

Cohesion Fund
Management and Control
General Manual

Ministry of Economy and Labour
Warsaw, December 2004

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This manual is mainly addressed to the institutions responsible for the management, implementation and control of the Cohesion Fund in Poland. It is also recommended for potential Final Beneficiaries of the Cohesion Fund. The aim of this handbook is to present:

- legal regulations that are the basis of the Cohesion Fund management and control;
- the institutional management and control system of the Cohesion Fund ;
- basic tasks of respective institutions;
- binding regulations with regard to the implementation of projects assisted from the Cohesion Fund.

It is a starting point for the preparation of detailed manuals of internal procedures for respective institutions described in this handbook.

The handbook is approved by the Undersecretary of State of the Ministry of Economy and Labour (MEL) after consultations with appropriate bodies, and changes to it are implemented in the same procedure. The binding version of the handbook is available on the Internet site of the Ministry (<http://www.funduszspojnosci.gov.pl>), and all institutions partaking in the Cohesion Fund implementation and control are informed about its new version within seven days upon its approval.

1. Introduction

One of the main objectives of the European Union is to reduce the disparities in the level of development among different regions and to diminish the backwardness of the least favoured regions. In consequence, Member States are obliged to take solidary actions within the scope of their respective policies in order to realize defined goals. The Cohesion Fund as an instrument of the economic and social cohesion policy, pursues these goals by granting financial assistance for environment projects and for trans-European networks in the field of transport infrastructure. It also contributes to economic and social stability of Member States, among other reasons in order to meet the convergence criteria set in Article 104 of the Treaty establishing the European Community.

The Cohesion Fund was established under the terms of Article 161 of the Treaty establishing the European Community. The Council of the European Union established this financial instrument with the Council Regulation (EC) No 1164/94 of 16 May 1994 which entered into force on 26 May 1994. The Council Regulation (EC) No 1164/94 was amended on 21 June 1999 by the Council Regulation (EC) No 1264/99 and 1265/99. The Polish versions of these regulations are available at the www.funduszspojnosci.gov.pl.

The scope of the Cohesion Fund intervention includes assistance on the state level contrary to regional level, as it is the case of the Structural Funds. This instrument is not a structural fund. Initially, the support for the eligible Member States of the EU was planned for the period between 1993 and 1999; however, at the European Union summit in Berlin it was decided to prolong its functioning until 2006. The III Cohesion Report presented by the European Commission in February 2004 provides for this instrument to be sustained in 2007-2013 period.

The financial means of the Cohesion Fund are directed to those Member States whose Gross National Product (GNP) *per capita* is less than 90% of the European Union average and who have developed a programme aiming at meeting the convergence criteria set in Article 104 of the Treaty establishing the European Community.

Projects financed from the Cohesion Fund should be in compliance with the resolutions of the Treaties, with the instruments and policies of the Community adopted in accordance with them, including the policy of environmental protection, transport, regarding trans-European networks, the policy of competition and of public procurements. Projects financed from the Cohesion Fund may not simultaneously benefit from the Structural Funds.

Since the year 2000 Poland has been benefiting from the Instrument for Structural Policies for Pre-Accession (ISPA), which was established under the terms of the Council Regulation (EC) No 1267/99 of 21 June 1999. On accession to the European Union, Poland ceased to be the beneficiary of that instrument. All projects approved for financing from ISPA for which the European Commission signed the Financing Memoranda shall be continued in the following years as the projects of the Cohesion Fund. This means that the commitments of the European Union earmarked for the continuation of the ISPA projects in the years 2004-2006 will be paid from the Cohesion Fund.

Regulation regarding Poland's access to the Cohesion Fund means is included in Poland's Treaty of Accession to the European Union in the part referring to the amendment of the Council Regulation (EC) No 1164/94.

Cohesion Fund and ISPA

The description of the ISPA management and control system as well as the method of programming and implementation of this financial instrument, which each beneficiary state undertook to create on the basis of commitments resulting from the Financing Memoranda, is presented in the separate document '*ISPA – Programming and Implementation in Poland*'. This document was approved by the Committee for European Integration and changes to it were implemented in the same procedure.

Since the 1 May 2004 the amended Regulation (EEC) No 1164/1994 has become binding under the terms of Poland's Treaty of Accession to the European Union. According to the Article 16 (a) of this legal act, as regards all ISPA projects approved for assistance before the day of accession that have not been completed by that time, the provisions of the Regulation (EEC) No 1164/1994 shall be applied, with the exceptions stated in the Treaty of Accession. Due to that fact, these projects will be implemented in conformity with the binding rules of the Cohesion Fund, with following exceptions:

- Rules of tenders. From the day of accession the procedures of tenders are basing on Polish regulations of public procurement, which is in conformity with the Community legislation. However, tenders announced before the day of accession are continued according to the procedure set out in the tender announcement published in the Official Journal of the European Union.
- Share of the Community budget funds in the project assistance. The rate of assistance remains unchanged. The Treaty of Accession foresees the possibility of the modification but only in particularly justified cases on the motion of the Member State and after detailed analysis of particular case (including Cost-Benefit Analysis) done by the European Commission..
- Rules of the eligibility of expenditure .. The provisions of the Regulation (EC) No 1267/1999 and the provisions set out in the Financing Memoranda regulating the eligibility of expenditure shall still be applicable for the ISPA projects.

The regulation included in the Enclosure III to Financial Memoranda (with exception to Enclosure III.2 on eligible expenditures) ceased to bind with the day of accession. It is replaced by respective regulations regarding Cohesion Fund.

In view of Poland's membership in European Union, Polish language became an official language of the Union. It implies on the Polish side an obligation to hand over any official documents and information to the European Commission in Polish language. However this obligation does not exclude possibility to deliver at the same time an English translation of a document in order to speed up and to facilitate work of the EC.

2. Terminology

2.1. Organisation structures

<p style="text-align: center;">Managing Authority MA</p>	<p>Institution appointed to manage and coordinate the Cohesion Fund in Poland and to prepare and supervise the implementation of Framework Reference Document for the Cohesion Fund. It is the European Commission's main partner with regard to the Cohesion Fund assistance. The role of the Managing Authority belongs to an appropriate minister responsible for regional development (Minister of Economy and Labour).</p>
<p style="text-align: center;">Undersecretary of State at the Ministry of Economy and Labour</p>	<p>The Undersecretary of State of the MEL supervises the appropriate organisation unit carrying out the tasks resulting from acting MA by the Minister; has also the function of the Chairperson of the Cohesion Fund Monitoring Committee.</p>
<p style="text-align: center;">Paying Authority PA</p>	<p>Institution appointed to prepare and submit applications for payments and to receive payments from the European Commission. The role of PA belongs to an appropriate minister responsible for the public finance.</p>
<p style="text-align: center;">Undersecretary of State at the Ministry of Finance US at MF</p>	<p>The Undersecretary of State of the Ministry of Finance, supervising the appropriate organisation unit carrying out the tasks of PA.</p>
<p style="text-align: center;">Intermediate Body IB</p>	<p>The body, to whom the Managing Authority and/or the Paying Authority delegates a part of their tasks. In case of the Cohesion Fund, the Intermediate Bodies are: the Minister of Infrastructure and the Minister of Environment (1st degree Intermediate Body); in the Environment Sector these are also: The National Fund for Environmental Protection and Water Management (NFEPWM) (2nd degree Intermediate Body) and the voivodship funds for environmental protection and water management (3rd degree Intermediate Body). Ministry of Finance establishes in Financing Agreement the detailed conditions concerning utilization and settlement of accounts for resources granted from the Cohesion Fund.</p>
<p style="text-align: center;">Sectoral Authorising Officer SAO</p>	<p>Appointed by the Undersecretary of State of the MEL at the motion of an appropriate minister responsible for environment or transport after consultations with the US at MF; has responsibility for carrying out the tasks of the Intermediate Body in a given sector (the Minister of Environment or the Minister of Transport respectively) and for supervision of other tasks of the Intermediate Bodies or the Implementing Bodies. A detailed scope of activities of the SAO is set out in the agreements between the Intermediate Body and the Paying Authority as well as between the Intermediate Body and the Managing Authority.</p>
<p style="text-align: center;">Sub - Sectoral Authorising Officer SUB-SAO</p>	<p>SAO delegates a part of its functions to Sub-Sectoral Authorising Officers in agreement with the Undersecretary of State of the MEL and the US at MF.</p> <p>SUB-SAO have been appointed:</p> <ul style="list-style-type: none"> - at the NFEP&WM – in the Environment Sector;

	- respectively in PKP PLK S.A. and in GDDKiA – in the Transport Sector
Measure Authorising Officer MAO	Appointed by the Final Beneficiary in the Environment Sector and approved by SAO; responsible for the correct completion of the assisted project.
Body responsible for implementation	Public or private body responsible for holding tenders, signing contracts and their performance. The Body responsible for implementation is often also the Final Beneficiary. This body should be indicated in the application for assistance from the Cohesion Fund. If not otherwise indicated, only this body bears the eligible expenditure. In the Transport Sector, the Implementing Bodies are PKP Polish Railway Lines (PKP PLK S.A.) and the General Directorate for National Roads and Motorways (GDNR&M), whereas in the Environment Sector these are the municipalities, associations of municipalities, municipal companies and other public (e.g. Regional Boards for Water Management) or private bodies. An Body responsible for implementation may also be a body that is not the Final Beneficiary, for example a licensee. Every change of the Body responsible for implementation must be approved by the European Commission.
Final Beneficiary	Organizational unit, benefiting from public European Community resources and Polish public resources, on the ground of European Commission Decision on assistance from the Cohesion Fund resources and Agreement on assistance.
Cohesion Fund Steering Committees	The Steering Committees are advisory bodies to the Minister of Environment and the Minister of Infrastructure as regards the selection of projects to be assisted from the Cohesion Fund. The Committees are appointed by these Ministers by way of an executive order.
Cohesion Fund Monitoring Committee	The Committee is a body monitoring the implementation of the Cohesion Fund, appointed by way of an executive order of an appropriate Minister of Economy and Labour, who chairs the Committee. Its members are the representatives of the European Commission and of Poland: the Undersecretary of State at the MEL (representative of the Managing Authority), the US at MF (representative of the Paying Authority), the SAO (representative of the Intermediate Bodies – the Minister of Infrastructure and the Minister of Environment). If the scope of the issues under discussion so requires, experts, representatives of Beneficiaries and other institutions as well as social and professional groups may take part in the Committee sessions upon a written invitation issued by the Chairman
International Financial Institutions	Institutions engaged in the financing of the Cohesion Fund projects, such as EIB and EBRD.

2.2 Documents and Legal Acts

<p>Statute of 20 April 2004 on the National Development Plan (Journal of Laws No 116 item 1206)</p>	<p>Statute on the NDP sets the legal framework in the field of coordination, programming and implementation of domestic funds, the Structural Funds and the Cohesion Fund as well as defines the role of respective institutions in the process of programming and management of funds from these financial instruments.</p>
<p>Rozporządzenie Rady Ministrów z dnia 22 czerwca 2004 r. w sprawie przyjęcia Narodowego Planu Rozwoju na lata 2004-2006 (Dz. U. Nr 149, poz. 1567)</p>	<p>Regulation of Council of Ministers on adoption of National Development Plan 2004-2006.</p>
<p>Rozporządzenie Ministra Gospodarki i Pracy z dnia 30 lipca 2004 r. w sprawie przyjęcia strategii wykorzystania Funduszu Spójności na lata 2004-2006 (Dz. U. Nr 176, poz. 1827)</p>	<p>Regulation of Council of Ministers on adoption of Framework Reference Document for the Cohesion Fund.</p>
<p>Zarządzenie Nr 19 Ministra Gospodarki i Pracy z dnia 11 sierpnia 2004 r. w sprawie Komitetu Monitorującego strategię wykorzystania Funduszu Spójności</p>	<p>Order of Minister for Economic Affairs and Labour laying down rules for composition, tasks and mode of operation of Cohesion Fund Monitoring Committee.</p>
<p>Zarządzenie Nr 12 Ministra Infrastruktury z dnia 25 czerwca 2004 r. w sprawie powołania Komitetu Sterującego dla strategii wykorzystania Funduszu Spójności w sektorze transportu</p>	<p>Order of Minister of Infrastructure laying down rules for composition, tasks and mode of operation of Cohesion Fund Steering Committee.</p>
<p>Zarządzenie Nr 23 Ministra Środowiska z dnia 18 listopada 2004 r. w sprawie powołania Komitetu Sterującego dla części dotyczącej środowiska strategii wykorzystania Funduszu Spójności</p>	<p>Order of Minister of Environment laying down rules for composition, tasks and mode of operation of Cohesion Fund Steering Committee.</p>
<p>Rozporządzenie Ministra Infrastruktury z dnia 30 lipca 2004 r. w sprawie trybu wyłaniania przedstawicieli partnerów społecznych i gospodarczych do uczestnictwa w pracach Komitetu Sterującego Sektorowego Programu Operacyjnego Transport i Komitetu</p>	<p>Regulation of Minister of Infrastructure laying down rules for manner of appointment of representatives of social and economic partners for participating in sessions of Cohesion Fund Steering Committee (in the transport infrastructure sector) and Steering Committee of the Sectoral Operation Programme – Transport.</p>

<p>Sterującego dla części transportowej strategii wykorzystania Funduszu Spójności (Dz. U. Nr 177, poz. 1829)</p>	
<p>Rozporządzenie Ministra Środowiska z dnia 9 sierpnia 2004 r. w sprawie trybu wyłaniania przedstawicieli partnerów społecznych i gospodarczych do uczestnictwa w pracach Komitetu Sterującego dla części dotyczącej środowiska strategii wykorzystania Funduszu Spójności (Dz. U. Nr 185, poz. 1917)</p>	<p>Regulation of Minister of Environment laying down rules for manner of appointment of representatives of social and economic partners for participating in sessions of Cohesion Fund Steering Committee (in the environment sector).</p>

The list of Polish basic legal acts connected with the process of programming and implementation of the Cohesion Fund projects is published on the Internet site: (<http://www.funduszspojnosci.gov.pl>). The acts of the Community legislation listed below are translated into Polish and are published on the Internet sites:

- http://europa.eu.int/eur-lex/pl/dd/reg/pl_register_1460.html – documents, the translation of which has been completed;
- <http://www.ukie.gov.pl/dtc.nsf> – verified official translations of documents;
- <http://www.funduszspojnosci.gov.pl>.

<p>Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ L 130 of 25.05.1994)</p>	<p>This Regulation establishes the general legal framework for the functioning of the Cohesion Fund.</p>
<p>Council Regulation (EC) No 1264/99 of 21 June 1999 amending Regulation (EC) No 1164/94 establishing a Cohesion Fund (OJ L 161 of 26.06.1999)</p>	<p>This Regulation amends the Regulation that was the basis of the functioning of the Cohesion Fund, for example by prolonging the period of the intervention validity of this instrument until 2006 and introducing a number of new provisions: the ‘polluter pays’ principle, the implementation of a program connected with convergence criteria, new provisions regarding management and control.</p>
<p>Council Regulation (EC) No 1265/99 of 21 June 1999 amending Annex II Regulation (EC) No 1164/94 (OJ L 161 of 26.06.1999)</p>	<p>The amended Annex contains new provisions: referring to the definition, project, group of project or project stages and aiming at simplifying the system of financial management. The Regulation also amends the provisions of Article G as regards control of expenditure.</p>
<p>Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union of 16 April 2003</p>	<p>The Treaty and <i>Annex 2 Regional Policy and Coordination of Structural Instruments</i> contain resolutions as regards Poland’s partaking in benefiting from the Cohesion Fund. The Treaty amends the Council Regulation (EEC) No 1164/94 by adding Article 16 (a) which regulates the questions of transition from ISPA to the Cohesion Fund.</p>

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Commission Regulation (EC) No 1386/2002 of 29 July 2002 laying down detailed rules for the implementation of Council Regulation (EC) No 1164/94 as regards the management and control systems for assistance granted from the Cohesion Fund and the procedure for making financial corrections (OJ L 201 of 31.07.2002)	This Regulation lays down in detail the tasks of Member States, carried out in order to ensure a well-functioning management and control system of the Cohesion Fund.
Commission Regulation (EC) No 16/2003 of 6 January 2003 laying down special detailed rules for implementing Council Regulation (EC) No 1164/94 as regards eligibility expenditures in the context of measures part-financed by the Cohesion Fund (OJ L 2 of 07.01.2003)	This Regulation lays down in detail the rules on the basis of which expenditures incurred in Cohesion Fund projects will be approved as eligible for reimbursement.
Commission Regulation (EC) No 1831/94 of 26 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the Cohesion Fund and the organisation of an information system in this field (OJ L 191 of 27.07.1994)	This Regulation lays down the obligations of the Beneficiary States towards the European Commission in the field of exchanging information on irregularities in the implementation of the projects financed from the Cohesion Fund.
Commission Regulation (EC) No 621/2004 of 1 April 2004 laying down rules for implementing Council Regulation (EC) No 1164/94 as regards information and publicity measures concerning the activities of the Cohesion Fund (OJ L 98 of 02.04.2004).	This Regulation contains a detailed description of the obligations of a Member State as regards information and publicity measures concerning the projects financed from the Cohesion Fund.
Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities	This Regulation establishes the range of authority of the European Commission over a Member State as regards on-the-spot checks.
Granting Decision	Decision taken by the European Commission, stating the amount of the funds distributed and the sum of the European Commission's commitment in the first year of project

	implementation. The description of the project that is the object of assistance as well as the suggested plan of financial commitments are included in the Annexes.
Financing Memorandum	The Financing Memorandum is an agreement between the European Commission and the Polish Government, on the basis of which the ISPA projects were approved for assistance.

3. Management and Control System

According to the Council Regulation (EC) No 1164/94 of 16 May 1994 establishing the Cohesion Fund and Commission Regulation (EC) No 1386/2002, each Member State is obliged to establish a functional and effective management and control system of the Cohesion Fund resources.

Financial management and internal control in all entities engaged in the management, control and implementation of the Cohesion Fund projects are carried out in compliance with the procedures set out in the manuals of internal procedures for the Cohesion Fund binding in the respective institutions. These manuals include among others the description of the organisation structure and the division of responsibility between respective sections; procedures in case of detection of irregularities; checklists as regards respective stages of preparation and realisation of the Cohesion Fund projects. The manuals are approved respectively by the Undersecretary of State at the MEL, the US at MF, the SAO or the heads of appropriate units and they should be in compliance with the guidelines issued by the institutions supervising the activities of these units. The manuals are available in all units.

The Law on public finance of 26 November 1998 (text in the Journal of Laws from 2003, No 15 item 148 with amendment) established general rules of management and spending of resources from the European Union Structural Funds and the Cohesion Fund. For spending of the resources from the Cohesion Fund as well as the resources assigned for assistance, the rules of settlement established for budgetary allocations shall be applicable. Detailed conditions of using and settling the allocated resources from the Cohesion Fund may be set in the agreement with the Body responsible for implementation carrying out a project financed from these funds.

Financial supervision as regards the means of Cohesion Fund, and especially the supervision of the bodies controlling the projects financed from these funds and having these funds at their disposal, shall be exercised by the Paying Authority, and the method of the financial management of these funds may be established by the agreements between the Paying Authority and these bodies. The Bodies responsible for carrying out the projects financed from the Cohesion Fund resources are obliged to their detailed settlement.

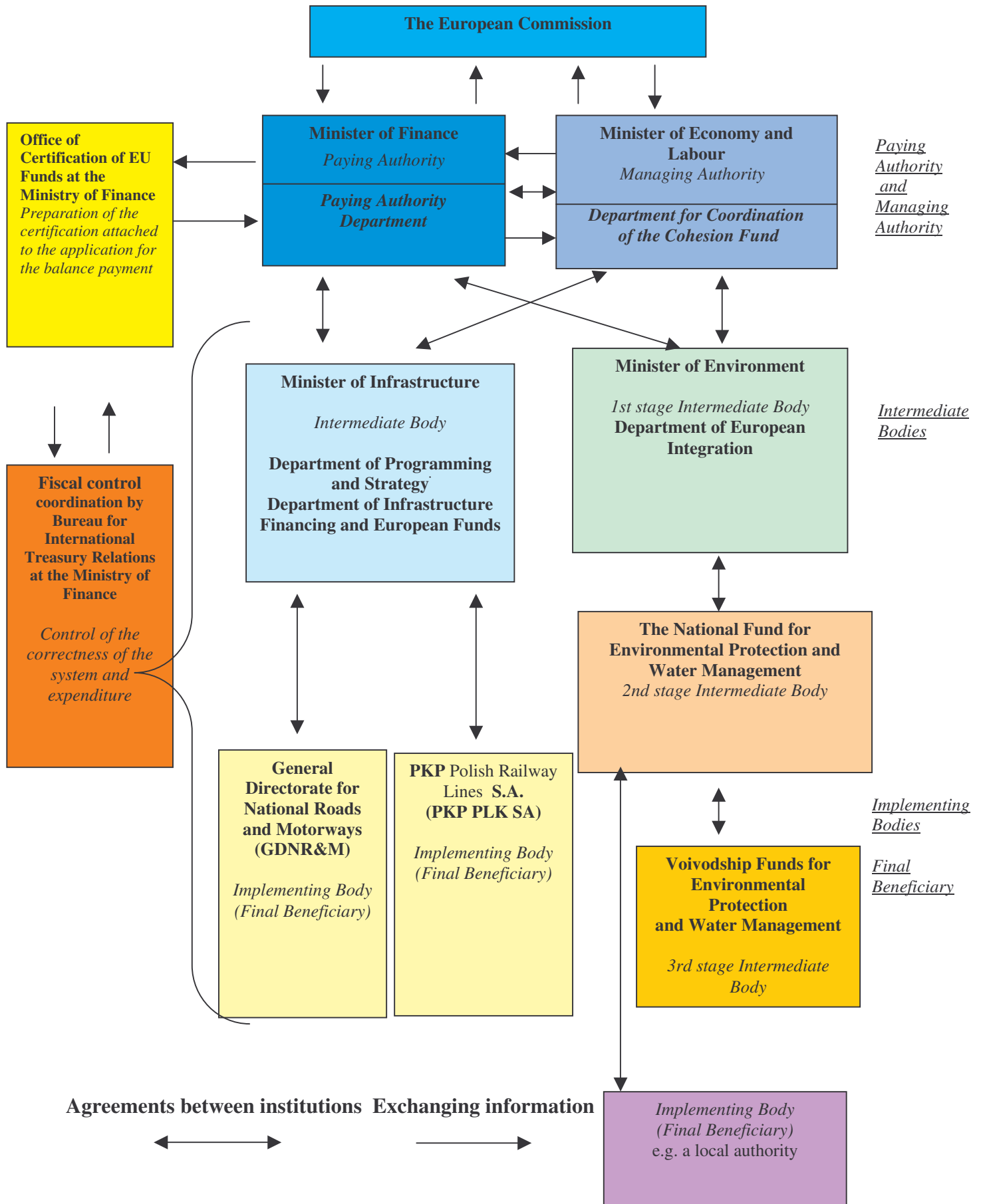
The bodies supervising projects financed from the Cohesion Fund resources exercise control over the use of these resources and assess their application. The subject of assessment is in particular the consistence of the expenditure with the aim planned; regularity of the payment application, including the scope of the tasks completed; regularity of the payment application as regards the conformity with the aim planned and the procedures.

