DCI-ASIE/2010/21624

ORIGINAL

FINANCING AGREEMENT

between

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

and

THE EUROPEAN COMMISSION

"Raising the living standards of ethnic minorities in Vietnam"



FINANCING AGREEMENT

Special Conditions

The European Union, hereinafter referred to as "the EU", represented by the European Commission, hereinafter referred to as "the Commission",

of the one part, and

The Government of the Socialist Republic of Vietnam, represented by the Ministry of Finance, hereafter referred to as "the Beneficiary",

of the other part,

have agreed as follows:

ARTICLE 1 - NATURE AND PURPOSE OF THE OPERATION

1.1. The EU shall contribute to the financing of the following programme:

Raising the livings standards of ethnic minorities in Vietnam
Ref: DCI-ASIE/2010/21624

hereinafter referred to as the programme which is described in the Technical and Administrative Provisions in Annex II.

1.2 This programme will be implemented in accordance with the financing agreement and the annexes thereto: the General Conditions (Annex I) and the Technical and Administrative Provisions (Annex II).

ARTICLE 2 – THE EU'S FINANCIAL CONTRIBUTION

2.1 The total cost of the programme is estimated at 12 million euro with the following components:

2.1.1 Budget support:
Amount: 12 million euro

2.2 The EU undertakes to finance a maximum of 12 million euro. The breakdown of the EU's financial contribution into budget headings is shown in the budget included in the Technical and Administrative Provisions in Annex II.

ARTICLE 3 – THE BENEFICIARY'S CONTRIBUTION

3.1 The Beneficiary shall contribute zero euro to the programme.

3.2 Where there is a non-financial contribution by the Beneficiary the detailed arrangements shall be set out in the Technical and Administrative Provisions in Annex II.

ARTICLE 4 - PERIOD OF EXECUTION

The period of execution of the financing agreement as defined in Article 4 of the General Conditions shall commence on the entry into force of the financing agreement and end at 42 month after this date.

ARTICLE 5 - ADDRESSES

All communications concerning the implementation of the financing agreement shall be in writing, refer expressly to the programme and be sent to the following addresses:

a) for the Commission

Head of Delegation of the European Union to Vietnam

83B Ly Thuong Kiet, 17th floor, Hanoi

b) for the Beneficiary

Mr. Vu Van Ninh

Minister of Finance

Socialist Republic of Vietnam

28 Tran Hung Dao, Hanoi

ARTICLE 6 - ANNEXES

6.1 The following documents shall be annexed to this agreement and form an integral part thereof: .

Annex I: General Conditions

Annex II: Technical and Administrative Provisions.

6.2 In the event of a conflict between the provisions of the Annexes and those of the Special Conditions of the financing agreement, the provisions of the Special Conditions shall take precedence. In the event of a conflict between the provisions of Annex I and those of Annex II, the provisions of Annex I shall take precedence.

ARTICLE 7 - CONDITIONS APPLYING TO A BUDGET SUPPORT OPERATION

7.1. Given the nature of a budget support operation, the following clauses of the General Conditions shall not be applicable in respect to the amount specified in Article 2.1.1 (budget support) of these Special Conditions: Articles 2, 4.2 first sentence, 5, 6, 7, 8, 9, 11, 12.2 and 13.2.

7.2. In respect to the amount specified in Article 2.1.1 (budget support) of these Special Conditions, the following clauses of the General Conditions shall be replaced by the following:

7.2.1 In respect to Article 3.1: the programme shall be implemented by the Commission. This consists of the verification of the compliance with the conditions for payment and the payment of the amounts due for each instalment, in conformity with this financing agreement.

7.2.2 In respect to Article 10: the Beneficiary undertakes to apply its national foreign exchange regulations in a non-discriminatory manner to the payments made under this financing agreement. The foreign exchange transfers will be accounted for under the value date of the notification of credit to the account of the Ministry of Finance opened for this purpose at the State Bank of Vietnam (SBV). The exchange rate will be the buying rate of the operation centre of the SBV on the date of the conversion of funds into VND.

7.3 In respect to the amount specified in Article 2.1.1 (budget support) of these Special Conditions, Article 4.1 of the General Conditions shall be supplemented by the following: all payment requests submitted by the Beneficiary in accordance with the provisions set out in the Technical and Administrative Provisions (Annex II) shall be eligible for EU financing provided that such requests are submitted by the Beneficiary during the operational implementation phase.

7.4 Article 14.3 of the General Conditions shall mutatis mutandis be applicable in relation to any practices of active or passive corruption whatsoever in relation to the implementation of the operation.

ARTICLE 8 - ENTRY INTO FORCE OF THE FINANCING AGREEMENT

The financing agreement shall enter into force on the date on which it is signed by the last party.

Done in three original copies in the English language, two being handed to the Commission and one to the Beneficiary.

FOR THE BENEFICIARY	FOR THE COMMISSION
Tran Xuan Ha Deputy Minister Ministry of Finance	Mr Dirk Meganck Director Directorate D – Asia and Central Asia Europeaid Cooperation Office
Signature	*Signature*
Date 30.09.2010	*Date* 16.9.2010

ANNEX I - GENERAL CONDITIONS

TITLE I - PROJECT/PROGRAMME FINANCING

ARTICLE 1 – GENERAL PRINCIPLE

1.1 The EU's financial contribution shall be limited to the amount specified in the financing agreement.

1.2 The provision of the EU financing shall be subject to fulfilment of the Beneficiary's obligations under this financing agreement.

ARTICLE 2 - COST OVERRUNS AND COVERING THEM

2.1 Individual overruns of the budget headings of the financing agreement shall be dealt with by reallocating funds within the overall budget, in accordance with Article 17 of these General Conditions.

