

16 May 2008

FRAMEWORK AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF TURKEY

AND

THE COMMISSION OF THE EUROPEAN COMMUNITIES

ON

**THE RULES FOR CO-OPERATION CONCERNING EC-FINANCIAL
ASSISTANCE TO THE REPUBLIC OF TURKEY IN THE
FRAMEWORK OF THE IMPLEMENTATION OF THE ASSISTANCE
UNDER THE INSTRUMENT FOR PRE-ACCESSION ASSISTANCE
(IPA)**

(DATED: DDMMYY)

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The Commission of the European Communities, hereinafter referred to as “**the Commission**”, acting for and on behalf of the European Community, hereinafter referred to as “the Community”

on the one part,

and

the Government of the Republic of Turkey, acting on behalf of the Republic of Turkey, hereinafter referred to as “**the Beneficiary**”

and together, jointly referred to as “the Contracting Parties”

Whereas

- (1) On 1 August 2006, the Council of the European Union adopted Regulation (EC) No 1085/2006 of 17 July 2006⁽¹⁾ establishing an instrument for pre-accession assistance (hereinafter referred to as “IPA Framework Regulation”). With effect from the 1 January 2007, this new instrument constitutes the single legal basis for the provision of financial assistance to candidate countries and potential candidate countries in their efforts to enhance political, economic and institutional reforms with a view to become members of the European Union;
- (2) On 12 June 2007, the Commission has adopted the regulation implementing the IPA Framework Regulation, detailing applicable management and control provisions;
- (3) The new instrument for pre-accession assistance (IPA) replaces the five previously existing pre-accession instruments: Regulation (EEC) No 3906/1989 on economic aid to certain countries of Central and Eastern Europe, Regulation (EC) No 1267/1999 on the establishment of an instrument for structural policies for pre-accession, Regulation (EC) No 1268/1999 on the support for pre-accession measures for agriculture and rural development, Regulation (EC) No 2666/2000 on assistance for Albania, Bosnia and Herzegovina, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, and Regulation (EC) No 2500/2001 on the financial assistance to Turkey;
- (4) The Beneficiary is eligible under IPA as provided for in the IPA Framework Regulation and in Commission Regulation (EC) No 718/2007 of 12 June 2007⁽²⁾ implementing the IPA Framework Regulation (hereinafter referred to as “IPA Implementing Regulation”);

¹ OJ L 210, 31 July 2006, p. 82

² OJ L 170, 29 June 2007, p.1

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- (5) The Beneficiary figures in Annex I of the IPA Framework Regulation, and should therefore have access to the 5 components established under IPA, i.e. the Transition Assistance and Institution Building Component, the Cross-Border Co-operation Component, the Regional Development Component, the Human Resources Development Component and the Rural Development Component;
- (6) It is therefore necessary to set out the rules for co-operation concerning EC financial assistance with the Beneficiary under IPA;

HAVE AGREED AS FOLLOWS:

SECTION I GENERAL PROVISIONS

Article 1 Interpretation

- (1) Subject to any express provision to the contrary in this Framework 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 Framework 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 Framework Agreement by means of amendments.
- (4) Headings in this Agreement have no legal significance and do not affect its interpretation.
- (5) The Framework Agreement between the Government of the Republic of Turkey and the Commission of 14 May 2004 continues to be applicable for measures decided and agreed upon under previous pre-accession instruments until they are completed in accordance with the terms of the relevant implementation agreements.

Article 2 Partial invalidity and unintentional gaps

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 Contracting 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. The Contracting 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.

Article 3 Purpose and Scope

- (1) In order to promote co-operation between the Contracting Parties and to assist the Beneficiary in its progressive alignment with the standards and policies of the

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European Union, including, where appropriate the *acquis communautaire*, with a view to membership, the Contracting Parties agree to implement activities in the various fields as specified in the IPA Framework Regulation and IPA Implementing Regulation and as applicable to the Beneficiary.

- (2) The activities shall be financed and implemented within the legal, administrative and technical framework laid down in this Agreement and as further detailed in Sectoral Agreements and/or Financing Agreements, if any.
- (3) The Beneficiary takes all necessary steps in order to ensure the proper execution of all activities and to facilitate the implementation of the related programmes.

(4) Scope of this Agreement covers activities under:

- a) National Pre-accession Programmes for the Republic of Turkey concluded under Council Regulation (EC) No. 1085/2006 17 July 2006 concerning IPA Pre-accession financial assistance for Turkey or under any other Regulation amending or replacing this Regulation.
- b) Projects and actions to be financed under the Framework Agreement on the general principles for the participation of the Republic of Turkey in Community Programmes as signed by the Republic of Turkey and European Commission on 26.02.2002 and the Relevant Memoranda of Understanding and any other Framework Agreement or Memoranda of Understanding that will be signed for Community Programmes.
- c) Projects implemented under Council Regulation (EC) No. 1085/2006 17 July 2006 concerning IPA Pre-accession financial assistance in centralized, shared, joint and de-concentrated management structure.

Article 4 General rules on financial assistance

- (1) The following principles shall apply to financial assistance by the Community under IPA:
 - a) Assistance shall respect the principles of coherence, complementarity, co-ordination, partnership and concentration;
 - b) Assistance shall be coherent with EU policies and shall support alignment to the *acquis communautaire*;
 - c) Assistance shall comply with the budgetary principles laid down in Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002³) on the Financial Regulation applicable to the general budget of the European Communities (hereinafter referred to as "Financial Regulation") and its Implementing Rules⁴;

³ OJ L 248, 16 September 2002, p.1, as amended by Regulation No 1995/2006 of 13 December 2006 (OJ L 390, 30 December 2006, p.1)

⁴ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 (OJ L 357, 31.12.2002, p. 1) as last amended by Commission Regulation No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007)

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- d) Assistance shall be consistent with the needs identified in the enlargement process and absorption capacities of the Beneficiary. It shall also take account of lessons learned;
 - e) The ownership of the programming and implementation of assistance by the Beneficiary shall be strongly encouraged and adequate visibility of EU intervention shall be ensured;
 - f) Operations shall be properly prepared, with clear and verifiable objectives, which are to be achieved within a given period; the results obtained should be assessed through clearly measurable and adequate indicators;
 - g) Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prevented during the various stages of the implementation of assistance;
 - h) The objectives of pre-accession assistance shall be pursued in the framework of sustainable development and the Community promotion of the goal of protecting and improving the environment.
- (2) Assistance for the Beneficiary shall be based on the priorities identified in the existing documents, i.e. the Accession Partnership, the national programme for the adoption of the *acquis communautaire*, the reports and strategy paper contained in the annual enlargement package of the Commission and the negotiation framework.
 - (3) All operations receiving assistance under IPA shall in principle require co-financing by the Beneficiary and the Community, unless otherwise agreed upon in a Sectoral Agreement or Financing Agreement.
 - (4) Where the execution of activities depends on financial commitments from the Beneficiary's own resources or from other sources of funds, the funding of the Community shall become available at such time as the financial commitments of the Beneficiary and/or the other sources of funds themselves become available.
 - (5) The provision of Community financing under IPA shall be subject to the fulfilment by the Beneficiary of its obligations under this Framework Agreement and under Sectoral Agreements and Financing Agreements, if any.

Article 5 Implementation methods

- (1) For the implementation of assistance under IPA in the Republic of Turkey, decentralised management, whereby the Commission confers the management of certain actions on the Beneficiary, while retaining overall final responsibility for general budget execution in accordance with Article 53c of the Financial Regulation and the relevant provisions of the EC Treaties, shall apply as a rule. Decentralised management shall cover at least tendering, contracting and payments by the national administration of the Beneficiary. Operations shall be implemented in accordance with the provisions laid down in Article 53c of the Financial Regulation and the ones referred to in this article.
- (2) However, the Contracting Parties may agree to make use of
 - a) centralised management as defined in Article 53a of the Financial Regulation under the Transition Assistance and Institution Building Component, in particular for regional and horizontal programmes, and under the Cross-Border Co-

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operation Component. It may also be used for technical assistance under any of the IPA components. Operations shall be implemented in accordance with the provisions laid down in Articles 53 point (a), 53a and 54 to 57 of the Financial Regulation.

European Commission shall provide necessary information annually on projects managed in centralised and de-concentrated management structure to the Beneficiary.

