

**COMMISSION DECISION
PH(2005) 1208 OF 01/08/2005**

Establishing a *Phare Cross Border Co-operation Programme (Neighbourhood Programme)* between *the Republic of Bulgaria and the Former Yugoslav Republic of Macedonia* in 2005,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of central and eastern Europe¹, and in particular Article 8 thereof,

Whereas:

(1) Regulation No 3906/89 lays down the rules and conditions for the granting of economic aid to certain countries of Central and Eastern Europe,

(2) The Commission has adopted Regulation No 2760/98 of 18 December 1998, concerning the implementation of a programme for cross-border co-operation in the framework of the Phare programme²,

(3) The measures provided for by this Decision are in accordance with the opinion of the Committee on Aid for Economic Restructuring in certain countries of Central and Eastern Europe,

HAS DECIDED AS FOLLOWS:

Article 1

The programme described in the Annex to the present decision is hereby adopted. It shall be implemented by means of Financing Agreements to be concluded between the Commission and the Government of each of the Partner Countries in conformity with the Framework Agreements concluded between the same parties.

Article 2

The maximum amount of Community assistance shall be **€3 million** to be financed through Budget line **22.02.02** in 2005.

¹ OJ L 375, 23.12.1989, p. 11. Regulation as last amended by Council Regulation (EC) N° 2257/2004 of 20.12.2004 amending Regulations (EEC) n° 3906/89, (EC) n° 1267/1999, (EC) n° 1268/1999 and (EC) n° 2666/2000, to take into account Croatia's candidate status (OJ L 389, 30.12.2004, p 1)

2 OJ L 345, 19.12.1998, p 49. Regulation as last amended by Council Regulation (EC) N° 1822/2003 of 16.10.2003 (OJ L267, 17.10.2003, p. 9)

FINANCING PROPOSAL

1. IDENTIFICATION

Beneficiary	The Republic of Bulgaria
Programme	Cross Border Co-operation Programme/Neighbourhood Programme between the Republic of Bulgaria and the former Yugoslav Republic of Macedonia
CRIS number	2005/017-456
Year	2005
Cost	3 Million €
Implementing Authority	Ministry of Regional Development and Public Works of the Republic of Bulgaria
Expiry Date:	<u>Contracting</u> : November 30, 2007 ³
	<u>Execution of contracts</u> : November 30, 2008 ⁴
Sector Code	Employment, social policy and education 16110 Environment – 41010, Joint Small Project Funds – 15050
Budget line	22.02.02
Programming Task Manager	François BEGEOT
Implementation Task Manager	Ruud VAN ENK

2. SUMMARY

The 2005 Cross-Border Co-operation Programme with the former Yugoslav Republic of Macedonia will finance grant scheme actions for **sustainable development** and **people-to-people actions**, in compliance with the multi annual perspective further detailed in the Joint Programming

³ The expiry date for contracting is 30 November 2007. In exceptional cases, an extension may be granted, subject to the agreement of the Authorising Officer, but in no event for more than 3 years after the date of the global commitment (Article 166 (2) FR)..

⁴ Budgetary commitments which have not given rise to payments during three years counted from the date of the legal commitment will be decommitted (Art. 77 (3) FR)

Document approved on 13 July 2004 by the Joint Co-operation Committee. The proposed projects have been approved at the Joint Co-operation Committee meeting in Skopje on June 2005.

The 2005 programme actions are as follows:

Sustainable spatial development of the cross-border region & Promotion of cross border cooperation between public institutions and businesses

2005/017-456.01: Sustainable development Grant scheme **€2.43 million**

People to people

2005/017-456.02: People to people actions **€0.45 million**

Technical Assistance

2005/017-456.03: Technical Assistance **€0.12 million**

TOTAL:	€3.0 million
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The Implementing Agency is the Ministry of Regional Development and Public Works.

The expiry date for contracting is **30 November 2007**.

3. STRATEGY

In the context of the "Wider Europe – Neighbourhood" policy, the Commission issued on the 1st of July 2003 the Communication "Paving the way for a New Neighbourhood Instrument" (COM [2003] 393), which introduced the concept of Neighbourhood Programmes to be applied in 2004-06 in order to "pave the way" for the post-2006 integrated cross-border co-operation instruments to be implemented at the EU external borders. In 2004-06 the Neighbourhood programmes shall aim at improving co-ordination between the various financing instruments concerned (here: Phare CBC and CARDS) within the existing legislative and financial framework.

The broad objectives of the Neighbourhood programmes are the following:

- Promoting sustainable economic and social development in the border areas;
- Working together to address common challenges, in fields such as environment, public health, and the prevention of and fight against organised crime;
- Ensuring efficient and secure borders;
- Promoting local, 'people-to-people' type of actions.

The Neighbourhood Programme between Bulgaria and the former Yugoslav Republic of Macedonia will include funds from Phare CBC and Cards⁵. The Neighbourhood programme will operate under a joint management structure where the two neighbouring countries will have an equal role. Neighbourhood Programmes are based on a multi annual Joint Programming Documents, and are implemented through a joint annual programming exercise, allowing for single calls for proposals covering either side of the border, and a joint selection of projects to be financed.

