Assistance.

- (e) On 27 November 2008, the Commission adopted the ENPI Black Sea Basin programme by Decision C(2008)7406.
- (f) On 4 November 2010, the Commission adopted a programme on financing the participation of Turkey in the ENPI Black Sea Basin programme for the year 2010 by Decision C(2010)7470 (hereafter: "The programme"). This programme is to be implemented by means of decentralised management.
- (g) It is necessary for the implementation of this programme that the Parties conclude a Financing Agreement to lay down the conditions for the delivery of European Union assistance, the rules and procedures concerning disbursement related to such assistance and the terms on which the assistance will be managed.

HAVE AGREED ON THE FOLLOWING:

1 THE PROGRAMME

The Commission will contribute, by way of grant, to the financing of the Programme on financing the participation of Turkey in the ENPI Black Sea Basin Programme under the IPA Cross-Border Co-operation component for the year 2010 (Programme number: IPA 2010/022-572), which is set out in Annex A to this Agreement:

2 IMPLEMENTATION OF THE PROGRAMME

- (1) The programme shall be implemented by decentralised management, in the meaning of Article 53c of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as last modified by Council Regulation (EC) No 1525/2007 of 17 December 2007 (hereafter: "the Financial Regulation").
- (2) The Programme shall be implemented in accordance with the provisions of the Framework Agreement on the rules for co-operation concerning EU Financial Assistance to Turkey and the implementation of the Assistance under the Instrument for Pre-Accession Assistance (IPA), concluded between the Parties on 11 July 2008 (hereafter: "the Framework Agreement"), which is set out in Annex B to this Agreement.

3 NATIONAL STRUCTURES AND AUTHORITIES

- (1) The structures and authorities with functions and responsibilities for the implementation of this Agreement are described in Annex B to this Agreement.
- (2) Further responsibilities of the national authorizing officer and the national fund are set out in Annex C to this Agreement.
- (3) The beneficiary country shall establish an operating structure responsible for the management and the implementation of this programme. Such operating structure shall co-operate with the Managing Authorities of the ENPI Black Sea Basin Programme and it will be represented in the Joint Monitoring Committees of this programme as a full member.
- (4) The functions and responsibilities of the operating structure shall be, *mutatis mutandis*, those listed in Section 6, Annex A, of the Framework Agreement enclosed to this Agreement as Annex B.

4 FUNDING

The funding for the implementation of this Agreement shall be as follows:

- (1) The European Union contribution for the year 2010 for the participation in the ENPI Black Sea Basin programme is fixed at a maximum of €1.000.000, as detailed in the programme in Annex A. However, payments of the European Union contribution by

the Commission will not be made if the minimum requirements referred to in Article 41 of the IPA Implementing Regulation are not met.

- (2) Up to 10% of this European Union contribution can be used to co-finance the operational and administrative costs incurred by the beneficiary country in the implementation of this programme, as detailed in Annex A to this Agreement.

5 CONTRACTING DEADLINE

- (1) The individual contracts and agreements which implement this Agreement shall be concluded no later than two years from the date of conclusion of this Agreement.
- (2) In duly justified cases, this contracting deadline may be extended with the agreement of the Commission before its end date to a maximum of three years from the date of conclusion of this Agreement.
- (3) Any funds for which no contract has been concluded before the contracting deadline shall be cancelled.

6 DEADLINE FOR THE EXECUTION OF CONTRACTS

- (1) The contracts must be executed within a maximum of 2 years from the end date of contracting.
- (2) The Commission may agree, upon request by the beneficiary country, to an appropriate extension of the deadline for the execution of contracts. Such request must be addressed to the Commission before the end of the deadline for the execution of contracts, and be duly justified by the beneficiary country.

7 DISBURSEMENT DEADLINE

- (1) Disbursement of funds must be made no later than one year after the final date for the execution of contracts.
- (2) The deadline for disbursement of funds may be extended with the agreement of the Commission before its end date in duly justified cases.

8 INTERPRETATION

- (1) Subject to any express provision to the contrary in this Agreement, the terms used in this Agreement shall bear the same meaning as attributed to them in the IPA Framework Regulation and the IPA Implementing Regulation.
- (2) Subject to any express provision to the contrary in this Agreement, references to this Agreement are references to such Agreement as amended, supplemented or replaced from time to time.
- (3) Any references to Council or Commission Regulations are made to the version of those regulations as indicated. If required, modifications of these regulations shall be transposed into this Agreement by means of amendments.

- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.

9 PARTIAL INVALIDITY AND UNINTENTIONAL GAPS

- (1) If a provision of this Agreement is or becomes invalid or if this Agreement contains unintentional gaps, this will not affect the validity of the other provisions of this Agreement. The Parties will replace any invalid provision by a valid provision which comes as close as possible to the purpose of and intent of the invalid provision.
- (2) The Parties will fill any unintentional gap by a provision which best suits the purpose and intent of this Agreement, in compliance with the IPA Framework Regulation and the IPA Implementing Regulation.

10 REVIEW AND AMENDMENT

- (1) The implementation of this Agreement will be subject to periodic reviews at times arranged between the Parties.
- (2) Any amendment agreed to by the Parties will be in writing and will form part of this Agreement. Such amendment shall come into effect on the date determined by the Parties.

11 TERMINATION

- (1) Without prejudice to paragraph 2, this Agreement shall terminate eight years after its signature. The termination of this Agreement shall not preclude the possibility for the Commission to make financial corrections in accordance with Articles 49 to 54 of the IPA Implementing Regulation.
- (2) This Agreement may be terminated by either Party by giving written notice to the other Party. Such termination shall take effect six calendar months from the date of the written notice.

12 SETTLEMENT OF DIFFERENCES

- (1) Differences arising out of the interpretation, operation and implementation of this Agreement, at any and all levels of participation, will be settled amicably through consultation between the Parties.
- (2) In default of amicable settlement, either Party may refer the matter to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the date of this Agreement.
- (3) The language to be used in the arbitration proceedings shall be English. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration following a written request submitted by either Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.