- b) joint management as defined in Article 53d of the Financial Regulation for the Transition Assistance and Institution Building Component, in particular for regional and horizontal programmes, and for programmes involving international organisations. Operations shall be implemented in accordance with the provisions laid down in Articles 53 point (c) and 53d of the Financial Regulation.
- c) shared management as defined in Article 53b of the Financial Regulation under the Cross-Border Co-operation Component, for cross-border programmes involving Member States of the European Union. Operations shall be implemented in accordance with the provisions laid down in Articles 53 point (b), 53b and Title II of Part two of the Financial Regulation. The following particular provision shall be taken into account in the implementation of cross-border programmes with Member States.

Where one or more Member States of the European Union and the Beneficiary participating in a cross-border programme are not yet ready for implementation of the whole programme under shared management, the part of the programme concerning the Member State(s) shall be implemented in accordance with Title II (Cross-Border Co-operation Component), Chapter III, Section 2 of the IPA Implementing Regulation (Articles 101 to 138) and the part of the programme concerning the Beneficiary shall be implemented in accordance with Title II, Chapter III, Section 3 of the IPA Implementing Regulation. (Articles 139 to 146 IPA Implementing Regulation, with the exception of Article 142. The provisions concerning the joint monitoring committee of Article 110 shall apply).

- (3) If required by the related Financing Decision, the Commission and the Beneficiary shall conclude a Financing Agreement in accordance with Article 8 of the IPA Implementing Regulation on multi-annual or annual programmes. Financing Agreements may be concluded between the Commission and several beneficiary countries under IPA including the Beneficiary for assistance for multi-country programmes and horizontal initiatives.
- (4) This Framework Agreement shall apply to all Financing Agreements concluded between the Contracting Parties for the financial assistance under IPA. Where they exist, Sectoral Agreements related to a given component shall apply to all Financing Agreements concluded under that component. Where there is no Financing Agreement, the rules included in this Framework Agreement apply together with Sectoral Agreements, if any. Provisions of this Framework Agreement shall prevail on Financing Agreements concluded under IPA.

SECTION II MANAGEMENT STRUCTURES AND AUTHORITIES

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Article 6 Establishment and designation of structures and authorities for decentralised management

- (1) The following structures and authorities must be designated by the Beneficiary in the event of decentralised management:
 - a) The competent accrediting officer (CAO);
 - b) The national IPA co-ordinator (NIPAC);
 - c) The strategic coordinator for the Regional Development Component and the Human Resources Development Component;
 - d) The national authorising officer (NAO);
 - e) The national fund (NF);
 - f) Operating structures per component or programme to deal with the management and implementation of assistance under the IPA Regulation;
 - g) The audit authority.
- (2) Specific bodies may be established within the overall framework defined by the bodies and authorities described above within or outside the operating structures initially designated. The Beneficiary shall ensure that the final responsibility for the functions of operating structures shall remain with the operating structure initially designated. Such a restructuring shall be formalised in written agreements and shall be subject to accreditation by the national authorising officer and the conferral of management by the Commission.
- (3) The Beneficiary shall ensure that appropriate segregation of duties applies to the bodies and authorities mentioned under paragraph 1 and 2 above in accordance with Article 56 of the Financial Regulation. Duties are segregated when different tasks related to a transaction are allocated to different staff, thereby helping to ensure that each separate task has been properly undertaken.

Article 7 Establishment and designation of structures and authorities for centralised or joint management

- (1) In the event of centralised or joint management the national IPA co-ordinator shall act as the representative of the Beneficiary vis-à-vis the Commission. He shall ensure that a close link is maintained between the Commission and the Beneficiary with regard both to the general accession process and to EU pre-accession assistance under IPA.
- (2) The national IPA co-ordinator shall also be responsible for co-ordinating the Beneficiary's participation in the relevant cross-border programmes, both with Member States and with other Beneficiary countries, as well as in the trans-national, interregional or sea basins programmes under other Community instruments. He may delegate the tasks relating to this latter responsibility to a cross-border co-operation co-ordinator.

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- (3) In the case of the Cross-border Co-operation Component, operating structures shall be designated and put in place by the Beneficiary, in accordance with Article 139 of the IPA Implementing Regulation.

Article 8 Functions and common responsibilities of the structures, authorities and bodies

- (1) The bodies and authorities mentioned in Article 6 above shall be allocated the functions and common responsibilities as set out in **ANNEX A** to this Framework Agreement.
- (2) Component-related specific allocations of functions and responsibilities may be set out in Sectoral Agreements or Financing Agreements. They must not be in contradiction to the basic approach chosen for the allocation of functions and common responsibilities as shown in **ANNEX A**.
- (3) Where under decentralised management specific persons have been given responsibility for an activity in relation to the management, implementation and control of programmes, the Beneficiary shall enable such persons to exercise the duties associated with that responsibility including in cases where, there is no hierarchical link between them and the bodies participating in that activity. The Beneficiary shall, in particular, provide those persons with the authority to establish, through formal working arrangements between them and the bodies concerned:
- a) an appropriate system for the exchange of information, including the power to require information and a right of access to documents and staff on the spot, if necessary;
 - b) the standards to be met;
 - c) the procedures to be followed.

SECTION III ACCREDITATION AND CONFERRAL OF MANAGEMENT POWERS UNDER DECENTRALISED MANAGEMENT

Article 9 Common requirements

Management relating to a component, a programme or a measure can only be conferred on the Republic of Turkey, if and when the following requirements are fulfilled:

- a) The Beneficiary meets the conditions set to Article 56 of the Financial Regulation, in particular as regards the management and control systems. The management and control systems set up in the Republic of Turkey shall provide for effective and efficient control in at least the areas set out in the Annex to the IPA Implementing Regulation and as listed under No 1 c) of **ANNEX A** to this Framework Agreement. The Contracting Parties may define further provisions in Sectoral Agreements or Financing Agreements.
- b) The competent accrediting officer has given accreditation to the national authorising officer both
 - as the head of the national fund bearing overall responsibility for the financial management of EU funds in the Republic of Turkey and being responsible for the legality and regularity of the underlying transactions;

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- with regard to national authorising officer's capacity to fulfil the responsibilities for the effective functioning of management and control systems under IPA.

The accreditation of the national authorising officer shall also cover the national fund as described in Annex A, 5.

- c) The national authorising officer has given accreditation to the relevant operating structures.

Article 10 Procedure for accreditation of the national authorising officer and the national fund by the competent accrediting officer

- (1) Accreditation of the national authorising officer in accordance with Article 11 of the IPA Implementing Regulation is subject to his fulfilment of the applicable requirements set out in Article 11 of the said regulation and as further defined in Annex A, 4. This accreditation shall be supported by an audit opinion drawn up by an external auditor functionally independent from all actors in the management and control system. The audit opinion shall be based on examinations conducted according to internationally accepted auditing standards.
- (2) The competent accrediting officer shall notify the Commission of the accreditation of the national authorising officer, not later than the notification of the accreditation of the first operating structure. The competent accrediting officer shall provide all relevant supporting information required by the Commission.
- (3) The competent accrediting officer shall immediately inform the Commission of any changes concerning the national authorising officer or the national fund. Where a change affects the national authorising officer or the national fund in relation to the applicable requirements as set out in Article 11 of the IPA Implementing Regulation, the competent accrediting officer shall send to the Commission an assessment of the consequences of such a change on the validity of the accreditation. Where such a change is significant, the competent accrediting officer shall also notify the Commission of his decision concerning the accreditation.

Article 11 Procedure for accreditation of operating structures by the national authorising officer

- (1) Accreditation of an operating structure is subject to its fulfilment of the requirements set out in Article 11 of the IPA Implementing Regulation. This assurance shall be supported by an audit opinion drawn up by an external auditor functionally independent from all actors in the management and control system. The audit opinion shall be based on examinations conducted according to internationally accepted auditing standards.
- (2) The national authorising officer shall notify the Commission of the accreditation of the operating structures and shall provide all relevant supporting information required by the Commission, including a description of the management and control systems.

Article 12 Procedure for conferral of management powers by the Commission

- (1) The Commission shall confer management powers on the Beneficiary, only after the bodies and authorities referred to in Article 6 above have been designated and put in place and the conditions laid down in this article are fulfilled.