In case of an application of the Cohesion Fund resources which does not comply with the aim or which was executed without observing the procedures, or in case of their undue collection or of their undue cumulation, these funds are subject to repayment together with the interest by the Body responsible for implementation in the sum set as for tax arrears. The payment application of that sort deprives a Member State of the right to apply for granting these payments for the following three years.

3.1 Management and Control System institutions and their role

The diagram on il.1 presents the system of implementation and control of the Cohesion Fund projects in Poland. On the basis of the provisions of the Law on the National Development Plan and the Regulation (EC) 1386/2002, respective units were described the functions presented on the diagram.

II.1 Diagram presenting the management and control system



3.1.1 Managing Authority

Realization of the Cohesion Fund Managing Authority tasks is supervised by **the Undersecretary of State of the Ministry of Economy and Labour**.

Within the Ministry the tasks of the Managing Authority are carried out by the **Department for Coordination of the Cohesion Fund**.

In the field of the Cohesion Fund Management and Control, the Managing Authority is responsible in particular for:

- official contacts with the European Commission;
- informing the European Commission of the organisation of the Managing Authority, the Paying Authority and the Intermediate Bodies responsible for the projects implemented in Poland, according to the resolutions of the Council Regulation (EC) No 1386/2002 and the Commission guidelines;
- informing the European Commission of expanding and changing the Cohesion Fund system;
- ensuring that the provisions regarding the Cohesion Fund are known to and applied by all Intermediate Bodies;
- drafting and updating the General Manual of the Cohesion Fund Management and Control, in cooperation with the Paying Authority, Intermediate Bodies and other institutions;
- preparing guidelines for Intermediate Bodies and verifying their implementation;
- coordinating the preparation of the ‘Framework Reference Document for the Cohesion Fund’ and supervising its implementation;
- ensuring balance in financing projects in the Transport Infrastructure Sector and the Environment Sector;
- handing over the applications for the Cohesion Fund financial assistance to the European Commission;
- appointing the Monitoring Committee;
- monitoring the projects assisted from the Cohesion Fund as regards the tasks of the Managing Authority and delivering the reports on the project implementation (for the Monitoring Committee) and final reports (according to Article F (4), Annex 2 of the Council Regulation (EC) No 1164/94);
- coordinating the preparation and implementation of measures as regards information and publicity of the Cohesion Fund;
- ensuring a widespread information on every project assisted from the Cohesion Fund in cooperation with institutions engaged in the implementation of the Cohesion Fund;

As regards the Cohesion Fund projects, the Managing Authority performing its duties:

- introduces the obligation of consulting the management and control manuals of the Intermediate Bodies;;
- assesses the regularity, efficiency and compliance with law of the procedures implemented by the Intermediate Bodies;
- undertakes action in order to ensure an efficient management and control system, especially through indicating a way of eliminating irregularities and introducing improvements.

According to the Article 19 of the Law on the National Development Plan and to the Council Regulation (EC) No 1386/2002, the Managing Authority may delegate a part of its rights to the Intermediate Bodies as regards the management of the Cohesion Fund. The range of the duties delegated will be set in the agreements with these bodies.

In order to carry out these duties correctly, the Managing Authority has issued following guidelines:

- ‘Guidelines for Intermediate Bodies on basic programming and preparation requirements of the Cohesion Fund projects in the programming period 2004-2006’;
- ‘General Guidelines for Information and Publicity Measures on Projects Assisted from the Cohesion Fund’.
- General guidelines in the field of internal financial control in the units beyond public finance sector that are Beneficiaries of the Cohesion Fund’;
- ‘General guidelines on internal audit in the units beyond public finance sector that are Beneficiaries of the Cohesion Fund;’
- ‘Guidelines on the preparation of the final report on project implementation for the European Commission’

oraz przy współpracy Ministerstwa Finansów:

- ‘Guidelines on the preparation of semestral/annual reports on project implementation (for the Cohesion Fund Monitoring Committee)’;
- ‘General guidelines on eligibility of expenditure for projects co-financed by the Cohesion Fund’;

Moreover, the Managing Authority issued following guidelines:

- ‘Guidelines for Intermediate Bodies in the Cohesion Fund Management on the development of audit trials and their uniform presentation form’;

All issued guidelines are available on the Polish Website of the Cohesion Fund-
www.funduszspojnosci.gov.pl

3.1.2 Paying Authority

The implementation of the tasks of the Cohesion Fund Paying Authority is supervised by the **Undersecretary of State at the Ministry of Finance (US at MF)**.

The tasks of the Paying Authority embrace in particular:

- running the Cohesion Fund Paying Authority Account (CFPAA) and the Cohesion Fund Current Account (CFCA);
- management of financial transfers of the Cohesion Fund resources from the European Commission to CFPAA and from CFPAA to CFCA;
- verification of the statements of expenditure submitted by Intermediate Bodies and of the monthly financial reports on project implementation attached to them;
- certification of PA’s applications for intermediate payment and for payment of the final balance to the European Commission;
- applying to the European Commission for assistance from the Cohesion Fund;
- running the bank account of the amounts returned (to CFPAA) from the assistance payments already made;
- ensuring that undue payments are returned to the bank account for returned payments without undue delay and informing the European Commission thereof;
- returning undue payments to the European Commission upon the demand and in the amount set by the European Commission;
- reducing the amount of the payments applied for to the European Commission by the sum of undue payments;
- preparing guidelines on the transfer of financial resources;
- handing over expenditure plans (schedules) to the European Commission;
- analysing reports on the progress of project implementation submitted to the PA;
- monitoring the financial aspects of the project implementation process;

- collecting data regarding the financial monitoring, statistical and financial information;
- supervising the functioning and management of the monitoring database (SIMIK);
- cooperation with the European Commission as regards the tasks of Intermediate Bodies.

The tasks of the Paying Authority also cover coordinating works on the preparation by the Intermediate Bodies of guidelines on financial management, control and internal procedures of financial transfers as well as supervising and controlling their implementation in the Intermediate Bodies and the Implementing Bodies.

Paying Authority Department

The realization of the Paying Authority tasks is the responsibility of the Ministry of Finance and is carried out by the Paying Authority Department. In performance of its duties, this Department cooperates with appropriate departments of the Ministry of Finance as well as with the Managing Authority and the Intermediate Bodies.

3.1.3 Intermediate Bodies, Implementing Bodies, Beneficiaries

The structure of this level of the Cohesion Fund management is different in both sectors. In the Environment Sector, apart from the 1st degree Intermediate Body at the Ministry of Environment, there are also Intermediate Bodies on two other levels, ie. The National Fund for Environmental Protection and Water Management (NFEP&WM) and the Voivodship Funds for Environmental Protection and Water Management (VFEP&WM). In the Transport Sector, apart from the Intermediate Body at the Ministry of Infrastructure there are only two Implementing Bodies.

Intermediate Bodies are responsible for the financial management of the projects assisted from the Cohesion Fund in the Environment Sector and the Transport Sector.

Intermediate Bodies are responsible in particular for:

- establishing in the lower level Intermediate Bodies and/or Implementation Bodies a system of financial management and control that would fulfil (meet) the conditions of expenditure eligibility of the Cohesion Fund assistance;
- ensuring that projects are implemented in conformity with the aims set out in the Granting Decision of the European Commission and with the conditions of the Cohesion Fund Community legislation ;
- preparing appropriate guidelines for the Implementing Bodies in order to ensure a correct implementation by these institutions of the Cohesion Fund Community legislation . The guidelines prepared by the Ministry of Infrastructure contain the procedures of the Cohesion Fund management with regard to Implementing Bodies in the form of the ‘Procedure Manual on the Cohesion Fund Management for the Ministry of Infrastructure’;
- ensuring the correct application of the public procurement procedures by the Implementing Bodies and the compliance with the Community legislation in the field of environmental protection, transport and competition;
- executing tasks in the field of coordination of the Cohesion Fund with other instruments of EU’s structural policy in the scope set out in Guidelines for Intermediate Bodies on basic programming and preparation requirements of the Cohesion Fund projects in the programming period 2004-2006’;
- ensuring that appropriate documentation is stored available in compliance with the Article G 9 (3) of the Council Regulation (EC) No 1164/94;
- ensuring the implementation of procedures connected with the monitoring of project implementation, including the procedures of on-the-spot checks;
- verification of the interim and final reports on project implementation and handing them over to the Managing Authority and to the Paying Authority;
- ensuring the implementation of information and publicity measures as regards the Cohesion Fund;

- ensuring an efficient and correct management and control system in the sector;
- developing and updating audit trials;
- implementing a reliable and appropriate accounting and book-keeping system; this system should register appropriate data on payments that would enable the identification of the European Commission Granting Decision and of the contract;
- verifying the applications for payment; ;
- verifying and certifying statements of expenditure;
- preparing statements of expenditure on the basis of applications for payment;
- preparing financial schedules.

Detailed tasks of respective Intermediate Bodies in the Environment Sector and the Transport Sector are set out in the agreements between the Managing Authority and the Intermediate Bodies, between the Paying Authority and the Intermediate Bodies and in the agreements between the Intermediate Bodies.

Sectoral Authorising Officers in the Environment Sector and the Transport Sector are appointed on the motion of the Undersecretary of State at the Ministry of Economy and Labour responsible for the Cohesion Fund after consultations with the Head of the Paying Authority. The detailed procedure of appointing the SAO and Sub-SAOs has been accepted by the European Committee of the Council of Ministers and is available at www.funduszsposojnosci.gov.pl. The SAOs may delegate a part of their duties to the Sub-Sectoral Authorising Officers, in cooperation with the MA and the US at MF. In case when the SAO delegates the management duties to subordinate institutions, these institutions are responsible for project implementation, which does not release the SAO from the full responsibility for the efficiency and regularity of the Cohesion Fund management and implementation.

3.1.3.1 Environment Sector

1st degree Intermediate Body

The 1st degree Intermediate Body is the Minister of Environment, who is responsible in particular for:

- supervision of the subordinated units, verification of the system, of the state of institutional capacity of respective units and of the procedures applied by these units in the implementation of the Cohesion Fund;
- identification of the projects to be assisted from the Cohesion Fund;
- verification of the applications for assistance from the CF for projects approved by Minister of Environment;
- running the information policy on the Cohesion Fund in cooperation with the Managing Authority;
- executing tasks in the field of coordination of the Cohesion Fund with other instruments of EU's structural policy in the scope set out in Guidelines for Intermediate Bodies on basic programming and preparation requirements of the Cohesion Fund projects in the programming period 2004-2006';
- supervision of the Cohesion Fund financial management in the field of environmental protection;
- supervision of the tenders for purchasing services, goods and labour co-financed from the Cohesion Fund;
- monitoring and assessing the Cohesion Fund implementation process in the Environment Sector on the basis of reports and on-the-spot project implementation checks;
- giving opinion on the manual of the 2nd degree Intermediate Body (approving part concerning eligibility of expenditure) which must be in compliance with the procedures adopted for the 1st degree Intermediate Body;

- submitting collective information on Cohesion Fund projects being accomplished in environmental sector on demand of the European Commission on dates pointed out by the Managing Authority.
- Giving agreement on requests for modification and pass them on in order to send them to the European Commission.

2nd degree Intermediate Body

The 2nd degree Intermediate Body is the National Fund for Environmental Protection and Water Management. The detailed relations between the 1st degree Intermediate Body and the National Fund for Environmental Protection and Water Management in the field of project preparation have been set in the *'Agreement on preparation of environmental protection projects to be assisted from the resources of the Cohesion Fund'* concluded by the Minister of Environment and the NFEP&WM on 4 December 2002.

The division of duties as regards the project implementation assisted from the Cohesion Fund is regulated by the *'Agreement on the implementation of the Cohesion Fund'*, which will be concluded by the Minister of Environment and the NFEP&WM.

3rd degree Intermediate Body

In accordance with the Article 15 of the *'Agreement on preparation of environmental protection projects to be assisted from the resources of the Cohesion Fund'* (this Agreement will be replaced by *Agreement on the Cohesion Fund Implementation System*), of 4 December 2002, the NFEP&WM delegated a part of the duties connected with project preparation to the VFEP&WM (3rd degree Intermediate Bodies) by a separate agreement signed on 15 April 2003.

The scope of duties delegated by the NFEP&WM to VFEP&WM has been approved by the Minister of Environment.

Due to the delegation of a part of the NFEP&WM duties to VFEP&WM, the NFEP&WM approves procedure manuals for respective VFEP&WM.

Implementing Bodies

In the Environment Sector, the municipalities (local authorities NUTS III-LA) are simultaneously Implementing Bodies and Beneficiaries of the Cohesion Fund assistance. If a project involves more than one LA, these might be LA associations, e.g. communal associations. In certain cases the role of the Body responsible for implementation may be played by a body different from the local authority, eg. a municipal company. Basic tasks of the Implementing Bodies in the Environment Sector include: holding tenders, carrying out investments and paying the contractors, in compliance with the rules and conditions set in the Regulations and the European Commission Granting Decision.

3.1.3.2 Transport Sector

Intermediate Body

The Intermediate Body is the Minister of Infrastructure, responsible in particular for:

- supervision of subordinated units, verification of the system, of the state of institutional capacity of respective units and of the procedures applied by these units in the implementation of the Cohesion Fund;
- selection of the projects to be presented to the European Commission;
- running the information policy on the Cohesion Fund in cooperation with the Managing Authority;
- supervision of the Cohesion Fund financial management system in the Transport Sector;
- supervision of tenders for the purchase of services, goods and labour assisted from the Cohesion Fund;

- performing duties of body carrying out *ex-ante* control of tender procedures (in case of tenders realised according to PRAG, *ex-ante* control is carried out in the form of SAO's acceptance of subsequent stages in tender procedures);
- monitoring and assessing the Cohesion Fund implementation process in the Transport Sector on the basis of reports and on-the-spot project implementation checks;
- submitting overall information on Cohesion Fund projects being accomplished in environmental sector on request of the European Commission on dates pointed out by the Managing Authority. przekazywanie zbiorczych informacji nt. projektów Funduszu Spójności realizowanych w sektorze transportu na żądanie Komisji Europejskiej w terminach wskazanych przez Instytucję Zarządzającą.

Implementing Bodies

In the Transport Sector, the Implementing Bodies are: the General Directorate for National Roads and Motorways (GDNR&M) and PKP Polish Railway Lines S.A. (PKP PLK S.A.). These bodies are also Beneficiaries for all projects. These units are responsible for preparing projects, holding tenders, signing contracts with contractors ; they shall also be responsible for management and supervision of site. The basic tasks of GDNR&M and PKP PLK S.A. include also: paying the contractors , running the project accountancy, submitting applications for payments to the Intermediate Body and recovering undue payments from contractors.

Detailed relations between the Intermediate Body on one part and GDNR&M and PKP PLK S.A. on the other in the field of Cohesion Fund management and control will be set in the general framework agreements ordering implementation of projects assisted from the Cohesion Fund. Similarly to the ISPA system, there will also be detailed implementation agreements for every project.

3.2 Control system – first level of control

3.2.1 Internal financial control system in every unit

3.2.1.1 General provisions

The basic provisions of financial control in the units of the public finance sector were laid down in Chapter 5 of the Law on public finance. Moreover, on 30 January 2003 the Minister of Finance set out '*Financial control standards in the units of the public finance sector*' (Ministry of Finance Official Gazette No 13 item 13). These standards were established in accordance with the commonly accepted standards, especially with the internal control model COSO. The provisions set out in the Law on public finance and in the standards refer to all units of the public finance sector.

According to the Law , financial control refers to processes connected with cumulation and distribution of public funds and to property management. The responsibility for the whole of financial management and for financial control in the public finance sector unit belongs to the head of the unit. The head of the unit is obliged to introduce written procedures of financial control that are in compliance with the standards of financial control as well as to ensure their observance.

3.2.1.2 Realization of the internal financial control

Due to Poland's decentralised system of management and responsibility for public funds, individual instructions, procedures and financial control mechanisms have to be set out by the head of the relevant unit. Internal financial control is realised on the level of Implementing Bodies, Intermediate Bodies, the Managing Authority and the Paying Authority. The method of its implementation in the mentioned institutions is presented in respective procedure manuals.

3.2.2 Internal audit

According to the regulations of the Law on public finance, the term 'internal audit' should be understood as the total scope of actions through which the head of a unit acquires an objective and

independent opinion on the functioning of the unit in the field of financial management as regards legality, economic prudence, purposefulness, diligence, as well as transparency and publicness.

The aim of internal audit, that is audit run by an internal auditor employed in the given public finance sector unit, is to supply the head of that unit with objective and independent assessment of the unit's financial management. In order to achieve this aim, internal auditor may apply different types of audit, including system audit, activity audit (value for money) and financial audit.

Internal auditor is directly responsible to the head of the unit. Internal auditor shall not be engaged in any operational activity of the public finance sector unit. Auditors shall not take part in any of the management processes that they assess, therefore they must not prepare and make any decisions, including the procedures and mechanisms of internal financial control, that refer to the work of the unit where they are employed.

In compliance with the provisions of the Law on public finance, since 1 January 2002 the majority of public administration units, other non-governmental public administration units, justice administration units, target funds and state higher education units are obliged to run internal audit. In order to fulfil this obligation they should establish internal audit sections.

This is also the duty of other units which cumulate or spend public funds on a large scale, including local authorities, according to the provisions of the Regulation of the Minister of Finance of 20 December 2002 on setting the sum of revenues and expenditures of public funds made during the calendar year, the excess of which would oblige the public finance sector units to introduce internal audit (Journal of Laws No 234 item 1970).

Units of the public finance sector whose expenditures or earnings of public funds exceed the sum of 35 million PLN in a given year are obliged to start internal audit before the end of the first quarter of the year following the year in which the excess took place. The Regulation entered into force on 12 January 2003 and as its consequence from 1 April 2004 ca. 440 units of local authorities, including all autonomous authorities on voivodship level, shall be obliged to run internal audit.

3.2.2.1 Internal audit standards and procedure manuals

The general procedure of internal audit is set out by the Regulation of the Minister of Finance of 5 July 2002 on detailed method and procedure of internal audit (Journal of Laws No 111 item 973).

'Internal audit standards in the units of the public finance sector' were set out by the Minister of Finance on 30 January 2003 (Ministry of Finance Official Gazette No 3 item 14). The standards of internal audit constitute principles of good practice and they contain instructions both for internal auditors and for heads of units. These standards are in compliance with the international standards for internal audit issued by the international professional association of internal auditors, The Institute of Internal Auditors. In 2002 the Ministry of Finance prepared an internal audit manual, which was completed in 2003 with example methods of risk assessment. More detailed manuals / procedures, appropriate for respective units of the public finance sector, should be prepared by internal auditors in these units.

3.2.3 Internal audit and internal control in the non-public finance sector

Non-public finance sector Implementing Bodies have to implement a system of financial control and to apply appropriate procedures complying with the *Financial control standards in the units of the public finance sector* set out by the Minister of Finance. In order to guarantee an appropriate level of financial control, the provision of observing the guidelines received from the Managing Authority and the obligation of approving the procedures of internal financial control by superior institutions has to be stipulated in the agreements with these bodies, under the sanction of losing financial assistance.

These bodies should be obliged to run internal audit in a manner complying with the *Internal audit standards in the units of the public finance* set by the Minister of Finance.

3.2.4 Independent external audit in the units with no internal audit sections

In case when Final Beneficiaries, according to Public Finance Act, are not obliged to run internal audit either by law or by force of other obligations, they have to ensure that a financial audit of every project is run by an independent auditor once a year. The results of the audit will be submitted to an appropriate SAO (and a copy will be sent to the MA) not later than within one month after the receipt of the audit report for the purpose of current monitoring and control. As in the ISPA fund, the scope of duties of the external auditor should be in compliance with the document drafted by the Ministry of Finance for the ISPA fund: 'The scope of annual audit of eligible expenditure for projects assisted from ISPA resources', which was to the units in April 2003.

3.2.5 Supervision and control system by superior units in the project implementation

Correctness supervision of the management and control system

It is the responsibility of the Managing Authority to ensure an effective system of the Cohesion Fund management in Poland. The first step in this direction is the assessment of the internal procedure manuals of the Intermediate Bodies as well as supervising the implementation of these procedures. Moreover, basing on the information on all controls / audits run in the Cohesion Fund Implementing Bodies as well as on the information identified in the process of monitoring institutional capacity, the Managing Authority may recommend units to improve the management and control system of the Cohesion Fund. In justified cases, the Managing Authority is entitled to run additional controls in the field of system functioning.

Guidelines issued by units superordinate in the project implementation system

The Managing Authority, the Paying Authority and superior Intermediate Bodies alike may issue guidelines for subordinated institutions. In case of an issue of such guidelines, subordinated units are obliged to apply them, while the superior unit is entitled to control their application and to take adequate measures in case when they are not observed.

Control run upon certification of applications for payment

Environment Sector

Control will apply to all applications for payment. It will be run on the basis of checklists both in the NFEP&WM and in the 1st degree Intermediate Body. After the verification of the applications by the SAO services and after their approval by the SAO they will be submitted to the Paying Authority.

Transport sector

Controls in order to certify applications for payment shall be run by way of monthly reports in which the sums of respective invoices shall undergo detailed verification. Collective payment lists for a given period will be checked as regards the regularity of division into eligible expenditure. Parallely in case of projects implemented by ISPA, there will be controls (both planned and ad hoc) as regards expenditure eligibility and the level of project progress. The controls shall verify the regularity of payment certification procedures through a detailed examination of three invoices made out for expenditures incurred in performance of three different contracts for the same project as regards the correctness of their preparation, making out and certifying as well as their realisation. The controls shall be run according to the year control plan, and in extraordinary cases it is planned to organise controls more often than provided in the year plan.