13 NOTICES

- (1) Any communication in connection with this Agreement shall be made in writing and in the English language. Each communication must be signed and must be supplied as an original document or by fax.
- (2) Any communication in connection with this Agreement must be sent to the following addresses:

For the European Union:

*Delegation of the European Commission to Turkey
Ugur Mumcu cad. No. 88/4
Gazi Osman Pasa 06700
Ankara, Turkey
Fax: (+90.312) 446 67 37*

For the Beneficiary Country:

*H. E. Ambassador Volkan Bozkar
Secretary General
National IPA Coordinator (NIPAC)
Secretariat General for EU Affairs
Basbakanlik Avrupa Birliđi Genel Sekreterliđi
Mustafa Kemal Mah. 6.Cad. No: 4
06800 Ankara, Turkey
Tel: (+90.312) 218 14 68
Fax: (+90.312) 218 14 44*

14 NUMBER OF ORIGINALS

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

15 ANNEXES

The Annexes A, B and C shall form an integral part of this Agreement.

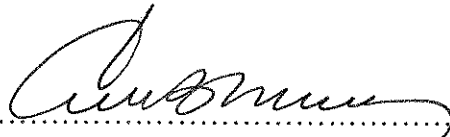
16 ENTRY INTO FORCE

This Agreement shall enter into force on the date on which the Contracting Parties inform each other in writing of its approval in accordance with the existing internal legislation or procedure of each of the Parties.

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

at Ankara..... on 03.02.2011.....

by



*H. E. Ambassador Volkan Bozkır
National IPA Coordinator (NIPAC)
Secretary General for EU Affairs*

Signed, for and on behalf of the
Commission,

at Brussels..... on 16.12.2010

by



*Alexandra Cas Granje,
Director DG Enlargement for
Croatia, The former Yugoslav
Republic of Macedonia, Turkey, Iceland*

ANNEX A

ANNEX - Programme on financing the participation of Turkey in the ENPI Black Sea Basin programme under the IPA Cross-border Co-operation component for the year 2010

1. Identification

Beneficiary	Turkey
CRIS number	2010 / 022-572
Year	2010
Cost	EUR 1 000 000 (one million euros)
Operating structure	Turkish Cooperation and Development Agency (TIKA) Central Finance and Contracts Unit (CFCU) at the Undersecretariat of the Treasury
Implementing Authority	The Implementing Agency responsible for the programme is the Central Finance and Contracts Unit (CFCU) at the Undersecretariat of the Treasury
Final date for concluding the Financing Agreement:	At the latest by 31 December 2011
Final date for contracting	2 years following the date of conclusion of the Financing Agreement. No deadline for audit and evaluation projects covered by this Financing Agreement, as referred to in Article 166(2) of the Financial Regulation These dates apply also to the national co-financing.
Final date for execution	2 years following the end date for contracting. These dates apply also to the national co-financing.
Sector Code	15110
Budget line concerned	22.020401
Programming Task Manager	DG ELARG Unit B.3 (Turkey)
Implementation Task Manager	Head of Operations section, EU Delegation to Turkey

2. The Programme

2.1 Introduction

The purpose of this programme is to support – through the 2010 funds of the IPA Cross-border Co-operation (CBC) component – the participation of Turkey in the ENPI Black Sea basin programme 2007–2013. IPA funds are committed in annual instalments to support Turkey's participation in the programme.

Multilateral cross-border co-operation between coastal regions of countries along one of the three shared sea basins on the EU's external borders (Baltic Sea, Black Sea and the Mediterranean) is one of the priorities of the Cross-border Co-operation component of the European Neighbourhood and Partnership Instrument (ENPI).

In this framework, the co-operation involves the coastal regions of Member States and of partner countries covered by the European Neighbourhood Policy (ENP) plus Russia.

Moreover, as foreseen by the IPA legal base, the coastal regions of candidate/potential candidate countries may participate, where appropriate, in the ENPI multilateral sea basins programmes.

Considering its geographical location in the Black Sea basin, Turkey has been invited to participate in the programme.

The relevant Turkish authorities have accepted the invitation and decided to take part in the Black Sea basin programme with the financial support of the IPA Cross-border Co-operation component for the year 2010.

The ENPI Black Sea Basin programme ("Black Sea 2007-2013") was concluded by the 10 participating countries including Turkey and submitted to the Commission, which adopted the programme on 27 November 2008. Romania was appointed Managing Authority of the programme.

On 1 December 2008 a Commission Decision was adopted on conferring the management powers for the programme on Turkey's participation in the ENPI Black Sea basin programme to the Turkish authorities.

The areas of Turkey eligible for the ENPI Black Sea basin programme are the NUTS level II equivalent regions along the Black Sea coast: TR10 (İstanbul), TR21 (Tekirdağ, Edirne, Kırklareli), TR42 (Kocaeli, Sakarya, Düzce, Bolu, Yalova), TR81 (Zonguldak, Karabük, Bartın), TR82 (Kastamonu, Çankırı, Sinop), TR83 (Samsun, Tokat, Çorum, Amasya) and TR90 (Trabzon, Ordu, Giresun, Rize, Artvin, Gümüşhane).

2.2 Objective of the programme

The objective of this programme is twofold:

- To support the participation of Turkey in joint sea basin co-operation activities with partners from EU Member States and third countries;
- To familiarise Turkey with the multilateral sea basin co-operation programmes under the ENPI with a view to their implementation upon accession.

2.3 Priorities

The aim of the ENPI Black Sea Basin programme is to achieve a stronger and sustainable economic and social development of the regions of the Black Sea basin, based on stronger regional partnership and co-operation, concentrating primarily on the following areas:

- a) Promoting economic and social development in the Black Sea basin area. This objective should be pursued through cross-border support for partnerships for social and economic development, based on common resources and joint activities from local actors, including social partners. Actions may *inter alia* include: integrated local development initiatives especially in the area of rural economy and fisheries; integration and promotion of tourism development initiatives including through the establishment of networks among public and private actors in the tourism sector; increased administrative capacity for local administrations to promote economic and social development through the establishment of international partnerships.
- b) Working together to address common challenges. This objective should be pursued through networking resources and competencies for environmental protection and valorisation. Actions may *inter alia* include: addressing common challenges in the environmental protection of the hydrographic system in the area (marine and rivers); promotion of research and innovation in the field of valorisation and environmental protection of protected natural areas; promotion of innovation in technologies and management of waste and wastewater management systems.
- c) Promoting local, people-to-people type actions. This objective should be pursued through support for cultural and educational initiatives for the establishment of a common cultural environment in the basin. Actions may *inter alia* include: promoting the cultural networking and exchange in Black Sea communities; promoting networking and development between education institutions.