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- (2) Before the conferral of management powers, the Commission shall review the accreditations of the national authorising officer and the operating structures as laid down in Articles 10 and 11 above and examine the procedures and structures of any of the bodies or authorities concerned within the Republic of Turkey. This may include on-the-spot verifications by the services of the Commissions or subcontracted to an audit firm.
- (3) The Commission may, in its decision to confer management powers, set further conditions, with a view to ensuring that the requirements referred to in Article 11 of the IPA Implementing Regulation are met. These further conditions must be fulfilled within a fixed period determined by the Commission for the conferral of management powers to remain effective.
- (4) The Commission Decision on the conferral of management powers shall lay down the list of the *ex ante* controls, if any, to be performed by the Commission on the tendering of contracts, launch of calls for proposals and the award of contracts and grants. This list may vary with the component or the programme. The *ex ante* controls shall be applied, depending on the component or programme, until the Commission allows for decentralised management without *ex ante* controls as referred to in Article 16 below.

Article 13 Withdrawal or suspension of the accreditation of the national authorising officer and the national fund

- (1) After the conferral of management powers by the Commission, the competent accrediting officer shall be responsible for monitoring the continuing fulfilment of all the requirements for this accreditation to be maintained and shall inform the Commission of any significant change related thereto.
- (2) If any of the applicable requirements set out in Article 11 of the IPA Implementing Regulation, are not, or are no longer, fulfilled, the competent accrediting officer shall either suspend or withdraw the accreditation of the national authorising officer, and shall immediately inform the Commission of his decision and of the reasons for his decision. The competent accrediting officer shall assure himself that those requirements are again fulfilled before restoring the accreditation. This assurance shall be supported by an audit opinion as specified in Article 10(1) above.
- (3) Where the accreditation of the national authorising officer is withdrawn or suspended by the competent accrediting officer, the following provisions shall apply:
 - The Commission shall cease to make transfers of funds to the Beneficiary during the period when the accreditation is not in force;
 - During the period when the accreditation is not in force, all the euro accounts or the euro accounts for the components concerned shall be blocked and no payment made by the National Fund from those euros accounts which are blocked shall be considered eligible for Community funding;
 - without prejudice to any other financial corrections, the Commission may make financial corrections as laid down in Article 30 below against the Beneficiary in respect of its past non-compliance with the requirements for the conferral of management powers.

Article 14 Withdrawal or suspension of the accreditation of the operating structures

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- (1) After the conferral of management powers by the Commission, the national authorising officer shall be responsible for monitoring the continuing fulfilment of all the requirements for this accreditation to be maintained and shall inform the Commission and the competent accrediting officer of any significant change related thereto.
- (2) If any of the requirements set out in Article 11 of the IPA Implementing Regulation are not, or are no longer, fulfilled, the national authorising officer shall either suspend or withdraw the accreditation of the operating structure concerned, and shall immediately inform the Commission and the competent accrediting officer of his decision and of the reasons for his decision.

The national authorising officer shall assure himself that those requirements are again fulfilled before restoring the accreditation concerned. This assurance shall be supported by an audit opinion as referred to in Article 11(1) above.

- (3) Where the accreditation of an operating structure is withdrawn or suspended by the national authorising officer, the following provisions shall apply:
 - The Commission shall make no transfers to the Beneficiary of funds relating to programmes or operations implemented by the operating structure concerned while its accreditation is suspended or withdrawn;
 - Without prejudice to any other financial corrections, the Commission may make financial corrections as laid down in Article 30 below against the Beneficiary in respect of its past non-compliance with the requirements and conditions for the conferral of management powers;
 - No new legal commitments made by the operating structure concerned shall be considered eligible during the period when the accreditation is not in force;
 - The national authorising officer shall be responsible for taking any appropriate safeguard measures regarding payments made or contracts signed by the operating structure concerned.

Article 15 Withdrawal or suspension of conferral of management powers

- (1) The Commission shall monitor compliance with the requirements set out in Article 11 of the IPA Implementing Regulation.
- (2) Irrespective of the decision by the competent accrediting officer to maintain, suspend or withdraw the accreditation of the national authorising officer, or of the decision by the national authorising officer to maintain, suspend or withdraw the accreditation of the operating structure, the Commission may withdraw or suspend the conferral of management powers at any time, in particular in the event that any of the requirements mentioned in Article 11 of the IPA Implementing Regulation are not, or no longer, fulfilled.
- (3) Where the conferral of management powers is withdrawn or suspended by the Commission, the following provisions shall apply:
 - The Commission shall cease to make transfers of funds to the Beneficiary;

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- Without prejudice to any other financial corrections, the Commission may make financial corrections as laid down in Article 30 below against the Beneficiary in respect of its past non-compliance with the requirements for the conferral of management powers.

The Commission may lay down other consequences of such a suspension or withdrawal in a specific Commission Decision

- (4) The Commission Decision may lay down provisions concerning the suspension or withdrawal of the conferral of management powers in relation to specific bodies or authorities.

Article 16 Decentralisation without ex-ante control by the Commission

- (1) Decentralisation without ex-ante control by the Commission shall be the objective for the implementation of all IPA components where assistance is implemented on a decentralised basis in accordance with Article 5 above. The timing for attainment of this objective may vary depending on the IPA Component concerned.
- (2) Before dispensing with the *ex-ante* controls laid down in the Commission Decision on conferral of management, the Commission shall satisfy itself of the effective functioning of the management and control system concerned in accordance with the relevant Community and national rules. In particular, the Commission shall monitor the implementation, by the Beneficiary, of the roadmap included in the Financing Agreement, which may refer to a phased waiver of different types of ex-ante controls. The Commission shall take due account of the results achieved by the Beneficiary in this context, in particular in the provision of assistance and in the negotiation process.

Article 17 Statement of assurance by the national authorising officer

- (1) The national authorising officer shall make an annual management declaration covering
 - his overall responsibility, in his function as head of the national fund, for the financial management of EU funds in the Republic of Turkey and for the legality and regularity of the underlying transactions;
 - his responsibility for the effective functioning of management and control systems under IPA.

This management declaration shall take the form of a statement of assurance to be presented to the Commission by 28 February each year with a copy to the competent accrediting officer.

- (2) The Statement of Assurance shall be based on the national authorising officer's actual supervision of the management and control system throughout the financial year.
- (3) The Statement of Assurance shall be drawn up according to the model attached in **ANNEX B** to this Framework Agreement.
- (4) If the confirmations regarding the effective functioning of the management and control systems and the legality and regularity of underlying transactions required through the Statement of Assurance are not available, the national authorising officer shall inform the Commission, copy to the competent accrediting officer, of the

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reasons and potential consequences as well as of the actions being taken to remedy the situation and to protect the interests of the Community.

Article 18 Establishment of reports and opinions by the audit authority and follow up by the national authorising officer and the Commission

- (1) Subject to the detailed functions and responsibilities of the audit authority as set out **ANNEX A** to this Framework Agreement, the audit authority shall in particular establish the following reports and opinions:
 - a) An annual audit activity report according to the model in **ANNEX C** to this Framework Agreement;
 - b) An annual audit opinion on the management and control system according to the model in **ANNEX D** to this Framework Agreement;
 - c) An audit opinion on the final statement of expenditure for the closure of a programme or parts of a programme according to the model in **ANNEX E** to this Framework Agreement.
- (2) Following receipt of the annual audit activity report and the annual audit opinion referred to in paragraph 1, the national authorising officer shall:
 - a) decide whether any improvements to the management and control systems are required, record the decisions in that respect and ensure the timely implementation of those improvements;
 - b) make any necessary adjustments to the payment applications to the Commission.
- (3) The Commission may decide either to take follow-up action itself in response to the reports and opinions, for example by initiating a financial correction procedure, or to require the Beneficiary to take action, while informing the national authorising officer and the competent accrediting officer of its decision.

SECTION IV GENERAL RULES FOR COMMUNITY FINANCIAL ASSISTANCE

Article 19 Eligibility of expenditure

- (1) In the event of decentralised management, notwithstanding accreditations by the competent accrediting officer and the national authorising officer, contracts and addenda signed, expenditure incurred and payments made by the national authorities shall not be eligible for funding under IPA prior to the conferral of management by the Commission on the concerned structures and authorities. The end date for the eligibility of expenditure shall be laid down in Financing Agreements, where necessary.
- (2) By way of derogation from paragraph 1,
 - a) technical assistance to support the setting up of management and control systems may be eligible prior to the initial conferral of management, for expenditure incurred after 1 January 2007;

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- b) expenditure following the launch of calls for proposals or calls for tenders may also be eligible if the call is launched prior to the initial conferral of management, subject to this initial conferral of management being in place within the time limits defined in a reserve clause to be inserted in the operations or calls concerned, and subject to prior approval of the documents concerned by the Commission. The calls for proposal or calls for tender concerned may be cancelled or modified depending on the decision on conferral of management.
- (3) Expenditure financed under IPA shall not be the subject of any other financing under the Community budget.
- (4) In addition to paragraph 1 to 3 above, more detailed rules on eligibility of expenditure may be set out in Financing Agreements or Sectoral Agreements.