3.3 External controls – second level of control

3.3.1 Fiscal control

3.3.1.1 Legal basis

According to the Law of 28 September 1991 on fiscal control (Journal of Law from 2004 No 8 item 65, with amendment) the tasks of fiscal control, set in Article 2 of the Statute, include in particular:

- control of purposefulness and legality of the EU funds management, as well as control of meeting the conditions of assistance from these funds
- certifying and issuing declarations on winding up of the assistance from the EU funds.

In keeping with the provisions of Article 4 of the Statute on fiscal control, fiscal control shall apply to:

- entities spending, transferring and receiving the European Union funds;
- entities obliged to meet the conditions of financial assistance from the European Union funds.

On-the-spot checks are carried out by 16 fiscal control offices (FCOs). According to Article 13 (4) of the Law on fiscal control, in case of a control of funds received by the Republic of Poland from the EU institutions, EU representatives may take part in controls. Responsibility for the control coordination, uniform control methodology, systematisation of results and transferring them to appropriate domestic institutions and to the European Commission belongs to the Bureau for International Treasury Relations at the Ministry of Finance.

In view of the provisions of the Community legislation, financial control as understood in the Articles 9-12 of the Commission Regulation (EC) No 1386/2002 of 29 July 2002 is carried out by the fiscal control. The control shall include:

- checking the efficiency of the applied management and control system;
- controlling at least 15% of the eligible expenditures of different level institutions, and of transfer and management of funds (carrying out controls of operations on the basis of an appropriate sample check method);

3.3.1.2 Control of operation correctness on the basis of sample checks

According to Article 9 (1) of the Council Regulation (EC) No 1386/2002, appropriate controls aim at:

- checking the efficiency of the management and control systems applied;
- selective verification of expenditures on the basis of risk analysis on various examined levels.

According to Article 11 of the Council Regulation (EC) No 1386/2002, controls aim also at determining whether any of the encountered problems are of a systemic nature, which could be a risk factor for other projects, and defining the causes of such situations, the potential scope of further controls required and the necessary corrective measures and counteractions.

The tasks connected with control are carried out by the General Inspector of Fiscal Control with the assistance of the Bureau for International Treasury Relations. The controls refer to finished operations (ex-post controls) and are carried out according to control plans (planned controls), prepared by the Bureau for International Treasury relations and approved by the General Inspector of Fiscal Control.

Controls are carried out by inspectors and agents of fiscal control offices.

Rules of sample selection

When planning controls aiming at carrying out appropriate verifications, the Bureau for

International Treasury Relations takes into account the necessity of:

- checking at least 15% of the total sum of eligible expenditure before the completion of any project;
- regular time arrangement of the checks when possible;
- carrying out the checks on the basis of representative samples of certified operations.

The selection of samples of the certified operations, made by the Bureau for International Treasury Relations, is carried out on the basis of a method set by the Bureau and approved by the General Inspector of Fiscal Control; this method shall consider risk factors, their importance and the necessity of checking different types of institutions engaged in the Cohesion Fund implementation system, as well as type and scale of different projects.. The Bureau for International Treasury Relations also drafts appropriate guidelines for fiscal control offices, aiming at a uniform methodology of controls carried out by fiscal control offices (patterns of control plans, checklists, reporting methods, and especially formulation of applications); these guidelines have to be approved by the General Inspector of Fiscal Control.

Scope of verification

The scope of verification includes at least:

- practical use and efficiency of management and control mechanisms;
- consistence of records in accounting books with accounting documentation;
- establishing and applying an appropriate audit trial;
- compliance of the type and time of expenditure with the Community requirements, with the approved physical scope of the project and the works carried out;
- consistence of the aim or the planned aim of an operation with the aim described in the application for assistance;
- fulfilling the duties in the field of transferring the European Union financial assistance in total amount, without any deductions and without undue delay;
- ensuring national co-financing of the projects;
- consistence of the project implementation with the provisions of Article 8 of the Council Regulation (EC) No 1164/94.

3.3.1.3 Submission of information on 15% sample checks

The General Inspector of Fiscal Control submits to the European Commission information on sample checks in the previous year till 30 June of every year, in compliance with the Articles 9-11 of the Council Regulation (EC) No 1386/2002.

3.3.1.4 Controls motioned by the European Commission

According to the Article 12 (2) of the Council Regulation (EC) No 1164/94, the aim of controls carried out on the motion of the European Commission is the verification of regularity of one or more transactions.

The tasks connected with controls motioned by the European Commission are carried out by the General Inspector of Fiscal Control with the assistance of the Bureau for International Treasury Relations, with the provision that:

- controls are carried out by inspectors and agents of fiscal control offices out of the plan of controls set by the General Inspector of Fiscal Control (ad hoc controls),
- controls relate to transactions already completed (ex post controls),
- controlled expenditures are not included in the 15% of expenditures verified through sample selection.

The scope of control is established in accordance with the motion of the European Commission.

3.3.1.5 Other fiscal controls

Apart from the controls that serve the direct realisation of duties deriving from the Community legislation, there are also ad hoc controls carried out in justified cases on the basis of information suggesting irregularities in the Cohesion Fund implementation. These controls are carried out in particular on the motion of such institutions as: the Parliament, Office of the Attorney General, the Paying Authority, the Managing Authority.

In this scope the duties of the General Inspector of Fiscal Control are carried out with the assistance of the Bureau for International Treasury Relations. Checks are carried out by inspectors and agents of fiscal control offices, out of the plan of controls set by the General Inspector of Fiscal Control.

Controls relate to completed transactions (ex post controls), and the controlled expenditures are not included in the sum of 15% of the eligible expenditures, verified on the basis of an appropriate method of sample selection.

The scope of control is set out appropriately to the information received, with the stipulation of authority deriving from the Law on fiscal control.

3.3.2 Other external controls

Due to Poland's obligations deriving from the Community legislation, appropriate external controls of application of the Structural Funds and the Cohesion Fund assistance may also be performed by the Community institutions. Particularly it refers to the European Court of Auditors, established under the terms of the Treaty of Brussels of 1975, which is authorised e.g. to perform system audit and financial audit and which is authorised to run controls in the Member States, as well as the European Commission.

Providing for the requirements of a potential system audit and financial audit, the Managing Authority creates and updates the presentation of audit trials on the basis of the updated presentations of audit trials in the Intermediate Bodies and the Paying Authority.

The Supreme Chamber of Control

The Supreme Chamber of Control is the head body of state control. The legal basis for its functioning is the Constitution of the Republic of Poland of 2 April 1997 (Journal of Law No 78 item 483 with amendment). The Supreme Chamber of Control is subordinated to the Parliament of the Republic of Poland and it operates on a collective basis. According to the Constitution, the Supreme Chamber of Control is responsible above all for controlling the government and other units of the government administration, the National Bank of Poland, state legal entities and other state organisation units as regards **legality, economic prudence, purposefulness and diligence**. Basing on these criteria, the Supreme Chamber of Control prepares reports and opinions for the Parliament, among others on the state budget performance. Moreover, the Supreme Chamber of Control has the authority to control the actions of local authority bodies, municipal legal persons and other municipal organisation units as regards **legality, economic prudence and diligence**, as well as the actions of other units¹ and economic agents as regards their application of the state property or funds or the communal property or funds and their fulfilling the financial commitments to the State.

Regional Audit Offices

Regional Audit Offices supervise and control local authorities as regards financial management and public procurements. Regional Audit Offices exercise external control as regards local authorities

¹ Irrespective of the form of activity of the entity

and local authority bodies. The legal basis for their functioning is the Law of 7 October 1992 on regional audit offices (Journal of Law No 85 item 428 with amendment).

3.4 Declaration on winding-up of the assistance – third level of control

The General Inspector of Fiscal Control carries out the task of issuing declarations on winding-up of the assistance (described in Chapter 5 of the Regulation (EC) No 1386/2002) with the assistance of the Office for Certification of EU Funds, the organisation unit at the Ministry of Finance. According to the provisions of the Law on fiscal control, issue of declarations on winding-up of the assistance from the European Union funds covers a set of material and technical activities aiming at certifying the accuracy of accounts and checking the regularity of the systems of management and control of the projects assisted from the European Union funds. The Office for Certification of EU Funds, separated from other control bodies as regards its functioning, prepares declarations on winding-up of the assistance to be signed by the General Inspector of Fiscal Control.

The declaration is prepared by the Office on the basis of:

- a) examining the Cohesion Fund management and control systems,
- b) results of expenditure controls carried out by fiscal control offices (at least 15% of eligible expenditures), and
- c) in justified cases, other sample checks of transactions.

The Office runs the audit in conformity with the international audit standards.

A declaration will be accompanied by a report including all important information justifying the declaration.

If important failures in the management or control systems or frequent irregularities render it impossible for the Office to make out a proper declaration, the Office will refer to these circumstances, assessing the scale of the problem and its financial effects.

4 Cohesion Fund programming

4.1 Basic provisions

General information on the Cohesion Fund is included in ‘*The Guidelines for the Cohesion Fund 2000-2006*’, a document drafted by the European Commission Regional Policy Directorate General in order to prepare better the new Member States to use the Cohesion Fund. The guidelines of the European Commission point to the application of the following rules:

4.1.1 Strategic approach

Respective projects are financed by the Cohesion Fund, but an effective application of the funds **requires a strategic approach** identifying priorities and the sources of their financing.

Strategic directions of the allocation of public funds in the years 2004-2006, particularly of the European transfers, are set in the documents of the Ministry of Economy and Labour: *The National Development Plan 2004-2006* (approved by the Council of Ministers on 14 January 2003) and the *Community Support Framework* (approved by the Council of Ministers on 23 December 2003), prepared on the basis of the National Development Plan. The program document, forming the framework for the Cohesion Fund programming, is *The Framework Reference Document for the Cohesion Fund 2004-2006*, approved by the Council of Ministers on 23 March 2003. *The Framework Reference Document for the Cohesion Fund* has been approved by a Regulation of the Minister of Economy and Labour of 30 April 2004 (Dz. U. Nr 176, poz. 1827). This document contains the main directions of benefiting from the Cohesion Fund in the current programming period with the division into the Transport Sector and the Environment Sector. It also presents a diagnosis of the present state of Polish transport and a diagnosis of the situation in the main intervention zones in the Environment Sector. The document establishes the criteria of project selection in both sectors. Moreover, in the Transport Sector it identifies indicative project lists with the division into priority projects and reserve projects. In the Environment Sector the lists of projects suggested for assistance from the Cohesion Fund will be presented in conformity with the

lists of projects within the National Program of Municipal Sewage Treatment, The National Waste Management Plan, voivodship plans and air protection programs.

National Development Plan, Community Support Framework and The Framework Reference Document for Cohesion Fund Assistance are available on the Internet site www.fundusze-strukturalne.gov.pl.

According to the Council Regulation (EC) No 1164/94, projects financed from the Cohesion Fund will involve the 'polluter pays' principle and take into account future income generated by the project while calculating a rate of assistance.

The European Commission places an accent on the application of private funds in order to enhance the effect of financial leverage of the Community assistance.

4.1.2 Project size

The Cohesion Fund finances projects that have an important influence on the development of the trans-European transport networks or on the improvement of the state of the environment, thus approximating it to the standards set by the ecology *acquis communautaire*. Consequently, it is assumed that the minimal size of a project to be financed from the Cohesion Fund is 10 million Euro.

4.1.3 Project preparation

An application form for investment projects for the Environment Sector and the Transport Sector has been prepared for the Cohesion Fund. Moreover, the Managing Authority has prepared instructions of filling the application for assistance from the Cohesion Fund. Both the form and the instructions are available on the Ministry of Economy and Labour Internet site (<http://www.funduszspojnosci.gov.pl>).

In the process of project preparation, special attention should be paid to the rules of expenditure eligibility, public procurement and the question of state aid, which will be discussed later.

4.1.4 Cohesion Fund assistance

The rate of assistance of the Cohesion Fund ranges at the most between 80% to 85% of public expenditures or other equivalent expenditures, including the expenditures of entities whose actions are undertaken within the administrative or legal frames under such provisions which render them equivalent to public entities².

It must be stressed, however, that the actual rate of assistance, as a rule, will be lower than the 80%-85% mentioned above. The actual rate of assistance is established on the basis of the 'polluter pays' principle and in respect of the revenue³ from access fees generated by the project. The amount of the Cohesion Fund assistance may also be changed if on submitting the final report the planned revenues from the project exceed by 10% the net revenues declared in the assistance application. The total Cohesion fund assistance or any other Community assistance for investment projects should not exceed 90% of the total sum of eligible expenditures in a given project. The Cohesion Fund also co-finances technical assistance projects. In extraordinary cases the projects of that type may be financed at 100% of the total cost.

4.1.5 Project selection

Assistance from the CF may be granted to the project, technically and financially independent stage of a project and groups of projects. Projects may be grouped if they meet following three conditions: they must be located in the same area or situated along the same transport corridor; they must be carried out under an overall plan for the area or corridor with clearly identified goals

² The rate of assistance refers to eligible expenditures.

³ Revenue-generating projects are:

- Infrastructures, the usage of which includes fees borne directly by the users
- production investments in the Environment Sector.

and they must be supervised by a body responsible for coordinating and monitoring the group of projects in cases where the projects are carried out by different competent authorities.

The selection of projects in order to submit them to the European Commission is made by Polish part on the basis of following programme documents, which in the case of Poland are: *National Development Plan 2004 – 2006 (NDP)* and *The Framework Reference Document for Cohesion Fund Assistance*. European Commission decides which of submitted projects will be granted assistance in the given year. The Commission may also suggest technical assistance projects which finds worthy of consideration.

In the project selection there should be an appropriate balance between the Transport Sector and the Environment Sector projects.

4.1.6 State aid in the Cohesion Fund

Under the terms of Article 8 of the Council Regulation (EC) No 1164/94, the Cohesion Fund assistance must always comply with the Community policies, e.g. in the field of competition. The analysis of assistance application includes both the Cohesion Fund and public funds. As a result, after deciding that the assistance is granted according to priorities and under the terms set in the Council Regulation establishing the Cohesion Fund, in case of state aid additionally there is necessity to check if it meets the conditions set in the *acquis communautaire*. Under the terms of Article 10 (4) and (5) of the Regulation mentioned, an assistance application for a given project should especially include all information proving that it is in compliance with the Community policies, also in terms of the state aid rules..

According to the terms of Article 87 (1) of the Treaty establishing the European Community, all assistance granted by the State or from state funds, irrespective of its form, in case when it injures or creates the risk of injuring trade relations between Member States due to violating or threatening to violate the rules of competition through favouring certain companies or certain branches of production, is incompatible with the rules of the common market. If the planned assistance has the features mentioned in the above definition, on granting assistance there arises the necessity to apply the rules of state aid admissibility set in the *acquis communautaire*.

In respect of financing of infrastructure, the European Commission is of a opinion that public financing of its construction or maintenance is not regarded as state aid as defined in Article 87 (1) of the Treaty, provided that:

1. it is accessible for every potential user under non-discriminating conditions;
2. there is a clear economic division between operational activities and the infrastructure management.

The funds earmarked for infrastructure development are a measure of a general nature (generally accessible), with which the State carries out its duties in the public interest. In such cases the condition of selectivity, which arises from the definition of the state aid according to which state aid favours certain corporations, is not fulfilled..

In conformity with the provisions of the Council Regulation (EC) No 1164/94 and in accordance with the measures planned in *The Framework Reference Document for the Cohesion Fund 2004-2006*, the Beneficiaries of the Cohesion Fund assistance may be entrepreneurs carrying out the tasks of public bodies. The activities financed within the reference framework will not constitute state aid. At the same time it does not exclude appearance of the projects benefiting from state aid.

4.1.6.1 Transport Sector

In the Transport Sector there have been identified the priorities in the field of road and railway infrastructure. In view of selection of strictly determined most urgent tasks related to development of TEN network, there are two exclusive Final beneficiaries: General Directorate of National Roads

and Motorways-managing body for roads and motorways and PKP PLK S.A.-managing body for railway lines.

Construction and modernisation of the road infrastructure

General Director of National Roads and Motorways is a central body of public administration which carries out State tasks in the field of construction and modernisation of national roads and motorways with assistance of General Directorate of National Roads and Motorways. Due to the nature of these activities, carried out on a non-commercial basis, the assistance granted within the framework of the Cohesion Fund projects shall not be considered to be state aid..

Modernisation of railway lines

Railway infrastructure referred in *The Framework Reference Document for Cohesion Fund Assistance 2004-2006*, is managed by PKP PLK S.A. The company carries out State tasks in the field of construction and modernisation of railway lines of State importance. Due to the statutory monopoly of PKP PLK S.A. on the lines considered a priority in *The Framework Reference Document for the Cohesion Fund Assistance*, excluding the possibility of competition, and to the provisions of the Law of 28 March 2003 on railway transport (Journal of Law No 86 item 789) which guarantees the access to railway infrastructure under non-discriminatory conditions as well as the separation of tasks connected with infrastructure management and transport services, in case of the Cohesion Fund projects there is not the question of state aid.

4.1.6.2 Environment Sector

The European Commission points out that the question of expenditures borne by municipal companies is regulated in Article 7 of the Council Regulation (EC) No 1164/94. It also emphasizes that the tasks carried out by these companies are as a rule State tasks carried out in the public interest. Within the scope of their activity the companies act as natural (State) monopoly, and as a consequence this market is not open for competition.

This means that as a rule the financial resources assigned for the implementation of these projects, irrespective of their source, shall not be perceived as state aid in the understanding of Article 87 (1) of the Treaty.

The projects within the priority of improving the flood safety will be carried out by the Regional Boards for Water Management. In view of the nature of their activities, the assistance granted within the framework of the Cohesion Fund, as a rule, projects shall not be perceived as state aid.

However, financing measures set out in *The Framework Reference Document for Cohesion Fund* does not constitute an excuse from verification this measure as regards state aid.

In each case a project must be verified as regards the question of state aid with the application of the general rules described above.

4.1.6.3 Process of application verification as regards state aid and the notification procedure

Environment Sector

According to the Community legislation as regards granting state aid and on the basis of the Law of 30 April 2004 on procedures in cases of granting state aid (Journal of Law No 123 item 1291), in cases when the question of state aid appears in the Cohesion Fund projects, a notification procedure for individual assistance projects should be applied. In the Cohesion Fund system, the application verification will be as follows:

1. In the process of the preparation of an application for assistance the Beneficiary points out the case of state aid. The Beneficiary then applies to the National Fund for Environmental Protection and Water Management to begin the notification procedure;

2. The National Fund for Environmental Protection and Water Management applies to the President of the Office for Competition and Consumer Protection to issue an opinion on the individual aid project;;
3. The OCCP President issues an opinion on conformity of state aid with the common market within 60 days;
4. Irrespective of the opinion, the NFEP&WM may apply within 14 days of its receipt to the OCCP President to notify the European Commission. The OCCP President will not notify the European Commission if no application is submitted within this period;
5. The OCCP President notifies the European Commission through the Permanent Representation of the Republic of Poland to the European Union. In case of certifying an individual aid project, the European Commission informs the OCCP of the agreement granted (the European Commission has 2 months for issuing the opinion);
6. The OCCP informs the NFEP&WM of the decision of the European Commission to grant state aid to the Cohesion Fund project;
7. The Final Beneficiary completes the application for assistance with appropriate information and submits it to the NFEP&WM.

Due to the fact that the notification procedure may take several months, the projects in which the question of state aid may arise should be prepared in advance.

A detailed explanation of the issue in the application for assistance is a necessary condition of its being presented to the European Commission.

Transport Sector

In accordance with the information in art. 4.1.6.1., a notification procedure will not be in use in the transport sector at the stage.

4.2 Programming process

4.2.1 Programming coordination

The programming coordination is the responsibility of the Managing Authority, which prepares in cooperation with the Intermediate Bodies the *Framework Reference Document for the Cohesion Fund Assistance* and which is responsible for the coordination of its updating. The *Framework Reference Document for Cohesion Fund 2004-2006* was formally approved by the European Commission on 19 December 2003. The MA also contributes to ensuring the balance of the funds distribution between the Environment Sector and the Transport Sector.

With regards to the programming process the Managing Authority has issued *Guidelines for Intermediate Bodies on basic requirements of programming and preparation of Cohesion Fund projects in the programming period 2004-2006*. The aim of this document is to present and systematize the requirements of the Managing Authority in the field of the programming process as regards the SAOs whose duty is to ensure the fulfillment of these requirements through preparing additional guidelines, appropriate internal procedures in the Ministries and, in case of the Environment Sector, in the Intermediate Bodies.

Due to the specificity of both sectors the process of preparation and project selection is presented separately.

4.2.1.1 Environment Sector

The programming process and the preparation of applications in the Environment Sector belong to the responsibilities of the Minister of Environment, the 1st degree Intermediate Body. The tasks of the Minister of Environment as regards the preparation of programme documents are carried out by the Department of European Integration of the Ministry of Environment. In the process of substantial assessment of applications the Department of European Integration cooperates with the Department of Water Resources, Department of Environmental Protection Instruments and Department of Ecological Policy.

4.2.1.1.1 Project selection

Entitled entities (local authorities, associations of local authorities, municipal companies) submit project proposals in form of the so-called Cohesion Fund **preliminary applications** (project cards) to the appropriate Voivodship Fund for Environmental Protection and Water Management which supplies the entities within the voivodship with information on the rules of the Cohesion Fund functioning, which also includes official forms and documents.

The Voivodship Funds for Environmental Protection and Water Management assess the preliminary applications as regards their substantiality and formality. Those applications that do not meet formal requirements are returned to the applicants for appropriate corrections. Moreover, a Voivodship Fund runs the preliminary substantial verification of the application as regards its conformity with the criteria approved by the Minister of Environment. A *'Report on investment evaluation as regards its conformity with the Cohesion Fund'* is made out for every application. After the preliminary assessment of all applications, the Voivodship Funds for Environmental Protection and Water Management prepare voivodship lists of potential projects to be assisted from the Cohesion Fund.