The partner countries prepared the 2004-06 Joint Programming Document (JPD), which was approved by the Joint Co-operation Committee in July 2004.

⁵ This Financing Proposal covers only Phare CBC funds.

The global objective of the JPD is to foster economic, social, cultural and ecological sustainability in the border area, thus ensuring integration into the wider European co-operation. JPD's strategy aims at contributing to the balanced and sustainable development of the border region through the intensification of exchanges over the border and the improvement of the economic prospects, of the environmental conditions and of the living standards of its inhabitants. The Stabilisation and Association Process policy should be taken into account especially within its regional dimension as regards of the integrated border management that encompasses trade facilitation, cross border cooperation and border security, all items that seems relevant to the present project.

Because of the peculiar features and of the history of the region, local economies need to be strengthened in order to avoid isolation, prevent and reduce unemployment and stop depopulation.

The aim is to make the border region more accessible, thus contributing to give a new impulse to the economy of the area.

Besides strengthening social and cultural ties and improving the quality of life of the local population by providing a higher range and standard of services to the local community and to visitors, upgrading public utilities and infrastructure can favour the establishment of closer business relations and the expansion of commerce and, likely, help attract investments to the region.

The programme will also endeavour to make the most of the rich cultural and historical heritage of the border region.

The intensification of cultural exchanges can also contribute to improved relations between local communities across the border. Finally, building-up capacities within local institutions and organizations will help improve the quality of services provided and contribute to the international integration of the region.

The effort will be to improve the administrative capacity of local/regional actors by directly involving them in cross-border cooperation. The aim is to enhance the capabilities of local and regional public administrations and other non-profit oriented components of the democratic society (such as chambers of commerce, industry and agriculture, trade associations, trade unions, NGOs, schools and universities, etc.) from the border region to identify and develop joint small-scale “people-to-people” activities with a cross-border impact.

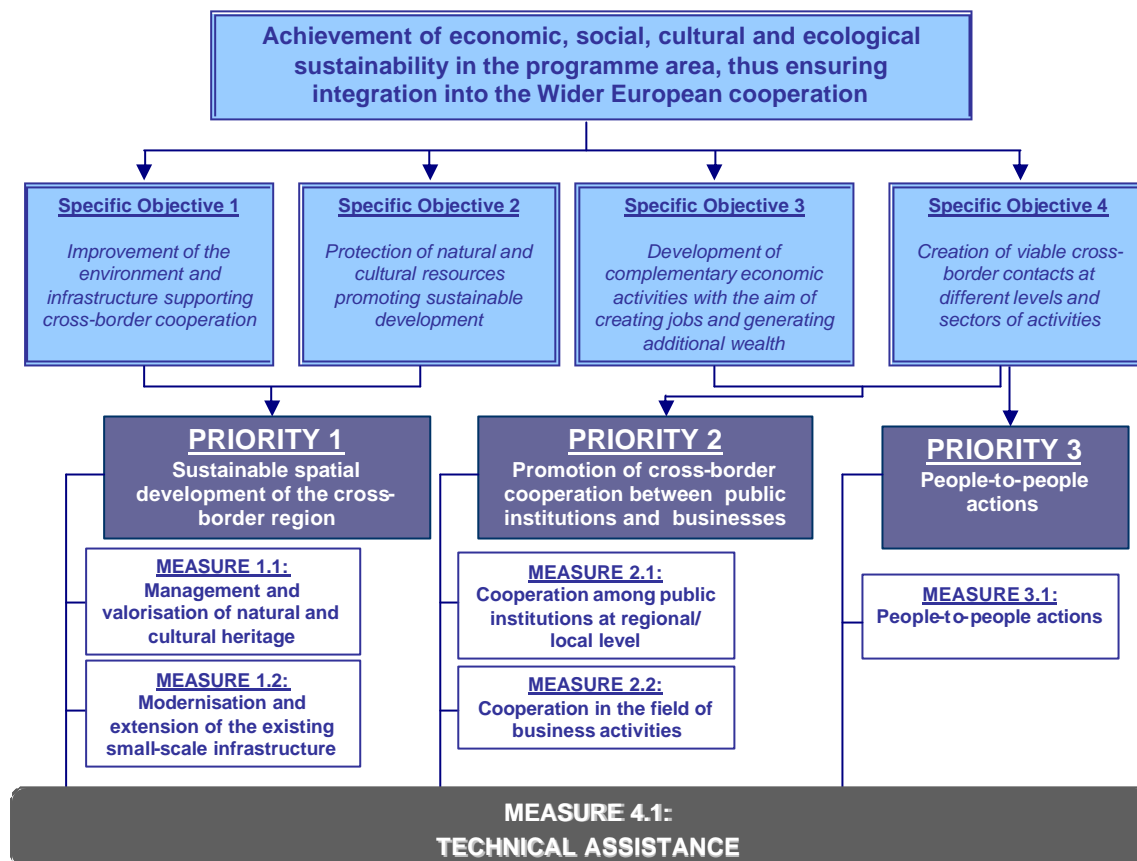
Protection of the environment is crucial for the sustainable economic development of the border region. The rich and varied natural heritage is needed to be preserved and protected from human interventions, such as the uncontrolled felling of woods or the consequences of ill-planned industrialisation or heavy traffic, as well as from natural calamities. At the same time, this is a wealth from the economic, social and cultural points of view, the potential of which is not fully exploited.