2.2 Wherever there is a risk of overrunning the global amount set in the financing agreement, the Commission may either scale down the project/programme or draw on the Beneficiary's own ressources or other non-EU resources.

2.3 If the project/programme cannot be scaled down, or if the overrun cannot be covered either by the Beneficiary's own resources or other resources, the Commission may grant additional EU financing. Should it so agree, the excess costs shall be financed, without prejudice to the relevant EU rules and procedures, by the release of an additional financial contribution to be set by the Commission.

TITLE II - IMPLEMENTATION

ARTICLE 3 – GENERAL PRINCIPLE

3.1 The project/programme shall be implemented by the Commission acting for and on behalf of the Beneficiary.

3.2 The Commission shall be represented in the State of the Beneficiary by its Head of Delegation.

ARTICLE 4 - PERIOD OF EXECUTION

4.1 The period of execution of the financing agreement shall comprise two phases:

- an operational implementation phase, in which the principal activities are carried out. This phase shall commence on the entry into force of the financing agreement and end at the latest 24 months before the end of the period of execution;
- a closure phase, during which final audits and evaluation are carried out and contracts for the implementation of the financing agreement are technically and financially closed. This phase shall commence on the day after the date of end of the operational implementation phase and end at the latest 24 months after this date.

4.2 Costs related to the principal activities shall be eligible for EU financing only if they have been incurred during the operational implementation phase. Costs related to final audits and evaluation and closure activities shall be eligible up to the end of the closure phase.

4.3 Any balance remaining from the EU contribution will be automatically cancelled six months after the end of the period of execution.

4.4 In exceptional and duly substantiated cases, a request may be made for the extension of the operational implementation phase and correlatively of the period of execution. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the operational implementation phase and approved by the Commission before that latter date.

4.5 In exceptional and duly substantiated cases, and after the end of the operational implementation phase, a request may be made for the extension of the closure phase and correlatively of the period of execution. If the extension is requested by the Beneficiary, the request must be made at least three months before the end of the closure phase and approved by the Commission before that latter date.

TITLE III - AWARD OF CONTRACTS AND GRANTS

ARTICLE 5 – GENERAL PRINCIPLE

All contracts implementing the financing agreement must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

ARTICLE 6 - DEADLINE FOR THE SIGNATURE OF THE CONTRACTS IMPLEMENTING THE FINANCING AGREEMENT

6.1 The contracts implementing the financing agreement shall be signed by both parties within three years of the entry into force of the financing agreement, which means

within three years of the date on which the financing agreement was signed by the last party. That deadline may not be extended.

6.2 The above provision shall not apply to audit and evaluation contracts, which may be signed later, as well as to riders to contracts already signed.

6.3 At the end of the three years of the entry into force of the financing agreement, any balance for which contracts have not been signed will be cancelled.

6.4 The above provision shall not apply to any balance of the contingency reserve.

6.5 A contract which has not given rise to any payment within three years of its signature shall be automatically terminated and its funding cancelled.

ARTICLE 7 - ELIGIBILITY

7.1 Participation in invitations to tender for works, supply or service contracts and in calls for proposals shall be open on equal terms to all natural and legal persons of the Member States of the EU and, in accordance with the specific provisions in the basic acts governing the cooperation sector concerned, to all natural and legal persons of the beneficiary third countries or of any other third country expressly mentioned in those acts.

7.2 It may be decided, on the basis of the specific conditions laid down in the basic acts governing the cooperation sector concerned, to allow third-country nationals other than those referred to in paragraph 1 to tender for contracts.

7.3 Goods and supplies financed by the EU and necessary for the performance of works, supply and service contracts and procurement procedures launched by the grant beneficiaries for the execution of the action financed must originate in countries eligible to participate on the terms laid down in the previous two paragraphs, except when it is provided otherwise in the basic act.

TITLE IV - RULES APPLICABLE TO THE PERFORMANCE OF CONTRACTS

ARTICLE 8 - ESTABLISHMENT AND RIGHT OF RESIDENCE

8.1 Where justified by the nature of the contract, natural and legal persons participating in invitations to tender for works, supply or service contracts shall enjoy a provisional right of establishment and residence in the Beneficiary's country. This right shall remain valid for one month after the contract is awarded.

8.2 Contractors (including the grant beneficiaries) and natural persons whose services are required for the performance of the contract and members of their family shall enjoy similar rights during the implementation of the project/programme.

ARTICLE 9 - TAX AND CUSTOMS PROVISIONS

9.1 Save where otherwise provided in the Special Conditions, taxes, duties or other charges (including value added tax - VAT - or equivalent taxes) shall be excluded from EU financing.

9.2 The State of the Beneficiary shall apply to procurement contracts and grants financed by the EU the most favoured tax and customs arrangements applied to States or international development organisations with which it has relations.

9.3 Where the Framework Agreement or exchange of letters applicable includes more detailed provisions on this subject, they shall apply as well.

ARTICLE 10 - FOREIGN EXCHANGE ARRANGEMENTS

10.1 The State of the Beneficiary undertakes to authorise the import or purchase of the foreign currency necessary for the implementation of the project. It also undertakes to apply its national foreign exchange regulations in a non-discriminatory manner to the contractors allowed to participate referred to in Article 7 of these General Conditions.

10.2 Where the Framework Agreement or exchange of letters applicable includes more detailed provisions on this subject, they shall apply as well.

ARTICLE 11 – USE OF DATA FROM STUDIES

Where the financing agreement involves the financing of a study, the contract related to this study, signed for the implementation of the financing agreement, shall govern the ownership of that study and the right for the Beneficiary and the Commission to use data in the study, to publish it or to disclose it to third parties.