Due to the necessity of coordination of works with the projects financed by the European Regional Development Fund (ERDF) within the Integrated Operational Programme of Regional Development at the earliest programming stage possible, the Voivodship Funds for Environmental Protection and Water Management submit the lists of potential projects to be assisted from the Cohesion Fund to the Marshals of the Voivodships who verify if a given application has not been submitted to the ERDF. The Marshals transmit their opinions to the Voivodship Funds for Environmental Protection and Water Management. Having received the opinions of the Marshals, the Voivodship Funds for Environmental Protection and Water Management verify the lists before submitting them to the National Fund for Environmental Protection and Water Management.

The tasks of the National Fund for Environmental Protection and Water Management include the substantial assessment of the preliminary applications submitted by the Voivodship Funds for Environmental Protection and Water Management as well as preparing for the Minister of Environment a joint list of potential projects to be assisted from the Cohesion Fund.. Within that scope of responsibilities, the NFEP&WM assesses the projects as regards their planned ecological effect and their technical, economical and financial feasibility on the basis of the *Framework Reference Document for Cohesion Fund Assistance* and of the criteria approved by the Minister of Environment which have the nature of guidelines.

The above mentioned criteria for the project selection, approved by the Minister of Environment, include general and detailed criteria. Those projects that meet the general criteria are then arranged according to the detailed criteria, differentiated according to the type of project. Both types of criteria are set out in the *Framework Reference Document for Cohesion Fund Assistance*.

Having verified the voivodship lists of potential projects, the NFEP&WM drafts joint list of projects and submits it to the Secretariat of the Steering Committee.

The Cohesion Fund Steering Committee is a auxiliary body to the Minister of Environment which gives opinion and advises the Minister as regards the final selection of projects submitted for assistance from the Cohesion Fund. The Steering Committee will be appointed by Disposition of the Minister of Environment issued on the basis of Article 23 (5) of the Law on the National Development Plan. The working procedures of the Steering Committee are established by the regulations included in the attachment to the aforementioned Disposition. In conformity with the Law on the National Development Plan, the Committee shall include the representatives of the Managing Authority, the Intermediate Bodies (ME, NFEP&WM, VFEP&WM), voivodship autonomous authorities, social and economic partners (non-government ecological organisations).

When preparing the project assessments, the Steering Committee takes into consideration the opinions of the Marshals of voivodships. Moreover, The Committee may set additional detailed criteria of the choice of projects which must be in conformity with the criteria set in the *Framework*

Reference Document for Cohesion Fund Assistance. After the preliminary project assessment, the Steering Committee prepares a list of projects recommended for preparation, which is submitted for approval to the Minister of Environment.

The Ministry of Environment informs the Marshals and potential Beneficiaries of the approval of the project list by an appropriate Minister.

Preparation of application for assistance

After the Minister of Environment approves the projects that are to compete for the Cohesion Fund assistance, an application for assistance from the Cohesion Fund is being prepared. The applications to the Cohesion Fund will be prepared by the Beneficiaries in cooperation with the VFEP&WM and the NFEP&WM.

The project preparation by the NFEP&WM includes among others:

- Holding tenders as regards the contracts co-financed by the technical assistance according to the requirements of the European Commission;
- Identifying and preparing the range of duties for the contractors providing services in the project preparation, including especially expertise, surveys, opinions, analysis and tender documentation;
- After the approval of the selection of contractor by the Minister of Environment, signing contracts with the contractors and making settlements with them, as well as signing contracts with Final Beneficiaries as regards technical assistance.

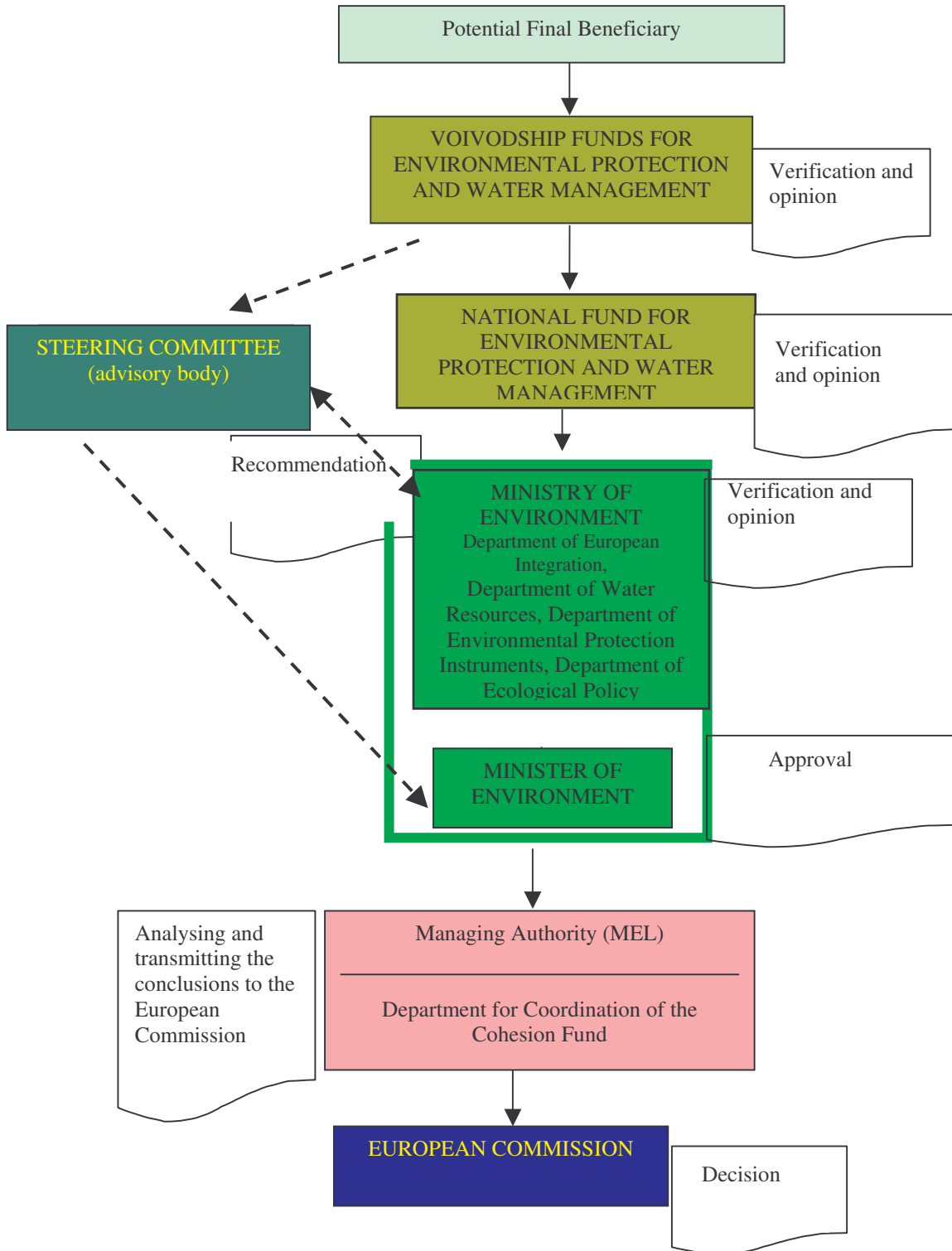
Project preparation by the NFEP&WM includes also ordering the contractors to carry out activities related to project preparation, especially expertise, surveys, opinions, analyses, tender documentation etc., in case when these activities are financed from the Cohesion Fund. These activities include among others: holding tenders, preparing the range of activities for the contractors, signing contracts with the contractors and making settlements.

Ready made applications for assistance from the Cohesion Fund which include the necessary documents, e.g. feasibility studies, environment impact assessments of the investment, and economic and financial analysis, will be sent to the Managing Authority and then to the European Commission. Basic information on the projects submitted to the European Commission is also introduced to the SIMIK system by the Managing Authority.

The Minister of Environment, supervising the realisation of the NFEP&WM duties and controlling the implementation of tasks connected with the Cohesion Fund, cooperates with the NFEP&WM, Voivodship Funds for Environmental Protection and Water Management and Final Beneficiaries in the assessment and verification of applications. The Minister plans and carries out the information policy as regards the Cohesion Fund and assesses its implementation in cooperation with the Managing Authority.

The programming process will be described in detailed internal procedures prepared by the Ministry of Environment, the NFEP&WM and the VFEP&WM, depending on the tasks they carry out.

IL. 2. DIAGRAM OF THE PROCESS OF SELECTION , ASSESSMENT AND PREPRARATION OF THE COHESION FUND PROJECTS IN THE ENVIRONMENT SECTOR



4.2.1.2 Transport Sector

The Minister of Infrastructure is responsible for the programming process and for the preparation and assessment of applications in the Transport Sector. The tasks of the Minister of Infrastructure as regards the preparation of programme documents are carried out by the Department of Programming and Strategy in the Ministry of Infrastructure. The coordination of the preparation of the Transport Sector projects and the application assessment are managed by the Department of Programming and Strategy in cooperation with the Department of Infrastructure Financing and European Funds and, in case of railway projects and road projects, with the Department of Railways and the Department of Public Roads.

4.2.1.2.1 Project selection

In the Transport Sector, the process of programming and project selection is centralised. Due to the character of priority investments in the Transport Sector, the number of Final Beneficiaries is determined on the level of the *Framework Reference*. The scale of potential investments also limits the number of projects that will compete for the Cohesion Fund assistance. Due to that, preliminary priority investments were identified on the level of the *Framework Reference*. The list of preliminary priority projects is drafted by the Ministry of Infrastructure on the basis of recommendations presented to the Ministry of Infrastructure by the PKP PLK S.A. and the General Directorate for National Roads and Motorways, who will be both the Implementing Bodies and the Beneficiaries of the Cohesion Fund intervention.

In consequence, the identification process is limited to the directions suggested in the *Framework Reference*.

The Minister of Infrastructure decides on the sequence of preparation and submission of the projects upon recommendation of the Steering Committee which approves the project selection criteria. The Cohesion Fund Steering Committee in the Transport Sector, which was appointed by a disposition of the Minister of Infrastructure of 25 June 2004 on the basis of Article 23 (5) of the Law on the National Development Fund, consists of the representatives of the Managing Authority, the Intermediate Body, voivodship autonomous authorities and social and economic partners (ecological organisations). Additionally, at the invitation of the President of the Committee, representatives of the Implementing Bodies and other institutions connected with the programming and implementation of the Cohesion Fund may take part in the Committee sessions. The Steering Committee supports the Minister of Infrastructure in setting out the priorities and strategies of application of the Cohesion Fund assistance in the Transport Sector. In particular, the Committee gives opinion on the project plans competing for the Cohesion Fund assistance and suggests the sequence of preparation and submission of the projects to the European Commission in order to receive the assistance. At this stage of project selection, in case of any doubts or reservations the Steering Committee has a right to ask Implementing Bodies for explanations, justification or opinion. It is also authorised to appoint working teams in the questions needing additional expert knowledge. The actions of the Committee should be coordinated with the actions of the Sectoral Operational Program Transport Steering Committee in order to ensure uniformity in the implementation of projects co-financed from the European Union funds.

Project preparation

The application for assistance from the Cohesion Fund undergoes::

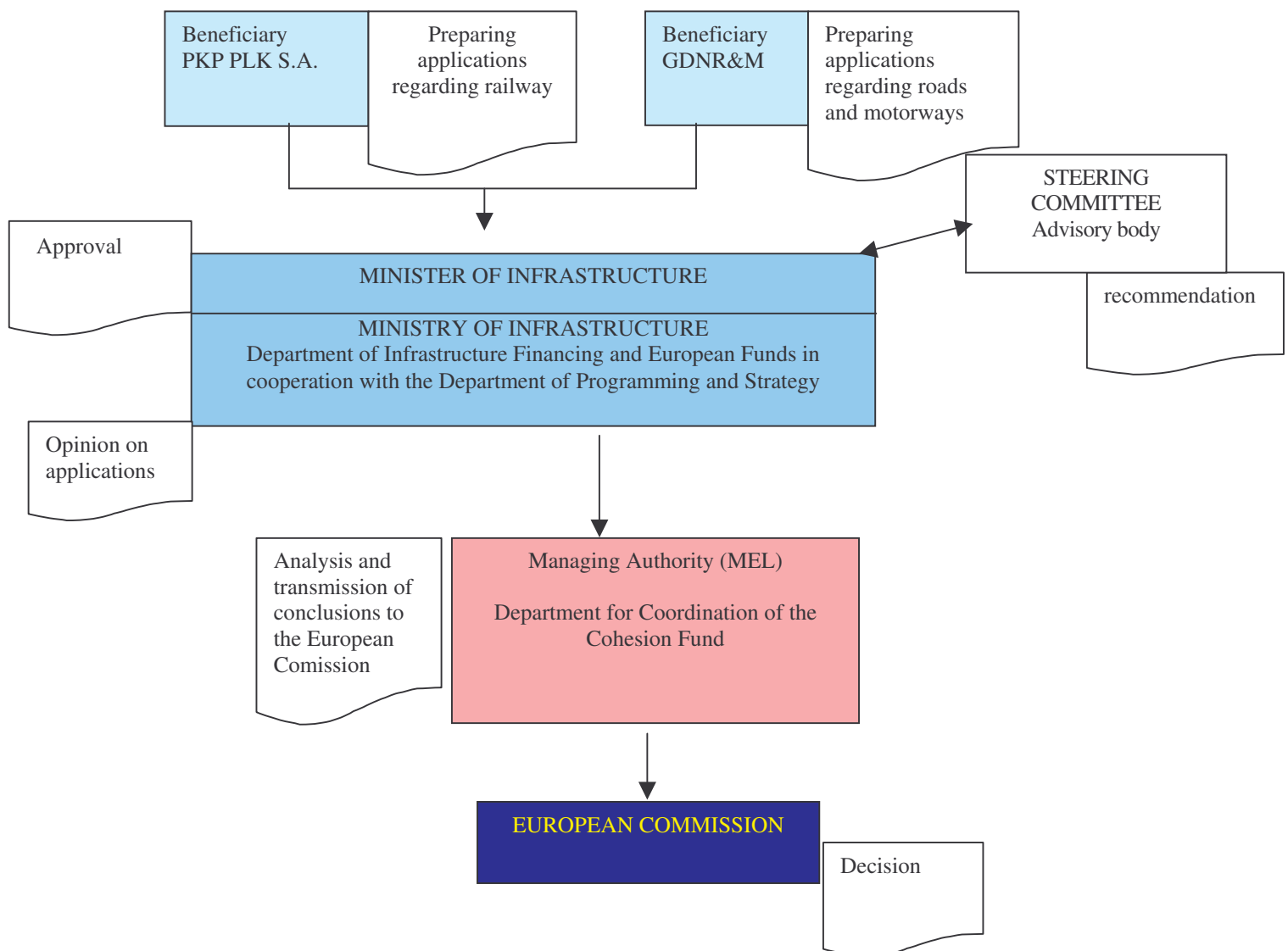
- 1) formal assessment – by the Department of Programming and Strategy of the Ministry of Infrastructure;
- 2) technical assessment – by the Department of Railways, Department of Road Transport and Department of Budget and Economic Analyses of the Ministry of Infrastructure;

3economic and financial assessment – by the Department of Infrastructure Financing and European Funds of the Ministry of Infrastructure.

The applications are subsequently assessed by a Working Team (which may use the assistance of experts) appropriate for the type of project. This assessment is submitted to the Steering Committee which recommends projects for approval of the Minister of Infrastructure. After approving certain projects, the Minister of Infrastructure submits information on the approval to the Managing Authority. The approval of the Minister is a necessary condition for a prepared application for assistance to be submitted to the Managing Authority.

The programming process was described in the detailed internal procedures of the Ministry of Infrastructure, included in the *‘Ministry of Infrastructure procedure manual of the Cohesion Fund management’*, and of the Implementing Bodies.

IL. 3. DIAGRAM OF THE PROCESS OF SELECTION, ASSESSMENT AND PREPARATION OF THE COHESION FUND PROJECTS IN THE TRANSPORT SECTOR



4.2.2 Project appraisal

After the submission of the application to the European Commission by the MA, it is subject to registration by the European Commission. After submitting the application, basic information on the projects are introduced into the SIMIK system.

The European Commission appraises the applications as regards:

- Medium-term economic and social benefits of these projects. These benefits should be commensurate to the resources invested, the appraisal should be made in view of the cost-benefit analysis;
- Priorities set by the Member States benefiting from the assistance;
- Contribution of the project to the implementation of the Community policies in the field of environment, including the 'polluter pays' principle;
- Conformity of the projects with the Community policies and their compliance with other structural actions of the Community;
- Ensuring an appropriate balance between the Cohesion Fund interventions in the environmental protection and transport infrastructure.

This process takes ca. 3 months. On appraisal of the project, the European Commission may ask for the opinion of the European Investment Bank. After completing the appraisal procedure, the European Commission takes a separate Granting Decision for each project assisted from the Cohesion Fund.

5 Project implementation mechanisms

5.1 General aspects

The rules for the Cohesion Fund project implementation should regard basic requirements established in the Council Regulation (EC) No 1164/1994 and in the executive dispositions issued on this basis.

In view of the provisions of Poland's Treaty of Accession to the European Union, after the accession Poland ceased to be the Beneficiary of the Instrument for Structural Policies for Pre-Accession (ISPA). However, after the accession the implementation of ISPA projects continues. From 1 May 2004 the projects approved for assistance from the ISPA and not completed before the day of accession shall be continued as Cohesion Fund projects. As regards the ISPA projects that will be implemented after the accession, their rules are set out in the Financial Memoranda made out up to the day of accession and in the subsequent amendments to these Memoranda exclusively in terms of eligibility of expenditures. All other questions are subject to respective Cohesion Fund regulation.. Each Financing Memorandum contains three Annexes, of which:

Annex I – is a description of a given project;

Annex Ia – contains a preliminary plan of tenders,

Annex II – contains the financing plan

Annex III – standard for all Memoranda; contains, among others, the following: provisions of financial management, eligibility of expenditures and procedures in case of detection of irregularities.

Annex III, except annex III.2 regarding principles of eligibility of expenditures, expired with the day of Poland's accession to the EU.

The procedures of holding tenders and concluding contracts have changed, as the awarding entities are

bound by the provisions of the Law on public procurement. Basic regulations binding in this respect are set out in the subparagraph 5.4. It has to be stressed that the rules of the eligibility of expenditures for ISPA projects shall not be changed.

5.2 Issuing the Granting Decision by the European Commission and the procedure of appeal for a change of the Decision

This chapter has been prepared on the ground of „*Guidelines for the amendment of decisions on Cohesion Fund projects*” submitted by the European Commission on 27 April 2004.

The European Commission issues a Granting Decision separately for each project. The key information on a given project is published in the Official Journal of the European Union. Basic data contained in the Decision are entered in the SIMIK system. Taking into account the above mentioned, it is not considered as a modification what has been described in the Commission Decision as „indicative”.

The European Commission, after individual case examination, may approve the only one change of the Decision to be based always on appropriate justification. However, in force majeure or mistake of the European Commission the second change to the Decision is allowed. In case of group of projects, it is allowed to apply for modification of each of them if justifiable circumstances occurred.

5.2.1 Changing Granting Decision Application procedure

There are two types of changing decision:

A change is classified as **minor** if it refers to extension of realization period, to change of financial plan, to small changes of project objective or to small changes of total cost, under the condition that it does not result in modification of the total amount of the EU assistance.

A change is classified as **major** if it refers to substantial change of project objective or if change of total cost of a project results in modification of the total amount of the EU assistance.

In case of major changes the two following situations can happen:

- 1) Project realization works have been started. In such a case, a changing decision is prepared. The new date is set up for a new part of the project to become eligible.
- 2) Project realization works have not been started. In this case the Commission cancels the EU assistance and approves a new project on the basis on works to be completed.

In all cases, a changing decision will set up the ending date of a project and its cost which must not be modified.

In case of single project application based on minor change must not precede an application based on major change.

Irrespective to type of change, Changing Decision Application is submitted by the SAO to the MEL Undersecretary of State. Everytime before delivery any Changing Decision Application to the European Commission, its project is submitted to the US at MF with request for opinion.

5.3 Project implementation

The regular implementation of the projects in the Environment sector and the Transport Sector belongs to the responsibilities of the respective SAOs in the Ministry of Environment and the Ministry of Transport. However, respective projects are implemented by the Implementing Bodies, indicated each time in the applications for assistance and in the European Commission Granting Decision.

Agreements between the Managing Authority and the Intermediate Bodies

The agreements made by the Minister of Economy and Labour as the Cohesion Fund Managing Authority separately with the Minister of Infrastructure as the Intermediate Body in the Transport Sector and the Minister of Environment as the 1st degree Intermediate Body in the Environment Sector on the basis of Article 19 of the Law on the National Development Plan formalise the framework of cooperation between these institutions in the field of the Cohesion Fund implementation system.. On the basis of the

aforementioned agreements, the MA will delegate to the IB the duties of management, monitoring and control of the projects assisted from the Cohesion Fund. The MA entered to one agreement with every IB that will refer to the whole system – the agreement with Ministry of Infrastructure was signed on 23 July 2004 and with Ministry of Environment on 13 October 2004.

Financing Agreements

The detailed conditions of settlements and utilization of the Cohesion Fund assistance will be set out in the Financing Agreements made out between the Paying Authority and the Intermediate Bodies. These agreements will contain the requirements regarding putting the funds at the disposal of the Intermediate Bodies and the financial reports.

The Paying Authority signs the Financing Agreement with the appropriate Intermediate Body for each project separately. In both sectors this agreement is a basis for Intermediate body to sign an implementation agreement with the body responsible for implementation

Body responsible for implementation

Agreements between the Intermediate Bodies and supervised institutions

The Minister of Environment and the Minister of Infrastructure will conclude agreements with supervised institutions. In the Transport Sector, the Minister of Infrastructure will sign separate contracts with the GDNR&M and with PKP PLK S.A., that is with the Implementing Bodies. The Minister of Infrastructure, as the Intermediate Body, shall not delegate its duties to other Intermediate Bodies in the Transport Sector.

In the Environment Sector, ‘*Agreement on preparation and implementation of projects co-financed by the Cohesion Fund*’ will be made out between the Minister of Environment and the NFEP&WM functioning as the 2nd degree Intermediate Body. There will also be an agreement between the NFEP&WM and VFEP&WM on the basis of which the 2nd degree Intermediate Body shall delegate a part of its duties as regards the Cohesion Fund implementation management to the 3rd degree Intermediate Bodies. The rules for the delegation of duties by the Intermediate Bodies to subordinate Intermediate Bodies in the Environment Sector shall be set out in the Agreement made out between the Managing Authority and the 1st degree Intermediate Body.