Co-operation through joint cross-border actions between regional and local authorities, communities and other organisations and associations across the border will be more effective than unilateral initiatives to attain these goals.

The strategy is oriented towards overcoming the risk of isolation and that of the region becoming peripheral and towards encouraging sustainable economic development while protecting the environment and improving the standard of living of the local population.

Taking into consideration the above-mentioned factors, the programme focuses on few strategic priorities to be implemented through a limited number of measures and activities.

The structure of the JPD is as follows:



The joint priorities and measures have been selected by the partner countries in the frame of a joint cross-border planning exercise, intended to draw up a common development strategy.

The Neighbourhood Programme is fully compatible with the respective national programmes financed by the EC. During the programme's preparation, coherence and synchronization with other donors' funding activities were also sought in order to avoid overlaps and duplications.

4. OBJECTIVES AND DESCRIPTION

4.1. Overall objectives of the programme

- Efficient and secure border;
- Promoting sustainable socio-economic development;
- Joint actions for common challenges;
- Promoting local cross-border cohesion.

4.2. Specific project purposes

- To facilitate the **protection of natural and cultural resources** promoting **sustainable development**;
- To stimulate **regional cooperation** and to establish **local capacity and networks**;
- To facilitate **the cross-border co-operation of regional actors and agencies** in the areas of information, cultural exchange, justice, freedom and security cooperation and education through the continuation of a Joint Small Project Fund.

4.3. Programme Description

The 2005 programme has been designed following the set of projects jointly defined by the partner countries and approved at the Joint Cooperation Committee meeting in Skopje, on May 2005.

Summary descriptions⁶ of the individual projects grouped under the sectoral objectives are as follows:

JPD priority 1 & 2: Sustainable spatial development of the cross-border region & Promotion of cross border cooperation between public institutions and businesses

<i>BG 2005/017-456.01: Sustainable development Grant scheme</i>	
<i>Duration</i>	<i>18 months</i>
<i>Twinning</i>	<i>N/A</i>
<i>Phare budget</i>	<i>€ 2.43 M</i>
<i>Implementing Agency</i>	<i>Ministry of Regional Development and Public Works</i>

The overall objective is to enhance, exploit and manage the territorial and infrastructural integrity of the cross-border area in accordance to the sustainable development principles and extension of contacts towards a new level of cooperation and widening of the sectors and participants currently active in cross-border cooperation.

The project is related to the Measure 1.2: "Modernisation and extension of the existing small-scale infrastructure" (priority 1: "Sustainable spatial development of the cross-border region") and with the Measure 2.2 "Cooperation in the field of business activities" (priority 2: "Promotion of cross-border cooperation between institutions and businesses") of the Joint Programming Document for Phare CBC/CARDS Neighbourhood Programme between the Republic of Bulgaria and the former Yugoslav Republic of Macedonia (2004-2006). It will be implemented by the form of a grant scheme.

The grant scheme will support joint projects in order to reach synergies in the cross-border cooperation development, thus providing for achieving the following specific results:

⁶ Descriptions are indicative; some details may be changed

Window 1

- Network links in the mountainous border areas, with focus on organisation and logistics in public passengers and cargo transport.
- Enabled peripheral areas access and exploitation of modern information technologies advantages.
- Created conditions for an effective cooperation at all levels, which can be seen as a basic pre-requisite for economic development.
- Improved tourism attractions based on local natural and/or cultural value and public utilities, including development and improvement of electricity networks.

Window 2

- Created business networks and setting up of marketing strategies, innovation and know-how transfer mechanisms
- Created cross-border links in the field of economic and social activities.
- Increased employment rate and developed business environment.
- Adjusted labour force to alternative economic and social activities by innovative systems.

The foreseen results will be achieved through the implementation of joint projects (with participation of both Bulgarian and the former Yugoslav Republic of Macedonia partners).

JPD priority 3 – “People to people actions

<i>BG 2005/017-456. 02: People to people actions</i>	
<i>Duration</i>	<i>12 months</i>
<i>Twinning</i>	<i>N/A</i>
<i>Phare budget</i>	<i>€ 0.45M</i>
<i>Implementing Agency</i>	<i>Ministry of Regional Development and Public Works</i>

The people to people actions aim at encouraging and supporting the establishment or further development of sustainable co-operation networks between local and regional stakeholders in the border region in order to increase personnel and institutional capabilities for co-operation and participation in future development programmes.