ARTICLE 12 – ALLOCATION OF AMOUNTS RECOVERED UNDER CONTRACTS

12.1 Amounts recovered from payments wrongly effected, from guarantees of pre-financing payments or from performance guarantees supplied on the basis of contracts financed under this financing agreement, shall be allocated to the project/programme.

12.2 The financial penalties imposed by the contracting authority on candidate or tenderer who is in a case of exclusion in the context of a procurement contract, the calling upon of tender guarantees, as well as the damages granted to the Commission shall be repaid to the general budget of the European Communities.

TITLE V - GENERAL AND FINAL PROVISIONS

ARTICLE 13 – VISIBILITY

13.1 Every project/programme financed by the EU shall be the subject of appropriate communication and information operations. These operations shall be defined with the approval of the Commission.

13.2 These communication and information operations must follow the rules laid down and published by the Commission for the visibility of external operations in force at the time of the operations.

ARTICLE 14 – PREVENTION OF IRREGULARITIES, FRAUD AND CORRUPTION

14.1 The Beneficiary shall take appropriate measures to prevent irregularities and fraud and, on request of the Commission, bring prosecutions to recover funds wrongly paid. The Beneficiary shall inform the Commission of any measure taken.

14.2 "Irregularity" shall mean any infringement of the financing agreement, implementing contracts or EU law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the European Communities, or by an unjustified item of expenditure.

"Fraud" shall mean any intentional act or omission concerning:

- the use or presentation of false, incorrect or incomplete, statements or documents which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by them, or on their behalf;
- non-disclosure of information in violation of a specific obligation, with the same effect;
- the misapplication of such funds for purposes other than those for which they are originally granted.

The Beneficiary shall immediately inform the Commission of any element brought to its attention which arouses suspicions of irregularities or fraud.

14.3 The Beneficiary undertakes to take every appropriate measure to remedy any practices of active or passive corruption whatsoever at any stage of the procedure for the award of contracts or grants or in the implementation of the related contracts. "Passive corruption" shall mean the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the financial interests of the European

Communities. "Active corruption" shall mean the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the financial interests of the European Communities.

ARTICLE 15 - VERIFICATIONS AND CHECKS BY THE COMMISSION, THE EUROPEAN ANTI-FRAUD OFFICE (OLAF) AND THE EUROPEAN COURT OF AUDITORS

15.1 The Beneficiary agrees to the Commission, OLAF and the European Court of Auditors conducting documentary and on-the-spot checks on the use made of EU funding under the financing agreement (including procedures for the award of contracts and grants) and carrying out a full audit, if necessary, on the basis of supporting documents of accounts and accounting documents and any other documents relating to the financing of the project/programme, throughout the duration of the agreement and for seven years after the date of the last payment.

15.2 The Beneficiary also agrees that OLAF may carry out on-the-spot checks and verifications in accordance with the procedures laid down by EU law for the protection of the financial interests of the EU against fraud and other irregularities.

15.3 To that end, the Beneficiary undertakes to grant officials of the Commission, OLAF and the European Court of Auditors and their authorised agents access to sites and premises at which operations financed under the financing agreement are carried out, including their computer systems, and to any documents and computerised data concerning the technical and financial management of those operations, and to take every appropriate measure to facilitate their work. Access by authorised agents of the Commission, OLAF and the European Court of Auditors shall be granted on conditions of strict confidentiality with regard to third parties, without prejudice to public law obligations to which they are subject. Documents must be accessible and filed in a manner permitting easy inspection, the Beneficiary being bound to inform the Commission, OLAF or the European Court of Auditors of the exact location at which they are kept.

15.4 The checks and audits described above shall also apply to contractors and subcontractors who have received EU funding.

15.5 The Beneficiary shall be notified of on-the-spot missions by agents appointed by the Commission, OLAF or the European Court of Auditors.

ARTICLE 16 – CONSULTATION BETWEEN THE COMMISSION AND THE BENEFICIARY

16.1 The Beneficiary and the Commission shall consult each other before taking any dispute relating to the implementation or interpretation of this financing agreement further.

16.2 The consultation may lead to the amendment, suspension or termination of the financing agreement.

ARTICLE 17 – AMENDMENT OF THE FINANCING AGREEMENT

17.1 Any amendment to the Special Conditions and Annex II to the financing agreement shall be made in writing and be the subject of an addendum.

17.2 If the request for an amendment comes from the Beneficiary, the latter shall submit that request to the Commission at least three months before the amendment is intended to enter into force, except in cases which are duly substantiated by the Beneficiary and accepted by the Commission.

17.3 The specific cases of the extension of the operational implementation phase or closure phase are governed by Article 4 (4) and (5) of these General Conditions.

ARTICLE 18 – SUSPENSION OF THE FINANCING AGREEMENT

18.1 The financing agreement may be suspended in the following cases:

- The Commission may suspend the implementation of the financing agreement if the Beneficiary breaches an obligation under the financing agreement.
- The Commission may suspend the financing agreement if the Beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.
- The financing agreement may be suspended in cases of force majeure, as defined below. "Force majeure" shall mean any unforeseeable and exceptional situation or event beyond the partie's control which prevents either of them from fulfilling any of their obligations, not attributable to error or negligence on their part (or the part of their contractors, agents or employees) and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial difficulties cannot be invoked as force majeure. A party shall not be held in breach of its obligations if it is prevented from fulfilling them by force majeure. A party faced with force majeure shall inform the other party without delay, stating the nature, probable duration and foreseeable effects of the problem, and take any measure to minimise possible damage.