Article 20 Property of interest

Any interest earned on any of the component-specific euro accounts remains the property of the Beneficiary. Interest generated by the financing by the Community of a programme shall be posted exclusively to that programme, being regarded as a resource for the Beneficiary in the form of a national public contribution, and shall be declared to the Commission, at the time of the final closure of the programme.

Article 21 Audit trail

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.

Article 22 Aid intensities and rate of Community contribution

- (1) The Community contribution shall be calculated in relation to the eligible expenditure, as defined in Part II of the IPA Implementing Regulation for each IPA component.
- (2) Financing decisions adopting the annual or multi-annual programmes for each IPA component shall set the maximum indicative amount of the Community contribution and the subsequent maximum rate for each priority axis.

SECTION V GENERAL RULES FOR IMPLEMENTATION

Article 23 Rules on procurement

- (1) Assistance under all IPA components shall be managed in accordance with the rules for External Aid contained in the Financial Regulation. This shall not apply to assistance implemented under the transitional arrangements of Article 99 IPA Implementing Regulation regarding the Cross-Border Co-operation Component to that part of the programme that is implemented on Member States' territory, unless otherwise decided by the participating Member State.
- (2) Results of tender procedures shall be published according to the rules referred to in paragraph 1 above and as further specified in Article 24(3) below.

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- (3) The rules of participation and origin as laid down in Article 19 of the IPA Framework Regulation shall apply to all contract award procedures under IPA. The Beneficiary shall designate an authority in charge of issuing certificates of origin or similar documents upon request for locally manufactured goods in compliance with the relevant Community legislation on rules of origin for customs purposes. The designated authority shall apply effective controls to ensure that these rules are duly respected.
- (4) All service, supplies and work contracts shall be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question, unless otherwise provided for in Sectoral or Financing Agreements.

Article 24 Publicity and visibility

- (1) In the case of centralised and joint management, information on programmes and operations shall be provided by the Commission with the assistance of the national IPA co-ordinator as appropriate. In the case of decentralised management and in all cases for programmes or part of programmes under the cross-border co-operation component not implemented through shared management, the Beneficiary, in particular the national IPA co-ordinator, shall provide information on and publicise programmes and operations. In the case of shared management, the Member States and the Beneficiary shall provide information on and publicise programmes and operations. The information shall be addressed to the citizens and beneficiaries, with the aim of highlighting the role of the Community and ensuring transparency.
- (2) In the case of decentralised management, the operating structures shall be responsible for organising the publication of the list of the final beneficiaries, the names of the operations and the amount of Community funding allocated to the operations by means of the award of grants in the following way:
 - a) The publication shall be made according to a standard presentation, in a dedicated and easily accessible place of the Beneficiary's internet site. If such internet publication is impossible, the information shall be published by any other appropriate means, including the national official journal.
 - b) Publication shall take place during the first half of the year following the closure of the budget year in respect of which the funds were attributed to the Beneficiary.
 - c) The Beneficiary shall communicate to the Commission the address of the place of publication. If the information is published otherwise, the Beneficiary shall give the Commission full details of the means used.
 - d) The operating structures shall ensure that the final beneficiary is informed that acceptance of funding is also an acceptance of their inclusion in this list of beneficiaries published. Any personal data included in this list shall nevertheless be processed in accordance with the requirements of Regulation (EC) No 45/2001 of the European Parliament and the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the

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Community institutions and bodies and on the free movement of such data ⁽⁵⁾, and with due observance of the requirements of security.

- (3) In the case of decentralised management, the relevant bodies shall prepare a contract award notice, once the contract has been signed, and send it to the Commission for publication. The contract award notice may also be published by the beneficiary in the appropriate national publications.
- (4) The Commission and the relevant national, regional or local authorities of the Beneficiary shall agree on a coherent set of activities to make available, and publicise, in the Republic of Turkey information about assistance under IPA. The procedures for implementing such activities shall be specified in the Sectoral or Financing Agreements.
- (5) Implementation of the activities referred to in paragraph 4 shall be the responsibility of the final beneficiaries, and might be funded from the amount allocated to the relevant programmes or operations.

Article 25 Granting of facilities for the implementation of programmes and execution of contracts

- (1) In order to ensure the effective implementation of programmes under IPA, the Beneficiary shall take all necessary measures, without prejudice to public security and public health, to ensure:
 - a) that, in the case of service, supplies or works tender procedures, natural or legal persons eligible to participate in tender procedures pursuant to Article 23 above shall be entitled to temporary installation and residence where the importance of the contract so warrants. This right shall be acquired only after the invitation to tender has been launched and shall be enjoyed by the technical staff needed to carry out studies and other preparatory measures to the drawing up of tenders. This right shall expire one month after the decision of contract award;
 - b) that personnel taking part in Community financed activities, including Resident Twinning Advisors in IPA twinning projects, and members of their immediate family are accorded no less favourable benefits, privileges and exemptions than those usually accorded to other international staff with comparable rank and status employed in the Republic of Turkey under any other bilateral or multilateral agreement or arrangements for assistance and technical co-operation, whichever is applicable to the Republic of Turkey;
 - c) that personnel taking part in Community financed activities and members of their immediate family are allowed to enter the Republic of Turkey, to establish themselves in the Republic of Turkey, to work there and to leave the Republic of Turkey according to existing national legislation of the Beneficiary, as the nature of the underlying contract so justifies;

⁵ OJ L 8, 12 January 2001, p. 1

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- d) the granting of all permits necessary for the importation of goods required for the execution of the underlying contract, subject to existing laws, rules and regulations of the Beneficiary; natural and legal persons importing professional equipment shall, if they so request, benefit from the system of temporary importation as defined by the national legislation of the Beneficiary in respect of the said equipment;
 - e) that imports carried out under IPA will be exempted from taxes, customs and import duties and levies and/or taxes of equivalent effect;
 - f) the granting of all permits necessary for the re-export of the above goods, once the underlying contract has been fully executed;
 - g) the granting of authorisations for the import or acquisition of the foreign currency necessary for the implementation of the underlying contract and the application of national exchange control regulations in a non-discriminatory manner to contractors, regardless of their nationality or place of establishment;
 - h) the granting of all permits necessary to repatriate funds received in respect of the activity financed under IPA, in accordance with the foreign exchange control regulations in force in the Republic of Turkey;
 - i) transactions necessary for carrying out contracts under IPA will be exempted from procedures requiring the transfer of the price of goods and/or services to their contractors abroad through banks or financial institutions operating in the Republic of Turkey.
- (2) The Beneficiary shall ensure full co-operation of all relevant authorities. It will also ensure access to state-owned companies and other governmental institutions, which are involved or are necessary in the implementation of a programme or in the execution of the contract.
 - (3) After the entry into force of this Framework Agreement the Beneficiary will adopt the secondary legislation to enforce the requirements of the procedures laid down in this article while keeping these procedures as simple and as time efficient as possible in order to avoid delays of implementation.

Article 26 Rules on taxes, customs and import duties and levies and/or taxes of equivalent effect

- (1) Save where otherwise provided for in a Sectoral Agreement or a Financing Agreement, taxes, customs and import duties and levies and/or taxes of equivalent effect are not eligible under IPA. This exemption covers also the co-financing provided by the Republic of Turkey.
- (2) The following detailed provisions shall apply:
 - a) All imports by EC contractors shall be allowed to enter the Republic of Turkey without being subject to customs or import duties, charges, Value Added Tax (VAT) and the Special Consumption Tax or to any other similar tax, duties or charges. Such exemption shall only be applied to the imports in connection with

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the goods supplied and/or services rendered and/or works executed by the EC contractor under the EC contract.

- b) EC contractors shall be exempted from VAT for any service rendered and/or goods supplied and/or works executed under the EC contract. Goods supplied or services rendered or works executed by a contractor to the EC contractor shall also be exempted from VAT. Such exemption shall only be applied to the goods supplied or services rendered or works executed which are connected with the goods supplied or services rendered or works executed by the EC contractor under the EC contract.