The fund will finance selected small-scale “people-to-people” projects. The grants may not have the purpose or effect of producing a profit for the beneficiary. Joint projects, especially where co-financed jointly by project partners from Bulgarian and the former Yugoslav Republic of Macedonia, will be particularly encouraged. The following priority themes will be the subject of the call for proposals:

- Development or establishment of facilities and resources to improve the flow of information and communication between border regions, including television and radio programmes of common interest

- Cultural exchange
- Justice, Freedom and security by enhancing cross border communication and prevention of crime in the border regions by developing training partnership projects
- Development or establishment of local employment, education and training initiatives between border regions

Co-financing is needed and will be one criterion for eligibility of projects. Minimum co-financing will be 10 % of the eligible cost of each soft project. Projects already part-financed by another EU funded programme may not be granted support from this Phare programme.

JPD horizontal measure – Technical Assistance

<i>BG 2005/017-456.03: Technical Assistance</i>	
<i>Duration</i>	<i>12 months</i>
<i>Twinning</i>	<i>N/A</i>
<i>Phare budget</i>	<i>€0.12 M</i>
<i>Implementing Agency</i>	<i>Ministry of Regional Development and Public Works</i>

Technical assistance will be used to ensure efficient, effective and transparent management and implementation of the Neighbourhood programme. The smooth and efficient administration of the programme strictly depends, inter alia, on management capacity to properly deal with procedures. Hence, a small percentage of the programme's resources (both from Phare CBC funds and Cards funds) shall be envisaged for supporting the efficient implementation of the programme.

Technical assistance funds will contribute to:

(a) programme management and implementation. Funds will contribute to the management structures of the Neighbourhood programme (the Joint Co-operation Committee, the Joint Steering Committee and the Joint Technical Secretariat) in the accomplishment of their tasks (e.g. administrative costs of joint committees, other administrative costs related to the joint evaluation, monitoring and control process, etc.). Technical assistance funds will contribute, in particular, to the operational costs of the Joint Technical Secretariat, to be located on the Bulgarian side of the border, which include staff from both countries.

(b) programme publicity and evaluation, project preparation. Funds will contribute to increase awareness and information among local potential beneficiaries, to enhance their project preparation capacity as well as to promote programme's results achieved and aims pursued.

Lessons Learned

Experience with the implementation of Phare programmes in previous years and evaluation have led to a number of general lessons being learned. As in 2004, these lessons are reflected in the design and implementation of the 2005 CBC/Neighbourhood Programme.

The most important lessons relate to constraints on Bulgarian administrative capacity, more specifically in Ministries acting as Implementing Agencies. Medium to long term efforts to reinforce this capacity are already under way. These include efforts to support horizontal public administration reform, a careful follow-up of the implementation of projects by the means of Monthly meetings and updated procurement plans to be provided earlier by the Bulgarian authorities to the Commission. This allows to identify in advance risks of delays and to ask for the necessary remedial actions. More specific lessons relating to individual sectors, Ministries or project types have also been learned and are reflected in the design of individual project documents.

Overall programme conditionalities

Before the Financing Agreement between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will satisfy the Commission that adequate steps have been taken to staff and resource adequately the National Fund, CFCU, the Phare CBC Implementing Agency of the Ministry of Regional Development and Public Works and project management units involved in implementing this programme.

Before the Financing Agreement between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will confirm the availability of the national co-financing indicated in each project fiche, and the modalities for combining Phare and national co-financing when projects are contracted.

Any project involving the supply of equipment and works requires national co-financing as shown in the relevant project fiche. In addition, all operational and running costs and the maintenance of the equipment will be provided by the final beneficiaries. If the total cost of equipment or works is less than the amount envisaged in the fiche, the amount of Phare support will be reduced to maintain unchanged the relative proportions of Phare support and national co-financing shown in the fiche. If the total cost is greater than the amount envisaged in the fiche, the extra support required will be provided by additional national co-financing.

Before the Financing Agreement between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will satisfy the Commission that draft Guidelines for Applicants and technical specifications have been prepared, as appropriate, to allow each project to be launched immediately.

For projects involving more than one Bulgarian Ministry or agency, the National Aid Co-ordinator will ensure that effective mechanisms for co-operation and co-ordination between such Ministries or agencies are in place. The National Aid Co-ordinator will undertake thorough reviews of progress on implementation of the projects listed at least every three months from the time the Financing Agreement is signed until the final date for contracting. If these reviews indicate that by the first quarter of the final year for contracting (2007 unless otherwise specified) there is a high risk of a project or component of a project not being contracted, the Commission reserves the right to take remedial action including, if necessary, reallocating funds to other purposes or cancelling projects or components thereof.

Further project-specific conditionalities are described in each project fiche.

