

**Programme Authorising Officer of a
Phare Implementing Agency**

Phare

**GUIDELINES FOR
SENIOR PROGRAMME OFFICERS
AND PROJECT LEADERS
FOR IMPLEMENTATION OF
CONTRACTS UNDER EDIS**

Version 1.0 – November 2006

FOREWORD

Dear Colleagues,

As you know, the decentralisation process in relation to the EU pre-accession funds aims at transferring to the candidate countries the management of the EU funds. Developing an **Extended Decentralised Implementation System [EDIS]** is an essential pre-requisite for successful preparation for membership. It requires a strong involvement and mobilisation of resources as well as coordination and leadership.

Responsibilities for implementing contracts funded under Phare are shared by different players who interact with each other. The Senior Programme Officers in the Line Ministries are major players in this process.

A "Report from the Commission¹ mentioned in 2003 that: "In line with the objective of decentralisation, the Commission encourages Candidate countries to **enhance inter-ministerial co-ordination as a key condition for successful future management of the Structural Funds** (...). In several countries, however, such inter-ministerial coordination needs further improvement." This statement was also underlined by the Commission as a Lesson Learnt from EDIS preparation in several candidate countries.

At present, the Phare Implementing Agencies manage a large portfolio of active projects and interacts with several Senior Programme Officers. We – the PAOs / CFCU / Implementing Agencies and the SPOs all together - have faced challenges in the management of projects since 1998 and we have learned a lot about how to improve our capacities. In the context of the EDIS accreditation, we need to go even further. Thus, it is my pleasure to present to you the first version of our "**Guidelines for SPOs for Implementation of contracts under EDIS**"

These Guidelines primarily focus on:

- **activities to be implemented after the Phare Financing Agreements are signed between the Government of Bulgaria and the European Commission,**
- **interaction between the Senior Programme Officers/Project Leaders and the Programme Authorising Officer**

and should be used as a practical tool.

The CFCU/ Implementing Agencies can also provide you with support and clarifications as needed: Feel free to contact them.

I would also expect to receive from you comments and any suggestions which would help us to further improve our cooperation.

The Programme Authorising Officer

¹ Report from the Commission to the European Parliament and the Council – General Report on pre-accession assistance (Phare – ISPA – SAPARD) - 02.05.2005 - COM(2005) 178

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PART I - GENERAL AND HORIZONTAL ISSUES

- ✓ *In which environment do you operate?*
- ✓ *What is expected from you on behalf of Bulgaria?*

A. GENERAL INFORMATION

A.1. PHARE

The Phare programme is one of the three pre-accession instruments financed by the European Communities to assist applicant countries of Central and Eastern Europe in their preparations for joining the EU.

Phare provides funds for institution building support through "twinning" and technical assistance and for investment support to help applicant countries in their efforts:

- to strengthen their public administrations and institutions to function effectively inside the Union;
- to promote convergence with the European Community's extensive legislation and reduce the need for transition periods;
- to promote economic and social cohesion.

Full details on Phare are available on the EC web site:

http://ec.europa.eu/enlargement/financial_assistance/phare/index_en.htm

A set of important instruments in terms of programming of Phare assistance must be taken in consideration:

- the Accession Partnership,
- the National Programme for the Adoption of the Acquis (NPAA),
- the National Development Programme (NDP) – if available,
- the Regular Reports and the negotiations process.

The **Accession Partnerships** lay down the priorities in the accession process. They are the single frameworks for programming all pre-accession assistance.

The **NPAA** sets out in detail how Bulgaria intends to fulfil the priorities of the Accession

Partnership and to prepare for its integration into the EU. The NPAA complements the Accession Partnership in that it contains a timetable for achieving the priorities and objectives and, where possible and relevant, indicates the human and financial resources to be allocated.

The **National Development Programme** is, inter alia, the action programme for regional development and as such maps out the strategy, priorities and programme for promoting economic and social cohesion under the Phare Programme.

Relevant **national authorities** are in charge of project identification and development according to the priorities identified in the programming documents.

The Phare Management Committee consisting of representatives of the EU Member States is consulted on the basis of Financing Proposals accompanied by Project Fiches which detail the project implementation and the commitments that Bulgaria will undertake in order to ensure the successful implementation of programmes.

Financial assistance for these priorities is made available through annual financing decisions taken by the EC. A Financing Agreement [*formerly referred to as Financing Memorandum*] will follow the financing decisions.

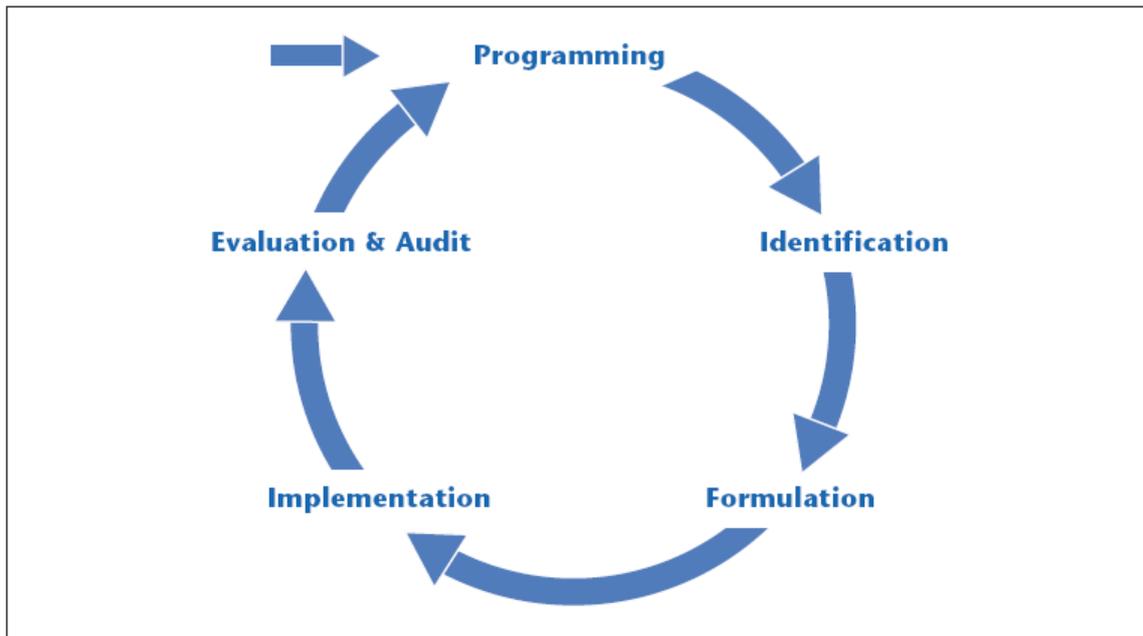
A.2. PROJECT CYCLE

The best way to understand the Programme / Project cycle is to refer to the EC "**Project Cycle Management Guidelines**" issued by the EC and which are available on the EC web site.

http://ec.europa.eu/comm/europeaid/reports/pcm_guidelines_2004_en.pdf

The following figures are extracted from the EC "**Project Cycle Management Guidelines**" and illustrate the project cycle.

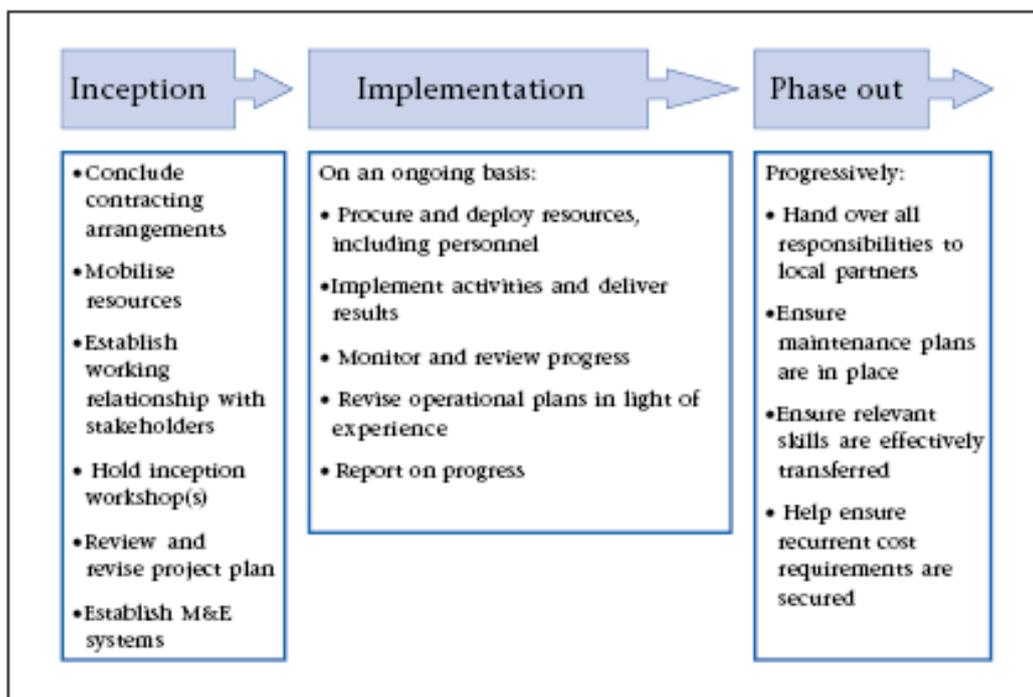
Figure 4 – The Cycle of Operations



Our present “Guidelines for SPOs for Implementation of contracts under EDIS-Phare” do not include discussions on the Programming, Identification and Formulation phases. Our intention is to focus on the Implementation phase

which is illustrated in the EC “Project Cycle Management Guidelines” as follows:

-Figure 10 – Main Implementation periods

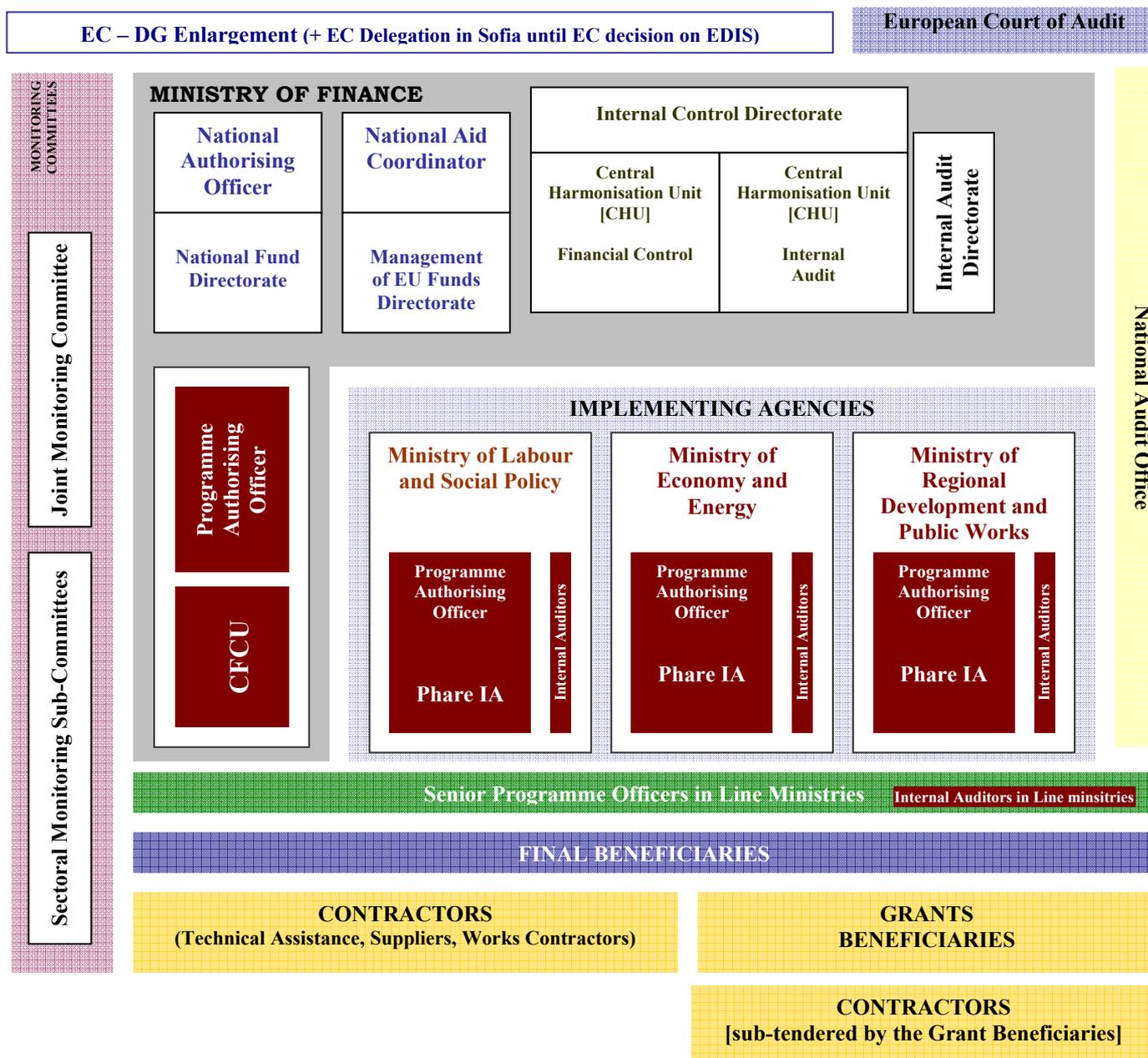


M&E = Monitoring and Evaluation

A.3. INTER-INSTITUTIONAL RELATION CHART

The main actors of the implementation of the Phare Programme are:

- the National Aid Co-ordinator,
- the National Authorising Officer,
- the National Fund,
- Implementing Agencies, including the CFCU, headed by the Programme Authorising Officer,
- Senior Programme Officers (SPOs) and Line Ministries,
- Final beneficiaries, who may be Line Ministries or other public sector institutions,
- Project implementation Units (PIUs),
- Sectoral Monitoring Sub-Committees (SMSCs),
- Joint Monitoring Committee (JMC),
- EC Delegation (under DIS only).



A.4. THE EC REQUIREMENTS

Until adoption by the EC of the new Financial Regulation² candidate countries were granted assistance under a **Decentralised Implementation System [DIS]** by default. In other words, signature of Financing Agreements under Phare was not subject to very demanding requirements from the EC in terms of systems of internal controls.

New Member States have all operated under DIS during several years before considering the move to the **Extended Decentralised Implementation System [EDIS]**. Since February 2005, the Commission's policy on decentralisation of financial assistance does not make a major difference between the requirements for DIS and EDIS: **both are equally demanding**.

A.4.1. Roadmap to EDIS

The decision to move to EDIS can only be undertaken by the EC "on the basis of a case-by-case analysis of national and sectoral programme/project management capacity, financial control procedures and structures regarding public finance". Before requesting the EC for the conferral of management of Phare under EDIS, the NAO needs to obtain the confirmation that EDIS requirements are met.

In principle, a thorough preparation process has to be undertaken and achieved through four stages³:

- Stage 1** Gap Assessment
- Stage 2** Gap Plugging
- Stage 3** Compliance Assessment
- Stage 4** Preparation for Commission Decision which is a "Verification audit" performed by the EC auditors after the NAO has submitted to the relevant EC services the formal application for accreditation to EDIS⁴.

In 2000, the EC sent to candidates countries the Commission Working document "**Preparing for Extended Decentralisation**" which was followed in 2001 by the "**Roadmap to EDIS for ISPA and Phare**". The **EDIS criteria** developed

in the Roadmap to EDIS are referred in our Guidelines as often as possible **to help you to make the link between the EC requirements and what is expected from you**.

Under EDIS, the EC does not exercise a systematic ex-ante control over individual transactions, but an ex-post control. All key players have responsibility for setting up adequate internal control as part of their accountability for achieving the objectives of the decentralised management of Phare funds. **Setting ex-ante controls and Quality assurance in the CFCU/IA, in the SPOs' services and down to the level of the Final beneficiaries is therefore of utmost importance.**

A.4.2. EDIS criteria

EDIS criterion: "demonstration of effective internal controls (...) including an independent audit function and an effective (...) reporting system which meets internationally accepted audit standards."

In the "*internal control jargon*", this EDIS criterion is translated into "defining, formalising and setting up systems and procedures in the following areas:

- control environment;
- risk assessment/mitigation;
- information and communication;
- control activities, which include:
 - Internal Control comprising ex-ante controls,
 - Internal Audit comprising ex-post controls,
 - Accounting and Financial Reporting,
 - Operational Monitoring, Assessment and Evaluation."

In an almost simplistic way - since we have to be practical and pragmatic - this means that the SPO for any of the activities he / she is delegated must provide the PAO with evidences on the issues discussed in **sections A.4.2.1 to A.4.3**.

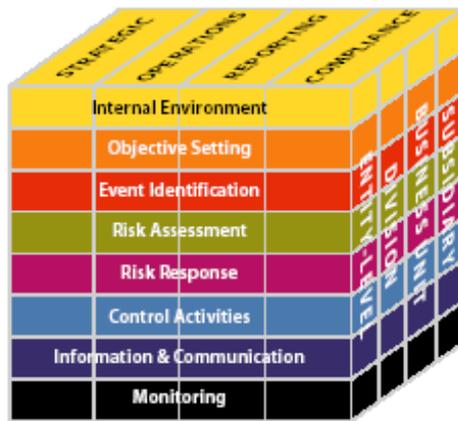
A visit to the following website of **COSO**⁵ would provide you with further information on the concept of Internal Control and the COSO cube:

² Council Regulation 1605/2002 of 25 June 2002 - Financial Regulation applicable to the general budget of the European Communities referred to as "New Financial Regulation".

³ Commission Working documents "Preparing for Extended Decentralisation" and "Roadmap to EDIS for ISPA and Phare".

⁴ The NAO has submitted the EDIS Phare accreditation request to the EC in August 2006 and the EC Verification Audit has taken place in October 2006.

⁵ The Committee of Sponsoring Organizations of the Treadway Commission - http://www.coso.org/publications/executive_summary_integrated_framework.htm:



A.4.2.1. Control environment

The SPO must develop and transmit to his / her staff a culture based on:

- ethical values,
- an appropriate management philosophy,
- delegation of duties,

all supported by suitable guidance emanating from the SPO.

Control environment is also about:

- Putting into place **job descriptions**, as well as clear and documented Recruitment procedures,
- Identifying **training needs** and subsequently defining and implementing **Training plans**,
- Performing regular **Workload Analysis**.

See Chapter C – HUMAN RESOURCES for further details.

A.4.2.2. Risk assessment / mitigation procedures

Risk management is a continuous process [a responsibility of top management] to identify, assess and manage risks which may threaten the achievement of the SPO objectives.

The purpose of risk management is to acknowledge the risks endangering the objectives of an institution, to assess these risks, and to mitigate critical risks.

Risk management provides a framework to increase management effectiveness.

It helps to identify problems which are above the risk tolerance level and to identify areas in which the control system works most effectively (and where not).

It is also a tool to make strategic decisions.

All SPOs should:

- be aware of:
 - risks present in their area of activity;
 - possible consequences and general effect of realisation of risks;
- develop effective methods for the assessment and identification of possible risks;
- design and implement risk management procedures to ensure that:
 - a system is introduced to control the most significant risks,
 - responsibilities and activities are coordinated between all groups and individuals with a role in the risk management process,
 - the responsibilities and activities are appropriately documented in strategic plans, policies and procedures,
 - alternative actions are taken in the case of realisation of risks.

In risk identification, regard should be given to the internal factors (such as the quality and motivation of the staff, etc.) and external factors (such as the complexity of the projects, amendment of legislation, technological developments, force majeure, etc.).

Risks at projects level

We would want to refer, here again, to the EC “**Project Cycle Management Guidelines**” [http://ec.europa.eu/comm/europeaid/reports/pcm_guidelines_2004_en.pdf] which detail in their section 7.2.2 the concept of risk management in relation to the achievement of project objectives and provide for practical tools to:

- identify whether or not assumptions that have been made by in relation to project are likely to hold true,
- identify new risks which may be emerging,
- take action to manage or mitigate the risks where possible.

The EC “**Project Cycle Management Guidelines**” provide for a format (risk management matrix) in Figure 42 “*which can be used to provide a clear record of how a project plans to manage identified risks. This then needs to be reviewed and updated on a regular basis.*”

Risk analysis performed at projects level must also serve to support the risk management procedures to be performed at the institutional level.

Risks at institutional level

There are several risk identification methods. The outputs of such procedures are:

- Implementation of risk management workshops,
- List of Risks (results of the risk workshop),
- Risk Mitigation Plans.

☛ Annex A01 – Risk management procedures at institutional level

To understand the relationship – in terms of risk management - between the various layers of the implementation system is primordial.

Implementation of Phare programmes / projects is delegated with related responsibilities below the NAO level:

- from the NAO to the PAO,
- from the PAO to the SPO [for technical management],
- from the SPO to Beneficiaries [to some extent, depending on the type of projects].

On the top of the picture, the NAO should be aware of the high-risk organisations and projects. Not only that, but the NAO should take action, if required, to ensure that these high risks are managed. This is relevant for such risks which can not be mitigated by the Phare institutions themselves.

Subsequently, the management of each Phare Implementing Agency monitors the mitigation of risks in their respective institutions (on the basis of Risk management procedures fully detailed in the Phare Implementing Agencies written procedures).

The SPOs must manage the risks in their services and inform the PAO accordingly [the PAO uses the information to support his / her own analysis].

The PAO must manage the risks in the Implementing Agency, taking into consideration the risks at the level of the SPO / Line Ministries / Beneficiaries.

The NAO [through the National Fund] monitors:

- the risks identified by the institutions, which are out of their span of control and should be brought to the level of NAO and / or NAC for further control and monitoring,
- the mitigation of risks in all Phare Implementing Agencies on an annual basis.

In order to obtain an overview of the way risks are managed over the whole Phare

management system, the NF organises Annual Risk Meetings, which all Phare Implementing Agencies should attend to present their main risks and mitigation methods.

You are therefore invited to apply the procedures described in:

☛ Annex A01 – Risk management procedures at institutional level

and to transmit to the PAO [by deadlines to be agreed upon with the PAO] your:

- List of Risks (results of your risk workshop);
- Risk Mitigation Plans.

A.4.2.3. Information and communication

In order to do one's share in the controlling process, **each person has to know enough of the operations** and the related responsibilities.

Therefore, information must:

- be **forwarded** immediately to all those concerned,
- **flow** from bottom up and from top down, as well as sideways – in the form of regular internal and external meetings, issuance of guidelines, trainings, storing information in the information systems, reporting etc.

The **management and control procedures** must be formulated in an unambiguous manner, approved as required and made known to all persons concerned.

The respective documentation must be regularly updated and easily accessible to employees concerned and auditors.

A.4.2.4. Control activities

Internal Control comprising ex-ante controls

In a narrow definition, ex-ante controls mean controls which are performed before a transaction is completed. Examples:

- Controls performed by the SPO over Terms of Reference before they are transmitted to the PAO for processing the subsequent tendering procedures,
- Controls performed by the SPO over Progress Reports before they are transmitted to the PAO,
- Controls performed over the outputs of Contractors before confirmation to the PAO that services / works / supplies are delivered in accordance with the applicable contract.

More generally, internal controls would include:

- Management's control system⁶, personnel training, procedures, and segregation of duties [See § A.5 SEGREGATION OF DUTIES].
- Reporting, reviewing, and approving reconciliations,
- Checking the accuracy of records,
- Controlling computer information systems,
- Maintaining and reviewing control accounts,
- Approving and controlling documents and financial decisions (including justification in case of disapprovals),
- Comparing internal data with external sources of information [reconciliation],
- Limiting direct physical access to records.

For all activities / transactions the SPO must ensure that procedures [preferably formalised in manuals of procedures]:

- exist,
- describe how the activities should be carried out,
- are transmitted to all staff,
- are understood,
- are used,
- are updated.

Internal audit comprising ex-ante controls

SPOs have a managerial accountability. In other words, they are responsible [as would any top Manager of any institution be] for setting up systems to:

- Prevent breaches of internal controls,
- Detect breaches of internal controls.

In order to ensure that the system of controls developed by the SPO are robust enough to provide assurance to the PAO (and ultimately to the NAO and the EC) to comply with requirements of a sound financial control system, the SPO should be supported by an internal audit function.

Internal Auditors are assigned to the SPOs in accordance with the PIFC rules defined under the national legal and administrative framework [Public Internal Financial Control = PIFC].

As part of government's internal control system internal auditors should verify:

- that the SPO internal control systems have operated effectively,

- that the SPO mitigates risks to an acceptable level,
- that the SPO activities are carried out in accordance with relevant acts of the Republic of Bulgaria on public financial control, including acts pertaining to ensuring the preservation of assets, the reliability of financial documents and accounting.

External audit

External audits can be carried out by:

- The National Audit Office,
- The European Court of Auditors,
- The European Commission services.

A.4.2.5. Accounting and Financial Reporting

Since there are no accounting functions delegated by the PAO to the SPO, accounting is not discussed in our Guidelines.

As far as Financial Reporting is concerned, the following comments should be considered in a broader prospect and cover any type of reporting [financial, but also technical, monitoring, etc...].

The SPOs must ensure that their reporting system is appropriate, in terms of scope, quality, and conformity with the requirements defined by the EC, the PAO and / or the NAO and that reports generated and / or reviewed are:

- Comprehensible,
- Appropriate,
- Reliable,
- Accurate,
- Up to date,
- Timely submitted.

The exact duties, rights and responsibility of employees dealing with reporting must be specified in their job descriptions.

Control of reports must be evidenced in checklists - **See A.4.3 - Formal assurance.**

A.4.2.6. Operational Monitoring, Assessment and Evaluation

Here again, it is important to understand that the relationship between the various players of the implementation system is a core issue.

The NAO is expected by the EC to "*deliver sound and efficient management and the realisation of programme objectives*"⁷. To enable the NAO to fulfil such obligations, the NAO must obtain evidence from the PAO that projects are

⁶ Including the internal audit function

⁷ Preparing for Extended Decentralisation of the Phare and ISPA Programmes, Commission Services Working Document [Annex 2 - Checklist for EDIS request: Implementing Agencies - (7) Control Activity 4 - Operational Monitoring, Assessment And Evaluation]

properly implemented. Thus, the SPOs must provide the PAO with assurance that an appropriate, true and fair level of information on the progress of implementation activities is provided:

- from the projects to the SPO,
- from the SPO to the PAO.

This implies that the SPOs must support the generation of proper progress / monitoring / evaluation reports widely and accurately distributed by providing relevant and sufficient information:

- To the PAO / NAO / NAC to participate in the Phare monitoring,
- To Evaluators for the assessment and evaluation system,
- To the relevant Sectoral Sub-Monitoring Committees [SMSCs] and Joint Monitoring Committee (JMC).

The reports must provide for sufficient information (content and frequency) on physical progress of the *“projects to enable effective assessment of progress and impact. Monitoring of information allows for problems to be identified and for remedial action to be taken”*⁷.

A.4.3. Formal assurance

From the reading of the above paragraphs it can be noticed how crucial it is for the EC to get “formal assurance” on any declaration made by the Bulgarian authorities.

If “substance” matters, forms also do. It is not sufficient to declare *“I understand what internal controls are and I have set up mine”*. One is also expected to support such declarations with formal evidence⁸. It is therefore important that the SPOs instruct the relevant staff to:

- Perform controls over all activities through reliable checklists,
- and that:
- Not only the checklists but all relevant documents are properly kept and filed.

Documenting controls will also allow the SPO to evidence that in relation to activities they are delegated they have applied the relevant quality standards.

A.5. SEGREGATION OF DUTIES

The SPO should ensure that sufficient segregation of duties is guaranteed between :

- Programming and implementation,
- Tendering and contract management,
- Contract implementation and financial / payment responsibilities.

A.5.1.1. Segregation between Programming and implementation

The staff assigned to the activities which are to take place after the signature of the Financing Agreement between Bulgaria and the EC [that is to say when the Project Fiche is finalised and applicable] should not have been involved in the Programming phase [that is to say the preparation of the Project Fiche].

A.5.1.2. Segregation between Tendering and Technical and / or Financial Contract management

During the implementation of the Project Fiche through the tendering, contracting and implementation of each contract:

- the staff assigned to prepare and / or control Terms of Reference, Technical specifications, Guidelines for applicants, Tender dossiers, etc...

should be different from the staff which will be assigned after signature to :

- implement the contract, interact with contractors, approve the invoices, handle the operational monitoring.

A.5.1.3. Contract implementation and financial / payment responsibilities

In the case the SPO staff has access to funds [for example in the case of sub-sub- accounts as mentioned in §AG.2.3 - Sub-sub-accounts for EU funds] the staff providing for approval for payment of invoices / requests for payment during the operational monitoring should not have access to the funds in a way or another [e.g. signature on bank accounts, accounting, reconciliation].

A.5.1.4. If one cannot respect the principles of segregation of duties

It is obvious that segregation of duties rules have limitations. If a SPO is responsible for a small project he / she obviously cannot afford to set up an office of 10 people. In this case, the SPO must set up controls to mitigate the potential and / or actual risks deriving from that situation. Examples:

Share the work

For a small team of two persons, organise the work in such a way that :

⁸ Also referred to as “audit evidence”

- One person [who in any event has never been involved in the programming phase] deals with the activities during the tendering phase
- The second person deals with the implementation of the contract after signature [operational monitoring at contract level].

Delegate the work

The SPO is entitled to delegate some activities to other departments / units of his / her line ministry or to the beneficiary of the project. This is particularly manageable in the case of:

- Grant schemes where contract management issues can be delegated at a local / regional level,
- Works contracts for which the services of an independent Engineer can be used for supervision of the works.

In any event, ensure that all activities are performed under the close supervision of the SPO and controls formalised in check-lists based on the “two sets of eyes principle” [See [check-lists annexed to these Guidelines](#)].

A.6. MAINTAINING THE EDIS ACCREDITATION

It is **vital** to obtain the EC approval on the move to EDIS, but it is also **fundamental** to ensure that the criteria and conditions referred to during the EDIS accreditation [i.e. minimum criteria set in Regulation 1266/99] **remain fulfilled**. If for any reason the conditions are no longer met, the EC may withdraw the accreditation.

A.6.1. NAO: the interlocutor of the EC

The NAO - supported by the NF - coordinates the supervision over the EDIS accreditation and ensures that prior approval of the EC is received for any substantial changes in the programme / project management capacity, Phare management and control system and structures.

If a need to modify substantially the structures / systems / procedures at the level of the SPO / Line Ministries / PIUs / Beneficiaries is acknowledged, the NAO should be provided with justifications in advance [see below details on [Significant and Minor changes](#)].

The NAO will decide whether the prior approval from the EC must be requested before the implementation of the modifications.

- ☛ **If prior agreement/opinion of the EC is not timely and properly requested, transactions can be considered as ineligible by the EC**

and the related expenditures would have to be repaid by the SPO to the PAO.

A.6.2. Who is your interlocutor?

The SPO must inform the PAO – **prior to implementation** - of any significant change in the structures / systems / procedures at the level of the SPO / Line Ministries / PIUs / Beneficiaries. The PAO will ensure the communication with the NAO as relevant until the “green light” is provided by the NAO for implementing the changes proposed.

A.6.3. Significant and minor changes

The following list is not exhaustive:

Significant changes:

- Reorganisation of key bodies involved in the management of the programme, e.g. change in the hierarchical structure, merging / splitting of units, move of a key body or institution;
- Changes in the legal basis of one or several of the bodies involved in the implementation of the programme, e.g. from agency status to public institution status;
- Major changes in the procedures for procurement, contracts management [technical, financial and / or administrative], payment, monitoring and / or evaluation;
- Modification and / or cancellation of controls, workflows, financial and / or reporting circuits;
- Reduction or increase of staff dealing with the programme.

Minor changes which do not require prior approval from the EC and the NAO:

- Change, mobility or turnover of staff, i.e. replacement of a staff member with a staff of equivalent qualifications;
- Renaming of a body without other legal implications;
- Updating of procedures manual, e.g. introducing new measures approved, guidance received, lessons learnt, change of organigrammes, terminology, etc. without changing the substance of the underlining controls.

A.6.4. Audit reports

Another aspect of the supervision of the EDIS accreditation is the assessment of the application of the relevant procedures at the level of the SPO / Line Ministries / PIUs / Beneficiaries of the projects. The assessment is performed through:

- **On-site visits** by the PAO/CFCU/IA and / or the NAO / National Fund [See F.10 - Site visits
- **Audits** performed by audit authorities, [i.e.: Internal auditors and/or External auditors (National and European)] which involve the communication to the NAO of Audit reports.

Findings and recommendations expressed in audit reports are assessed by the NF and the **NAO** is entitled to:

- issue instructions and guidelines to the PAO and / or SPO accordingly,
- request additional audits.

B. ROLE, VALUES, MISSION AND OBJECTIVES

B.1. THE SPO RESPONSIBILITIES

The SPOs are:

- officials from the administration (operational) in charge of the **technical implementation** of the projects in a Line Ministry

where

- the CFCU/IA is responsible for the **administrative and financial** implementation of the projects (procedural).

The SPO should be of a sufficient senior level to allow him/her to make the appropriate decisions and to act as required in accordance with the responsibilities entrusted to him/her.

The SPOs have responsibility to the PAO of the CFCU (**and ultimately to the NAO**) that:

- all operational matters concerned with Phare transactions are properly executed within the line ministry and / or the Beneficiary,
- technical aspects concerning the implementation of the projects are carried out in an effective and timely manner.

The SPO may delegate part of his/her responsibility and actions, including the right of endorsement of documents, to a maximum of two officials within the same Beneficiary.

The names and signatures of the officials to whom the SPO has delegated his/her responsibility must be communicated to the PAO in due time by the SPO.

Whatever implementation arrangements are made between the Beneficiary and the SPO, the SPO shall ensure to the PAO that an appropriate number of qualified personnel are available to enable him/her to discharge the responsibilities to be carried out by him/her in an efficient manner.

The SPOs may set up a Programme Implementation Unit (PIU) to handle implementation activities [See B.8 SETTING UP A PIU?].

The PAO, being responsible for the sound financial management and the timely implementation and execution of Phare projects, will exercise a supervisory function over the SPO in the implementation of projects.

The PAO has the power to issue instructions to the SPO related to the proper implementation of the projects.

B.2. ROLE AND MAIN ACTIVITIES

The SPO is responsible for the timely technical management of the projects in respect of the Beneficiary. This will cover technical implementation including, inter alia:

- any related policy support,
- monitoring and execution of projects,
- provision of regular [minimum monthly] updates and reports on projects / programmes; and
- the verification and approval of the contractors' reports and activities.

More specifically the responsibilities of the SPO will include:

- Preparation of Terms of Reference / Technical Specifications / Guidelines for applicants in accordance with the principles and requirements specified in the applicable procurement procedures. The SPO must submit these documents to the PAO together with a check-list confirming that:
 - all requirements for preparation of Terms of Reference / Technical Specifications / Guidelines for applicants have been strictly adhered to,
 - Terms of Reference / Technical Specifications / Guidelines for applicants have been subject to proper controls prior to submission to the PAO.

☛ **Annex E01 – Check-lists for control**
[prior to submission to PAO] of :
E01a - Terms of Reference [Services & FWC]
E01b - Terms of Reference [Services & FWC]
E01c - Technical Specifications [Supplies]
E01d - Technical Specifications [Works]
E01e - Guidelines for applicants
E01f - Work Plan for Twinning

- Within 30 calendar days following the entry into force of each Operational Agreement the SPO should submit to the PAO a draft of the Technical Specifications / Terms of Reference and needs assessment for all contracts under the Project Fiche(s) in question. The SPO should provide the CFCU/IA also with evidence that all conditionalities foreseen in the Project Fiche(s) are fully met.

☛ **If the deadlines for submission to the PAO of Terms of Reference / Technical Specifications / Guidelines for applicants are not respected, the PAO and/or the NAO might decide to:**

- **cancel the related projects,**
- **reallocate the funds to SPOs who have demonstrated better absorption capacities.**

- Preparation of budget estimates for the final versions of the Terms of Reference / Technical Specifications. These budget estimations shall be prepared in close co-ordination with the PAO,
- In relation to the procurement of supplies, preparation of list of potential manufacturers, able to meet the final technical specifications requirements for the supplies tender,
- In relation to competitive negotiated tender procedures, preparation of list of tenderers, to be invited following the instructions of the PAO,
- Submission to the PAO of requests to launch tenders,
- Providing the PAO with any necessary information in relation to technical aspects of the project during the preparation of tenders and/or the tendering process,
- Providing the PAO with proposals for voting members of the Short-List Panels / Evaluation Committees in line with EC requirements. The SPO must submit the proposals for the composition of the Short-List Panels / Evaluation Committees [voting members] together with check-lists to formally confirm that:
 - Technical capacity / required qualifications, command of English and Administrative capacity of the candidates proposed by the SPO are satisfactory,
 - No potential / actual conflicts of interest [which might be detected even before tender opening session [i.e. any hierarchical relationship which might

impact the neutrality and independence of the member proposed] have been detected,

- CVs of the proposed members are fully reviewed, and they document previous (if any) experience with tender evaluations.

☛ **Annex E02 – Check-list for control [prior to submission to PAO] of Evaluation Committee / Short-list panel composition**

- Ensuring the attendance of the evaluation committee members (for both Shortlist Panels and Tender Evaluation Committees),
- Provision of assistance to the CFCU/IA in contract negotiations, as necessary,
- Technical supervision and monitoring of contracts, notifying the CFCU/IA of difficulties or non-performance during contract implementation:
 - Cooperating with the contractor and rendering logistical or other assistance if required,
 - Ensuring that the contractor performs the tasks in accordance with the pre-defined deadlines and to the standard of quality required,
 - Approval of the reports of contractors,
 - Approval of provisional / final acceptance Certificates,
 - Approval of experts' timesheets,
 - Approval of contractors' invoices ["good for payment"],
- Coordination with other departments and institutions for the development and proper implementation of projects,
- Preparation and/or approval of regular status reports on the progress of the implementation of projects and input into the preparation of financial and reporting documents as requested by the PAO,
- The immediate reporting to the PAO of any suspected and/or actual cases of fraud and/or irregularity as well as measures related thereto taken by the SPO. Furthermore, the SPO should provide the PAO, on a quarterly basis, with a declaration concerning irregularities discovered and the measures taken,
- Monitoring the implementation of projects,
- Preparation of Monitoring Reports,
- Participation in the Sectoral Monitoring Sub-Committees as relevant,

- Other tasks related to the technical implementation of projects under his/her responsibility.

B.3. MISSION OF THE SPO

The mission of the SPO is to successfully fulfil the responsibilities vested in him / her and to therefore ensure the technical management of the projects assigned to him / her under each Phare Financing Agreement signed between Bulgaria and the European Commission, applying the highest standards of quality.

The SPO and his / her staff must be committed to respect a set of principles based on:

- core values of honesty,
- integrity and respect for people and the promotion of trust,
- openness,
- teamwork,
- professionalism and
- pride.

B.4. OBJECTIVES OF THE SPO

B.4.1. Sound management and control

- To build sufficient and adequate administrative and technical capacity in relation to any activities delegated to the SPO and down to the bottom level of Final Beneficiaries in order to optimise the project management systems and procedures and guarantee that Phare projects are implemented in full consistence with:
 - the objectives and criteria defined in the related Phare Project Fiches;
 - the EC eligibility rules;
 - the applicable EU and national rules and regulations (including EU requirements under EDIS).
- To ensure that the ownership of the projects is clearly defined and that implementing arrangements and related infrastructures are agreed upon with the NAO and the PAO and furthermore established and regularly assessed,
- To define and maintain at institutional level as well as at individual level (i.e. inside the SPO services and in the relationships with other stakeholders), adequate rules in terms of segregation of duties [See § A.5 SEGREGATION OF DUTIES].
- To formalise in agreement, regulations, decrees, the respective responsibilities and reporting lines,

- To ensure that agreements and/or regulations are properly communicated to the staff, enforced and referred to as relevant in the course of the activities.

Related sub-objectives are:

B.4.1.1. Human Resources

- To define and implement a Human Resources Strategy to secure:
 - Recruitment of staff on the basis of appropriate and timely performed work load analysis,
 - Training of staff [based on regularly updated training needs analysis],
 - Motivation and retention of staff,
 - Segregation of duties [See § A.5 SEGREGATION OF DUTIES] and rotation of staff,
 - Appropriate handover procedures.
- To ensure that all employees assigned to the implementation of Phare projects are fully and clearly aware of their responsibilities and applicable procedures and that individual responsibilities are documented and included in job descriptions which are acknowledged by the staff.

B.4.1.2. Risk management

- To ensure that Risk management policies are fully identified, providing for:
 - An as exhaustive as possible inventory of risks to be regularly updated,
 - An assessment of the risks to be performed in a regular, reliable and responsible manner,
 - A mitigation of the risks providing for the best value for money,
- To ensure that Risk management policies are documented, communicated, understood and adhered to,
- To assign clear responsibilities for implementing the risk management policies,
- To provide for interaction with the Internal Audit function in a constructive manner.

B.4.1.3. Adequate internal management and control procedures

- To identify ex-ante controls required to comply with the best practices and EC requirements and to ensure that procedures address such requirements,

- To ensure that all procedures include management compliance reviews and approval at each stage of the processes as relevant,
- To ensure that procedures are:
 - Properly formalised (formulated in an unambiguous manner),
 - Properly and timely communicated to staff,
 - Enforced and applied by all persons concerned.

B.4.1.4. Information and Communication

- To ensure that the information and communication systems and procedures provide for:
 - Information to flow from bottom up and from top down, as well as sideways, and to be forwarded immediately to all those concerned,
 - documentation to be regularly updated and easily accessible [taking into account compliance with applicable confidentiality rules] to employees concerned and to auditors,
- To be aware of the status of projects / activities at any point in time,
- To ensure that regular reviews and actions follow-up meetings are held (internally and with other stakeholders).

B.4.1.5. Irregularities

- To design, set up, maintain and optimise systems and procedures to:
 - prevent,
 - timely report, and
 - effectively follow-up any potential case of irregularities.

B.4.1.6. Filing systems, archiving and IT

- To ensure that the filing and archiving systems are designed and implemented in such a way to:
 - Properly document the audit trail,
 - Secure access to information;
- To ensure that the IT systems are designed and implemented in such a way to:
 - Secure access to information,
 - Provide for continuity of operations, and
 - Are subject to regular testing.

B.4.2. Quality assurance and timeliness of operations

- To design, set up, maintain and optimise an effective quality assurance system over all the activities assigned to the SPO and to ensure that projects implementation activities are properly planned and operated in order to respect the deadlines set up in the Project Fiches / Financing Agreements and in full respect of the EU and national requirements in terms of eligibility and compliance with applicable rules.

Related sub-objectives are:

B.4.2.1. Procurement (Tendering)

- To ensure that responsibilities delegated to the SPO and other stakeholders involved in the Tendering procedures are formally defined, binding, communicated, and understood,
- To ensure that the tendering procedures delegated to the SPO [and these delegated by the SPO] are defined, applied and properly documented in full compliance with the applicable procurement rules (EU rules and / or national rules as relevant),
- To ensure that Terms of Reference, Technical Specifications and Guidelines for applicants (for grants) as well as Tender Dossiers and relevant annexes (i.e. draft contracts):
 - are timely and properly prepared (quality assurance),
 - comply with the objectives and needs described in the related Project Fiches,
 - clearly describe / define expectations of what is to be delivered and how this will be measured.
- To support the PAO in the setting up of adequate and competent Evaluation Committees / Short list panels.

B.4.2.2. Contract management and contract / project monitoring

- To ensure that responsibilities between the SPO and other stakeholders involved in the contracts management and monitoring procedures are formally defined, binding, communicated, understood and supervised,
- To assign clear responsibilities for contract management to officers who have technical skills to adequately discharge their responsibilities,

- To set up, apply and follow-up procedures to ensure that implementation of each contract [and ultimately each project] is performed in accordance with the contractual documents, the planned and applicable timetables / schedules of activities, and technical and other requirements agreed upon,
- To set up, apply and follow-up a system of warning to detect any delay and/or problems in the implementation of the contracts,
- To set up, apply and follow-up procedures for deciding, agreeing with the PAO and implementing corrective measures in case of delays and/or problems in the implementation of the contracts (all actions and information required must be assigned to individuals for completion within defined time periods),
- To ensure that contract management procedures and systems provide for:
 - Inception reports and other reports on the technical development of projects to be thoroughly reviewed and any changes to the initial scope of the project to be identified and resolved,
 - clear project implementation plan to be designed against which project development and cost status is monitored,
 - any deviations from the project implementation plan to be investigated on a timely basis and that corrective action is agreed and implemented,
 - No unauthorised changes to be made to projects,
 - Regular reviews of the actual project status against the approved project implementation plan are performed,
 - Requirements for project closure are included as part of the project implementation plan.
- To establish mechanisms to ensure a link between monitoring at contract level and monitoring at programme level in order to secure timely actions and feedback on actions required by Monitoring committees,
- To ensure that publicity requirements are defined and communicated and that their fulfilment is evidenced / documented.