These agreements shall set out the relations between respective institutions as regards the management of projects assisted from the Cohesion Fund; they shall be described in detail in the implementation agreements. In case when an Body responsible for implementation does not belong to the public finance sector, the agreements shall include the minimal requirements of the Managing Authority as regards internal control and internal audit in these entities.

Agreement on assistance

As it worked in the ISPA system, in both sectors there will be made out detailed implementation agreements for each project. In the Transport Sector, these agreements will be concluded by the Ministry of Infrastructure and the Implementing Bodies. In the Environment Sector, the agreements will be concluded by the NFEP&WM and the Final Beneficiaries and they will have a bilateral nature. In the Transport Sector, the Implementing Bodies (PKP PLK S.A. and GDNR&M) are at the same time the Beneficiaries. Up to the moment of signature of these agreements, agreements signed under ISPA are still binding.

Delegation of the implementation of the whole or a part of an investment by the Final Beneficiary to another entity

In view of provisions of Cohesion Fund implementation system, it has to be assumed that the delegation of the investment implementation shall take place only in the Environment Sector.

In case of projects which have been the subject of Commission decisions on assistance under Regulation (EC) No 1267/99, the process of the delegation of investment implementation from the Beneficiary to another entity is continued according to provisions of Annex III.2 of the ISPA Financing Memorandum. As rules concerning the process of delegation for projects which have been the subject of the Commission decision under ISPA changed on 4th February 2004 there are two different procedures.

I. In case of projects for which the process of delegation had begun before 4th February 2004 the following procedure applies:

1. After passing the resolutions required and signing the agreement on delegating the rights and duties by the Final Beneficiary and the entity taking over the project implementation, the Final Beneficiary submits the complete documentation to SAO through the NFEP&WM..
2. After verification of the documents submitted by the Final Beneficiary, within 5 working days from their receipt, the SAO submits a written application for the assessment of the delegation to the Undersecretary of State at the Ministry of Economy and Labour. The application should include following elements:
 - a) SAO's approval of the delegation of implementation duties together with the indication of the delegating entity and the entity taking over the duties as well as of the scope of the delegated implementation duties. The attachment to the SAO's application shall include copies of the documents (resolutions and contracts) on the basis of which SAO has approved the delegation. The documents submitted shall be in Polish and their consistence with the original shall be certified. However, due to the necessity of submitting these documents to the European Commission, it is recommended to attach their English translation to the documentation.
 - b) Declaration of the SAO, together with the reference to appropriate documents which confirm that the entity taking over the implementing duties is a 100% public entity;
 - c) Identification by the SAO of the appropriate point of the contract on delegating rights and duties, according to the provisions of Article 8 of the Financing Memorandum;
 - d) Declaration of the SAO that, during the period of project implementation, as regards the Final Beneficiary's fulfilment of Article 8 of the Financing Memorandum, a monitoring shall be carried out on the basis of information submitted by the Final Beneficiary within the reporting system;
 - e) Justification of the delegation of project implementation (it should include a brief description of benefits that will arise from the delegation of project implementation, the causes connected with the change of conditions that could not have been foreseen at the moment of programming and which have rendered it impossible or difficult for the Final Beneficiary to implement the project).
 - f) On the basis of the aforementioned documents and of the written opinion of the National Authorising Officer (NAO) (letter to SAO submitted before 1 May 2004 by the NAO with a copy to Undersecretary of State in MEL) the MEL Undersecretary of State issues an opinion within 10 working days upon the receipt of these documents. In case when the opinion is favourable, it is expressed in a letter to the European Commission in which the Undersecretary of State of the MEL notifies the European Commission of the delegation of the project implementation duties and in enclosure to which the Undersecretary of State sends appropriate documents. The SAO and the US at MF are informed of the favourable decision of the MEL Undersecretary of State while receiving a copy of the letter to the European Commission. In case when the required documents are missing or when the documents submitted cause doubts, the MEL Undersecretary of State returns the application back to SAO requesting for completion of the documentation or explanations.

II. Projects which have been the subject of Commission decisions on assistance under Regulation (EC) No 1267/99, in case of which the process of delegation has begun after 4th February 2004

As regards projects which have been the subject of Commission decisions on assistance under Regulation (EC) No 1267/99 and in case of which the process of delegation has begun after 4th February 2004 the following procedures applies:

The decision on delegating the investment implementation by an authorised entity has to be preceded by a formal approval of the appropriate SAO and an opinion of the US in MF within their competence.

1. The Undersecretary of State of the MEL presents an opinion on the conformity of the delegation with the guidelines before submitting the information to the European Commission.
2. The entity to which the implementation of a part or of the whole of the project has been delegated may bear expenditures which will be perceived as eligible expenditures from the day of the signature of the relevant agreement, subject to a conditions that it was provided in the agreement, US in MF has given favourable opinion concerning submitted documents and the procedure laid down in these guidelines have been fulfilled. Otherwise, the expenditures borne by the entity taking over the implementation duties up to the moment of meeting the conditions described above will be perceived as not eligible expenditures.
3. In case when the entity to which the Final Beneficiary plans to delegate the project implementation is not a 100% public entity⁴, it is necessary to consult previously the European Commission
4. In case when the SAO concludes that the delegation of the project implementation could violate the provisions of Article 8 of the Financing Memorandum, it is required to obtain the approval of the European Commission before the start of the procedure of delegation of implementation duties. These cases are discussed by the MEL Undersecretary of State and the European Commission on the basis of documents submitted by the SAO.
5. In case when the delegation of a part or the whole of the investment is made by an entity other than the Final Beneficiary, that entity is responsible for submitting the application and the documents required by the procedure. The provisions of this procedure apply to the entity delegating the project implementation instead of to the Final Beneficiary. The agreement of the Final Beneficiary, issued by the authorised body, is necessary to begin the procedure.

The procedure of obtaining approval includes the following:

1. The Final Beneficiary submits an application to the SAO (these documents are previously consulted upon with the NFEP&WM and then submitted to the SAO through the NFEP&WM).
2. The SAO issues the approval within 10 working days upon the receipt of the complete documentation. This approval takes form of a letter directed to the MEL Undersecretary of State (for the information of the Undersecretary of State of the MEL) with request for an opinion as regards the regularity of solutions in the field of financial transfers and the structure of the project account. The letter from the SAO is accompanied by the following documents:
 - a) justification of the delegation of certain tasks;
 - b) draft of the agreement on delegation of project implementation;
 - c) description of the proposed financial transfers for the funds and of other sources of project financing together with the description of the project account structure;
 - d) results of pre-implementation control carried out by the Implementing Body in the entity taking over the task.

⁴ A public entity should be understood as a commercial code company in which the State Treasury, community or an entity of the public finance sector have 100% of shares.

3. The US AT MF informs the SAO in writing (with a copy for the Undersecretary of State of the MEL) of the opinion on the presented solution in the field of proposed financial transfers and the project account structure within 10 working days upon the receipt of complete documentation. Only applications with the complete documentation shall be assessed by the US at MF. In case of missing documents or doubts ensuing from the submitted materials, the US at MF asks the SAO for complementing, informing thereof the Undersecretary of State of the MEL.
4. On receiving the written opinion of the US at MF, the SAO informs the Beneficiary through the NFEP&WM of the opinion of the US AT MF and the SAO. After passing required resolutions and signing the contract on the delegation of rights and duties by the Final Beneficiary and the entity taking over project implementation, the Final Beneficiary submits the complete documentation to the SAO through the NFEP&WM.
5. After the verification of the documents submitted by the Final Beneficiary, within 5 working days of their receipt the SAO issues a written application for an opinion on the delegation to the Undersecretary of State of the MEL. The application should include the following elements:
 - a) The SAO's consent for delegation of project implementation with the indication of the delegating entity and the entity taking over the project implementation and of the scope of the delegated implementation tasks. The attachment to the SAO's application shall include the copies of documents (resolutions and contracts) which were the basis for the SAO's consent. The submitted documents shall be in Polish and their uniformity with the original shall be certified. Due to the necessity of submitting these documents to the European Commission, it is recommended to attach their translation into English.
 - b) SAO's declaration, together with the reference to relevant documents, that the entity taking over project implementation is in 100% a public entity;
 - c) SAO's identification of the relevant provision of the agreement on delegating rights and duties, according to the provisions of Article 8 of the Financing Memorandum;
 - d) SAO's declaration that, as regards the Final Beneficiary's fulfilment of the condition of Article 8 of the Financing Memorandum, a monitoring shall be carried out during the period of project implementation on the basis of information submitted by the Final Beneficiary within the reporting system;
 - e) Justification of the delegation of project implementation (it should include a brief description of benefits that will arise from the delegation of project implementation, the causes connected with the change of conditions that could not have been foreseen at the moment of programming and which have rendered it impossible or difficult for the Final Beneficiary to implement the project).
6. On the basis of the aforementioned documents and of the written opinion of the US at MF (the Undersecretary is informed about it with a copy of the letter from the US AT MF to the SAO mentioned in subparagraph 3 of this procedure), the MEL Undersecretary of State issues an opinion within 10 working days of the receipt of the complete documentation. In case of a favourable opinion, it is expressed in a letter to the European Commission in which the MEL Undersecretary of State informs the European Commission of the delegation of project implementation, attaching appropriate documents. The SAO and the US at MF are informed of the favourable opinion of the MEL Undersecretary of State with a copy of the letter to the European Commission. In case when appropriate documents are missing or when doubts ensue from the submitted materials, the MEL Undersecretary of State returns the application to the SAO with request for completing the documentation or for explanations.

III. Projects which have been subject to of Commission decisions on assistance under Council Regulation (EC) No 1164/94.

In case of projects which have been approved according to the art. 10 of Council Regulation (EC) No 1164/94, the body entitled do make expenditures is the body responsible for implementation. Delegation is treated as entrustment of project implementation to another body, which is public entity or as granting a concession or licence. According to the EC law⁵, concessions is treated as entrustment in which a public authority entrusts a third party with the total (or partial) management of an economic activity which is normally the authority's responsibility and for which the third party assumes the operating risk. The body granting concession or licence is obliged to apply Public Procurement Law.

Taking into account abovementioned, delegations which have taken place in projects approved under regulation 1267/99/EC, and have consisted in entrustment of the right to implement the project to the public company (entirely owned by the municipalities) correspond with the definition of delegation laid down in Regulation 16/2003.

Any modification of the body responsible for implementation (different from delegation) shall be considered as an amendment of a decision and shall be subject to the procedure laid down in point 5.2.1 of this Manual.

The procedure which should be followed during performance of delegation, is based on the procedure described in point II.

1. The Undersecretary of State of the MEL presents an opinion on the conformity of the delegation with the guidelines before submitting the information to the European Commission .
2. The entity to which the implementation of a part or of the whole of the project has been delegated may bear expenditures which will be perceived as eligible expenditures from the day of the signature of the relevant agreement, subject to a conditions that it was provided in the agreement, US in MF has given favourable opinion concerning submitted documents and the procedure laid down in these guidelines have been fulfilled. Otherwise, the expenditures borne by the entity taking over the implementation duties up to the moment of meeting the conditions described above will be perceived as not eligible expenditures.
3. In case when the entity to which the Final Beneficiary plans to delegate the project implementation is not a 100% public entity⁶, it is necessary to consult previously the European Commission.
4. In case when the delegation of a part or the whole of the investment is made by an entity other than the Final Beneficiary, that entity is responsible for submitting the application and the documents required by the procedure. The provisions of this procedure apply to the entity delegating the project implementation instead of to the Final Beneficiary. The agreement of the Final Beneficiary, issued by the authorised body, is necessary to begin the procedure.

The procedure of obtaining approval includes the following:

1. The Final Beneficiary submits an application to the SAO (these documents are previously consulted upon with the NFEP&WM and then submitted to the SAO through the NFEP&WM).
2. The SAO issues the approval within 10 working days upon the receipt of the complete documentation. This approval takes form of a letter directed to the MEL Undersecretary of State (for the information of the Undersecretary of State of the MEL) with request for an opinion as regards the regularity of solutions in the field of financial transfers and the structure of the project account. The the letter from the SAO is accompanied by the following documents:
 - a) justification of the delegation of certain tasks;
 - b) draft of the agreement on delegation of project implementation;

⁵ Commission Interpretative Communication on Concession under Community Law (2000/C 121/02).

⁶ A public entity should be understood as a commercial code company in which the State Treasury, community or an entity of the public finance sector have 100% of shares.

- c) description of the proposed financial transfers for the funds and of other sources of project financing together with the description of the project account structure;
 - d) results of pre-implementation control carried out by the Implementing Body in the entity taking over the task.
3. The US AT MF informs the SAO in writing (with a copy for the Undersecretary of State of the MEL) of the opinion on the presented solution in the field of proposed financial transfers and the project account structure within 10 working days upon the receipt of complete documentation. Only applications with the complete documentation shall be assessed by the US at MF. In case of missing documents or doubts ensuing from the submitted materials, the US at MF asks the SAO for complementing, informing thereof the Undersecretary of State of the MEL.
 4. On receiving the written opinion of the US at MF, the SAO informs the Beneficiary through the NFEP&WM of the opinion of the US AT MF and the SAO. After passing required resolutions and signing the contract on the delegation of rights and duties by the Final Beneficiary and the entity taking over project implementation, the Final Beneficiary submits the complete documentation to the SAO through the NFEP&WM.
 5. After the verification of the documents submitted by the Final Beneficiary, within 5 working days of their receipt the SAO issues a written application for an opinion on the delegation to the Undersecretary of State of the MEL. The application should include the following elements:
 - a. The SAO's consent for delegation of project implementation with the indication of the delegating entity and the entity taking over the project implementation and of the scope of the delegated implementation tasks. The attachment to the SAO's application shall include the copies of documents (resolutions and contracts) which were the basis for the SAO's consent. The submitted documents shall be in Polish and their uniformity with the original shall be certified. Due to the necessity of submitting these documents to the European Commission, it is recommended to attach their translation into English.
 - b. SAO's declaration, together with the reference to relevant documents, that the entity taking over project implementation is in 100% a public entity;
 - c. Justification of the delegation of project implementation (it should include a brief description of benefits that will arise from the delegation of project implementation, the causes connected with the change of conditions that could not have been foreseen at the moment of programming and which have rendered it impossible or difficult for the Final Beneficiary to implement the project).
 - d. On the basis of the aforementioned documents and of the written opinion of the US at MF (the Undersecretary is informed about it with a copy of the letter from the US AT MF to the SAO mentioned in subparagraph 3 of this procedure), the MEL Undersecretary of State issues an opinion within 10 working days of the receipt of the complete documentation. In case of a favourable opinion, it is expressed in a letter to the European Commission in which the MEL Undersecretary of State informs the European Commission of the delegation of project implementation, attaching appropriate documents. The SAO and the US at MF are informed of the favourable opinion of the MEL Undersecretary of State with a copy of the letter to the European Commission. In case when appropriate documents are missing or when doubts ensue from the submitted materials, the MEL Undersecretary of State returns the application to the SAO with request for completing the documentation or for explanations.

5.4 System of public procurements

5.4.1 Legal basis

Due to the requirements of the Community legislation, the funds from the EU budget should be spent in conformity with the provisions set out in the Council Regulation (EC) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities. According to this Regulation, as regards the Cohesion Fund tender procedures, the Commission performs only the *ex post* control. It is the duty of the European Commission to ensure the same conditions of participation in tenders for natural and legal persons residing in the EU and in the countries benefiting from the EU assistance and to publish information on the tenders in official journals of law. Moreover, application of the EU budgetary funds should be in conformity with the Community policies. A beneficiary state is also responsible for ensuring the observance of these conditions. Hence the necessity of compliance of the Polish legislation on public procurements with the Community Directives.

Efficient functioning of both systems requires the existence of detailed internal procedures. These procedures should be based on the standards of internal financial control in public finance units, disseminated by the Ministry of Finance. Moreover, in order to regulate the actions of the Managing Authority / Intermediate Bodies as regards carrying out tasks in the field of control of procurement co-financed from the Structural Funds and the Cohesion Fund means, the European Committee of the Council of Ministers adopted on 27 April 2004 'Guidelines for the *ex ante* controls in the context of the Law on Public procurement law'.

Rules on eligibility of expenditure incurred in frame of tender procedures carried out in conformity with the Public Procurement Law are set out in point 5.5. of present manual.

5.4.2. Basic documents

The system is based on the binding **Law⁷** regulating the issues of public procurements which complies with the Community legislation. Apart from the Law, awarding entity should use the **Practical manual of public procurement procedures** (www.uzp.gov.pl/informator/przewodnik.html). The manual shall include standard documentation prepared by the Public Procurement Office (PPO). It is not compulsory to use this documentation. The awarding entities may create their own patterns of tender documents as long as they are in conformity with the binding law unless in the given sector there have been introduced compulsory tender documents. The awarding entity may also take advantage of the patterns of documentation that have been drawn by IB.

5.4.3. Institutions engaged in the system

Public Procurement Office⁸

The *ex ante* control will be carried out in the form of the PPO President's control of the awarding entity and in the form of mutual control (tenderer's right to object to the actions of the awarding entity by a protest, appeal to a body of arbitrators or by suing the judgement of the arbitrators in court). The rules of this type of control were set out in the provisions of the Statute of 29 January 2004 on Public procurement law.

Moreover, the control system is completed with uniform control activities of the awarding entity and of the body supervising the awarding entity which are contained in the agreements between respective units.

⁷ Statute of 29 January 2004 „Public procurement law” (Journal of Laws 2004 No 29 item 177)

⁸ Initially this function was based on the decision of the Preparatory Team of the Committee for European Integration of 28 June 2002 in which the PPO Chairperson was identified as the central unit which is to carry out the *ex ante* procedural control of tender processes with the pre-accession assistance within the EDIS system and within the Structural Funds and the Cohesion Fund.

Cohesion Fund Managing Authority:

CFMA informs the PPO of the projects assisted from the Cohesion Fund till the introduction of the SIMIK system.

Basing on the 'Guidelines for the *ex ante* controls in the context of the Law on Public procurement law' and on the agreements with Intermediate Bodies, the Managing Authority ensures:

- Execution of duties of the Intermediate Body in the field of *ex ante* control of the procedures of public procurement;
- Right to voice opinions as regards the content of procedure manuals and changes of these manuals as regards the *ex ante* control of tender procedures;
- Execution of duty to submit through the Intermediate Body to the PPO and the Bureau for International Treasury Relations the information on irregularities occurring in the tender procedures gathered on the basis of the opinion of CFMA officials-members of the tender commissions and on the basis of audit results and information from other Intermediate Bodies in the Environment Sector.

Intermediate Body (Unit supervising the awarding entity): in the Environment Sector, the tasks are divided between Intermediate Bodies: the Ministry of Environment and the NFEP&WM. In the Transport Sector these duties belong to the Ministry of Infrastructure.

Body responsible for implementation (awarding entity): in the Environment Sector, Implementing Bodies will be communities, municipal companies; in the Transport Sector the GDNR&M and PKP PLK S.A.

5.4.4 Delegation of duties in tender processes in respective sectors

The duties regarding the control of procurement involving the assistance of the Cohesion Fund will be delegated by the Managing Authority to Intermediate Bodies (in the Environment Sector to the 1st stage Intermediate Body only) on the basis of agreements. Until they present the methodology of control to the Managing Authority, the Intermediate Bodies are obliged to control 100% of the procedures of procurement where there is no *ex ante* control of the PPO President enforced by law.

5.4.5 Sanctions for the violation of procedures

Sanctions for the violation of procedures of public procurement are set out in the legal regulations. They are related to infringement of the public finance discipline. Additional sanctions will be contained in the agreements of assistance .

The PPO President may notify the Chief Spokesman on Public Finance Discipline and the Attorney General of the detected law violations on the basis of control results. Moreover, the Law 'Public procurement law' authorises the PPO President to forbid the conclusion of a contract after the start of a control procedure (*ex ante*) until its termination in case of a negative control result (suspension of terms).

Intermediate Body (Unit supervising the awarding entity) secures itself in the contract with the awarding entity the right right to withdraw from the contract in case of the infringement of the Law 'Public procurement law' by the Body responsible for implementation (Dz.U. 2004 r. No 19, position 177) or in case of infringement of duties concerning public procurement procedures, laid down in the Implementation agreement.

Body responsible for implementation (awarding entity) applies the sanctions set out in relevant legal regulations against unreliable (unconscientious) members of tender commissions.

5.4.6 Regulations for tenders announced for projects approved for ISPA and not concluded before the accession

According to the provisions of Poland's Treaty of Accession to the European Union, upon the day of accession the ISPA projects became by force of law the projects of the Cohesion Fund. Due to that, provisions of the Polish Law 'Public procurement law' shall be applied to the tenders announced after the

accession. However, tenders announced before the accession shall be concluded according to the same procedure according to which they were announced, that is 'The Practical Guide to contract procedures financed from the General Budget of the European Communities in the context of external actions' (PRAG). Therefore upon the accession Poland should take over the role of the European Commission as regards the tenders not concluded within the framework of DIS (Decentralised Implementation System). The division of duties between respective units is based on the system of public procurement for the expanded decentralisation of the Cohesion Fund implementation system. The necessity to control these actions will ensue from the agreements entered by the Managing Authority and Intermediate Bodies.

5.5 Eligibility

The rules of expenditure eligibility within the framework of the Cohesion Fund are regulated by the provisions of the Council Regulation (EC) No 1164/1994, the Commission Regulation (EC) No 1386/2002 and the Commission Regulation (EC) No 16/2003 which establish special detailed rules for the execution of the Regulation (EC) No 1164/94 as regards the eligibility of expenditures in the context of projects assisted from the Cohesion Fund. This Regulation extensively defines the categories of eligible expenditures. Moreover, other categories of expenditures than those set out by the Regulation (EC) No 16/2003 may be eligible only if they are defined in the Decision of the European Commission on granting assistance from the Cohesion Fund.

As regards projects which have been the subject of the Commission decisions on assistance under ISPA, the provisions set out in Annex III.2 of Financing Memoranda concerning eligibility of expenditure are still binding.

Eligible expenditures include the expenditures of EU funds and of the domestic co-financing funds mentioned in the Decision of the European Commission.