The priorities should be essentially implemented through single calls for proposals covering all of the eligible territory. The essential selection and award criteria to be used to select the proposals are laid down in the ENPI Black Sea basin programme.

The detailed selection and award criteria for the award of grants will be laid down in the Call for Proposals application pack (Guidelines for applicants).

Up to 10% of IPA funds allocated to Turkey for its participation in the ENPI Black Sea Basin programme can be used to co-finance the eligible operational and administrative costs incurred in the implementation of the programme.

These may include, *inter alia*, the following costs:

- support for the Operating Structure;
- expenses for participation in different meetings related to the implementation of the programme;
- costs related to the participation of national staff in the Joint Technical Secretariat, with the exclusion of salaries of public officials, and to the establishment, as appropriate, of national antennae of the JTS or info points;

- administrative and operational costs, including the costs of preparation, monitoring and evaluation of the programme, support to projects preparation, appraisal and selection of operations, the organisation of meetings related to the programme, translation, information and publicity costs.

The main aim of the IPA contribution to this expenditure is to facilitate effective and efficient administration and implementation of this programme in Turkey.

The main beneficiaries of the technical assistance funds would be the Operating Structure or any other structures/bodies related to development and implementation of this programme, and the programme beneficiaries.

Considering that the Managing Authority of the ENPI Black Sea Basin programme (The Directorate for International Cross Border Cooperation, General Directorate for European Territorial Cooperation, Ministry of Regional Development and Tourism in Romania) enjoys a *de facto* monopoly situation (within the meaning of Article 168, paragraph 1, subparagraph c of the Implementing Rules to the Financial Regulation) for managing the TA funds under the above programme, the Turkish Implementing Agency may conclude direct grant agreements without calls for proposals with the Romanian Managing Authority for the purpose of technical assistance.

The direct grant agreements can be concluded up to the limits for technical assistance (maximum 10% of the IPA funds allocated to Turkey for its participation in the ENPI Black Sea Basin programme) specified in the financing table in section 3.1.

The direct grant agreements can be signed as soon as the Financing Agreement concerning this programme has been concluded. Activities covered by the direct grant agreements (e.g. Joint Technical Secretariat, evaluation, publicity, etc.) can be procured further by the grantee in accordance with Article 120 of the Financial Regulation and Article 184 of the Implementing Rules to the Financial Regulation.

2.4 Overview of past and on-going experience in cross-border and transnational co-operation, including lessons learned

Turkey has participated in multilateral cross-border and trans-national programmes under EU instruments. Through funding from the EU pre-accession instrument for Turkey it took part in the bilateral cross-border co-operation programmes Turkey-Bulgaria 2004-06 (a Phare-CBC type programme) and, to a more limited extent, Turkey-Greece 2004-06 (an INTERREG IIIA programme). Turkey's participation in the current ENPI Black Sea basin programme has been supported through annual programmes since 2007 under the IPA CBC Component, likewise the multi-annual Turkey-Bulgaria 2007-2013 programme.

A sectoral Interim Evaluation Report from October 2008 on Turkey's experiences of cross-border co-operation points to the following:

- effective participation in multilateral co-operation programmes requires a good understanding by national authorities of the co-operation mechanisms and the acknowledgment of the "common benefit" concept which must characterize all operations supported by the programme;
- Turkish authorities have to allocate enough human resources to take active part in the management structures of the programme (joint monitoring committee, joint steering/evaluation committee, joint technical secretariat) and to follow up the implementation of the programme/projects in Turkey. Efficiency of programme

preparation and the establishment of functional project offices and monitoring systems need to be improved. A small fraction of IPA funds allocated to this programme can be made available to co-finance the operational costs linked with the implementation of the programme;

- effective co-ordination between the EU Delegation to Turkey and the managing Authority of the ENPI Black Sea Basin programme (hosted by Romania) is essential to ensure a smooth and timely implementation of the programme. Representatives of the EU Delegation to Turkey should participate, in an advisory capacity, in the work of the Joint Monitoring Committee which is the body responsible, *inter alia*, for the selection of projects.

2.5 Conditions

The National Authorities are committed to avoid overlaps between IPA components.

2.6 Benchmarks

	N (2011)	N+1 (cumulative)	N+2 (cumulative)
Number of calls for proposals launched	1	1	1
Contracting Rate (%)	0 %	50%	100 %
Number of direct grant agreements (TA funds)	1	1	1

"N" being the date of conclusion of the Financing Agreement

2.7 Roadmap for the decentralisation of the management of EU funds without ex ante controls by the European Commission

A Commission Decision establishing conferral of management with ex-ante controls on the IPA Transition Assistance and Institution Building Component was adopted on 29 October 2008, thereby accrediting the Turkish DIS (decentralised implementation system) institutions and procedures. The Decision includes a number of recommendations to further improve the management and control system, which are monitored closely by the European Commission. The Turkish authorities have in 2009 also prepared a roadmap for full decentralisation of the management of EU funds without *ex ante* controls by the European Commission. Once the roadmap is implemented and the European Commission confirms that the necessary conditions are met, a partial or full waiver of ex ante controls may be considered.

3. 2010 Budget

3.1 Indicative 2010 financial table

	IPA EU contribution		National Contribution		Total (IPA plus National Contribution)	
	EUR (a)	% ⁽¹⁾	EUR (b)	(%) ⁽¹⁾	EUR (c)=(a)+(b)	(%) ⁽²⁾
Participation in the ENPI Black Sea Basin programme	900 000	90 %	100 000	10 %	1 000 000	100
TA funds	100 000	90 %	11 111	10 %	111 111	100
TOTAL	1 000 000	90 %	111 111	10 %	1 111 111	100

(1) Expressed in % of the Total (IPA plus National contributions) (column (c))

(2) Expressed in % of the grand total of column (c). It indicates the relative weight of the each priority with reference to the total funds (IPA + National)

3.2 Principle of co-financing applying to the projects funded under the programme

The EU contribution has been calculated in relation to the **eligible expenditure** which, in the case of this programme, is based on **public expenditure**.

4. Implementation arrangements

4.1 Introduction

This programme provides Turkey with IPA component II funds to finance the participation of its national partners in joint co-operation projects under the ENPI Black Sea Basin programme as laid down in the Joint Operational Programme agreed between the participating countries.