B.4.2.3. Reporting systems (financial / technical / monitoring reports, etc...)

- To ensure that reporting requirements (including details on expected contents and frequency of the reports) are fully identified, documented, communicated and adhered to,
- To ensure that responsibilities between the SPO and other stakeholders involved in the reporting systems are formally defined, binding, communicated, understood and are subject to supervision by the SPO,
- To assign clear responsibilities for reporting to officers who have required skills and understanding to adequately discharge their responsibilities,
- To ensure that reports are:
 - timely and properly (contents should match the requirements) generated, and provide for accurate, reliable and up-to-date information,
 - fully reviewed (quality assurance to ensure that reports are checked for accuracy and certified as being correct or that inaccuracies are referred back to the originator for correction and re-submission),
 - timely and properly communicated (i.e. formal distribution list and recipients acknowledging receipt),
- To ensure that methods to be used for generating reports are documented and communicated, and include reconciliation procedures,
- To ensure that actions arising from report reviews are documented, that individuals are identified to complete the actions, and that due dates are assigned.

B.4.2.4. Payments to Contractors

- To ensure that payment procedures and systems provide for:
 - Requirements to be adequately documented and communicated,
 - Payment requests to be analysed in relation to eligibility / ineligibility, respect of contracts requirements and actual project status, and checks / controls and payment authorisations to be properly documented prior to any transmission to the PAO of:
 - Approval of the reports of contractors,

- Approval of provisional/final acceptance Certificates,
- Approval of experts' timesheets,
- Approval of contractors' invoices ["good for payment"].

B.5. VALUES

The SPO must be committed to promote and share the following values at individual and corporate level:

B.5.1. Excellence

The management and staff must be committed to the highest ethical and quality standards in any of the activities they manage and / or perform.

The increasing knowledge and expertise they acquire in the course of their activities as well as through training benefit to the staff.

B.5.2. Integrity and responsibility

When carrying out their responsibilities, implementing activities and handling any relationship, the management and staff must be committed to respect the principles of:

- integrity,
- responsibility,
- competence,
- independence,
- good faith,
- transparency, and
- respect of the applicable legislation.

B.5.3. Respect of the public assets

As a part of the Bulgarian Administration, the SPO and his / her staff are dedicated to contribute to the mission of the public administration and to manage properly resources (including human resources, materials, funds and information) put at their disposal.

B.5.4. Cooperation with other stakeholders

In order to establish and maintain adequate interaction and working relations with any of the structures involved in Phare projects, the SPO and his / her staff must respect the following principles:

- sharing important information taking into account the applicable rules of confidentiality,
- fairness,
- respecting interlocutors.

B.6. RESPONSIBILITIES OF THE INSTITUTIONS INVOLVED IN PHARE

B.6.1. National Aid Co-ordinator (NAC)

The **NAC** (appointed by the government) is responsible for programming and monitoring and more particularly for:

- Ensuring a close link between the general accession process and the use of Community assistance including Phare funds through the programming of Phare which will reflect the priorities identified in the Accession Partnerships. The use of transparent project selection procedures is essential,
- The preparation and coordination of the annual Financing Agreement in liaison with the NAO and the relevant ministries and in agreement with the EC,
- The signature on behalf of the Government of the Financing Agreement / Financing Memoranda,
- Monitoring of programme implementation in liaison with the NAO and EC,
- Coordinate monitoring and evaluation,
- Participate with the EC and NAO in the Joint Monitoring Committee and request changes in programme documents.

B.6.2. National Authorising Officer (NAO)

The **National Authorising Officer** is the NAC's financial counterweight (also appointed by the government) and is responsible for the National Fund, which is now the only channel (since 1998) through which Community pre-accession funds flow.

- Overall responsibility of financial management of Phare funds and the national co-financing. The NAO shall ensure that the Phare rules, regulations and procedures pertaining to procurement, reporting and financial management are respected, and that a proper reporting and project information system is functioning. The NAO shall have the full overall accountability for the Phare funds of a programme until the closure of the programme,
- The NAO shall maintain a financial reporting system for all pre-accession funds. He/she shall be accountable to the Commission for the use of the funds.

In carrying out these responsibilities, the NAO shall be responsible for the following tasks:

- Request and manage funds from the Commission,
- Appoint Programme Authorising Officers (PAOs) in each Implementing Agency and the CFCU,
- Conclude the Implementing Agreements for EU financing and national co-financing which he/she signs with each of the CFCU/IAs,
- Ensure the flow of national and other co-financing resources as set out in Financing Agreements for Phare programmes,
- Ensure that a financial reporting system (including iPerseus) for Phare funds and co-financing funds is regularly updated and reporting procedures properly respected by the CFCU/IA,
- Transfer funds to the CFCU/IA according to mechanisms set out in Financing Agreements,
- Participate with the Commission and the NAC in a Joint Monitoring Committee,
- Recover non-used or wrongly used funds to the Commission, if applicable.

The National Fund is the sole financial entity that deals with:

- the financial management of all programmes,
- the request for, and the receipt of, funds from the EC,
- the redistribution of funds to the relevant beneficiaries,
- financial reporting to the Commission.

B.6.3. Programme Authorising Officer (PAO)

The **Programme Authorising Officer** is an official of the administration who heads the CFCU/IA and is responsible for the operations and for the sound financial management of the projects to be implemented.

The PAO is responsible for signature of individual contracts and payments. While the operational matters will be initiated in the Line Ministries, the PAO still needs to take responsibility for the operational matters for the contracts he/she signs and therefore the supervisory authority over the SPOs must be recognised and ensured.

Delegation to the Senior Project Officer (SPO): the PAO may delegate some of his/her responsibilities for procurement or other matters to the SPO. The PAO should:

- formalise the delegation in writing [i.e. signature of an Operational Agreement between the PAO and the SPO],
- maintain a sufficient degree of supervision over the SPOs to which any responsibility has been delegated,
- receive sufficient information substantiated by original documentation so that he/she can declare that information received from the SPO is correct, accurate and complete.

B.6.4. CFCU / Implementing Agency

The **CFCU / IA** carry out the implementation of the programmes to which it is assigned to. Institution Building programmes, which are multi-sectoral by nature, are managed by the CFCU.

The CFCU/IA, under the direction of the PAO, appointed by the NAO, is responsible for:

- Operating an appropriate administrative structure, including: premises, sufficient qualified staff, suitable filing system and full transparency in financial transactions, management and reporting,
- Effective, timely and accountable implementation of contracts, economic and cost-effective use of funds and the observation of the principles of sound financial management,
- Provision of assistance to SPOs in the design, implementation and monitoring of programmes/projects, in accordance with the relevant Project Fiche(s),
- Supervision of tendering and contracting procedures, ensuring the application of the relevant rules for contract award and implementation,
- Contract signature (by PAO) and payment approval (on SPOs authorisation),
- Mediation between individual contractors and SPOs/project beneficiaries in the case of difficulties or non-performance during contract implementation,
- In accordance with Implementing Agreements signed with the NF / NAO, regular financial and programme / project / sub-projects progress reporting to the NAO,

- Requesting the transfer of funds from the NF/NAO, on the basis of forecast needs from the financial reporting system,
- Operating an accounting system under international standards.

CFCU only

The CFCU also acts as Administrative Office (AO), which retains the overall procedural, financial and contractual management of the Twinning projects.

Some of the functions of the Administrative Office may be delegated to another body with proven administrative capacity to carry out the activities delegated.

The delegation of functions should be done through a detailed and duly signed Operational agreement.

B.6.5. Sectoral Monitoring Sub-Committees (SMSCs)

The SMSC is a joint Commission-Beneficiaries body where progress in any given sector is discussed in detail and where corrective actions are agreed.

The composition should consist of the National Authorising Officer, the National Aid Coordinator, and the PAOs.

Additional participants (i.e. representatives of PIUs and / or Final beneficiaries can be invited to meetings as and when necessary).

B.6.6. Joint Monitoring Committee (JMC)

The JMC consists of the NAO, NAC, Director of the “National Fund” Directorate in the Ministry of Finance, Director of the “Management of EU Funds” Directorate in the Ministry of Finance, Director of the “Coordination of European Union Issues and International Financial Institutions” Directorate in the Council of Ministers and the Commission representatives.

The JMC reviews and assesses the technical and financial progress of on-going pre-accession programmes with a view to achieving the objectives set out in the programme documents.

The JMC meets twice a year and under EDIS is chaired by the NAC.

The objective of the JMC is to assess progress towards meeting the operational objectives for accession.

The JMC will review progress on the basis of information supplied by each SMSC, by the external assessors and in light of the Financing

Agreements concluded for the period under review.

The JMC makes recommendations in terms of re-allocation of funds and/or change of priorities.

B.7. OPERATIONAL AGREEMENTS

B.7.1. Purpose

The PAO and the SPO must sign Operational Agreements in order to:

- detail the division of responsibilities and obligations between the PAO and the SPO,
- establish and formally agree on the sequence and related procedures for technical implementation and operational monitoring of the projects,
- define and describe the reporting procedures (reporting lines, timing, format) in relation to technical implementation, operational monitoring, irregularities,
- establish and formally agree on the sequence and related procedures for SPO to provide the PAO with formal approval of the Contractors’ reports and deliverables through certification of invoices / reports for services / supplies / works and grants as being “According to the Facts” / “Read and Approved” on the basis of actual controls on site.

The legal duration of the Operational Agreement shall correspond to the whole duration of the related Phare project until its final closure.

The Operational Agreement may be amended in writing by common consent of the parties.

Any modification / amendment must be formalised in the form of an addendum to be submitted to the NAO.

B.7.2. Declarations to be made by the SPO

The SPO shall be responsible for ensuring that an adequate organisation, with sound internal procedures, is established staffed by an appropriate number of qualified personnel to enable him/her to carry out the implementation of Phare projects in a timely, efficient and effective manner.

The SPO must confirm this to the PAO in writing not later than 14 calendar days from the signature of each Operational Agreement.

Additionally, the SPO should confirm to the PAO in writing not later than 30 January each year that the adequate organisation, with sound internal procedures, and staffed by an

appropriate number of qualified personnel continues to be in place for effective and timely technical management of the projects.

☛ **Annex A03 Readiness Statement: declaration to PAO on organisation / staff / procedures**

Again, it is not sufficient to make declarations. Any declaration must be supported by **formal evidence**⁹.

The PAO and / or the NAO as well as EC and national auditors can seek for evidences from the SPO at any point in time.

B.8. SETTING UP A PIU?

B.8.1. What is it?

Project Implementation Units [PIUs] are a very common tool used in the management of donors assistance. PIUs are designed to ensure the operational activities of projects in order to achieve the project objectives as defined in the Project Fiches.

A PIU:

- can take different forms [it is even often referred to under different names and titles]: Programme Management Unit, Programme Coordination Unit, Technical Implementation Unit, etc...
- can be located in different levels of the public administration [i.e. as a Directorate or a Department in a Ministry, as an independent agency, etc...], or within the structures of an NGO or of contractors.

B.8.2. Make a decision

For some projects, the implementation arrangements pre-defined in the Project Fiches include the setting of a PIU as a pre-requirement.

Close cooperation with the NAC services during the Project Fiches preparation help the decision making in relation to setting up the PIUs.

SPOs responsible for several projects deriving from different annual Phare Financing Agreements may decide to set up a PIU to manage all of the projects implementation, taking into account:

- the level of complexity of systems and procedures set up at the bottom level of the projects implementation, i.e.:
 - the level of delegation between the CFCU/IA, the Line Ministries and the Final Beneficiaries,

- the role – if any – to be played in the implementation of projects by the various directorates of the Line Ministries,
- the role – if any – to be played by decentralised structures [for example, regional offices for the management of grant schemes].

B.8.3. Don't forget to ...

a) Take into account the EDIS requirements

Notwithstanding the form of the PIU and any of the implementation arrangements to be considered, when setting up and running PIUs, it is important to bear in mind the following EDIS criteria:

- “there should be a well-defined system for managing the funds with full internal rules of procedure, clear institutional and personal responsibilities.”

In any event, the SPOs should ensure that:

- the PIU staff have access to any other structure cooperating on the project implementation,
- coordination is maintained to avoid duplication of efforts and loss of time.

b) Inform the PAO

The SPO must provide the PAO with a full description of the project implementation arrangements, including:

- documentation on the legal status [legal right to assume responsibilities for the management of Phare projects and reference to the relevant legislative / regulative documentation],
- description of the organisational structures and lines of responsibility and reporting,
- description [supported by a job description] of the positions involved in the PIU and in other directorates / departments / units / agencies,
- description of the involvement and responsibilities of intermediaries, municipalities and other beneficiaries,
- description of the mechanisms of coordination,
- information on staffing issues [number and qualifications, staff policy, training, etc...].

⁹ Also referred to as “audit evidence”

C. HUMAN RESOURCES

EDIS requirements: “adequate personnel must be available and assigned to the task. They must have suitable (...) skills and experience, language skills and be fully trained in implementing Community programmes.”

In principle, the SPOs **are delegated by the PAOs** technical activities which cannot – **and should not** – be carried out by the Implementing Agencies. **The PAO must therefore has good reasons to think that the SPOs have access to the staff required for carrying out the delegated activities** in full conformity with the abovementioned EDIS criterion.

Thus, the SPOs must demonstrate to the PAO [and ultimately to the NAO] that they have taken all required measures to guarantee:

- the development,
 - implementation, and
 - management
- of appropriate policies and procedures in order to ensure the effective:

- selection,
- deployment,
- assessment, and
- development

of employees, so that they have qualified staff in place with skills and competencies necessary for their overall goals and objectives.

In order to properly carry out the tasks assigned to them, the SPOs must:

- decide what type of organisational structure must be set up to implement the projects,
- define the relevant management and control systems,
- establish - in compliance with the labour legislation - a multidisciplinary working team with necessary expertise and skills in administrative and technical management of projects,
- clearly define and assign personal responsibilities for individual tasks referring to clear job descriptions,
- guarantee the financing requirements of present and future staffing needs based on estimated workload,
- identify training needs of the staff and develop and implement training programmes to maintain a professional staff,

- perform personal performance appraisal to confirm the career growth,
- introduce and implement motivation tools to minimise turnover of the team.

C.1. OBLIGATIONS OF THE SPO

C.1.1. Organisational structure and management and control systems

Decisions on the arrangements of the organisational structure would highly depend on the nature and number of projects the SPO is responsible for [**See section B.8 - SETTING UP A PIU?**].

To understand what are control systems, **see Section A.1.**

C.1.2. Defining and assigning personal responsibilities

Each position of the staff involved in the management of Phare projects must be formally described in a job description. The Jobs descriptions must be:

- developed in accordance with the relevant national regulations [e.g. Civil Servants Act, Decree of the Council of Ministers on “Adoption of the Uniform Classifier of Positions in the State Administration”, “Ordinance on the Application of the Uniform Classifier of Positions in the State Administration”, Decree of the Council of Ministers on wages in the budget organisations and activities.]
- formally acknowledged by the employees who should confirm their familiarity and agreement with the job description by signature,
- properly filed,
- be available during audits.

C.1.3. Establishing a skilled working team

The recruitment of staff is regulated by the national regulation [Civil Servant Law and Ordinance No.8. and Regulations on Holding Competitions for Civil Servants adopted with the Council of Ministers Ordinance No 8 of January 16, 2004]. When making decisions on the recruitment process, the SPO must clearly

identify and define the skills required for managing the projects, taking into account:

- horizontal skills which are commonly required [e.g. language skills],
- specialised skills which directly relate to the type of projects to be managed [e.g. FIDIC for works contracts].

C.1.4. Training needs analysis and training programmes

Training of the employees is a priority of human resources management and development policy. Training should serve to further improve the knowledge and skills for the purpose of developing the capacity of the staff assigned by the SPO to the implementation of projects.

- **General training** aims at creating professional skills and/or raising qualification of employees in performing their tasks.
- **Specific trainings needs** are defined on a basis of performance appraisal (achievement of agreed goals, level of execution of duties and demonstration of professional competence) **See section C.1.6 - Personal performance.**

Training funds – expressed as a percentage of the overall salaries – should be made available.

The SPO should ensure that:

- A **Training Needs Analysis** is performed once a year within the process of an annual staff appraisal,
- Training needs are formulated in the Job plans of individual staff that are developed as results of appraisal,
- **Annual training plans** are prepared and detail the training priorities, time schedule and type of training actions,
- **Implementation** of training plans is regularly reviewed and actions are timely and properly taken.

C.1.5. Guaranteeing the financing requirements of present and future staffing

It is not enough to set up a skilled working team. The SPO must also ensure regular analysis and forecast of the estimate of the human resources required to meet the SPO's mandate. The SPO must:

- Identify the current human resources available by directorate / department / unit and key task,

- Estimate the likely increase in workload in terms of new projects, programmes, tasks, and other stakeholders' demands,
- Estimate the increase or decrease in the number of man-days required to meet this workload by department and key task (i.e. number of people days required to carry out the work) taking into account likely benefits that planned improvement may have on increasing the productivity of the departments [for example, the introduction of a new software which might improve the processing of data],
- Estimate the total resources required by department and key task to carry out the estimated workload,
- Formalise the results of the analysis in a "Staff Needs Analysis",
- Identify means to finance the requirements identified in the Staff Needs Analysis,
- Communicate with the PAO on the results of the analysis and the means identified.

C.1.6. Personal performance

The Staff appraisal must be organised in accordance with the "Regulation on the Terms and Procedures for the Attestation of staff in the State Administration" [Ordinance No. 105 of the Council of Ministers dated 21 May 2002] which includes **attestation terms and procedures and applicable standard forms.**

The Staff appraisal is an organised process for assessing the performance of an individual in a specific work environment.

The Staff appraisal gives an opportunity to:

- discuss and assess the employee performance and the required level on competencies for the job,
- identify staff training and development needs now and in the future,
- build on potential and the strengths of the staff,
- ensure staff contribution relates directly to organisational objectives and improvements.

Full details on the staff appraisal are available in the Regulation on the Attestation of Staff in the State Administration through Personal Performance Appraisal published by the Minister of State Administration on the following web site: <http://sadoes.government.bg/sa/Documents/Атестирание/Наредба/P105.pdf>

C.1.7. Staff Replacement

The SPO must:

- Define the substitution rules [which should be documented in a substitution plan and / or job descriptions],
- Assign tasks in case of absence of staff in total compliance with segregation of duties principles [See § A.5 SEGREGATION OF DUTIES].

C.1.8. Handover procedures

In order to avoid any disruption in the activities delegated to the SPO by the PAO, the SPO should ensure that the following procedures are implemented:

Any outgoing employees shall:

- prepare a written note for the incoming employee before change-over. The note should include:
 - Details of any outstanding actions that are the responsibility of the related function, including [if not already existing in the files] a list of references, contacts, correspondence and required and/or anticipated time-frame associated with each outstanding action,
 - A list of on-going / pending duties: items such as, but not limited to, attendance to meetings, preparation of reports, etc...
- if possible, arrange contact with the incoming employee before handover to discuss in general terms the activities related to the position, to highlight important issues and to answer any questions that the incoming employee may have relating to the function or in general,
- provide the incoming employee with contact details so as to enable ready and quick assistance as and when needed,
- provide assistance to the incoming employee as required / needed,
- notify all relevant persons and authorities of the impending change-over, providing full contact details for the incoming employee and the date of the change-over. A copy of these correspondences should be provided to the incoming employee.

The incoming employee shall:

- avail himself of all support being offered by the outgoing employee,

- satisfy himself that he/she has a proper understanding of the function he/she will occupy,
- satisfy himself that he/she has in his possession all relevant documentation.

C.1.9. Motivation tools to minimise turnover

High staff turnover in the stakeholder institutions has negative impact on EU programme management. This is a problem which has been shared by all candidate countries.

Due to the failure in recruitment and retention of qualified staff in the public administration, there may be a lack of human resources, competences and skills required to handle the Phare projects.

C.2. INFORMATION FOR THE PAO

The PAO - and ultimately the NAO - must be informed on the measures taken [this means designed but also implemented] by the SPO to ensure that the requirements in terms of Human resources are respected by the SPO. This must be achieved through the following channels:

- Declarations by the SPO: that adequate administrative capacity exists within the institutions under the supervision of the SPO, or shall exist at the onset of the respective project preparation [art. 14 of the Operational Agreement signed between the SPO and the PAO],

Annex A03 Readiness Statement: declaration to PAO on organisation / staff / procedures

- Audit reports, especially audit reports issued on the basis of System Audits,
- Progress reports in which the SPO must report on any issues [including Human resources] related to the capacities of the implementing structures.

PART II - STARTING THE CONTRACTS IMPLEMENTATION : a crucial phase !

✓ *What about planning activities?*

Planning is a key concept for successful management and implementation of projects.

Failures to keep projects on the tracks are mainly imputable to deficiencies in the planning process. The SPO in close cooperation with the PAO and other stakeholders must first plan out the project [program work] and then monitor and control the execution of the program work. The old saying still holds : “**Plan the work and work the plan**”.

To jump right away to starting the work without planning is a mistake we should not repeat. We must spend time together at the earliest stages of the projects implementation to plan our activities.

During the planning process, perhaps more than ever, the following EDIS requirement must be referred to : “**there should be a well-defined system for managing the funds with full internal rules of procedure, clear institutional and personal responsibilities.**” Time and efforts spent on such preparation will help us to :

- Optimise the time management and **respect the projects durations and deadlines**,
- Optimise the **quality** of the deliverables,
- **Reduce costs** and improve the **absorption** capacities.

We must bear in mind that funds we cannot absorb in Bulgaria will be allocated to other countries. This applies to Phare funds but also to funds we will manage after accession [Structural and Cohesion Funds].

The planning process should be based on three major components :

- **Project Definition,**
- **Project Work Plan,**
- **Project management procedures.**

D. STARTING THE IMPLEMENTATION

D.1. STARTING-UP PHASE

D.1.1. Project typologies

Once Project Fiches are finalised the Financing Agreement signed, the actual implementation of project starts with the implementation.

The various Phare project typologies may include: Institution building, Procurements of equipments, Infrastructure rehabilitation or construction, Support to public, private and non-governmental bodies for the implementation of actions in line with EU policy objectives and are associated to the following types of contracts.

Types of typologies and related contracts are anticipated and correspondingly described in the Project Fiches.

Project typology	Associated instruments and contracts
Institution building	Provision of services Technical Assistance Twinning
Procurements of equipments	Supplies
Infrastructure rehabilitation or construction	Works
Financial support to public, private and non-governmental bodies for the implementation of actions in line with EU policy objectives	Grant scheme

D.1.2. Project definition

Upon signature of the Project Fiches an Operational Agreement will be signed between us [See B.7 - OPERATIONAL AGREEMENTS] to establish our respective responsibilities.

When you SPOs and we PAOs are assigned the responsibility for a project through the Operational Agreements, **we inherit a schedule, timeline, deadlines, resources, and expectations set out a long time ago** [it often happens that we are not involved in commenting the implementation

arrangements when the Project Fiches are prepared].

The SPO must think, **before starting to implement projects**, about answers to very simple questions:

- What are the expected deliverables?
- What should be accomplished within the project? What should be the benefits of the project?
- What are the priorities?
- What are the assumptions? Do they still hold true?
- What are the risks? What can we do to manage the risks?
- What kind of implementation approach are we going to adopt?
- Who is and/or should be involved in the project implementation [individuals, institutions, stakeholders, etc...]?
- Who will be the dedicated Project Manager?
- Who will be part of the Project team?
- How will the stakeholders be represented?
- Are the required equipment and resources available?
- Have we identified the required staff skills?
- How are we going to put quality controls in place?
- How are we going to document our project activities?
- How are we going to communicate internally and externally?

Answers to above questions become the basis for the work we have to carry out. **Most of the answers** are to be found in the **Project Fiches**. Yet, since long delays quite often occur between the time the Project Fiches are prepared and the time the project implementation starts at the level of the Implementing Agency, it is **important to update the information**.

A team [a Project Manager for example supported by a Working Group or a PIU team] should be assigned by the SPO to formulate the questions, list the answers in the form of a “so called” Implementation Feasibility Study in order to document the feasibility of the implementation and:

- Describe the context in which the project is launched and is expected to be implemented,

- Provide for further information to support a better understanding of the project and related contracts.

Annex D02 – Implementation Feasibility Study

D.1.3. Project Work Plan

Once the Project Definition is finalised, the SPO can prepare the Project Work Plan. The Project Work Plan serves to formalise the step-by-step activities for delivering the projects. It is formalised in the form of an Implementation chart which helps to understand at a glance where we stand in the projects implementation.

To prepare the Project Work Plan, you should ideally be equipped with project management software commonly known / used (for example Microsoft Office Project) to prepare the implementation chart. Yet, Microsoft Excel can be sufficient to formalise the Project Work Plan. We recommend that you use the following template :

Annex D01 – Project Work Plan / Procurement Plan

Of course, one can find in the Project Fiches :

- Implementation chart(s),
- Commitment / disbursement schedules,

In most of the cases and the charts and schedules would not be detailed enough to support our implementation activities and in any event, they would be out-dated.

Your Project Work Plan would serve us to prepare the Procurement Plans. It is therefore important that you transmit to us.

Role of the SPO - Procedure

Not later than 14 calendar days from the signature of each Operational Agreement :

- A description of the organisation and systems designed / set up which would include details on :
 - Offices and equipments,
 - Number and qualification of staff assigned to the implementation of the projects, as well as recruitment strategy,
 - Arrangements anticipated / implemented in relation to Steering Committees [composition, meeting schedules, etc], when relevant,
 - Arrangements related to information, briefing and training of any institutions and / or partners to be involved in the

project implementation,

- The first draft of the Project Work Plan (hard copy and electronic version) to detail :
 - Timetable of activities and interaction between the various components of the projects,
 - Initial inputs [i.e. staff, logistics, etc..],
 - Anticipated evolution of the inputs
 - Timetable of deliveries, etc...

registers / delivery books,

- All files are labelled using standard printed labels indicating precisely the content of the file,
- A retention policy is designed and implemented to ensure that all documents related to the projects are kept as minimum during a period of five years after the closure of the project,
- Access to the files is properly secured.

Role of the SPO - Procedure

- The SPO must ensure that the preparation, regular reviews and coordination, and regular updating, of the Project Work Plan is assigned to a Project Manager who would be personally responsible for communication with the CFCU/IA on project implementation activities.

D.2. PRE-PROCUREMENT ACTIVITIES

The implementation of projects implies procurement of contracts. The procurement process consists of two main stages: tendering and contracting. The type of tender documentation to be prepared and the specific steps to be undertaken depend upon the type of contract and therefore the relevant tender procedure to be used.

D.1.4. Kick-off meeting SPO - PAO

Upon receipt of the SPO declarations:

☛ **Annex A03 Declaration to PAO on organisation / staff / procedures**
and Project Work Plan [or at an earliest stage, depending on the nature of the projects], we would organise a kick-off meeting which should serve to us [PAO and SPOs] to :

- Agree on the objectives and arrangements,
- Confirm that we have set realistic schedules and estimates in order to better manage the respective expectations of the NAO, the NAC, the EC, the final Beneficiaries.

The necessary preparation may be performed in a number of ways including:

- use of the Final Beneficiary own resources,
- use of the CFCU/IA resources,
- engagement of external experts by way of services contracts for drafting Terms of Reference for Services, Technical Specifications for Supplies or Works, etc..., if such assistance is foreseen in the Project Fiche.

D.1.5. Filing systems

Setting up and operating an efficient filing system is essential to successful project management since it creates adequate audit trails and facilitate the easy retrieval of documents at any given point of time by any authorised person.

D.2.1. Quality standards

The principle of delegating activities from NAO to PAO and from PAO to SPO is not designed to duplicate work and controls. It is quite the opposite. The NAO needs to be able to rely on the PAO and the PAO needs to be able to totally rely on the SPOs for activities he/she has delegated. These are main issues.

In general, the SPOs ensure the preparation of :

- Terms of reference for services,
 - Technical specifications for supplies,
 - Technical specifications, drawings, employer's requirements etc. for works contracts,
 - Guidelines for applicants for Grants,
- while Tender Dossiers are prepared by the CFCU/IA.

Role of the SPO - Procedure

During the starting-up period, the SPO should ensure that filing systems are organised in order to satisfy the following minimum requirements :

- Incoming and outgoing documents are properly registered and distributed through a computerised system or

The procurement process is triggered by the SPO who must provide the PAO with Terms of reference, Technical specifications, Guidelines for applicants and any information required to prepare the Contract forecasts, Procurement Notices, etc...

Quality standards must be applied to any information and / or document submitted by the SPO to the PAO whatever is the origin of the document / information. Documents and information must be provided in due time and fully checked.

D.2.2. Respect of deadlines

If delays are experienced at the level of the SPO, the PAO will not be in a position for respecting the deadlines set up in the Procurement Plan and ultimately this would result in late contracting and loss of money.

In accordance with the Operational Agreement signed between the PAO and the SPO, "within **30 calendar days** following the entry into force of each Operational Agreement the SPO should submit to the PAO a draft of the Technical Specifications / Terms of Reference and needs assessment for all contracts under the Project Fiche(s) in question. The SPO should provide the CFCU/IA also with evidence that all conditionalities foreseen in the Project Fiche(s) are fully met."

It must be added that among other conditionalities for Phare national programme in Bulgaria for 2006, the following one also

applies: "**before the Financing Agreement** between the Commission and the Government of Bulgaria **is signed**, the National Aid Coordinator will satisfy the Commission that draft twinning contract, terms of reference and technical specifications have been prepared, as appropriate, to allow each project to be launched immediately."

D.2.3. Procurement Plan

After the signature of each Financing Agreement, a Procurement Plan has to be prepared to organise, coordinate and follow-up the procurement activities. This is done by the CFCU/IA on the basis of information to be received from the SPO [**See Section D.1.3 - Project Work Plan**].

Annex D01 – Project Work Plan / Procurement Plan

For each project, we will contact you to organise the collection of any information required [starting with your Project Work Plan as described in section **D.1.3 - Project Work Plan**] to support the preparation of our Procurement Plan,

We will also review during our regular meetings the implementation of the Procurement Plan and Project Work Plan.

PART III – PROCUREMENT - TENDERING

- ✓ *Who is responsible for what ?*
- ✓ *What is expected from you ?*
- ✓ *Can you demonstrate that you have done what is expected from you ?*

E. TENDERING

E.1. APPLICABLE PROCEDURES

A decision was taken by the Bulgarian Authorities that Bulgaria will follow, after conferral of EDIS and if received before the date of accession, the Procurement Procedures as stipulated in the "Practical Guide to contract procedures for EC external actions" [PRAG in its latest title and manifestation as available on the EC web site:

http://ec.europa.eu/comm/europeaid/tender/gestion/index_en.htm

Information provided in the PRAG shall supersede any information contained in any other manual of procedures [including these Guidelines] except in cases related to Works contracts for which contracts conditions shall be those of the relevant FIDIC book.

E.1.1. Reference to PRAG and EC manuals

In relation to procurement, in order to avoid duplicating information reference is made to the relevant chapters and sections of the following manuals :

- PRAG - Practical Guide to contract procedures for EC external actions (Budget and EDF) - http://ec.europa.eu/comm/europeaid/tender/practical_guide_2006/index_en.htm
- PRAG 2003 - Practical Guide to contract procedures financed from the EC general budget in the context of external actions http://ec.europa.eu/comm/europeaid/tender/gestion/pg/npg_en.doc
- Framework contract: http://ec.europa.eu/comm/europeaid/tender/cadre05/index_en.htm
- Twinning Manual 2005
Main text: http://ec.europa.eu/enlargement/pdf/financial_assistance/institution_building/manual_2005_en.pdf
Annexes : http://ec.europa.eu/enlargement/pdf/financial_assistance/institution_building/manual_2005_annexes_en.pdf

E.1.2. Contracting Award Procedures

Tendering procedures are based on the thresholds of the value of the proposed contracts, including co-financing as shown in the following table [Note: Grants and Twinning are not included in the table].

SERVICES	≥ €200,000 International restricted tender procedure	< €200,000 but > € 5,000 1. Framework contracts 2. Competitive negotiated procedure		≤ €5,000 Single tender
SUPPLIES	≥ €150,000 International open tender procedure	<€150,000 but ≥30,000 Local open tender procedure	<€30,000 but > €5,000 Competitive negotiated procedure	≤ €5,000 Single tender
WORKS	≥€5,000,000 1. International open tender procedure 2. International restricted tender procedure (exceptional cases)	<€ 5,000,000 but ≥ €300,000	< € 300,000 but > € 5,000 Competitive negotiated procedure	≤ €5,000 Single tender

Applicable standards documents / Forms / formats are referenced in the annexes of the PRAG.

- **Open procedure** : a procedure is called open when all interested possible and eligible contractors may submit a tender. The contract is given maximum publicity through publications.

☛ PRAG - § 2.4.2. Open procedure

- **Restricted procedure**: calls for tender are restricted where all possible and eligible contractors may ask to take part but only candidates satisfying the selection criteria

and invited simultaneously and in writing by the PAO may submit a tender.

☛ PRAG - § 2.4.3. Restricted procedure

- **Competitive Negotiated procedure**: under the Competitive Negotiated procedure, the PAO invites tenders from candidates of his / her choice. At the end of the procedure, he / she selects the most economically advantageous tender in the case of service tenders and the cheapest compliant offer in the case of supplies or works tenders.

☛ PRAG - §3.4.2. and § 5.6 Competitive Negotiated procedure

- **Framework Contracts:** the EC in Brussels has contracted on behalf of contracting authorities a group of firms/consortia, known as Framework Contractors that can provide short-term experts specialised in specific areas of technical expertise and divided into thematic lots such as environment, infrastructures, information technology, etc. For short term TA contracts under € 200 000 with a performance period of up to 12 months the Framework contract should be used. Full details of who the Framework Contractors are and the description of the lots and procedures for contracting as well as all the templates can be found on the EuropeAid Internet web site.

http://ec.europa.eu/comm/europeaid/tender/cadre05/index_en.htm

- **Dynamic Purchasing System:** this involves a completely electronic process for making commonly used purchases which is limited in duration and open throughout its validity to any economic operator who satisfies the selection criteria and has submitted an indicative tender that is found compliant. For each individual contract, the CFCU/IA publishes a contract notice and invites all of the contractors admitted to the system in accordance with the above described approach. It thereafter selects the most economically advantageous tender (MEAT).

NOTE: The legal framework for this procedure is defined for future use, but the IT tools (confidentiality, security etc.) to make it possible are not yet available in the EC.

☛ PRAG - §2.4.6. Dynamic purchasing system

- **Competitive Dialogue:** in cases of “particularly complex contract”, [i.e. inability to objectively define the technical means capable of satisfying the needs or objectives or able to specify the legal or

financial makeup of the project]. The CFCU/IA must publish a procurement notice describing and defining its needs and requirements. Having received the applications of the candidates the CFCU/IA opens a dialogue with a minimum of three of the candidates which meet the published selection criteria. All aspects of the tender can be discussed during the dialogue, however the dialogue is conducted with each tenderer individually on the basis of their proposed solutions and ideas. The CFCU/IA must ensure equal treatment of all tenderers as well as confidentiality. This procedure should be used with caution in view of its exceptional nature.

☛ PRAG - §2.4.7. Competitive dialog

- **Single Tender;** (also known as “direct purchase”) is provided for in case the sum allotted for a contract is equal to or less than €5,000. However, artificially splitting related activities into smaller sized contracts to prevent the requirement for tendering is strictly prohibited. The procedure is usually used within another contract where services like translations, publications, independent technical expertise are required.
- **Negotiated Procedure:** to be used only in exceptional cases. No specific thresholds apply. Prior approval of the PAO for use of the negotiated procedure (for services, supplies and works) is required. The circumstances when the negotiated procedure can be used for services, supplies and works are detailed in the PRAG. The CFCU/IA must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations.

☛ PRAG

Services: § 3.2.3.1. Supplies: § 4.2.4.1. Works: § 5.2.4.1.

E.2. SERVICES

Most services contracts are concluded for the procurement of outside know-how and are usually for technical assistance or studies.

Technical Assistance is a service provided by a Contractor [consulting firm or individual experts] to transfer skills and technologies required for the implementation of institution building actions (preparation of a new laws / regulation, reorganisation of an institution, etc.). The selection of the contractor is based on the evaluation of:

- Technical proposal [How the contractor intends to implement the service]
- Expert/s curricula vitae [CV],
- Financial proposal (Price proposed for the services).

The scope of the service is defined in the ToR.

E.2.1. Responsibilities

Beneficiary (line ministry / SPO)

- Provides the CFCU/IA with any information required for Services Contract Forecast and Procurement Notices,
- Prepares the ToR,

- Provides the CFCU/IA with input for the preparation of Tender Dossier ,
- Prepares List of service providers when Competitive Negotiated procedure is applied. During the establishment of the list of possible service providers, the SPO cannot make any contacts with them,
- Communicates with the personnel involved in the project about their input,
- Proposes Short list Committee, Evaluation Committee and dates of meetings,
- Performs controls in order to guarantee full Quality assurance.

CFCU/IA

- Prepares Service Contract Forecast and Procurement Notices
- Updates any register in relation to procurement
- Prepares and publishes local advertisements (sends a letter to listed service providers when Competitive Negotiated procedure is applied)
- Transmits to EC services Contract Forecasts and Procurement Notices for publication in EC Official Journal.

	Type of tender procedure				
	International restricted tender procedure ≥ €200,000	Competitive Negotiated procedure < €200,000 but > € 5,000	Framework contracts < €200,000 but > € 5,000	Negotiated procedure Exceptional – case by case	Single tender ¹⁰ ≤ €5,000
Contract Forecast	✓				
Procurement Notice	✓				
Shortlist panel	✓				
Establishment of shortlist	✓				
Preparation and Approval of Terms of Reference		✓	✓		✓
Preparation of Tender Dossier	✓	✓		✓	✓
Preparation of Request for services			✓		
Proposal by the SPO to the PAO of names of potential tenderers	✓	✓	[✓]	✓	✓
Clarification to tenderers	✓	✓	✓	✓	✓
Evaluation committee	✓	✓	✓	✓	
Opening and evaluation	✓	✓	✓	✓	✓
Award of contract	✓	✓	✓	✓ ¹¹	✓

¹⁰ Although the PAO is free to choose the single service provider, it is recommended that three companies are consulted for the most advantageous offer

¹¹ Award of contract (in that a contract should be drawn up - the standard contract form is recommended but not required)

E.2.2. Contract Forecast [CF] and Procurement Notice [PN]

PRAG

3.3.1.1. Publication of individual contract forecasts

3.3.1.2. Publication of procurement notices

Specific characteristics of the planned tender procedure must be published in individual contract forecast. The Contract Forecast serves to briefly describe the subject, content and value of the contracts (See PRAG - Annex B1 .

Given that it is a forecast, publication of Contract Forecasts does not bind the CFCU/IA to finance the contracts proposed. Procurement Notices must be published for all service contracts of €200,000 or more (See PRAG - Annex B2 ) to serve the publicity on selection criteria. The Individual Contract forecasts must be published at least 30 days before the corresponding Procurement Notice publication.

The Contract Forecast and Procurement Notices are published in the Official Journal of the European Union, on the EuropeAid website (at http://europa.eu.int/comm/europeaid/index_en.htm) [OJEU] and in any other appropriate media.

The EC is responsible for publication in the OJEU and on the EuropeAid website, while the CFCU/IA arranges local publication directly.

Role of the SPO - Procedure

Provide the PAO – upon request of the CFCU/IA and within deadlines set up in the communication received from the CFCU/IA – with any information which might be required to prepare and publish the Contract forecast and Procurement Notice.

More particularly, the SPO should support the PAO in the preparation of selection criteria in order to ensure that they are :

- Clearly formulated, without any ambiguity
- Easy to verify on the basis of information submitted using the standard application form (See PRAG - Annex B3 )
- Devised to allow a clear YES/NO assessment to be made as to whether or not the candidate satisfies a particular selection criterion.

E.2.3. Preparation of Terms of Reference

E.2.3.1. By the SPO

Terms of Reference are part of the Tender Dossier. They serve – at the level of each service contract – to define :

- The terms of the services that must be provided by the Contractors,
- Background information,
- Overall and specific objectives and the result to be achieved,
- Assumptions and risks,
- Scope of the work to be performed,
- Specific activities to be implemented,
- Contract management structure,
- Logistic and timing,
- Requirements in terms of Personnel and other inputs,
- Reporting system,
- Monitoring and evaluation arrangements.

The source of most of the background information in Terms of Reference is the Project Fiche, however it is recommended that special care be taken over describing the tasks, services and results expected, since these could be modified in the time between writing the Project Fiche and getting down to the business of contracting.

Role of the SPO - Procedure

- Prepare the Terms of Reference [ToR] using the relevant standard format (PRAG - Annex B8  = Annex II of the draft contract). This template also includes **guidance** on how to prepare the Terms of Reference,
 - Ensure that the staff involved in the preparation / control of the ToR sign a Declaration of Objectivity and Confidentiality (PRAG - Annex A3 ) ,
 - Ensure that the preparation of the ToR is supported by the use of the **Check-list for control of Terms of Reference** in order to guarantee that the ToR:
 - are timely and properly prepared (quality assurance),
 - comply with the objectives and needs described in the related Project Fiches,
 - clearly describe / define expectations of what is to be delivered and how this will be measured,
- **Annex E01 – Check-lists for control [prior to submission to PAO] of :**
 E01a - Terms of Reference [Services & FWC]
 E01b - Terms of Reference [Services & FWC]
- Submit to the CFCU/IA :
 - the draft version of the ToR in hard as well as electronic copy
 - a copy of the **Check-list for control of Terms of Reference**

A letter will be sent to the SPO by the PAO to require adjustments to the ToR if needed.

Role of the SPO - Procedure

- Adjust the draft ToR as relevant,
- Formalise the comments and controls in the **Check-list for control of Terms of Reference**

☛ **Annex E01 – Check-lists for control [prior to submission to PAO] of :**
 E01a - Terms of Reference [Services & FWC]
 E01b - Terms of Reference [Services & FWC]

- Submit to the CFCU/IA :
 - the version of the ToR modified [in hard as well as electronic copy],
 - a copy of the **Check-list for control of Terms of Reference**

Once the final version of the ToR are approved, the SPO will be informed in written by the PAO.

E.2.3.2. By external experts

The SPO may contract external expertise for preparation of the Terms of Reference. Regardless if the expertise is contracted using EU or local funds (co-financing), the experts contracted to prepare the Terms of Reference :

- should not participate in the implementation stage of the project,
- should sign a Declaration of Objectivity and Confidentiality (**PRAG - Annex A3** )

Role of the SPO - Procedure

- Control the ToR and formalise the comments and controls in the **Check-list for control of Terms of Reference**

☛ **Annex E01 – Check-lists for control [prior to submission to PAO] of :**
 E01a - Terms of Reference [Services & FWC]
 E01b - Terms of Reference [Services & FWC]

- Submit to the CFCU/IA :
 - the version of the ToR controlled by the SPO [in hard as well as electronic copy],
 - a copy of the **Check-list for control of Terms of Reference**

The SPO remains ultimately responsible for the quality of the ToR.

E.2.4. Short-listing

E.2.4.1. Shortlist Panel

In the case of a restricted tender, standard application forms (**PRAG - Annex B3** ) are submitted by companies to form a long-list of all applications received. The applications are

assessed by a Shortlist Panel in order to establish a shortlist of companies to receive an invitation to tender.

The shortlist panel is appointed by the PAO further to proposals submitted by the SPO. The assessment of the applications by the Shortlist Panel begins at the earliest time of availability of all members of the Shortlist panel.

The Shortlist Panel must consist in:

- Non-voting members (the Chairman, the Secretary)
- An odd number of voting members (minimum three) proposed by SPO,

On an optional basis observers to represent the PAO will be part of the Shortlist panel.

☛ **PRAG - 2.8. Responsibilities of the members of the Shortlist Panel**

Procedures related to the setting-up of Shortlist panels are the same as procedure for setting up Tender Evaluation Committees [See Section E.2.5 - Evaluation Committee].