18.2 No prior notice shall be given of the suspension decision.

18.3 When the suspension is notified, the consequences on the ongoing contracts or contracts to be signed will be indicated.

ARTICLE 19 – TERMINATION OF THE FINANCING AGREEMENT

19.1 If the issues which led to the suspension of the financing agreement have not been resolved within a maximum period of four months, either party may terminate the financing agreement at two months' notice.

19.2 Where a financing agreement has not given rise to any payment within three years of its signature or no implementing contract has been signed within this period, that financing agreement will automatically be terminated.

19.3 When the termination is notified, the consequences on the ongoing contracts or contracts to be signed will be indicated.

ARTICLE 20 - DISPUTE-SETTLEMENT ARRANGEMENTS

20.1 Any dispute concerning the financing agreement which cannot be settled within a six-month period by the consultations between the parties provided for in Article 16 of these General Conditions may be settled by arbitration at one of the parties' request.

20.2 In this case the parties shall each designate an arbitrator within 30 days of the request for arbitration. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration (The Hague) to designate a second arbitrator. The two arbitrators shall in their turn designate a third arbitrator within 30 days. Failing that, either party may ask the Secretary-General of the Permanent Court of Arbitration to designate the third arbitrator.

20.3 Unless the arbitrators decide otherwise, the procedure laid down in the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States shall apply. The arbitrators' decisions shall be taken by a majority within a period of three months.

20.4 Each party shall be bound to take the measures necessary for the application of the arbitrators' decision.

ANNEX II TO FINANCING AGREEMENT N° DCI-ASIE/2010/21624

TECHNICAL AND ADMINISTRATIVE PROVISIONS

BENEFICIARY COUNTRY / REGION	Vietnam		
REQUESTING AUTHORITY	Government of Vietnam		
BUDGET HEADING	19.100101		
TITLE	Raising the living standards of ethnic minorities in Vietnam		
TOTAL COST	12 million euro		
Aid method / management mode	Sector budget support (centralised management)		
DAC-CODE	16050	***SECTOR***	Multi-sector aid for basic social services

1. INTERVENTION

1.1. Objectives

General objectives:

The general objective is to contribute to poverty reduction in the communes facing extreme hardship in ethnic minority and mountainous areas of Vietnam in order to narrow the gap among regions and ethnic groups. This support would also be an entry point to a wider, emerging agenda for systemic change in the way targeted poverty reduction programmes are conceived and implemented.

Specific objectives:

The purpose (specific objective) of the EU's sector budget support is to support the Government in achieving quality improvements to p-135-2 in four areas (i) poverty targeting, (ii) decentralization, participation and empowerment, (iii) fiduciary transparency and accountability, and (iv) monitoring and evaluation.

1.2. Expected results and main activities

Expected results:

The programme's expected results are: (i) public investment resources better targeted and more effectively delivered to contribute to increasing the level, security and sustainability of livelihoods of ethnic minority households living in remaining deep pockets of poverty in remote, upland areas of Vietnam; (ii) higher quality and more cost-effective support services and basic infrastructure used by poor, ethnic minority households in remote locations to access markets, wage-earning opportunities, education and health services, and sources of public information; (iii) greater responsiveness of local authorities to citizens' and communities demands for more effective service provision; and (iv) a reduction in corruption risks in government programmes through enhanced public participation and oversight of public financial management and procurement.

Activities:

The main activities will be to provide budget support and to engage in regular policy dialogue on policies and institutional actions necessary to improve the results of the P135-2.

2. IMPLEMENTATION

2.1 Implementation method and procurement and payment clauses

The implementation method is centralised management (sector budget support).

The Ministry of Finance will confirm that the relevant account has been credited and provide documentary evidence of the transfer, including the exchange rate used.

2.2 Budget and calendar

2.2.1 Budget

The total budget of the action is of EUR 12 million, to be disbursed in principle in the second half of 2010. The beneficiary will treat this as an additional resource for programme 135.

Indicative total amount of the programme *	EU contribution (budget support)	Other donors (grants)	Government funding (including IDA loans)
~ EUR 612 million	EUR 12 million	~ EUR 87 million	~ EUR 513 million

* Based on information available at the time of preparing the FA

2.2.2 Calendar

EU support to the programme will cover only the year 2010, the final year of implementation of P135-2, and will consist of one fixed instalment of EUR 12 million.

The operational duration of this action will be of 18 months from the date of signature of the Financing Agreement.

2.3 Performance monitoring and criteria for disbursement

2.3.1. Description of performance monitoring arrangements:

Performance monitoring is undertaken jointly by the Government and development partners as laid down in the MoU of 6 July 2007 between the Government and the development partners. By signing this Financing Agreement, GoV and the European Commission agree that the European Commission becomes a member of the Partnership Committee established under that MOU, will participate in Joint Progress Reviews and all activities of the Partnership, including the possibility to serve as co-chair.

The Partnership Committee is chaired by the Government, represented by the Committee for Ethnic Minorities, with donors rotating the co-chairmanship role. The Partnership serves as a common forum for donors' coordination in support of P135-2, and for regular dialogue between the government and donors over implementation and review of P135-2 to ensure that reporting, supervision and policy dialogue are streamlined and standardized, and provide the basis for a consensus based approach to assessment of progress and required changes.

Specific targets of the programme are established. The Policy Matrix or Results Framework, agreed between the Government and development partners, will inform the policy dialogue between the Government and development partners, will be used as a basis for judging Government performance against the agreed criteria and indicators, and will be updated in the light of semi-annual P135-2 progress reports and other programme reviews.