The main implementation steps are the following:

The relevant Turkish authorities of Turkey have established an Operating Structure consisting of the National Authority/Implementing Agency (i.e. TIKA/CFCU) to deal with the management and implementation of this programme. The Operating Structure co-operates with the Joint Managing Authority of the ENPI Black Sea Basin programme; TIKA/CFCU is represented as a full member in the Joint Monitoring Committee of the above programme.

- The Joint Monitoring Committee of the ENPI Black Sea Basin programme approves the Call for Proposals – Application pack (Guidelines for applicants) for the implementation of the programme.
- Before being published, the Call for Proposals notice and its Application pack is submitted to the EU Delegation to Turkey for ex-ante approval (see point 4.2 below).

- The participation of Turkish partners is only possible in projects involving at least one partner from an EU Member State and one partner from an ENP country or Russia. Applications must clearly distinguish between activities – and their costs – taking place in Member States, ENP countries or Russia with ENPI funds, and those taking place in Turkey with IPA funds.
- For joint projects which involve the participation of Turkish partners, they shall appoint an IPA Financial Lead Partner among themselves.
- The Joint Monitoring Committee of the ENPI Black Sea Basin programme is responsible for selecting joint projects according to ENPI rules.
- The evaluation report and the list of joint projects selected for financing are submitted to the EU Delegation to Turkey for ex-ante approval (see point 4.2 below). This approval concerns only the participation of Turkish partners in the relevant joint projects.
- Following the ex-ante approval by the EU Delegation, the Turkish Operating Structure signs a grant contract for the corresponding IPA funds with the IPA Financial Lead Partner.
- The IPA Financial Lead Partner must cooperate closely with the ENPI Lead Partner for a successful implementation of the joint project and with the aim of ensuring single operational reporting of the project, even if differentiating between ENPI and IPA expenditure.

4.2 Method of Implementation

This programme shall be implemented in accordance with Article 53c of the Financial Regulation¹ and the corresponding provisions of the Implementing Rules². The Beneficiary Country will continue to ensure that the conditions laid down in Article 56 of the Financial Regulation are respected at all times.

The ex-ante control by the European Commission shall apply to the tendering of contracts, launch of call for proposals and the award of contracts and grants until the European Commission allows for decentralised management without ex-ante controls as referred in Article 18 of the IPA Implementing Regulation.

4.3 General rules for Procurement and grant award procedures

Procurement shall follow the provisions of Part Two, Title IV of the Financial Regulation and Part Two, Title III, Chapter 3 of its Implementing Rules³ as well as the rules and procedures for service, supply and works contracts financed from the general budget of the European Union for the purposes of cooperation with third countries as adopted by the European Commission on 24 May 2007 (C(2007)2034).

Grant award procedures shall follow the provisions of Part One, Title VI of the Financial Regulation and Part One, Title VI of its Implementing Rules.

¹ Regulation 1605/2002 (OJ L 248, 16.9.2002, p.1) as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p.1)

² Regulation 2342/2002 (OJ L 357, 31.12.2002, p.1) as last amended by Regulation (EC, Euratom) No 478/2007 (OJ L 111, 28.4.2007, p. 13)

³ See footnotes 1 and 2 *supra*

Where appropriate, the Contracting Authorities shall also use the standard templates and models facilitating the application of the above rules provided for in the "Practical Guide to contract procedures for EU external actions" ("Practical Guide") as published on the EuropeAid website⁴ at the date of the initiation of the procurement or grant award procedure.

4.4 Environmental Impact Assessment and Nature Conservation (where appropriate)

All investments shall be carried out in compliance with the relevant EU environmental legislation.

The procedures for environmental impact assessment as set down in the EIA Directive⁵ fully apply to all investment projects under IPA. If the EIA Directive has not yet been fully transposed, the procedures should be similar to the ones established in the above-mentioned Directive.

If a project is likely to affect sites of nature conservation importance, an appropriate nature conservation assessment shall be made, equivalent to that provided for in Article 6 of the Habitats Directive must be documented⁶.

5. Monitoring and Evaluation

5.1 Monitoring

In Turkey, the implementation of this programme will be monitored through the IPA monitoring committee in accordance with Article 58 of the IPA Implementing Regulation.

The IPA monitoring committee shall assess the effectiveness, quality and coherence of the implementation of the programme to ensure the achievements of the programme objectives and enhance the efficiency of the assistance provided.

5.2 Evaluation

This programme shall be subject to evaluations in accordance with Articles 57 and 82 of the IPA Implementing Regulation, with the aim of improving the quality, effectiveness and consistency of the assistance from EU funds and the strategy and implementation of the programme. The European Commission may also carry out strategic evaluations.

The ENPI Black Sea Basin programme is subject to evaluation according to ENPI rules, under the responsibility of the European Commission. When such an evaluation is conducted, every effort should be made to evaluate also the elements concerning the participation of Turkey in the programme.

⁴ current address: http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm

⁵ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40). Directive as last amended by Directive 2003/35/EC, OJ L 156, 25.6.2003, p. 17.

⁶ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L206, 22.7.1992). Directive as last amended by Regulation (EC) No 1882/2003 (OJ L284, 31.10.2003, p. 1)

6 Audit, Financial Control, antifraud measures; financial Adjustments, Preventive measures and financial corrections

6.1 Audit, Financial Control and Anti-fraud measures

The accounts and operations of all parties involved in the implementation of this programme, as well as all contracts and agreements implementing this programme, are subject to, on the one hand, the supervision and financial control by the European Commission (including the European Anti-Fraud Office), which may carry out checks at its discretion, either by itself or through an outside auditor and, on the other hand, audits by the European Court of Auditors. This includes measures such as ex-ante verification of tendering and contracting carried out by the Delegations in the Beneficiary Countries.

In order to ensure the efficient protection of the financial interests of the European Union, the European Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96⁷.

The controls and audits described above are applicable to all contractors, subcontractors and grant beneficiaries who have received EU funds.

6.2 Financial adjustments

In Turkey the national authorising officer, who bears in the first instance the responsibility for investigating all irregularities, shall make the financial adjustments where irregularities or negligence are detected in connection with the implementation of this programme, by cancelling all or part of the EU assistance. The national authorising officer shall take into account the nature and gravity of the irregularities and the financial loss to the EU.