E.2.4.2. Establishment of Shortlist

Applications of companies are registered upon receipt at the CFCU/IA. The Shortlist Panel checks the administrative compliance of the applications and establishes a long-list of applications (**PRAG - Annex B4** )

The Shortlist Panel members sign Declarations of Impartiality and Confidentiality (**PRAG - Annex A4** ) and assess the applications for:

- Economic and financial standing,
- Professional capacity,
- Technical capacity .

A short-list of the minimum 4 and maximum 8 candidates is drawn up based on the above criteria. A Shortlist Report (**PRAG - Annex B5** ) is elaborated by the Secretary of the Shortlist Panel and signed by the members of the Shortlist Panel.

A Shortlist Notice (**PRAG - Annex B6** ) is prepared and publication (if applicable) is ensured by the CFCU/IA and the EC.

Candidates who are selected will receive a letter of invitation to tender (**PRAG - Annex B8** ) and a Tender Dossier. Unsuccessful candidates are notified by the PAO (**PRAG - Annex B7** )

The SPO is informed by the PAO about the Shortlist results.

Role of the SPO - Procedure

- Support the selection of members of the Shortlist Panel,
- Provide the CFCU/IA with any input required by the PAO.

E.2.5. Evaluation Committee

The composition of the Evaluation Committee [and Short-List Panels, where pre-qualification is applicable] is the responsibility of the PAO.

E.2.5.1. Composition

An Evaluation Committee is made of:

- a non-voting Chairman,
- a non-voting Secretary,
- an odd number of voting members
- Nominated observers

The EvC should consist of a minimum of:

- three for services and supply contracts,
- five for works international contracts [minimum three for works local contracts],
- two for Framework Contracts.

PRAG

Services / Supplies / Works : § 2.8.3
Grants : § 6.4.7.

E.2.5.2. Observers

An observer may be proposed:

- by the NAO for the tenders that he/she considers essential for the smooth implementation of the Programme,
- by the Director of the CFCU/IA and/or the PAO.

Regarding all works contracts under the PHARE Programme, the PAO is obliged to inform the NAO at least five days before the approval of the composition of the Evaluation Committee on scope of the work to be contracted and the period of the evaluation, in order for the NAO to decide whether to nominate an observer to follow up all or part of proceedings of the Evaluation Committee.

The participation of any observers must be authorised individually by the PAO

PRAG

Services / Supplies / Works : § 2.8.1
Grants : § 6.4.7.

- **Guidelines [provided by the NAO to the PAO] on selection and proposal of members of Tender Evaluation Committee in the context of the PHARE Pre-accession Program in**

accordance with Article 2(3) of Decree of Council of Ministers No 131/28.06.2005

E.2.5.3. Responsibilities of the EvC members

- The members of the EvC sign Declarations of Impartiality and Confidentiality
- All voting members of the Evaluation Committee have equal voting rights and take collective responsibility for decisions taken by the Evaluation Committee
- The names and functions of all those involved in evaluation process must be recorded in the Evaluation Report
- No information about examination, clarification, evaluation or comparison of tenders or decision about contract award can be disclosed before the signature of the contract,
- Any attempt by tenderer to influence the process in any way will result in immediate exclusion of its tender from further consideration,
- The proceedings are confidential.

The members of the EvC should attend all meetings¹², any absence must be recorded and explained in the Evaluation Report. Any member of EvC who withdraws must be replaced and the evaluation process must be restarted. Any assessment by a voting member who withdraws from the EvC must be disregarded.

E.2.5.4. Responsibilities of the Chairman

The Chairman is responsible for co-ordinating the evaluation process in accordance with the procedures set out in the PRAG and for ensuring the procedure's impartiality and transparency

E.2.5.5. Responsibilities of the Secretary

The Secretary is responsible for carrying out all the administrative tasks within the evaluation procedures, including:

- Circulating and collecting the Declaration of Impartiality and Confidentiality,
- Keeping the minutes of all meetings of the Evaluation Committee and the relevant records and documents,
- Registering attendance to meetings and compiling the Evaluation Report and its supporting annexes.

¹² This applies to Services, Supplies and Works. Rules are different for grants.

E.2.5.6. Nomination of the EvC

Role of the SPO - Procedure

- Receive from the PAO a “Letter to SPO requesting a proposal for EvC composition / Shortlist panel”
- Prepare proposals for the candidates to the EvC voting members,
- Ensure that several (at least two) reserve / alternate members for each voting member’s position are identified,
- Check that the proposed members:
 - have a reasonable command of the language in which the tenders are submitted,
 - possess the technical and administrative capacities to give an informed opinion on the tenders,
 - present CVs of the candidates that reflect the required qualifications, and previous experience with tender evaluations
 - have no hierarchical dependence between any of them, [as a mean of ensuring that it exists no hierarchical relations between members of the EvC / Shortlist Panel, it is necessary that each name in the list of nominations is followed by a clear indication of his/ her position, department/directorate and institution],
 - will be freed from their daily tasks during the course of the evaluation.
- Formalise controls performed on the annex to the “Letter to SPO requesting a proposal for EvC composition / Shortlist panel”
- Transmit to the PAO :
 - CVs of the proposed candidates and alternate members,
 - Copy of the annex to the “Letter to SPO requesting a proposal for EvC composition / Shortlist panel” duly filled, dated and signed by the SPO.

E.2.5.7. Quality of CVs proposed

The competencies needed and the hierarchal independence should be assessed by way of the CV of the evaluation committee candidates. Therefore, the CVs must be complete and updated, illustrating technical and linguistic capabilities, as well as experience in previous evaluations. The latter experience should be demonstrated by the inclusion of a list of evaluations in which the proposed committee member had previously been involved.

When the NAO considers necessary, he/ she may request information on the composition of the Evaluation Committee, including the CVs of

the experts, in order to enforce the provision of the Article 4 (7), 3 of Decree of Council of Ministers No 131/ 28.06.2005 and request a replacement of members in the evaluation panel.

E.2.5.8. Conflict of interest

Conflicts of interest arise where the impartial and objective exercise of the functions of a member of the Evaluation Committee is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a tenderer.

It is the responsibility of any Evaluation Committee member or Observer who has a potential conflict of interest, due to a link with any tenderer, to declare such link and immediately withdraw from the evaluation. He/she will be excluded from participating further in any capacity in the evaluation meetings.

As soon as tenderers are identified, particular attention must be given to any information on possible links with any tenderer which the CFCU/IA, the Final Beneficiary, or any other party in the tender may identify.

E.2.5.9. Approval of the EvC composition

The PAO is entitled to reject proposals received for the EvC members. The SPO will be informed accordingly.

When the qualifications, experience and other criteria of the proposed EvC Members are met, the PAO may endorse / approve the EvC composition.

E.2.6. Preparation of Tender Dossier [TD]

The purpose of tender dossier is to provide the tenderers with exact nature and performance characteristics of the services, to give instructions to them and inform about the special conditions at the tendering stage about the nature of the tender they will need to submit and to serve as the contractor’s mandate during project implementation.

The Tender Dossier (including standard contract) can be found in **PRAG - Annex B8** and contains :

- Letter of invitation to tender,
- Instructions to tenderers,
- Draft contract: Special conditions,
- Draft contract: General conditions (Annex I),
- Draft contract: Terms of reference (Annex II),

- Draft contract: Organisation & methodology (Annex III),
- Draft contract: List and CV's of key experts (Annex IV),
- Draft contract: Budget (Annex V) : Budget for a global-price contract; or Budget breakdown for a fee-based contract,
- Draft contract: Forms and other relevant documents (Annex VI) :
 - Bank account notification form,
 - Financial guarantee template,
 - Legal Entity File (individual),
 - Legal Entity File (private companies),
 - Legal Entity File (public bodies),
- Draft contract: Expenditure verification: Terms of Reference and Report of factual Findings (Annex VII),
- Shortlist notice,
- Administrative compliance grid,
- Evaluation grid,
- Tender submission form.

Preparation of the Tender Dossier is the responsibility of the CFCU/IA.

The SPO is informed by the PAO about the endorsement of the Tender Dossier and actions during the tendering stages.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO.

E.2.7. Preparatory Meeting

Before the formal tender opening session, the EvC meets at a "Preparatory Meeting". The purpose of this meeting is to present to the EvC the contents of the tender dossier and the evaluation procedures.

Note: Preparatory Meeting applies to works, services, supplies and grants tenders.

PRAG

Services : § 3.3.10 **Supplies : § 4.3.9**
Works : § 5.3.9 **Grants : § 6.4.7 § 6.4.8**

Based on the Agenda prepared by the Secretary, the Chairman:

- presents the purpose of the tender procedure in general terms,
- reminds the EvC of the selection and award criteria specified in the Tender Dossier, stating that these must be respected without modification,
- explains the procedures to be followed by the EvC,

- checks that all members are familiar with the evaluation grid set out in the tender dossier to make sure that the tenders will be evaluated by the different members of the EvC in a consistent manner.

The Secretary prepares the minutes of the Preparatory meeting.

E.2.8. Clarification to Tenderers

PRAG

Services : § 3.3.5. **Supplies : § 4.3.4.**
Works : § 5.3.4. **Grants : § 6.4.4**

Tenderers may submit questions in writing for clarification up to 21 days¹³ before the deadline for submission of tenders. Tenderers must receive answers to their questions at least 11 days before the deadline for submission of tenders. The deadline for submission of tenders appears in the Procurement Notice and/or in the Instructions to Tenderers in the Tender Dossier.

The CFCU/IA is responsible for responding to the questions either by providing additional information or by clarifying the issue(s) raised by tenderers.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to clarifications to tenderers [mainly for technical issues raised by the potential tenderers].

E.2.9. Modification of Tender Dossier

After the Tender Dossier is issued, it might appear that some information it contains should be corrected, clarified or even added.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to the preparation of modifications [mainly technical aspects of the Tender Dossier].

The PAO – though the CFCU/IA - ensures that such information as well as responses to all tenderers' questions:

- sent in writing to the tenderers at the same time and at least 11 days before the deadline for submission of tenders,
- published in any appropriate media.

Note: No modifications of the Tender Dossier are allowed besides deadlines, removal of unwarranted restrictions and removal of

¹³ Please note that all references to days in this chapter should be interpreted as calendar days (unless otherwise specified).

technical errors. Should the clarification to tenderers questions involve a change to the substance of the original tender dossier, or if the PAO determines that there are substantial errors in the Tender Dossier or additional information that should be included in the Tender Dossier then a formal Addendum to the Tender Dossier is prepared and issued to each of the tenderers.

E.2.10. Information or clarification meeting / Site Visit

When a Tender is considered to have a particularly complex technical content, the PAO and/or the Beneficiary may decide that a site visit and/or clarification meeting will be organised.

Information regarding the Information or clarification meeting / Site Visit must be clearly stated in the Instructions to Tenderers and in the Procurement Notice with a specific date, time and place of venue. It shall be clearly stated if it is voluntary or mandatory for the tenderers to participate in the Information or clarification meeting / Site Visit.

All costs of attending such a site visit or clarification meeting will be the responsibility of the tenderers.

NOTE:

Should attendance be deemed mandatory, any tenders submitted by tenderers who did not participate in the said clarification meeting/site visit will be considered "not admissible" and will not be evaluated.

Information or clarification meeting / Site Visit shall be organised by the CFCU/IA together with the Beneficiary [if needed] and in compliance with the information provided in the Procurement Notice and/or Tender Dossier.

The CFCU/IA is responsible for :

- preparing a "list of participants" which will be signed by all representatives of tenderers who attend the meeting,
- chairing the meeting,
- preparing precise minutes of the meeting,
- ensuring that the minutes are issued together with eventual further clarifications or additional information in the same way to all tenderers at the same time or as stated in the Tender Dossier.

Role of the SPO - Procedure

The provision for support in relation to technical issues is the responsibility of the SPO.

The PAO may request the SPO to perform the following activities :

- to organise the meeting,
- to prepare the List of participants,
- to chair the visit/meeting,
- to prepare precise minutes of the meeting,
- to submit the minutes and any relevant documents to the CFCU/IA.

If it is necessary to change the venue for the meeting, the CFCU/IA should forward a special invitation to all tenderers in due time.

E.2.11. Opening and Evaluation of Tenders

a) Compliance with formal requirements

Tasks of the Secretary and Chairman of the Evaluation Committee are based to a great extent on Tender Opening Checklist (**PRAG - Annex B9** ) and Tender Opening Report (**PRAG - Annex B10** ) requirements as well as other requirements set in PRAG. The tasks include:

- Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer and whether separate envelopes have been used for technical and financial offers. Only tenders contained in envelopes received by the date and time indicated in the tender dossier are considered for opening,
- Require all members of the Evaluation Committee and any observer(s) to read and sign a Declaration of Impartiality and Confidentiality,
- Open the inner envelope containing the technical offer and mark the tender envelope number on each copy of the technical offer. The front page of each copy of the technical offer must be initialled by the Chairman and the Secretary,
- Follow the tasks as per Tender Opening Checklist (**PRAG - Annex B9** ) ,
- The Chairman and the Secretary must initial the inner envelope containing the financial offer across the seal, marking the tender envelope number on the envelope. This is not opened and must be locked away in a safe place until the financial evaluation takes place, after completion of the technical evaluation.

The EvC decides whether or not tenders comply with the formal requirements at this stage. The

Summary of tenders received, which is attached to the Tender Opening Report (**PRAG - Annex B10** ) must be used to record the compliance of each of the tenders with the formal requirements. Non-compliant tenders are rejected.

b) Administrative Compliance

Each technical offer is examined for compliance with the tender dossier. The following points are checked:

- the documentation is complete
- the language required by the tender dossier has been used
- a declaration of intent, accepting the terms of reference and general conditions, has been signed by the tenderer
- each of the key personnel proposed have signed a statement of availability and exclusivity
- for consortia: the confirmation of association and designation of a lead company has been signed by all consortium members
- for tenderers intending to subcontract tasks (if permitted by the tender dossier) : the tenderer has included a subcontracting statement
- any other details as per the Administrative Compliance grid.

Copies of the tenders are distributed to the EvC members and the originals are locked away for safe keeping.

With the agreement of the other EvC members, the Chairman may communicate in writing with tenderers whose submission require clarification, offering them the possibility to respond by fax within a within a reasonable time limit to be fixed by the Committee. The Secretary writes a letters to tenderers, the Chairman and the Secretary signs them and the Secretary is responsible for sending the letters.

The Tender opening report is drawn up by the Evaluation Committee Secretary and signed by all members of the Evaluation Committee.

c) Technical Evaluation

The EvC examines the technical offers. When evaluating technical offers, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, sub-criteria and weightings) laid down in the tender dossier.

In practice, it is recommended that tenders be scored for a given criterion one after another, rather than scoring each tender for all criteria before moving on to the next. Where the content of a tender is incomplete or deviates substantially from one or more of the technical award criteria laid down in the tender dossier (e.g. the required profile of a certain expert), the tender should be automatically rejected, without being given a score, but this should be justified in the evaluation report.

The EvC discusses the scoring given for each section of the grid. The EvC decides (if envisaged in the Tender Dossier) which companies to invite for interviews, which may be held at a time that was named in the Tender Dossier.

The Secretary draws up the invitations to interview. After the interview, the technical scores are adjusted and the EvC establishes the technical offers' average scores. Technical offers that have an average score of 80 points or more, proceed to the financial evaluation stage.

d) Evaluation of Financial Offers

The Evaluation Committee has to ensure that the financial offer satisfies all formal requirements. A financial offer not meeting these requirements may be rejected. Any rejection on these grounds will have to be fully justified in the Evaluation Report.

The envelopes containing the financial offers of rejected tenderers must be retained by the CFCU/IA with other documents for the tender. They must remain unopened.

The EvC checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without prejudice to the tenderer.

Financial bids exceeding the maximum budget allocated for the contract are eliminated.

The most economically advantageous tender is established by weighing technical quality against price on an 80/20 basis. This is done by multiplying:

- scores awarded to the technical offers by 0.80
- scores awarded to the financial offers by 0,20.

e) Evaluation Report

Conclusion of the EvC is included in the Tender Evaluation Report (**PRAG - Annex B11** ) which is signed by the Chairman, the Secretary and all voting members of the EvC.

The Evaluation Report must be submitted to the PAO who must decide whether or not to accept its recommendation.

E.2.12. Award of Services Contract

When the Evaluation Report is approved by the PAO, the CFCU/IA prepares a set of documents including:

- A Services Contract and an Explanatory Note (**PRAG - Annex A6** ) in close cooperation with the SPO,
- A Contract Notification Letter (**PRAG - Annex A8** ) to the winner and requests additional information in accordance with the Tender Dossier (financial identification form, confirmation that grounds for exclusion have not changed, documentary evidence of statements made in experts' CVs, auditor, evidence of the financial and economic capacity as well as the technical and professional capacity according to the selection criteria specified in the procurement notice, etc.).

The PAO contacts the SPO to inform him / her and to ask him for preparing the forthcoming actions (preparation for starting the contract).

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to the preparation of the Contract and Explanatory Note,
- Support the PAO in the preparation for the starting of the contract.

E.2.13. Contract signature

The CFCU/IA prepares three original copies of the Contract which are signed by the PAO. The signed contracts are sent then to the Contractor with a cover letter (**PRAG - Annex A9** )

The successful tenderer signs all copies of the Contract and provides the PAO with any required additional information.

The CFCU/IA arranges for one copy of the contract to be sent to the SPO.

Concurrently to the contract preparation process the CFCU/IA ensure the publication of a Service Contract Award Notice (**PRAG - Annex B14** )

E.2.14. Letter to unsuccessful tenderers

Not more than 15 days after the contract signature by both parties, the CFCU/IA sends the letters to unsuccessful tenderers (**PRAG - Annex B13** ) explaining why they have not been awarded the contract, stating whether their

tenders were technically compliant and indicating any technical shortcomings.

E.2.15. Cancelling the tender procedures

The PAO may, at any time before signature of a contract, abandon the procurement or cancel the award procedure.

➤ **Possible reasons for cancellation are described in the PRAG**
PRAG § 2.4.14 – Cancellation of procurement procedures
Services: § 3.3.32 § 3.3.11
Supplies: § 4.3.10
Works : § 5.3.4.10
Grants : § 6.4.9

The tenderers [and the SPO] will be informed by the CFCU/IA of the cancellation and the CFCU/IA will ensure the publication of a Notice of cancellation of tender procedure (**PRAG - Annex A5** )

The tender cancellation should be taken into account when up-dating your Project Plan.

E.2.16. Framework Contracting [FWC]

Framework contracts for services are used when the allocated budget for the project is €199.999 or less and the duration of the project is not more than 12 months.

The procedures laid down in the user's guide of the framework contract and/or the Global ToRs are used for the following steps :

- Preparation and submission of the Request for Services (RfS),
- Processing the Request for Services,
- Submission and evaluation of offers,
- Signature of the Contract.

Role of the SPO - Procedure

- Prepare the ToR using the relevant standard format. ToR template for FWC are different from used for other services contracts (**See FWC instructions on EC web site – Section B. § 4.1.1. Specific ToRs for all lots except lot 5**  and **4.1.2. lot 5** )
- Apply the same procedures as described in **Section E.2.5 - Evaluation Committee** to support the setting up of an EvC.

E.3. SUPPLIES

Most supplies contracts are concluded for purchase, leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include installation, maintenance and outside know-how.

The scope of procurement is to supply a Line Ministry or Agency with equipments needed to perform activities related to the achievement of project specific objectives.

The list of goods to be supplied and their technical characteristics are defined in the Technical Specifications. The selection of the contractor is based on the evaluation of:

- Compliance with Technical Specifications
- Delivery conditions, warranty and after-sale support,
- Financial proposal.

E.3.1. Responsibilities

Beneficiary (line ministry / SPO)

- Provides CFCU/IA with information required for the preparation of Supplies Contract Forecast and Procurement Notices,
- Prepares Technical Specifications,
- Prepares List of Suppliers when Competitive Negotiated procedure is applied. During the establishment of the list of possible Suppliers, the SPO should not make any contacts with them,

- Provides CFCU/IA with input for the preparation of Tender Dossier
- Communicates with the personnel involved in the project about their input
- Proposes members to the Evaluation Committee
- Provide clarifications and organise site visits

CFCU/IA

- Prepares Contract Forecast and Procurement Notices,
- Prepares Tender Dossier,
- Provides Tender Dossier to Tenderers,
- Prepares letter to Tenderers with clarification Meeting minutes from SPO,
- Updates any register(s) related to procurement,
- Sends Supplies Contract Forecast and Procurement Notices for publication in EC Official Journal and EC web site,
- Prepares and publishes local advertisements (sends a letter to listed suppliers when Competitive Negotiated procedure is applied),
- Publishes Award Notice on Internet.

	Type of tender procedure			
	International open procedure ≥ €150,000	Local open procedure < €150,000 but ≥ €30,000	Competitive Negotiated procedure ¹⁴ < €30,000 but > €5,000	Single tender ¹⁵ ≤ €5,000
Contract forecast	✓			
Procurement Notice	✓	✓		
Preparation and Approval Technical Specifications	✓	✓	✓	✓
Preparation of Tender Dossier	✓	✓	✓	✓
Proposal by the SPO to the PAO of names of potential tenderers	✓	✓	✓	✓
Clarification to tenderers	✓	✓	✓	✓
Evaluation committee	✓	✓	✓	
Opening and evaluation	✓	✓	✓	[✓]
Award of contract	✓	✓	✓	✓

¹⁴ The Competitive Negotiated procedure allows the Contracting Authority/PAO to directly invite tenders from candidates of its choice – no publication is needed. For contracts above €5,000 at least three valid tenders must be received (i.e. arrived on time and respecting the formal submission requirements), but contracts for less than €5,000 can be awarded based on a single Tender.

¹⁵ The negotiated procedure is to be used with a single tender only in exceptional cases. Prior approval from the PAO for use of the negotiated procedure is required. A Negotiation Report justifying the manner and basis of the negotiations must be prepared. It must be included in the Contract Dossier.

E.3.2. Contract Forecast [CF] and Procurement Notice [PN]

PRAG

4.3.1.1. Publication of individual contract forecasts

4.3.1.2. Publication of procurement notices

Specific characteristics of the planned tender procedure must be published in individual contract forecast. The Contract Forecast serves to briefly describe the subject, content and value of the contracts (See **PRAG - Annex C1** ). Given that it is a forecast, publication of Contract Forecasts does not bind the CFCU/IA to finance the contracts proposed.

Procurement Notices must be published for all supply contracts of €150,000 or more (See **PRAG - Annex C2** ) to serve the publicity on selection criteria. The Individual Contract forecasts must be published at least 30 days before the corresponding Procurement Notice publication.

The Contract Forecast and Procurement Notices are published in the Official Journal of the European Union, on the EuropeAid website (at http://europa.eu.int/comm/europeaid/index_en.htm) [OJEU] and in any other appropriate media.

The EC is responsible for publication in the OJEU and on the EuropeAid website, while the CFCU/IA arranges local publication directly.

Role of the SPO - Procedure

Provide the PAO – upon request of the CFCU/IA and within deadlines set up in the communication received from the CFCU/IA – with any information which might be required to prepare and publish the Contract forecasts and Procurement Notices.

E.3.3. Preparation of Technical Specifications

E.3.3.1. By the SPO

Technical Specifications are part of the Tender Dossier. They serve – at the level of each supplies contract – to define the expectations in terms of :

- Quality levels,
- Environmental performance,
- Design for all requirements,
- The level and procedure for conformity assessment ,
- Fitness for use,
- Safety or dimensions

The source of most of the background information in Technical Specifications is the

Project Fiche, however it is recommended that special care be taken over describing the supplies characteristics.

Technical Specifications should define the required supplies precisely. The minimum requirements defined in the Technical Specifications must enable the EvC to determine which tenders are technically compliant.

Role of the SPO - Procedure

- Prepare the Technical Specifications [TS] using the relevant standard format (**PRAG - Annex C4**  = Annex II of the draft contract),
 - Ensure that the staff involved in the preparation / control of the TS sign a Declaration of Objectivity and Confidentiality (**PRAG - Annex A3** ) ,
 - Ensure that the preparation of the TS is supported by the use of the **Check-list for control of Technical Specifications** in order to guarantee that the TS:
 - are timely and properly prepared (quality assurance),
 - comply with the objectives and needs described in the related Project Fiches,
 - clearly describe / define expectations of what is to be delivered and how this will be measured,
- Annex E01 – Check-lists for control [prior to submission to PAO] of : E01c - Technical Specifications [Supplies]**
- Submit to the CFCU/IA :
 - the draft version of the TS in hard as well as electronic copy
 - a copy of the **Check-list for control of Technical Specifications**.

A letter will be sent to the SPO by the PAO to require adjustments to the TS if needed.

Role of the SPO - Procedure

- Adjust the draft TS as relevant,
 - Formalise the comments and controls in the **Check-list for control of Technical Specifications**
- Annex E01 – Check-lists for control [prior to submission to PAO] of : E01c - Technical Specifications [Supplies]**
- Submit to the CFCU/IA :
 - the version of the TS modified [in hard as well as electronic copy],
 - a copy of the **Check-list for control of Technical Specifications**.

Once the final version of the TS are approved, the SPO will be informed in written by the PAO.

E.3.3.2. By external experts

The SPO may contract external expertise for preparation of the Technical Specifications. Regardless if the expertise is contracted using EU or local funds (co-financing), the experts contracted to prepare the Technical Specifications :

- should not participate in the implementation stage of the project,
- should sign a Declaration of Objectivity and Confidentiality (**PRAG - Annex A3** )

Role of the SPO - Procedure

- Control the TS and formalise the comments and controls in the **Check-list for control of Technical Specifications**

☛ **Annex E01 – Check-lists for control [prior to submission to PAO] of :**
E01c - Technical Specifications [Supplies]

- Submit to the CFCU/IA :
 - the version of the TS controlled by the SPO [in hard as well as electronic copy],
 - a copy of the **Check-list for control of Technical Specifications**.

The SPO remains ultimately responsible for the quality of the Technical Specifications.

E.3.4. Evaluation Committee

See Section E.2.5 - Evaluation Committee.

E.3.5. Preparation of Tender Dossier [TD]

The purpose of tender dossier is to provide the tenderers with exact nature and characteristics of the supplies, to give instructions to them and inform about the special conditions at the tendering stage about the nature of the tender they will need to submit.

The Tender Dossier (including standard contract) can be found in **PRAG - Annex C4** and contains :

- Letter of invitation to tender,
- Letter of invitation to tender
- Instructions to tenderers
- Draft contract
- Draft contract: Special Conditions
- Draft contract: General Conditions (Annex I)
- Technical Specifications (Annex II)
- Technical Offer (Annex III)
- Financial Offer (Annex IV)
- Performance Guarantee (Annex V)
- Pre-financing Guarantee (Annex V)
- Administrative compliance grid
- Evaluation grid

- Tender submission form
- Tender Guarantee
- Glossary
- Bank account notification form
 - Legal Entity File (private companies)
 - Legal Entity File (public bodies)

Preparation of the Tender Dossier is the responsibility of the CFCU/IA.

The SPO is informed by the PAO about the endorsement of the Tender Dossier and actions during the tendering stages.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO.

E.3.6. Preparatory Meeting

See Section E.2.7 Preparatory Meeting.

E.3.7. Clarification to Tenderers

☛ **PRAG**
Services : § 3.3.5. **Supplies : § 4.3.4.**
Works : § 5.3.4. **Grants : § 6.4.4**

Tenderers may submit questions in writing for clarification up to 21 days¹⁶ before the deadline for submission of tenders. Tenderers must receive answers to their questions at least 11 days before the deadline for submission of tenders. The deadline for submission of tenders appears in the Procurement Notice and/or in the Instructions to Tenderers in the Tender Dossier.

The CFCU/IA is responsible for responding to the questions either by providing additional information or by clarifying the issue(s) raised by tenderers.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to clarifications to tenderers [mainly for technical issues raised by the potential tenderers].

¹⁶ Please note that all references to days in this chapter should be interpreted as calendar days (unless otherwise specified).

E.3.8. Modification of Tender Dossier

See Section E.2.9. - Modification of Tender Dossier.

E.3.9. Information or clarification meeting / Site Visit

See Section E.2.10 - Information or clarification meeting / Site Visit.

For Supply tenders, the minutes of the site visit / information or clarification meetings must also be published on the EuropeAid website at least 11 days before the deadline for submission of tenders, in accordance with item 14 of the Instructions to Tenderers.

E.3.10. Opening and Evaluation of Tenders

a) Compliance with formal requirements

Tasks of the Secretary and Chairman of the Evaluation Committee are based to a great extent on Tender Opening Checklist (**PRAG - Annex C5** ) and Tender Opening Report (**PRAG - Annex C6** ) requirements as well as other requirements set in PRAG. The tasks include:

- Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer. Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.
- Initial the front page of each document and all pages of the financial offer.

The EvC decides whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (**PRAG - Annex C6** ) must be used to record the compliance of each of the tenders with the formal requirements. The tenders not considered for further evaluation must be kept by the CFCU/IA, together with the other tenders - the associated guarantees may be returned to the tenderers on request.

The Tender opening report is drawn up by the Secretary and signed by all members of the Evaluation Committee.

b) Administrative Compliance

Each technical offer is examined for compliance with the tender dossier. The following points are checked:

- the documentation is complete
- the language required in the Tender Dossier has been used,

- for consortia: the confirmation of association and designation of a lead company has been signed by all consortium members,
- for tenderers intending to subcontract tasks (if permitted by the tender dossier): the tenderer has included a statement regarding the content and extent of subcontracting envisaged, which must be within the limit stated in the tender dossier,
- other administrative requirements (e.g. conflict of interest, number of offers submitted).

Copies of the tenders are distributed to the EvC members and the originals are locked away for safe keeping,

With the agreement of the other EvC members, the Chairman may communicate in writing with tenderers whose submission require clarification, offering them the possibility to respond by fax within a reasonable time limit to be fixed by the EvC. The Secretary writes a letters to tenderers, the Chairman and the Secretary sign them and the Secretary is responsible for sending the letters.

c) Technical Evaluation

The purpose of this evaluation is to assess whether or not the competing tenders meet the minimum technical requirements and selection criteria. The criteria to be applied are those published in the Procurement Notice, Tender Dossier and, accordingly, the Evaluation Grid included in the Tender Dossier must be used. Under no circumstances may the EvC or its members change the evaluation grid communicated to the tenderers in the Tender Dossier.

Having evaluated the tenders, the EvC rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant.

d) Evaluation of Financial Offers

The EvC checks that the financial offers contain no arithmetical errors. Any arithmetical errors in calculation are corrected without prejudice to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking into consideration any eventual discounts granted by the tenderers if this is allowed by the tender dossier.

In the case of abnormally low tenders, the EvC must request any relevant information concerning the tender submitted. The justification for accepting or rejecting an abnormally low offer must be recorded in the Evaluation Report.

Price is the sole criterion for awarding supply contracts not including after-sales services.

Where a supply contract includes ancillary services (such as after sales services and/or training) which represent a significant proportion of the contract value, the technical evaluation can take into account the quality of such services on a YES/NO basis.

All non-compliant tenders having already been eliminated, the contract is awarded to the tenderer submitting the least expensive, compliant tender.

For particularly complex supplies, a combination of quality and price may be used as the basis for awarding the contract to the most economically advantageous tender. This should be limited to products with particular security / production / implementation constraints.

If the selected tender exceeds the maximum budget available for the contract, the CFCU/IA may vary the quantities of each item such that the total value of the supplies may not rise or fall as a result of the variation in the quantities by more than 25 % of the contract price at the time of contracting and during the validity of the contract.

If, following that variation in quantities, the selected tender shall again exceed the maximum budget available for the contract the tender procedure shall be cancelled and a Negotiation Procedure may be started with the one or some or all of the tenderers that took part in the former tender procedure.

e) Evaluation Report

Conclusion of the EvC is included in the Evaluation report (**PRAG - Annex C7** ) which is signed by the Chairman, the Secretary and all voting members of the EvC. The Evaluation Report is submitted to the PAO for final endorsement.

Minutes of the Tender Opening Session may be made available by the CFCU/IA to the Tenderers upon written request.

All other documentation produced during the evaluation process and the Evaluation Report, in particular, is for official use only and may be divulged neither to Tenderers nor to any party

outside the authorised departments of the CFCU/IA, the EC and the supervisory authorities (e.g. the European Court of Auditors).

E.3.11. Award of Supply Contract

When the Evaluation Report is endorsed by the PAO, the CFCU/IA prepares a set of documents including:

- A Supplies Contract (**PRAG - Annex C4** ) and an Explanatory Note (**PRAG - Annex A6** ) in close cooperation with the SPO. The Supply Contract is based on the standard supply contract template and includes:
 - Special conditions (to be completed by the CFCU/IA)
 - General conditions for supply contracts (standard version in the tender dossier)
 - Technical specifications (from the Tender Dossier)
 - The Technical offer of the successful tenderer
 - Budget (from the recommended tender)
 - Miscellaneous (from the tender dossier and including, for example, tax and customs arrangements, financial guarantee format, and the standard invoice format to be used by the contractor).
- A Contract Notification Letter (**PRAG - Annex A8** ) to the winner and requests additional information in accordance with the tender dossier (financial identification form, confirmation that grounds for exclusion have not changed, etc).

The PAO contacts the SPO to inform him / her and to ask him for preparing the forthcoming actions (preparation for starting the contract).

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to the preparation of the Contract and Explanatory Note,
- Support the PAO in the preparation for the starting of the contract.

E.3.12. Contract signature

The CFCU/IA prepares three or four original copies of the Contract which are signed by the PAO. The signed contracts are sent then to the Contractor with a cover letter (**PRAG - Annex A9** )

The successful tenderer signs all copies of the Contract and provides the PAO with any required additional information.

The CFCU/IA arranges for one copy of the contract to be sent to the SPO. Concurrently to the contract preparation process the CFCU/IA ensure the publication of a Supply Award Notice (**PRAG - Annex C9** )

E.3.13. Letter to unsuccessful tenderers

Not more than 15 days after the contract signature by both parties, the CFCU/IA sends the letters to unsuccessful tenderers (**PRAG - Annex C8** ) explaining why they have not been awarded the contract, stating whether their tenders were technically compliant and indicating any technical shortcomings.

E.3.14. Cancelling the tender procedures

See Section E.2.15 Cancelling the tender procedures.

E.4. WORKS

The scope of works is to rehabilitate or construct infrastructures that are essential to the implementation of projects activities and to the achievement of project objectives. Works contracts cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified in a Tender Dossier.

A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function. The works are defined in the detailed design and related Bill of quantities [BoQ].

The selection of works contractors is based on the evaluation of:

- The compliance with Detailed Design and BoQ

- The Technical proposal
- The Financial proposal

E.4.1. Responsibilities

Beneficiary (line ministry / SPO)

- Provides CFCU/IA with information required for the preparation of Works Contract Forecast and Procurement Notices,
- Prepares Technical Specifications,
- Prepares List of Suppliers when Competitive Negotiated procedure is applied. During the establishment of the list of possible Suppliers, the SPO should not make any contacts with them,
- Provides CFCU/IA with input for the preparation of Tender Dossier
- Communicates with the personnel involved in the project about their input
- Proposes members to the Evaluation Committee
- Provide clarifications and organise site visits

CFCU/IA

- Prepares Contract Forecast and Procurement Notices,
- Prepares Tender Dossier,
- Provides Tender Dossier to Tenderers,
- Prepares letter to Tenderers with clarification Meeting minutes from SPO,
- Updates any register(s) related to procurement,
- Sends Contract Forecast and Procurement Notices for publication in EC Official Journal and EC web site,
- Prepares and publishes local advertisements (sends a letter to listed suppliers when Competitive Negotiated procedure is applied),
- Publishes Award Notice on Internet.

	Type of tender procedure			
	International open procedure or International restricted procedure (exceptional cases) ≥ €5,000,000	Local open procedure < €5,000,000 but ≥ € 300,000	Competitive Negotiated procedure ¹⁷ < €300,000 but ≥ € 5,000	Single tender ¹⁸ ≤ €5,000
Contract forecast	✓	✓		
Procurement Notice	✓	✓		
Preparation and Approval Technical Specifications	✓	✓	✓	✓

¹⁷ Works contracts under €300,000 are awarded by Competitive Negotiated procedure. Three compliant tenders must be obtained so at least three contractors must be consulted, but no procurement notice need be published. Contracts for less than €5,000 can be awarded based on a single Tender. The Competitive Negotiated procedure allows the CFCU to directly invite tenders from candidates of its choice – no publication is needed.

¹⁸ The negotiated procedure is to be used with a single tender only in exceptional cases. Prior approval from the PAO for use of the negotiated procedure is required. A Negotiation Report justifying the manner and basis of the negotiations must be prepared. It must be included in the Contract Dossier.

	Type of tender procedure			
	International open procedure or International restricted procedure (exceptional cases) $\geq \text{€}5,000,000$	Local open procedure $< \text{€}5,000,000$ but $\geq \text{€}300,000$	Competitive Negotiated procedure ¹⁷ $< \text{€}300,000$ but $\geq \text{€}5,000$	Single tender ¹⁸ $\leq \text{€}5,000$
Preparation of Tender Dossier	✓	✓	✓	
Proposal by the SPO to the PAO of names of potential tenderers	✓	✓	✓	✓
Clarification to tenderers	✓	✓	✓	✓
Preparatory meeting	✓	✓	✓	
Evaluation committee	✓	✓	✓	
Opening and evaluation	✓	✓	✓	✓
Award of contract	✓	✓	✓	✓

E.4.2. Contract Forecast [CF] and Procurement Notice [PN]

PRAG

5.3.1.1. Publication of individual contract forecasts

5.3.1.2. Publication of procurement notices

Specific characteristics of the planned tender procedure must be published in individual contract forecast. The Contract Forecast serves to briefly describe the subject, content and value of the contracts (See PRAG - Annex D1 ). Given that it is a forecast, publication of Contract Forecasts does not bind the CFCU/IA to finance the contracts proposed.

Procurement Notices must be published for all works contracts of €5,000,000 or more (See PRAG - Annex D2 ) to serve the publicity on selection criteria. The Individual Contract forecasts must be published at least 30 days before the corresponding Procurement Notice publication.

The Contract Forecast and Procurement Notices are published in the Official Journal of the European Union, on the EuropeAid website (at http://europa.eu.int/comm/europeaid/index_en.htm) [OJEU] and in any other appropriate media.

For the Local Open Procedure, the Procurement Notice is published only in Bulgaria. The EC publishes only reference of such tender Procedure. The EC is responsible for publication in the OJEU and on the EuropeAid website, while the CFCU/IA arranges local publication directly.

Role of the SPO - Procedure

- Provide the PAO – upon request of the CFCU/IA and within deadlines set up in the communication received from the CFCU/IA – with any information which might be required to prepare and publish the Contract forecasts and Procurement Notices.

E.4.3. Preparation of Technical Specifications [TS]

E.4.3.1. By the SPO

Technical Specifications are part of the Tender Dossier. They serve – at the level of each Works contract – to define the characteristics required by the Contracting Authority in relation to :

- the quality levels;
- environmental performance;
- wherever possible, the accessibility criteria for people with disabilities or the design for all users;
- the levels and procedures of conformity assessment;
- fitness for use;
- safety or dimensions, including, for supplies, the sales name and user instructions, and, for
- all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
- the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the Contracting Authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.

Technical Specifications for the works tendered are the key to successful procurement and a sound works contract and project.

The Technical Specifications must :

- indicate - where applicable, lot by lot - the exact nature and performance characteristics of the works,

- specify – where applicable - delivery conditions and installation, training and after-sales service,
- enable the EvC to determine which tenders are technically compliant.

Role of the SPO - Procedure

- Prepare the Technical Specifications [TS]
- Ensure that the staff involved in the preparation / control of the TS sign a Declaration of Objectivity and Confidentiality (PRAG - Annex A3 ) ,
- Ensure that the preparation of the TS is supported by the use of the **Check-list for control of Technical Specifications** in order to guarantee that the TS:
 - are timely and properly prepared (quality assurance),
 - comply with the objectives and needs described in the related Project Fiches,
 - clearly describe / define expectations of what is to be delivered and how this will be measured,
- Submit to the CFCU/IA :
 - the draft version of the TS in hard as well as electronic copy
 - a copy of the **Check-list for control of Technical Specifications**.

A letter will be sent to the SPO by the PAO to require adjustments to the TS if needed.

Role of the SPO - Procedure

- Adjust the draft TS as relevant,
- Formalise the comments and controls in the **Check-list for control of Technical Specifications**
- Submit to the CFCU/IA :
 - the version of the TS modified [in hard as well as electronic copy],
 - a copy of the **Check-list for control of Technical Specifications**.

Once the final version of the TS are approved, the SPO will be informed in written by the PAO.

E.4.3.2. By external experts

The SPO may contract external expertise for preparation of the Technical Specifications. Regardless if the expertise is contracted using EU or local funds (co-financing), the experts

contracted to prepare the Technical Specifications :

- should not participate in the implementation stage of the project,
- should sign a Declaration of Objectivity and Confidentiality (PRAG - Annex A3 ) ,

Role of the SPO - Procedure

- Control the TS and formalise the comments and controls in the **Check-list for control of Technical Specifications**
- Submit to the CFCU/IA :
 - the version of the TS controlled by the SPO [in hard as well as electronic copy],
 - a copy of the **Check-list for control of Technical Specifications**.

The SPO remains ultimately responsible for the quality of the Technical Specifications.

E.4.4. Evaluation Committee

See Section E.2.5 - Evaluation Committee.

E.4.5. Preparation of Tender Dossier [TD]

The purpose of tender dossier is to provide the tenderers with exact nature and characteristics of the works, to give instructions to them and inform about the special conditions at the tendering stage about the nature of the tender they will need to submit.

The Tender Dossier (including standard contract) can be found in PRAG - Annex D4 and contains :

- Volume 1: Instructions to tenderer and tender forms
- Volume 2: Draft contract and conditions,
- Volume 3: Technical specifications,
- Volume 4: Model financial bid,
- Volume 5: Design documents and drawings.

Preparation of the Tender Dossier is the responsibility of the CFCU/IA.

The SPO is informed by the PAO about the endorsement of the Tender Dossier and actions during the tendering stages.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO especially with technical support.

E.4.6. Preparatory Meeting

See Section E.2.7 Preparatory Meeting.

E.4.7. Clarification to Tenderers

PRAG

Services : § 3.3.5.

Supplies : § 4.3.4.

Works : § 5.3.4.

Grants : § 6.4.4

Tenderers may submit questions in writing for clarification up to 21 days¹⁹ before the deadline for submission of tenders. Tenderers must receive answers to their questions at least 11 days before the deadline for submission of tenders.

The deadline for submission of tenders appears in the Procurement Notice and/or in the Instructions to Tenderers in the Tender Dossier.

The CFCU/IA is responsible for responding to the questions either by providing additional information or by clarifying the issue(s) raised by tenderers.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to clarifications to tenderers [mainly for technical issues raised by the potential tenderers]
- Support the preparation of the site visits in full coordination with the CFCU/IA.

E.4.8. Modification of Tender Dossier

See Section E.2.9. - Modification of Tender Dossier.

E.4.9. Information or clarification meeting / Site Visit

If there needs to be an information meeting or site visit to clarify technical requirements at the site where the works are to be carried out, this should be specified in the instructions to tenderers, together with details of the arrangements.

See Section E.2.10 - Information or clarification meeting / Site Visit.

E.4.10. Opening and Evaluation of Tenders

a) Compliance with formal requirements

Tasks of the Secretary and Chairman of the Evaluation Committee are based to a great extent on Tender Opening Checklist (PRAG - Annex D5 ) and Tender Opening Report (PRAG - Annex D6 ) requirements as well as other requirements set in PRAG. The tasks include:

- Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer. Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.
- Initial the front page of each tender and all pages of the financial offer.

The EvC decides whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (PRAG - Annex D6 ) must be used to record the compliance of each of the tenders with the formal requirements. The tenders not considered for further evaluation must be kept by the CFCU/IA, together with the other tenders.

b) Administrative Compliance

Each technical offer is examined for compliance with the tender dossier. The following points are checked:

- the documentation is complete
- the language required by the tender dossier has been used
- the tenderer has initialled the front page of both the Technical Specifications and General Conditions
- for consortia: the confirmation of association and designation of a lead company has been signed by all consortium members
- for tenderers intending to subcontract tasks (if permitted by the tender dossier): the tenderer has included a statement regarding the content and extent of subcontracting envisaged, which must be within the limit stated in the tender dossier.