2.3.2. Criteria for disbursement:

a- General criteria for disbursement:

The general criteria for disbursement are based on the three eligibility criteria for budget support as set below:

- Vietnam's stability oriented macro-economic policy is maintained and the medium-term prospects do not put at risk the sector objectives.

- Vietnam's reform plans for public finance management are sufficiently credible and relevant and are implemented satisfactorily.
- A clearly defined policy for P-135 is in place and implemented satisfactorily.

b- Specific criteria for disbursement:

There will be two specific disbursement criteria:

- Satisfactory progress on implementation of the Results Framework agreed jointly between the GoV and the donor partnership group and attached to the MoU, and reproduced in Appendix 1. Analysis of the chosen performance indicators in Appendix 1 tells us that they are of adequate quality to justify their use for the disbursement of budget support.

- Disbursement shows progress, demonstrated by a cumulative disbursement (January 2006 to end of June 2010) of at least 8600 billion VND.

The chosen performance targets and indicators specified in Appendix 1 will apply for the duration of the programme. However, in duly justified circumstances, the Government of Vietnam may submit a request to the European Commission for the targets and indicators to be changed. The changes agreed to the targets and indicators may be authorised by exchange of letters between the two parties.

3. MONITORING, EVALUATION AND AUDIT

A Joint Mid-Term Review was conducted from 5 to 25 November 2008 and the MoU foresees a final evaluation at the end of 2010, whose TORs should be discussed by the partnership group in the course of 2010. P135-2 was the first Government programme having a baseline survey conducted (in 2007) which will enhance the value of the final evaluation.

The P135-2 programme has an audit plan for the whole period of implementation (2006–2010), with an audit conducted annually by the State Audit of Vietnam (SAV). A copy of the audit reports will be provided to the EU Delegation when available for distribution.

4. COMMUNICATION AND VISIBILITY

In accordance with the provisions mentioned in the Communication and Visibility Manual for EU External Actions, steps will be taken to ensure visibility of the EU support. A signing ceremony followed by a press conference will take place at the time of the signature of the Financing Agreement.

CEM will make known as much as possible the support provided by development Partners whenever public events are organised and in particular on its website.

APPENDICES

1 - Performance criteria and indicators used for disbursement
2 - Disbursement arrangements and timetable

Appendix 1: Performance criteria and indicators used for disbursements

As for this programme there will be only one instalment, the criteria for this disbursement will be a combination of general and specific (related to performance) criteria.

Consistent with the Hanoi Core Statement on Aid Effectiveness, the national version of the Paris Declaration, the Government of Vietnam and donor community have agreed on a Results Framework that is attached to the MoU. The criteria and indicators to be used for performance monitoring by the Government, as well as during the Joint Government - Development Partners Programme Reviews, will inform the policy dialogue between Government and Development Partners. The latter have agreed to make their bilateral agreements consistent with the Results Framework and base their budget support disbursements on their own assessment of the Government's performance. By adopting the existing results framework, the Commission also accepts to use it in the same way it is used by other donors, namely that the individual policy actions are not binding for disbursement, in the sense that failure to achieve one particular action does not mean that the funds cannot be disbursed. The results are looked at globally, and specific benchmarks can be reformulated with the agreement of CEM and all donors if they appear unclear or not feasible in the way they were written.

The second specific criterion relates to disbursement[1]. Disbursement has been slow in the beginning of the implementation of P-135, but has picked up later on. The criterion reflects the resolve of CEM to maintain the momentum.

Years	*2006*	*2007*	*2008*	*2009*	*2010*
Cumulative disbursement achieved (in billion dongs)	*948*	*2743*	*5225*	*7982.5*	
Target for end June 2010					*8600*

[1] The figure used for disbursement is the figure published by the treasury for processed or advance payments, but not necessarily acquitted or liquidated yet.

Policy Matrix / Results Framework

Objectives	Lead agency	Prior Actions (DPC1)	Current status of PA	Indicative Future Triggers				Indicators
				2007	2008(DPC2)	2009	2010 (DPC3)	
Policy Area I: Poverty Targeting								
I.A. Commune, Village and Household Selection								
Commune, village and household selection criteria under P135-II are pro-poor and effectively applied	CEM	Decision 393/2005/QĐ-UBDT incorporated revised, verifiable, poverty-based criteria for selection of communes and villages included in P135-II	Completed	Decision issued on list of communes to graduate from P135-II in 2008	Actual P135-II commune, village and household selection reviewed at MTR and commitment made to revise selection criteria in light of evidence	Publicize the list of beneficiaries of the Programme at the commune office and village office	Efficacy of actual poverty-targeting in commune, village and household selection evaluated at the end of P135-II	Selection criteria verified ex-post using small-area estimation techniques to generate poverty maps based on data from VHLSS 2004 and 2006 Agricultural Census
I.B. Program Resource Allocation								
Program resource allocation favors poorer participating communes and villages	CEM (PPC)	Inter-ministerial circular 676/2006 requires that provinces allocate resources to participating communes and villages on a 'non-egalitarian', pro-poor basis	Completed	Provinces use explicit and objectively-verifiable criteria including poverty measures for allocating resources to participating communes & villages	Actual allocation of P135-2 resources from provinces to participating communes and villages reviewed at MTR, and commitment made to revise allocation criteria in light of evidence	Study and develop tools to supervise the annual expenditure of the communes and enhance supervision skills of expenditure and propoor budget allocation in the provinces that receive Technical Assistance	Annual reporting/ tracking of programme expenditure piloted and assessed to propose for the next phase of the programme	Resource allocation verified ex-post using disaggregated actual program expenditure data in comparison with poverty maps or other reliable sources of poverty data
I.C. Enhancing Sustainability of Program Investment								
Program infrastructure outputs are well maintained	MOF (CEM) with TA support		Completted	O&M groups with recognized legal status formed in participating communes and villages, and clear plan with monitorable actions formulated on measures to build their capacity. Assessment of O&M quality and adequacy of O&M funding from different sources as input to MTR	**6.3% of the Infrastructure component budget was allocated as recurrent resource** MOF/STV 's Official Instruction for Management and Payment of P135-2 Fund, including for O&M spending, is issued.	The use of additional financial resources allocated from central state budget (central, provincial and district levels) for regular O & M of basic infrastructure works in the P135-II communes is reported O&M group is established by the Commune People's Committee (with specific regulation on the functions, responsibilities and activities). 50% of districts and communes have O & M plan for the list of infrastructure works and carry out O & M as planned with the participation of the self-management group or community supervision board.	EOP Evaluation assesses adequacy of O&M budget allocation, organization for use at commune level and quality of expenditure. _70% of districts an communes have O & M plan for the list of infrastructure works and carry out O &M as planned with the participation of the self-management group or community supervision board.	Actual spending on periodic maintenance at provincial and district levels; technical audits of infrastructure O&M carried out at MTR and EOP
I.D. Pro-Poor Orientation of Production/ Livelihoods Support								
Poor upland households increase incomes and diversify livelihoods in a sustainable,	MARD	Circular issued on strategy for providing support services in upland communes based on farmer demand and market orientation	Completed		Guidelines issued by CEM/MARD to support inter-circular 01 production support	• Assess the compliance of the production support with Circular 01 and assess necessary measures to improve the implementation of this Component.	End of Progamme evaluation assesses the participation of women (30 %) in production support activities, and lessons in market-oriented production	MIS data, citizen report-card surveys and other PM&E results including reports of horizontal learning events