As regards the eligibility of expenditures, following issues need to be taken into account:

- Eligible expenditures are those which are actually incurred, based on binding contracts, proved by invoices with the payment receipted or accounting documents of equivalent probative value and with the confirmation of payment to the contractor in form of the statement of bank account;
- The body authorised to bear eligible expenditures is the Body responsible for implementation indicated in the assistance application and in the Granting Decision of the European Commission;
- Eligible expenditures shall be incurred in the fixed period:
 - from the date of the receipt by the European Commission of the complete assistance application. The confirmation of this date will be put down in the Granting Decision. Additionally, the Commission shall notify the Managing Authority of that date. According to the provisions of Poland's Treaty of Accession to the European Union, eligible expenditures may be incurred already from 1 January 2004;
 - in case of projects which have been the subject of the Commission decisions on assistance under ISPA, the initial time limit on eligibility is the date on which the financing memorandum related to the project was signed by the;
 - in case of an application for a major change of the substantial elements of a project, the expenditures referring to these new or expanded physical elements shall be perceived as eligible from the date of the receipt of the relevant application by the Commission;
 - until the completion date set out in the Granting Decision;
- Eligible expenditures must be directly connected with the project.

Eligible expenditures are grouped in categories, different for projects which have been the subject of the Commission decisions on assistance under ISPA and for new CF projects. However, while preparing application for payment and in the whole SIMIK system there should be applied **only** categories set out in the Council Regulation (EC) No 1386/2002.

ISPA		Fundusz Spójności	Art. Of the Commission Regulation (EC) No 16/2003 concerning particular kind of expenditure
ISPA 2000-2002 ISPA Financing Memoranda	New Enclosure III to Financing Memoranda	Council Regulation (EC) No 1386/2002	
Planning/design fees	Planning	1. Planning	13,14,15, 34 ⁹
	Feasibility studies, design		
		2. Land acquisition	16, 17, 19
Site preparation	Site preparation	3. Site preparation	20, 22 ¹⁰
Main works	Building and construction	4. Building and construction	21, 22 ¹¹ , 23 ¹²
Plant and machinery	Equipment	5. Equipment	23 ¹³ , 24, 25 ust.2, 33, 38
Technical assistance	Technical assistance, preparation of tender documents	6. Technical Assistance	29 ¹⁴ , 32, 34 ¹⁵ , 35 ust.2, 40, 41, 42
Supervision	Brak		
		7. Publicity	36
		8. Vat or equivalent	11

Additionally, under certain conditions the VAT as well as other taxes and fees may be perceived as eligible expenditures. The Granting Decision of the Commission may also define other categories of eligible expenditures.

Eligible expenditures have to be incurred according to the method ensuing from other conditions of project implementation, as e.g. public procurement.

6. Rules of financing

6.1 System of annual commitment appropriations

The Cohesion Fund project assistance is based on the rule of co-financing. Investment projects applying for co-financing may be assisted from the Cohesion Fund at the most up to 85% of public expenditures or other equal expenditures, including the expenditures of the units whose activity is carried out within the administrative or legal framework and which can therefore be considered equal to public entities. Polish side has to guarantee the funds for the rest of investment from one or more sources. Technical assistance may be financed in 100% from the Cohesion Fund.

According to the provisions of Poland's Treaty of Accession to the European Union, for the years 2004-2006 the European Union has assigned 7.5905 billion Euro **at 1999 prices** for the commitments undertaken by the new Member States within the framework of the Cohesion Fund intervention.

Commitments for the new Member States for each year of that period should amount to:

- in 2004: 2616.8 million Euro,
- in 2005: 2151.7 million Euro,
- in 2006: 2822.0 million Euro.

According to the Council Regulation (EC) No 1164/94, on setting the indicative allocation for a given country the country's population, its GNP with regard to the improvement of national

⁹ W zależności od tego, czy dany wydatek odnosi się do fazy planowania, czy też wdrażania projektu.

¹⁰ Zgodnie z przeznaczeniem środków, tak jak było to stosowane w ramach ISPA.

¹¹ Patrz przypis 11

¹² W zależności od środka trwałego, którego dotyczy.

¹³ Patrz przypis 13

¹⁴ Spójnie z propozycją MF dot. kategorii ISPA, gdzie *Supervision* jest prezentowane w kategorii *Technical Assistance*.

¹⁵ Patrz przypis 10

prosperity attained over the previous programming period, its surface area and other socio-economic factors, such as deficiencies in transport infrastructure, shall be taken into account.

Taking into consideration the criteria applied on the appropriations of the indicative allocation and the amount of resources available for commitments in the current programming process, the preliminary allocation for Poland ranges from **45.65%** and **52.72%** of the total amount of resources available for the new Member States. This means that from 2004 annual commitments for Poland at 1999 prices (in brackets at current prices) will range between the following:

in 2004 – from 1185.8 (1312.9) million Euro to 1369.4 (1516.3) million Euro

in 2005 – from 976.3 (1086.5) million Euro to 1127.5 (1254.7) million Euro

in 2006 – from 1302.9 (1478.9) million Euro to 1504.7 (1707.9) million Euro

According to the National Development Plan 2004-2006-Reference Framework Document for the Cohesion Fund Assistance, document agreed with the European Commission, accepted by the Council of Ministry on 23 March 2004., , the planned allocations for Poland will amount to:

in 2004 – 1277.6 (1414.6) million Euro,

in 2005 – 1051.9 (1170.6) million Euro,

in 2006 – 1403.8 (1593.4) million Euro,

2004-2006 total – 3733.3 (4178.6) million Euro.

The Council Regulation (EC) No 1164/1994 mentions two ways of assigning commitments:

- Commitments of the Commission in respect of the projects to be carried out over a period of two or more years shall, as a general rule, be effected in annual instalments. Commitments in respect of the first annual instalment shall be made when the Granting Decision is issued by the European Commission. Instalment does not cover on the whole the Cohesion Fund assistance for a given project. Subsequent annual instalments shall be based on the initial or revised financing plan. Usually the Commission issues them up to 30 April of every year on the basis of the expenditures assumed for every year within a given project.
- For projects to be carried out over a period of less than two years or where the Community assistance is less than 50 million Euro, the total amount of assistance may be divided into two commitments. The first commitment may amount up to 80% of the Cohesion Fund's assistance upon the issue of the Decision by the European Commission. The remaining assistance shall be granted depending on the progress made in the project implementation.

The Commission has to assign the balance of resources remaining in the last year of the programming period. The annual instalment in the last programming year is equal to the amount that remains to be assigned at the beginning of that year. No annual instalments will be planned for the years of the next programming period. If the procedure of winding-up of a project is begun before the assignment of the total amount of resources, the final commitment shall be limited to the amount necessary to pay the balance .

6.2 Rules and procedures regarding financial management

6.2.1 Payment schedules

Multi-year payment schedules

On the conclusion of the Financing Agreement, payment and contract schedules are required for every project. The schedules for the Cohesion Fund shall be of a multi-year nature and they shall contain the planned allocation of the resources from the Fund, the planned quotas of assistance, a prognosis of expenditures for the whole period of implementation of a given project arranged quarterly and divided into respective sources of financing (EU resources and co-financing). The schedules should be currently updated in the SIMIK system by the Implementing Bodies for the Transport Sector and by the NFEP&WM on the basis of data submitted by the Body responsible for implementation in an appropriate format.

Annual payment schedules

Supposing that SIMIK will be launched, the schedule of planned expenditures for the following 12 months will be presented in the *'Report on project implementation'* attached to the *'Declaration of incurred expenditures'* submitted monthly by the Intermediate Bodies to the PA. The schedules should be currently updated by appropriate institutions within the SIMIK system.

Information on the predicted applications for payment

Up to 30 April of every year the Paying Authority submits to the European Commission (with a copy to the MA) the information on predicted applications for payment from the Cohesion Fund. For that purpose, up to 20 April of every year it receives the necessary information from the Intermediate Bodies in a format agreed with the Paying Authority.

6.2.2 Co-financing

Delivery of application for the Cohesion Fund assistance to the European Commission implies an obligation to finance a project in accordance with enclosed financial plan. It also implies that a Final Beneficiary is responsible for ensuring a co-financing of the Cohesion Fund project.

Reference Framework Document for Cohesion Fund identifies subjects which are to be beneficiaries or groups of beneficiaries of assistance.

There are among others institutions, which activities are performed according to respective laws and based on budget allocations. In the transport sector: The General Directorate of National Roads and Motorways and PKP Polish Railway Lines S.A. In the environment sector there can be Regional Boards of Water Management realizing flood control projects. At the same time the SAO is responsible for ensuring a project implementation according to valid regulation, among others for supervising of uninterrupted co-financing.

Due to fact that a state budget is not projected in long term perspective there are not defined procedures ensuring long term financing of an investment.

In view of that, till January 15th of each year of project realization, the SAOs in both sectors are due to submit a declaration to the MA which confirms that final beneficiaries ensures co-financing in sufficient amount to guarantee realization of the project in this budget year in accordance with format included in "Guidelines for Intermediate Bodies on basic programming and preparation requirements of the Cohesion Fund projects in the programming period 2004-2006"

The SAO is also due to submit a declaration on ensuring of co-financing according to the format included in Guidelines and accompanied by the Application.

All co-financing resources, described in the Decision of the European Commission as eligible, have to be spent in compliance with the provisions established for the Cohesion Fund resources.

Co-financing resources should be ensured in the budget of body responsible for implementation.

Co-financing ensured by national authorities can be classified as follows:

Public means including

- central (state budget),
- others, for example
- budget of autonomous authorities
- loans/credits received by local authority or municipal company from National Fund of Environmental Protection and Water Management, European Investment Bank and international financial institutions: European Bank for Reconstruction and Development and World Bank.
- Financial surplus of municipal enterprise;

- Private means (Public-Private Partnership).
- other

It is assumed that the beginning of the investment shall be financed from the advance ensuing from the Decision of the European Commission (20% of the grant paid after the EC Decision and after a signature of contracts¹⁶), whereas further progress of the works shall be financed parallel from the Cohesion Fund resources and co-financing.

Below are presented other sources of co-financing funds.

6.2.2.1 European Investment Bank (EIB):

The European Investment Bank (EIB), established in 1958 on the basis of the Treaty establishing the European Union (Treaty of Rome), is an EU institution ensuring long-term financing, supporting capital investments aiming at tightening the European integration. EIB offers its resources on advantageous conditions for the usage of its funds in order to develop the Community policies.

EIB pursues its objective both directly through small loans for project promoters and indirectly through financial agents. Small-scale and medium-scale projects of an investment value ranging from 40 000 EUR to 25 000 000 EUR are as a rule financed by means of ‘global loans’, special credit lines, to partner banks which make the EIB resources available by means of loans, mostly for small-scale and medium-scale companies and communities. Larger projects and project groups, which are carried out by the same investor (loan-taker) and whose total investment costs exceed the equivalent of 25 000 000 EUR may be financed directly.

Projects financed by EIB have to be economically justified, technically feasible and they have to meet the requirements of environmental protection; additionally, investments in the production sector have to ensure return of the resources invested. These projects may refer to the public sector, the private sector, the public-private partnership and to a wide range of commercial enterprise in the fields of energy, transport, telecommunication and IT, industry, rural development, tourism, health, education and scientific research and development. Bodies of central and regional administration, communities and private or state companies, including those with a foreign stake, have access to the EIB resources on equal conditions.

EIB grants short-term and long-term loans in all main convertible currencies and in PLN. As a rule, the period of a loan depends on the type of a project and on the period of asset depreciation and ranges between 10 and 12 years for industrial projects, 12 and 15 years for projects in the field of energy and up to 20 years for infrastructural projects. Due to the fact that the Bank is not profit-oriented, the offered interest rates are closely connected with the preferential cost of access to the funds, whereas, according to the Bank’s Statute, loan-takers need to have a high credit capacity or ensure appropriate return guarantees, mainly in form of bank guarantees or, where more appropriate, of government guarantees.

In all projects, funds provided by EIB are as a rule an additional source of financing, ranging up to 50% of total costs of a project. EIB may support potential Final Beneficiaries in getting loans and in optimum project financing.

Additional information on EIB and a list of its partner banks are available on the Bank’s website: www.eib.org, whereas detailed dates and conditions of granting direct loans may be obtained from the sites of relevant Bank Departments in respective countries, available at www.eib.org/contact/. There are no special formalities connected with the process of applying for a loan and in most cases information submitted to the Commission or to appropriate bodies in Poland which are responsible for grant allocation will be sufficient for the Bank’s requirements. Similarly, the requirements of

¹⁶ At the time being the amount of contracts which should signed before advance payment is being agreed with the EC.

monitoring and reporting are as much as possible made uniform with the appropriate requirements for EU grants.

6.2.2.2 Loans granted by the National Fund for Environmental Protection and Water Management

NFEP&WM set up a financial instrument, the so-called bridge loans, for entities implementing projects in the Environment Sector which were granted assistance from the Cohesion Fund. The aim of these loans is to ensure the uninterrupted financing necessary for payment of invoices or equal financial documents connected with project implementation.

Moreover, beneficiaries of the Cohesion Fund assistance may apply for co-financing in form of a loan from the NFEP&WM resources to cover a part of investment expenditures.

Details on loans offered by NFEP&WM are available at www.nfosigw.gov.pl

6.2.2.3 Public-Private Partnership (PPP)

Implementation of Cohesion Fund projects which are the domain of the public sector, such as the projects of transport and environmental protection infrastructure may also be carried out on the basis of Public-Private Partnerships (PPP). The cooperation between the public sector and the private sector results mainly from the insufficient financial resources of the public sector to cover investment requirements and by the efforts to improve the quality and efficiency of public services.

The European Commission has declared its readiness to assist development and implementation of PPP projects in the document 'Guidelines for successful Public-Private Partnerships' (January 2003).

According to this document, due to the participation of the private sector, benefiting from the EU assistance resources in PPP projects is limited by the following conditions:

- PPP should be applied only in cases when they ensure higher rate of return on the resources invested than the traditional methods of public procurement;
- PPP projects should be in conformity with transparent market rules, mainly with tender procedures and procedures of choosing private partners;
- PPP should be developed in full conformity with the provisions of the state aid. This means that the subvention co-financing of PPP projects should be in accordance with the actual subvention demand so that the subventions do not lead to unfair support and unpermissible state aid;
- Financing from the EU assistance resources is connected with various conditions and limitations which must be accepted by the project and PPP partners.

As regards the settlement of the level of assistance from the EU resources, it is the task of the European Commission and of national institutions responsible for PPP to reach an effective balance between the intention to assist the project implementation and the public benefit. Due to that, each PPP project is examined and negotiated individually.

6.2.2.4 Municipal Investment Development Fund

In accordance with the Law on Municipal Investment Development Fund of 12.12.2003 (Journal of Law no. 223, p.2218) this Fund was created in the Bank Gospodarstwa Krajowego to assist measures stimulating regional development of a country. Granting preferential credits assigned for financial assistance of municipal investment projects realized by municipalities or their groups, which are co-financed by the European Union.

Preferential credits are granted up to 80% of net scheduled cost related to preparation of investment project but not more than 500.000 PLN in case of each project.

A preferential credit is granted if the Bank Gospodarstwa Krajowego has approved the investor's application to be accompanied by the documents required in Paragraph 3 p.2 of the Regulation of

Ministry Economy and Labour of 4th February 2004, including the investor's declaration of availability of means for co-financing of the planned investment.

The Bank Gospodarstwa Krajowego grants preferential credits on the basis of evaluation of investor's credit ability to be attached to respective application and at the same time the bank evaluates the proposed investment in terms of possibilities to benefit from the EU assistance.

6.2.3 Settlement of conversion rate

Declarations of expenditure contained in the reports to the European Commission should be expressed in EUR. The conversion rate, according to the Annex II of Article E (5) of the Council Regulation 1164/94 is the month rate set by the European Commission (rate of the ECB from the last but one Commission working day of the month preceding the month in which the expenditure was entered in the books on the accounts of the Cohesion Fund Paying Authority¹⁷). Final Beneficiaries bear the risk of conversion rate. They may manage the risk by deciding to convert the resources from EUR to PLN.

6.2.4 Banking costs

All banking costs connected with the account management and with operations made on CFPAA and CFCA are covered by the account owner, the Ministry of Finance.

In case when similar costs occur on the level of project accounts, banking costs shall be covered by body responsible for implementation.

6.2.5 Interests

In the case of ISPA the European Commission agreed for the ISPA Final Beneficiaries to use the accrued interests and to classify them as domestic co-financing. These interests may be used only to cover eligible expenditures of national co-financing of a given project. Any change to the use of the interests requires each time the approval of the European Commission. In case of interests accrued on the account of the PA, division criteria of the interests have been prepared by the SAO and after an agreement with the MA and the PA and are subject to approval by the CFMC.

According to these criteria and at the SAO's proposal, the CFMC assigns means to particular projects.

In the case of the Cohesion Fund, the Commission has announced that interests are to be classified as financial resources of the Member State. However, Regulations on the Cohesion Fund lack guidelines for application of these interests. As a consequence, the Commission suggests to apply the solution recommended in the case of the Structural Funds, where the Paying Authority should allocate the interests to a given form of assistance.

6.3 Transfer of funds for the projects assisted from the Cohesion Fund

The scheme of transfer of the Cohesion Fund resources :

- Funds are transferred from the European Commission to the Sectoral Accounts in the Paying Authority, set up for the Cohesion Fund (for the sectors of environmental protection, transport, technical assistance);
- Subsequently, the Paying Authority transfers the funds to the separate *Cohesion Fund Current Accounts*, set up for respective projects;
- The funds are then transferred to project accounts (each projects has its separate account with the Body responsible for implementation). The Paying Authority is responsible for the management of financial transfers from the European Commission to CFPAA and from CFPAA to CFCA. The Paying Authority shall apply for payments to the European Commission

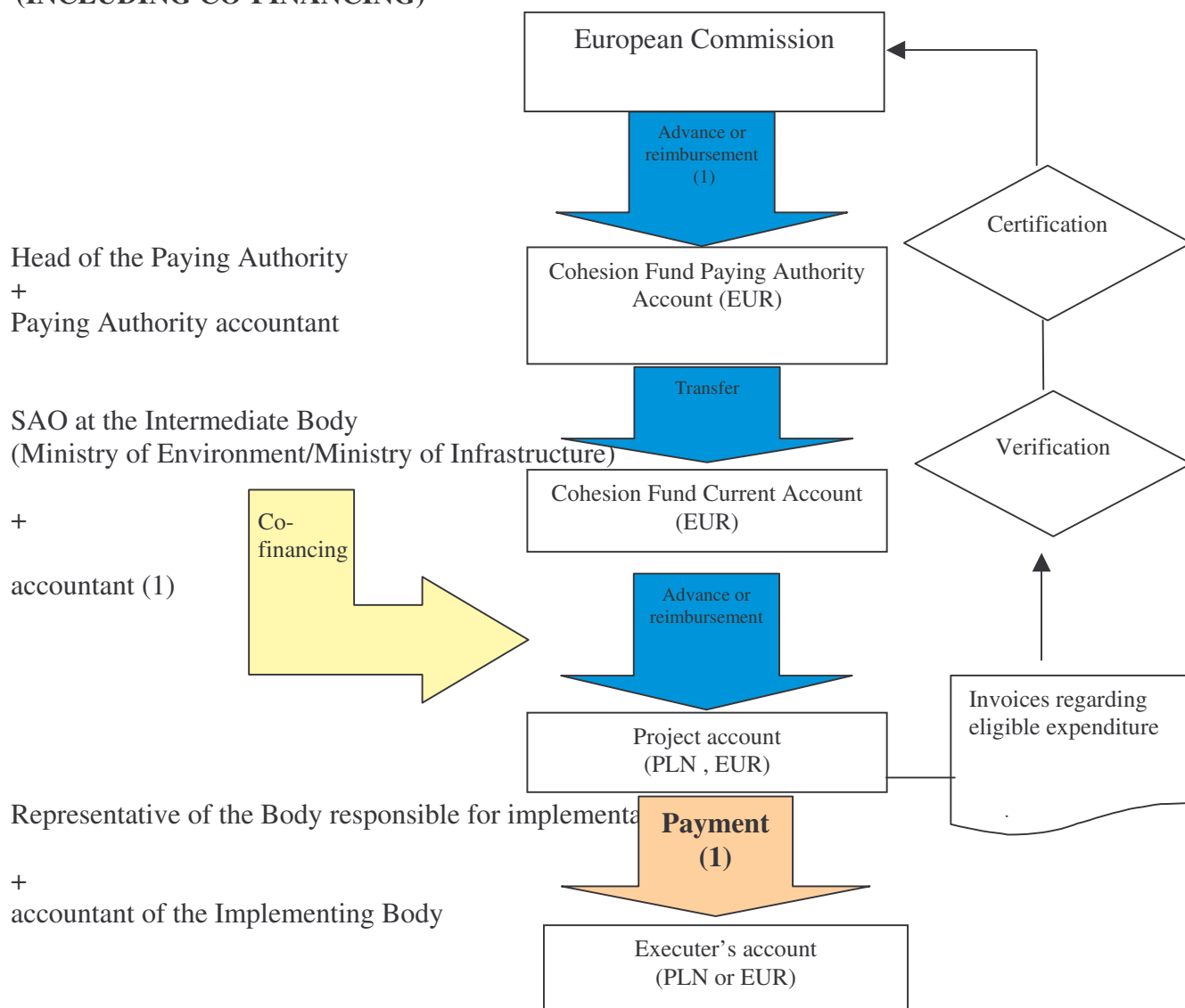
¹⁷ Information on the currently binding conversion rate are available on the site of Budget Directorate-General: http://europa.eu.int/comm/budget/inforeuro/index.cfm?fuseaction=currency_historique¤cy=153&SearchField=&Period=2004-3&Language=en&Delim=

on the basis of declarations of expenditure and payment schedules submitted by the Intermediate Bodies.

In the case of amounts recovered, the transfer of resources shall be following:

- amounts recovered and interests on amounts recovered are paid into the Cohesion Fund Paying Authority Account – recovered Amounts;
- recovered amounts (and the interests) are transferred to the account of the European Commission.

II. 4 Diagram presenting Financial Transfers (INCLUDING CO-FINANCING)



In case of infrastructure projects co-financed by the National Road Fund on the basis of the Law on payable motorways of 27th October 1994 (J.o.L.of 2001 no.110.,p.1192 with amendments), transfers of national means for co-financing will be accomplished as follows:

- on the account of the National Road Fund held in the Bank Gospodarstwa Krajowego subaccounts will be set up for the purpose of deposit of national means for co-financing to be run in PLN;
- the means will be released by the National Road Fund directly to the contractor's account against the General Directorate of National Roads and Motorways application to be submitted together with a invoice copy;
- the Bank Gospodarstwa Krajowego is due to submit to GDNR&M a copy of a document confirming execution of each payment in favour of contractors;

- the Bank Gospodarstwa Krajowego will prepare monthly reports on each of subaccounts and deliver them to the GDNR&M;
- the GDNR&M will submit to the PA monthly reports on subaccounts of each projects till the 15th day of the next month.
-

6.4 Account structure

Structure of the Cohesion Fund Paying Authority Account – CFPAA

Cohesion Fund Paying Authority Account (CFPAA) shall be opened on the basis of an agreement between the Ministry of Finance and the National Bank of Poland.