With the agreement of the other EvC members, the Chairman may communicate in writing with tenderers whose submission require clarification, offering them the possibility to respond by fax within a reasonable time limit to be fixed by the EvC.

The administrative compliance of each of the tenders must be recorded in the Evaluation Report (PRAG - Annex D7 )

c) Technical Evaluation

The detailed evaluation of the tenders takes place after checking that the tenders satisfy the formal requirements of tender submission. The criteria to be applied are those published in the Tender Dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the EvC or

¹⁹ Please note that all references to days in this chapter should be interpreted as calendar days (unless otherwise specified).

its members change the evaluation grid communicated to the tenderers in the Tender Dossier.

Having evaluated the tenders, the EvC rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant.

d) Evaluation of Financial Offers

The EvC checks that the financial offers contain no arithmetical errors. Any arithmetical errors in calculation are corrected without prejudice to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking into consideration any eventual discounts granted by the tenderers if this is allowed by the tender dossier.

← PRAG - § 4.3.9.5. Application of discounts

The successful tenderer is the one submitting the "least expensive" tender classified as "technically compliant" during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the selected tender exceeds the maximum budget available for the contract, after cancelling the tender procedure, the PAO may negotiate with one or more tenderers of his/her choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered and the principle of equal treatment is observed.

A Negotiation Report must be prepared to justify the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations.

e) Evaluation Report

Conclusion of the EvC is included in the Evaluation Report (PRAG - Annex D7 ) which is signed by the Chairman, the Secretary and all voting members of the Evaluation Committee before submission to the PAO. Minutes of the Tender Opening Session may be made available by the CFCU/IA to the Tenderers upon written request.

All other documentation produced during the evaluation process and the Evaluation Report, in particular, is for official use only and may be divulged neither to Tenderers nor to any party outside the authorised departments of the

CFCU/IA, the EC and the supervisory authorities (e.g. the European Court of Auditors).

E.4.11. Award of Works Contract

When the Evaluation Report is endorsed by the PAO, the CFCU/IA prepares a set of documents including:

- A Works Contract (PRAG - Annex D4 ) and an Explanatory Note (PRAG - Annex A6 ) in close cooperation with the SPO. The Works Contract is based on the standard works contract template and includes:
 - Special conditions (to be completed by the CFCU/IA)
 - General conditions for works contracts (standard version in the tender dossier)
 - Technical specifications (from the tender dossier)
 - The Technical offer of the successful tenderer
 - Budget (from the recommended tender)
 - Miscellaneous (from the tender dossier and including, for example, tax and customs arrangements, financial guarantee format, and the standard invoice format to be used by the contractor).
- A Contract Notification Letter (PRAG - Annex A8 ) to the winner and requests additional information in accordance with the tender dossier (financial identification form, confirmation that grounds for exclusion have not changed, etc).

The PAO contacts the SPO to inform him / her and to ask him for preparing the forthcoming actions (preparation for starting the contract).

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to the preparation of the Contract and Explanatory Note,
- Support the PAO in the preparation for the starting of the contract.

E.4.12. Contract signature

The CFCU/IA prepares three original copies of the Contract which are signed by the PAO. The signed contracts are sent then to the Contractor with a cover letter (PRAG - Annex A9 )

The successful tenderer signs all copies of the Contract and provides the PAO with any required additional information.

The CFCU/IA arranges for one copy of the contract to be sent to the SPO.

Concurrently to the contract preparation process the CFCU/IA ensure the publication of a Works Contract Award Notice (**PRAG - Annex D9** .

E.4.13. Letter to unsuccessful tenderers

Not more than 15 days after the contract signature by both parties, the CFCU/IA sends the letters to unsuccessful tenderers (**PRAG - Annex D8** ) explaining why they have not been awarded the contract, stating whether their tenders were technically compliant and indicating any technical shortcomings.

E.4.14. Cancelling the tender procedures

See Section E.2.15 - Cancelling the tender procedures.

E.5. GRANTS

Grants are direct financial resources provided to public, private and non governmental organisations, by way of donation in order to finance:

- either an action intended to help achieve an objective forming part of an European Union policy;
- or the functioning of a body²⁰ which pursues an aim of general European interest or has an objective forming part of an European Union policy.

Terminology

Grant beneficiary: the body which signs a grant contract,

Final beneficiaries: those who will benefit from the project in the long term at the level of the society or sector at large,

Target groups: groups/entities which will be directly positively affected by the project at the Project Purpose level.

The activity financed by means of a grant is called an “Action” and should not be confused with a “Project”.

← **PRAG § 6.1 Grants – Introduction**
§ 6.1.3 Eligibility criteria
§ 6.2 Basic rules for grants

A call for Proposals is launched [except for “Direct award”] to invite potential beneficiaries to apply for grants. The potential beneficiaries

²⁰ A body involved in education, training, information, innovation or research and study on European policies, any activities contributing to the promotion of citizenship or human rights, or a European standards body; or a European network representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

have to prepare a project proposal following the instructions provided in the Guidelines for Grant Applicants. Grants are awarded on the basis of selection criteria that are listed in the Guidelines.

E.5.1. Responsibilities

Beneficiary (Line ministry / SPO)

- Provides the PAO with information and input on :
 - project and eligibility criteria,
 - preparation of the Annual Work Programme,
 - preparation of the Calls for proposals,
 - preparation of the Guidelines for Applicants,
- Proposes to the PAO :
 - members for the Evaluation Committee ,
 - dates of meetings of the Evaluation Committee,
- Performs controls in order to guarantee full Quality assurance,
- Communicates with the personnel involved in the project about their input.

CFCU/IA

- Prepares Calls for proposals Notices and Guidelines for applicants,
- Prepares and publishes local advertisements
- Provides the EC with information required for publications on EC website and EC Official Journal.

E.5.2. Grants: procurement procedures

Open procedure

In principle, the procedure for grants is open: applicants are allowed to submit a grant application form in response to the Guidelines for Applicants.

Yet, the PAO might decide to organise a restricted Call for proposals if the “technical nature of the field or the expected number of proposals” justifies it. Potential applicants are short-listed on the basis of a Concept Note (**PRAG - Annex E3b_1** .

← **PRAG § 6.6. Restricted call for proposals**

Direct award

Under circumstances defined in:

← **PRAG § 6.3.2. Grants awarded without calls for proposals (“Direct award”)**

there is no Call for Proposals before awarding grants. These circumstances are exceptional and mainly relate to :

- cases of emergency,
- crisis situations, or
- the nature of a body to which the grant might be allocated.

Note: only the competent services of the European Commission may declare the existence of a crisis situation. Imminent expiry of the financing agreement cannot be considered as an acceptable circumstance.

E.5.3. Annual Work Programme

Before launching Calls for proposals, an Annual Work Programme for grants (**PRAG - Annex E1** ) must be prepared and published²¹ not later than 31st January of each financial year.

The Annual Work Programme for Grants serves to specify :

- the budget heading or programme,
- the legal basis, objectives, and schedule of Calls for proposals with the indicative amount and the results expected.

Role of the SPO - Procedure

- Provide the PAO – upon request of the CFCU/IA and within deadlines set up in the communication received from the CFCU/IA – with any information which might be required to prepare the Annual Work Programme.

The CFCU/IA takes measures to ensure that the Annual Work Programme for Grants is published locally and on the Europaid website.

← PRAG § 6.2.1 Programming

E.5.4. Call for Proposals

In procurement contracts [services, supplies, works] the CFCU/IA would describe in Terms of reference / Technical specifications the project which is wanted to be carried out. The approach is slightly different for grants. The grant is “made for an operation which is proposed to the CFCU/IA by a potential beneficiary (an “applicant”) and falls within the normal framework of the beneficiary's activities.”

It is therefore important to ensure the widest possible publicity on the calls for proposals and guidance to the applicants.

← PRAG § 6.4.1 Publicity

Guidelines for applicants must be published for every Call for Proposals:

- Locally through the publication of a minimum information (**PRAG - Annex E2 – Local publication for call for proposals** ) ,
- On the Europaid website:
 - **PRAG - Annex E3a – Guidelines for grant applicants responding to the call for proposals for Open Call for proposal** ,
 - **PRAG - Annex E3b – Guidelines for grant applicants responding to the call for proposals for Restricted Call for proposal** ,
- and in any other appropriate media (specialised press, local publications, etc...).

E.5.5. Contents of the Guidelines for Applicants

The Guidelines for Applicants [GfA] and their annexes should be drafted for each Call for Proposal using the template provided in the PRAG and should be adapted to each grant programme specifically.

← PRAG § 6.4.2 Drafting and contents of the guidelines for applicants

The GfA serve to provide for information and instructions to the applicants on:

- Background
- Objectives of the programme and priority issues
- Financial allocation
- Rules of the Call for proposals, i.e.:
 - eligibility criteria of applicants [who may apply],
 - partnerships and eligibility of partners,
 - eligibility of actions [actions for which an application may be made],
 - eligibility of costs [costs which may be taken into consideration for the grant],
- For restricted procedures : how to prepare, where and how to send the Concept Note Form (**PRAG - Annex E3b_1** ) .
- For all procedures, how to prepare, where and how to send the Application Form :
 - **PRAG - Annex E3a_1 Application form open call** ,
 - (**PRAG - Annex E3b_2 Application form-restricted call** ) .
- Procedures for evaluation and selection of the applications
- How to submit supporting documents for provisionally selected proposals,

²¹ Any substantial change in the Annual Work Programme for Grants must also be published in the same conditions as the initial Programme.

- How is the Contracting Authority's decision notified [content of the decision, indicative time table],
- Conditions applicable to implementation of the action following the Contracting Authority's decision to award the grant and more particularly:
 - final amount of the grant,
 - conditions applicable in case of failure to meet the objectives,
 - conditions relating to the amendments to the contract and variations within the budget,
 - reporting, monitoring and evaluation arrangements,
 - expenditure verification and payments procedures,
 - keeping accounts of the action,
 - Publicity rules,
 - implementation of contracts procedures and rules.

The GfA include the following annexes:

- Concept Note Format,
- Grant application Form,
- Budget template,
- Logical framework template
- Templates of legal entities sheets
- Financial Identification Form [FIF],

and information such as internet links to :

- Standard contract form
- Daily Allowance rates (Per Diem).

E.5.6. Eligibility criteria

The information published in the GfA subsequently become binding for the EvC.

The evaluation grids:

- **PRAG - Annex E5a – Concept Note Evaluation Grid** ,
- **PRAG - Annex E5b – Proposal Evaluation Grid** ,

must be included in the GfA and cannot be changed.

☛ **PRAG § 6.4.3 Eligibility and evaluation (selection and award) criteria**

The eligibility criteria for applicants and project objectives are defined by the SPO, following the provisions of the relevant Project Fiche.

A letter will be sent to the SPO by the PAO to require adjustments to the eligibility criteria if needed.

Role of the SPO - Procedure

- Support the preparation of the GfA
- Ensure that the staff involved in the preparation / control of the GfA sign a

Declaration of Objectivity and Confidentiality (PRAG - Annex A3 ,

- Ensure that the preparation of the GfA is supported by the use of the **Check-list for control of Guidelines for Applicants** in order to guarantee that the GfA:
 - are timely and properly prepared (quality assurance),
 - comply with the objectives and needs described in the related Project Fiches,
 - clearly describe / define expectations of what is to be delivered and how this will be measured,
- ☛ **Annex E01 – Check-lists for control [prior to submission to PAO] of :
E01e – Guidelines for applicants [Grants]**
- Submit to the CFCU/IA :
 - the draft version of the GfA in hard as well as electronic copy
 - a copy of the **Check-list for control of Guidelines for applicants.**

Once the final version of the GfA are approved, the SPO will be informed in written by the PAO.

E.5.7. Clarification to Candidates

The applicants may request additional information or clarification up to 21 days before the deadline for submission of proposals. All applicants must receive the same information; therefore the answers are published at least 11 days before the deadline for submission of proposals.

The CFCU/IA is responsible for responding to the questions either by providing additional information or by clarifying the issue(s) raised by tenderers.

☛ **PRAG**

§ 6.4.4 Additional information before the deadline for submission of proposals

§ 6.4.5 Deadline for submission of proposals

The minimum period between the date of publication of the Guidelines and the deadline for receipt of proposals is 90 days.

When the maximum size of each grant to be awarded within the programme is less or equal to € 100,000, the minimum period is 60 days. In exceptional cases, a shorter deadline may be allowed as a derogation.

The deadline for submissions of proposals (when they must reach the address for submission) must be at the close of business of a working day.

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to clarifications to tenderers [mainly for technical issues raised by the potential tenderers]
- Support the preparation of “Information session on the call for proposal” [if any is organised and announced in the Call for proposal - **PRAG - Annex E2 – Local publication for call for proposals** 

E.5.8. Supporting documents from applicants

Administrative conformity requirements in relation to grants have been lightened in the PRAG since February 2006. The evaluation of grants proposals starts with their relevance and their technical and financial aspects, while administrative conformity and eligibility are checked only for proposals selected for financing²². Details are available in :

☛ **PRAG - § 6.4.6 Submission of proposals**

E.5.9. Evaluation Committee and Assessors

☛ **PRAG § 6.4.7 The Evaluation Committee**

See Section E.2.5 - Evaluation Committee.

Note:

The EvC members should attend all meetings, except the opening meeting [PRAG 6.4.7.1]. Any absence must be recorded and explained in the Evaluation Report.

Any member who withdraws from the EvC for whatever reason must be replaced by his substitute or following the standard procedure for appointing members of the EvC [PRAG 6.4.7.1.] The Chairperson of the EvC determines to what extent the evaluation process must be restarted. Such decision as well as any decision relating to the replacement of a committee member must be recorded and justified in the Evaluation Report.

Assessors

Given the high number of proposals usually received, it may not be possible for the EvC to examine each concept note and/or proposal in detail.

Instead, assessors who are not members of the EVC may be engaged to carry out this detailed examination so that the EVC may carry out its

deliberations on the basis of their assessments. Assessors can never be members of the EVC, although they may be present at meetings of the EVC as observers.

Assessors may be civil servants (or other agents of the public administration) or external experts. They must have an in-depth knowledge of the issues covered by the grant programme for which proposals are being evaluated. Their expertise should be established on the basis of their CVs.

A minimum of five years' experience of a particular issue should be expected. External assessors who are not civil servants or other agents of the public administration of the beneficiary country must be selected in accordance with the standard procurement procedures.

Assessors work under the supervision of the Chairperson of the EvC. Although the same assessors may be used for the different stages, different types of expertise are required for the different assessments and it is recommended to use different persons wherever possible.

However, even in the case that assessors are used, the EvC voting members shall be fully responsible for the results of the evaluation.

E.5.10. Evaluation of applications

The CFCU/IA receives and registers the proposals submitted by applicants. The proposals are kept in a locked and secured place until the opening session.

The evaluation of the applications is performed through the following stages :

☛ **PRAG**

§ 6.4.8.1. Receipt and registration of proposals

§ 6.4.8.2. Opening session and administrative check

§ 6.4.8.3. Evaluation of the concept note

§ 6.4.8.4. Evaluation of the application form

§ 6.4.8.5. Verification of eligibility

§ 6.4.8.6. Conclusions of the EvC

The table hereinafter provides for details on steps of the procedure, the relevant sections of the PRAG and the Annexes of the PRAG which are applicable.

²² Note AIDCO/KR D(2006) 1847 dated January 31, 2006 to the attention of the AIDCO staff and Delegations

Steps of the evaluation procedure PRAG sections	Relevant PRAG Annexes	
	Open Call for proposals	Restricted Call for proposals
§ 6.4.8.1. Receipt and registration of proposals	E4  Acknowledgement of receipt – Hand delivery of Applications / Concept Notes [to be printed on letterhead of the CFCU/IA]	E4  Acknowledgement of receipt – Hand delivery of Applications / Concept Notes [to be printed on letterhead of the CFCU/IA]
§ 6.4.8.2. Opening session and administrative check - Control of the respect of the deadline for reception of the Applications / Concept notes - Administrative check: assessment of the compliance with criteria mentioned in the checklist annexed to the grant application form (section V of the grant application form).	E3a_1  Check-list included in the Application form E6a  Evaluation Report : Step 1 – Opening and Administrative checks [open call]	E3b_1  Check-list included in the Concept note E7a  Evaluation Report : Step 1 – Opening and Administrative checks [restricted call]
Transmission to the applicants of a standard letter to : - indicate whether or not their application was received within the deadline, - inform of the reference number the applicant has been allocated, - indicate if the application has satisfied all criteria mentioned in the checklist annexed to the grant application form (section V of the grant application form), - indicate if the Concept Note has been recommended for further evaluation.	E9a_1  Letter to applicants after opening rejected [open call] E9a_2  Letter to applicants after opening accepted [open call]	E9e_1  Letter to applicants after opening phase 1 rejected [restricted call] E9e_2  Letter to applicants after opening phase 1 accepted [restricted call]
§ 6.4.8.3. Evaluation of the Concept Note Invitation to short-listed applicants [for restricted procedure] to submit a full application form.	E5a  Concept note evaluation grid E6b  Evaluation report Step 2 : Concept Note Evaluation [open call]	E5a  Concept note evaluation grid E7b  Phase 1 - Evaluation report – Step 2 : Concept Note Evaluation [restricted call] E9f_1  Letter to applicants after evaluation concept note pre-selected [restricted call] E9f_2  Letter to applicants after evaluation concept note not pre-selected [restricted call]
Transmission to the applicants of a standard letter to indicate whether or not their full application will be evaluated or not	E9b_1  Letter to applicants after evaluation concept note pre-selected [open call] E9b_2  Letter to applicants after evaluation concept note not pre-selected [open call]	
§ 6.4.8.4. Evaluation of the application form	E5b  Proposal evaluation grid	E3b_2  Check-list included in the Application Form E5b  Proposal evaluation grid E7c  Phase 2 – Evaluation Report – Step 1 : opening and

Steps of the evaluation procedure PRAG sections	Relevant PRAG Annexes	
	Open Call for proposals	Restricted Call for proposals
		administrative checks of the Application Forms E 9g_1  Letter to applicants after opening phase 2 rejected [restricted call] E9g_2  Letter to applicants after opening phase 2 accepted [restricted call] E7d  Evaluation report of the application [restricted call]
	E6c  Evaluation report of the full application form [open call]	
Transmission to the applicants of a standard letter to : <ul style="list-style-type: none"> - indicate whether their proposal has been provisionally selected according to their score, - invite those whose proposals have been provisionally selected to supply required supporting documents. 	E9c_1  Letter to applicants after evaluation application form provisionally selected [open + restricted call] E9c_2  Letter to applicants after evaluation application form rejected [open +restricted call] E9c_3  Letter to applicants after evaluation application form reserve list [open + restricted call]	E9c_1  Letter to applicants after evaluation application form provisionally selected [open + restricted call] E9c_2  Letter to applicants after evaluation application form rejected [open +restricted call] E9c_3  Letter to applicants after evaluation application form reserve list [open + restricted call]
§ 6.4.8.5. Verification of eligibility. Assessment - using criteria set out in the GfA.- of the Declaration made by the applicants in section VI of the Grant Application Form § 6.4.8.6. Conclusions of the EvC Transmission of letters to successful candidate, unsuccessful candidates and candidates put on Reserve List. The letters to the successful applicants must be sent within 15 days of the award decision and letters to the unsuccessful applicants within a further 15 days of that.	E6d  Evaluation report – Final Eligibility checks [open call] <u>Successful candidates:</u> E9d_1  Letter to applicants award [open + restricted call] <u>Unsuccessful candidates :</u> E9d_2  Letter to applicants non award [open + restricted call] <u>Reserve List :</u> E9d_3  Letter to applicants put on Reserve List [open + restricted call]	E7e  Final evaluation report [restricted call] <u>Successful candidates:</u> E9d_1  Letter to applicants award [open + restricted call] <u>Unsuccessful candidates :</u> E9d_2  Letter to applicants non award [open + restricted call] <u>Reserve List :</u> E9d_3  Letter to applicants put on Reserve List [open + restricted call]

E.5.11.Grants less or equal to €10,000

When:

- the maximum size of each grant to be awarded is less or equal to € 10000, and
- the potential beneficiaries of the grants are community based organisations or other local organisations,

the PAO may award grants without calls for proposals.

The PAO implements publicity measures and evaluation procedures which are suitable for this kind of programme in order to ensure the respect of the principle of transparency and equal treatment while avoiding any conflict of interests. Each grant contract to be concluded has to specify in particular :

- its subject,
- its beneficiary,
- its duration,
- the maximal amount of the grant,
- the description of the action,
- the estimated budget,

- the beneficiary' acceptance of the checks to be carried out by the Commission and the Court of Auditors and,
- the Beneficiary's obligations as regard management and reporting.

When the implementation of such grant contract requires procurement by the beneficiary, the relevant rules of nationality and origin do apply. Subcontracting may only concern a limited portion of the action.

☛ **PRAG § 6.5. Grants of low amount in decentralised management**

E.5.12. Contracting

☛ **PRAG § 6.4.10.2. Contract preparation and signature**

See also:

☛ **PRAG § 6.4.10.3. Characteristics of the standard grant contract**

After the Evaluation Report is approved by the PAO, the CFCU/IA organises the signature of the grant contracts and prepares a dossier for each grant contract to be concluded comprising the following items:

- Three copies of the specific parts of the contract using the standard grant contract [PRAG - Annex E3h] :
 - E3h_1 Special conditions (any additions to or derogations from the General Conditions must be specified in Article 7 of the Special Conditions, which is provided for that purpose)
 - E3h_2 General conditions (annex II)
 - E3h_3 Contract-award procedures (annex IV)
 - E3h_4 Request for payment (annex V)
 - E3h_5 Interim narrative report (annex VI)
 - E3h_7.2 Final narrative report
 - E3h_7 Financial report (annex VI)
 - E3h_8 Expenditure verification (annex VII)
 - E3h_9 Financial guarantee (annex VIII)

The selected applicants sign all copies of the Contract and provide the PAO with any required additional information as well as a payment request and any financial guarantee required in the contract.

The PAO and the grant beneficiary must note on the contract the date on which they sign it. The

contract takes effect on the date of the later signature.

A contract cannot cover earlier activities except in duly substantiated exceptional cases.

☛ **PRAG § 6.2.5. Non-retroactivity**

The CFCU/IA arranges for one copy of the contract to be sent to the SPO.

The PAO contacts the SPO to inform him / her and to ask him for preparing the forthcoming actions (preparation for starting the contract).

Role of the SPO - Procedure

- Provide the CFCU/IA with any input required by the PAO in relation to the preparation of the Grant Contracts,
- Support the PAO in the preparation for the starting of the grant contracts.

E.5.13. Publication of award

Once the contracts have been signed, the CFCU/IA ensures that :

- a notice of award for each call for proposals (PRAG - Annex E11 ) is prepared and transmitted to the EC which publishes the results of the call for proposals on the EuropeAid website,
- the award is published locally as relevant.

☛ **PRAG § 6.4.10.4. Publishing the award of grants**

In addition, the CFCU/IA ensures:

- the record of all statistical information concerning the contract procurement procedure (including the grant amounts, the names of the applicants, and details of the beneficiaries),
- the transmission to the EC [at the end of each year] for publication a summary table based on the format in PRAG - Annex E11  (including the table of grants made without a call for proposals).

E.5.14. Cancelling the tender procedures

See Section E.2.15 - Cancelling the tender procedures

☛ **PRAG § 6.4.9. Cancelling the call for proposals procedure**

E.6. TWINNING

The following sections refer to the Twinning Manual 2005 published on the EC web site:

- Main text :  http://ec.europa.eu/enlargement/pdf/financial_assistance/institution_building/manual_2005_en.pdf
- Annexes :  http://ec.europa.eu/enlargement/pdf/financial_assistance/institution_building/manual_2005_annexes_en.pdf

E.6.1. Introduction

The “Twinning” instrument is an initiative of the EC designed to assist new Member States and Candidate Countries to create or adapt their administrative and democratic institutions to meet EU membership standards.

Twinning Projects deliver “Technical Assistance” from a Member State to Candidate Countries by providing :

- experts referred to as Resident Twinning Advisors [RTAs]: these are civil servants from Member States who would work in Bulgaria on a full time basis for at least twelve months,
- short and medium term mission by specialised experts.

Twinning is a joint process in which both partners (Member State and Bulgaria) take on responsibilities : their respective formal commitment is set out in a **Twinning Contract**.

Twinning projects are implemented to achieve **mandatory results** through the transfer of hands-on public sector experience and expertise. Thus, the signatories of Twinning Contracts commit themselves to the results, and not only to the means to achieve them.

☛ **Twinning Manual - § 2.1 The Fundamental Principles for all Twinning Projects**

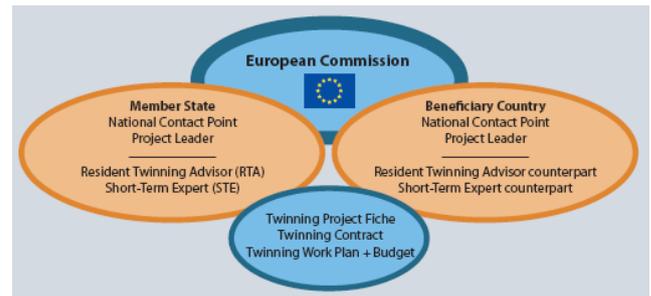
Bulgaria commits to undertaking the projects and achieving the results stated in the Project Fiche, and the Member State commits to providing the assistance for the duration of the project through the implementation of a detailed **work plan**.

The Twinning partners draft the detailed work plan, before starting work to underpin the credibility of their commitment.

The work plan may be adapted in the course of its implementation, but it must fix clear benchmarks to allow for close monitoring of progress towards the final result.

☛ **Twinning Manual - § 2.3 The Twinning “Work Plan”**

E.6.2. Main actors



[Figure above is extracted from DG Enlargement brochure Twinning, Building Europe together available on EC web site at http://ec.europa.eu/enlargement/pdf/twinning_brochure_2005_en.pdf]

Under EDIS, the CFCU is the **Administrative Office [AO]** and takes on board the functions performed by the EC Delegation under DIS in relation to financial and administrative management of the Twinning projects.

The responsibility of the CFCU under EDIS implies that that the PAO should have authority to ensure the effective supervision [both for financial and operational aspects] over the respective line ministries and administration which prepare, host, and implement the Twinning projects in Bulgaria.

☛ **Article 4(3) of Decree 131 of June 28, 2005 specifies that “The PAO (...), while executing his/her rights, shall require from the persons and institutions involved in the implementation of the projects, to follow the instructions issued by him/her”**

Yet, the beneficiary administration / line ministry and MS administration should maintain their scope of commitment and ownership of the Twinning project.

The host administration in Bulgaria negotiates the joint work plan with its MS counterparts and is responsible for implementing it.

The role of the main actors listed below is fully described in the EC Twinning Manual.

- CFCU = Administrative Office in Bulgaria

- ☛ **Twinning Manual - § 2.7 Role of the Administrative Office in the Beneficiary Country**
- Bulgarian National Contact Points
 - ☛ **Twinning Manual - § 2.4 Role of the Beneficiary Countries (BC) – BC National Contact points**
- Member State National Contact Points
 - ☛ **Twinning Manual - § 2.5 Role of the Member States (MS) – MS National Contact points**
- Project Leaders
 - ☛ **Twinning Manual - § 2.2 The Project Leaders (PL) and the Resident Twinning Adviser (RTA)**
- Resident Twinning Advisers
 - ☛ **Twinning Manual - § 2.2 The Project Leaders (PL) and the Resident Twinning Adviser (RTA)**

- The European Commission

- ☛ **Twinning Manual - § 2.6 Role of the Commission**

- A Project Steering Committee [if foreseen in the Twinning work plan] to ensure coordination during the implementation.

- ☛ **Twinning Manual - § 4.3 Deciding Project Management responsibilities**

E.6.3. The Twinning cycle project

[See figure hereinafter extracted from DG Enlargement brochure: “Twinning, Building Europe together” available on EC web site at http://ec.europa.eu/enlargement/pdf/twinning_brochure_2005_en.pdf]



E.6.4. Responsibilities

EC [under EDIS]

- Programming;
- Circulation of Twinning project fiches;
- Accreditation or cancellation of mandated bodies;
- Reception of proposals and dispatch of proposals to BC administration (AO);
- Issuing of a compulsory and binding opinion on the relevance of the work plan in relation to the relevant EU policy objectives (acquis) and latest developments. This opinion will however not cover financial and contractual aspects.
- Initial Training of Resident Twinning Advisers;
- General co-ordination of the EC Twinning manual;
- General monitoring, controls ex-post or otherwise;
- Evaluation.

CFCU

As Administrative Office under EDIS, the CFCU is responsible for :

- Circulation of Twinning project fiches [in the context of call for proposal];
- Registration of Member State's Twinning proposals;
- Dispatch of Twinning proposals to beneficiaries;
- Checking that the detailed proposals meet the required standards;
- Organisation and management of selection meetings and selection of partners;
- Communication of selection results to administration of the present MS;
- Assistance to project partners in drafting Twinning Contract and annexes;
- Assessment of proposed Twinning Contracts in terms of content and finances;
- Request for Commission opinion on relevance of work plan in relation to the EU acquis and subsequent modifications as necessary;
- Drafting, signature and notification of financing decision to Twinning partners, ensuring compliance with the Commission's binding opinion upon the relevance of the work plan;

- Payments;
- Monitoring of implementation (e.g. side letters, attending project steering committees);
- Approval of amendments;
- Approval of compliance with jointly agreed objectives of the Twinning project;
- Approval of final invoice and payment;
- Receipt, examination and approval of all Twinning project reports, and
- [where requested by the Member State partner] the tendering and contracting of private sector inputs for services and supplies subject to the provisions of the Twinning Manual 7.6.

Beneficiary (line ministry)

- Design Twinning Projects in Project Fiches (in the programming phase)
- Select Twinning Partners and prepares Twinning Contracts with twinning partners
- Commits to the implementation of the Twinning Project so that results are achieved,
- Prepare with the MS the Joint Work Plan and ensure that the following details are taken into account :
 - departments or bodies concerned,
 - official(s) responsible for the changes to be made and for achieving the desired outcome,
 - availability of appropriate office space and logistic,
 - budgetary resources to be mobilised,
 - timetable for the work it will itself undertake at each stage of the project's progress.

Commission's Steering Committee [under EDIS]

The Steering Committee is made up of the relevant Commission services and chaired by DG Enlargement.

It is consulted through electronic means and it meets as often as required, depending on the need for further consultation between the involved departments of the Commission.

Under EDIS, its role is limited to issuing of a compulsory and binding opinion [which provides guidance and recommendations] on the relevance of the Twinning work plan in relation to the EU acquis and its latest developments at that stage.

Bulgarian National Contact Point [NCP]

- Is the central point of communication between the Commission and Bulgaria, in particular of programming;
- Is the central contact point for other Bulgarian and MS NCPs;
- Channel information to Bulgarian Ministries and other relevant bodies and coaching them on the process and development of Twinning projects;
- Co-ordinate the administration of all Twinning activities in Bulgaria and resolve any horizontal administrative obstacles;
- Attend meetings with other Bulgarian and MS NCPs.

MS National Contact Point [NCP]

- Is the central point of communication between the Commission and the MS,
- Is the central contact point Bulgarian and other MS NCPs;
- Channel information to MS Ministries and other relevant bodies and coaching them on the process and development of Twinning projects;
- Co-ordinate the overall administration of all Twinning activities in BCs and resolve any common administrative obstacles (e.g. accounting for reimbursements),
- Assist in case of problem in the negotiation of consortium agreement,
- Filter and submitting project proposals,
- Attend meetings with Bulgarian and other MS NCPs.

Project Leaders

MS Project Leader – who is not an Adviser - continues to work in his/her MS administration but who devotes a portion of his/her time²³ to :

- conceiving, supervising and co-ordinating the overall thrust of the project,
- maintain .an operational dialogue and backing at political level with Bulgaria..
- direct the implementation of the project.

S/he is always complemented by at least one full-time Resident Twinning Adviser (RTA), from a MS to work on a day-to-day basis with the

Bulgarian administration in Bulgaria and accompany the implementation of the Twinning project.

A Bulgarian Project Leader is needed in each Twinning project to:

- act as the counterpart of the MS Project Leader,
- ensure in close co-operation the overall steering and co-ordination of the project.
- operate at the appropriate political level [if required].

Resident Twinning Adviser [RTA]

Technical experts [civil servants or equivalent from MS] based in Bulgaria for at least twelve consecutive months [but no more than three years in total in any one country] to :

- provide technical advice and assist the administration or other public sector bodies in Bulgaria in the context of a predetermined work plan,
- be in charge of the day-to-day implementation of the Twinning project in Bulgaria,
- assist and give advice to the representatives of the partner institution in Bulgaria to which they are assigned,
- work in any field where their services are deemed necessary according to the Twinning Contract, provided there is no conflict with the interests of their administration or mandated body of origin.
- carry out their duties and conduct themselves solely with the interests of the host administration in Bulgaria and those of the EU in mind,
- abstain from any action and, in particular, any public expression of opinion, which may reflect on their position [if in the performance of their duties, they are called upon to pronounce on a matter, in the handling or outcome of which they have a personal interest such as to impair their independence, they will immediately inform the MS Project Leader to whom they report.],
- exercise the greatest discretion with regard to all facts and information coming to their knowledge in the course of or in connection with the performance of their duties;

RTAs shall not:

- in any form whatsoever disclose to any unauthorised person any document or information not already made public;

²³ It is recommended that a minimum of 3 days per month including one visit every months (more for complex projects) is allocated

- publish or cause to be published - whether alone or together with others - any matter relying to their work with the host administration in Bulgaria or the EU without obtaining permission from the EC and the beneficiary administration with the conditions and rules in force in Bulgaria.

RTAs are responsible to the Project Leader of the MS in respect of the performance of the tasks entrusted to them.

E.6.5. Conventional Twinning

E.6.5.1. Call for proposals

Twinning Project Fiches are circulated by the EC to Member States National Contact Points inviting the Member States to submit proposals. Each Twinning Project Fiche can include only one twinning project.

Member States submit offers using standard format

☛ **Twinning Manual – Annex C2 Model Twinning proposal**

Since prices and rates for the reimbursement of expenses incurred by the MS administrations are fixed, MS make their proposals based purely on what is perceived as the comparative advantage of their administrative system and the quality and experience of their administrative experts.

E.6.5.2. Publication of Call for proposals

As a matter of information the call for Twinning proposals is published on the website of the Directorate General in charge.

The CFCU shall transmit to the relevant EC services any information required for the preparation and **publication of the Twinning Call for Proposals**.

☛ **Twinning Manual – Annex C7 Publication of the Twinning Call for Proposals in the Internet**

The CFCU does not proceed to any pre-selection of the proposals. The CFCU :

- registers the proposals received from the Member States via the EC interested in participating in the project,
- Informs all MS of the number of proposal received for each Twinning Project Fiche,
- formally transmits the proposals to the beneficiaries,
- notifies the beneficiaries on the deadline set up to make a decision on the choice of the MS partner.

E.6.5.3. Selection meetings

The CFCU organises and chairs – in Bulgaria - meetings between:

- the MS administrations [this should include the MS Project Leader and the RTA(s)] which have put forward Twinning proposals and,
- the relevant Bulgarian Beneficiary [this should include the Bulgarian Project Leader and the RTA counterpart].

The purpose of these meetings is for the Beneficiary in Bulgaria to appreciate the quality of the expertise offered by the Member State in order to make a choice.

During these meetings :

- the MS perform an oral presentation of their proposal,
- both oral and written proposals are assessed.

☛ **Twinning Manual – Annex C3 Oral presentation of MS Twinning Proposal at Twinning Selection meeting in BC**

A **Selection Fact Sheet** will be used for evaluation by the Beneficiary administration of each MS proposal presented during the selection meeting.

☛ **Twinning Manual – Annex C5 Model of Twinning proposal**

Feedback should be given to all participating MS on the decision process. The CFCU :

- files the Selection Fact Sheets,
- informs individually the MS partners + copy to the National Contract Point of the selected MS and DG Enlargement.

The letter to MS and DG Enlargement will indicate any particularities and spell out rights and responsibilities.

It will constitute the green light to proceed with the drafting of the Twinning Contract.

E.6.5.4. Possible recirculation

If it was not possible to select a partner from the first round of proposals, the project may be re-circulated a second time.

If it still proves impossible to select a suitable partner, the PAO may resort to traditional Technical Assistance. In this case of failure to receive the proper proposals before the decision of the use of TA the PAO will consult with the

NAO. Procedures for modification of the Project Fiche shall apply. [See H.3 - Modification of FA / FM / PF - Reallocation of funds]

E.6.5.5. Drafting the “Twinning Contract” and Work plan

Within 3 months of notification of selection, the selected MS partner, the Bulgarian NCP and the Beneficiary must prepare and transmit to the CFCU a detailed Twinning work plan with a corresponding budget and other annexes to form the Twinning Contract structured as follows:

- Special Conditions (up-front contract)
- Annex I: Description of the Action - including Work Plan;
- Annex II: General Conditions applicable to EC-financed grant contracts for external Actions;
- Annex III: Budget for the Action (including co-financing part by the Final Recipient of the Action);
- Annex IV: Contract-award procedures;
- Annex V: Standard request for payment and financial identification form;
- Annex VI: Model audit certificate;
- Annex VII: Special Financial Annex;
- Annex VIII: Mandates (if MS have formed a consortium).

☛ **Twinning Manual – Annexes A – A1 to A8**

E.6.5.6. Control by the CFCU

Within 4 weeks of submission to the CFCU of the draft contract, the CFCU shall:

- formulate any relevant comment on the draft contract [including the compliance of the breakdown of costs with the rules] and Work Plan,
- request adjustments to be performed jointly by the selected MS partner and the Beneficiary,
- formally set up a deadline for receiving the amended version of the draft Twinning contract and Work Plan

Within 2 weeks of submission to the CFCU of the amended version of the draft contract / work plan, the CFCU shall :

- get back to the twinning partners,
- forward the Twinning work plan to the EC Headquarters for a consultation procedure with the concerned line DGs and the Commission Steering Committee proceeding which will result in a compulsory binding opinion.

The consultation procedure normally takes 10 working days.

E.6.5.7. Control of the Work Plan by the Bulgarian Project Leader

The AO [CFCU] will request the beneficiary to perform a review of the Work Plan as well as to provide any other technical support and input which might be required. Controls to be performed by the Beneficiary should be formalised in a check-list which shall be transmitted to the PAO.

☛ **Annex E01f – Check-list for control [prior to submission to PAO] of Work Plan for Twinning**

E.6.5.8. Compulsory binding opinion

The Commission Steering Committee is called upon to assess the credibility of the work plan in relation to the targeted mandatory result and the accuracy of the underlying EU acquis.

Assessment by the Commission Steering Committee results in a binding opinion which is a pre-condition for the financing of the Twinning project with EU funds..

The project is sent for consultation before being discussed by the Commission Steering Committee and opinions issued by the Commission Steering Committee can take the following forms:

I. recommend to finance the project as presented, either

- (i) unconditionnaly, or*
- (ii) conditionnaly;*

II. recommend that the Twinning partners undertake further amendments or clarifications, either by

- (i) written procedure, or*
- (ii) full debate;*

III. recommend to reject the proposal as it stands and recommend a full reworking.

☛ **Twinning Manual - § 3.9 Approval of the Twinning Contract**

Full or conditional approval

If the members recommend full or conditional approval within the given deadline (15 working days) and do not recommend a specific discussion, the project need not be discussed at a plenary meeting. If the Twinning work plan is recommended for conditional approval subject to a number of alterations (case I (ii) above), the modifications recommended will be of a technical nature and not fundamental.

The PAO is sent a specification of the conditions to be fulfilled, with a copy to the partners. The partners modify the project accordingly and resubmit it, fully signed, to the PAO.

The CFCU verifies for the PAO the compliance with the conditions, consulting with EC Headquarters in cases of doubt, and confirms final approval to the partners. The project does not have to be resubmitted to the Steering Committee.

Need for substantial modifications

If the Steering Committee recommends more substantial modifications, the project is sent back to the partners for reworking before being resubmitted to the Committee.

The Committee may recommend resubmission for further examination by written procedure (case II (i) above) or, alternatively, if the revisions are sufficiently major to warrant further discussion, the project may be resubmitted for full debate (case II (ii)). This involves undergoing the full Steering Committee consultation procedure.

The Commission will not normally select option III in the first submission of a Twinning work plan to the Steering Committee (except in cases where Twinning work plans contain fundamental flaws) and will always try to work with both the BC and MS to assist them in developing the Twinning work plan into a viable format. The Commission will always endeavour to make its reasoning clear.

Timing

Provided that :

- the comments of the CFCU are fully addressed,
- the Commission compulsory and binding opinion on the relevance of the work plan in relation to the relevant EU policy objectives (acquis) and latest developments [this opinion will however not cover financial and contractual aspects] is obtained and integrated into the work plan,

the overall target remains that projects can become operational not later than a maximum of 6 months after notification of the selection.

The CFCU will ensure that the requested changes have been made prior to the final signature.

If the Twinning Contract is not timely drafted

If the twinning partners do not produce a draft Twinning Contract for submission to the CFCU

within three months of the MS partner(s) being informed of their selection, the PAO may instruct the CFCU to re-circulate the Twinning project fiche.

In this case, **both parties [the MS partner and Bulgarian Beneficiary] will bear their respective preparation costs** incurred in the unsuccessful attempt to draft the Twinning Contract.

E.6.5.9. Signature of the Twinning Contract

Once the Commission has issued its binding opinion on the relevance of the Twinning work plan with respect to the EU acquis and has transmitted it to the CFCU, the CFCU must verify that the project partners have duly integrated the Commission's comments on the work plan, if any.

The CFCU must also ensure that the beneficiary administration has signed the work plan and budget.

Following this two-fold verification, the Twinning Contract is ready for signature [4 originals are required] :

On behalf of the MS

- (1) By the official representing a binding commitment of the government (administrative authority)
 - (2) By the person in the administration or mandated body responsible for the implementation of the MS obligations in the Twinning project. The person responsible for the implementation of MS obligations in the project also initials all annexes to the Twinning contract. Examples of persons who may be able to bind the MS government (administrative authority) concerned would be a senior official authorised to sign on behalf of the government, the NCP or the Ambassador to the EU.
- If a Twinning project is entirely under the responsibility of a decentralised public authority (Land, Département or region), it may sign instead of a central administrative authority, subject to approval by the central authorities (e.g. represented by the NCP).

On behalf of Bulgaria

- (1) By the PAO of the CFCU signs the Twinning Contract and initials all annexes, expressing his/her overall contractual and financial responsibility.
- (2) By the official(s) responsible for the implementation of the Twinning project in the beneficiary administration sign(s) the work

plan (Annex I) and the Budget (Annex III) expressing commitment and ownership of their administration.

☛ **Twinning Manual - § 3.10 Signature of the Twinning Contract**

E.6.5.10. Notification of the Contract

The CFCU notifies the partners of signature attaching the appropriate originals.

A copy of the Twinning Contract, which has been finally signed by the PAO and notified to the project partners by the PAO will also be sent by the CFCU to the EC Headquarters.

The date of the notification by the CFCU signifies the legal starting date as well as the first possible starting date for the implementation of the work plan of the project or reimbursement for presence in the Bulgaria of the RTA. No costs incurred before that date may be covered out of project funds, except those related to costs incurred for its preparation, subject to the provisions under section 5.2 and Annex VII to the Twinning Contract.

☛ **Twinning Manual - § 3.11 Notification of the Twinning Contract**

E.6.6. Twinning Light

"Twinning Light" consists of the provision by a Member State of a package of services, generally involving one or more short missions (for example, one or two weeks at a time) by selected officials (civil servants), and/or, less frequently, civil servant experts staying for lengthier, intermediate periods.

☛ **Twinning Manual – Section 8 – Specific procedures for Twinning Light**

The main difference differences between standard Twinning and twinning light are:

- The absence of a Resident Twinning Advisor [thus no need for additional run-in time for his/her mobilisation];
- The absence of a jointly designed work plan. This enables the project to be approved in shorter delays. However, the project fiche has to very precisely define the requested input and cooperation. To achieve the set objectives and mandatory result will remain essential;
- No Consortia of MS partners allowed;
- No purchase of equipment or private sector services allowed except for translation and interpretation where necessary.
- Limits: financial ceiling for "Twinning Light" projects is 250,000 € and duration limited to

6 months; in exceptional cases this can be extended to 8 months.

E.6.6.1. Project Fiches

As a rule 'Twinning Light' projects should be included in the country's Phare programming exercise, but they can also be initiated in the interim between two exercises. For this purpose national Phare programmes may budget an unspecified amount ("twinning pot") earmarked for 'Twinning Light' projects which emerge from the negotiation process.