5. BUDGET

5.1. Budget Table for 2005

No.	OBJECTIVE	Phare support			Co-financing		TOTAL
		IB	INV	Total Phare (in €M)	Other sources (**)	National public fund (*)	
01	Sustainable development grant scheme	0.690	1.740	2.430		0.580	3.010
02	People to people actions	0.450		0.450			0.450
03	Technical Assistance	0.120		0.120			0.120
	TOTAL	1.260	1.740	3.000		0.580	3.580

(The distribution of figures between the budget lines is indicative within the limits of Art. 5 MoU NF)

(*) Contribution from national, regional, local, municipal authorities, FIs loans to public entities, funds from public enterprises.

(**) Private funds, FIs loans to private entities.

5.2. Principle of Co-Financing

In accordance with the Phare Guidelines, all investment projects supported by Phare must receive co-financing from national public funds.

The Community contribution may amount to up to 75% of the total eligible public expenditure. Taxes are not an element eligible for co-financing.

Co-financing for Institution Building projects is provided by the Beneficiary Country bearing certain infrastructure and operational implementation costs, through financing the human and other resources required for effective and efficient absorption of Phare assistance.

6. IMPLEMENTING AGENCIES

Implementing Agencies will be responsible for sub-programmes as follows:

- The Phare CBC Implementing Agency of the Ministry of Regional Development and Public Works will be the Implementing Agency for all programmes.

7. IMPLEMENTATION ARRANGEMENTS

7.1. Method of Implementation

Implementation of the programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation⁷. The Beneficiary Country will continue to ensure that the conditions laid down in Art. 164 (1) (a) - (e) of the Financial Regulation are respected at all times.

Prior to the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999⁸, project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

The implementation of the Neighbourhood programme will follow the Implementing Guidelines for Phare CBC/Tacis and Phare CBC/Cards borders, issued by the Commission on 15 July 2004.

7.2. General rules for Procurement

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Chapter 3 of Part 2, Title III of its Implementing Rules⁹, as well as the Commission Decision SEC (2003) 387/2¹⁰.

The Contracting Authorities shall also use the procedural guidelines and standard templates and models facilitating the application of the above rules provided for in the “Practical Guide to contract procedures financed from the general EC budget in the context of external actions” (“Practical Guide”) as published on the EuropeAid website¹¹ at the date of the initiation of the procurement or grant award procedure.

In line with Art. 164 of the Financial Regulation, the Commission may decide to allow the Contracting Authorities entrusted with decentralised management responsibilities to execute procurement in accordance with national legislation and guidelines transposing the European Union Public Procurement Directives.

7.3. Grant Schemes

For grant schemes the precise implementation arrangements will be specified in the relevant project fiches in line with the following principles:

The procedures and formats to be used in the implementation of the schemes and award of the grants will follow the procurement rules for External Actions. In particular, due care will be given to the selection process of the projects. Except when provided differently in the Neighbourhood Programme Implementing Guidelines, the grants will be awarded in conformity with the provisions of chapter 6 of the Practical Guide, and following the principles of Phare

⁷ Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002; OJ L 248; 16.9.2002; p. 1

⁸ Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

⁹ Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1 as amended by Commission Decision 2004/121 of 6 February 2004. OJ L 036, 07.02.2004 p 58

¹⁰ Commission Decision SEC (2003) 387/2 on Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities in the context of co-operation with third countries, adopted on March 25, 2003

¹¹ current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

decentralised management. Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Bulgaria will be required.

The competent PAO for the programme under which the grant scheme is financed has to retain his/her contractual and financial responsibility for the implementation of the schemes. In particular, the PAO has to formally approve the call for proposals, application forms, evaluation criteria, as well as the selection process and results. The PAO also has to sign the grant agreements with the beneficiaries and to ensure adequate monitoring and financial control under his/her authority and responsibility. With this reservation, the management can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement rules for External Actions at the time of implementation. Following a positive assessment of the Implementing Agency's capacity to operationally and financially manage the schemes in a sound and efficient manner¹², the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by the final beneficiaries of the individual grants. The detailed provisions governing the role of the Delegation in the above-mentioned sub-contracting phase will be specified, as appropriate, in the Exchange of Letters between the Delegation and the national authorities following the above-mentioned assessment exercise.

Grant schemes will not involve projects for which the Phare contribution is below €50 000 (except for the Small Project Fund, see below) or above €2 million. This lower limit may be waived as a result of the above-mentioned assessment of the Implementing Agency's capacity of giving assurance of sound financial management. The lower limit is not applicable in the case of NGOs.

The financial commitments in Phare terms will be effected at the date of signature of the grant agreements by the competent PAO. The projects should be fully implemented before the expiry date for contract execution of the corresponding Financing Agreement.

7.4. Implementation Principles for Twinning Projects

Not relevant

7.5. Principles for the CBC Small Projects Fund

The CBC Small Projects Fund will finance projects with a Phare/ pre-accession instrument contribution below € 50.000. It will not include physical investments other than small infrastructure not generating substantial net revenue.

8. MANAGEMENT OF ASSISTANCE

8.1. Project Management

8.1.1. Responsibilities

The National Aid Co-ordinator (NAC) will have overall responsibility for programming and monitoring of Phare programmes.