Any EC contractor or contractor supplying goods and/or rendering services and/or executing works for an EC contractor who is entitled to the exemption, as provided in this Agreement, shall be entitled to offset or deduct any VAT paid in connection with the goods supplied and/or services rendered and/or works executed which are exempted from VAT, as provided in this Agreement, against any VAT collected by them for any of their other transactions. Should the EC contractor or contractor not be able to make use of this possibility, they shall be able to obtain a VAT refund directly from the tax administration upon submission of a written request to the tax administration accompanied by the necessary documentation required under Turkish law for the refund of VAT.

- c) Natural persons not nationals and not residents of Turkey carrying out services and/or works and/or grant and/or twinning contracts financed by the Community and the eventual co-financing contribution provided by the Beneficiary shall not be subject to income tax in Turkey for the income generated by this type of contract.

Legal persons will be subject to the same above provision provided that they do not have their permanent establishment or fixed base in Turkey.

Profit and/or income arising from EC contracts shall be taxable in Turkey in accordance with its tax system, if the natural and/or legal persons making such profit and/or income have their permanent establishment or fixed base in Turkey according to the provisions of the applicable double taxation agreements as ratified by the Beneficiary.

- d) Expenditures of the EC contractors shall be relieved from the Special Consumption Tax. This relief shall only be applied to the expenditure in connection with the goods supplied and/or services rendered and/or works executed by that EC contractor under the EC contract.
- e) Those benefiting from projects and/or contracts and/or activities carried out under IPA shall be exempted from "Inheritance and Transfer Tax" resulting from goods and/or rights and/or constructed facilities and/or funds transferred to them without consideration in any way under IPA.
- f) Personal and household effects imported for personal use by natural persons (and members of their immediate families), other than those recruited locally, carrying out tasks defined in service and/or works and/or grant contracts and/or twinning contracts or covenants, shall be exempted from customs duties, import duties, taxes and levies and/or taxes of equivalent effect, the said personal and household

Silimmiş: The Republic of Turkey shall ensure that the imports concerned will be released from the point of entry for delivery to the EC contractors as required by the provisions of the contract and for immediate use as required for the normal implementation of the contract, without regard to any delays or disputes over the settlement of the above-mentioned duties, taxes or charges.

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effects being re-exported or disposed of in the state, in accordance with the regulations in force in the Republic of Turkey after termination of the contract.

g) EC contracts shall not be subject in the Republic of Turkey to stamp or registration duties, or to any other charge having equivalent effect. This exemption shall also apply to transactions and related payment orders under the EC contract with the exception of sub-contracting

Silinmiş: thereto

Silinmiş: whether such charges exist or are to be instituted

h) For the purposes of this agreement, the term "*EC contractor*" shall be construed as natural and legal persons, rendering services and/or supplying goods and/or executing works and/or executing a grant under an EC contract. The term "*EC contractor*" shall also cover partners in a consortium or joint venture, contractors and pre-accession advisors, also known as resident twinning advisors.

The term "*EC contract*" means any legally binding document through which an activity is financed under IPA, including possible co-financing, and which is signed by the European Community or the Beneficiary or a grant beneficiary.

(3) a) Whenever necessary, the Beneficiary shall adopt the secondary legislation to enforce the tax provisions in this agreement shortly upon its entering into force.

Silinmiş: i) . Apart from the taxes, customs and import duties and levies and/or taxes of equivalent effect mentioned above, the following shall also be exempted: ¶
<#>outlay taxes; ¶
<#>vehicle purchase tax ¶
motor vehicle tax

b) The legislation provided for in the previous paragraph (a) shall contain rules regulating VAT-exemption certificates for EC contractors as well as the length of the procedures for their issuing, which shall not exceed 30 calendar days. It shall contain also procedures for tax refund, return and offsetting, and the requirement of a maximum of 10 calendar days for completion without any additional considerable costs. The legislation shall contain also exhaustive lists of documents which have to be submitted and which have to be directly relevant to the exemption procedure. In case of refusal, the legislation shall contain provisions for clear and duly acceptable justification. Tax exemptions to be provided under this agreement shall be on an ex-ante basis.

(4) The rules and procedures mentioned under this article shall also apply to any similar tax, duty or levy and/or taxes of equivalent effect, which may be instituted after the date of signature of this agreement in addition to, or in replacement of existing ones.

Article 27 Supervision, control and audit by the Commission and the European Court of Auditors

(1) All Financing Agreements as well as all resulting programmes and subsequent contracts shall be subject to supervision and financial control by the Commission including the European Anti-Fraud Office (OLAF) and audits by the European Court of Auditors. This includes the right of the Delegation of the Commission in the Republic of Turkey to carry out measures such as ex-ante verification - as long as ex-ante control has not been waived in accordance with Article 16 above - as well as ex-post controls of tendering, contracting and contract implementations carried out by the related operating structures. The duly authorised agents or representatives of the Commission and of OLAF shall have the right to carry out any technical and financial verification that the Commission or OLAF consider necessary to follow the implementation of a programme including visits of sites and premises at which Community financed activities are implemented. The Commission shall give the national authorities concerned advance notice of such missions.

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Upon the request of national authorities, such missions may be carried out jointly with the Commission.

- (2) The Beneficiary shall supply all requested information and documents including any computerised data and take all suitable measures to facilitate the work of the persons instructed to carry out audits or inspections.
- (3) The Beneficiary shall maintain records and accounts adequate to identify the services, supplies, works and grants financed under the related Financing Agreement in accordance with sound accounting procedures. The Beneficiary shall also ensure that the agents or representatives of the Commission including OLAF have the right to inspect all relevant documentation and accounts pertaining to items financed under the related Financing Agreement and assist the European Court of Auditors to carry out audits relating to the use of Community funds.
- (4) In order to ensure the efficient protection of the financial interests of the Community, the Commission including OLAF may also conduct documentary and on-the-spot checks and inspections in accordance with the procedural provisions of Council Regulation (EC, Euratom) No 2185/1996 of 11 November 1996⁽⁶⁾. These checks and inspections shall be prepared and conducted in close collaboration with the competent authorities designated by the Beneficiary, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. The Beneficiary shall identify a service which will collaborate with OLAF in conducting investigations in accordance with Council Regulation (EC, Euratom) No 2185/1996. This service shall also facilitate the exchange of information between OLAF and national authorities. If the Beneficiary wishes, the on-the-spot checks and inspections may be carried out jointly with them. Where the participants in Community financed activities resist an on-the-spot check or inspection, the Beneficiary, acting in accordance with national rules, shall give Commission/OLAF inspectors such assistance, including due co-operation with them in their investigations, as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

Upon the request by the Beneficiary the Commission/OLAF inspectors may be accompanied by duly authorised agents or representatives of the Beneficiary at every stage of the on-the-spot check.

The Commission/OLAF shall report as soon as possible to the Beneficiary any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event, the Commission/OLAF shall be required to inform the above-mentioned authority of the result of such checks and inspections.

- (5) The controls and audits described above are applicable to all contractors and sub-contractors who have received Community funds.
- (6) Without prejudice to the responsibilities of the Commission and the European Court of Auditors, the accounts and operations of the National Fund and, where applicable, operating structures and other management structures, authorities and bodies, may be

Silinmiş: including all related information to be found in the documents of the national fund of the Beneficiary concerning the national contribution.

⁶ OJ L 292, 15 November 1996, p. 2

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checked at the discretion of the Commission by the Commission itself or by an external auditor assigned by the Commission.

Article 28 Prevention of irregularity and fraud, measures against corruption

- (1) The Beneficiary 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 foreseen in the Commission Regulation (EC) No 1828/2006 of 8 December 2006 ⁽⁷⁾. In the case of suspected fraud or irregularity, the Commission shall be informed without delay.
- (2) Furthermore, the Beneficiary shall take any appropriate measure to prevent and counter any active or passive corruption practices at any stage of the procurement procedure or grant award procedure or during the implementation of corresponding contracts.
- (3) The Beneficiary, including the personnel responsible for the implementation tasks of the Community financed activities, undertakes to take whatever precautions are necessary to avoid any risk of conflict of interests and shall inform the Commission immediately of any such conflict of interest or any situation likely to give rise to any such conflict.
- (4) The following definitions shall apply under the scope of this agreement:
 - a) *Irregularity* shall mean any infringement of a provision of applicable rules and contracts resulting from an act or an 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.
 - b) *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 Communities or budgets managed by, or on behalf of, the European Communities; 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.
 - c) *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 financial interests of the European Communities.
 - d) *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 financial interests of the European Communities.