For Twinning Light projects identified between programming exercises:

- Detailed Project Fiches are drawn up on the basis of the unallocated twinning pot without initial Project Fiche,
- EC in Brussels has the final decision.

E.6.6.2. Detailed Project Fiche

The Detailed Project Fiche will form an annex to the "Twinning Light" contract. It must cover the background, the ongoing reform process, the longer-term and immediate objectives and the outputs/results of the required assistance so as to allow interested MS to prepare a detailed offer quickly.

☛ **Twinning Manual – § 8.2 – The detailed "Twinning Light" Project Fiche**

The Detailed Project Fiche must provide for :

- a detailed description of the beneficiary institution;
- the context in the BC;
- the proposed methodology for implementing the intended reform;
- the nature of the activities;
- the mandatory result/s it wishes to target, including benchmarks;
- profile of the experts required;
- the Bulgarian administration' own strategy for achieving its objectives and the means it intends to deploy;
- a clearly identified BC Project Leader with all references (phone, fax, email). Where appropriate, additional counterpart personnel responsible for individual components must be nominated;
- the precisely defined inputs it is seeking from a MS and the amount of funds it wishes to use for that purpose;
- working language;
- total budget available.

The Detailed Project Fiches will be communicated to the CFCU by the SPOs at the earliest possible stage.

E.6.6.3. Call for proposals

Under EDIS, the CFCU sends approved Detailed Project Fiche through National Contact Points to all Member States calling for detailed written offers.

☛ **Twinning Manual - § 8.4.1. Circulation of projects**

The proposal shall be sent to the CFCU within 6 weeks [delay may be extended if the project refers to a much specialised area of administrative practice or if the timing of the circulation warrants such extension] and contain:

- the name of a designated Project Leader responsible for the coordination of the MS inputs (this can be one of the experts designated to work in the candidate country),
- CVs of proposed officials, matched to the requirements defined in the Detailed Project Fiche under which they will work,
- budget for fees (units and rates) and reimbursable costs (maximum lump sum, subject to compliance with twinning rules and presentation of invoices).

E.6.6.4. Transmission of proposals to the Beneficiary

Proposals will be forwarded by the CFCU to the Beneficiary (email and hard copy).

E.6.6.5. Selection of a proposal

☛ **Twinning Manual - § 8.4.3. Selection procedure**

The CFCU will set up an Evaluation Committee and ensure that all relevant procedures are followed, but it will not have a vote in the selection process.

MS will generally not be requested to present their proposal at Selection Meetings. However, in some cases, MS may be invited to do so. Expenses thus incurred will not be reimbursed.

The Evaluation Committee will consist of representatives of :

- CFCU (Chairman and Secretary, non-voting members),
- Beneficiary (voting members,)
- Bulgarian National Contact Point (Observer, non-voting member).

The Chairman is responsible for :

- co-ordinating the evaluation process,

- signature of the front page of each document and all pages of the financial offer,
- signature of the EvC minutes.

The Secretary of the EvC is responsible for carrying out all the administrative tasks within the evaluation procedures; this will include:

- Keeping the minutes of all meetings of the EvC and the relevant records and documents,
- Registering attendance to meetings and compiling the Minutes of EvC meetings,
- Organisational matters concerning the process of assessment of the proposals.

Evaluation grids of Evaluation Committee members [based on Selection Fact Sheets] will be annexed to minutes of final evaluation results. The Beneficiary institution itself will be responsible for the actual selection of a Member State on the basis of the written proposals.

If no proposal has been received or the only proposal is considered inadequate, the PAO and the Beneficiary, may cancel the procedure and either recirculate the 'Twinning light' project fiche in duly justified cases or convert it into a commercial tender for Technical Assistance. In this case of failure to receive the proper proposals before the decision of the use of TA the PAO will consult with the NAO.

Procedures for modification of the Project Fiche shall apply [**See H.3 - Modification of FA / FM / PF - Reallocation of funds**]

The CFCU will notify all MS, which have submitted proposals of the beneficiary institution's final decision within maximum 6 weeks of the deadline for submission of proposals with information on the reasons, which motivate the final decision. MS are entitled to receive such feedback in view of future proposals from their administrations.

E.6.6.6. Signature of the Contract

☛ **Twinning Manual - § 8.5.1. Structure of the contract and § 8.5.3. Contracting Authority, signatories of contract, order of signature**

Further to the notification of the MS, the CFCU prepares a Twinning Light Contract in line with the standard Twinning contract structured as follows:

- Special Conditions (up-front contract)
- Annex I: Description of the Action - including Work Plan;

- Annex II: General Conditions applicable to EC-financed grant contracts for external Actions;
- Annex III: Budget for the Action (including co-financing part by the Final Recipient of the Action);
- Annex IV: Contract-award procedures;
- Annex V: Standard request for payment and financial identification form;
- Annex VI: Model audit certificate;
- Annex VII: Special Financial Annex;

Five copies of the contract be drawn up, one for the Member State, one for the Beneficiary, one for the CFCU, one for the EC and one for the Junior MS if applicable.

The Twinning Light Contract is transmitted by the CFCU for signature to :

- SPO and/or Beneficiary administration [to express its commitment to ensure proper implementation and ownership],
 - Selected MS;
- and is finally signed by the PAO.

PART IV – TECHNICAL IMPLEMENTATION

- ✓ *You and the Contractors*
- ✓ *You and the PAO / Implementing Agency*

F. CONTRACT MANAGEMENT / OPERATIONAL MONITORING

Contracts signed during the tendering process must be implemented by the selected contractors and managed and monitored by:

- the SPO who is in charge of the **technical implementation** of the projects,
- the PAO [through the CFCU/IA] who is responsible for the **administrative and financial** implementation of the projects.

Contracts must be administered in accordance with:

- the General Conditions and
- the Special Conditions

for Contracts Financed as attached to the contracts.

<p>☛ PRAG Annexes</p> <p>Services: B8 Draft contract: Special conditions B8 Draft contract: General conditions</p> <p>Supplies: C4 Draft contract: Special Conditions C4 Draft contract: General Conditions</p> <p>Works: D4 Draft contract: Special Conditions D4 Draft contract: General Conditions</p> <p>Grants: E3h_1 Special conditions E3h_2 General conditions</p>

The General and Special Conditions provide the basis for the contractual obligations of both the Contracting Authority and the Contractor and, as such, serve as the means by which both parties execute the contract.

Depending on their nature, the management and monitoring of the contracts would differ.

Still, some basic rules remain constant:

- the “**Special Conditions**” of the contracts must be carefully prepared during the Tendering process [as part of the Tender Dossier / Draft contracts] to anticipate to a maximum any of the needs which may occur during the implementation phase,
- a **close cooperation** should be maintained between the SPO and the PAO.

F.1. MONITORING: one single word, but different meanings

F.1.1. Three levels of monitoring

The word “Monitoring” might be confusing for it is used by different people in different contexts for different purposes. Implementation of Phare programmes is monitored at three levels:

1. Project level

This is contract management and it is achieved through the day to day technical implementation on site of each contract by the SPOs and reporting from the SPOs to the PAO and from the PAO to the NAO.

2. Sector level

In Bulgaria, there are 10 Phare monitoring sectors:

- Economic development;
- Agriculture,
- Transport;
- Environment;
- Regional development/Cross-border cooperation;
- Energy and telecommunications;
- Social development;
- Public sector / development of administrative capacity;
- Justice and Home Affairs;
- Public sector/Public finance.

They correspond to the Sectoral Monitoring Sub-Committees [SMSC] which have Secretariats in the line ministries responsible for Phare sector programme monitoring.

Under the aegis of the NAC. the SMSC prepare Phare Sector Monitoring Reports which actually emanate from information prepared by the SPOs [in close cooperation with the PAO as far as the financial data are concerned].

3. Programme level

The Joint Monitoring Committee [JMC] is the highest monitoring body, convening at least once a year and responsible for the monitoring of the progress of EU pre-accession instruments. The composition and the tasks of the Joint Monitoring Committee are outlined in the Rules for JMC and SMSC [See Chapter H - Sectoral and programme monitoring].

The JMC received Phare Sector Monitoring Reports from the SMSCs, to form the basis for

the JMC discussions and reports. In addition to the Phare Sector Monitoring Reports, brief information sheets are presented to the JMC for providing summary information on Phare sector progress.

F.1.2. Monitoring internal control systems

This is not about monitoring Phare projects / programmes but monitoring in the context of Public Financial Internal Control [PIFC]. To ensure the effective functioning of an internal control system, it is necessary to exercise supervision over the system or to monitor it. In the context of Public Internal Financial Control, monitoring is the process which serves to assess the quality of the internal control system's performance over time. This is done by through:

- Application of internal controls during normal course of activities,

- Periodic assessment integrated in the internal reviews performed by the management,
- Reviews by Internal Auditors.

Deficiencies found in internal control should be reported to the appropriate personnel and management responsible for that area, evaluated and corrected.

F.1.3. Distinction between Monitoring, Evaluation and Audit

A clear distinction must be made between Monitoring, Evaluation and Audit as reminded in the table hereinafter extracted from the EC "Project Cycle Management Guidelines"

http://ec.europa.eu/comm/europeaid/reports/pcm_guidelines_2004_en.pdf

Distinction between evaluation, monitoring and audit

Evaluation	<ul style="list-style-type: none"> • Assessment of the efficiency, effectiveness, impact, relevance and sustainability of aid policies and actions
Monitoring	<ul style="list-style-type: none"> • Ongoing analysis of project progress towards achieving planned results with the purpose of improving management decision making
Audit	<ul style="list-style-type: none"> • Assessment of (i) the legality and regularity of project expenditure and income <i>i.e.</i> compliance with laws and regulations and with applicable contractual rules and criteria; (ii) whether project funds have been used efficiently and economically <i>i.e.</i> in accordance with sound financial management;; and (iii) whether project funds have been used effectively <i>i.e.</i> for purposes intended. • Primarily a financial and financial management focus, with the focus of effectiveness being on project results.

F.1.4. Link Reporting - Monitoring

There is synergy and linkage among the various levels of monitoring and the reporting systems. The SPO contributes to the monitoring at programme level by providing for sufficient data to enable the generation of regular monitoring and assessment reports.

In the Progress Report [from SPO to PAO] – **See Chapter F.9 REPORTS BY SPO** - and SMSC Monitoring Reports - [**See Chapter H - Sectoral and programme monitoring**]. - the actual achievement on contract level (output indicators) is compared against the objectives set in the Project Fiches. Based on contract output data, respective conclusions on project progress and the achievement of project

objectives by the end of project implementation will be drawn at the SMSC meetings and ultimately serve the JMC reports / meetings

The information and reports provided by Contractors to the SPOs and PAO are supported by regular technical meetings held on site by the SPO and/or the PAO representatives, the Final Beneficiaries and the Contractors.

The Contractors reports are reviewed and endorsed by the SPO and/or the PAO. They constitute the direct input for the compilation of the reports to be prepared by the SPO and / or the PAO. There is no point in duplicating efforts. When information is available at any level of the system, it must be passed to the relevant interlocutor to support the compilation of monitoring and progress reports.

F.2. CONTRACTORS

F.2.1. Role of the SPO

Monitoring of programmes and projects as part of the implementation process is primarily based on responsibilities delegated to the SPO in each of the beneficiary institutions for the complete and effective project management of the relevant project in accordance with the applicable contract and contractual schedules.

Sufficient information is to be provided on physical activity to enable effective assessment of progress and impact.

The SPO must establish a monitoring process based on :

- Collecting and analysing information during regular meetings held with the Contractors and/or the Final beneficiaries [such meetings serve to ensure the coordination of plans, activities and results between the stakeholders].
- Reviewing regular progress reports and documentation attached to Invoices provided by the Contractors
- Comparing information and data reported with objectives, estimated results, activities and indicators of achievement introduced in Project fiches and Contracts,
- Performing on-site visits.

F.2.2. Review of reports submitted by Contractors

Role of the SPO - Procedure

- Ensure a thorough review of the technical information contained in the reports submitted by the Contractors in order to control if the Contractor achieves the results for expected and therefore comply with the conditions of the contract,
- Reconcile the contents of the reports with the time-sheets, the project implementation plan and the actual implementation of the project [this can include on-site visits to confirm the deliveries,
- Ensure that the control of the reports is supported by the use of the **Check-list for control of Contractors reports**
 - ☛ Annex F06 – Check-list for control [prior to submission to PAO] of Contractors reports / outputs
- Provide the PAO [within delays notified by the PAO] and the Contractor [when applicable] with any necessary feedback and/or comments as relevant, on particular

on any changes to the scope and/or implementation plan of the project. Note: Article 27 of the General Conditions of Contract, or other relevant details contained in the Special Conditions, describe the time periods within which the Contractors should receive a response to the reports they submit.

- Submit to the CFCU/IA a copy of the **Check-list for control of Contractors reports**

☛ Annex F06 – Check-list for control [prior to submission to PAO] of Contractors reports / outputs

- Investigate on a timely basis and report to the PAO any deviations from the project implementation plan and/or technical requirements,
- Support the PAO in ensuring with the Contractor that corrective actions are agreed and implemented.

F.2.3. Meetings : agenda and minutes

Meetings should be as concise as possible with a set agenda and should be documented in minutes. For meetings organised by the SPO, the SPO staff [or alternatively, a person mutually agreed between the SPO and the CFCU/IA if relevant] should:

- Prepare the minutes of the meeting,
- Make the minutes available within a reasonable period,
- Receive comments of the participants on the minutes of the meeting [the minutes are deemed to be agreed if no comments are received].

Meetings with Contractors

The date, time and location of meetings should be agreed between the CFCU/IA and the SPO and formally transmitted to the Consultant, in writing [by the CFCU/IA], including information of the expected participants and the proposed agenda.

The CFCU/IA or alternatively, a person mutually agreed between the CFCU/IA and the Consultant should:

- Prepare the minutes of the meeting,
- Make the minutes available within a reasonable period,
- Receive comments of the participants on the minutes of the meeting [the minutes are deemed to be agreed if no comments are received].

During post contract audits, minutes of meetings are used, with the reports, as the first source of information about the progress of the Contract.

Inadequate minutes, or reports, are indicative of poor contract implementation.

F.3. SERVICES

F.3.1. Fee based vs. Global price

Service contracts can take the form of either fee based or global priced. Because of their nature and method of implementation, the approach to the management and monitoring of such contracts must be conducted differently.

Fee based: the expected results under this type of contract are normally more general than those required under a global price contract. The technical assistance to be provided may include tasks such as:

- assistance in the management of the activities of an organisation, a department or other such unit, for example a PIU;
- day-to-day advice on ad-hoc issues;
- institutional building;
- institutional and organisational development;
- project preparation; etc.

In order to obtain the optimum use of the services available, a common understanding and agreement should be reached on the specific tasks to be performed, based upon the terms of reference, and the expected results. Also, in many cases it may be necessary to clarify issues in the ToR and this should ideally be achieved during the inception phase.

Global Price: for this type of contract, it is usual that the Consultant is expected to produce a “hard” deliverable such as, for example, a tender dossier, feasibility study, economic or financial study, cost-benefit analysis, works contract engineering design or technical specification etc. In this instance, the Consultant is contracted to provide the end result as the “deliverable” and it is often difficult to monitor progress on an on-going basis, unless the terms of reference contain specific milestones etc, by which specific outputs or tasks are to be achieved.

Similar to fee based contracts, it is often necessary that clarification of issues as described in the terms of reference is required. In as far as possible, it is recommended to attempt to resolve such issues during the inception phase of the contract.

F.3.2. Meetings with Contractors

F.3.2.1. Kick-off meeting

It is recommended that a formal contract “kick-off” meeting is arranged to be held either on the

commencement date of the service contract, or on a date as close as possible to this, to be agreed with the Consultant.

The commencement date is mentioned in the Special Conditions of Contract.

The aim of the “kick-off” meeting should be, amongst other issues:

- introduction of the contracting parties and their personnel who will be involved in the contract;
- discussion and agreement on the exact scope of the services to be provided;
- contract schedule and milestones including those related to mobilisation of the Consultant’s staff;
- any issues relating to proposed staff changes by the Consultant;
- any information or other assistance to be provided by the Contracting Authority and/or the SPO to the Consultant, in accordance with the terms of reference and the time in which it will be provided;
- reporting arrangements;
- schedule of meetings and the periods after such meetings that minutes should be submitted by one party to the other;
- the period after receipt of minutes within which the parties should respond to the issuer of such minutes.
- other issues.

F.3.2.2. Regular meetings

It is rarely possible to identify a schedule for each and every meeting that will occur during the course of a contract, since it is usual for various issues to arise that may involve unforeseen or other such occurrences that could not have been anticipated at the commencement of the contract. Therefore, it is in the interests of the parties to adopt a flexible approach to such meetings, but always taking cognizance of the impact on the time involved in same.

In the event that the terms of reference do not identify a specific schedule of progress meetings, it is recommended that such a tentative schedule (preferably on monthly basis) is agreed either at the “kick-off” meeting or during the contract inception phase.

Each contract contains its own peculiarities. Yet, it is recommended to hold a formal meeting at least once per month for fee based contracts at shorter and less definite periods for global price contracts [since the achievement of the

Consultants' outputs very often depends on specific activities to be achieved by a certain deadline or milestone date].

Should the establishment of a Steering Committee be required under the terms of reference then the "regular meetings" are often scheduled to coincide with contract reporting and payment dates.

F.3.3. Reports

The General Conditions for Services Contracts describe the general reporting requirements of the Consultant (Article 26, interim and final progress reports). In general it may be expected that the Consultant should prepare the following reports:

- Inception Report
- Interim / Progress Reports
- Final Report

The Terms of Reference and the Special Conditions identify the more specific reporting requirements.

The reports should be submitted for approval to:

- the SPO / Final beneficiary,
- the PAO.

The format of the reports would normally be identified in Annex VI of the Tender Dossier or otherwise notified to the Consultant by the PAO.

F.3.3.1. Inception Report

An Inception Report is generally required in order that the Contractor may provide the following:

- opinions as to whether or not the actual situation, in relation to the contract, is as described in the Terms of Reference.
- understanding of any issues in the Terms of Reference that may be considered as vague or unclear;
- implementation approach to the contract;
- proposed work schedule and if possible, planned resource usage of the available man-days;
- any other issues that should be identified at the earliest stages of the contract, in order to minimise any potential delays or problems during the implementation phase.

Standard contents:

- 1) Project synopsis
- 2) Analysis of the project - Start situation
- 3) Project Planning:
 - Co-ordination with other projects
 - Project objectives

- Project approach
- Intended results
- Planning of project duration
- Constraints, risks and assumptions
- Planning of next reporting period.

F.3.3.2. Progress Reports / Interim Reports

General Conditions for Services Contracts Article 26.4 – Interim and Final progress Report

Standard contents:

- 1) Project synopsis
- 2) Summary of progress since project start-up
- 3) Summary of project planning for the remainder of the project
- 4) Project progress in the reporting period
- 5) Project planning for the next reporting period
- 6) Technical annexes, project findings, recommendations,
- 7) Annexes

For fee based contracts, a Financial Report, in addition to a Progress Report, is submitted by the Contractor with each of the invoices.

F.3.3.3. Final Report

A final report must be sent by the Contractor not later than 60 days after the completion date of the contract.

General Conditions for Services Contracts Article 26.4 – Interim and Final progress Report

Standard contents:

- 1) Project synopsis
- 2) Summary of progress since the start of project
- 3) Summary of progress in final project period
- 4) Project completion report (including executive summary and recommendations)
- 5) Other issues, observations and recommendations related to project implementation
- 6) Annexes.

F.3.4. Framework contracts

Reporting requirements are specified in the Contract and Terms of Reference. With the request for final payment, the Contractor should provide final invoice accompanied by time sheets. If an approval of Final report is required, the proof for the existence of this approval should be made available.

F.3.5. Construction supervision services for a Works contract [FIDIC]

See § F.5.3 - The FIDIC Engineer

Progress reports: apart from providing ongoing monitoring information, the progress report submitted by the Consultant at the time at which he provides the taking-over certificate to the Contractor, in accordance with the FIDIC Contract General Conditions Clause 10, is particularly important.

This report is submitted at a time when the main construction works have been completed and have reached the date of official completion as determined under FIDIC. This does not imply either the Works or the Services contract has been contractually completed, only that an important contractual and monitoring milestone has been reached.

As part of the payment procedures described in Article 28 of the GCs for Service Contract, the Consultant is obliged to submit an approved progress report, together with his invoice, in order to become eligible for an interim payment under the services contract.

Final report will normally be dependent upon the date on which the Performance Certificate of the latter is issued by the Engineer to the Contractor

☛ FIDIC General Conditions of Contract Clause 11.9

In many cases this will not occur for at least 12 months after the main works have been completed.

From the date of receipt of the Performance Certificate, the Works Contractor can be expected to receive the final payment certificate, for all works performed during the implementation of the contract, within a maximum of 84 days after he has submitted his application for final payment.

☛ FIDIC Clause 14.11

Because of the above, completion of the Consultant's Services Contract is unlikely to occur until he has finalised the contract administration requirements of the main Works contract.

F.3.6. Replacement of Key Personnel

☛ PRAG § 3.3.14. Provision and replacement of experts

☛ General Conditions for Services Contracts Article 17 – Replacement of personnel

Should the experts not be available for reasons such as death, illness or in the event of an accident then this is clearly a justifiable reason for the need for replacements. Likewise the Contractor cannot compel the personnel to

remain involved in a project if they decide to resign or otherwise.

In such cases the Contractor must propose replacement experts who are in possession of similar experience and qualification to those who they are intended to replace.

It may also occur that the beneficiary of the project and / or the PAO becomes dissatisfied with the performance of particular experts.

Role of the SPO - Procedure

- In case of dissatisfaction of the Beneficiary of the project, to formalise a duly justified request for replacement of the personnel and to submit it to the PAO

The PAO would follow-up with the Contractor the resolving of the issue. The Contractor is under a contractual responsibility to provide the necessary replacements to the satisfaction of the PAO.

F.3.7. Amendment to Contract

Any amendment or modification to a contract must be formalised by way of an addendum and this should not alter terms of the original contract.

☛ PRAG § 2.10. Modifying contracts

☛ General Conditions for Services Contracts Article 20 – Amendment of the contract

In general, the need for a contract amendment arises when the conditions of the original contract are altered, except for those related to changes of address, bank account and auditor.

For fee based contracts the PAO may order an amendment, provided the change is limited to a transfer within fees involving a financial impact of less than 15% of the original amount in the relevant line in the budget breakdown.

The above amendment can involve additions, omissions, substitutions, changes in quality, quantity, specified sequence of contract activities, method of timing of performance of services.

Other conditions relating to contract amendments include the following:

- they can only occur within the lifetime of a contract;
- they must be closely related to the nature of the original contract;
- they can involve extensions to the contract period, provided that final payment can be made before expiry of the Financing Agreement under which the original contract was financed;

- the financial impact of the amendment must not exceed 50 % of the original contract amount;
- they cannot be made retroactively;
- they must not be of a nature that they would have fundamentally changed the competition conditions at the time of tender evaluation;
- they must not involve changes in the unit rates as used in the original contract;
- they must not fundamentally alter the Terms of Reference.

Contract amendments must be formally approved by the PAO.

Role of the SPO - Procedure

- If the request for modification of the contract is expressed by the Contractor [or a Steering Committee if relevant] supports the PAO in the analysis of the request especially in issues in direct relation with the technical implementation of the contract.
- Expresses to the PAO – whenever the request for modification of the Contract is not expressed directly by the Contractor – any need for considering a modification of the Contract (e.g. due to changes in the implementation conditions). The request must be duly and formally justified.
- Support the PAO in the preparation of the Explanatory Note setting out the technical and financial grounds for making the modifications in the contract
- **PRAG - Annex A6: Explanatory Note**
- When the addendum to the contract is signed, receives a copy of the addendum for further follow-up of the project.

The PAO would follow-up with the Contractor the resolving of the issue and inform the SPO accordingly.

F.4. SUPPLIES

F.4.1. Meetings

Due to the nature of supply contracts, the Contractor is generally not required to be on site during the delivery period of the supplies and in many cases is based in a location far removed. For these reasons, the regularity of meetings are often different that those that would be expected to occur for services and works contracts.

For complex supply contracts, where the goods to be supplied are, for example, of an uncommon nature or may need to be fabricated, it may be needed to meet with the Contractor more regularly and every attempt should be made to arrange such meetings if and when required.

It is recommended that requests for such meetings are issued in writing.

General Conditions - Article 4

It would be expected that the Contractor is present on site:

- at the time the supplies are delivered,
- when any training is required and
- when any testing or commissioning is required before provisional acceptance

General Conditions - Article 31

A formal meeting should be organised to allow both contracting parties to present their views on the status of the project and to discuss any other issues that require to be completed in accordance with the contract.

F.4.1.1. Kick-Off Meeting

It is recommended that a formal contract “kick-off” meeting is arranged on a date as close as possible to the contract commencement date, between the Contracting Authority and Supplier.

The aim of the “kick-off” meeting should be, amongst other issues:

- introduction of the contracting parties and their personnel who will be involved in the contract;
- discussion and agreement on the exact scope of the supplies to be provided;
- contract schedule and milestones including those related to delivery, installation and, if applicable, testing and commissioning date;
- any information or other assistance to be provided to the Supplier, in accordance with the contract and the time in which it will be provided;

- reporting arrangements;
- schedule of meetings and the periods after such meetings that minutes should be submitted by one party to the other;
- the period after receipt of minutes within which the parties should respond to the issuer of such minutes
- other issues.

F.4.1.2. Progress Meeting

Due to the nature of supply contracts, the regularity of meetings are often different that those that would be expected to occur for services and works contracts.

It is recommended, however, that a tentative schedule of meetings with the Contractor is agreed at the “kick-off” meeting.

It is in the interests of the parties to adopt a flexible approach to such meetings, but always taking cognizance of the impact on the time involved in same.

F.4.2. Reports

The requirement for reports in supply contract is less well defined than those required for services and works contracts.

In addition to progress meetings, the main contract management and monitoring tool comprises the reports submitted by the Contractor and the **Implementation programme** which shall contain at least:

- the order in which the Contractor proposes to perform the contract including design, manufacture, delivery to place of receipt, installation, testing and commissioning;
- the deadlines for submission and approval of the drawings;
- a general description of the methods which the Contractor proposes to adopt for executing the contract; and
- such further details and information as the Project Manager [on behalf of the SPO] may reasonably require.

General Conditions for Supplies Contracts Article 13 – Implementation programme

The Technical specifications should specify the milestones by which reports should be submitted, in addition to the type of information to be included in such reports.

F.4.3. Amendment to Contract

Any amendment, modification or variation to a contract must be formalised by way of an administrative order.

PRAG § 2.10. Modifying contracts General Conditions for Supplies Contracts Article 22 – Amendment of the contract

In general, the need for a contract variation arises when the conditions of the original contract are altered, except for those related to changes of address or bank account.

The variation can involve additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as drawings or specifications where the supplies are to be specifically manufactured for the Contracting Authority, method of shipment or packing, place of delivery, and in the specified sequence, method or timing of execution of the supplies.

The PAO may vary the quantities in the contract by an amount to be included in Article 22 of the Special Conditions, however the total financial impact of all variations must not be greater than 25% of the contract price.

Other conditions relating to variations / administrative orders include the following:

- they must be made in writing;
- they can only occur within the lifetime of a contract and should be closely related to the nature of the original contract;
- the nature of the variation should, as soon as is practically possible and preferably before issuing an administrative order, be made familiar to the Contractor;
- the Contractor should submit a proposal, in response to the proposed variation, including his assessment of the tasks to be performed, any impact on performance programme and any financial implications. If the proposal is accepted by the Monitoring Department then an administration order is issued.
- they can involve extensions to the contract period, provided that final payment can be made before deadline for disbursement of the Phare Financing Agreement under which the original contract was financed;
- they cannot be made retroactively;
- they must not be of a nature that they would have fundamentally changed the competition conditions at the time of tender evaluation;
- major changes to the technical specifications cannot be made by way of a contract addendum;
- they must not involve changes in the unit rates as used in the original contract;

- Contract variations that are not covered by an administrative order must be formalised through an addendum to the contract.

☛ **PRAG - Annex C12: Template for an addendum to Supply contract**

Contract amendments must be formally approved by the PAO.

Role of the SPO - Procedure

- If the request for modification of the contract is expressed by the Contractor [or a Steering Committee if relevant] supports the PAO in the analysis of the request especially in issues in direct relation with the technical implementation of the contract.
 - Expresses to the PAO – whenever the request for modification of the Contract is not expressed directly by the Contractor – any need for considering a modification of the Contract (e.g. due to changes in the implementation conditions). The request must be duly and formally justified.
 - Support the PAO in the preparation of the Explanatory Note setting out the technical and financial grounds for making the modifications in the contract
- ☛ **PRAG - Annex A6: Explanatory Note**
- When the addendum to the contract is signed, receives a copy of the addendum for further follow-up of the project.

F.5. WORKS

F.5.1. FIDIC rules

Works contracts are administered in accordance with contract conditions as published by the Fédération internationale des Ingénieurs-Conseils (FIDIC). Depending on the nature of the project, the contract conditions to be used could include any of the following:

- Conditions of Contract for Construction (first edition 1999) - commonly referred to as the “New Red Book”
- Conditions of Contract for Plant and Design-Build (first edition 1999) - commonly referred to as the “New Yellow Book”
- Conditions of Contract for EPC/Turnkey Projects (first edition 1999) -commonly referred to as the New Silver Book
- Short Form (first edition 1999) -commonly referred to as the New Green Book

The most widely used contract conditions are those for the “New Red Book” and the “New Yellow Book”.

F.5.2. Parties to contracts

The main parties to a FIDIC contract are the “**Employer**” and “**Contractor**”. In the case of Phare projects in Bulgaria, the Employer is the PAO and signs the Works contract with the Contractor.

The Contractor is the legal person or persons who were successful in the tendering process for the relevant Works Contract and were awarded and signed the same contract.

F.5.3. The FIDIC Engineer

The administration of the Works contract is managed by the “**Engineer**”, who is appointed by the Employer²⁴ [the PAO] through Service Contract for Supervision to carry out the duties assigned to him under the Works contract.

It is often the case that the services of the Engineer are procured by way of a services contract under the PRAG procedures. As such, the Engineer is not only required to perform his duties and exercise his authority in accordance with the Works contract, but he is also required to comply with the conditions of the service contract with the PAO [**see also F.5.8 - Amendment to Contract**].

²⁴ Unlike previous versions of FIDIC, the Engineer in the 1999 versions of the New Red and Yellow books is “deemed to act for the Employer”

F.5.4. Meetings with Contractors

Meetings must be regularly held to discuss the progress of the Contract and resolve outstanding issues. They are detailed in the table hereinafter.

It must be noted and emphasised that everything in a meeting is given orally. Minutes of meetings are a written record of verbal statements; they are not notices in writing in the meaning of the Contract. Therefore any notice, consent, approval, certificate or determination by any person, given in a meeting must be

confirmed formally in writing for it to be legally effective within the Contract.

Minutes of meetings are recorded in a standard format and they must be a fair and representative written record of the meeting. If an incorrect statement is made, it must be recorded as made; the minutes should not be corrected by inserting a correct statement. A correction statement is made at the next meeting, but the minutes of the earlier meeting must record the incorrect statement.

Timing	Purpose	Chaired by	Parties invited	Agenda / Minutes
Pre-commencement meeting (also referred to as Kick-off meeting)				
Beginning of project [commencement date]	Once Contractor and Engineer are appointed, the CFCU/IA organises a pre-commencement meeting to introduce all parties formally and to clarify any outstanding matters.	CFCU/IA	CFCU/IA Engineer; Contractor; Nominated sub-contractors Final Beneficiary	Fixed Agenda prepared by the Employer Minutes produced and distributed by the Employer.
Site Progress				
Weekly	Short informal meetings to : - define the programme of activities for the following week - record decisions made from one week to another, Main item for discussion : - Contractor's Programme for the following week [The Engineer needs to know the Contractor's programme in order to arrange for timely inspections and approval] - The various registers ²⁵ are checked for consistency and discussed so that the outstanding items can be arranged in order of priority or age.	Engineer	Engineer, Contractor Final Beneficiary CFCU/IA (optional)	Because of the frequency of the meetings, it is unusual to report actions from the previous meeting.
Monthly Technical Progress Meetings				
Monthly Near the beginning of the month shortly after the monthly reports have been issued, so that all information is current and relevant	Overall contract management. It is a formal meeting for the exchange of information and procedures. The first item is to record the date, time and place of the meeting and to register those present, recording any apologies for absence. The agreement of the minutes of the previous meeting is done in a formal way using the words "It was agreed that the minutes of the previous meeting were a fair and accurate representation of that meeting with the following corrections..."	Engineer	CFCU/IA Employer representative ; Engineer; Contractor Sub-contractors Final Beneficiary	Fixed Agenda produced and distributed by the Engineer at least one week before the meeting. Minutes produced and distributed by the Engineer within one week after the meeting is held.
Ad hoc meeting				
When required	Discussion of specific issues/problems. Meetings held as necessary to deal with a single subject (e.g. design change, claims, etc.)	CFCU/IA:	As required. Attendance should be kept to a minimum to ensure that effective decisions can be made quickly. CFCU/IA	Agenda shall be produced by the CFCU/IA Minutes produced and distributed within one week after the meeting is held.

²⁵ Registers act as an aide memoir to ensure that nothing is lost misplaced or forgotten. There can be disagreements later on the Contract on the date when information was agreed. The Contractor has obligation to give due notice of outstanding information and the Engineer has a duty to provide the information before its absence delays progress.

F.5.5. Reports

The specific reporting requirements of the Works contractor are often described in more detail in the Technical Specification, than they are in FIDIC Clause 4.21 and the related clause in the Particular Conditions²⁶.

F.5.5.1. Monthly Report

Regardless of whether the Works contract is administered under the FIDIC Red, Yellow or Silver Book, the reporting periods are the same (monthly) and generally contain the same minimum information, incl:

- charts, progress schedules, documentation relating to site delivery of major items of materials, plant or equipment;
- photographs showing progress of works or manufacture of plant etc.;
- detailed information on major items of plant to be manufactured including name and location of manufacturer, progress on manufacture, expected delivery dates etc.;
- numbers of each class of contractor's personnel on site;
- details on numbers and type of contractor's equipment on site;
- copies of quality assurance documents, test results etc.
- information on any claims by Contractor or Employer;
- details on health and safety issues;
- comparison of planned versus actual progress and information on how the contractor aims to address any identified problems.

The monthly progress report is a fundamental document in relation to payment requests by the contractor, since each interim payment application requires that a progress report accompanies same.

In order to assist the PAO and the SPO / Final beneficiaries, not alone in being made familiar with the progress of the Works, but also in preparing the necessary monitoring reports which is required to be submitted to the Monitoring Committees, it is recommended that the format of the contractors report contains the information required by the PAO for his/her reporting purposes. This should be agreed

between the Engineer and Contractor at the commencement of the Works contract.

Minutes of the site progress meetings are prepared by the **Engineer** and should be included in his monthly reports on progress of the Works contracts.

F.5.5.2. Final Report

For Works contracts, the final report of the Contractor is normally a very comprehensive document, including numerous attachments. The contents of the final report are described in detail in the contract and it may be expected that this would be covered in the technical specifications and/or Employer's Requirements, depending on the type of contract.

It is important to note the distinction between the report submitted by the Contractor at the Taking-Over stage of a contract, and at final completion of a contract, that is after the Performance Certificate has been issued by the Engineer. In addition, the type of contract will also have an influence on the contents of the report.

In the case of the Taking-Over stage for a contract administered under the FIDIC Red book, the level of information to be included would be expected to be less than that for a contract administered under the FIDIC Yellow or Silver Books.

In the latter case, since detailed design is performed by the Contractor it may be expected that the report would include:

The Final report to be submitted by the Contractor after he has received the Performance Certificate will be less detailed and would include detailed information on, amongst other issues, the following:

- Works completed during the Defects Notification period;
- Any test results or other quality assurance information relevant to the Defects Notification Period;
- Application for final payment certificate
- Written discharge to the Employer confirming that the total of the Final Statement represents the full and final settlement of all moneys due to the Contractor in connection with the Contract

← FIDIC Sub-Clause 14.12

²⁶ The equivalent to FIDIC "Particular Conditions" in PRAG are the "Special Conditions"

TAKING-OVER STAGE		
No.	FIDIC Red Book	FIDIC Yellow and/or Silver Book
Technical		
1.	Any outstanding charts, progress schedules, documentation relating to site delivery of major items of materials, plant or equipment etc.;	Any outstanding charts, progress schedules, documentation relating to site delivery of major items of materials, plant or equipment etc.;
2.	Photographs showing progress of works at taking-over stage of contract.	Photographs showing progress of works at taking-over stage of contract.
3.	Detailed information on major items of plant delivered and incorporated into the Works.	Detailed information on major items of plant delivered and incorporated into the Works.
4.	Copies of quality assurance documents, test results etc.e.g. - Materials tests; - Soils tests - tests on completion; - tests after completion, etc	Copies of quality assurance documents, test results etc. e.g. - Materials tests; - Soils tests - tests on completion; - tests after completion, etc.
5.	Information on any claims by contractor or employer;	Information on any claims by contractor or employer;
6.	Details on health and safety issues	Details on health and safety issues
7.	Details on works to be completed during the Defects Notification Period (as identified by the engineer before he issues the Taking Over Certificate)	Details on works to be completed during the Defects Notification Period (as identified by the engineer before he issues the Taking Over Certificate)
8.	Any other documents described in the Contract	As-Built drawings
9.		Operation and Maintenance manuals
10.		Any other documents described in the Contract
Financial		
11.	Statement on completion indicating: - value of work completed up to the date of issuance of Taking-Over Certificate; - any other amounts to which the Contractor considers is due to him: - estimated of any other amount which the Contractor considers will become due to him;	

F.5.6. Contractual tools

F.5.6.1. Site instructions

For FIDIC Works contracts, site instructions are issued by the Engineer.

☛ FIDIC Sub-Clause 3.3

The extent to which the Contractor is obliged to receive and obey such instructions varies somewhat between the FIDIC Red, Yellow and Silver books and as such, reference must be made to the relevant document when dealing with the instructions.

Instructions can be issued for numerous reasons and the impact of each instruction requires to be

considered carefully both by the Engineer and the Contractors, since in many cases it may lead to a variation to the original contract, resulting in a financial or delayed completion impact.

Site instructions do not automatically result in a contract variation and in many cases they are issued simply for clarification purposes to the Contractor on either technical, administrative, contractual or financial issues.

For record purposes, the Engineer should maintain a register of instructions which would eventually form part of the contract file.

F.5.6.2. Claims

Contract claims can be initiated either by the Contractor or Employer. In the case of the former, a claim might normally involve either an extension of time or additional payments. The Employer, on the other hand, may also initiate a claim against the Contractor for payment under any clause of the FIDIC contract conditions or for an extension to the defects Notification Period.

- ☛ **FIDIC Sub-Clause 2.5 Employer's claims**
- ☛ **FIDIC Sub-Clause 20.1 Contractor's claims**

Claims can become very complicated and the procedures involved in pursuing a claim are very strict.

Should a Contractor consider that he has a justifiable claim against the Employer he must, in the first instance, serve notice to either the Engineer or the Employer, depending under which FIDIC contract conditions the contract is administered.

In many cases, claims are resolved amicably between the Contractor and Engineer and through a determination by the Engineer

- ☛ **FIDIC Clause 3.5**

However, in the event that a dispute arises where both parties fail to come to an agreement then the claim may be referred to a Dispute Adjudication Board [DAB]

- ☛ **FIDIC Clause 20**

The decision of the DAB is normally binding on both parties.

When preparing and submitting his progress reports, the Engineer should always provide as much relevant information as possible on the nature of any claims and the potential impacts on the contract both financially, administratively and technically

F.5.7. Administrative issues

F.5.7.1. Guarantees / Bonds

Works contract guarantees or bonds are normally required as a means of ensuring the performance by a Contractor.

There are many types of guarantees and bonds in use, the main types being those as described following:

Tender bonds

Tender Bonds are required when a contract is to be awarded on a competitive basis and is required to be submitted by all tenderers as part of the Contractor's tender. The purpose of a tender bond is to:

- ensure that a Tenderer does not change his mind and withdraw his offer.
- exclude non-serious Tenderers.

Information concerning the tender bond is included in the tender dossier.

Performance Security

Performance Securities, are designed to guarantee the proper and timely completion of the Contractor's responsibilities under the Works contract.

The wording of such a security is very important as it will specify the conditions under which the security may be forfeit. Non-performance must be established before expire date of tender Security.

The Performance Security is only released to the Contractor within 21 days after the Performance Certificate has been issued by the Engineer.

Advance payment bond

Advance payments may be made to the Contractor to cover heavy initial costs such as mobilisation, purchase of materials, equipment, plant etc. The amount of the advance is identified in the Appendix to Tender and is not paid to the Contractor until he first submits an advance payment bond for the full amount of the advance.

- ☛ **FIDIC Sub-Clause 14.2**

In addition, payment will not be made until the Contractor provides an acceptable Performance Security.

The advance payment bond will not be released to the Contractor until full payment has been made on the advance.

F.5.7.2. Insurance

- ☛ **FIDIC Clause 18**

The main insurances are described following:

Insurance for Works and Contractor's Equipment

- ☛ **FIDIC Sub-Clause 18.2**

This insurance is intended to cover the Works, Plant, Materials and Contractor's documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. In addition the insurance should cover the full replacement value of the Contractor's equipment.

The insurance should remain valid until the Taking-Over Certificate is issued. Thereafter it is the responsibility of the Employer to make provisions for his own insurance cover.

Insurance against Injury to Persons and Damage to Property

☛ FIDIC Sub-Clause 18.3

This is also known as 3rd party insurance and is intended to insure against loss, damage, death or bodily injury that might occur to any physical property or person as a result of the Contractor's performance.

The amount of insurance cover should be decided on a contract-by-contract basis and included in the Appendix to Tender.

The insurance should remain valid until the Performance Certificate is issued.

Insurance for Contractor's Personnel

☛ FIDIC Sub-Clause 18.4

This should insure the Contractor against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of his employees on the contract.

The cover must be valid for all times that the insured are on site.

F.5.7.3. Taking Over Certificate

A Taking Over Certificate is issued to the Contractor when the Employer is satisfied that the Works have been completed in accordance with the Contract and have successfully passed any tests on completion, identified in the technical specifications.

It is noted that the issuance of the above certificate does not imply that the Contractor has satisfied all of his contractual obligations since minor works would likely still be outstanding, however these should not affect the use of the Works for their intended purposes.

The outstanding work is identified by the Engineer and agreed with the Contractor and Employer and are completed during the Defects Notification Period. The date on which the Taking Over Certificate is issued, is also the commencement date for the Defects Notification Period.

If bad performance occurs during the implementation of the project, supporting evidence including a statement signed by the person identified and verified the wrong doing should be collected and the case should be kept in file at the CFCU/IA.

F.5.7.4. Retention Money Guarantee

= Guarantees that no defects occur during the defects notification period.

Only in case when the defects notification period is over and the CFCU/IA together with Engineer

and Employer go to site for final certification, then Final payment can be released (if all is fine) and only then the retention money guarantee can be released (after issuance of the Performance Certificate)

F.5.7.5. Performance Certificate

The Performance Certificate, issued by the Engineer to the Contractor, is the only document that constitutes final acceptance of the Works. This provide written confirmation that the Engineer or Employer considers that the Contractor has completed his performance of obligations under the Contract and accepts the Works.

F.5.8. Amendment to Contract

- ☛ PRAG § 2.10. Modifying contracts
- ☛ PRAG § 5.7. Modifying Works contracts
- ☛ General Conditions for Works Contracts Article 35 – Modifications

In the administration of a Works contract it is usual that events will arise that may require the initiation of variation orders

Variations Orders may be initiated by the Engineer or Employer at any time prior to the Taking-Over Certificate for the Works being issued.

☛ FIDIC Clause 13

Such variations are more common under the FIDIC Red Book contracts than FIDIC Yellow Book contract and often result in either or both increased contract costs or extensions to the contract completion deadline.

Since variations can often result in a financial or time implication to a Contractor, and thus the contract price, the Employer may wish to limit the extent to which an Engineer can instruct a variation. In this case the limitations must be clearly identified in the Special Conditions of the FIDIC contract. It may also be identified in the services contract between the PAO and the Engineer.