¹² see section 11 and Annex 4 of the 2004 Phare Programming Guide

The National Authorising Officer (NAO) and the NAC shall be jointly responsible for the co-ordination between Phare, ISPA and SAPARD, as well as the Structural and Cohesion Funds.

The NAO and the Project Authorising Officer (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the instructions of the Commission. They will also ensure that all contracts required to implement the Financing Agreement are awarded using the procedures and standard documents for External Actions in force at the time of implementation, and that EU state aid rules are respected.

8.1.2. Project Size

The projects concerning people to people actions (2005/017-456.02) and technical assistance (2005/017-456.03) will be lower than €2 million due to the fact that these projects can not utilise such amount of allocation. The project concerning Sustainable development Grant scheme (2005/017-456.01) will be over this limit (2.43 million

8.1.3. Deadline for contracting and execution of contracts, programming deadline

(1) All contracts must be concluded by no later than November 30, 2007.

(2) All contracts must be executed by no later than November 30, 2008. These deadlines are of indicative nature and have to be determined by the authorising officer. In no case can the contracting period for projects implemented under this programme exceed three years after the date of the global commitment (Art. 166 (2) FR). Budgetary commitments which have not given rise to payments during three years counted from the date of the legal commitment will be decommitted (Art. 77 (3) FR).

(3) Under DIS, a complete tender dossier must be submitted to the Delegation for approval by no later than 6 months after the signature of the Financing Agreement, . In case of non-compliance, the Beneficiary Country will inform the JMC, which may recommend reallocation of funds in accordance with Art. 5 of the MoU on the National Fund.

8.1.4. Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive¹³ are fully applicable for all investment projects under Phare. If the EIA-directive has not yet been fully transposed, the procedures should be similar to the ones established in the above-mentioned directive. If a project would fall within the scope of annex 1 or annex 2 of the EIA-directive, the carrying out of the EIA-procedure must be documented¹⁴.

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-directive must be documented¹⁵.

¹³ DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

¹⁴ in Annex EIA to the corresponding investment project fiche.

¹⁵ in Annex Nature Conservation to the corresponding investment project fiche

All investments shall be carried out in compliance with the relevant community environmental legislation. The project fiches will contain specific clauses on compliance with the relevant EU-legislation in the field of the environment according to the type of activity carried out under each investment project.

8.2. Financial Management

8.2.1. Principles and Responsibilities

The National Fund in the Ministry of Finance, headed by the NAO, will supervise the financial management of the programme, and will be responsible for reporting to the European Commission. The NAO shall have the overall responsibility for financial management of the Phare funds, and the full accountability for the Phare funds of a programme until the closure of that programme.

The NAO shall ensure that the Phare rules, regulations and procedures pertaining to reporting and financial management are respected, and that a reporting and project information system is functioning.

The Commission will make payments to the NF in accordance with the Memorandum of Understanding signed between the Commission and the Republic of Bulgaria in December 1998.

Payments will be made following requests from the NAO onto a separate bank account, denominated in € which will be opened and managed by the National Fund in the central bank or in a Government guaranteed bank. In principle, all bank accounts will be interest bearing.

According to Articles 3 & 4 of the implementing rules of the Financial Regulation accrued interest is the property of the Beneficiary Country. The NAO must however ensure that the accrued interest is actually registered in its entirety as revenue in the national budget. Furthermore the NAO will ensure a regular reporting of the interest via Perseus.

8.2.2. Payments to the National Fund

A first payment¹⁶ of up to 20% of the funds to be managed locally¹⁷, will be sent to the NF following signature of the Financing Agreement and the Implementing Agreements between the NF and the Phare CBC Implementing Agency. Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the Phare CBC Implementing Agency and the manner in which the payment function between them will be carried out.

Two further payments¹⁸ of up to 30% of the funds to be managed locally¹⁹ will be made. The second payment will be triggered when 5 % of the total budget in force²⁰ has been disbursed by

¹⁶ representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹⁷ excluding the amount foreseen for Community Programmes

¹⁸ representing interim payments or the renewal of pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹⁹ excluding the amount for Community Programmes

the Phare CBC Implementing Agency. The third payment may be requested when 35% of the total budget in force²¹ has been disbursed.

A final fourth payment will be made when 70 % of the total budget in force²² has been disbursed and all contracts have been signed.

Exceptionally the NAO may request more than the percentage agreed where it can be demonstrated by a cash-flow projection that the cash-flow requirements in the subsequent period will exceed such percentage. In cases where the aggregate of the funds deposited in the NF, and the Phare CBC Implementing Agency accounts exceeds 15% of the total budget in force for the programme the Commission may exceptionally authorise a payment, if the NAO provides duly substantiated evidence that contractual obligations cannot be met with the funds available.