⁷ OJ L 371, 27 December 2006, p. 4

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- (5) The definitions under this article shall not be construed as introduction of new crime types to the Turkish penal code or changes therein.

Article 29 Recovery of funds in case of irregularity or fraud

- (1) Any proven case of irregularity or fraud discovered at any time during the implementation of assistance under IPA or as the result of an audit will lead to the recovery of the funds by the Commission from the Beneficiary.
- (2) The national authorising officer shall recover the Community contribution paid to the Beneficiary from those who committed the irregularity, fraud or corruption or benefited from it, in accordance with national recovery procedures. The fact that the national authorising officer does not succeed in recovering all or part of the funds shall not prevent the Commission from recovering the funds from the Beneficiary.

Article 30 Financial corrections

- (1) In the case of decentralised management, in order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms in accordance with Article 53b(4) and 53c(2) of the Financial Regulation and as detailed in Sectoral Agreements or Financing Agreements.
- (2) A financial correction may arise following either:
- identification of a specific irregularity, including fraud;
 - identification of or deficiency in the management and control systems of the Beneficiary;
 - (3) If the Commission finds that expenditure under the programmes covered by IPA has been incurred in a way that has infringed applicable rules, it shall decide what amounts are to be excluded from Community financing.

Silinmiş: a weakness

The calculation and establishment of any such corrections, as well as the related recoveries, shall be made by the Commission, following the criteria and procedures provided for in Articles 32, 33 and 34 below. Provisions on financial corrections which have been set down in Sectoral Agreements or Financing Agreements shall apply in addition to this Framework Agreement.

Article 31 Financial adjustments

In the case of decentralised management the national authorising officer, who bears in the first instance the responsibility for investigating irregularities, shall make the financial adjustments where irregularities or negligence are detected in operations or operational programmes, by cancelling all or part of the Community contribution to the operations or the operational programmes concerned. The national authorising officer shall take into account the nature and gravity of the irregularities and the financial loss to the Community contribution.

Article 32 Criteria for financial corrections

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- (1) The Commission may make financial corrections, by cancelling all or part of the Community contribution to a programme, in the situations referred to in Article 30(2) above.
- (2) Where individual cases of irregularity are identified, the Commission shall take into account the systemic nature of the irregularity to determine whether flat-rate corrections, punctual corrections or corrections based on an extrapolation of the findings should be applied. For the Rural Development Component, criteria for financial corrections are set out in Financing Agreements or Sectoral Agreements.
- (3) When deciding the amount of a correction, the Commission shall take into account the nature and gravity of the irregularity and/or the extent and financial implications of the weaknesses or the deficiencies found in the management and control system in the programme concerned.

Article 33 Procedure for financial corrections

- (1) Before taking a decision on a financial correction, the Commission shall inform the national authorising officer of its provisional conclusions and request his comments within two months.

Where the Commission proposes a financial correction on the basis of extrapolation or at a flat rate, the Beneficiary shall be given the opportunity to establish the actual extent of the irregularity, through an examination of the documentation concerned. In agreement with the Commission, the Beneficiary may limit the scope of this examination to an appropriate proportion or sample of the documentation concerned. Except in duly justified cases, the time allowed for this examination shall not exceed a period of two months after the two-month period referred to in the first subparagraph.

- (2) The Commission shall take account of any evidence supplied by the Beneficiary within the time limits mentioned in paragraph 1.
- (3) The Commission shall endeavour to take a decision on the financial correction within six months after opening the procedure as set out in paragraph 1.

Article 34 Repayment

- (1) Any repayment to the general budget of the European Union shall be effected before the due date indicated in the recovery order drawn up in accordance with Article 72 of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.
- 2) Any delay in repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

Article 35 Re-use of Community contribution

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- (1) The resources from the Community contribution cancelled following financial corrections pursuant to Article 30 shall be paid to the Community Budget, including interest thereon.
- (2) The contribution cancelled or recovered in accordance with Article 31 above may not be re-used for the operation or operations that were the subject of the recovery or the adjustment, nor, where the recovery or adjustment is made for a systemic irregularity, for existing operations within the whole or part of the priority axis in which the systemic irregularity occurred.

Article 36 Monitoring in the case of decentralised management, monitoring committees

- (1) In the case of decentralised management, the Beneficiary shall, within six months after the entry into force of the first financing agreement, set up an IPA monitoring committee, in agreement with the Commission, to ensure coherence and coordination in the implementation of the IPA components.
- (2) The IPA monitoring committee shall be assisted by sectoral monitoring committees set up under the IPA components. They shall be attached to programmes or components. They may include representatives of civil society, where appropriate. More detailed rules may be provided for in Financing Agreements or Sectoral Agreements.
- (3) The IPA monitoring committee shall satisfy itself as to the overall effectiveness, quality and coherence of the implementation of all programmes and operations towards meeting the objectives set out in the multi-annual indicative planning documents and the financing agreements.
 - (a) The IPA monitoring committee may make proposals to the Commission, the national IPA co-ordinator and the national authorising officer for any actions to ensure the coherence and co-ordination between the programmes and operations implemented under the different components, as well as for any cross-component corrective measures needed to ensure the achievement of the global objectives of the assistance provided, and to enhance its overall efficiency. It may also make proposals to the relevant sectoral monitoring committee(s) for decisions on any corrective measures to ensure the achievements of programme objectives and enhance the efficiency of assistance provided under the programmes or IPA component(s) concerned;
 - (b) The IPA monitoring committee shall adopt its internal rules of procedure in compliance with a monitoring committee mandate established by the Commission, and within the institutional, legal and financial framework of the Republic of Turkey;
 - (c) Unless otherwise provided in the monitoring committee mandate set out by the Commission, the following provisions shall apply:
 - aa) The IPA monitoring committee shall include among its members representatives of the Commission, the national IPA co-ordinator, the national authorising officer, representatives of the operating structures, and the strategic co-ordinator.

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- bb) A representative of the Commission and the national IPA co-ordinator shall co-chair the IPA monitoring committee meetings;
- cc) The IPA monitoring committee shall meet at least once a year. Intermediate meetings may also be convened on a thematic basis.

Article 37 Monitoring in the case of centralised and joint management

In the case of centralised and joint management, the Commission, duly informing the Beneficiary, may undertake any actions it deems necessary to monitor the programmes concerned. In the case of joint management, these actions may be carried out jointly with the international organisation(s) concerned.

Article 38 Annual and final reports on implementation

- (1) The operating structures shall draw up a sectoral annual report and a sectoral final report on the implementation of the programmes for which they are responsible, in compliance with the procedures defined for each IPA component in Part II of the IPA Implementing Regulation.

The sectoral annual reports on implementation shall cover the financial year. The sectoral final reports on implementation shall cover the whole period of implementation and may include the last sectoral annual report.

- (2) The reports referred to in paragraph 1 shall be sent to the national IPA co-ordinator, the national authorising officer and to the Commission, after examination by the sectoral monitoring committees.
- (3) On the basis of the reports referred to in paragraph 1, the national IPA co-ordinator shall send to the Commission and the national authorising officer, after examination by the IPA monitoring committee, annual and final reports on the implementation of assistance under the IPA Regulation.
- (4) The annual report on implementation referred to in paragraph 3, which shall be sent by 31 August each year and for the first time in 2008, shall synthesise the different sectoral annual reports issued under the different components and shall include information about:
 - a) progress made in implementing Community assistance, in relation to the priorities set up in the multi-annual indicative planning document and the different programmes;
 - b) financial implementation of Community assistance.
- (5) The final report on the implementation as referred to in paragraph 3 shall cover the whole period of implementation and may include the latest annual report mentioned in paragraph 4.

Article 39 Closure of programmes under decentralised management

- (1) After an application for final payment has been received by the Commission from the Beneficiary, a programme is considered closed as soon as one of the following occurs:

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- payment of the final balance due by the Commission;
 - issuance of a recovery order by the Commission;
 - de-commitment of appropriations by the Commission.
- (2) The closure of a programme does not prejudice the right of the Commission to undertake a financial correction at a later stage.
- (3) The closure of a programme does not affect the obligations of the Beneficiary to continue to retain related documents.
- (4) In addition to paragraph 1 to 3 above, more detailed rules on the closure of programmes may be set out in Financing Agreements or Sectoral Agreements.