Concerning the above referred limitations, it would be necessary that the Engineer receives the approval of the Employer before initiating such variations.

The SPO has not authority to make the decisions on the variations of the works. The decisions can be taken by the CFCU/IA Director in case the variation will not require contract amendment(s). Otherwise, the decisions on variations shall be ultimately approved by the PAO.

The consequence to the Employer of variations may involve an increase in the final contract

value and since any such increases are rarely covered by the Phare funds, any additional funding would have to be made available from the Employer himself.

Similar to instructions, the Engineer should maintain a register of variations which would eventually form part of the contract file.

The impact of these variations, either in relation to financial or other issues, should be described in each progress report.

Contract modifications not covered by an administrative order must be formalised through an addendum to the contract signed by all parties.

☛ **PRAG - Annex D11: Template for an addendum to Works contract**

Under no circumstances can the Contracting Authority increase the budget of the initial contract or agree to/arrange for works that was not covered in the Technical Specifications of the initial tender and subsequent contract.

The only exception to this rule is for additional works not included in the initial contract but which have, through unforeseen circumstances, become necessary for the works initially foreseen to be carried out, provided that the award is made to the contractor already carrying out such work:

- where such works cannot be technically or economically separated from the main contract without serious inconvenience for the Contracting Authority;
- where such works, although separable from the performance of the initial contract, are absolutely necessary to its completion.

This should remain exceptional and should not be used to cover deficiencies in the technical specifications of the tender dossier. However, the aggregate cost of contracts awarded for additional works must not exceed 50% of the amount of the main contract.

F.6. GRANTS

The management of Grant Schemes differs from the management of other contracts because it implies an additional level of delegation and control at the level of the Grant Beneficiaries [that is to say the institution / body which signs the Grant Contract with the PAO].

By virtue of the grant contracts they sign with the PAO, the Grant Beneficiaries become responsible not only for implementing activities but also for tendering procedures [for services, supplies, works], referred to as “**Secondary Contracting**” or “**Sub-tendering**”.

- ☛ **PRAG – 6.8. Procurement by grant beneficiaries**
- ☛ **Annex E3h-3 – Procurement by grant beneficiaries in the context of European Community external actions**

F.6.1. Secondary Contracting : “ex-ante controls” responsibilities

In principle, the institutional framework of each Grant Scheme is designed and described in the respective Project Fiches.

☛ **The chart hereinafter provides for a global picture and inter-institutional relations**

The institutional set up might differ from one Grant scheme to another, the decision on “who will perform the ex-ante controls over the Secondary Contracting” must be made on a case-by-case basis between the SPO and PAO.

The PAO is responsible for the implementation of sound financial management system. The PAO should therefore decide what would be the optimal solution in implementing ex-ante controls over the Secondary Contracting. In any event, several options might be considered mainly depending on the **level of risk** associated to the Grant Scheme.

F.6.1.1. Identify risky Grant Schemes

During the preparation of the Operational Agreement to be signed between the PAO and the SPO, the PAO and the SPO must consult to assess the **level of risk** of the Grant Scheme based on:

- The amount of funds involved,
- The size and location of the geographic area to be covered by the Grant Scheme,
- The complexity of the Grant Scheme,
- The anticipated level of awareness of the potential Grant Beneficiaries,

- The availability of Technical Assistance during the preparation phase [e.g. Calls for proposals] and the implementation phase,
- Etc...

Depending on the level of risk assessed, the PAO and the SPO would make a decision on:

- Who should be responsible for performing the ex-ante controls over the Secondary Contracting,
- Should the ex-ante controls be systematic [i.e. control of 100% of the transactions] or should it be based on sampling methods.

F.6.2. Options to consider

F.6.2.1. Ex-ante controls by Technical Assistance

Role of the SPO - Procedure

- While preparing the Terms of Reference of the Technical Assistance, the SPO should ensure that the TA assignment includes the following responsibilities:
 - **Prior to the implementation** of the Grant Contract:
 - Preparation and dissemination of manuals / instructions on Secondary contracting and related controls,
 - Organisation and implementation of training - for the Grant Beneficiaries - on procurement procedures for the Secondary Contracting.
 - **During the implementation** of the Grant Contract:
 - Define Quality control procedures in order to ensure timely, proper and reliable application of the relevant procurement procedures and guarantee the quality of the outputs in relation to the Secondary Contracting,
 - Perform ex-ante control of the process of Secondary contracting in order to guarantee compliance with the procedures and the requirements of the EC and national legislation,
 - Formalise controls performed [in check-lists],
 - Perform quality control of all procurement documentation [ToRs / Technical specifications / etc.] in order to check the compliance with the procedures and the requirements of the EC and national legislation as well as compliance with the objectives of the corresponding Grant Contract,
 - Provide for Observer(s) to participate to Tender Evaluation Committees as

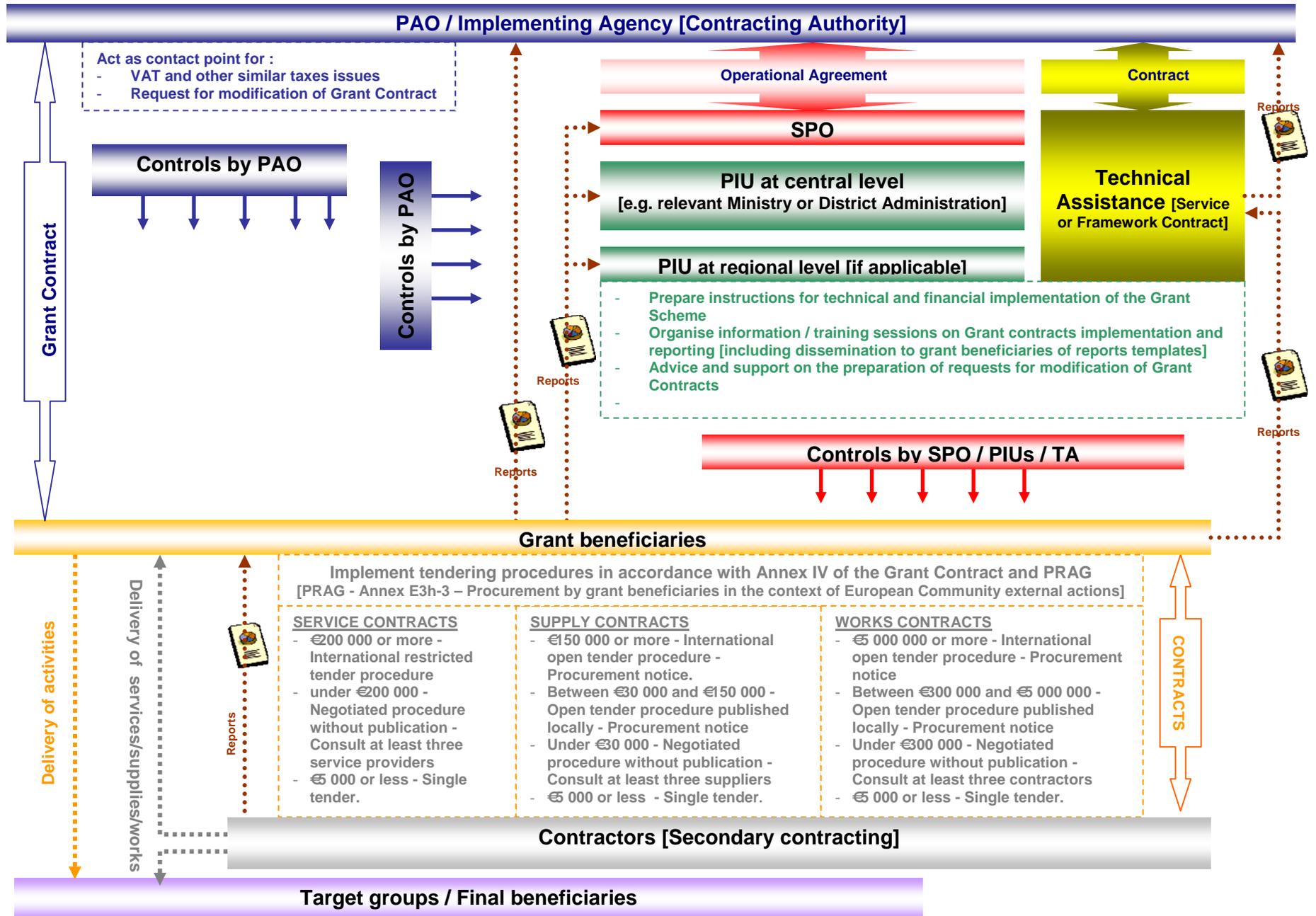
relevant,

- Identify and analyse any shortcoming and propose corrective actions as relevant,
- Report to the PAO and SPO on the controls performed by the TA over the application of the Secondary Contracting procedures.
- The SPO should perform on-site visits to reconcile the TA controls / reports with the reality by checking on site the relevant documentation and actual deliveries [**See F.10 - Site visits**].

F.6.2.2. Ex-ante controls by SPO / PIU(s)

Role of the SPO - Procedure

- **Prior to the implementation** of the Grant Contract:
 - Preparation and dissemination of manuals / instructions on Secondary contracting and related controls,
 - Organisation and implementation of training - for the Grant Beneficiaries - on procurement procedures for the Secondary Contracting.
- **During the implementation** of the Grant Contract:
 - Define Quality control procedures in order to ensure timely, proper and reliable application of the relevant procurement procedures and guarantee the quality of the outputs in relation to the Secondary Contracting,
 - Perform ex-ante control of the process of Secondary contracting in order to guarantee compliance with the procedures and the requirements of the EC and national legislation,
 - Formalise controls performed [in check-lists],
 - Perform quality control of all procurement documentation [ToRs / Technical specifications / etc.] in order to check the compliance with the procedures and the requirements of the EC and national legislation as well as compliance with the objectives of the corresponding Grant Contract,
 - Provide for Observer(s) to participate to Tender Evaluation Committees as relevant,
 - Identify and analyse any shortcoming and propose corrective actions as relevant,
 - Report to the PAO on the controls performed over the application of the Secondary Contracting procedures.



F.6.2.3. Ex-ante controls by the PAO

Role of the SPO - Procedure

- **Prior to the implementation** of the Grant Contract:
 - Cooperate with the PAO on :
 - Agreeing on the flow of tendering documentation between the Grant Beneficiaries and the SPO and PAO,
 - the preparation and dissemination of manuals / instructions on Secondary contracting and related controls,
 - the organisation and implementation of training - for the Grant Beneficiaries – on procurement procedures for the Secondary Contracting.
- **During the implementation** of the Grant Contract:
 - Support the PAO in implementing any corrective measures which may derive from the ex-ante controls applied by the PAO.

F.6.3. Do the current settings have to be modified?

If necessary, the PAO may request from the SPO that the system of ex-ante controls over the Secondary Contracting is modified. Such a decision might be triggered by:

- Conclusions of on-site visits performed by the PAO,
- Audits performed by the national and / or EC auditor,
- Conclusions expressed in Evaluation and / or Monitoring reports.

The PAO would initiate the signature of an addendum to the Operational Agreement signed between the PAO and the SPO to confirm any new arrangements.

F.6.4. Meetings

The Grant Beneficiaries are too numerous for the SPO and / or the PAO can afford to organise individual meetings with each of them.

The following meetings should be organised to support the Grant Scheme Implementation and monitoring :

- A Kick-off meeting
- On-site visits based on a Risk Analysis

F.6.4.1. Kick-off meeting

Once the Grant Contracts are signed and Award Notices published, an official ceremony for Grants awards may be organised.

Apart from being a formal commencement of the project, the kick-off meeting should also serve to:

- to introduce all parties formally,
- to clarify any outstanding matters,
- reiterate to the Grant Beneficiaries the **requirements** of the Contracting Authority in terms of reporting and other administrative issues,
- provide the Grant beneficiaries with **any needed additional guidance** [although it could be assumed that full information has been provided to Grant beneficiaries - when they were only potential applicants - during the Call for proposals].

Role of the SPO - Procedure

- Cooperate with the PAO on :
 - Agreeing on the date of the Kick-off meeting
 - Assigning responsibilities for the logistics and organisation. This would include:
 - Location of the event practical arrangements (e.g. banners and flags to respect publicity requirements, microphones and simultaneous translation, translations, projector and multimedia tools, name plates, sufficient number of chairs, etc...)
 - Presentation material (e.g. folders with presentation of the programme, press releases, brochures, flyers, etc)
 - Holding the kick-off meeting
 - Recording attendance
 - Document the event accordingly.

F.6.4.2. On-site visits

See section F.10 - Site visits

F.6.5. Reports

The reporting requirements²⁷ are set in:

- The General Conditions
 - **PRAG - Annex E3h_1 Special conditions**
- Any additional reporting requirement as set out in the Special Conditions and in accordance with Article 2.2 of the General Conditions.
 - **PRAG - Annex E3h_2 General conditions (annex II)**

²⁷ Reference is made to the reporting system in the Guidelines for Applicants [PRAG – Annex E3b: Guidelines for applicants - Section 2.6: Reports of the Conditions applicable to implementation of the action following the Contracting Authority's decision to award a grant

F.6.5.1. Interim and Final reports

Grant Beneficiaries are entitled to receive payments in accordance with the schedules summed up in the table hereinafter.

Article 4 of the Special Conditions	Option 1: Actions with an implementation period not exceeding 12 months or where the financing provided by the Contracting Authority does not exceed €100000	Option 2: Actions with an implementation period of more than 12 months and where the financing provided by the Contracting Authority is more than €100000	Option 3: - All Actions
Pre-financing	80% of the sum referred to in Art. 3.2 of the Special Conditions within 45 days of receipt by the Contracting Authority of : <ul style="list-style-type: none"> – Contract signed by both parties, – request for payment conforming to the model attached at Annex V, and – financial guarantee if required in Art. 15.7 	80% of that part of the estimated budget for the first 12 months financed by the Contracting Authority, as specified in Article 4 of the Special Conditions, within 45 days of receipt by the Contracting Authority of : <ul style="list-style-type: none"> – Contract signed by both Parties, – request for payment conforming to the model in Annex V, and – financial guarantee if required under Article 15.7 	
Further pre-financing instalments [interim payments]²⁸		Amount specified in Arti. 4 of Special Conditions and designed to normally cover the Beneficiary's financing needs for each twelve month period of implementation of the Action, within 45 days of the Contracting Authority approving an interim report in accordance with Article 15.2, accompanied by: <ul style="list-style-type: none"> – a request for payment conforming to the model in Annex V, – an expenditure verification report if required under Article 15.6, – a financial guarantee if required under Article 15.7; – An interim report must accompany every request for payment 	
Interim report			
Final payment	Balance within 45 days of the Contracting Authority approving the final report in accordance with Art. 15.2, accompanied by a request for payment of the balance conforming to the model in Annex V.	Balance within 45 days of the Contracting Authority approving the final report in accordance with Art. 15.2, accompanied by: <ul style="list-style-type: none"> – a request for payment of the balance conforming to the model in Annex V, – an expenditure verification report in accordance with Art. 15.6. 	One payment within 45 days of the Contracting Authority approving the final report in accordance with Art. 15.2, accompanied by: <ul style="list-style-type: none"> – a request for payment of the balance conforming to the model in Annex V, – an expenditure verification report if required under Article 15.6.
Final report²⁹	Final report submitted no later than three months after the implementation period as defined in Art. 2 of the Special Conditions.	Final report submitted no later than three months after the implementation period as defined in Art. 2 of the Special Conditions.	Final report submitted no later than three months after the implementation period as defined in Art. 2 of the Special Conditions.

²⁸ Further pre-financing may only be given if the part of the expenditure actually incurred which is financed by the Contracting Authority (by applying the percentage set out in Article 3.2 of the Special Conditions) stands at 70% at least of the previous payment (and at 100% of any previous payments) as supported by the corresponding interim report and, where applicable, by an expenditure verification report as specified in Article 15.6. Where the consumption of the previous pre-financing is less than 70%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment. The sum total of pre-financing under the Contract may not exceed 90% of the amount referred to in Article 3.2 of the Special Conditions.

²⁹ The deadline for submission of the final report is extended to six months where the Beneficiary does not have its headquarters in the country where the Action is implemented.

The Grants Requests for Payment shall be supported by **Narrative and Financial reports** as stipulated in the General and Special Conditions of the Grant Contract. Format and templates are defined in the PRAG.

- ☛ **PRAG – Grants reports templates**
- Annex E3h_5: Interim narrative report (annex VI)
- Annex E3h_7.2: Final narrative report
- Annex E3h_7: Financial report (annex VI)

Role of the SPO - Procedure

- While preparing the Guidelines for Applicants, the SPO should ensure that the obligations for reporting are properly defined and agreed upon with the PAO including:
 - Instructions to Grant beneficiaries on identification of the flow of Grant Beneficiaries Reports and Requests for Payment,
 - Format of the Reports [in principle the formats are prescribed in the PRAG],
 - Periodicity and deadlines for submission of the Reports,
 - Nature of controls to be performed over the Grant Beneficiaries Reports and Requests for Payment and related assignments of responsibilities for controls,
- If controls are to be assigned to a TAO³⁰, ensure that :
 - the TAO Terms of Reference / contract reflect the responsibilities of the TAO accordingly,
 - coordinate activities and responsibilities of the TAO with the SPO staff / PIUs activities and responsibilities,
- Ensures that controls are documented and that related check-lists are available for review by the PAO whenever the PAO would request it,
- [If requested to do so by the PAO], formally approves the Interim and Final Grant Beneficiaries reports as a pre-condition for execution of the payments.

Any report shall be considered approved if there is no written reply to the Grant Beneficiary within 45 days of its receipt accompanied by the required documents.

- ☛ **PRAG - Annex E3h_2**
- Art. 15.2 of General conditions (annex II)

The PAO may request clarification, alteration or additional information, which must be produced within 30 days of the request.

The PAO may suspend the time-limit for approval of a report by notifying the Beneficiary that the report cannot be approved and that it finds it necessary to carry out additional checks. Close coordination with the SPO and / or the TAO should therefore be maintained.

F.6.5.2. Monthly Monitoring Sheets

It might be risky to not follow monitoring data continuously over the lifetime of the Grant Schemes. Yet, imposing on the Grant Beneficiaries heavy reporting requirements might be cumbersome and have adverse effects on the efficiency of the implementation. It is therefore recommended to introduce in the reporting system a simplified so called **Monthly Monitoring Sheet for Project Indicators**.

The Grant Beneficiaries should submit to the SPO / PIUs on a monthly basis a short form [maximum one page] to provide for information on the **most important** milestones, outputs and results of the project.

- ☛ **Annex F07 – Template – Grant Schemes : Monthly Monitoring Sheet for Project Indicators**

The **Monthly Monitoring Sheet for Project Indicators** should be transmitted to the SPO and the PAO in electronic form in order to expedite the transmission and facilitate the exploitation of the data.

Role of the SPO - Procedure

- Review and perform regular analyses of the Monthly Monitoring Sheet for Project Indicators
- Use the review to support decisions on planning on-site visits and any additional monitoring actions [e.g. meetings with the Grants beneficiaries in full coordination with the PAO].

F.6.6. Amendment to Contract

- ☛ **PRAG – 6.7. Modifying grant contracts**

Grant contract modifications require a formal addendum to the contract to be signed by the Grant Beneficiary and the PAO³¹.

- ☛ **PRAG - Annex E10: Template for an addendum**

The PAO and the Grant beneficiary must note on the addendum the date on which they sign it. The addendum takes effect on the date of the later signature.

For minor changes [e.g. changes of address, changes of bank account and changes of auditor] the notification may simply be made in

³⁰ Technical Assistance Organisation

³¹ Under EDIS, no approval and endorsement by EC is required

writing by the Grant Beneficiary to the PAO, although this does not affect the right of the PAO to oppose the Grant Beneficiary's choice of bank account or auditor.

Requests for modifications should not automatically be accepted by the PAO. Such requests must be properly substantiated. The PAO – through the CFCU/IA - must examine the reasons given, and reject requests which have little or no substantiation.

Requests for modifications must be made (by one contracting party to the other) allowing an adequate time-limit for the addendum to be signed before the modifications are intended to enter into force.

The following modifications to Grant Contracts **are not allowed**:

- Increase in the maximum amount of the Grants;
- Extension of Contracts after deadlines stated in the related Financing Memorandum [deadline for contract execution and deadline for disbursement]
- Modifications that may call into question the Grants award decision or be contrary to the equal treatment of Applicants;
- Retroactive modifications.

Role of the SPO - Procedure

- If the request for modification of the Grant Contract is expressed by the Grant Beneficiary [or a Steering Committee if relevant] supports the PAO in the analysis of the request especially in issues in direct relation with the technical implementation of the Grant Scheme.
 - Expresses to the PAO – whenever the request for modification of the Grant Contract is not expressed directly by the Grant Beneficiary – any need for considering a modification of the Grant Contract (e.g. due to changes in the implementation conditions). The request must be duly and formally justified.
 - Support the PAO in the preparation of the Explanatory note setting out the technical and financial grounds for making the modifications in the proposed addendum
- **PRAG - Annex A6: Explanatory Note**
- When the addendum to the contract is signed, receives a copy of the addendum for further follow-up of the project.

F.7. TWINNING

The “mandatory results” set out in the Twinning Project Fiche and in the Twinning work plan are one the main features of Twinning. Thus, to monitor the contracts in order to regularly check if the “mandatory results” are achieved is essential.

- **Twining Manual - § 2.1 The fundamental principles for all Twinning Projects**
- **Twining Manual - § 6.3 Monitoring**

Contract management should serve - among other - to:

- assess if the mandatory results [benchmarks specified at regular time intervals in the Twinning Work Plan to serve to measure progress] are delivered within the timeframe and budget available,
- follow-up activities in close coordination with other projects taking place and which may assist with, overlap with, or hinder the project.

- **Twining Manual – Section 4 Detailed Project Design § 6.3 Monitoring**
- **Twining Manual – § 4.2 Benchmarks, Timeframes, Durations and Risk Analysis**

F.7.1. Responsibilities in the contract implementation

The implementation of Twinning contracts must be carried out under the responsibility of the two Project Leaders.

- **Twining Manual - § 2.2 The Project Leaders (PL) and the Resident Twinning Adviser (RTA)**

The distribution between the BC and the MS Project Leaders of the respective responsibilities in relation to:

- Components,
- Activities,
- Human resources,
- Material resources,

is detailed in each Twinning Work Plan.

The MS Project Leader may delegate the management and implementation of project components [including accounting and invoicing tasks, organisation of training seminars, preparation of training documentation, etc.] to a management structure.

The fees and costs incurred to cover this management is to be financed through the ‘**twining management costs**’ compensation.

- **Twining Manual - § 4.3 Deciding project Management responsibilities [management hierarchy for MS Inputs]**
- **Twining Manual - § 5.8 “Twining Management Costs” Compensation**

☛ **Twinning Manual - § 6.2 Management by the Project Leaders – “Twinning management cost compensation”**

F.7.2. Intra-consortium agreement

When a Twinning Contract is signed with a MS consortium, it must be made sure that the consortium members are “both willing and, in reality, in a position to co-operate fully to achieve the mandatory results”.

☛ **Twinning Manual - § 4.3 Deciding project Management responsibilities Projects involving a consortium of MS**

In addition to the details on responsibilities of each of the partners and which are described in the Twinning work plan, the following items must be secured:

- A **general mandate** (Annex VIII to the Twinning Contract) from the junior MS partner to the Project Leader appointed by the lead MS, providing the power to commit its administration and take any project implementation decisions on its behalf. The signature of this mandate is a pre-condition for submitting the Twinning Contract.

☛ **Twinning Manual - Annex A8 – Mandate**

- An intra-consortium agreement must be signed between the consortium partners to define the details of the co-operation and to cover [as a minimum]:

- Financial matters, i.e. arrangements for the transfer of funds between consortium members in respect of reimbursable expenditure and a proportion of the ‘twinning management costs’ compensation. Generally, the lead MS partner retains a proportion of the ‘twinning management costs’ compensation to cover the costs for its leadership;

☛ **Twinning Manual - § 5.8 “Twinning Management Costs” Compensation**

- Lines of communication which will guarantee sharing of information and the coherence and co-ordination of activities;
- Procedures for decision-making, i.e., which decisions will be taken by consensus, which matters can be left to the lead MS.

F.7.3. Inputs of the BC prior to the RTA arrival

In accordance with the details provided in the Twinning Contract / Twinning Work Plan, the institution benefiting of the twinning project shall respect practical commitments, i.e.:

- Provision of office space,

- Provision of equipment (including access to computer, telephone, fax, etc...),
- Availability of staff and RTA counterpart(s).

☛ **Twinning Manual - § 4.4 Inputs of BC (Staff and Infrastructure)**

Role of the SPO - Procedure

- Prior to the arrival of the RTA, the Bulgarian Project Leader shall inform the AO [CFCU] on arrangements made to secure the infrastructure inputs and timely respect of any of the practical commitments.

A provision limited to 5000 Euro for miscellaneous supplies is eligible for EU funding but only in very restricted cases.

☛ **Twinning Manual - § 5.1 The Project Budget**

F.7.4. Small Public Procurement

☛ **Twinning Manual - § 7.6. Private Sector Inputs: tendering, procurement and contracting**

☛ **Twinning Manual - § 5.11. Private Sector Sub-contractors**

Because the Twinning approach is about transferring expertise from the public sector, in principle, equipment or services from the private sector [sub-contractors] is required only in exceptional cases. This would happen when the MS justifies and evidences a need for sub-contracting activities. A typical example would be a software design.

The sub-contracting is subject to overall ceilings:

- Equipments: €5000,
- Services: €5000 per process.

☛ **Twinning Manual - § 5.10. Private Sector Inputs: tendering, procurement and contracting**

F.7.4.1. Tendering procedures

The sub-contractors shall be tendered in accordance with the provisions of Annex IV (Contract Award procedures) to the Twinning contract, and more specifically :

- PRAG under DIS,
- National procurement rules under EDIS.

F.7.4.2. Contracting authorities

In the project Budget, annotations should clearly mention who will be contracting the “sub-contractors”.

The Contracting Authority may be:

- the MS body responsible for the implementation of the project if the budget is inferior to the abovementioned ceilings,
- The AO [CFCU] for inputs above the abovementioned thresholds,

- Always the AO [CFCU] if so agreed between the parties and the EC.

F.7.4.3. Role of the RTA in sub-contracting

If the RTA is asked to advice or participate in the preparation or implementation of a tender procedure, he/she shall:

- work under the supervision of the AO [CFCU],
- indicate any potential conflict of interest,

The RTA shall not be involved in both the preparation of the terms of reference and the proceedings of the evaluation committee.

F.7.5. Regular meetings

F.7.5.1. Kick-off meeting

In principle, the RTA is expected to be in place within three months following notification of signature / endorsement of the Twinning Contract.

☛ **Twinning Manual - § 6.1 Timing and deadlines**

Role of the SPO - Procedure

- Upon arrival of the RTA, the Bulgarian Project Leader – in close cooperation with the AO [CFCU] - shall organise a pre-commencement meeting to introduce all parties formally and to clarify any outstanding matters.

F.7.5.2. Monthly Operational Coordination meetings

The CFCU, in its role of Administrative Office shall take the initiative of organising monthly meetings between:

- the RTA,
- the Ministries benefiting of the Twinning projects,
- and representatives of the CFCU.

F.7.5.3. Systematic review

Upon submission to the AO [CFCU] of the upon submission of the 2nd Interim Quarterly Reports, the CFCU shall contact partners involved in the project in order to organise a systematic review of the project.

Practical arrangements shall be made by the CFCU especially in relation to the Agenda and the documentation [minutes] of the review as well as the follow-up.

F.7.6. Reports

The reporting requirements are set out in the EC Twinning Manual and in the General Conditions of the Twinning Contract.

☛ **Twinning Manual - § 6.4 Project Reporting Requirements**

☛ **Twinning Manual - § 8.5.4. Reporting [Twinning Light]**

Reports should comprise technical and financial information as required in the template annexed to the Twinning Contract:

☛ **Twinning Manual - Annex C4 – Interim Quarterly / Final Report**

and which includes three sections:

- **Section I** : basic data on the project,
- **Section II**: progress achieved in the implementation,
- **Section III**: expenditures.

Reports shall be:

- Prepared by the MS Project Leader using reports provided by the RTA, the Bulgarian counterparts and any other sources (i.e. short term experts, organisation of training and seminars, etc...),
- Submitted to the comments of the Bulgarian Project Leader [in order to ensure an insight into project progress],
- Co-signed by the MS and Bulgarian Project leaders prior to submission to the Administrative Office [CFCU]. The CFCU shall transmit a copy of the report to the EC.

Any report shall be considered approved if there is no written reply from the AO within 45 days of its receipt accompanied by any required documents.

F.7.7. Reports for standard Twinning

☛ **Twinning Manual - § 6.4 Project Reporting Requirements**

F.7.7.1. Three Monthly Interim Quarterly Reports

☛ **Twinning Manual - § 6.4.2 Interim Quarterly**

The first Interim Quarterly report shall be submitted to the AO [CFCU] in the fourth month after the date of endorsement / signature of the Twinning Contract. Following reports should be submitted to the AO [CFCU] on the beginning of the month following the quarter under consideration.

F.7.7.2. Final Report

The Final report shall be submitted to the AO [CFCU] no later than three months after the implementation period defined in article 2 of the General conditions of the Twinning Contract.

The Final Report must be accompanied by an Audit Certificate delivered by a recognised, independent auditor.

☛ **Twinning Manual - Annex A6 – Model Audit Certificate**

F.7.8. Reports for Twinning Light

☛ Twinning Manual - § 8.5.4. Reporting

F.7.8.1. Start-up report

Start-up report should cover the first two months of the contract and shall be submitted to the AO [CFCU] in the third month after the date of endorsement / signature of the Twinning Contract.

F.7.8.2. Interim Quarterly Reports

Not applicable to Twinning Light.

F.7.8.3. Quarterly overview

☛ Twinning Manual - § 8.8. Issues of overall Coordination

The AO [CFCU] shall send to the respective Commission twinning co-ordination teams a quarterly synthetic overview of developments regarding twinning light projects including a the following information for every twinning light project (identified by project number and title),

- the date each project fiche was circulated,
- the deadline for proposals,
- the Member State partner(s) selected,
- the start date of the project,
- budget,
- Project leader and beneficiary administration,
- the completion date of the project and
- if the final project report was received and approved.

F.7.8.4. Final Report

The Final report shall be submitted to the AO [CFCU] no later than three months after the implementation period defined in article 2 of the General conditions of the Twinning Contract.

The Final Report must be accompanied by an Audit Certificate delivered by a recognised, independent auditor,

☛ Twinning Manual - Annex A6 – Model Audit Certificate

F.7.9. Amendment to Contract

Modifications of a Twinning Contract can be done through two procedures:

- Addendum
- Side letter (Administrative order)

☛ Twinning Manual - 6.6. Changes to a Twinning Contract

F.7.9.1. Main principles

- The request for amending the Twinning contract must be properly substantiated. The PAO examines the reasons given, and may

reject requests which have little or no substantiation.

- The means and the activities initially planned for achieving the mandatory results may be modified / adjusted / replaced [due to changing circumstances] but there should be no change to the mandatory results to be achieved,
- The modification of the Twinning contract must take place within the period of implementation of the Twinning Contract and cannot apply retroactively.
- Any modification extending the performance period of the contract must be such that implementation and final payments can be completed before the expiry of the Deadline for Payment mentioned in the Financing Agreement,
- The modifications must not have the purpose or the effect of making such changes to the contract as would call into question the contract grant award decision or be contrary to the equal treatment of applicants.
- Modification of the budget:
 - In principle, any change in the work plan will entail a corresponding change in the budget. Yet, the budgetary changes cannot affect the structure – definition of the budget, only its implementation.
 - The maximum amount of the contract cannot be increased, and so in order to finance a new activity, another activity must be reduced or cancelled first. The budget should officially be reallocated before the new activity can be implemented. Activities implemented before being officially entered into the budget will not be financed.
- Introduction of any new activity must be justified by showing that it will be of real use in achieving the mandatory results; the mere availability of funds (following savings under or cancellation of activities originally foreseen) is not sufficient to justify the financing of new activities.
- The notifications must be made by a secure means of communication, so that dispatch can be proven in the event of dispute.
- The redeployment of the budget shall not have the purpose of increasing the fixed fees and rates.

- Each Twinning project must include a full-time Resident Twinning Advisor, resident in the BC for a minimum of 12 consecutive months. Transfers of budgetary resources shall not jeopardise this requirement.

F.7.9.2. Addendum

☛ Twinning Manual - 6.6.2. Addenda

An **addendum and the binding opinion of the EC Steering Committee** shall be requested in case of changes in :

- The Acquis Communautaire related to the project
- MS administration involved in the Twinning project as mentioned in Article 5 of the Twinning Contract
- Legal duration (Article 2 of the Twinning Contract)
- Definition of the mandatory results and the benchmarks to be achieved (Articles 3 and 4 of the Work plan). [For changes concerning the means used for implementation, the time schedule and dates, and the identity of most of the MS' short term experts present in the BC no addendum is needed].
- Identity of the MS and BC Project Leaders, the RTA and the principal MS short-term experts (Article 6 of the Work plan)
- Interruption or termination of the Twinning contract before completion
- Suspending the funding or lifting the suspension of funding for a twinning project.

Role of the SPO - Procedure

- Any of the Twinning partners or both partners requests contract modifications (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the modifications are intended to enter into force.
- Twinning partners:
 - draft the Addendum to the Twinning Contract
 - submit to the AO [CFCU] the draft Addendum together with an Explanatory Note duly justifying the need for the contract modification
- The AO [CFCU] :
 - examines the draft addendum and the justifications provided to support the request for modifying the Twinning Contract [The AO is entitled to agree or refuse the proposed addendum]

- formulates any relevant comment on the budgetary changes and changes in the Work Plan,
- requests adjustments to be performed jointly by the selected MS partner and the Beneficiary,
- formally sets up a deadline for receiving the amended version of the Addendum to the Twinning contract
- Twinning partners submit to the AO [CFCU] – within the prescribed delays - the amended version of the Addendum

If the binding opinion of the EC Steering Committee is required

- The AO [CFCU]:
 - forwards the Addendum and any relevant documentation to the EC Headquarters for a consultation procedure with the concerned line DGs and the Commission Steering Committee
 - Once the Commission has issued its binding opinion and has transmitted it to the AO [CFCU], the CFCU must verify that any of the Commission's comments, if any, are duly integrated by the project partners in the Addendum / modified work plan / modified budget.
 - Following this verification, the Addendum to the Twinning Contract is ready for signature [4 originals are required] by the signatories of the original Twinning Contract. [Note: the signatories of the Twinning Contract can delegate authority to the Project Leaders to sign any addenda on their behalf.]
 - The addendum is considered as valid on the date of notification of the Addendum to the Twinning partners / both Project Leaders.

If no binding opinion of the EC Steering Committee is required

- The Addendum to the Twinning Contract is ready for signature [4 originals are required] by the signatories of the original Twinning Contract. [Note: the signatories of the Twinning Contract can delegate authority to the Project Leaders to sign any addenda on their behalf.]
- The addendum is considered as valid on the date of notification - by the AO [CFCU] - of the Addendum to the Twinning partners / both Project Leaders.

F.7.9.3. Side letter (Administrative order)

• Twinning Manual - 6.6.3. Side letters (Administrative orders)

If requirements for an addendum are not applicable, a side letter (administrative order) is used for amending Twinning Contracts when:

- the change does not affect the basic purpose of the project,
- reallocation of appropriations are made within budget components

The budgetary changes are summed up after each side letter. Once the total amount of modifications via side letters reaches of 10% of the total budget, any further modification (independent of its size) to the breakdown of costs (budget) should be done via an addendum to the Twinning Contract, including full approval of the two Project Leaders plus the AO [CFCU].

Minor changes such as changes of address, changes of bank account and changes of auditor may simply be notified and signed by the two Project Leaders (MS and BC), although this shall not affect the Contracting Authority's right to question the signatory Member State's choice of bank account or auditor.

Role of the SPO - Procedure

- Any of the Project Leaders or both requests contract modifications (by one contracting party to the other) allowing at least 30 days for the side letter to be signed before the modifications are intended to enter into force.
- Twinning partners:
 - draft a Side letter (Administrative Order) to lay down the changes requested,
 - submit to the AO [CFCU] the Side letter (Administrative Order)
- The AO [CFCU] :
 - examines the Side letter (Administrative Order) and the justifications provided to support the request for modifying the Twinning Contract [The AO is entitled to agree or refuse the proposed changes]
 - formulates any relevant comment on the budgetary changes and changes in the Work Plan,
 - requests adjustments to be performed jointly by the selected MS partner and the Beneficiary,
 - formally sets up a deadline for receiving the amended version of the Side letter (Administrative Order)
- Twinning partners submit to the AO [CFCU]

– within the prescribed delays - the amended version of the Side letter (Administrative Order)

- Once the Side letter (Administrative Order) is ready for signature [4 originals are required] by the signatories of the original Twinning Contract. [Note: The MS Project Leader can delegate RTA to sign side letters on his/her behalf]
- The addendum is considered as valid on the date of notification – by the AO [CFCU] – of approval of the Side letter (Administrative Order) to the Twinning partners / both Project Leaders.

F.8. REGULAR MEETINGS

In addition to meetings with the Contractors, the SPO must contribute to the implementation of the following meetings:

- Internal meetings
- Progress (monitoring) meetings
- Steering Committee meetings
- Ad hoc meeting

F.8.1. Internal meetings

The overall objective of internal communication is to keep all staff informed about progress made in different projects implementation, to review and discuss problems and search for solutions and recommend activities to improve the implementation process.

An internal communication is a two-way tool of coordination in order to enable the staff to carry out their responsibilities. The SPO should hold formal internal staff meeting [in principle weekly] designed to update progress on all activities under the responsibility of the SPO.

Main topics to be discussed during the weekly staff meeting will include:

- review of the operations of previous week and execution of tasks,
- review of the status of projects (per contracts) including Project Work Plan,
- problems encountered and actions to take,
- follow-up and planning,
- analysis and follow-up of recommendations received (e.g. audit reports) and/or made (e.g. on site visit to final beneficiaries),
- training actions undertaken and/or planned,
- preparation of meetings with external institutions, etc...

The holding of “Staff Meetings” shall be supported by the following documentation :

- Agenda of meetings including as a minimum :
 - Review of execution of tasks assigned during the previous internal meeting,
 - Review of the status of individual projects implementation (projects, summary of procurement and implementation phases status),
 - Actual tasks for the following period – follow up planning,
 - Tasks resulting from other meetings, decisions etc.
 - Training activity – training undertaken and lessons learnt briefing /training planned
- Minutes of the meetings,
- Register of tasks/actions and their respective implementation (status of each activity for which a nominated staff-member should be responsible for weekly update).

Minutes of the meetings shall be reviewed by the SPO. They will serve for “audit evidence” when ever the projects are audited.

F.8.2. Progress (monitoring) meetings

The overall objective of progress (monitoring) meetings is:

- to provide timely communication and coordination in order to keep the stakeholders informed about progress made in project/contract implementation;
- to review and discuss problems and search for solutions;
- to recommend activities to improve the implementation process.

Monthly Meetings to review progress of all the projects under a given Phare sector programme are organised in cooperation with the NAC services. It is envisaged that under EDIS the system on monthly meetings will be maintained

The purpose of Monthly Meetings is to review the progress of all the project of a given sector on a monthly basis, to discuss problems and find solutions – thereby facilitating project implementation and achievement of objectives.

The Monthly meeting will be chaired by the Chairperson of SMSC (SPO or PAO) and participated by the SPOs, representatives of Implementing Agency, representative of National Fund Directorate.

Prior to the Monthly Meeting, brief information sheets will be compiled by the SPOs, and the Information Sheets disseminated to the participants of the Monthly Meeting by the Secretariat of SMSC in advance of the meeting.

The Implementing Agency provides the respective SPO with the data on commitment and disbursement status.

Follow-up actions will be recorded by the Secretariat of SMSC and fulfilment of actions checked during the subsequent Monthly Meeting.

☛ Annex H04 – Template – Phare Monthly Meeting Progress Table

☛ Annex H05 – Template – Phare Monthly Meeting Progress Table [Follow-up]

F.8.3. Steering Committee meetings

Project Steering Committee meetings are set up to facilitate the effective implementation of the project including monitoring the progress and ensuring achievement of the project objectives. Problems encountered or anticipated are also brought up for discussion.

The Project Fiche and / or Terms of reference determine general objectives of the project Steering Committee (SC).

The objectives of the Steering Committee are:

- examination and planning of time schedule of the project;
- actual state of implementation of the project;
- discussion of problems and agreeing on solutions.

They serve to inform the participants on the following:

- Will the Contractors fulfil their contractual obligations on time?,
- Can all the objectives of the contracts be achieved?,
- Results of the finished contracts (since the last Steering Committee),
- Time schedules of the new contracts,
- Any impact on the implementation of the Procurement Plan,
- Use of incidental expenses,
- Use of co-financing.

The SC meetings organised by the SPO are attended by the Contractor, representative of the PAO, the stakeholders and the representatives of the target institutions.

Minutes of the Steering Committee meeting are prepared by representatives of the institution acting as SPO for the particular project.

F.8.4. Ad hoc meeting

There are occasions within the regular communication and coordination activities when ad hoc information on progress is required on an as-needed basis. This may require the organisation of ad hoc meeting with the SPO/PIU or Contractors or beneficiaries.

Ad hoc meetings should be documented in Agenda / invitations and Minutes of the meetings.

F.9. REPORTS BY SPO

The PAO is allowed to request any information from the SPOs in order to follow the progress of given projects under the authority of the SPO.

Monitoring at contract level is closely linked to payment processes since the PAO / CFCU/IA ensures the review of regular progress reports [approved by SPO] and documentation attached to Invoices provided for different projects by Contractors.

The PAO / CFCU/IA assesses :

- Activities performed by the Contractors
- Outputs and results achieved
- Financial resources utilised.

and link it to the reality of the implementation of the contract including through :

- comparison of actual expenditure against budget and actual progress against objectives and indicators of achievements
- interaction with the SPO / Line Ministries responsible for conforming the deliveries of the Contractors.

F.9.1. Progress Report SPO to PAO

In accordance with the Operational Agreement, the SPO should submit to the CFCU/IA [monthly / ad-hoc / final] Progress Reports in order to :

- report to the PAO on :
 - status of the project against indicators,
 - activities undertaken during the period of the report as compared to the implementation schedule,
 - current and anticipated problems, including planned remedial actions,
 - planned and scheduled major activities,
- and provide the PAO with a written confirmation signed by the SPO that the project / programme is progressing at a satisfactory rate.

Progress Reports from SPO to PAO serve to the CFCU/IA for the preparation of Progress Reports from PAO to NAO and are taken into account for the planning of on-site-visits by the CFCU/IA.

Role of the SPO - Procedure

- Prepare the Progress Report from SPO to PAO using the standard format assigned by the PAO,
- Ensure that the preparation of the Progress Report from SPO to PAO is supported by the use of the **Check-list for control of Progress Report from SPO to PAO** in order to guarantee that reporting requirements are fully adhered to, and more particularly that the Progress Report from SPO to PAO:
 - provide for accurate, reliable and up-to-date information,
 - are checked for accuracy and certified as being correct or that inaccuracies are referred back to the originator for correction and re-submission,
 - are timely and properly communicated,
- Submit to the CFCU/IA :
 - the Progress Report from SPO to PAO in hard as well as electronic copy
 - a copy of the **Check-list for control of Progress Report from SPO to PAO**

- ☛ Annex F01 – Progress Report from SPO to PAO
- ☛ Annex F02 – Check-list for control [prior to submission to PAO]of the Progress Report from SPO to PAO

F.9.2. Financial Reports from the PIUs

If PIUs are assigned payment responsibilities, the requirements for financial reporting are regulated in the Operational Agreements signed between the PAO and the PIUs.

The PIUs are obliged to report within relevant deadlines and to use pre-established standard formats provided by the PAO.

F.10. SITE VISITS

Technical implementation on site is firstly the responsibility of the SPO. It must be verified, – through physical checks on site - that outputs of the contracts are indeed available, according to the specifications of the contract, and are appropriately identified / recorded.