The Cohesion Fund resources transferred from the European Commission shall be deposited on the following accounts of the Cohesion Fund Paying Authority:

- 1) Environmental protection account;
 - 2) Transport account;
 - 3) Technical assistance account
- Together with the interest accounts and
- 4) Recovered amounts account.

Accounts shall be run in EUR. They will bear interest, the interest will be appropriated at the end of each quarter and recorded on the relevant interest account. The owner of the CFPAA shall be the Minister of Finance, and the persons authorised to dispose of the funds deposited on these accounts shall be: Head of the Paying Authority and the PA employees (accountant, authorised officials). Decision on the interest accrued on the CFPAA will be taken by the Cohesion Fund Monitoring Committee at the SAO's proposal.

Structure of the Cohesion Fund Current Account – CFCA

CFCA shall be open for every Cohesion Fund project on the basis of an agreement between the Ministry of Finance and the National Bank of Poland.

The account will be run in EUR. It will bear interest and the interests will be appropriated at the end of each quarter and recorded on the current account of the relevant project. The owner of the CFCA shall be the Minister of Finance, and the persons authorised to dispose of the funds deposited on these accounts shall be the Sectoral Authorising Officers and persons authorised by them (accountant, authorised officials).

Structure of the Body responsible for implementation account

An Body responsible for implementation should create separate accounts of a given project for:

- Cohesion Fund resources transferred for project implementation,
- Co-financing resources transferred by the Polish party,
- Interests on Cohesion Fund resources.

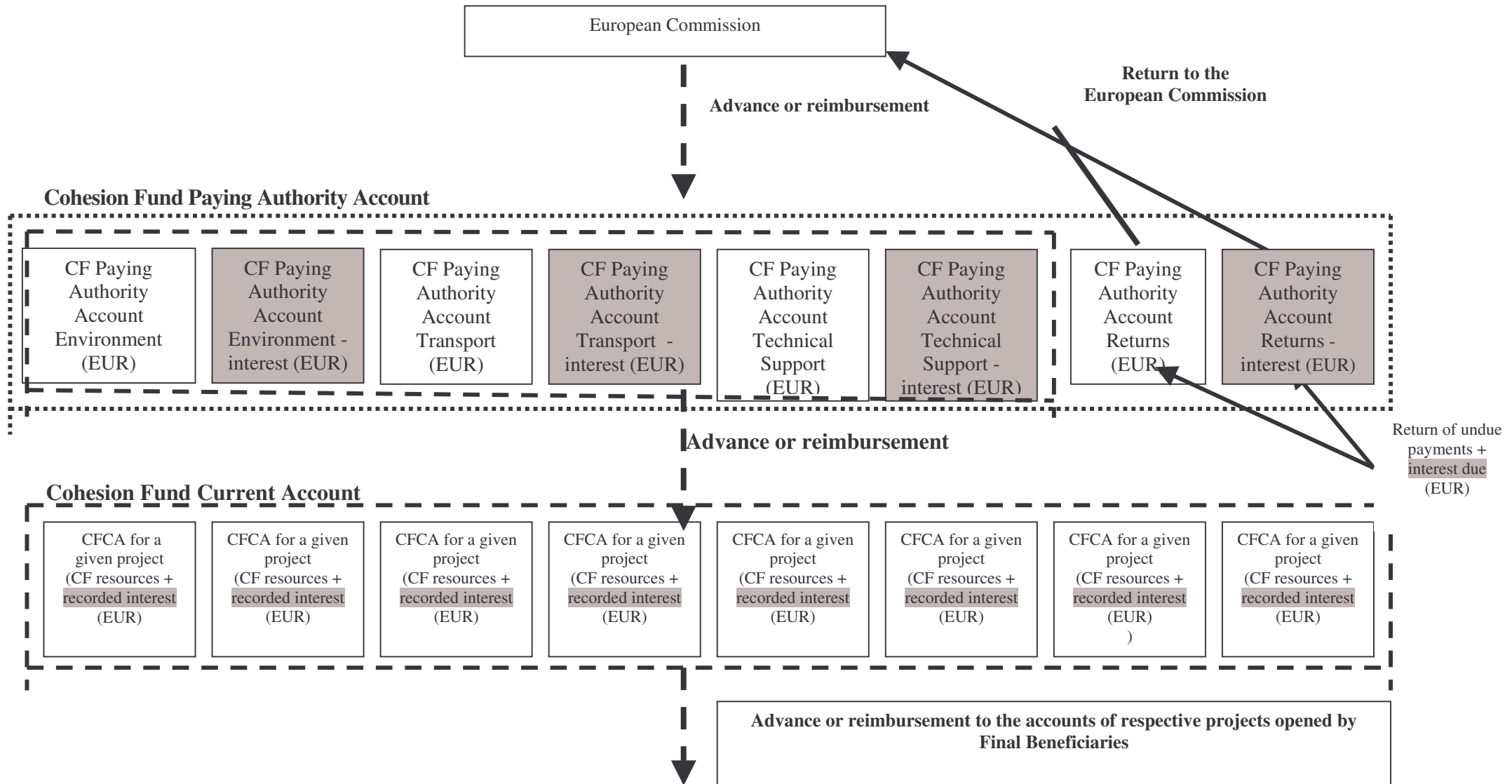
All these accounts, serving the management of the Cohesion Fund resources as well as interest accounts of these funds, shall be run in EUR. Accounts of Polish co-financing resources may be run in PLN. There is a possibility to open more than one account for co-financing resources if co-financing comes from more than one source, on condition that only particular project will be served by these accounts

According to the new Financial Agreement, SAO is the body responsible for giving acceptance for the structure of accounts of the body responsible for implementation.

In duly justified cases, Undersecretary of State in the Ministry of Finance might accept another solution as regards structure of accounts of the body responsible for implementation, but SAO shall each time give their acceptance of structure of accounts of the body responsible for implementation.

The account arrangement is presented on il.5

II. 5 Account arrangement in the Cohesion Fund



6.5 Descriptions of transfers from the EU

6.5.1 Transfer of funds from the European Commission

The European Commission transfers funds to the Cohesion Fund Paying Authority Account (CFPAA) in three forms:

- Advance (20% of the Community Assistance) after the approval of projects presented by the Polish party (under the condition contained in Article D of Annex II to the Council Regulation (EC) No 1164/94, i.e. after signing the contracts for 20% of the value of total eligible cost of a project by a Beneficiary and a contractor),
- Intermediate payments (not later than two months upon date of receiving the acceptable application for payment),
- Payment of the final balance.

The European Commission may demand a return of advance (in part or in total) in cases when no application for payment (reimbursement) is submitted to the Commission within 12 months upon transfer of funds. The return of advance is not synonymous with cancellation of assistance.

The joint amount of advance payment and intermediate payments may not exceed 80% (90 % in extraordinary cases) of the total reimbursement for a given assistance. The remaining part of that amount is covered with a reimbursement as the payment of the final balance.

Intermediate payments are made on the basis of the '*Statement of expenditure*' certified by the Paying Authority.

In extraordinary cases, on the basis of a justified application, the European Commission may transfer the intermediate payment before the advance payment. This refers to expenditure not connected to a public contract or a contract equal to that.

Payments of the final balance are made as a result of:

- Completion of the project,
- Certification of all eligible expenditure by the PA,
- Approval of the final report by the European Commission.

Assistance granted for a given project may be cancelled if within two years upon the planned date of the beginning of works, set out in the Granting Decision, or from the date of adopting the Decision if the latter took place later, no works are begun. According to the interpretation of the European Commission, the term 'beginning of works' is to be understood as: launching the expropriation procedure **or** signing any contract for the project **or** the actual beginning of works. According to Article 16 (a) of the Council Regulation (EC) No 1164/94, after the accession the above interpretation shall also be applicable to ISPA projects. However, due to the fact that ISPA projects do not have the planned date of the beginning of works set out in the Financing Memorandum or in the Decision of the Commission, this date has been settled with the European Commission for every project by exchange of letters.

6.5.2 Application for payment to the European Commission – large-scale reimbursement

The Paying Authority shall without delays inform the MA and SAO of submitting the application for payment to the European Commission, send them copy of the application, and the SAO shall inform about this the relevant Body responsible for implementation.

6.5.2.1 Advance payment

According to Article D of Annex II to the Council Regulation (EC) No 1164/94, advance payment in form of a single transfer of 20% of the value of the Cohesion Fund assistance will be made after the Commission takes the Decision on granting the assistance and after signing the contracts with contractors within public procurement (with the exception of justified cases).

In accordance with the EC interpretation, as exceptional case, a part of advance payment which relates to financing of those measures which are not subject to public procurement procedure or

amount of public procurement is insignificant can be released just after the Decision of the EC. Particularly this solution refers to expenditure on expropriation or on preparatory studies.

The application of PA to the European Commission depends on the submission of the copies of the aforementioned documents by the Intermediate Bodies.

In a project the advance payment is used to cover from the Community assistance the expenditure connected with the implementation of projects granted assistance from the European resources. Similarly as in the case of ISPA, transfers of funds from the Cohesion Fund Current Account to project accounts shall be made on the basis of payment schedules.

If advance payment yields return in form of interests, the Body responsible for implementation is obliged to allocate that amount to the given project.

6.5.2.2 Intermediate payment

Application for intermediate payment is initiated by the Paying Authority and is submitted to the European Commission in terms conditioned by the rate of expenditure of funds declared in the updated payment schedules. Intermediate payment refunds eligible expenditure actually incurred and correctly certified.

According to the Commission's interpretation, it is possible to submit application for intermediate payment before submitting application for advance payment.

According to the provisions of Article D (2) (b) of Annex II to the Council Regulation (EC) No 1164/94, intermediate payment is made under the following conditions:

- The PA submits an application describing the progress in project implementation measured with substantial (rzeczowymi) and financial indicators and stating that this application complies with the Granting Decision of the Commission including, in a given case, any special conditions of the assistance;
- Measures are undertaken with regard to the observations and recommendations of national and/or Community control bodies, especially as regards measures taken against all detected or assumed irregularities;
- Main technical, financial and legal problems as well as measures taken to solve them are pointed out;
- An analysis of any discrepancies with the initial financing plan is carried out;
- A description of project information measures is presented;

The application to the European Commission consists of two basic documents:

- '*Certificate and Statement of Expenditure and Application for Payment*', consisting of:
 - an appropriate application for payment,
 - certification of expenditures incurred,
 - statement of expenditures,
 - statement of recovered amounts.
- '*Report on Progress of Project Implementation*', presenting, among others, discrepancies with the initial financing plan, technical, financial and legal problems, progress in the project implementation measured with substantial (rzeczowymi) and financial indicators, observations and recommendations of national and/or Community control bodies.

Having launched the SIMIK system in appropriate module Paying Authority prepares the application for intermediate payment on the basis of information presented in the '*Declarations of incurred expenditures*' submitted monthly to the Paying Authority by the Intermediate Bodies and prepared with the SIMIK use., to which the '*Financial reports on project implementation*' are attached.

The PA may apply to the European Commission for the reimbursement of expenditures incurred during respective stages of the whole project, depending on the progress of project implementation and the planned payment schedules.

As a rule, applications for payment shall be submitted to the European Commission three times a year, at the latest on 1 March, 1 July and 1 November.

6.5.2.3 Payment of the final balance

Application for the payment of the final balance made by the Paying Authority has to be preceded by the motion of the Intermediate Body confirming project completion and meeting its aims.

According to the provisions of Article D (2) (d) of Annex II to the aforementioned Regulation, the Paying Authority submits to the European Commission an application for payment of the final balance in form of an application describing the completion of project implementation measured with substantial (rzeczowymi) and financial indicators and its compliance with the Decision of the Commission.

The Paying Authority calculates the final balance of the Community assistance (amount of the payment of the final balance) on the basis of certified and actually incurred expenditures.

The European Commission shall make the payment of the final balance if:

- the project, stage of project or group of projects are implemented in conformity with their aims;
- the application for payment is submitted to the European Commission within six months upon the final date of the project completion and making of the payments (being also the final date of expenditure eligibility) set out in the Decision;
- final report is submitted to the Commission;
- the Member State confirms that the information contained in the application and the report is correct;
- the Member State submitted to the Commission the declaration drafted by the Office for Certification of EU Funds;
- all information and publicity measures set out by the Commission for a given project were implemented.

Moreover, the transfer of the payment of the final balance depends on meeting the special conditions enumerated in Annex I to the Decision of the European Commission. It is additionally required that a Member State submits information necessary for the assessment of compliance with the Community rules of public procurement, in compliance with Article 8 (1) of the Council Regulation (EC) No 1164/94.

A part of the assistance equal to the payment of the final balance will be cancelled if the final report is not submitted within 18 months upon the final date of project payment completion, set out in the Decision of the European Commission.

6.5.3 Application for payment to the Paying Authority – small-scale reimbursement

On adopting a project for implementation, the PA opens for a given project a Cohesion Fund Current Account (CFCA) and signs a Financing Agreement with the Intermediate Body (Ministry of Environment / Ministry of Infrastructure) appropriate for a given project. On receiving the funds, the Paying Authority shall immediately inform the respective Intermediate Body of the receipt of funds from the European Commission.

Advance payment is transferred by the Paying Authority to the appropriate CFCA on the motion of the Intermediate Body. SAO's application has to consist of the exact amount of payment and number of the current account of the project on which CF resources will be transferred.

Moreover, in the application for advance payment SAO has to inform PA that the Implementing Agreement for a given project has been signed, the body responsible for implementation has opened account of a project as well as has to submit the structure of accounts of the project accepted by SAO.

Intermediate payments and the payment of the final balance are transferred by the Paying Authority upon their receipt from the European Commission.

Account	Transfer authorisation	Accounting counter signature
Cohesion Fund Account (CFA)	Member of the Ministry of Finance management in charge of the PA and/or proxies	
Cohesion Fund Current Account (for a given project)	Environment: Member of the ME management supervising the Body responsible for implementation or his/her deputy	Environment: Head Accountant of the NFEP&WM
	Transport: Member of the MI management supervising the Body responsible for implementation or his/her deputy	Transport: Head Accountant of the Ministry of Infrastructure

6.5.4 Pre-financing

Public finance sector entities which realize programmes and projects assisted by the Cohesion Fund are allowed to receive state budget means for a pre-financing of projects.

The principles of a pre-financing have been laid down in Art.30g-30l of the Amendment Law on public finance in accordance with Art.1 p.5 of this Law of 16th April 2004.

The state budget means are rendered in form of interest rated loans with exception of loans granted to the state budget entities and regional autonomous authorities for the measures related to reduction of unemployment and realized by the Voivodship Labour Offices and payment agencies which benefit non-rated loans. Repayment of a loan granted for pre-financing is realized after transfer of the EU assistance.

The Minister of Finance in coordination with the Minister of Economy and Labour will set out in form of regulation a mode and dates for release and repayment of state budget means for a pre-financing.

7. Irregularities and procedures in case of detecting irregularities

7.1 Definition and types of irregularities

According to Article 1 (2) of the Council Regulation (Euratom, EC) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (EC O. J. No L 312 of 23 December 1995), bearing in mind other regulations of Polish and European Community law and taking other domestic and Community regulations into account, an **irregularity** in the functioning of the Cohesion Fund in Poland should be understood to mean any violation of Community or domestic regulations resulting from action or negligence on the part of a project implementing body¹⁸ (*economic operator*) that has jeopardised or could have jeopardised the general budget of the Community or budgets managed by the Community or in relation to unjustified expenditure item. **Irregularities** should be understood to mean any violation of Community or domestic regulations resulting from action or negligence on the part of a project implementing body (*economic operator*) that has jeopardised or could have jeopardised the budget of the Community or budgets managed by

¹⁸ These are large institutions/bodies participating in Cohesion Fund project implementation: Managing Authority, Paying Authority, Intermediate Bodies, Implementing bodies and contractors.

the Community, or by decreasing or a loss of income from own funds derived directly on behalf of the Community, or in relation to unjustified expenditure item.

7.2 Bodies detecting irregularities

It is in particular the institutions carrying out control of projects or of the Cohesion Fund management and control systems that are appointed to detect irregularities. However, irregularities may also be detected in the course of activities other than the controls carried out by the Implementing Bodies, Intermediate Bodies, PA or MA. Therefore, irrespective of the source of information on irregularities, a procedure appropriate for a given type of irregularity should be applied.

7.3 Types of irregularities

For the needs of the Cohesion Fund Management and Control System, irregularities can be divided into the following categories:

- individual (non-systemic) irregularities resulting in inappropriate spending of funds;
- individual irregularities not resulting in inappropriate spending of funds;
- systemic irregularities¹⁹ resulting in inappropriate spending of funds;
- systemic irregularities not resulting in inappropriate spending of funds.

Moreover, due to the fact that it is necessary to provide information to the European Commission (European Anti-Fraud Office – OLAF), irregularities can be divided into those that are subject to reporting to the Commission and those that are not²⁰.

7.4 Procedures in case of detection of irregularities

7.4.1 General provisions

In every institution there should be internal procedures of action in case of detection of irregularities and of a justified assumption of irregularities that would ensure an immediate notification of the head of the entity. Depending on the type of an irregularity, one of the following procedures is used. Manager of the appropriate unit in accordance with Bureau for International Treasury Relations at the Ministry of Finance's (BITR) instructions is responsible for appropriate qualification of irregularities. In the case of doubts, this body can request BITR assistance in classification.

Procedure in the case an individual irregularity not resulting in inappropriate spending of funds

In the case of detecting an individual irregularity that does not result in improper expenditures, the manager of the appropriate unit, after possible consultations with a supervisory unit, will make a decision concerning the manner of repairing the irregularity of which it notifies the supervisory unit and MA in writing. When the irregularity is repaired, appropriate information is submitted to the supervisory unit and MA again.

Procedure in the case a systemic irregularity not resulting in inappropriate spending of funds

Procedure concerning a systemic irregularity as far as its repair is concerned should be the same as in the case of an individual irregularity. However, the systemic irregularity is a base for modifying general procedures of the Cohesion Fund management and control or internal procedures in a given unit. Actions in this scope are performed by the Managing Authority or the manager of the proper unit. On the basis of gained information, the MA formulates recommendations aiming at repairing

¹⁹ Each irregularity that results from a fault or error in Cohesion fund management and control system and can thus occur in the case of other projects should be deemed a systemic irregularity.

²⁰ Pursuant to the opinion of the European Commission, not all information on irregularities must be submitted top the Commission – a list of such cases can be found in the instructions of the Bureau for International Treasury Relations (BITR) at the Ministry of Finance.

irregularities and submits these to the appropriate units or modifies the "The Cohesion Fund' General Manual". MA monitors implementation of recommendations.

Procedure in the case an individual or systemic irregularity resulting in inappropriate spending of funds

Irregularities resulting in inappropriate spending of funds (systemic or individual) form a basis to suspend payment, recovery of undue amounts or for other actions influencing the financial flow through the Paying Authority or Intermediate Bodies. The procedure described above is additionally applied in the case of systemic irregularities.

7.5 Notifying of irregularities

7.5.1 Flow of information on irregularities among institutions (authorities) in Poland

Information on irregularities in the Cohesion Fund should be submitted pursuant to BITR instructions titled "System of Notifying of Irregularities in the Scope of the Cohesion Fund Application". Notifying of irregularities takes form of completing standard report forms and collective statements of irregularities and submitting these to the Bureau for International Treasury Relations as well as sending a memo on the irregularity pursuant to article 56 of the Law on the National Development Plan.²¹ Until the irregularity module that will satisfy requirements specified in the *Commission Regulation No. 1831/94* is made operative in the SIMIK system, reports on irregularities should be submitted in hard and electronic copy (a floppy disk attached to a hard copy). The following reports and other documents will be used in the system of notifying of irregularities:

Reports/other documents and deadlines for submission

Type of report /document	Deadline	Person responsible for submitting the report/document
Current report	<ul style="list-style-type: none"> immediately after getting information or justified suspicion of irregularity 	Body responsible for notifying BITR (cc: higher degree institution in the management system, PA and MA)
Note on irregularity	<ul style="list-style-type: none"> immediately after detecting the irregularity 	IB or MA to Undersecretary of state supervising Department for Coordination of the Cohesion Fund at the MEL and to PA and BITR.
Monthly statement of irregularities	<ul style="list-style-type: none"> not later than on the 6th day of each month not later than on the 8th day of each month not later than on the 10th day of each month 	Cohesion Fund Beneficiary/Body responsible for implementation to IB ²² IB, PA to MA MA to BITR
Quarterly report and Quarterly statement of irregularities not subject	<ul style="list-style-type: none"> 25 calendar days after the end of the quarter 	Cohesion Fund Beneficiary/Body responsible for implementation to IB ²³

²¹ Reports and the memo should be signed by MAO, Sub SUZ, SUZ, US at the MF and US at the MEL, respectively; the statements may be signed by an appropriate Department/Bureau Director.

²² In the environment sector FB/Body responsible for implementation should deliver a monthly statement to the National Fund of Environmental Protection and Water Management by the 4th day of each month and the National Fund of Environmental Protection and Water Management to the Ministry of Environment by the 6th day of each month.

²³ In the environment sector FB/Body responsible for implementation should deliver a quarterly report/ statement to the National Fund of Environmental Protection and Water Management by the 15th calendar day after the end of the quarter and the National Fund of Environmental Protection and Water Management to the Ministry of Environment by the 25th calendar day after the end of the quarter.

to reporting	<ul style="list-style-type: none"> • 35 calendar days after the end of the quarter • 45 calendar days after the end of the quarter 	IB, PA to MA BITR
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In the case of receiving information of an irregularity or a justified suspicion of an irregularity, the unit manager (or other manager in accordance with the internal procedure) is obliged to specify the following:

- firstly, whether this irregularity is subject to reporting to the EC or not (if not, it should be EC entered to the quarterly statement of irregularities not subject to reporting to the EC and **no other reports concerning this issue should be sent to the BITR**);
- secondly, whether the given irregularity meets at least one of the three conditions that imply necessity of submitting immediate information to the Bureau for International Treasury Relations (BITR) at the Ministry of Finance and to the attention of a higher degree institution in the management system, MA and PA in accordance with the sampler current report attached to BITR instructions;
- thirdly – if the irregularity occurs at the level of IB, MA or PA - whether it consists in using the granted funds by the beneficiary in a manner inconsistent with their purpose or project co-financing agreement which requires immediate submission of information pursuant to article 56 of the Law on the National Development Plan.