In case of an irregularity, including negligence and fraud, the national authorising officer shall recover the EU assistance paid to the beneficiary in accordance with national recovery procedures.

6.3 Audit trail

In Turkey, the national authorising officer shall ensure that all the relevant information is available to ensure at all times a sufficiently detailed audit trail. This information shall include documentary evidence of the authorisation of payment applications, of the accounting and payment of such applications, and of the treatment of advances, guarantees and debts.

6.4 Preventive Measures

Turkey shall ensure investigation and effective treatment of suspected cases of fraud and irregularities and shall ensure the functioning of a control and reporting mechanism equivalent to that provided for in European Commission Regulation 1828/2006⁸. All suspected or actual cases of fraud and irregularity as well as all measures related thereto taken must be

⁷ Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2.

⁸ OJ L 371, 27.12.2006, p.1.

reported to the European Commission services without delay. Should there be no suspected or actual cases of fraud or irregularity to report, the beneficiary country shall inform the European Commission of this fact within two months following the end of each quarter.

Irregularity shall mean any infringement of a provision of applicable rules and contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget.

Fraud shall mean any intentional act or omission relating to: the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Union or budgets managed by, or on behalf of, the European Union; non disclosure of information in violation of a specific obligation with the same effect; the misapplication of such funds for purposes other than those for which they are originally granted.

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts."

"Active corruption is defined as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Union's financial interests.

Passive corruption is defined as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or a third party, or accepts a promise of such advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Union's financial interests.

The authorities of the beneficiary country, including the personnel responsible for the implementation of the programme, shall also undertake to take whatever precautions are necessary to avoid any risk of conflict of interest, and shall inform the European Commission immediately of any such conflict of interest or any situation likely to give rise to any such conflict.

6.5 Financial corrections

In order to ensure that the funds are used in accordance with the applicable rules, in Turkey the European Commission shall apply clearance-of-accounts procedures or financial correction mechanisms in accordance with Article 53c (2) of the Financial Regulation and as detailed in the Framework Agreement concluded between the European Commission and Turkey or, where the latter does not exist, in the Financing Agreement concluded with Turkey for the implementation of this programme.

A financial correction may arise following:

- (i) identification of a specific irregularity, including fraud; or
- (ii) identification of a weakness or deficiency in the management and control systems of the beneficiary country.

If the European Commission finds that expenditure under this programme has been incurred in a way that has infringed applicable rules, it shall decide what amounts are to be excluded from EU financing.

The calculation and establishment of any such corrections, as well as the related recoveries, shall be made by the European Commission following the criteria and procedures provided for in the IPA Implementing Regulation.

7 Non Substantial Reallocation of Funds

The authorising officer by delegation (AOD), or the authorising officer by sub-delegation (AOSD), in line with the delegation of powers conferred upon him by the AOD, in accordance with the principles of sound financial management, may undertake non substantial reallocations of funds without an amending financing decision being necessary. In this context, cumulative reallocations not exceeding 20% of the total amount allocated for the programme, subject to a limit of EUR 4 million, shall not be considered substantial, provided that they do not affect the nature and objectives of the programme. The IPA Committee shall be informed of the above reallocation of funds.

8 Limited adjustments in the implementation of the programme

Limited changes in the implementation of this programme affecting essential elements listed under Article 90 of the Implementing Rules to the Financial Regulation, which are of an indicative nature⁹, may be undertaken by the European Commission's authorising officer by delegation (AOD), or by the European Commission's authorising officer by sub-delegation (AOSD), in line with the delegation of powers conferred upon him by the AOD, in accordance with the principles of sound financial management without an amending financing decision being necessary.

⁹ These essential elements of an indicative nature are, for grants, the indicative amount of the call for proposals and, for procurement, the indicative number and type of contracts envisaged and the indicative time frame for launching the procurement procedures.

ANNEX C FURTHER CONDITIONS FOR THE DELIVERY OF EUROPEAN UNION ASSISTANCE

1 DEPUTISING

- (1) The beneficiary country shall ensure that a system of deputising is in place to ensure the continuity of the functions assigned to the national authorising officer.
- (2) Without prejudice of the aforementioned, the national authorising officer shall remain finally responsible for all the responsibilities vested in him in this Agreement and other agreements.

2 FURTHER RESPONSIBILITIES OF THE NAO

In addition to the functions and responsibilities laid down in Annex B to this Agreement, the national authorizing officer shall:

- (a) conclude the relevant agreements with each of the implementing agencies, which must be endorsed by the Commission;
- (b) ensure the flow of national and other co-financing resources;
- (c) ensure that the financing reporting system Perseus¹⁰ is regularly updated and reporting procedures properly respected by the national fund and the implementing agencies;
- (d) participate in the IPA monitoring committee;
- (e) participate in the Transition Assistance and Institution Building Monitoring Committee (the TAIB committee).

3 PAYMENTS

- (1) Payments by the Commission of the European Union contribution shall be made within the limits of the funds available.
- (2) They shall take the form of: pre-financing, interim payments and payments of the final balance.
- (3) By 28 February each year, the national authorising officer shall send to the Commission a forecast of its likely payments applications for the financial year concerned and for the subsequent financial years.

¹⁰ Perseus is the current financial reporting system of the European Commission.

- (4) The exchange of information concerning financial transactions between the Commission and the national authorising officer shall, where appropriate, be made by electronic means, using procedures agreed upon between them.
- (5) The combined total of pre-financing and interim payments shall not exceed 95% of the European Union contribution.
- (6) When the ceiling referred to in paragraph 5 above is reached, the national authorising officer shall only submit a new certified statement of expenditure and information about the amounts received when he/she requests the payment of the final balance.
- (7) Amounts set out in the programmes submitted by the national authorising officer, in certified statements of expenditure, in payment applications and in expenditure mentioned in the implementation reports, shall be denominated in euro. The national authorising officer shall convert the amounts of expenditure incurred in national currency into euro using the monthly accounting rate of the euro established by the Commission for the month during which the expenditure was registered in the accounts of the operating structure concerned.
- (8) Payments by the Commission to the national fund shall be made to the euro account. One euro account shall be opened for each of the IPA programmes concerned, and shall be used exclusively for transactions relating to that programme.
- (9) The national authorising officer shall ensure that the final beneficiaries receive the total amount of the public contribution in due time and in full. No specific charge or other charge with equivalent effect shall be levied which would reduce these amounts for the final beneficiaries.
- (10) The expenditure may be covered by European Union financing only if it has been incurred and paid by the final beneficiary. Expenditure paid by final beneficiaries shall be substantiated by receipted invoices or accounting documents of equivalent probative value or other relevant documents, where, according to the programme, assistance is not a function of expenditure. Expenditure must have been certified by the national authorising officer.