8.2.3. Payments from the National Fund to the Implementing Agency

The National Fund will make payments to the Phare CBC Implementing Agency, in accordance with Implementing Agreements signed between the NF and the Phare CBC Implementing Agency. Bank accounts for sub-programmes shall be opened in the name of the Phare CBC Implementing Agency in charge of financial management of the sub-programme in line with Art. 13 of the MoU on the National Fund.

As long as implementation follows DIS, each individual Implementing Agreement must be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the Phare CBC Implementing Agency there will be no payments from the NF to the Phare CBC Implementing Agency. The Phare CBC Implementing Agency must each be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the NAC. The PAO will be responsible for all operations carried out by the Phare CBC Implementing Agency .

8.2.4. Payments in Case of Contractual Retention Clauses

For those contracts with contractual retention clauses (e.g. funds retained for a warranty period), the Phare CBC Implementing Agency assumes full responsibility for managing the funds until final payment is due, as well as for ensuring that the said funds will only be used to make payments related to the retention clauses.

The Phare CBC Implementing Agency further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the Commission.

8.2.5. Closure of Expenditure and Clearance of Accounts

No later than eight months after the completion of disbursements, the NF will submit a final declaration of expenditure covering both PHARE support and co-financing and an attestation

²⁰ excluding the amount for Community Programmes

²¹ excluding the amount for Community Programmes

²² excluding the amount for Community Programmes

regarding the regularity, accuracy and veracity of the accounts transmitted. The final certified expenditure should at this point equal the original value of the contracts minus any deductions and savings agreed with contractors in the course of implementation. This should also equal payments made plus any sums outstanding on account of contractual retention.

If the payments received from the Commission exceed the final certified expenditure, the NF shall return the excess to the Commission at the time of submitting the final declaration. If there are any outstanding payments (with the exception of contractual retention funds), the NF should provide an explanation and a forecast when payment will be finalised. The NF shall report on progress on contractual retention funds and outstanding payments on a quarterly basis. If they are not paid to the contractor, they shall be returned to the Commission.

After evaluation of the final declaration, the Commission will state its view on any expenditure to be excluded from Community funding, where it finds that expenditure has not been executed in compliance with Community rules.

The results of the Commission's checks and its conclusions to exclude expenditure from financing will be notified in writing to the NF, which shall be given one month to transmit its reply in writing.

If no agreement is reached within one month of receipt of the NF's written reply, the Commission shall decide and establish the amounts to be excluded, having regard in particular to the degree of non-compliance found, the nature and gravity of the infringement as well as the financial loss suffered by the Community.

Following the decision about amounts to be excluded, all ineligible expenditure will be recovered without prejudice to the treatment of irregularities and subsequent financial corrections stipulated below.

The funds will be recovered either by direct reimbursement from the NF or by compensation in accordance with Community rules.

9. MONITORING AND EVALUATION

Neighbourhood programme's monitoring of funding will be conducted at project level by the Contracting Authorities of both countries.

Nevertheless, as a Neighbourhood Programme is a joint co-operation programme, every effort should be made to report on progress across the whole programme. Since projects should, as far as possible, produce single progress reports covering the use of Phare CBC and Cards funding, the Neighbourhood programme Joint Co-operation Committee should have all necessary information in order to report to the Commission on the entirety of the programme on a yearly basis.

A joint progress report should be prepared, covering both Phare CBC and Cards activities, and submitted to the Commission on a yearly basis. The report should be available in English. This report should be available to all concerned parties.

When an evaluation is conducted, every effort should be made to evaluate all elements of the programme (Phare CBC and Cards).

At national level (Bulgaria), project implementation will be monitored through the Joint Monitoring Committee (JMC). It includes the NAO, the NAC and the Commission services. The JMC will meet at least once a year to review all Phare funded programmes in order to assess their progress towards meeting the objectives set out in the Financing Agreements and the Accession Partnership. The JMC may recommend a change of priorities and/or reallocation of Phare funds. Furthermore, the JMC will review the progress of all pre-accession EU-funded assistance programmes once a year (Phare, ISPA, SAPARD).

For the Phare programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC), which will include the NAC, the PAO of each Implementing Agency (and the CFCU where applicable) and the Commission Services. The SMSC will review in detail the progress of each programme, including its components and contracts, assembled by the JMC into suitable monitoring sectors. Each sector will be supervised by one SMSC on the basis of regular monitoring reports produced by the Implementing Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward recommendations on aspects of management and design, ensuring that these are effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

The Commission services shall ensure that this programme will be subject to interim (either centralised or decentralised) and/or ex post evaluations.

10. AUDIT, FINANCIAL CONTROL, ANTI-FRAUD MEASURES, PREVENTIVE AND CORRECTIVE ACTIONS

10.1. Supervision and Financial Control by the Commission and the European Court of Auditors

All Financing Agreements as well as all resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-Fraud Office) and audits by the European Court of Auditors. As long as EDIS is not yet applicable to the Implementing Agencies in the Beneficiary Country, this includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Beneficiary Country.

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96²³.

The controls and audits described above are applicable to all contractors and subcontractors who have received Community funds.