On-site visits serve (among others) to:

- correlate the reality with the details given in the reports,
- monitor the execution of contracts at the level of the Final Beneficiary and to control the implementation of any task / responsibility assigned to Final Beneficiaries,
- to inspect the Site, work methods and materials, including the testing regime, to correlate the reality with the details given in the reports submitted by the Engineer and to prepare records related to works performed.
- to check the models, types, names of the manufacturer and serial number of equipments;
- to reconcile serial numbers as recorded in assets inventories with numbers reported in procurement documentation (e.g. guarantees);
- to check the respect of publicity requirements,
- support the analysis of suspected irregularities, case of use of second hand equipment, modification of serial numbers and any other attempt to commit irregularities / fraud.

A schedule of regular and on-site visits for each project must be conducted.

The scheduling of on-the-spot site visits should be co-ordinated internally and among the stakeholders in order that any specific issues, that may need checking, are identified.

F.10.1. Site visits under the responsibility of the NAO

The National Fund may organise monitoring on-site-visits to the CFCU/IA and/ or beneficiaries to ensure that projects implementation, financial management in accordance with EU funds and national co-financing rules and relevant sound financial management systems, are established and operational.

The findings from visits are recorded in minutes and reported to the NAO and to the PAO.

F.10.2. Site visits under the responsibility of the PAO

Based on a risk assessment methodology and considering the delegation of tasks from the PAO to a bottom level (i.e. SPOs / Line Ministries / PIUs as relevant), the PAO implements an “Annual on-site visits plan” taking into account :

- the implementation of the Procurement Plan and the signature of new contracts,
- information received through the reporting system and regular meetings with the stakeholders.

On behalf of the PAO, the CFCU/IA:

- executes the on-the-spot visits
- registers the on-the-spot visits execution,
- prepares the on-the-spot visit reports,
- informs the CFCU/IA Departments [as relevant] on any impact of findings on the implementation of the Procurement Plan,
- ensures the follow-up further to the visits and the filing of any related documentation.

F.10.3. Under the responsibility of the SPO

The SPO shall prepare an Annual Plan for on-site visits [to be implemented during the following year].

If the number of contracts handled by the SPO is not very large and the human resources of the SPO are sufficient to ensure a systematic visit to all projects, the plan shall cover all contracts accordingly.

If the number of contracts is too large to be covered systematically in the plan, the SPO shall apply a risk analysis to determine the sample of contracts which should be covered by the visits for the year.

The main aim of the assessment of risks is to know which Final Beneficiaries and related contracts are of higher risk. The result of this exercise will target the monitoring function in those Final Beneficiaries / contracts to initiate corrective actions.

- ☛ Annex A01 – Risk assessment criteria at contracts level
- ☛ Annex F03 – Site visits : Annual Plan
- ☛ Annex F04 – Check-list for the preparation and implementation of site visits
- ☛ Annex F04 – Site visit report

Role of the SPO - Procedure

- Performs a Risk Analysis to select the risky contracts,

☛ Annex A02 – Risk assessment criteria at contracts level

- Checks specific issues that may need checking and/or particular attention,
- Prepares an Annual on-site visits plan,

☛ Annex F03 – Site visits : Annual Plan

- Consults with the PAO / CFCU/IA to avoid duplication of efforts and / or agree [if relevant] on visits for which resources could be pooled and visits carried out together,
- Transmits a copy of the Annual Plan for on-site visits to the PAO [a copy of the final Annual Plan should also be transmitted to the NAO for information] ,
- When additional ad-hoc on-the-spot checks are required (i.e. in case an irregularity is suspected / noted) ensures the modification / endorsement of the Annual Plan for on-site visits,
- Assigns the relevant staff to perform the preparation of on-the-spot checks ,

☛ Annex F04 – Check-list for the preparation and implementation of site visits

- Ensures that the assigned staff:
 - Collects and reviews information relating to the contracts managed by the SPO (i.e. list of contracts, monitoring / progress reports, audit reports, minutes of meetings, etc...) ,
 - Reviews the performance indicators of the relevant contracts / projects,
 - Identifies issues to discuss,
 - Confirms the visit schedule to the relevant institutions,
 - Ensures that logistics issues are sorted out,
 - Formalises the controls of each step of the on-the-spot checks execution on the Check-list for the preparation and execution of on-site visit and signs-off the check-list,
 - Provides for feed back and prepares the Report on execution of on-site visit,

☛ Annex F04 – Site visit report

- Updates the project files
- Ensures that :
 - the PAO is informed and receives a copy of the Report on execution of on-site visit,

- recommendations are agreed with the PAO prior to transmission to the Final beneficiaries' and / or Contractors [especially since the PAO as Contracting Authority is the "legal" interlocutor of the Contractors],
- The follow-up on corrective measures is implemented,
- During the regular meetings (internal and other monitoring meetings) the follow-up is discussed.

For **Works contracts**, on-site visits may be scheduled to coincide with the Monthly Site Progress Meeting held between the Contractor and Engineer [See F.5.4 - Meetings with Contractors].

Minutes of the site progress meetings are prepared by the Engineer and should be included in his/her monthly reports on progress of the Works contracts.

For **Grants**, the site visits may include **meetings with the project final beneficiaries** [as distinct from the Grant Beneficiary]

Meetings with a selection of target groups / final Beneficiaries [based on face-to-face interviews] would serve to assess the level of satisfaction of the beneficiaries and key stakeholders which have benefited from services, trainings, etc... provided under the grant scheme:

- Does the quality match the needs of the final beneficiaries ?
- Did the final beneficiaries receive the allowances [if applicable] mentioned in the progress / financial reports of the project ?
- What have been the direct impacts on the target groups / final Beneficiaries ?
- What are the problems encountered ?

The selection of target groups / final Beneficiaries to meet with should be made on a random basis. Training attendance sheets, registers, project database, survey forms, etc . should help to support the randomised selection.

These meetings should last no more than 30 minutes and shall be well prepared:

- elaborated set of questions should be prepared prior to the interviews,.
- the role and activities / responsibilities of the persons to interview in the implementation of the project must be well known by the interviewers.

Any statement must be justified. It is important to met both satisfied and non-satisfied participants. Achievements should be outlined as well as the weaknesses and problems.

F.11. PROJECT CLOSURE

Closure dates of programmes are defined in the Financing Agreement which specifies deadlines for signature of contracts (commitments) and disbursement of funds.

Financing Agreement for 2003 introduces a deadline for execution of contracts (instead of a deadline for disbursements) and a set up of a clearance of accounts procedures.

All Financing Agreements as well as the resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-fraud Office) and audits by the Court of Auditors even after closure.

Formal programme closure can only be made after clearance of the accounts by the EC.

The following activities must be carried out to ensure the finalisation of contract implementation:

- Completion of contract (and addenda if applicable) requirements by the contractor (delivery of services, supply, works)
- Approval of the final reports, certificates, etc by the Beneficiary and the CFCU/IA as a Contracting Authority (for twinning: audit certificate)
- Requirements relating to warranty fulfilled
- Bank guarantees returned
- Project accounts reviewed and closed.
- Project assets transferred to the beneficiary and recorded in the asset register of the beneficiary.
- Final payments to the contractor made
- Final assessment within the year after closure
- Any specific requirements of the contract fulfilled.

The Final Progress Report constitutes part of the Final Declaration of Expenditure by the PAO to the NAO.

G. PAYMENT TO CONTRACTORS

Invoices or requests for payment (hereinafter Payment Requests) submitted by the Contractors are the documents that constitute the basis for payments.

The Contractor (suppliers and grant beneficiaries) should issue one original invoice/payment request approved by the authorised persons. These are transmitted to the PAO / CFCU/IA as the Contracting Authority.

In order to ensure that EU funds and co-financing funds are available for timely payment to Contractors, cash flow management must be performed at two levels:

- CFCU/IA level: in relation to needs for paying Contractors,
- NF level: in relation to needs for requesting funds from the EC and/or from the national co-financing sources.

For national co-financing under Twinning contracts, invoices (receipts or protocols for airplane tickets), submitted by the suppliers of goods or services or Requests for reimbursement of expenditures, submitted by the Beneficiary are the documents that constitute the basis for payment (hereinafter *Payment Requests*).

G.1. RESPONSIBILITIES

As a Contracting Authority, the PAO is responsible for settling Payment requests/ Invoices received from Contractors.

The National Fund is responsible for channelling the appropriate funds (Phare and national co-financing funds) to the appropriate bank sub-accounts.

The Senior Programme Officers are responsible for:

- formally confirming the delivery of works/supplies/services,
- (for twinning and service contracts) verifying if the services provided comply with the contract's stipulations), .and
- approving the corresponding invoices/requests for payment.

Twinning: as Contracting Authority for the Twinning national co-financing, the CFCU is responsible for settling Invoices (or Protocols

where applicable) received from the Supplier of goods and services, and for settling the Requests for reimbursement of expenditures, received from the Beneficiaries/Line ministries.

The Beneficiaries (BC Project Leaders) are responsible for:

- formally confirming the delivery of supplies and services;
- duly signing the corresponding invoice/ acceptance protocols/ requests for reimbursement of expenditures/ written orders for business trips/ other originals or copies of the documents, required by the CFCU.

G.2. BANK ACCOUNTS

G.2.1. Main and sub-accounts

Main accounts for Phare EU funds are opened by the NAO to ensure the flow of funds between the EC and the NF.

For each main account, the NAO initiates the opening of sub-accounts for the activities of the IAs in the framework of each respective FA.

The PAO is authorised to make payments from the sub-accounts only against contracts signed further to the application of relevant procurement procedures (i.e PRAG, Twinning, etc...).

Payments to contractors are reported by the CFCU/IA to the NF and the EC.

G.2.2. National co-financing accounts

Sub-accounts are opened for the projects where national co-financing is required.

The BGN national co-financing sub-accounts are linked to the BGN national co-financing main account and the Euro national co-financing sub-accounts are linked to the Euro national co-financing main account.

G.2.3. Sub-sub-accounts for EU funds

Sub-sub-accounts are opened for specific projects, where in the Project Fiche or during the implementation of the project it is decided to delegate any payment responsibilities to a PIU or another intermediary (for example UNDP). The sub-sub-accounts shall be:

- related to the sub-account of the CFCU/IA for the project,
- opened in the name of the NF with a mandate to the relevant intermediary
- be operated on the basis of a double signature system:

A sub-sub-account can be opened only after an Agreement is signed between the PAO and the PIU/intermediary and upon approval [by the PAO] of authorised persons to operate the account.

Role of the SPO - Procedure

- After the Agreement is signed between the NF, CFCU/IA and the PIU, the SPO nominates and authorises persons to operate the sub-sub-account by issuing a formal written Order;
- The SPO notifies the PAO the authorised signatures, attaching a copy of the written Order.;
- The PAO / CFCU/IA initiates the opening of the sub-sub-account submitting to the NF a formal Request which contains the authorised signatories from the SPO,
- In case of disapproval on the authorised persons, the NF returns the "Request for sub-sub-accounts opening" back to the CFCU/IA for further consultations. The CFCU/IA requests from the SPO another proposal for signature authorisation(s);
- When the NF approves the authorised persons, the NF opens the relevant sub-sub-account(s) and informs the PAO;
- The PAO notifies the SPO the opening of the sub-sub-account(s).

G.3. PAYMENT PROCEDURES

G.3.1. Payment authorisation

G.3.1.1. Services / Supply / Works / Framework contracts

Role of the SPO - Procedure

- The CFCU/IA :
 - registers the invoices
 - checks the availability of funds
 - requests from the SPO the approval of the services / supplies / works delivered
- The SPO ensures that:
 - the delivery of services / supplies /

is properly controlled,

- related controls are formalised in check list.

Annex F06 – Control [prior to submission to the PAO] of Contractors reports / outputs [including reports on exceptions]

- The SPO confirms in written to the PAO the deliveries [transmits a copy of the check-list to the PAO].
- The CFCU/IA :
 - establishes the amount that shall be paid to the Contractor;
 - issues Payment Orders,
 - updates the Contract payment Dossier,
 - issues a notification letter to the Contractor.

G.3.1.2. Payments under grant contracts

Under Grant contracts a Phare service contract with a specially assigned technical assistance organisation (TAO, usually an NGO) is concluded for performance of technical assistance for management of grant scheme.

The TAO is responsible for:

- Checking the eligibility of the expenditures taking into account the Grant Contract provisions,
- Verification of the exactness of arithmetic calculations,
- Check that Requests for Payment are submitted according to the established payment schedules and comply with any other conditions stipulated by the Grant Agreement,
- Calculation of the actual grant amount based on the documents submitted by the grant beneficiary and the eligible expenditures actually incurred,
- Approval of the payments,
- Examination of the progress reports and the final reports submitted by grant beneficiaries before endorsing the Final Request for Payment.

Role of the SPO - Procedure

- The CFCU/IA :
 - registers the requests for payment
 - checks the availability of funds
 - requests from the SPO [or the TAO when there is a TAO] the approval

of the Grant Request for payment

- The SPO [or the TAO when there is a TAO] ensures that:
 - the Grant Request for payment is properly controlled,
 - related controls are formalised in check list

← **Annex F06 – Control [prior to submission to the PAO] of Contractors reports / outputs [including reports on exceptions]**

- The SPO [or the TAO when there is a TAO] confirms in written to the PAO the controls and approval of the grant Request for payment [transmits a copy of the check-list to the PAO].
- The CFCU/IA :
 - checks if the TAO has performed the control / approval procedures;
 - establishes the amount that shall be paid to the Grant Beneficiary;
 - issues Payment Orders,
 - updates the Contract payment Dossier
 - issues a notification letter to the Grant Beneficiary.

G.3.1.3. Payments under twinning contracts

Under Twinning contracts, the main input of the SPO / Beneficiaries relates to co-signature of the reports – **See F.7.6 Reports.**

Role of the SPO - Procedure

- The CFCU/IA :
 - registers the requests for payment and the reports co-signed by the Project partners,
 - checks the availability of funds
- The CFCU/IA :
 - checks if the reports and request for payment are properly signed,
 - establishes the amount that shall be paid,
 - issues Payment Orders,
 - updates the Contract payment dossier.

G.4. PAYMENT TYPES AND TERMS

The different types of contracts (services, frameworks, supplies, works, grants, twinning) have different payment schemes. For each category, Contractors are entitled to receive:

- initial pre-financing payment / instalment,
- further pre-financing instalments (interim payments) – where applicable, and
- balance (final) payment,

in accordance with the PRAG/Twinning manual and the conditions set out in the respective contracts.

The tables hereinafter summarise:

- payable amounts (pre-financing, interim and final) by percentage;
- documents required to be submitted by the Contractor for checking by the CFCU/IA;
- timeframe for the payment.

The tables are subject to changes if (Special) Conditions of the Contracts financing change. In the tables, “Cash flow forecast” refers to the estimate of the cash flows arising directly from the execution of the contract and “Contract value” refers to the sum stated in the Contract representing the maximum or total amount payable for the provision of the services.

G.4.1. Service Contracts

Fee-based contracts

	PRAG	Pre-financing	Interim payment	Balance payment
Amount	PRAG 2003	60% of the cash flow forecast for the 12 months following commencement date (if applicable)	Forecast as per Special Conditions is based on: <ul style="list-style-type: none"> - the submitted invoice setting out days worked and incidental expenditures incurred; - contractors' progress reports explaining the activities due until the end of the project; - contract time-schedule for activities/payments. The interim invoices are paid until the sum of the amount paid is 90% of the contract maximum value	The balance of the final certified value of the contract, subject to the maximum contract value, after deduction of the amounts already paid
	PRAG 2006	<p><u>First payment of pre-financing:</u></p> <ul style="list-style-type: none"> - If implementation period of the contract is 12 months or less : maximum of 40 % of the total contract amount, - If implementation period is between 12 and 24 months: maximum of 30 % of the total contract amount - If implementation period is 24 months or more: maximum of 20 % of the total contract amount <p><u>6-monthly further instalments of pre-financing,</u> if any, as indicated in Special Conditions (art. 7.2).</p> <ul style="list-style-type: none"> - Amount equivalent to the amount cleared on the basis of expenditure verification reports [art. 27 – Approval of reports and documents]. <p>Where the cumulative amount of payments made reaches 80 % of the contract amount, the entire pre-financing must have be cleared.</p>	<p><u>Once all pre-financing is cleared or if no pre-financing is requested [Special Conditions art. 7.2]</u></p> <ul style="list-style-type: none"> - The interim invoices are paid such that the sum of payments does not exceed 90% of the maximum contract value stated in art. 3 of the Special Conditions. 	<p><u>Maximum 10% of the contract value</u></p> <ul style="list-style-type: none"> - Balance of the final value of the contract [subject to the maximum value stated in art. 3 of the Special Conditions] after deduction of the amounts already paid.

	PRAG	Pre-financing	Interim payment	Balance payment
Required documents	PRAG 2003	<ul style="list-style-type: none"> - Signed contract - Invoice/request for pre-financing payment - Financial guarantee (for the full amount of the pre-financing payment if the pre-financing amount exceeds €150.000). The guarantee remains valid until the final certified value established in audit certificate has been accepted. 	<ul style="list-style-type: none"> - Interim report approved by Beneficiary and Contracting Authority - Financial report - Invoice/request for interim payment – for Fees and Incidental Expenditures - Timesheets for the relevant period <p>Letter by the Beneficiary confirming that the services provided are in accordance with the contract (if applicable).</p>	<ul style="list-style-type: none"> - Approved final progress report - Final financial report - Audit certificate - Final invoice for Fees and incidental expenditures - Timesheets for the relevant final period - Final Statement (General Conditions Art. 28.7) - Letter by the Beneficiary confirming that the services provided are in accordance with the contract (if applicable)
	PRAG 2006	<ul style="list-style-type: none"> - Signed contract - Invoice / request for pre-financing payment - Financial guarantee (for the full amount of the pre-financing payment) if the pre-financing amount exceeds €150.000. The guarantee remains valid until it is released by the Contracting Authority, i.e. in one go once the related pre-financing has been cleared, at the very latest by the time 80% of the amount of the contract has been paid. <p><u>Additional for 6-monthly instalments:</u></p> <ul style="list-style-type: none"> - Interim progress report (together with the supporting documentation) - Auditor's expenditure verification report 	<ul style="list-style-type: none"> - Interim progress report approved by Beneficiary and Contracting Authority - Financial report (GC Art 26.1 & 26.2) - Invoice/request for interim payment - Timesheets for the relevant period - Auditor's expenditure verification report 	<ul style="list-style-type: none"> - Approved final progress report and Final Statement (General Conditions Art. 29.7) - Financial report (GC Art 26.1 & 26.2) - Auditor's final expenditure verification report - Final invoice - Timesheets for the relevant final period
Time frame for payment	PRAG 2003	Within 45 days of receipt of the contract signed by all parties and all relevant documents (request for payment, financial guarantee if applicable)	Within 45 days of receipt of the approved interim progress report, timesheets and invoice/request and all relevant documents.	Within 45 days of receipt of the approved final progress report and all relevant documents (invoice/request, timesheets, audit certificate, etc.).
	PRAG 2006	<p><u>1st payment of pre-financing</u></p> <p>Within 45 days of receipt of the contract signed by all parties and all relevant documents (request for payment, financial guarantee if applicable).</p> <p><u>6-monthly further pre-financing (if any)</u></p> <p>Within 45 days of receiving an invoice accompanied by all required supporting documents)</p>	<p>Within 45 days of receipt of the invoice, interim progress report, expenditure verification report (subject to approval), provided that appropriate substantiating documents have been provided and the expenditure is eligible.</p> <p>Payments are submitted on a six-monthly basis, if the contract duration is in excess of six months.</p> <p>If the contract duration is less than six months then there would only be one interim payment.</p>	<p>Within 45 days of receipt of the invoice, final progress report, final expenditure verification report and all relevant documents (invoice, timesheets, audit certificate, etc.).</p> <p>The financial guarantee must be released within 45 days after the audit certificate has been accepted.</p>

Global price contracts

	PRAG	Pre-financing	Interim payment	Balance payment
<i>Amount</i>	PRAG 2003	60% of the contract value	None	Maximum 40% of the contract value if pre-financing payment has been made
	PRAG 2006	60% of the contract value (Art. 3 Special Conditions)	None	Maximum 40% of the contract value if pre-financing payment has been made (Art. 3 Special Conditions)
<i>Required documents</i>	PRAG 2003	<ul style="list-style-type: none"> - Signed contract - Request for payment - Financial guarantee (for the full amount of the pre-financing payment if the pre-financing amount exceeds €150.000). The guarantee remains valid until a final payment has been made. 	Not applicable.	<ul style="list-style-type: none"> - Final progress report approved by Beneficiary and Contracting Authority - Final invoice/request - Final statement (General Conditions Art. 28.7)
	PRAG 2006	<ul style="list-style-type: none"> - Signed contract - Request for payment - Financial guarantee (for the full amount of the pre-financing payment) if the pre-financing amount exceeds €150.000. The guarantee remains valid until a final payment has been made. 	Not applicable.	<ul style="list-style-type: none"> - Final progress report approved by Beneficiary and Contracting Authority - Final invoice/request - Final statement (General Conditions Art. 29.7)
<i>Time frame for payment</i>	PRAG 2003	Within 45 days of receipt of the contract signed by all parties and all relevant documents (invoice/request, financial guarantee if applicable)	Not applicable.	Within 45 days of approval of the final progress report by the Beneficiary and the CFCU/IA and receipt of all relevant documents (invoice/request,, etc.).
	PRAG 2006	Same as PRAG 2003	Not applicable.	Same as PRAG 2003

G.4.2. Framework contracts

	Pre-financing	Interim payment	Balance payment
<i>Amount</i>	60% of the contract value	None	Up to 40% of the contract value [if the advance is requested]
<i>Required documents</i>	<ul style="list-style-type: none"> - Countersigned original of the letter of contract - Invoice/Request for advance - The original offer - Initialled ToR - Financial guarantee if the amount of the advance is higher than €100.000 	Not applicable	<ul style="list-style-type: none"> - Invoice/Request for final payment - List of supporting documents for invoiced costs - Copy of the approved final report - Beneficiary certificate ("good for payment" granted from the recipient).
<i>Time frame for payment</i>	Within 45 days from date of the letter of contract, invoice/request for payment and original financial guarantee (if applicable)	Not applicable	Within 45 days of receipt of the invoice/request

G.4.3. Supply Contracts

	PRAG	Pre-financing	Interim payment	Balance payment
Amount	2003	60% of the contract value	30% of the contract value	10% of the contract value
	PRAG 2006	60% of the contract price against provision of the performance guarantee. If the pre-financing payment exceeds EUR 150.000, the Contractor must provide a financial guarantee for the full amount of the pre-financing payment. Financial guarantee must remain valid until it is released 45 days at the latest after the provisional acceptance of the goods.	None	40% of the contract price following provisional acceptance of the supplies Where only part of the supplies have been delivered, the 40% payment shall be calculated on the value of the supplies which have actually been accepted and the security shall be released accordingly.
	Note: For supplies not covered by a warranty period conditions to which the payments of pre-financing, interim and/or final payments are subject, shall be as stated in the Special Conditions.			
Required documents	PRAG 2003	<ul style="list-style-type: none"> - Invoice/request for payment - Original of signed contract - Original of performance guarantee (for the amount specified in the contract, in any case no more than 10% of the amount of the contract price). - Original of pre-financing guarantee for the full pre-financing amount - Copy of insurance policy if required (see Special conditions, article 12) 	<ul style="list-style-type: none"> - Invoice - Original of provisional acceptance certificate - Originals of certificates of origin of the supplies - Copy of inspection test certificate if applicable <p>Note: where only a part of the supplies have been delivered, the calculated 30% are for the supplies which have actually been accepted according to the provisional acceptance certificate.</p> <p>Note: when a warranty period is not applicable, the payment schedule may be modified (see Special conditions, art.32)</p>	<ul style="list-style-type: none"> - Invoice - Final acceptance certificate - Original of guarantee (if applicable) - Copy of inspection test certificate if applicable <p>Note: the final 10% payment may be made at the same time as the interim payment if a security guaranteeing repayment of the full 10% balance is submitted.</p>
	PRAG 2006	<ul style="list-style-type: none"> - Invoice/request for payment - Original of signed contract - Original of performance guarantee (for the amount specified in the contract, in any case no more than 10% of the amount of the contract price). - Original of pre-financing guarantee for the full pre-financing amount - Copy of insurance policy if required (see Special conditions, article 12) 	NA	<ul style="list-style-type: none"> - Invoice - Provisional acceptance certificate - Original of guarantee (if applicable) - Originals of certificates of origin of the supplies - Copy of inspection test certificate if applicable - Copy of warranty if applicable
Time frame for payment	PRAG 2003	Within 45 days of receipt of the Invoice/request for payment and all relevant documents.	Within 45 days of receipt of the Request for payment and all relevant documents	Within 45 days of receipt of the Request for payment and the final acceptance protocol (or financial guarantee if applicable).
	PRAG 2006	Within 45 days from the date on which an admissible payment request is registered by the competent department specified in the Special Conditions. The payment request shall not be admissible if one or more essential requirements are not met.		

G.4.4. Works

Payment procedures for works must comply with FIDIC rules. In accordance with the FIDIC Contract Guide Clause 14, the following conditions apply to Construction and Plant and Design-build contracts.

	PRAG	Pre-financing	Interim payment	Balance payment
<i>Amount</i>	PRAG 2003	No more than 10% (as a lump sum) of the original contract price, or 20% of the contract price for the purchase or order of materials, etc. as stated in article 44 of the GC(see also art. 44 of the Special conditions)	Varies per individual contract	Varies per individual contract
	PRAG 2006	Varies per individual contract. Shall be stated in the Special conditions, yet total amount of pre-financing, shall not exceed : - 10% of the original contract price for the lump-sum advance referred to in Art. 44.1(a) of GC [lump sum advance enabling the Contractor to meet expenditure resulting from the commencement of the contract]	Varies per individual contract	Varies per individual contract
		- 20% of the contract price for all the other pre- financing referred to in Article 44.1(b) of GC [if the Contractor affords proof of the conclusion of a contract for the purchase or order of materials, plant, equipment, machines and tools necessary for the execution of the contract, and of any other substantial prior expenses such as the acquisition of patents or study costs.]		

	PRAG	Pre-financing	Interim payment	Balance payment
<i>Required documents</i>	PRAG 2003	<ul style="list-style-type: none"> - Invoice/request for payment - Original of signed contract - Original of performance guarantee (for the amount specified in the Special conditions, in any case no more than 10% of contract price). - Original of pre-financing guarantee for the full pre-financing amount, valid until pre-financing has been repaid by interim payments - Copy of insurance policy for design, if applicable - Copy of third-party insurance policy, if applicable - Copy of insurance required as stated in article 14 of the Special conditions. If none are stated there, then as stated in article 14 of the General conditions 	<ul style="list-style-type: none"> - Interim payment certificates – ensure inclusion of withheld retention money (or retention guarantee for no more than 10% of contract price) and amount deducted for repayment of pre-financing guarantee. - Original of provisional or partial provisional acceptance certificate as the case may be - Originals of certificates of origin of the goods and materials used - Copy of inspection test certificate if applicable <p><i>Note</i> : the interim payment certificates may include corrections or modifications to any previous certificate</p>	<ul style="list-style-type: none"> - Invoice/request for final payment - Copy of inspection test certificate if applicable - Final acceptance certificate - Original Retention guarantee, if applicable <p><i>Note:</i> The final acceptance certificate is issued within 30 days after expiry of the maintenance period. However, the final payment request may be submitted together with the (last) provisional acceptance certificate provided that a retention guarantee is submitted, as stated in art. 45 of Special conditions (see also GC art. 45).</p>
	PRAG 2006	<ul style="list-style-type: none"> - Invoice/request for payment - Original of signed contract - Performance guarantee which shall be valid and enforceable until the Contractor has executed and completed the Works and remedied any defects 	<ul style="list-style-type: none"> - Contractor's Invoice - Performance Security (if no Advance payment) - Interim Payment Certificate (IPC) issued by the Engineer determining the amount which the engineer fairly determines to be due, based on Contractor's Interim Statement 	<ul style="list-style-type: none"> - Invoice/request for final payment - Contractor's Final Statement (copy sent to Engineer) - Final Payment Certificate (FPC) issued by the Engineer, based on:
		<ul style="list-style-type: none"> - Original of pre-financing guarantee for the full pre-financing amount. The guarantee shall be valid and enforceable until the pre-financing has been completely repaid by the Contractor out of interim payments under the contract. - Copy of insurance required as stated in art. 14 of GC and/or in the Special conditions. 	<ul style="list-style-type: none"> - (i.e. application for IPC, submitted to Engineer in 6 copies after the end of each month) together with supporting documents, including report on progress during this month - Originals of certificates of origin of the goods and materials used - Copy of inspection test certificate if applicable 	<ul style="list-style-type: none"> - Contractor's draft final statement (i.e. application for the FPC, submitted to Engineer in 6 copies as a draft final statement) together with the supporting documents - Engineers IPC for the agreed parts of the Contractor's draft final statement

	PRAG	Pre-financing	Interim payment	Balance payment
			<ul style="list-style-type: none"> - Original of provisional or partial provisional acceptance certificate as the case may be <p><i>Note</i> : the interim payment certificates may include corrections or modifications to any previous certificate</p> <p>Note: Prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an IPC in an amount which would (after retention and other deductions) be less than the minimum amount of IPC (if any) stated in the Appendix to Tender.</p>	<ul style="list-style-type: none"> - Copy of the Performance Certificate issued by the Engineer to the Contractor on completion of the Contractor's obligations under the Contract (within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects) - Copy of inspection test certificate if applicable - Original Retention guarantee, if applicable
Time frame for payment	PRAG 2003	Within 45 days of receipt of payment and all relevant documents	Within 45 days of receipt of the request for payment and all relevant documents	Within 45 days of receipt of the request for payment and all relevant documents
	PRAG 2006	Within 45 days of receipt of payment and all relevant documents	Within 45 days of receipt of the request for payment and all relevant documents	Within 45 days of receipt of the request for payment and all relevant documents

G.4.5. Grants

	Pre-financing	Interim payment	Balance payment
Amount	<u>Option 1:</u> If the duration of the action is no more than 12 months <u>or</u> the financing provided by the Contracting Authority to the grant beneficiary does not exceed € 100.000 – the pre-financing instalment amounts to 80% of the amount referred to in Article 3.2 of the Special conditions	<u>Option 1:</u> none	<u>Option 1:</u> The balance – 20% of the amount referred to in Article 3.2 of the Special conditions
	<u>Option 2:</u> If the duration of the action exceeds 12 months <u>and</u> where the financing provided by the Contracting Authority to the grant beneficiary exceeds € 100.000 – the initial pre-financing instalment is equal to 80% of the estimated budget for the first 12 months of the action, financed by the Contracting Authority.	<u>Option 2:</u> the so called “subsequent pre-financing” payments shall be made according to Article 15 of the General conditions, art. 4 of the Special conditions. The sum total of all pre-financing payments under the Contract may not exceed 90 % of the amount referred to in Article 3.2 of the Special Condition.	<u>Option 2:</u> The balance of the amount referred to in Article 3.2 of the Special conditions
	<u>Option 3:</u> none	<u>Option 3:</u> none	<u>Option 3:</u> The amount referred to in Article 3.2 of the Special conditions in one payment

	Pre-financing	Interim payment	Balance payment
Required documents	<u>Option 1:</u> - Contract signed by all parties - Request for payment - Financial guarantee (if required under art. 15.7 of the General conditions).	<u>Option 1:</u> Not applicable	<u>Option 1:</u> - Request for final payment - Copy of the approved final report as described in article 2.3 of the General conditions
	<u>Option 2:</u> Same as above	<u>Option 2:</u> - Request for payment (see article 15.1 of the General conditions) - Approved interim report - Audit report if the sum total of the earlier and new pre-financing payment exceeds €750.000 and other conditions are in place according to Art. 15.6 - Financial guarantee if required (see General conditions Art 15.7)	<u>Option 2:</u> - Request for final payment - Approved final report - Audit report in accordance with Art.15.6 of the General Condition
	<u>Option 3:</u> Not applicable. <i>Note:</i> any request for payment of over €75.000 for the financial year in the case of an operating grant requires an audit certificate	<u>Option 3:</u> Not applicable <i>Note:</i> any request for payment of over €75.000 for the financial year in the case of an operating grant requires and audit certificate	<u>Option 3:</u> - Request for final payment - Approved final report - Audit report if required under art. 15.6 of the General Condition <i>Note:</i> any request for payment of over €75.000 for the financial year in the case of an operating grant requires an audit certificate <i>Note:</i> any request for payment of the balance in case of a grant of more than €100 000.00 requires and audit certificate
Time frame for payment	Within 45 days of receipt of the request for payment and all relevant documents	Within 45 days of receipt of the request for payment and all relevant documents	Within 45 days of receipt of the request for payment and all relevant documents plus the final report and audit certificate if applicable

G.4.6. Twinning contracts

	Pre-financing	Interim payment	Balance payment
<i>Amount</i>	A pre-financing of 80% of the budget of the Twinning Contract corresponding to first 12 months of the implementation period mentioned in article 2 of the Special Conditions as financed by Community Funds, within 45 days of receipt of: - the Twinning contract signed by both parties, - a request for payment conforming to the model attached as Annex 5 to the Twinning contract. The budget less the private sector input above € 5000 and the provisions for changes in prices will be divided by the number of months of the Twinning project and then multiplied by 12. The amount thus obtained will be reduced to 80%.	If more than 70% of the accumulated advance and interim payments have been consumed and supported by Interim Quarterly Reports, approved by the IA, a subsequent pre-financing payment equivalent to the amount mentioned in article 4 of the Special Conditions may be requested. Accumulated pre-financing payments may not exceed 90% of the total budget of the Contract less the private sector input above € 5000.	Balance up to the amount approved after the submission and of the final report, subject to approval of that report, and final audit certificate
<i>Required documents</i>	- Request for pre-financing payment. - The twinning contract signed by both parties. - Notification of endorsement is received.	- Request for interim payment. - Financial report(s) – approved, for the proper amount.	- Final invoice - Final report – approved, by both CFCU & ECD [under DIS only] - Final audit certificate.
<i>Time frame for payment</i>	Within 45 days of receipt of the request for payment and the signed contract if all requirements are satisfied.	Within 45 days of receipt of the request for payment if all requirements are satisfied.	Within 45 days of receipt of the request for payment if all requirements are satisfied.

For **twinning expenditures** out of **national co-financing funds** the different type of eligible costs determines different payment schemes:

- payment to the Supplier of the goods or services - the suppliers are entitled to receive one final payment against delivery of goods or services provided;
- reimbursement of expenditures to the Beneficiaries - the Beneficiaries are entitled to receive for each Request for reimbursement one final recovery of funds of actual and eligible costs incurred, approved by the CFCU as the Contracting Authority for the respective twinning contract.

In general, Twinning national co-financing expenditure items - which do not have to be Phare eligible by nature - are described in the Twinning manual. In conformity with the Twinning manual and the Bulgarian Budget Classification the following expenditures, grouped in categories, are deemed as eligible for payment / reimbursement by the CFCU as the Contracting Authority:

The direct and indirect costs of the Beneficiary administration, civil servants and national private experts working for the project are not born by the PAO / CFCU.

Category	Type of costs	Procurement and type of sub-contract	Required documents	Time frame for payment
Category I Direct costs for training connected with the successful implementation of the Twinning contract				
Category I A <i>Travel costs for BC staff travelling to an MS or between MS;</i>	<ul style="list-style-type: none"> - Direct costs for travel of BC staff to a MS or between MS - payment to the supplier of services 	<ul style="list-style-type: none"> - Small public procurement, held by CFCU - No need for a signed sub-contract 	<ul style="list-style-type: none"> - The whole original small public procurement dossier 	Within 2 weeks of receipt of the invoice/ protocol/ receipt
Category I B <i>Reimbursement of visa costs;</i>	<ul style="list-style-type: none"> - Visa expenditures - Reimbursement of actually incurred expenditures to the Beneficiary 	<ul style="list-style-type: none"> - No need of small public procurement thus no sub-contracts are signed 	<ul style="list-style-type: none"> - Original Request for reimbursement of expenditures under Category IB, with outgoing number and stamp of the relevant Beneficiary; - Copy of the exact page of the Twinning contract and Twinning budget, defining the activities held, including any additional changes to them; - All original invoices, receipts or other supporting documents, verifying expenditures for visa; 	Within 2 weeks of receipt of the invoices/ receipts/ request
Category I <i>Participation of BC staff in seminars/ workshops/ trainings etc, held in BC;</i>	<ul style="list-style-type: none"> - Direct costs of BC staff, participating in trainings held in BC - Reimbursement of actually incurred expenditures to the Beneficiary 	<ul style="list-style-type: none"> - No need of small public procurement thus no sub-contracts are signed 	<ul style="list-style-type: none"> - Original Request for reimbursement of expenditures under Category I, with outgoing number and stamp of the relevant Beneficiary; - Copy of the exact page of the Twinning contract and Twinning budget, defining the activities held, including any additional changes to them; - Copy of the Beneficiary internal order, stating the maximum amount of the hotel expenditure, duly signed by the BC PL; - Original individual written orders for business trip for each participant and - Original Financial Recapitulation Sheets for each participant stating the actual daily allowances, accommodation and travel costs, duly signed by the BC PL; - All original invoices, receipts and other supporting documents, verifying expenditures for accommodation, travel and logistics; 	Within 1 month of receipt of the Request for reimbursement of expenditures

Category	Type of costs	Procurement and type of sub-contract	Required documents	Time frame for payment
Category I D <i>Transportation for the BC staff, participating in seminars / workshops / trainings held in BC;</i>	- Organised group road transport by CFCU - payment to the supplier of the service	- Small public procurement, held by CFCU - Service sub-contract for road transport	- The whole original small public procurement dossier	Within 2 weeks of receipt of the invoice
Category II Operating costs				
Category II A <i>Telephone / fax / internet communications of the RTA and his/her Assistant(s)</i>	- Operating costs, (telecommunications, fax, internet access, etc.) - Reimbursement of actually incurred expenditures to the Beneficiary	- No need of small public procurement thus no sub-contracts are signed	- Original Request for reimbursement of expenditures under Category II, with outgoing number and stamp of the relevant Beneficiary; - Original or verified copy of invoice(s) issued by the supplier and invoiced to the Beneficiary, duly signed by the BC PL	Within 2 weeks of receipt of the Request for reimbursement of expenditures
Category II B <i>Office consumables of RTA and his/her Assistant(s);</i>	- Operating costs, (Stationery) - payment to the supplier of the services/supplies	- Small public procurement, held by CFCU - Sub-contract for supply/service	- The whole original small public procurement dossier	Within 1 month of receipt of invoice and acceptance protocol
Category III Office furniture and equipment				
Category III	- Office furniture and equipment - payment to the supplier	- Small public procurement, held by CFCU - Supply sub-contract	- The whole original small public procurement dossier	Within 1 month of receipt of invoice and acceptance protocol

PART V – MONITORING AND EVALUATION

- ✓ *Who is responsible for what ?*
- ✓ *What is expected from you ?*
- ✓ *Can you demonstrate that you have done what is expected from you ?*

H. SECTORAL AND PROGRAMME MONITORING

Before mid 2001, monitoring and assessment on the delivery of the Phare programme in the Candidate Countries was carried out by a consortium contracted by the EC. As of mid 2001 the responsibility for monitoring and assessment was split between the candidate countries and the EC.

The monitoring reports prepared by the candidate countries are submitted to the Monitoring [Sub]-Committees meetings via the National Aid Co-ordinator and form also the basis for the interim evaluation. The monitoring and evaluation covers each monitoring sector as a whole, and may be supported by monitoring and evaluation reports for certain sub-sectors, in particular where a single monitoring sector is too large. In this approach monitoring and evaluation do not deal with single projects but with a group of projects implementing larger objectives of the pre-accession aid. It takes wider objectives into account than an evaluation of single projects would do.

The EC has hired an external consortium as independent evaluators. However, once EDIS is in place or when the candidate country becomes a Member State, the responsibility for interim evaluation moves to the country.

H.1. JMC

H.1.1. Planning of the Annual Monitoring Cycle

The NAC services (Management of EU Funds Directorate - MEUFD – in the Ministry of Finance) are responsible for:

- drawing up the annual Phare programme monitoring time schedule, outlining the indicative dates of JMC and SMSC meetings;
- presenting the annual monitoring cycle for approval by the JMC.

H.1.2. Preparation of the JMC Meeting

H.1.2.1. Preparation of documents for JMC meeting

In accordance with its mandate of the Joint Monitoring Committee (JMC), the JMC receives the Phare Sector Monitoring Reports to form the basis for JMC discussions. The Phare Sector Monitoring Reports are prepared by the Secretariats in line ministries responsible for Phare sector programme monitoring, based on the Project Monitoring Reports prepared by the respective SPOs services.

The CFCU/IA provides financial and other data, as requested by the SPO services, for compilation of the Sector Monitoring Report.

In addition to the Phare Sector Monitoring Reports, brief information sheets are presented to the JMC for providing summary information on Phare sector progress. These sheets are compiled by the SMSC Secretariat.

☛ Annex H01 – Template: brief information sheet

H.1.2.2. Implementing JMC meeting

The JMC meeting are attended by the NAO, NAC, Director of the National Fund Directorate

in the Ministry of Finance, Director of the “Management of EU Funds Directorate” in the Ministry of Finance, Director of the “Coordination of European Union Issues and International Financial Institutions” Directorate in the Council of Ministers and the Commission representatives. The JMC discusses Phare programme progress based on the monitoring reports.

The JMC supervises the progress of Phare programme as per the Mandate of the JMC. The JMC may propose reallocations of funds within the Phare Financing Memorandum and propose extension of contracting and disbursement deadlines.

H.1.2.3. Minutes and follow-up of JMC decisions

The Minutes of JMC are drafted by the MEUFD as a Secretariat of the JMC. The JMC secretariat will inform in writing the respective Implementing Agencies on the decisions of the JMC concerning the projects being implemented by the Implementing Agency.

Follow-up of JMC decisions shall be monitored by the MEUFD as the JMC Secretariat.

☛ Annex H04 – Template – Phare Monthly Meeting Progress Table

☛ Annex H05 – Template – Phare Monthly Meeting Progress Table [Follow-up]

H.2. SMSC

H.2.1. Preparation of SMSC Meetings

The Project Monitoring Reports are prepared under the authority of the respective SPO responsible for technical implementation of a given project.

☛ Annex H02 – Template – Sector Monitoring Report

The Project Monitoring Reports are submitted to the Secretariats of the SMSCs for dissemination to the SMSC members.

The documentation of the SMSC meeting is submitted to the members of the SMSC by the SMSC Secretariat 14 calendar days prior to the SMSC meeting.

The CFCU/IA (respective contract and financial managers) review the Project Monitoring Reports and prepare comments prior to the SMSC meeting.

The PAO or the staff member delegated by the PAO to represent him/her at the SMSC meeting presents the CFCU/IA comments during the SMSC meeting.

H.2.2. Implementing SMSC meetings

The SMSC supervises the progress of a given Phare sector programme as per Mandate of the SMSC.

The SMSCs review the progress of given Phare sector based on the Project Monitoring Reports and the Evaluation Reports targeted on a given sector.

The representative of the CFCU/IA, assigned to the monitoring of given Phare projects, participates in the respective SMSC meetings as delegated by the PAO, and presents comments on the Project Monitoring Report and the overall progress of the project.

The SMSCs may make recommendations to improve the management of a programmes aimed at ensuring that the programmes reach the objectives set within the deadlines.

H.2.3. Minutes and follow-up of SMSC decisions

The Minutes of SMSC meetings are drafted by the Secretariat of the SMSC meeting within 15 calendar days after the meeting.

The Minutes are disseminated for commenting to the members of SMSCs.

Final minutes are issued upon inclusion of comments by the members of SMSCs.

Follow-up of SMSC decisions shall be monitored by the MEUFD.

The subsequent SMSC will be informed on the implementation of the decisions of the previous SMSC meeting.

H.3. MODIFICATION OF FA / FM / PF - REALLOCATION OF FUNDS

The projects financed by the Phare programme are described in the Project Fiches, forming part of the respective FM / FA. In some cases it may become necessary over the lifetime of project implementation to modify the Project Fiche, as the actual needs or circumstances have changed since the programming phase was completed.

Standard Project fiches :

http://ec.europa.eu/enlargement/fiche_projet/index.cfm?page=410708&c=BULGARIA

These changes require changing the relevant Project Fiche. Such changes are, for example:

- reallocation of budget,
- changes in the description of the project,
- changes in the objectives of the project,
- changes in the procurement procedures,
- changing co-financing arrangements (e.g. from joint to parallel or vice versa).

The above list is not exhaustive of all types of changes which may become necessary over the lifetime of project implementation.