Objectives	Lead agency	Prior Actions (DPC1)	Current status of PA	Indicative Future Triggers				Indicators
				2007	2008(DPC2)	2009	2010 (DPC3)	
market-responsive manner					approach and incorporating (i) unification of budget lines; (ii) target of minimum 30% women's participation,[(iii) enhanced transparency measures for selection of recipients; (iv) activities, and guidance on beneficiary cost sharing}.	• Assess the participation of women (30 %) in production support activities,	support activities be learnt to incorporate in the design of the next programme	
Policy Area II: Decentralization, Participation and Empowerment								
II.A. II.A Informed Public Participation in Program Planning and Management								
Socially inclusive, active and informed participation in program planning, implementation and monitoring achieved, and NTPs and other forms of public action at commune level effectively coordinated	CEM with TA support	Communication Strategy adopted to guide the planning, implementation of communication activities under P135-II of CEM and other P135-II implementation agenies at the province, district and commune levels	Completed	Specific indicators developed to measure progress in practice; user-friendly outreach materials are regularly disseminated in ethnic minority languages and audio-visual formats; and informed participation takes place in program planning and implementation at grassroots level	MTR determines progress towards improved vertical and horizontal communication goals	• Develop communication materials in the most five popular ethnic minorities languages • Indicators related to participation of the people are included in the progress reports to serve the joint reviews • Citizen report cards are used to provide information/ inputs for the annual review of the programme in 50 % of communes that receive technical assistance from projects. • Issue Manual on participatory planning by the commune (inculdingplan for O & M with the participation of the people with 30 % are women)	• Participatory planning is conducted annually with 30 % of participants are women • End of Programme Evaluation assess the use of number of participation methods in the planning process. • At least 70% of provinces have communication materials in ethnic minorities languages based on the typical characteristics of the localities	MIS data, citizen report-card surveys and other PM&E results including reports of horizontal learning events
II.B. Devolution of Investment Ownership								
All P135-2 communes act as	CEM (PPC) with TA	Guidance on transparent criteria drafted and circulated to relevant ministries, agencies	Completed	All P135-2 communes with prior experience in	60% of P135-2	• At least 80% of P135-2	• 100% of P135-2 communes are	MIS data, citizen report-card surveys and other