4 ACCEPTABILITY OF PAYMENT APPLICATIONS

- (1) Without prejudice of establishing additional requirement if the circumstances so require, the Commission shall not approve a payment application until the following minimum requirements have been fulfilled:
 - (a) In the case of pre-financing by the Commission:
 - the national authorising officer has notified to the Commission the opening of the euro account concerned;
 - the accreditation delivered by the competent accrediting officer and the national authorising officer are in force and the conferral of management by the Commission remains valid;
 - the relevant financing agreement has entered into force.

- (b) In the case of each interim payment made by the Commission:
- the national authorising officer has sent to the Commission a payment application and a statement of expenditure relating to the payment in question;
 - the ceilings for European Union assistance under each priority axis, as laid down in the Commission financing decision, have been respected;
 - the operating structure have sent the Commission the sectoral annual implementation reports, as referred to in Article 61(1) of Regulation (EC) 718/2007, including the most recent one;
 - the audit authority has sent the Commission, in accordance with the first and second indent of Article 29(2)(b) of Regulation (EC) 718/2007 the most recent annual audit activity report and opinion on the conformity of the management and control systems in place with the requirements of Regulation (EC) 718/2007 and those of any agreement between the Commission and the beneficiary country;
 - the accreditations delivered by the competent accrediting officer and the national authorising officer are in force, and the conferral of management by the Commission remains valid.

If one or more of the conditions mentioned in this paragraph are not met, the beneficiary country and the national authorising officer shall, when so requested by the Commission and within the time limit fixed by the Commission, take the necessary steps to remedy the situation.

- (c) In the case of payment by the Commission of the final balance, in accordance with the deadline set down in Article 166 of Regulation (EC, Euratom) 1605/2002, as last modified by Regulation (EC, Euratom) No 1995/2006 of 13 December 2006:
- the national authorising officer has sent the Commission a final payment application and a final statement of expenditure;
 - the operating structure have sent to the Commission the sectoral final reports for the programme concerned, as required by Article 61(1) of Regulation (EC) No 718/2007;
 - the audit authority has sent the Commission, in accordance with the third indent of Article 29(2)(b) of Regulation (EC) No 718/2007, an opinion on any final statement of expenditure, supported by a final activity report;
 - the accreditation delivered by the competent accrediting officer and the national authorising officer are in force and the conferral of management by the Commission remains valid.

Failure to meet any of the conditions mentioned in this paragraph shall immediately result in the de-commitment of the final balance.

- (2) All or part of the payments may be suspended by the Commission where:

- (a) there is a serious deficiency in the management and control system of the programme which affects the reliability of the procedure for certification of payments and for which corrective measures have not been taken; or
 - (b) expenditure in a certified statement of expenditure is linked to a serious irregularity which has not been corrected;
 - (c) clarifications are needed regarding the information contained in the declaration of expenditure.
- (3) The beneficiary country shall be given the opportunity to present its observations within a period of two months before the Commission decides on a suspension in accordance with paragraph 2.
- (4) The Commission shall end suspension of all or part of the payments where the beneficiary country has taken the necessary measures to remedy the deficiency. If those measures have not been taken by the beneficiary country, the Commission may decide to cancel all or part of the European Union contribution to the programme.

5 PRE-FINANCING

- (1) Pre-financing shall in principle represent 50% of the European Union contribution to the programme concerned and it may be paid in yearly instalments. That rate may be raised if the national authorising officer demonstrates that the resulting amount will not cover the pre-financing of the contracts and grants signed at national level. Payments for the participation in European Union programmes and agencies may amount to 100% of the European Union contribution relating to this participation.
- (2) The amount to be pre-financed shall be calculated as the sum of the estimate of the amount to be contracted by year, and the actual amount for which contractual obligations have been entered into in the previous years. With the exception of that concerning participation in European Union programmes and agencies, pre-financing shall only be paid once the first tender or call for proposals is launched.
- (3) The total amount paid as pre-financing shall be reimbursed to the Commission if no payment application for the programme concerned is sent within 15 months of the date on which the Commission pays the first pre-financing amount. The European Union contribution to the programme concerned shall not be affected by such reimbursement.
- (4) The total pre-financing amount shall be cleared at the latest when the programme is closed. Throughout the lifetime of the programme, the national authorising officer shall use the pre-financing payment only to pay the European Union contribution to expenditure in compliance with Regulation (EC) 718/2007.

6 INTERIM PAYMENTS

- (1) If it appears that the rules applicable have not been complied with or that European Union funds have been improperly used, the Commission may reduce interim payments to the beneficiary country, or temporarily suspend them, in accordance with the provisions of Article 46 of Regulation (EC) 718/2007. It shall inform the beneficiary country accordingly.

- (2) The suspension or reduction of interim payments shall comply with the principle of proportionality and shall be without prejudice to the decisions of conformity and clearance-of-account decisions and financial corrections.

7 REALLOCATION OF FUNDS

- (1) The national authorizing officer may request a reallocation of funds within the same programme following a recommendation from the IPA monitoring Committee.
- (2) The reallocation requested shall be submitted to the Commission for approval, and shall be subject to a new Commission decision.
- (3) If the reallocation does not comprise substantial changes to the nature of the original programme and, as regards the financial element, it does not exceed 20% of the total amount allocated to the programme in question, subject to the limit of €4 million, the committee which gave an opinion on the original programme shall be informed.

8 STAFF, LOCATION AND OPERATIONAL COSTS OF RELEVANT BODIES AND AUTHORITIES

- (1) The beneficiary country shall ensure that at its own cost the availability of the necessary human resources for the timely and correct execution of the tasks entrusted to the bodies and authorities designated under Article 21 of the IPA Implementing Regulation.
- (2) The beneficiary country shall provide at its own costs the necessary premises, office furniture and other facilities for the aforementioned bodies and authorities.
- (3) Up to 10% of the European Union contribution can be used to co-finance the operational and administrative costs incurred by the beneficiary country in the implementation of this programme, as detailed in Annex A to the Financing Agreement.