Annex H06 – Template – Standard Recommendation of the Sectoral Monitoring Subcommittee Form under EDIS

H.3.1. Under DIS

The procedure for modifying the Project Fiches (PF) is as follows:

If the change of projects requested is for:

- ***a reallocation of funds exceeds 15% (cumulated) of the budget of the FA / FM, or,***
- ***a technical modification which involves a change in objectives/results of a projects, or,***
- ***existing projects to be suppressed or new ones created,***

the procedure is as follows:

- The PAO/IA prepares and submits to the NAO/NF the request for reallocation/modification of PF, supported by a letter from the SPO/project beneficiary, a cover letter from the PAO and a decision of the JMC/SMSC/Monthly Meetings or when there is not a session of the committee a Written Procedure is held, supporting the need for reallocation;

- In case of disapproval the NAO / DNAO returns the Request to the PAO for further justification.
- In case of approval, the NAO/NF submits to NAC the Request, duly signed by the NAO / DNAO. A Cover Letter signed by NF Director is attached;
- NAC services perform checks according to their internal procedures;
- In case of disapproval the NAC / NAC services return/s the Request to PAO for further justification with a copy to NAO/NF.
- In case of approval, NAC sends the Request to EC Delegation for further proceeding and endorsement;
- EC Delegation performs checks and sends the Request to the EC (ENLARG A2) for PMC opinion and a new Commission Decision. In case of urgency, approval can be provided under written procedure, where relevant;
- In case of EC/ECD approval, a letter informing NAO, NAC and PAO is sent,
- In case of disapproval, a letter informing of the disapproval by EC/ECD will be disseminated by NAC to NAO/NF and the PAO/IA.
- PAO informs in writing the respective SPO on the ECD decision of the request.

If the change of projects requested is for a reallocation of funds below 15% (cumulated) but is substantial as:

- ***any change of a budget;***
- ***changes to the Results, including the corresponding Activities;***
- ***Changes affecting the IA and/or the beneficiary, when the beneficiary is new;***
- ***Changes to the Means, notably when it concerns TW;***
- ***Combination of components of multi-annual projects (MAP) financed initially under separated FA***

the procedure is as follows:

- The PAO/IA prepares and submits to the NAO/NF the request for reallocation/ modification of PF, supported by a letter from the SPO/project beneficiary, a cover letter from the PAO and a decision of the JMC/SMSC/Monthly Meetings or when there

is not a session of the committee a Written Procedure is held, supporting the need for reallocation;

- In case of disapproval the NAO / DNAO returns the Request to the PAO for further justification.
- In case of approval, the NAO/NF submits to NAC the Request, duly signed by the NAO / DNAO. A Cover Letter signed by NF Director is attached;
- NAC services perform checks according to their procedure manual;
- In case of disapproval the NAC / NAC services return/s the Request to PAO for further justification with a copy to NAO/NF.
- In case of approval, NAC sends the Request to EC Delegation for further proceeding and endorsement;
- EC Delegation performs checks and sends the Request to the EC (ENLARG A2) for information and comments if any within a deadline of three working days;
- In case of ECD approval the Request is signed and a letter informing NAO, NAC and PAO is sent,
- In case of disapproval, a letter informing of the disapproval by ECD will be disseminated by NAC to NAO/NF and the PAO/IA.
- PAO informs in writing the respective SPO on the ECD decision of the request.

If changes are of purely technical nature or cumulated reallocations amount to less than 15% of the total project budget concerned and do not involve a modification of the objectives/results of any project, it is called Minor Modification and the procedure is as follows:

The approval of Minor Modifications to Project Fiches (PFs) is confirmed by an Exchange of Letters between the PAO and the EC Delegation, with a copy for information sent to the NAO and NAC and Commissions Head Quarter.

All changes to the PF are highlighted in the PF concerned with track changes and in bold.

All changes are accompanied by a comprehensive but concise explanation/justification signed by the SPO, PAO, etc. as per the above. The modified PFs are sent in electronic format to the HQ for updating the database.

H.3.2. Under EDIS

The procedure for modifying the Project Fiches (PF) would be as follows:

If changes are of purely technical nature or cumulated reallocations amount to less than 15% of the total project budget concerned and do not involve a modification of the objectives/results of any project, the procedure is as follows:

- SPO/PIU submits to the PAO/IA a Request for minor reallocation/ modification of PF, Cover Letter signed by SPO and the revised version of PF attached,
- In case of disapproval the PAO returns the request to the SPO for further justification,
- In case of approving the Request, PAO/IA submits to NAO a Request for minor reallocation/ modification of PF, cover letter signed by PAO and the revised version of the PF is attached;
- The decision of the SMSC on the Modification is needed or when there is not a session of the committee a Written Procedure should be provided;
- NAO decides on the approval of the requested modification and duly endorses;
- NAO informs in a letter the EC and NAC, attaching the revised PF;
- NAO informs in a letter the PAO/IA about the approval of the requested modification;
- PAO/IA informs in a letter SPO/PIU about the approval of the requested modification

If the change of projects requested is for:

- ***a reallocation of funds below 15% (cumulated) of the budget of the projects(s) concerned but involves a change of objectives/results of any of the projects, or,***
- ***a reallocation of funds exceeds 15% (cumulated) of the budget of the projects concerned, or,***
- ***a technical modification which involves a change in objectives/results of a projects, or,***
- ***existing projects to be suppressed or new ones created,***

the procedure is as follows:

- SPO/PIU submits to PAO/IA a Request for reallocation/ modification of PF, cover letter

signed by SPO and the revised version of the PF is attached;

- In case of disapproval, the PAO return the Request for further justification to the SPO,
- In case of approving the Request for reallocation/ modification, PAO/IA submits to NAO a Request for reallocation/ modification of PF, Cover Letter signed by PAO and the revised version of the PF is attached;
- The decision of the SMSC on the Modification is needed or when there is not a session of the committee a Written Procedure should be provided;
- NAO sends the Request to NAC for coordination and comments if any;
- NAO decides on the approval of the requested modification and duly endorses;
- NAO sends the Request for modification to EC for final approval, attaching the revised PF;

NAO disseminates copy of the approval letter and the Request duly signed by EC to NAC and the PAO/IA.

PAO/IA disseminates copy of the approval letter and the Request duly signed by EC to the SPO/PIU.

H.4. EXTENSION OF DEADLINES

In addition to modifying the Project Fiches it may in some cases become necessary to extend commitment and execution of contracts deadlines of Financing Agreements/ Financing Memoranda, applicable to one or more projects in the respective Financing Agreement/ Financing Memorandum.

Justified extension requests must be submitted by the respective SPOs to the PAO/Implementing Agency, which analyses the request, and in case of approval in turn communicates the request to the National Aid Coordinator.

H.4.1. Under DIS

The procedure for requesting an Extension of contracting and/or execution of contracts period is as follows:

- The PAO submits to NAO a Request for Extension of FA, Cover Letter signed by PAO attached;
- NAO performs checks as per the Check list;

- In case of disapproval the NAO / DNAO returns the Request to PAO for further justification.
- In case of approval, the NAO submits to NAC a Request for Extension of FA, duly signed by the NAO / DNAO. Cover Letter signed by NF Director is attached;
- NAC services perform checks according to their procedure manual;
- In case of disapproval the NAC / NAC services return/s the Request to PAO for further justification with copy to NAO/NF.
- In case of approval, NAC sends the Request for Extension to EC Delegation for further proceeding;
- EC Delegation performs checks and sends the Request for Extension to EC for final decision,
- In case of EC approval Addendum is signed by both parties,
- NAC disseminates copy of the Addendum to the FA to the NAO/NF and the PAO/IA.
- In case of EC disapproval, a letter informing of the disapproval by EC will be disseminated by NAC to NAO/NF and the PAO/IA.
- PAO informs in writing the respective SPO on the EC approval or disapproval of the extension request.

Extension of Financing Agreement will take effect upon signature of an Addendum to the FA by both parties (NAC as representative of Republic of Bulgaria and the Head of ECD as representative of the European Commission).

H.4.2. Under EDIS

The procedure for requesting an Extension of contracting and/or execution of contracts period would be as follows:

- The SPO/PIU submits to PAO a Request for Extension of contracting and/or execution of contracts period, Cover Letter signed by SPO attached;
- In case of disapproval the PAO returns the Request to SPO for further justification.
- In case of approval, the PAO/IA submits to NAC a Request for Extension of contracting and/or execution of contracts period, Cover Letter signed by PAO attached;
- NAC sends the Request to NAO for coordination and comments if any;
- NAC sends the Request for Extension to EC for final approval;
- In case of EC approval, NAC disseminates copy of the Addendum to the FA/FM to the NAO and the PAO/IA.
- In case of EC disapproval, a letter informing of the disapproval by EC will be disseminated by NAC to NAO and the PAO/IA.
- PAO informs in writing the respective SPO on the EC approval or disapproval of the extension request.

Extension of Financing Agreement/ Financing Memorandum will take effect upon written approval by the European Commission.

I. EVALUATION

I.1. ANNUAL PLANNING

The NAC³² is responsible for planning funds for the Interim Evaluation function and ensuring that the Interim Evaluation services can be regularly provided.

An Annual Interim Evaluation Work plan is prepared by the NAC services to identify the Phare sectors/projects to be evaluated within the corresponding year.

The Annual Interim Evaluation Work plan is submitted to the approval of the JMC.

I.2. KICK-OFF MEETING OF SECTOR EVALUATION

The Interim Evaluation of a sector programme will be launched by convening a kick-off meeting of the Interim Evaluation by the NAC services.

The kick-off meeting will be:

- attended by the NAC services, NAO services, respective Implementing Agencies, SPOs and beneficiaries.
- chaired by a representative of the NAC services.

During the kick-off meeting:

- the objectives of the evaluation,
- the evaluation process and
- the respective timelines

will be introduced and agreed by the participants.

The Minutes of the meeting will be prepared by the NAC services and will be disseminated for comment to the participants of the meeting.

Upon receipt and inclusion of participants comments, the final minutes of the kick-off meeting will be issued by the NAC services.

I.3. EVALUATION REPORT

The Draft Sector Evaluation Report will be issued for commenting to the stakeholders by the Evaluator.

The stakeholders must review the report and transmit comments to the Evaluator within the applicable deadline.

The Evaluator must review the comments and make decision on their inclusion in the report prior to dissemination of the final version of the Evaluation Report.

I.4. DEBRIEFING MEETING OF THE SECTOR EVALUATION

The NAC services:

- organise the debriefing meeting of the Interim Evaluation,
- chair the debriefing meeting.

The debriefing meeting will be attended by the NAC services, NAO services, respective Implementing Agencies, SPOs and beneficiaries.

The Evaluator introduces:

- the main conclusions of the evaluation,
- the evaluation recommendations,

Decisions on the corrective measures – based on the recommendations made by the Evaluator – are made during the meeting.

A follow-up table of the recommendations is prepared and filled in by the NAC services.

The minutes of the debriefing meeting will be prepared by the NAC services.

The Minutes of the meeting will be prepared by the NAC services and will be disseminated for comment to the participants of the meeting.

Upon receipt and inclusion of participants comments, the final minutes of the debriefing meeting will be distributed by the NAC services to the participants of the debriefing meeting along with the follow-up table of evaluation recommendations.

I.5. FOLLOW-UP OF EVALUATION RECOMMENDATIONS

Timely follow-up of evaluation recommendations will be monitored by the NAC services.

Implementation of evaluation recommendations by the set deadline will be coordinated with the NAO, respective SPOs, Implementing Agencies and the beneficiaries.

Implementation of the evaluation recommendations may be discussed at the SMSC and JMC meetings.

³² Supported by the Management of EU Funds Directorate in the Ministry of Finance = MEUFD = NAC services

PART VI – IRREGULARITIES

- ✓ *What is it ?*
- ✓ *Who is responsible for what ?*
- ✓ *What to do if it happens ?*

J. IRREGULARITIES

It is a requirement of the EC that beneficiary countries report and control all irregularities and that national authorities ensure the functioning of a control and reporting mechanisms equivalent to those prescribed by the EC

The verification and reporting of any irregularity to the EC is under the responsibility of the NAO. The NAO uses the information received from the PAOs and SPOs for reporting to the EC. Should there be no irregularity to report, the NAO shall inform the EC of this fact on a quarterly basis.

Irregularity discovered by any of the management, payment, implementing agencies or bodies and/or final beneficiary must be reported to the NAO from the moment of detection **without any delay**.

- ☛ Annex C to the PHARE FA/FM - Anti-Fraud Measures and Corrective Actions
- ☛ COMMISSION REGULATION (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organization of an information system in this field
- ☛ COMMISSION REGULATION (EC) No 2035/2005 of 12 December 2005 amending Regulation (EC) No 1681/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field

The SPOS are therefore obliged **to** :

- Report to the PAO [who will report to the NAO] any irregularity discovered or suspected from the moment of detection **without any delay**. Should there be no irregularity to report, the SPO shall inform the PAO of this fact on a **quarterly basis**.
- Inform the PAO of the procedures instituted following all irregularities previously notified and of changes resulting there from,
- communicate any suspicion relating to commission of crime in implementing projects funded under EU funds to authorities acting in criminal proceedings.

In exceptional cases [e.g. if irregularities discovered or suspected might involve the PAO] the SPO should report to, inform and communicate directly with the NAO.

In any event, the following sections of these Guidelines must be read taking into account that any decision or action made by the SPO is made without prejudice to the NAO and PAO rights or claims.

J.1. DEFINITIONS

J.1.1. Definition of "Irregularity"

Irregularity means any infringement of a provision of Community and/or Bulgarian law (including Financing Agreements) resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Communities or the state budget of Bulgaria by an unjustified item of expenditure

- ☛ Definition deriving from Regulation No 2988/95 on the protection of the European Communities' financial interests.

Therefore, any failure to comply with regulations and any breakdown of management and/or control systems may be treated as an irregularity whether or not the irregularity itself involves any loss or potential loss of funds. The following conclusions could be drawn from this definition:

1. It covers **all behaviour**, intentional or not intentional (act or omission) by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Communities or the state budget of Bulgaria.
Its objective consequence must have been the infringement of a provision of applicable Community or national law.
2. To be qualified of irregularity, the behaviour must result in **infringement** of a provision of Community or national law.
3. The scope of the concept of irregularity must be considered in terms of the legislative framework, especially the obligation of Member States / Acceding Countries to organise a **management and control system** in order to ensure a sound financial management and to establish a sufficient audit trail throughout the whole

system of implementation. Failure by an economic operator to respect these obligations must therefore, be communicated to the EC.

4. All entities involved in the management of PHARE assistance should take the measures necessary to prevent and deal with irregularities and to cover amounts lost as a result of irregularities or negligence. The system covers both **EU funds and national resources**.

In the context of Phare, irregularities may occur as breaches of:

- provisions of the PHARE FA / FM,
- procurement procedures, as well as terms and provisions of contracts concluded under Phare programmes.

J.1.2. Definition of “Fraud”

The definition of fraud is taken from the Convention for the Protection of the Financial Interests from 1995 and entered into force on 17/10/2002 (it is one but not only the only possible definition). For the purposes of this Convention, fraud affecting the European Communities' financial interests shall consist of:

- a) in respect of expenditure, 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 were originally granted;
- (b) in respect of revenue, 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 illegal diminution of the resources of 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,
- misapplication of a legally obtained benefit, with the same effect.

For further details and Definition of fraud, corruption and other illegal activities, see



OLAF's website:

J.1.3. Types of irregularities

Irregularities can be:

- **Technical,**
- **Contractual,**
- **Financial or**
- **Administrative.**

Any of those irregularities can be **Intentional** or **Unintentional** and irregularities may have, or not have, a **financial impact**.

Their nature may appear to be **Systemic or of the One-off irregularity type**.

J.1.4. Technical, Contractual, Financial or Administrative irregularities

J.1.4.1. Technical Irregularities

Technical irregularities arise due to the supply of material or workmanship of a lower quality than that specified in the contract, most especially for works or supplies.

Quality control should be provided by the Contractor and quality assurance by the supervision by the SPO. Controls of the Engineer / Contractor / Supplier activities through spot checks of quality and quantities should be performed during regular site visits.

J.1.4.2. Contractual Irregularities

Contractual irregularities for works or supplies in particular arise due to incorrect application of the legal rules for a contract. A thorough knowledge of the basis of the contract is essential to avoid contractual irregularities. Contractual irregularities include:

- incorrect delegation of powers and duties,
- over-certification of payments,
- incorrect site instructions,
- incorrect approvals of materials or Contractor's proposals,
- incorrect presentation of addenda (Variation Orders for Works),
- improper handling of the Contractor's claims.

J.1.4.3. Financial Irregularities

Financial irregularities are fraudulent application or theft of funds, including corrupt practices. Financial irregularities are controlled by the internal and external audit, as well as by the internal ex-ante management and supervision procedures. Segregation of duties is to be established in all cases (i.e. two independent signatures are needed for the release any funds) [See also § A.5 SEGREGATION OF DUTIES].

J.1.4.4. Administrative Irregularities

Administrative irregularities arise from non-compliance with applicable rules for the tendering and financing of projects.

J.1.5. Irregularities by type of infliction

J.1.5.1. Intentional

These are the actions of any operator of any involved institutions (Contractor, Beneficiary, Supplier, banks or any other entity) in order to enrich himself or any other person in conflict with the Contract between the Contractor and the Implementing Agency and the Beneficiary, mainly through:

- invoices made out for undelivered services, goods and works [dummy / fictive invoices],
- invoices made up by a fictive firm [falsifications],
- invoices made up in duplicate,
- invoices made up for excessive amounts,
- non-charging quantity, price and other discount in the invoices,
- fraudulent transfer of funds to a wrong account,
- manipulating findings of documentary checks,
- manipulating findings arising from checks on the spot,
- falsifying and modifying accounting and/or other records and justifying documents
- incorrect submission or omission of events, operations or other important information.

J.1.5.2. Unintentional

These are the actions of any operator of any involved institutions (Contractor, Beneficiary, supplier, banks or any other entity) caused by negligence and resulting, in most cases, from infringement of approved procedures.

J.1.6. Irregularities by type of impact

J.1.6.1. With financial impact

These are irregularities which already resulted in the payment of unjustified expenditure to the Contractor or Grant Beneficiary.

Based on the request of the PAO, the Contractor or Beneficiary within prescribed time limit has to repay back amounts paid for unjustified expenditure (unjustified paid expenses).

J.1.6.2. Without financial impact

These are irregularities identified before reimbursement of unjustified expenditure to the Contractor or Beneficiary.

J.1.7. Irregularities by nature

J.1.7.1. Systemic irregularity

These are irregularities that occur recurrently or with a high probability of occurrence in the system as such throughout various projects.

They arise out of i.e. failings in a financial management system and may occur horizontally through all projects. Generally, these are unintentional irregularities resulting from the deficiency in the system (i.e. insufficiently defined scope of control in the system).

J.1.7.2. One-off irregularity

These are irregularities that only occur throughout a specific project, but not in the system as such. They arise out of actions or errors under a specific project and should not occur throughout other projects when financial management procedures are properly observed.

Generally, they are intentional irregularities or unintentional irregularities caused by negligence.

J.1.8. Errors

Errors detected by internal controls and proper management procedures would not normally have to be reported as irregularities although this type of error may indicate a need for other procedures such as training or if envisaged, relevant action according to the Civil Servants Act.

J.2. RESPONSIBILITIES

The following institutions (and their respective staff) should monitor and report irregularities, make recommendations and take, where appropriate, corrective measures:

- National Authorising Officer,
- National Fund,
- National Aid Co-ordinator,
- Programme Authorising Officer(s)
- Phare Implementing Agencies,
- Senior Programme Officers,
- PIUs / Line Ministries / Final Beneficiaries,
- Internal Auditors,
- External Auditors.

Although all institutions / individuals listed above play an important role in handling suspected and/or actual cases of fraud and other irregularities, the present Guidelines focus on the responsibilities and activities of the SPO.

J.2.1. PAO

When receiving a written notification on suspicion relating to commission of an irregularity, the PAO initiates the investigation into the irregularity. This may involve any resource or agency, including the police.

The SPO will be responsible for ensuring the cooperation of the beneficiaries under his / her scope for any investigation into the irregularity that may be launched by the PAO and / or the NAO and / or the EC relevant authorities (e.g. OLAF).

When an irregularity (or suspected irregularity) has been committed by a delegated body (i.e. Final Beneficiary), the PAO shall submit a request for justification of grounds of existence of irregularity and for implementation of corrective measures.

When the entity does not submit any adequate justification within a period prescribed by the PAO, the PAO may file announcement of given facts to authorities acting in criminal proceedings.

When authorities acting in criminal proceedings confirm the validity of filing an announcement, the further proceeding in respect of eligibility of filing announcement shall result from initiative of those authorities, with follow-up proceeding at relevant courts of Bulgaria.

The PAO shall be obliged to recover any sum wrongly paid and transfer such sums to the NAO.

The PAO assigns in the Implementing Agency an Irregularity Officer who is the main contact point in relation to irregularities.

J.2.2. SPO

The SPO is responsible for ensuring that the procedures relating to Irregularities [similarly to any other procedures] are properly managed and more particularly:

- Provide the PAO with sufficient information about the irregularity in order that the PAO can make a decision on sanctions or other actions to be taken
- Ensure that the necessary reviews of systems and procedures are carried out
- Ensure that the recommended changes to systems and procedures are carried out
- Ensure that the decision of the PAO in respect of these actions is carried out.
- Ensure that accounting procedures [if applicable] relating to irregularities are properly applied,
- Inform the Internal Audit function accordingly,
- Communicate (when relevant) the decision of the PAO in respect of sanctions or civil or criminal action.

J.2.3. Irregularity Officer at the SPO level

The SPO should act as Irregularity Officer. As an exception [and subject to approval of the PAO] the SPO may delegate the performance of activities to be carried out by him/her is the role Irregularity Officer to any institution assigned a level of control below the SPO [e.g. District administration, Directorate in a Line Ministry, etc...].

Irregularity Officer(s) is/are appointed to be the main contact point in relation to irregularities.

Procedures for reporting, recording, and following up cases of irregularities are handled by the Irregularity Officers who are also in charge of proposing corrective actions.

When an irregularity is reported to an Irregularity Officer, he/she will take the following actions:

- Inform the PAO that a suspected irregularity has been reported,
- Organise the analysis of the irregularity and make proposals on the procedures to apply and on how to improve the control systems,
- Ensure that an "Irregularity File" is open and regularly up-dated,

- Provide the PAO with sufficient information about the irregularity in order that the PAO can make a decision on sanctions or other actions to be taken,
- Whenever the irregularity has financial impact, provide the accounting function with required information / documentation for ensuring the proper recording transactions / events in relation to irregularities [if applicable, e.g. when a PIU runs a sub-sub bank account on behalf of the PAO/NAO].

J.2.4. Employees

It is the responsibility of all employees at all levels of seniority to participate in the discovery and reporting of irregularities. Employees will report in writing irregularities that they either discover have taken place or that they suspect have taken place. It is of the utmost importance that employees recognise the need for prompt action when dealing with irregularities.

When an employee suspects or discovers that an irregularity has occurred he/she must report the fact to the Irregularity Officer. Having reported the irregularity the Employee and the Employee's line manager will not discuss the irregularity with any other persons without permission of the SPO.

J.2.5. Internal / External Auditors

Any finding made by auditors in the area of EU funds management should be reviewed from the point of view of whether or not it constitutes an irregularity.

J.2.6. OLAF³³



The European Anti-Fraud Office was founded by the Commission in 1999 in order to strengthen the means of fraud prevention. OLAF acts as a Commission service in the context of irregularity reporting.³⁴

The Office was given responsibility for conducting administrative anti-fraud investigations by having conferred on it a special independent status.

The role of OLAF is to battle corruption, fraud and other irregularities harmful to EU financial interests. The structure of the Agency is three-pronged:

- political and legislation departments,
- investigative units,

- information gathering and analysis departments.

OLAF was given responsibility for conducting administrative anti-fraud investigations by having conferred on it a special independent status. In fulfilling tasks, OLAF works closely with law enforcement institutions and administrative agencies as well as with various international law enforcement organisations (Europol, Interpol, Eurojust and others). For



further details, see OLAF's website:

Agents of the European Anti-Fraud Office (OLAF) are assigned to Bulgaria on a permanent basis in view of the accession to the European Union. They support the Anti-Fraud Co-ordinating Services (AFCOS).

OLAF assistants are deployed in Bulgaria as a measure within the framework of the Commission's "Action Plan 2004-2005 on the Protection of the financial interests of the Communities".

OLAF assistants are central contact points for the coordination of all legislative, administrative and operational aspects of the protection of the EU financial interests in all EU-accession countries. They co-operate closely with the Office at an operational level.

The OLAF assistants also help further the financial, strategic and operational interests of the European Commission in matters of irregularities and fraud. They, for instance, provide technical advice, create and maintain intelligence pathways and share best practice experience with partners in their host countries.

J.2.7. AFCOS

According to Decree No 18/2003 of the Council of Ministers, the members of AFCOS [**Council Coordinating the Fight against the Infringements Affecting the Financial Interests of the European Communities**] in Bulgaria are representatives of the following institutions:

- Ministry of Interior
- Ministry of Finance
- Ministry of Agriculture and Forestry

The composition of the Council enhances the coordination and cooperation of all Bulgarian institutions involved.

³³ The abbreviation OLAF derives from the French: Office Européen de Lutte Anti-Fraude

³⁴ ECSC Decision 1999/352 of 28 April 1999

J.3. PREVENTION OF IRREGULARITIES

The **surest way to reduce irregularities is to make them unacceptable** to the various participants or actors involved in projects.

Irregularities can occur at any stage in the life cycle of a project or programme as well as in the day-to-day operation of any institution / organisation. Systems set up for ensuring the detection and prevention of irregularities must therefore cover the whole project life cycle.

Irregularities may occur that only affect national funds (Bulgarian contribution from State Budget). Where an irregularity of this nature is suspected or discovered then the advice and procedures (up to the NAO level only, since the NAO does not necessarily report such cases to the EC) in these Guidelines **will still be followed**.

Any data should be checked for consistency with other data, to highlight possible irregularities. Although many irregularities can be found through a desk study, the best way is to visit the site and correlate reality with the written reports.

The SPO should operate a system of checklists as aide memoirs to ensure that all aspects of procedures are checked properly.

If any irregularity has a financial implication, steps will be taken to recover any losses.

If human error or incompetence did not cause the losses, administrative steps will be taken to prevent further occurrences.

If the losses were due to fraud, negligence or criminal activity, the action specified in the national regulation will be instituted.

J.3.1. Internal controls

The following tools for prevention of irregularities should be applied :

- Separation of duties
- Internal Controls
- Financial control and internal audit
- Monitoring system
- Transparent and auditable system of registration and filing of documents
- Audit trail of financial flows and its observance
- Timely reporting on irregularities, especially forthwith reports on irregularities and/or new mal-practices (see hereafter).

J.3.2. Sharing experience

Candidate countries are encouraged to share experience in particular in relation to:

- Irregularities which may very quickly have repercussions outside Bulgaria and/or show that a new fraudulent mal-practice has been employed
- Lessons to be learnt in connection with irregularities, preventive measures and legal proceedings.

The NAO may receive reports on irregularities from other countries and transmit such information to other key players.

J.3.3. Training

Access to training on Irregularities should be gained as a minimum through:

- Training for newly recruited staff: such training should provide for initial understanding of the concepts related to irregularities and the respective requirement and procedures. Newly recruited staff should be provided with relevant written procedures. They should also be “mentored” on the issues by their direct hierarchical in order to share experience, clarifications and explanations.
- Regular training events on Irregularities organised at the initiative of OLAF, the EC and/or other institutions: such training aim at sharing experience and up-dating knowledge of the audience in relation to handling irregularities.

J.4. DETECTION OF IRREGULARITIES

IMPORTANT NOTE



A whistle blowing facility is available in the Ministry of Finance:

<http://www.minfin.bg/docs/Document5.pdf>

Telephone : 080018018

J.4.1. Methods of detection

Any or all of the following actions may lead to detection of irregularities and therefore provide evidence that systems for control and monitoring of projects do not function properly.

J.4.2. Desk study

Ineligible expenditure that has been claimed and paid against and absence of supporting documentation is the most common reason for registering an irregularity. Detailed checking

of Invoices, Requests for payment and Progress Reports could reveal that a project is failing to make progress in the delivery of the agreed outputs and/or results for which contracts were awarded.

J.4.3. On-site visits

Although many irregularities can be found through a desk study, the best way is to visit the site and correlate reality with any written reports. Evidence gathered during an on-site-visit visit may lead to confirmation of irregularities suspected during a desk study.

J.4.4. Regular/ final audit reports

Audit performed by internal or external auditors could reveal irregularities in implementation of projects.

J.5. PROCEDURES AFTER DETECTION OF IRREGULARITIES

Irregularity can be discovered at the following levels:

- **within the SPO services:**
 - through examinations carried out by the SPO staff,
 - through examinations carried out by internal and/or external auditors.
- **outside the SPO services (e.g. at the level of Grants Beneficiaries):**
 - through examinations or controls carried out by staff of other entities, or by staff of the SPO in the course of on-site visits and/or documents checks,
 - through examinations or controls carried out by internal/external auditors. Note: the NAO and/or the EC may request audit of any irregularities by internal and/or external auditors.

J.5.1. Irregularities within the SPO services discovered by SPO staff

When an irregularity has been discovered through examinations carried out by staff of the SPO, the SPO employees shall forward the documentation justifying suspicion relating to the irregularity to the SPO.

If the employee suspects that the SPO is involved in the irregularity, and the irregularity is a fraud rather than a mistake, then he/she should report the irregularity directly to the PAO.

J.5.2. Irregularities within the SPO services discovered by internal and/or external auditors

When an irregularity has been discovered through examinations carried out by Internal and/or External Auditors, the PAO, if he/she is not an addressee of the Audit report [e.g. when the audit is performed by auditors of a line ministries who do not have to report to the PAO] must be informed by the SPO through the submission of an Irregularity report

☛ Annex J01 – Template – Report on Irregularities from SPO to PAO

J.5.3. Irregularity committed by an employee

In the case it is confirmed that an employee of the SPO has committed an irregularity, the SPO, shall initiate appropriate administrative and/or legal proceedings and inform the PAO through the submission of an Irregularity report

☛ Annex J01 – Template – Report on Irregularities from SPO to PAO

When authorities acting in criminal proceedings confirm the justice of filing an announcement on commission of crime, the employee concerned will not continue to be involved in the respective transaction/case until the court's decision has been legally passed.

J.5.4. Irregularity outside the SPO services

Notwithstanding the level at which the irregularity is suspected/detected [i.e. Contractor, Final Beneficiary], in principle, reports on Irregularities are transmitted to the PAO by the SPO, except if the PAO is suspected of any involvement in the irregularity. In such a case, reports should be transmitted directly to the NAO.

The initial investigation shall be carried out by the SPO who shall:

- gather all necessary original documentation certifying that irregularity was committed;
- document and record all details of investigations carried out;
- ensure reporting on irregularities to the PAO, and provide the PAO with sufficient information about the irregularity in order that the PAO can make a decision on sanctions or other actions to be taken;
- make proposal to PAO on procedures and sanctions to be taken if the irregularity is confirmed,

- ensure that decisions and recommended changes of systems and procedures are carried out.

The PAO and / or the NAO may ask, if necessary, the SPO to submit any additional information and/or supporting documents as the evidence that irregularity has been committed.

The SPO, in co-operation with the PAO, shall ensure that steps are taken to confirm or establish the existence or otherwise of the alleged irregularity.

All the notifications in respect of suspicion relating to irregularity must be verified and, thereafter either confirmed or countered.

If for any reason (i.e. conflict of interest) the SPO cannot ensure further investigations, the investigation may be performed by any resource or agency, including the PAO services.

J.5.5. Reporting to the NAO

If for any reason (e.g. the irregularities discovered or suspected might involve the PAO) the SPO should report to the NAO by transmitting directly to the NAO an Irregularity report.

☛ Annex J01 – Template – Report on Irregularities from SPO to PAO

J.6. RECORDING IRREGULARITIES

J.6.1. Purpose

The purpose of the irregularities records is to:

- Provide a history of the irregularity and the way in which it was resolved
- Provide information and evidence which might be needed in the case of action, such as criminal proceedings, being taken against persons or organisations
- Provide information in a consistent way if the details of the irregularity are to be communicated to relevant institutions.

The proper maintenance of the Irregularity files and Irregularity Registers are part of the evidence that the SPO properly implements procedures in relation to handling irregularities.

J.6.2. Principles

Detected / suspected irregularities should be registered in:

- An Irregularity file

- An Irregularity Register.

The “Irregularity File” and “Irregularity Register” should be opened and until final closure of the case, the SPO must ensure that constant and regular up-date of both Irregularity File and Irregularity Register are operated.

Irregularities discovered are checked against previous entries in the “Irregularity File / Irregularity Register”.

Irregularity files and Irregularity Registers are confidential. Yet, they may be made available to duly authorised monitoring and auditing bodies.

Each irregularity case should be assigned a **sequential identification number**.

Once the irregularity case is closed, the “Irregularity File” and the “Irregularity Register” shall be closed and archived according to the SPO “documents and files / data management rules”.

J.6.3. Irregularity file

The Irregularity File contains all paper documentation gathered in relation to each irregularity case. This would include:

- Irregularity reports,
- Investigation documentations,
- Copy of audit reports,
- Notifications / letters sent and received,
- Answers to notifications / letters,
- Any correspondence
- Court-case related information, etc.

The Irregularity file should be identified by bearing the same identification number as the related “irregularity identification number”.

J.6.4. Irregularity Register

The Irregularity Register provides for information on:

- **Irregularity identification:** identification number, related project code and title, identification of the related beneficiaries / delegated bodies,
- **Irregularity status:** updates on the evolution of the case up to closure.

☛ Annex J03 – Template – SPO Register of Irregularities

J.7. REPORTING IRREGULARITIES

J.7.1. General principles

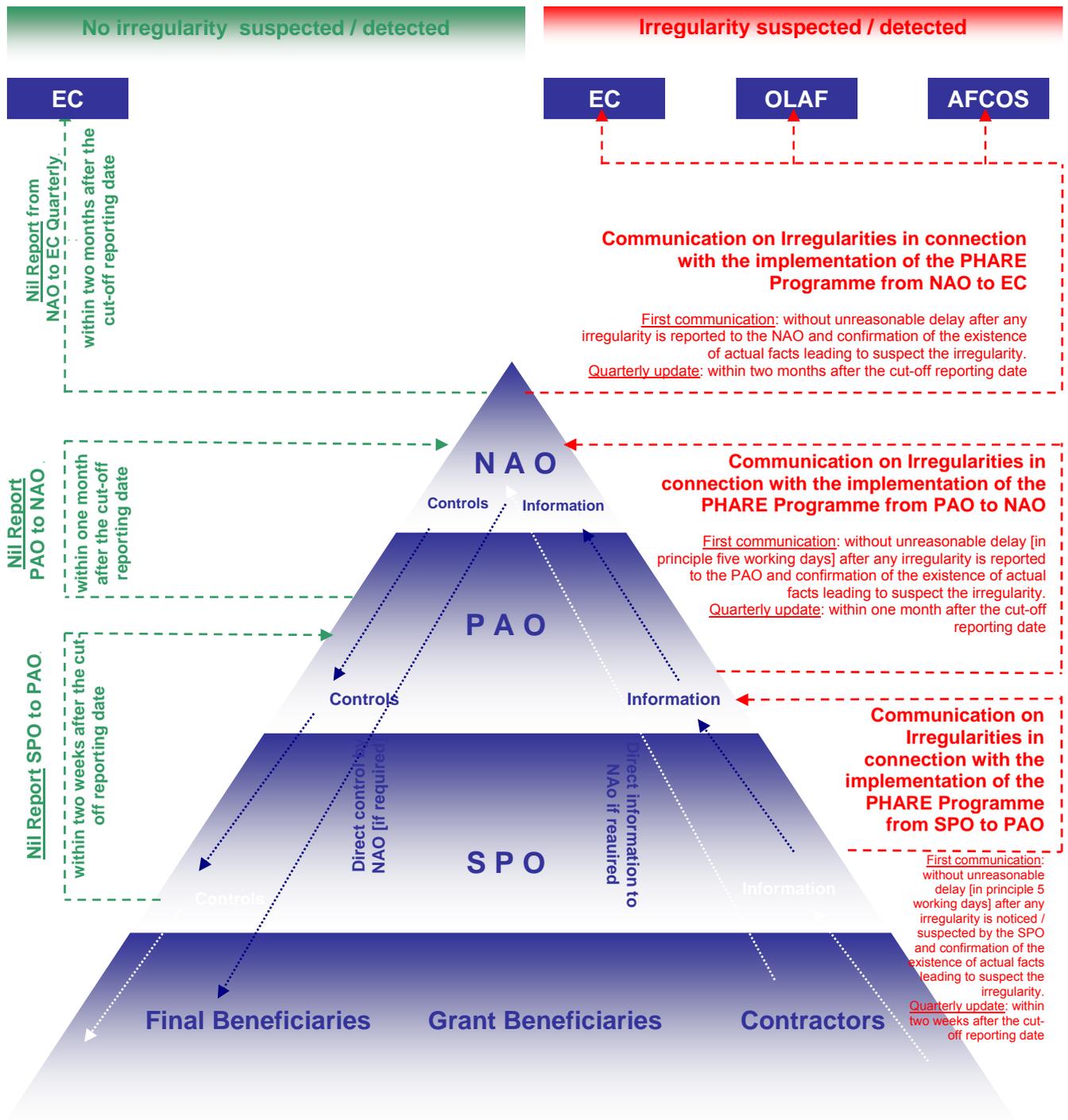
All suspected and/or actual cases of fraud and/or irregularity as well as measures related thereto taken by the IA must be reported **without delay** [i.e. in principle 5 working days after any irregularity is noticed / suspected].

A **suspicion** is a situation where sources point to a violation (complaint/report, circumstances disclosed in the course of an inspection/audit etc.), but where all the salient facts are not yet known (for example, state supervision, audit,

investigation, request for additional documents, etc. have yet to be carried out). Communications on irregularities are strictly confidential. Obligation to report irregularities may be limited by requirements of national legislation “if national provisions envisage a confidentiality of the investigation”.

If it is required by the confidentiality of the investigation, certain vulnerable information (e.g. to name defendants) may be withheld and the report may be limited to the presentation of certain facts, such as specific amounts or related measures, that do not impinge on the confidentiality of proceedings.

J.7.2. Overview of the reporting system between SPO, PAO and NAO



J.7.3. Report from SPO to PAO on Irregularities suspected or detected

First communication: all suspected and/or actual cases of fraud and/or irregularity as well as measures related thereto taken by the SPO must be reported to the PAO without delay [i.e. in principle 5 working days after any irregularity is noticed / suspected]. When an irregularity has been detected, the SPO is obliged to elaborate and submit to the PAO without unreasonable delays [i.e. in principle 5 working days after any irregularity is noticed / suspected]. a “Communication on Irregularities in connection with the implementation of the PHARE Programme”.

☛ Annex J01 – Template – Report on Irregularities from SPO to PAO

“Nil report” : if there are no irregularities to be reported or to be followed up on, the PAO should be informed quarterly and should receive from the SPO a Nil Report explicitly stating the Phare project, the period and the absence of any irregularity suspected / detected.

☛ Annex J02 – Template – Nil report on Irregularities from SPO to PAO

Quarterly update: all irregularities will continue to be included in a “Quarterly Communication on Irregularities in connection with the implementation of the PHARE Programme” to be submitted to the PAO:

- on a quarterly basis,
- within two weeks after reporting period cut-off date, (reporting cut-off date is end of March/June/September/December)
- until the irregularities are resolved.

The quarterly “Communication on Irregularities in connection with the implementation of the PHARE Programme” should include information on any procedures instituted following all irregularities previously notified and important changes resulting therefore, including any amounts which have been, or are expected to be, recovered and judicial and administrative procedures instituted with a view to recovering sums wrongly paid and to imposing sanctions.

☛ Annex J01 – Template – Report on Irregularities from SPO to PAO

J.7.4. Thresholds

All irregularities regardless of the size of the irregularity and regardless of whether the

irregularity is caused by error or fraud is to be reported by the SPO to the PAO.

J.8. ERADICATION OF IRREGULARITIES

Eradication of irregularities is just as important as uncovering them. Whenever any irregularities are uncovered, a system of eradication will be instituted.

The identification and reporting of any suspected fraud or other irregularities are as important as immediate implementation of corrective action (including sanctions and the launching of civil or criminal proceedings) further to the investigation of the cases of fraud and/or irregularities.

These actions are necessary to achieve:

- Protection of the financial interests of the European Union and Bulgaria,
- Recovery and refund of any amount wrongly paid as a result of the irregularity,
- Prevention of similar irregularities occurring in the future,
- Revision of systems and procedures to ensure such irregularities will not reoccur in the future,
- Collaboration with the EC and (when relevant) with other countries in order to identify and suppress cross border fraud.

The SPO must ensure that corrective measures, including measures set up in order to prevent similar irregularities in the future are:

- designed,
- related responsibilities assigned,
- reported on to the PAO , and
- a follow-up of the implementation of the corrective actions ensured.

J.9. RECOVERY OF AMOUNTS OUTSTANDING

The **PAO shall recover any sum wrongly paid by the CFCU/IA** and transfer such sums to the NF.

J.9.1. Suspension of payments

When an irregularity caused by an external entity (i.e. SPO, Final Beneficiary, Contractor) is confirmed, the NAO and/or the PAO may decide the suspension of payments until an acceptable justification is submitted and following the implementation of adequate corrective action to prevent similar irregularities in the future.

Suspension of payments may also be decided as a preventive measure (if appropriate).

When deciding on the suspension of payments, the NAO and the PAO take into consideration:

- the nature of the irregularity;
- occurrence of any financial loss or a risk that such a loss could occur.

J.9.2. Suspension of payment by the PAO

When an irregularity is detected, the PAO may decide, to suspend payments for the contract(s) to which the irregularity is related.

J.9.3. Suspension of payment by the NAO

The NAO may decide to suspend payments for all Projects in the implementation of which the PAO and/or the SPO are involved.

In the case of one-off irregularities with financial impact (loss already occurred), the NAO may suspend payments for **the project** to which the irregularity is related.

In the case of systemic irregularity with financial impact (loss already occurred), the NAO may suspend payments for **all projects** in the implementation of which the PAO and/or the SPO are involved.

J.9.4. Resuming payments

Payments suspended by the PAO and / or NAO shall continue when:

- the amount owed has been repaid and transferred to the relevant bank account of the NF;
- adequate corrective measure(s) has/have been taken to prevent similar irregularities in the future;
- personal responsibility has been assigned for the irregularity.

J.9.5. Recovery of amounts due by Contractors

If the Contractor was paid expenses unjustified (disallowable or ineligible expenses), the PAO shall request the Contractor to refund the amount outstanding in the relevant bank accounts (i.e.: relevant bank account for the EU contribution and relevant bank account for co-financing resources).

In its request for the refund of the amount outstanding the PAO should inform the Contractor on:

- the amount outstanding,
- the date for its refund (deadline),

- the references of the bank accounts to which the amount should be refunded,
- the possible sanctions and procedures in case the requirement to refund the amount outstanding is not fulfilled within the specified period.

If the Contractor does not refund the amount outstanding to the respective bank accounts within the specified delays, the PAO shall inform the NAO in writing and initiate a court proceeding against the Contractor.

If the Contractor refunded the amount outstanding within the period determined by the PAO [after the first challenge of the PAO] then the PAO is obliged to transmit to the NAO written information on the recovery [within 3 working days following the date of the recovery].

J.9.6. Recovery of amounts due by employees

The National Regulations will be applied to recover funds from employees.

J.9.7. Unrecoverable amounts

If:

- it proves impossible to recover any funds (for instance, if the debtor goes into liquidation),
- the PAO considers that an amount cannot be recovered, or cannot be expected to be totally recovered,

the PAO must inform the NAO accordingly on :

- amount not recovered,
- reasons why the amount may not be recovered,
- measures taken by the PAO for ensuring the repayment of the unrecoverable funds to the NAO.

Note: If an Irregularity is imputable to the SPO, the amount of the irregularity [if any] as well as the costs of any investigation and recovery proceedings shall be born by the SPO. Under no circumstances would the PAO bear such costs on behalf of the SPO.

Under no circumstances would the NAO bear on behalf of the PAO the amount of the irregularity [if any], the costs of any investigation and / or recovery proceedings.

LIST OF ANNEXES

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Annex F02	Control [prior to submission to PAO] of Progress Report from SPO to PAO
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