Current report

The Current report is developed immediately after gaining information on the following:

- detecting or justified suspicion of a fraud (a purposeful action aiming at achieving material profit);
- detecting or justified suspicion of actions leading to an irregularity which has or can have a completely new nature, not known to the body responsible for notifying²⁴;
- detecting or justified suspicion of actions leading to an irregularity which has or may have its results outside the territory of the Republic of Poland²⁵.

The current report is developed separately for each irregularity and submitted immediately by the body responsible for notifying to BITR with a copy to an institution of a higher degree in the management system, PA and MA in accordance with the sample specified in the BITR instructions.

Note on irregularity

Based on article 56 of the Law on the National Development Plan, in the case of detecting an irregularity by the **Managing Authority** or **Intermediate Body** in result of a conducted inspection or based on information received from another inspection body, consisting in using the granted funds by the beneficiary in a manner inconsistent with their purpose or project co-financing agreement, the Managing Authority or Intermediate Body immediately informs the minister appropriate for regional development issues (appropriate undersecretary of state supervising Cohesion Fund Co-ordination Department – Ministry of Economy and Labour) and the minister appropriate for public finance issues (Bureau for International Treasury Relations and Department of Paying Authority in the Ministry of Finance) in accordance with the note sample specified in the BITR instructions.

²⁴ In the current report, body responsible for informing informs of a suspicion or occurrence of an irregularity that it has never encountered before in its operations (i.e. it has never informed of it in reports on irregularities). In the case of further irregularities **of this type** (pursuant to Annex No. 8 to BITR instructions), these will be reported in quarterly reports.

²⁵ Body responsible for informing should specify (if possible) whether the irregularity has or may have its results outside the territory of the Republic of Poland – it only refers to bodies seated outside the territory of the Republic of Poland or trans-national projects.

Quarterly report

If, in the result of performed analysis information on irregularity or a justified suspicion of an irregularity the manager of the unit (or other employee in accordance with the internal procedure) decides that it is not necessary to send a current report or a note on irregularity, such information should be contained in the next quarterly report.

The first report on irregularity in a given case is a report of detecting of this irregularity. Each following quarterly report should include information on instituted actions leading to repair of irregularities in relation to former reports. The quarterly report contains the complete information on irregularity from the moment it is detected till the end of the reporting period (the end of the quarter).

MA, within 45 days from the end of the quarter, submits quarterly reports on irregularities to BTR. Information flow from Body responsible for implementation to MA in both sectors is described in the above table *Reports/other documents with submission deadlines*. Institutions submit reports in accordance with the sample specified in the BTR instructions. In the case of irregularities already submitted to the BTR, the quarterly report also contains information on actions instituted from the moment of detecting the irregularity by the appropriate body.

Should no irregularities that ought to be reported to the BTR (i.e. there have been no new or "unfinished" irregularities) occur in the given quarter, information of the lack of quarterly reports is submitted to Body responsible for implementation/ CF Beneficiary by subsequent degrees up to the BTR (a copy to the Paying Authority) upon deadlines specified for quarterly reports.

If MA and/or PA submit the first report on irregularity or include an irregularity in the quarterly statement of information not subject to reporting for the first time and the statement refers to the irregularity that occurred in the IB or Body responsible for implementation/ CF Beneficiary and in relation to which IB or Body responsible for implementation/ CF Beneficiary do not have any reservations, the next quarterly and monthly statements and quarterly reports on this irregularity should be developed by appropriate IB or Body responsible for implementation/ CF Beneficiary.

A person coordinating development of reports and statements and will have information on all irregularities in the given unit should be appointed in every unit.

Statements of irregularities

In order to aggregate the detected irregularities and provide the BTR with current information on all irregularities in the Cohesion Fund system, two collective statements of irregularities are applied:

- a monthly statement of irregularities – providing information on the progress of actions leading to repair of irregularities. Deadlines for submission of statements from Body responsible for implementation through subsequent grades are described in the above table *Reports/other documents with submission deadlines*. Statements are submitted in accordance with the sample specified in the BTR instructions.
- a quarterly statement of irregularities **not subject to reporting** – providing information on all irregularities that are not subject to reporting to the Commission. The statement is submitted in accordance with the sample specified in the BTR instructions along with quarterly reports or information on the lack of quarterly reports.

7.5.2 Submission of information on irregularities to the European Commission

Submission of information on irregularities by General Inspector of Financial Information (BTR) to the EC

Basically, information on irregularities necessary for development of appropriate reports submitted to the European Commission is gained by the General Inspector of Financial Information (Bureau for International Treasury Relations) from the following sources:

- fiscal control offices in a form, scope and upon dates set by the General Inspector of Financial Information in internal instructions;
- current and quarterly reports on irregularities.

Information gained from the SIMIK system or the Managing Authority can be at any moment supplemented by the General Inspector of Financial Information by means of the Law on Treasury and executive orders of the Government's Representative for Fighting Financial Irregularities for the to the Loss of the Republic of Poland or the European Union budget.

General Inspector of Financial Control is in particular responsible for:

- notifying the European Commission of detected irregularities that are the subject of preliminary administrative or court proceedings (or providing information of absence of these) within two months from the end of each quarter (quarterly reports);
- immediate notifying the European Commission and, in necessary, other interested member states of any abuse that has been detected or are suspected when it is reckoned that these can cause results outside the territory of a given state or when they indicate that new methods of abuse have been applied (current reports);
- notifying the European Commission of proceedings instituted in consequence of already reported abuse and their results; presenting the European Commission with administrative or court decisions referring to closing administrative or court proceedings or the main items of these within two months from the end of each quarter (quarterly reports);
- submitting reports on irrecoverable amounts along with information on the reasons of failure to recover them to the European Commission (a special report pursuant to article 5, item 2 of Commission Regulation No. 1831/94).

Copies of information reports on detected irregularities submitted to the European Commission are also filed with the Paying Authority, Managing Authority and Office of Certification of EU Funds.

7.6 Recovery of amounts inappropriately spent

The Paying Authority, that will order performance of tasks in this scope to Intermediate Bodies in both sectors by appropriate provisions in financing contracts, is responsible for recovery of inappropriately spent amounts.

Taking the manner of transferring funds in the Cohesion Fund among subsequent bodies – from Paying Authority do Body responsible for implementation – based on civil-legal contracts (agreements) into account, it is necessary to specify obligations of the parties, providing, among other things, for possibility to effectively recover funds spent in an inappropriate manner in a detailed manner in provisions of financing contracts and co-financing agreements. In order to present the existing possibilities of assuring recoverability of spent funds and to recommend preferred solutions, the inter-Ministry Working Group for fighting irregularities in the scope of using the UE funds has developed an instruction document entitled "Legal Provision of Recoverability of Inappropriately Spent Funds" that should be used while developing provisions of proper agreements/contracts on the basis of which the Cohesion Fund resources will be transferred.

7.6.1 Request for return an inappropriately spent amount

In relation to a detected irregularity, a proper body that is a party to the contract concluded with Body responsible for implementation (in the transport sector – Ministry of Infrastructure and in the environment sector – National Fund of Environmental Protection and Water Management) demands that Body responsible for implementation returns transferred funds in the amount appropriate for the given issue and upon the specified date along with interest.

Should the beneficiary fail to return the demanded amount with interest and its recovery, in part or in its entirety, is possible by means of appropriate decrease of reimbursement of the next expenditures presented by the beneficiary, the Paying Authority will do it and the beneficiary will be advised accordingly.

The basis of demanding paid amounts in the case of detecting irregularities by the Ministry of Infrastructure or National Fund of Environmental Protection and Water Management or to compensate these amounts from the next Body responsible for implementation expenditures (also including those projects in which no irregularities have been detected) is formed by appropriate contractual obligations that guarantee the right to such actions, included in the appropriate agreement. Appropriate IB will assure that agreements concluded with Body responsible for implementation contain appropriate provisions in this scope that should conform to recommendations included in the document "Legal Provision of Recoverability of Inappropriately Spent Funds".

7.6.2 Procedure in the case of ineffectiveness of return demand

Should Body responsible for implementation fail to return the demanded amount upon the required date or the amount is not recovered by means of appropriate decrease of reimbursement of the next expenditures in this period, Ministry of Infrastructure or National Fund of Environmental Protection and Water Management will start adequate recovery proceedings, pursuant to recommendations contained in the "Legal Provision of Recoverability of Inappropriately Spent Funds" document²⁶ including the use of legal provision of recoverability of inappropriately spent funds specified formerly in the agreement. It institutes recovery actions on its own or orders its performance to a third person. Should this prove ineffective, it initiates civil court proceedings unless it reckons this is unjustified due to the following:

- the value of the debt is negligible,
- it is positive that Body responsible for implementation will return the demanded amounts or that it will be possible to recover these by means of decreasing reimbursement of the next expenditures in the future and to make a proper security on the property of the debtor,
- there are other circumstances justifying temporary dropping of court action,
- there are other circumstances justifying final dropping of court action.

If a decision is made to finally refrain from recovery actions in relation to due amounts, the Managing Authority will inform the Bureau for International Treasury Relations of the not recovered amount and will indicate the budget (EU or domestic) that should be charged with the not recovered amount along with justification. General Inspector of Financial Information will immediately inform, by means of the special report mentioned in article 5.2 of Commission Regulation (EC) No. 1831/1994, the European Commission.

However, proceedings aiming at recovering the lost amounts are still continued if the European Commission demands it.

7.6.3 Return of recovered amounts to the European Commission

Funds recovered in relation to cancellation of the entirety or part of assistance along with interest are returned to the European Commission by the Paying Authority in accordance to principles specified in article 7 of the Council Regulation (EU) 1386/2002, i.e. by means of deducing these from the next expenditure statement and taking these into account in the application for payment or, if this is not possible, by direct return.

7.7 Financial corrections of Cohesion Fund assistance

If the European Commission decides that the irregularity has not been corrected or determines that the entirety or part of the project does not justify – in entirety or in part – the amount of assistance granted for its implementation, the Commission will conduct appropriate analysis of the given case asking fiscal inspection and PA for presentation of their comments upon a specified date. After the analysis, unless preventive actions have not been instituted in the case in question, the Commission, taking the type of the irregularity and the scope of observed negligence in the management and control mechanism into account, may:

²⁶ The document is available at the MEL web site: www.funduszsposnosci.gov.pl

- decrease the amount or cancel any advance payments;
- cancel the entirety or a part of assistance granted for the given project.

If PA decides that the detected irregularity is a vibrant violation of financing agreement provisions, it may, prior to the final decision by the Commission, return a specific amount to the appropriate account at the PA for CF or temporarily freeze the signature example chart of the appropriate banking account for CF, making it impossible to transfer Cohesion Fund resources to the account of the project. Irregularities detected during inspection are also reported by inspection bodies.

Should the European Commission suspend the periodic payments or in the case of the Commission decision on financial correction, pursuant to article H, Annex II to the Council Regulation (EU) No. 1164/94 and presenting its comments and conclusions concerning reasons for suspension of payments and necessary financial corrections, the Intermediate Body:

- observes comments and conclusions of the European Commission and introduces necessary corrections;
- or
- presents the Managing Authority (a copy to the Paying Authority) with reservations to the European Committee decision. When the coherent stance of the Polish part is agreed upon, MA asks the EU to organise a meeting in order to reach agreement.

Pursuant to article H, Annex II to the Council Regulation (EU) No. 1164/94, the European Commission may levy financial corrections in the amount from 2% to 100% of granted co-financing. Principles and criteria of financial corrections in various amounts are specified in the European Commission instructions to be found at www.funduszspojnosci.gov.pl in the English language.

8 The SIMIK System

The IT System of Monitoring and Financial Control of the Structural Funds and the Cohesion Fund in Poland (SIMIK) shall be one of the basic instruments of monitoring. It provides financial management, monitoring, control and evaluation (through submitting / generating information necessary for the evaluation of projects co-financed from the Cohesion Fund). Its aims include, among others:

- providing an appropriate, efficient and transparent management of the Cohesion Fund resources;
- providing an effective and procedures compatible submission of the required reports and information on progress and effects of the Cohesion Fund implementation in Poland to the European Commission;
- monitoring and management of every project, from the initial application for assistance through subsequent stages of project administration to evaluation and financial control.

The basis of the system functioning are set out by:

- legal provisions of the European Union as regards Cohesion Fund implementation, particularly in the field of electronic transmission of data to the European Commission and electronic archiving of data on the projects assisted;
- Polish legal provisions which regulate directly or indirectly the functioning of respective elements of the cohesion policy system in Poland.

Direct users of the SIMIK system as regards the Cohesion Fund shall be the Paying Authority, the Managing Authority, Intermediate Bodies, 2nd degree Intermediate Body in the Environment Sector and Implementing Bodies in the Transport Sector. All these institutions shall be responsible for time entering relevant data to the system. The range of the data recorded in the system should enable to fulfil requirements defined in Art. 16 p.1 and in Enclosures I and IV to the Regulation 1386/2002. The system shall record in particular:

- Basic information on projects, included in the application for assistance and in the Granting Decision of the European Commission;
- Information on contracts;
- Information on procedures of public procurement;
- Substantial and financing schedules;
- Lists of indicators together with currently updated figures;
- Information on invoices;
- Information on controls carried out and irregularities detected;
- Information on information and publicity measures taken.

If possible, users of the SIMIK system shall carry out their functions using the data and tools available in the SIMIK system.

Implementing Bodies in the Environment Sector which have no direct access to the SIMIK system shall prepare and submit information to the 2nd degree Intermediate Body in order to enter it to the system in the appropriate form (XML) in the monthly financial report. The Ministry of Finance shall act as system administrator and, in particular, shall run the centralised dictionary of definitions of the monitoring indicators.

9 Monitoring

9.1 General rules of monitoring

Monitoring – understood as the process of systematic gathering and analysing of reliable financial and statistical information as regards project implementation, which aims at ensuring the conformity of their implementation with the previously set out implementation conditions.

Monitoring is carried out on every level of project implementation, in Implementing Bodies, Intermediate Bodies, the Paying Authority and the Managing Authority. Monitoring the Cohesion Fund projects is carried out by way of reports for the Monitoring Committee, monthly reports on project implementation and on-the-spot checks.

Monitoring the progress of project implementation should be carried out on the basis of indicators of substantial and financial progress which are appropriate for the nature of the project and its aims and which are recorded in the SIMIK system. The indicators should be adopted in such way to make it possible to assess on their basis the progress of works in reference to the progress planned and to initially assumed aims. .

In order to ensure better efficiency of Cohesion Fund interventions, special attention is paid to the regularity of management. Due to that, monitoring should ensure a possibility of detecting changes in project management and connected problems.

9.2 Cohesion Fund Monitoring Committee

The Cohesion Fund Monitoring Committee (CFMC) is a body monitoring the implementation of respective projects and deciding on their progress. Regular sessions of the CFMC shall take place every six months. There shall also be *ad hoc* sessions, convened by the Managing Authority or the European Commission.

The Cohesion Fund Monitoring Committee has been appointed by way of an Executive Order No 19 of the Minister of Economy and Labour of 11 August 2004 issued on the basis of Article 44 (1) of the Statute on the National Development Fund. The CFMC sessions shall be presided by the Undersecretary of State at the MEL or by his/her representative. Detailed rules of functioning of the Committee have been set out in the ‘Regulations for the Cohesion Fund Monitoring Committee’, which shall be published on the Internet site of the MEL: www.funduszczojnosci.gov.pl. According to the above mentioned Executive Order, CFMC consists of the representatives of the Managing Authority, the Paying Authority, Intermediate Bodies and of the European Commission. Upon an invitation of the President, experts, representatives of Beneficiaries, other institutions and of social and professional groups may take part in the sessions. NGOs’ Representatives might participate in the proceedings of the Monitoring Committee as observers – the procedure of selection is available

on the website www.funduszspojnosci.gov.pl. The Secretariat of the Cohesion Fund Monitoring Committee shall be situated in the Managing Authority in the Ministry of Economy and Labour.

9.3 Reports

Submission of the following types of reports is required:

Type of report	Date	Entity responsible for transmitting the report
Monthly report on project implementation for the MA and the PA	According to dates set out in the Financing Agreement According to dates set out in the agreement between the PA and the Intermediate Body	Body responsible for implementation to Intermediate Body (ME, MI) (environmental sector via NFEPWM) to the PA (co: MA)
mid-year report on project implementation (for the Cohesion Fund Monitoring Committee)	According to dates set in the Regulations for the CFCM	Body responsible for implementation to Intermediate Body (Environment Sector via NFEPWM) to MA, PA, CFCM
Annual report for the European Commission	Within 3 months from the end of the year of completion of project implementation for the European Commission	As above
Final report for the European Commission	Has to be submitted to the European Commission within 6 months from project completion.	Body responsible for implementation to Intermediate Body to MA (PA) to the European
<i>Ad hoc</i> reports	On request of the European Commission, MA, PA, Intermediate Body	As needed

After launching the SIMIK system the reports enumerated above, with the exception of the reports prepared for the European Commission (the final report and *ad hoc* reports), shall be prepared, transmitted, approved and recorded using the SIMIK system.

Intermediate Bodies in their monthly reports on project implementation are obliged to inform the PA and the MA of controls and audits carried out, including especially conclusions and recommendations formulated as a result of controls.

Intermediate Bodies shall be responsible for the constant monitoring of project implementation, which refers both to the technical and financial aspects of project implementation and the progress of project implementation with regard to its conformity with national and European laws.

Complying with the provisions of the Financing Agreement made out for every project and with the dates set out there, the Intermediate Body is obliged to submit monthly financial reports on project implementation to the PA, prepared in written and electronic form, using the SIMIK system. Data contained in substantial reports are the basis for the PA to apply for funds to the European Commission.

These reports are also submitted to the MA (on the basis of agreements between the MA and the Intermediate Bodies).

9.3.1 Ad hoc reports

The European Commission, the Managing Authority and the Paying Authority may, when needed, apply to the Intermediate Body for all necessary information on the process of project implementation. Other institutions in the management system reserve themselves the right to obtain necessary information from the supervised institutions.

According to the Art.16 of the Regulation 1386/2002, a Member State is obliged to provide the European Commission, on its expressed request, with accounting documentation of projects. The documentation, defined in the Enclosure IV to a/m Regulation, will be produced and stored by the Implementing Body and part of this information will be available in the SIMIK system. In view of that, the Paying Authority, within 10 working days, will be responsible for delivery of information presented in the application of the Commission in a range compatible to Art.16 and with use of the SIMIK system or collecting respective information from the Body responsible for implementation.

9.3.2 Final report

The final report is submitted to the European Commission within six months upon project completion. In case when the report is not submitted within 18 months upon the date of completion of the works and payments set out in the Decision on granting assistance, a part of assistance equivalent to the payment of the final balance shall be cancelled. The final report shall contain in particular:

- Description of works carried out, together with physical indicators, expenditure according to category and measures taken on the basis of special conditions contained in the Decision;
- Summary of information and publicity measures;
- Confirmation of conformity of operations with the Granting Decision;
- Preliminary assessment if predicted results, which shall be later subject to evaluation, will be met. The assessment shall include in particular:
 - Actual date of launching the project;
 - Method of project management after its completion;
 - If appropriate, confirmation of financial prognosis, especially as regards operational costs and predicted revenue;
 - Confirmation of socio-economic assumptions, in particular predicted costs and revenues;
 - Identification of environmental protection measures taken and of costs connected with it, including conformity with the ‘polluter pays’ principle.

The form of the final report for environmental projects is available on the website of NFEPWM - www.nfosigw.gov.pl.

The detailed procedure of preparing final report has been laid down in ‘Guidelines on the preparation of the final report on project implementation for the European Commission’

9.4 On-the-spot monitoring

On-the-spot checks are the instruments of monitoring, based on direct observation of the implemented project. Intermediate Bodies are responsible for constant monitoring of project implementation, including on-the-spot checks. The Intermediate Body reserves itself the right to carry out inspections in appropriate agreements with supervised institutions. Procedures of on-the-spot monitoring are set up in the internal procedure manuals of authorised institutions.

10 Ex post evaluation of project implementation

Ex post evaluation shall embrace application of funds, efficiency and effectiveness of the assistance or its scope. It shall relate to the factors influencing the success or failure of project implementation. The evaluation shall also cover the actual influence of project implementation in order to assess the degree of achievement of the aims planned. This evaluation shall refer to, among others, the influence of completed projects on the implementation of the Community policy in the field of environmental protection, expansion of the trans-European transport network and of

the transport policy of the Community. It shall also include the influence of projects completed on environment. Currently, the European Commission does not plan to carry out a separate evaluation for each project but an *ex post evaluation* of chosen projects within the framework of a more general evaluation of the Cohesion Fund.

11 Archives management

All documents regarding project implementation, from the programming process onwards, shall be kept in every institution for at least three years from the date of final payment made by the European Commission.

12 Information and publicity

Rules of information and publicity measures were established in the Article 14 of the Council Regulation (EC) No 1164/94 and in the Commission Regulation (EC) No 621/2004 on implementation of information and publicity measures concerning the Cohesion Fund projects by the Member States and the European Commission.

Information and publicity measures concern all projects co-financed from the Cohesion Fund and aim at:

- Increasing the awareness of the general public of the role played by the Community in relation to projects co-financed from the Cohesion Fund;
- Increasing the awareness of the aims of the Cohesion Fund and of the effects of projects co-financed from the Cohesion Fund;
- making potential Final Beneficiaries aware of the possibility of assistance for certain projects from the Cohesion Fund;
- creating a uniform image of measures undertaken.

As regards information and publicity measures, the Managing Authority has issued *General Guidelines for Information and Publicity Measures as regards Projects Assisted from the Cohesion Fund*. They were set up in order to make all the institutions engaged in management, control and implementation of projects assisted from the Cohesion Fund aware of the provisions contained in the Commission Regulation (EC) No 621/2004. These guidelines define aims, general rules of information and publicity measures and detailed tasks of the institutions responsible for promoting the assistance of the Cohesion Fund in respective projects.