9 BANK ACCOUNTS

- (1) The National Fund shall for each programme open up a separate euro bank account in the Central Bank or in a Government guaranteed bank account. The account shall, in principle, be interest-generating.
- (2) Any interest earned on any of the component-specific euro accounts remains the property of the beneficiary country. Interest generated by the financing by the European Union of a programme shall be posted exclusively to that programme, being regarded as a resource for the beneficiary country in the form of a national public contribution, and shall be declared to the Commission whenever a payment application is submitted to the Commission.
- (3) The bank account shall be operated on the basis of a double signature system, requiring the signatures of the national authorizing officer and a senior accounting officer.

- (4) The national fund shall communicate to the Commission all relevant information on the accounts at the national fund as well as on all other accounts in the implementing agencies and others to which IPA funds have been transferred. Relevant information encompasses the name and address of the bank, the account number, the names of the account holders, the interest rates and any other information that the Commission deems appropriate.

10 ACCOUNTING AND AUDITS

- (1) The national fund shall operate an accounting system covering all contractual and other financial operations pertaining to all IPA financed programmes.
- (2) The accounts and operations of all relevant operating structures/implementing agencies and authorities may be checked at regular intervals by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Court of Auditors as referred to in the Framework Agreement.
- (3) All documents related to a given programme shall be retained by the beneficiary country for at least three years after the closure of the programme. This period shall be interrupted either in case of legal proceedings or at the duly motivated request of the Commission.
- (4) By way of derogation from paragraph 3 above, written records of the entire procurement, grant award and contracting procedure shall be retained by the operating structure for a period of at least seven years from the payment of the balance of the contract.

11 REPORTING

- (1) The operating structure shall send the Commission, the national IPA co-ordinator and the national authorising officer an annual report and a final report on the implementation of this programme.

The annual report shall be submitted by 30 June each year and for the first time in the second year following the adoption of this programme.

The final report shall be submitted at the latest 6 months after the closure of this programme.

- (2) The reports referred to in paragraph 1 shall include the following information:
 - (a) the progress made in participating in the ENPI Black Sea Basin programme and priorities in relation to their specific, verifiable targets, with a quantification, wherever and whenever they lend themselves to quantification;
 - (b) detailed information about the financial implementation of the programme;
 - (c) the steps taken by the operating structure to ensure the quality and effectiveness of implementation, in particular:

- monitoring and evaluation measures, including data collection arrangements,
- a summary of any significant problems encountered in implementing the programme and any measures taken;
- the use made of technical assistance;

(d) the measures taken to provide information on and publicise the programme.

Where appropriate, the information referred to in points (a) to (d) of this paragraph may be provided in summary form.

Information referred to in point (c) need not be included if there has been no significant modification since the previous report

12 ROADMAP FOR DECENTRALISATION WITHOUT EX-POST CONTROLS

- (1) The Beneficiary country shall establish a roadmap with indicative benchmarks and time limits to achieve decentralisation without *ex ante* controls by the Commission.
- (2) The Commission shall monitor the implementation of the roadmap mentioned in paragraph 1, and shall take due account of the results achieved by the beneficiary country in this context, in particular in the provision of assistance and in the negotiation process. The roadmap to achieve decentralization without *ex ante* controls may refer to a phased waiver of different types of ex-ante control.
- (3) The Beneficiary country shall keep the Commission updated on a six-monthly basis with the progress made in the implementation of this roadmap.

13 TREATMENT OF RECEIPTS

- (1) Receipts for the purposes of IPA include revenue earned by an operation, during the period of its co-financing, from sales, rentals, service enrolment/fees or other equivalent receipts with the exception of:
 - (a) receipts generated through the economic lifetime of the co-financed investments in the case of investments in firms;
 - (b) receipts generated within the framework of a financial engineering measure, including venture capital and loan funds, guarantee funds, leasing;
 - (c) where applicable, contributions from the private sector to the co-financing of operations, which shall be shown alongside public contribution in the financing tables of the programme.
- (2) Receipts as defined in paragraph 1 above represent income which shall be deducted from the amount of eligible expenditure for the operation concerned. No later than the closure of the programme, such receipts shall be deducted from the relevant operation's eligibility expenditure in their entirety or pro-rata, depending on whether they were generated entirely or only in part by the co-financed operation.

14 ELIGIBILITY OF EXPENDITURE

- (1) Expenditure under the programme in Annex A shall be eligible for European Union contribution if it has actually been incurred after the signature of this Financing Agreement.
- (2) The following expenditure shall not be eligible for European Union contribution under the programme in Annex A:
 - (a) taxes (including VAT), customs and import duties and levies and/or taxes of equivalent effect in accordance with the IPA Framework Agreement with Turkey in Art. 26, attached as Annex B to this Financing Agreement;
 - (b) purchase, rent or leasing of land and existing buildings;
 - (c) fines, financial penalties and expenses of litigation;
 - (d) operating costs;
 - (e) second hand equipment;
 - (f) bank charges, costs of guarantees and similar charges;
 - (g) conversion costs, charges and exchange losses associated with any of the component specific euro accounts, as well as other purely financial expenses;
 - (h) contributions in kind;
 - (i) interest on debt;
- (3) By way of derogation from paragraph 2 above, the following expenditure shall be eligible:
 - (a) value added taxes, if the following conditions are fulfilled:
 - (i) they are not recoverable by any means,
 - (ii) it is established that they are borne by the final beneficiary, and
 - (iii) they are clearly identified in the project proposal.
 - (b) charges for transnational financial transactions;
 - (c) where the implementation of an operation requires a separate account or accounts to be opened, the bank charges for opening and administering the accounts;
 - (d) legal consultancy fees, notarial fees, costs of technical or financial experts, and accountancy or audit costs, if they are directly linked to the co-financed operation and are necessary for its preparation or implementation;
 - (e) the cost of guarantees provided by a bank or other financial institutions, to the extent that the guarantees are required by national or European Union legislation;

- (f) overheads, provided they are based on real costs attributable to the implementation of the operation concerned. Flat-rates based on average costs may not exceed 25% of those direct costs of an operation that can affect the level of overheads. The calculation shall be properly documented and periodically reviewed;
 - (g) the purchase of land for an amount up to 10% of the eligible expenditure of the operation concerned.
- (4) In addition to the technical assistance for the programme referred to Article 94 of the IPA Implementing Regulation, the following expenditure paid by public authorities in the preparation or implementation of an operation shall be eligible:
- (a) the costs of professional services provided by a public authority other than the final beneficiary in the preparation or implementation of an operation;
 - (b) the costs of the provision of services relating to the preparation and implementation of an operation provided by a public authority that is itself the final beneficiary and which is executing an operation for its own account without recourse to other outside service providers if they are additional costs and relate either to expenditure actually and directly paid for the co-financed operation.