Article 40 Closure of programmes under centralised and joint management

- (1) A programme is closed when all the contracts and grants funded by this programme have been closed.
- (2) After a final payment application has been received, a contract or grant is considered closed as soon as one of the following occurs:
- payment of the final amount due by the Commission;
 - issuance of a recovery order by the Commission following receipt of the final payment application;
 - de-commitment of appropriations by the Commission.
- (3) The closure of a contract or grant does not prejudice the right of the Commission to undertake a financial correction at a later stage.
- (4) In addition to paragraph 1 to 3 above, more detailed rules on the closure of programmes may be set out in Financing Agreements or Sectoral Agreements.

SECTION VI FINAL PROVISIONS

Article 41 Consultation

- (1) Any question relating to the execution or interpretation of this Framework Agreement shall be the subject of consultation between the Contracting Parties leading, where necessary, to an amendment of this Framework Agreement.
- (2) Where there is a failure to carry out an obligation set out in this Framework Agreement which has not been the subject of remedial measures taken in due time, the Commission may suspend the financing of activities under IPA after consultation with the Beneficiary.
- (3) The Beneficiary may renounce in whole or in part the implementation of activities under IPA. The Contracting Parties shall set out the details of the said renunciation in an exchange of letters.

Article 42 Settlement of differences, arbitration

- (1) Differences arising out of the interpretation, operation and implementation of this Framework Agreement, at any and all levels of participation, will be settled amicably through consultation as provided for under Article 41.

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- (2) In default of amicable settlement, either Contracting 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 Framework Agreement.
- (3) The language to be used in the arbitral 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 Contracting Party. The Arbitrator's decision shall be binding on all Parties and there shall be no appeal.

Article 43 Disputes with third parties

- (1) Without prejudice to the jurisdiction of the court designated in a contract as the competent court for disputes arising out of that contract between the parties to it, the European Community shall enjoy in the territory of the Republic of Turkey immunity from suit and legal process with respect to any dispute between the European Community and/or the Beneficiary and a third party, or between third parties, which directly or indirectly relates to the provision of Community Assistance to the Beneficiary under this Framework Agreement, except in so far as in any particular case the European Community has expressly waived its immunity.
- (2) The Beneficiary shall in any legal or administrative proceedings before a court, tribunal or administrative instance in the Republic of Turkey defend this immunity and take a position which takes duly account of the interests of the European Community. Where necessary, the Beneficiary and the European Commission shall proceed with consultations on the position to take.

The European Community shall take every step to make good of any non contractual damage caused by its agents or representatives in the performance of their duties.

Article 44 Notices

- (1) Any communication in connection with this Framework 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 Framework Agreement must be sent to the following addresses:

For the Commission:

Directorate-General Enlargement
1049 Brussels
BELGIUM
Fax: +32 2 295.95.40

For the Beneficiary:

Secretariat General for EU Affairs
Eskişehir Yolu 9. Km.
06800 ANKARA/TURKEY
Fax : +90 (312) 286 04 08

Article 45 Annexes

The Annexes shall be deemed an integral part of this Framework Agreement.

Article 46 Entry into force

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This Framework 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.

Article 47 Amendment

Any amendment agreed to by the Contracting Parties will be in writing and will form part of this Agreement. Such amendment shall come into effect on the date determined by the Contracting Parties.

Article 48 Termination

- (1) This Framework Agreement shall continue to be in force for an indefinite period unless terminated by written notification by one of the Contracting Parties. Termination shall take effect 3 months after the date of written notification.
- (2) On termination of this Framework Agreement, any assistance still in the course of execution shall be carried out to its completion in accordance with this Framework Agreement and any Sectoral Agreement and Financing Agreement.

Article 49 Language

This Framework Agreement is drawn up in duplicate in English and Turkish. The English version shall prevail in case of divergence between the two versions or in case of differences of interpretation.

Signed, for and on behalf of the
Commission by

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

Mr Marc PIERINI
Head of Delegation
EC Delegation
Ankara,
Date:

Mr. Oğuz DEMİRALP
Ambassador
Secretary General fo EU Affairs
Ankara,
Date:

ANNEX A

Allocation of functions and common responsibilities to the structures, authorities and bodies in accordance with Article 8 of the Framework Agreement between the Commission and the Republic of Turkey

Preliminary remark:

This list shows the main functions and common responsibilities of the structures, authorities and bodies concerned. It is not to be considered exhaustive. It supplements the core part of this Framework Agreement.

1) The Competent Accrediting Officer (CAO):

- a) The CAO shall be appointed by the Beneficiary. He shall be a high-ranking official in the government or the state administration of the Republic of Turkey.
- b) The CAO shall be responsible for issuing, monitoring and suspending or withdrawing the accreditation of the national authorising officer (NAO) both
 - as the head of the national fund bearing overall responsibility for the financial management of EU funds in the Republic of Turkey and being responsible for the legality and regularity of the underlying transactions;
 - with regard to the NAO's capacity to fulfil the responsibilities for the effective functioning of management and control systems under IPA.

The accreditation of the NAO shall also cover the national fund (NF).

The CAO shall notify the Commission of the accreditation of the NAO and shall inform the Commission of any changes regarding the accreditation of the NAO. This includes the provision of all relevant supporting information required by the Commission.

- c) Prior to accrediting the NAO, the CAO shall satisfy himself that the applicable requirements set out in Article 11 of the IPA Implementing Rules are fulfilled. This includes the verification of the compliance of the management and control system set up by the Beneficiary for effective controls in at least the areas set out in the Annex to the IPA Implementing Regulation (accreditation criteria). This annex provides for the following overall requirements:
 - Control environment (establishment and management of the organisation and the staff) comprising ethics and integrity policies, irregularity management and reporting, staff planning, recruitment, training and appraisal including sensitive post management, sensitive functions and conflicts of interest, establishment of legal bases for bodies and individuals, formal establishment of accountability, responsibility, delegated responsibility and any necessary related authority for all tasks and positions throughout the organisation);
 - Planning and risk management comprising risk identification, assessment and management, objective setting and allocation of resources against objectives, planning of the implementation process;

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- Control activities (implementation of interventions) comprising verification procedures, procedures for supervision by accountable management of tasks delegated to subordinates, including annual statements of assurance from subordinate actors, rules for each type of procurement and calls for proposals, procedures including checklists for each step of procurement and calls for proposals, rules and procedures on publicity, payment procedures, procedures for monitoring the delivery of co-financing, budgetary procedures to ensure the availability of funds, procedures for continuity of operations, accounting procedures, reconciliation procedures, reporting of exceptions, amongst others exceptions to normal procedures approved at appropriate level, unapproved exceptions and control failures whenever identified, security procedures, archiving procedures, segregation of duties and reporting of internal control weaknesses;
- Monitoring activities (supervision of interventions), comprising internal audit with handling of audit reports and recommendations, evaluations;
- Communication (ensuring all actors receive information necessary to fulfil their role) comprising the regular coordination meetings between different bodies to exchange information on all aspects of planning and implementation and the regular reporting at all appropriate levels on efficiency and effectiveness of internal control.

2) The National IPA Coordinator (NIPAC):

- a) The NIPAC shall be appointed by the Beneficiary. He shall be a high-ranking official in the government or the state administration of the Beneficiary.
- b) He shall ensure the overall coordination of assistance under IPA.
- c) The NIPAC shall ensure partnership between the Commission and the Beneficiary and close link between the general accession process and the use of pre-accession assistance under IPA. He shall bear the overall responsibility for
 - the coherence and coordination of the programmes provided under IPA;
 - the annual programming for the Transition Assistance and Institution Building Component at national level;
 - the co-ordination of the participation of the Beneficiary in the relevant cross-border programmes both with Member States and with other Beneficiary countries, as well as the transnational, interregional or sea basins programmes under other Community instruments. The NIPAC may delegate the tasks relating to this co-ordination to a cross-border co-operation co-ordinator.
- d) The NIPAC shall draw up and, after examination by the IPA monitoring committee, submit to the Commission the IPA annual and final reports on implementation as defined in Article 38 of this Framework Agreement and in Article 61(3) of the IPA Implementing Regulation. He shall send a copy of these reports to the NAO.