Objectives	Lead agency	Prior Actions (DPC1)	Current status of PA	Indicative Future Triggers				Indicators
				2007	2008(DPC2)	2009	2010 (DPC3)	
investment owners for a significant share of all infrastructure investments; and communities apply acquired skills in activities beyond P135-2 alone	support	and provinces to be used to determine commune readiness to assume investment ownership responsibility		investment management under State or ODA-supported projects [estimated 35% of total] are granted investment ownership responsibility in 2007; adoption by PPC of necessary legal framework covering administrative and financial procedures to ensure commune-level investment ownership	communes investment owners in 2008	communes are investment owners for a share of or total of programme investment values (which breakown for the Production component and Infrastructure) • Develop support and capacity building mechanism for technical taskforce from Province and District level to support commune to act as investment owner in the provinces that receive Technical Assistance of donors. •	investment owners for a share of or total of programme investment values (which break down for the Production component and the Infrastructure component) • EOP evaluation assesses the weaknesses/ shortcomings of the procedures/ process and mechanism to encourage commune investment ownership.	PM&E results including reports of horizontal learning events
II.C. Local Institutional Capacity-Building Support								
Communities apply learned behaviors in grassroots democracy (e.g. supervision of investment) in activities beyond the scope of P135-2	CEM with TA support	>7% total program cost allocated for capacity-building of all kinds at central, provincial, district and local levels	Completed	Institutional capacity-building plan adopted, tailored according to assessed levels of initial capacity, and initiated both at commune/village and higher levels in order to provide enabling environment for exercise of investment ownership and grassroots democracy	>60% of program communes and villages supported in preparation of participatory multi-year investment plans, coordinating investments from various sources; widespread evidence of community supervision of infrastructure investments in line with Decision 80	>90% of program communes and villages supported in preparation of participatory multi-year investment plans, coordinating investments from various sources; widespread evidence of community supervision of infrastructure investments in line with Decision 80	PM&E findings suggest widespread use of learned behaviors beyond P135-2 alone (in cooperation with TA)	Citizen report-card surveys and other PM&E results including reports of horizontal learning events
Policy Area III: Fiduciary Transparency and Accountability								
III.A. Procurement for Small-Scale Infrastructure								
Improved cost-effectiveness and quality of, and citizen satisfaction with, built infrastructure	MPI (CEM) with TA support		n/a	Supplementary regulation issued amending procurement requirements under P135-2 so as to: (i) require open competitive bidding to be the principal method for civil works under P135-2; (ii) provide guidance on Community Contracting; (iii) limit the use of Direct Contracting method to exceptional circumstances (which shall be clearly specified); and (iv) remove the value-based thresholds for use of Direct Contracting	Manual on Procurement in accordance with Inter-Circular 01 issued consisting content of transparency and publishment at the commune and village	• **≥ 50% of contracts under P135-2 awarded through open and competitive bidding, community contracting and/or other non-Direct Contracting methods, following the issued Manual on Procurement , and verified by SAV's performance audit reports** • Develop detailed process of community participation contract and provide guidance for implementation by the P135-II communes and	*≥ 80% of contracts under P135-2 awarded through open and competitive bidding and/or other non-Direct Contracting methods, and verified by SAV's performance audit reports.* *100% of program communes and villages follow community contracting for 100% of commune/village-level works*	EOP evaluation report including collated MIS and expenditure data, independent audit findings, findings of citizen report-card survey; interim assessments of results from provinces using and not using competitive procurement methods; SAV's performance audits

Objectives	Lead agency	Prior Actions (DPC I)	Current status of PA	Indicative Future Triggers				Indicators
				2007	2008(DPC2)	2009	2010 (DPC3)	
				in Sub-Clause 2.8.1(a) of Inter- Circular 676/2006 and revised Inter-Circular 01/2008		villages in the provinces that receives Technical Assistance of the donors		
III.B. Public Financial Management								
Transparency and efficiency in public resource use achieved	MOF, CEM	MOF Circular No. 2849 issued, governing public financial management for P135-2, and giving instructions: (i) for STV to prepare fund-flow maps down to investment owner level, quarterly financial reports and reconciliation of expenditures under P135-2 between spending units & STV; and (ii) public disclosure via MoF website of six-monthly reports on P135-2 resource allocation, transfer and spending down to provincial level)	Completed	(i) Quarterly financial reports and reconciliation of expenditures between spending agencies and State Treasury (STV) produced program-wide; (ii) Quarterly fund-flow maps down to investment-owner level prepared; (iii) Six-monthly reports on allocation, transfer and usage of P135 funds to provincial level publicly disclosed via MoF website	(i) Quarterly financial reports and reconciliation of expenditures between spending agencies and State Treasury (STV) produced program-wide; (ii) Quarterly fund-flow maps down to investment-owner level prepared; (iii) Six-monthly reports on allocation, transfer and usage of P135 funds to provincial level publicly disclosed via MoF website	[Implementation of agreed actions (i)-(iii) continued and monitored]	[Implementation of agreed actions (i)-(iii) continued and monitored]	(i) More reliable and timely information on provincial and commune financial reporting and fund-flow maps; (ii) Budget document published for P135-2
III.B. Public Financial Management								
Ensure adequate oversight over public funds through independent audits	SAV	Multi-year audit plan for Program 135-2 issued and shared with donors that provides for: (i) scope of annual audits, acceptable to donors, with a view to increasing the number of sample provinces by >20% each year; (ii) annual P135-2 audit reports submitted within 6 months of each year-end starting with 2007; (iii) indicative participation of private auditors (subject to donors' acceptance and funding)	Completed	(i) Annual audit plan acceptable to donors prepared by the start of the financial year; (ii) Annual audit conducted with sample coverage of > 8 provinces; (iii) FY2006 Audit Report issued by June 30, 2007; (iv) Implementation of prior year's audit recommendations reviewed; (iv) Audit reports publicly disclosed through the media and SAV website as regulated by the Law of state audit	(i) Annual audit plan acceptable to donors prepared by the start of the financial year; (ii) Annual audit conducted with sample coverage of >10 provinces; (iii) FY2007 Audit Report issued by June 30, 2008; (iv) **Implementation of prior year's audit recommendations reviewed (including indication of fund reimbursed);** (v) Audit reports publicly disclosed through the media and website	• (i) Annual audit plan acceptable to donors prepared by the start of year; (ii) Annual audit conducted with sample coverage of >14 provinces; (iii) FY2008 Audit Report issued by June 30, 2009; (iv) Implementation of prior year's audit recommendations reviewed; (iv) Audit reports publicly disclosed through the media and website as regulated by the Law on state audit • A short summary of solutions that the provinces and central agencies will apply to implement the recommendation by the 2008 audit will be provided for the joint reviews • Lessons in implementation the recommendations by the audits are recorded through the Technical Assistance Projects by donors.	• (i) Annual audit plan acceptable to donors prepared by the start of the financial year; (ii) Annual audit conducted with sample coverage of >18 provinces; (iii) FY2009 Audit Report issued by June 30, 2010; (iv) Implementation of prior years' audit recommendations reviewed; (v) Audit reports publicly disclosed through the media and website as regulated by the Law on state audit • A short summary of solutions that the provinces and central agencies will apply to implement the recommendation by the 2009 audit will be provided for the joint reviews	• (i) Multi-year audit plan produced and updated annually; (ii) Annual audit plans produced; (iii) Audits conducted with adequate and expanding audit coverage; (v) audit reports publicly disclosed through the media and on the SAV website