The public authority concerned shall either invoice the costs referred to in point (a) of this paragraph to the final beneficiary or certify those costs on the basis of documents of equivalent probative value which permit the identification of real costs paid by that authority for that operation.

The costs referred to in point (b) of this paragraph must be certified by means of documents which permit the identification of real costs paid by the public authority concerned for that operation.

- (5) Without prejudice to the provisions of paragraphs 1 to 4, further rules on eligibility of expenditure may be laid down in the ENPI Black Sea Basin programme

15 RETENTION OF DOCUMENTS

- (1) All documents related to a given programme shall be retained by the Beneficiary for at least three years after the closure of the programme. This period shall be interrupted either in the case of legal proceedings or at the duly motivated request of the Commission.
- (2) By way of derogation from paragraph 1, written records of the entire procurement, grant award and contracting procedure shall be retained by the operating structure for a period of at least seven years from the payment of the balance of the contract.

16 DESIGNATION AND RESPONSIBILITIES OF THE PROGRAMME AUTHORISING OFFICER

- (1) The national authorizing officer shall, after consulting the national IPA co-ordinator, designate a programme authorizing officer to head the implementing agencies. It shall be an official within the state administration of the Beneficiary who shall be responsible for the activities mentioned in Section 6(b) of Annex A to the Framework

Agreement, in accordance with Article 8(3) of the Framework Agreement and with Article 11(3) of the IPA Implementing Regulation.

- (2) The Programme authorizing officer shall designate officials within the national administration as senior programme officers. Under the overall responsibility of the programme authorizing officer concerned, senior programme officers shall carry out the following tasks:
 - (a) be responsible for the technical aspect of the operations within the line ministries;
 - (b) assist the programme authorizing officers in the good and timely preparation and implementation of operations at technical level;
 - (c) be in charge of the co-ordination within each priority axis set down in the Beneficiary's project proposal.

17 DETAILED RULES ON THE ACCREDITATION OF THE OPERATING STRUCTURES

- (1) Where European Union funds have been managed by existing national bodies in the Beneficiary under Regulation (EEC) No 3906/89 or Regulation (EC) No 2500/2001 prior to the date of entry into force of the IPA Implementing Regulation, those bodies (hereinafter referred to as the "existing national bodies") shall manage funds under the transition assistance and institution building component and the cross-border co-operation component, until the Commission adopts a Decision on conferral of management powers.
- (2) In no case the existing national bodies can manage funds under the transition assistance and institution building component or under the cross-border co-operation component without a conferral of management powers by the Commission in accordance with the IPA implementing rule for more than one year from the entry into force of the IPA Implementing Regulation.
- (3) The Commission shall decide whether to confer management powers on the existing national bodies in particular having regard to the list of deviations submitted in accordance with paragraph 4 and the decision taken by the national authorizing officer in accordance with paragraph 5.
- (4) The national authorizing officer shall carry out an assessment of the operating structure, which include the existing national bodies, with regard to the requirements referred to in Article 11 of the IPA Implementing Regulation. In particular, he/she shall establish a list of any requirements under the IPA Implementing Regulation, as set out in Article 11 therein, which the operating structure does not comply with, based on an opinion of an external auditor functionally independent from all actors in the management and control system. The list of deviations shall be sent to the Commission at the latest four months after the entry into force of the IPA Implementing Regulation.

- (5) Where the non-compliance referred to in paragraph 4 is deemed to be compatible with the efficient and effective functioning of the operating structures, the national authorizing officer may decide to accredit the bodies concerned.

At the latest five months after the entry into force of the IPA Implementing Regulation, he/she shall send to the Commission a decision relating to the accreditation of the bodies concerned. This decision shall include a roadmap, with time bound objectives, laying down the steps to be taken to remedy the non-compliance as set out in the list referred to in paragraph 4. The roadmap shall be agreed by the Commission.

- (6) Where the non-compliance referred to in paragraph 6 is not deemed to be compatible with the efficient and effective functioning of an operating structure, the national authorizing officer shall proceed to establish an accreditation for the operating structure concerned, in accordance with the provisions of Article 13 of the IPA Implementing Regulation.

18 DETAILED RULES ON THE CONFERRAL OF MANAGEMENT POWERS BY THE COMMISSION

- (1) In the event that the Commission decides to confer management powers on the "existing national bodies" mentioned in Section 17(1) above, the Commission may lay down further conditions on the national authorities. In the event of further conditions, the Commission shall set a time limit for compliance by the national authorities for the conferral of management powers to remain effective. The Commission Decision shall also lay down the list of *ex-ante* controls mentioned in Article 12(4) of Annex B.
- (2) Irrespective of the national authorizing officer's decision, the Commission may decide to maintain, suspend or withdraw the conferral of management powers on any of the bodies concerned at any time.
- (3) At all stages, the national authorizing officer shall ensure that all the information required by the Commission is provided by the Beneficiary.

19 FURTHER PROVISIONS APPLICABLE TO THE IMPLEMENTATION OF PROGRAMMES FOR THE PARTICIPATION IN THE ENPI BLACK SEA BASIN PROGRAMME UNDER THE CROSS-BORDER COOPERATION COMPONENT

- (1) The operating structure shall cooperate with the Managing Authority of the ENPI Black Sea Basin programme. The operating structure is represented in the Joint Monitoring Committee of the ENPI Black Sea Basin programme as a full member.
- (2) The operating structure shall include one implementing agency which shall be established within the national administration or under its direct control.
- (3) The national authorising officer shall, after consulting the national IPA co-ordinator, designate a programme authorising officer to head the implementing agency.
- (4) The programme authorising officer shall be an official of the State administration of the beneficiary country. He/she shall be responsible for the activities carried out by the implementing agency.

- (5) The implementing agency shall be responsible for the tendering and contracting, payments accounting and financial reporting aspects of the procurement of services, supplies, works and grants.