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3) The Strategic Co-ordinator:

- a) A strategic co-ordinator shall be appointed by the Beneficiary to ensure the co-ordination of the Regional Development Component and Human Resources Development Component under the responsibility of the national IPA co-ordinator. The strategic co-ordinator shall be an entity within the state administration of the Beneficiary with no direct involvement in the implementation of components concerned.
- b) The strategic co-ordinator shall in particular:
 - co-ordinate assistance granted under the Regional Development Component and the Human Resources Development Component;
 - draft the strategic coherence framework as defined in Article 154 of the IPA Implementing Regulation;
 - ensure co-ordination between sectoral strategies and programmes;

4) The National Authorising Officer (NAO):

The NAO shall be appointed by the Beneficiary. He shall be a high-ranking official in the government or the state administration of the Beneficiary.

The NAO shall fulfil the following functions and assume the following responsibilities:

- a) As the head of the national fund, bearing overall responsibility for the financial management of EU funds in the Republic of Turkey and being responsible for the legality and regularity of the underlying transactions. The NAO shall in particular fulfil the following tasks as regards these responsibilities:
 - providing assurance about the regularity and legality of underlying transactions;
 - drawing up and submitting to the Commission certified statements of expenditure and payment applications; he shall bear overall responsibility for the accuracy of the payment application and for the transfer of funds to the operating structures and/or final beneficiaries;
 - verifying the existence and correctness of the co-financing elements;
 - ensuring the identification and immediate communication of any irregularity;
 - making the financial adjustments required in connection with irregularities detected, in accordance with Article 50 of the IPA Implementing Regulation;
 - being the contact point for financial information sent between the Commission and the Beneficiary.
- b) being responsible for the effective functioning of management and control systems under IPA. The NAO shall in particular fulfil the following tasks as regards these responsibilities:
 - being responsible for issuing, monitoring and suspending or withdrawing the accreditation of the operating structures;

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- ensuring the existence and effective functioning of systems of management of assistance under IPA;
- ensuring that the system of internal control concerning the management of funds is effective and efficient;
- reporting on the management and control system;
- ensuring that a proper reporting and information system is functioning;
- following-up the findings of audit reports from the audit authority, in accordance with Article 18 of this Framework Agreement and Article 30(1) of the IPA Implementing Regulation;
- immediately notifying the Commission, with a copy of the notification to the CAO, any significant change concerning the management and control systems.

As corollary to the responsibilities under a) and b) above, the NAO shall establish an Annual Statement of Assurance as defined in Article 17 of this Framework Agreement and following **ANNEX B** to this Agreement, which shall include:

- a) a confirmation of the effective functioning of the management and control systems;
- b) a confirmation regarding the legality and regularity of the underlying transactions;
- c) information concerning any changes in systems and controls, and elements of supporting accounting information.

If the confirmations regarding the effective functioning of the management and control systems and the legality and regularity of underlying transactions (a) and b) above) are not available, the NAO shall inform the Commission, copy to the CAO, of the reasons and potential consequences as well as of the actions being taken to remedy the situation and to protect the interests of the Community.

5) The National Fund (NF):

- a) The NF shall be a body located in a State level Ministry of the Beneficiary and shall have central budgetary competence and act as central treasury entity.
- b) The NF shall be in charge of tasks of financial management of assistance under IPA, under the responsibility of the NAO.
- c) The NF shall in particular be in charge of organising the bank accounts, requesting funds from the Commission, authorising the transfer of funds from the Commission to the operating structures or to the final beneficiaries and the financial reporting to the Commission.

6) The Operating Structures:

- a) An operating structure shall be established for each IPA component or programme to deal with the management and implementation of assistance under IPA. The operating structure shall be a body or a collection of bodies within the administration of the Beneficiary.
- b) The operating structure shall be responsible for managing and implementing the IPA programme or programmes concerned in accordance with the principle of sound

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financial management. For those purposes, the operating structure shall carry out a number of functions that include:

- drafting the annual or multi-annual programmes;
 - monitoring programme implementation and guiding the work of the sectoral monitoring committee as defined in Article 36(2) of this Framework Agreement and in Article 59 of the IPA Implementing Regulation, notably by providing the documents necessary for monitoring the quality of implementation of the programmes;
 - drawing up the sectoral annual and final implementation reports defined in Article 38(1) and (2) of this Framework Agreement and in Article 61(1) of the IPA Implementing Regulation and, after their examination by the sectoral monitoring committee, submitting them to the Commission the NIPAC and the NAO;
 - ensuring that operations are selected for funding and approved in accordance with the criteria and mechanisms applicable to the programmes, and that they comply with the relevant Community and national rules;
 - setting up procedures to ensure the retention of all documents regarding expenditure and audits required to ensure an adequate audit trail;
 - arranging for tendering procedures, grant award procedures, the ensuing contracting, and making payments to, and recovery from, the final Beneficiary;
 - ensuring that all bodies involved in the implementation of operations maintain a separate accounting system or a separate accounting codification;
 - ensuring that the NF and the NAO receive all necessary information on the procedures and verifications carried out in relation to expenditure;
 - setting up, maintaining and updating the reporting and information system;
 - carrying out verifications to ensure that the expenditure declared has actually been incurred in accordance with the applicable rules, the products or services have been delivered in accordance with the approval decision, and the payment requests by the final Beneficiary are correct: These verifications shall cover administrative, financial, technical and physical aspects of operations, as appropriate;
 - ensuring internal audit of its different constituting bodies;
 - ensuring irregularity reporting;
 - ensuring compliance with the information and publicity requirements.
- c) The heads of the bodies constituting the operating structure shall be clearly designated and shall be responsible for the tasks assigned to their respective bodies, in accordance with Article 8(3) of this Framework Agreement and with Article 11(3) of the IPA Implementing Regulation.

7) The Audit Authority:

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- a) The audit authority shall be designated by the Beneficiary and shall be functionally independent from all actors in the management and control system and comply with internationally accepted audit standards.
- b) The audit authority shall be responsible for the verification of the effective and sound functioning of the management and control systems.
- c) The audit authority, under the responsibility of its head, shall in particular fulfil the following functions and assume the following responsibilities:

- During the course of each year, establishing and fulfilling an **annual audit work plan** which encompasses audits aimed at verifying:
 - the effective functioning of the management and control systems;
 - the reliability of accounting information provided to the Commission.

The audit work shall include audits of an appropriate sample of operations or transactions, and an examination of procedures.

The annual audit work plan shall be submitted to the NAO and the Commission before the start of the year in question.

- submitting reports and opinions as follows:
 - an **annual audit activity report** following the model in **ANNEX C** to this Framework Agreement and setting out the resources used by the audit authority, and a summary of any weaknesses found in the management and control system or in transaction findings from the audits carried out in accordance with the annual audit work plan during the previous 12 month period, ending on 30 September of the year concerned. The annual audit activity report shall be addressed to the Commission, the NAO and the CAO by 31 December each year. The first such report shall cover the period 1 January 2007 - 30 November 2007.
 - an **annual audit opinion** following the model set out in **ANNEX D** to this Framework Agreement as to whether the management and control systems function effectively and conform to the requirements of this Framework Agreement and the IPA Implementing Regulation and/or any other agreements between the Commission and the Beneficiary. This opinion shall be addressed to the Commission, the NAO and the CAO. It shall cover the same period and have the same deadline as the annual audit activity report.
 - an **opinion on any final statement of expenditure** submitted to the Commission by the NAO, for the closure of any programme or of any part thereof. Where appropriate, the final statement of expenditure may include payment applications in the form of accounts submitted annually. This opinion shall address the validity of the final payment application, the accuracy of the financial information, and, where appropriate, be supported by a final audit activity report. It shall follow the model provided in **ANNEX E** to this Framework Agreement. It shall be sent to the Commission and to the CAO at the same time as the relevant final statement of expenditure submitted by the NAO, or at least within three months of the submission of that final statement of expenditure.

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- Further specific requirements for the annual audit work plan and/or the reports and opinions mentioned under the previous bullet point may be set out in the Sectoral Agreements or Financing Agreements.
- With regard to the methodology for the audit work, reports and audit opinions, the audit authority must comply with international standards on auditing in particular as regards the areas of risk assessment, audit materiality and sampling. That methodology may be complemented by any further guidance and definitions from the Commission, notably in relation to an appropriate general approach to sampling, confidence levels and materiality.