Objectives	Lead agency	Prior Actions (DPC1)	Current status of PA	Indicative Future Triggers				Indicators
				2007	2008(DPC2)	2009	2010 (DPC3)	
III.C. Community Contributions								
Những đóng góp Local contributions are equitable; wage-earning opportunities in public works fully exploited for generation of local multiplier effects, especially for the poorest households	CEM (MOF)	Inter-ministerial circular 676/2006 stipulates that local contributions are affordable, poorest households are exempted, and mechanisms are developed to promote paid local labor in civil works, with priority given to poor households in wage-earning opportunities	Completed	>50% of infrastructure investments include local paid labor; value of unpaid labor contributions captured in MIS and commune accounts		Develop rules and guidelines for the local paid labor and contribution by the villagers captured in MIS and commune accounts	EOP evaluation reports on extent of paid labor created and value of unpaid labor contributions, and reports evidence of pro-poor rules applied in either case	MIS data, citizen report-card surveys
Policy Area IV: Monitoring and Evaluation								
IV.A. Impact Evaluation								
Evaluation of program outcomes performed to high methodological standard including use of appropriate comparator data	CEM, GSO with TA support	Outcome indicators and overall M&E framework agreed and adopted; baseline survey designed including matched control group	Completed	Baseline survey completed including matched control group	Mid-term review of P135-2 includes mid-term impact evaluation against baseline and national goals ***with use of multiple quantitative and qualitative, independent assessments shared with stakeholders to inform mid-term review of P135-2, including baseline survey, provincial reports, SAV audits, National Assembly and development partners field reviews and participatory workshops...***	Term of Reference and budget estimation for end of programme survey finalized and sent to donors for comments	EOP evaluation of P135-2 includes final impact evaluation against baseline and national goals	Baseline, MTR and EOP surveys draw to the extent possible on existing data sources such as VHLSS, agricultural census (2006), and other GSO data as appropriate
IV.B. Process Monitoring								
Effective and reliable MIS is used to track progress towards agreed outcomes and identify/resolve program management issues	CEM (MPI) with TA support	Action Plan adopted to adapt Government's ODA portfolio monitoring tool to create an MIS for tracking and reporting on P135-2 inputs, outputs, and intermediate outcomes	Completed	MIS in place, used to track and report on inputs, outputs, and intermediate outcomes; participatory M&E approaches designed and mechanisms for cross-learning between participating localities introduce	• Citizen report-card survey and regional 'lessons-learned assessments' conducted to support program mid-term review • First reports consolidated from AMT/PMT is published to donors	*Participatory M&E approaches and cross- learning mechanisms are institutionalized* MIS in place and used to search and report on the inputs, outputs and short term results. Participatory M &E approach developed and cross-learning mechanism among localities of the P135 is issued.	Citizen report-card survey conducted to support end of program evaluation; MIS data collated as appropriate as input to EOP evaluation	MIS data, citizen report-card surveys, other PM&E outputs

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Appendix 2: Disbursement arrangements and timetable

1. Responsibilities

On the basis of the disbursement conditions stipulated in the Financing Agreement, Ministry of Finance will send a formal request to the European Commission for the disbursement of each instalment in accordance with the timetable specified in the table below. The request must include: (i) a full analysis and justification for payment of the funds, with the required supporting documents attached; (ii) a financial information form, duly signed, to facilitate the corresponding payment.

2. Indicative disbursement timetable

Disbursement of the funds by the EU shall normally occur by the end of 2010.

3. General conditions for disbursement

The general criteria for disbursement are based on the three eligibility criteria for budget support as set below:

- Vietnam's stability oriented macro-economic policy is maintained and the medium-term prospects do not put at risk the sector objectives.
- Vietnam's reform plans for public finance management are sufficiently credible and relevant and are implemented satisfactorily.
- A clearly defined policy for P-135 is in place and implemented satisfactorily.

4. Specific conditions for instalment release

The specific conditions for instalment release apply to the only instalment in addition to General Conditions.

As discussed with the GoV (Ministry of Finance and CEM), jointly with Finland who will follow a similar approach for its additional contribution 2010, there will be two additional specific disbursement criteria:

a- Satisfactory progress on implementation of the Results Framework agreed jointly between the GoV and the donor partnership group and attached to the MoU, and reproduced in Appendix 1. Analysis of the chosen performance indicators in Appendix 1 tells us that they are of adequate quality to justify their use for the disbursement of budget support.

b- Disbursement shows progress, demonstrated by a cumulative disbursement (January 2006 to June 2010) of at least 8600 billion VND.

The two criteria that need to be met prior to disbursement shall be assessed as follows:

The assessment on whether the progress has been satisfactory (criterion 1) will be made by the Commission based on the results of a Joint Progress Review of 2010 (review to be conducted in the second half of 2010).

The assessment of the fulfilment of criterion 2 will be based on the disbursements figures published on the website of the Vietnamese State Treasury.

Specific conditions for instalment release

Instalment	Amount	Indicative disbursement request date (Quarter/Year)	Indicative disbursement date (Quarter/Year)	Condition/Criteria/Activity for disbursement	Source of verification
Fixed instalment	€ 12 million	Quarter IV/2010	Quarter IV/2010	Conditions as set out in Section 4 above	Assessment of fulfilment of criterion 1: Joint Progress Review of 2010 (to be conducted in the 2nd half of 2010). The assessment of the fulfilment of criterion 2: disbursements figures published on the website of the Vietnamese State Treasury.