Without prejudice to the responsibilities of the Commission and the European Court of Auditors²⁴, the accounts and operations of the National Fund and, where applicable, the

²³ Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2

²⁴ as referred to in the General Conditions relating to the Financing Memorandum” attached to the Framework Agreement

CFCU and all relevant Implementing Agencies may be checked at the Commission's discretion by the Commission itself or by an outside auditor contracted by the Commission.

10.2. Obligations of the Beneficiary Country

10.2.1. Audit and Financial Control

In order to ensure sound financial management of the Phare funds, the Beneficiary Country must have a system for management and control of assistance in accordance with generally accepted principles and standards in place. This system shall fulfil the requirements set out in Art. 164 of the Financial Regulation, and in particular provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

The Beneficiary Country's management and control systems shall provide a sufficient audit trail, as defined in Art. 7 (2) of Commission Regulation 438/2001²⁵.

The competent national financial control authority shall carry out appropriate financial controls of all actors involved in the implementation of the programme.

Each year an audit plan and a summary of the findings and main recommendations of the audits carried out and an outline of the follow-up given to past audit recommendations shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

10.2.2. Preventive Measures

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption²⁶ practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

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

10.2.3. Anti-Fraud Measures and Corrective Actions

Beneficiary Countries shall, in the first instance, bear the responsibility to ensure investigation and satisfactory treatment of suspected or actual cases of fraud and irregularities following national or Community controls.

²⁵ Commission Regulation (EC, Euratom) 438/2001 of 2 March 2001, OJ L 63; 3.3.2001, p.21

²⁶ Active corruption is defined as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests.

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

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94²⁷.

In particular, all suspected or actual cases of fraud²⁸ and irregularity²⁹ as well as all measures related thereto taken by the national authority must be reported to the Commission services without delay. Should there be no suspected or actual cases of fraud or irregularity to report, the Beneficiary Country shall inform the Commission of this fact within two months following the end of each quarter.

In case of irregularity or fraud, the Beneficiary Country shall make the necessary financial corrections required in connection with the individual irregularity. The corrections made by the Beneficiary Country shall consist in cancelling all or part of the Community contribution. The Community funds released in this way may be re-used by the NF for the purpose of the programme, in compliance with Art. 5 of the MoU on the National Fund.

10.3. Recovery of Funds in Case of Irregularity or Fraud

Any proven irregularity³⁰ or fraud³¹ discovered at any time during the implementation of the programme or as the result of an audit will lead to the recovery of funds by the Commission.

If, after completing the necessary verifications, the Commission concludes that:

- (a) the Beneficiary Country has not complied with the obligations to prevent, detect, and correct irregularities or
- (b) the implementation of a project appears not to justify either part or the whole of the assistance allocated or
- (c) there are serious failings in the management or control systems which could lead to irregularities,

the Commission may suspend further financing of the programme in question, and, stating its reasons, request that the Beneficiary Country submit comments and, where appropriate, carry out any corrections within a specified period of time.

²⁷ Commission Regulation (EC) 1681/94 of 11. July 1994; 12.7.94; p. 43

²⁸ Fraud shall mean any intentional act or omission relating to: the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; non disclosure of information in violation of a specific obligation with the same effect; the misapplication of such funds for purposes other than those for which they are originally granted.

²⁹ Irregularity shall mean any infringement of a provision of national or Community law, this Financing Memorandum or ensuing contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure. The term "Community law" in this context shall be defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (e.g. the Europe Agreements, Framework Agreements, the MoU on the Establishment of the National Fund etc.)

³⁰ see definition above

³¹ see definition above

If no agreement is reached by the end of the period set by the Commission and if the required corrections have not been made, the Commission may – taking into account any comments made by the Beneficiary Country – decide within three months to:

- (a) reduce or cancel any payment for the programme in question, or
- (b) make the financial corrections required by cancelling all or part of the assistance granted to the programme concerned.

The Commission shall, when deciding on the amount of a correction, take into account the principle of proportionality, the type of irregularity and the extent and financial implications of the shortcomings found in the management and control system of the Beneficiary Country.

In the absence of a decision to do either (a) or (b), further financing of the programme shall immediately resume.

The National Authorising Officer will ensure the reimbursement of any unused funds or any sum wrongly paid within sixty calendar days of the date of the notification. If the NAO does not repay the amount due to the Community, the Beneficiary Country shall refund this amount to the Commission.

Interest on account of late payment shall be charged on sums not repaid by applying the rules specified in the Financial Regulation.

11. VISIBILITY AND PUBLICITY

The PAO in charge will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed from the programme. This will be done in close liaison with the Commission. Further details are set down in the Annex on Visibility and Publicity.

12. SPECIAL CONDITIONS

In the event that agreed commitments are not met for reasons which are within the control of the Government of the Republic of Bulgaria, the Commission may review the programme with a view, at the Commission's discretion, to cancelling all or part of it and/or to reallocate unused funds for other purposes consistent with the objectives of the Phare programme.