

FINANCING MEMORANDUM

The European Commission, hereinafter referred to as "THE COMMISSION", acting for and on behalf of the European Community, hereinafter referred to as "THE COMMUNITY"

on the one part, and

The Government of the Republic of **Romania**, hereinafter referred to as "THE RECIPIENT"

on the other part,

HAVE AGREED AS FOLLOWS:

The measure referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the measure referred to in Article 1 below shall be implemented is set out in the General Conditions annexed to the Framework Agreement between THE COMMISSION and THE RECIPIENT, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 - NATURE AND SUBJECT

As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE:

<u>Programme number:</u>	2002/000- 628
<u>Title:</u>	2002 Cross-Border Co-operation Programme between Hungary and Romania
<u>Duration:</u>	Until 30 November 2004 for contracting

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **€ 5 million** hereinafter referred to as "THE EC GRANT".

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting **until 30 November 2004** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled. The deadline for disbursement of THE EC GRANT is **30 November 2005** with the exception of project 2002/000-628-01, Crossover railway in Satu Mare on the route DN 19 to Petea (RO) – Csengersima (HU), where the disbursement expiry date is **30 November 2006**. All disbursements must be completed by the deadline for disbursement. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the disbursement period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall

expire at the expiry of the disbursement period of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 4 - ADDRESSES

Correspondence relating to the execution of THE MEASURE, stating THE MEASURE'S number and title, shall be addressed to the following:

for the COMMUNITY:

*Delegation of the European Commission in Bucharest
Bd Primaverii 48
71297 Bucharest
Romania
Tel: 40 21 203 54 00
Fax: 40 21 230 24 53*

for THE RECIPIENT:

*Mrs Hildegard Puwak
Minister of European Integration
Government of Romania
Str Apolodor 17
Bucharest
Romania
Fax: 00 40 1 336 85 09*

ARTICLE 5 - NUMBER OF ORIGINALS

This Memorandum is drawn up in duplicate in the English language.

ARTICLE 6 - ENTRY INTO FORCE

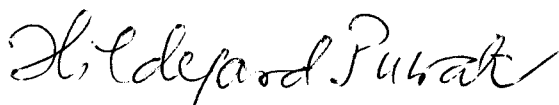
This Memorandum shall enter into force on the date on which it has been signed by both parties. No expenditure incurred before this date is eligible for the EC GRANT.

The Annexes shall be deemed an integral part of this Memorandum.

Done at Bucharest
Date *11 December 2002*

Done at Bucharest
Date *11 December 2002*

for THE RECIPIENT



Mrs. Hildegard Puwak
Minister of European Integration
National Aid Co-ordinator

for THE COMMUNITY



Mr. Jonathan Scheele
Head of Delegation of the
European Commission in Romania

Encl.

1. Framework Agreement (Annexes A & B)
2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)

ANNEX C TO THE FINANCING MEMORANDUM SPECIAL PROVISIONS

1. OBJECTIVES, DESCRIPTION AND CONDITIONALITY

1.1. The wider objectives of the programme are:

- To promote good neighbourliness and stability in the CEEC border regions by funding projects, which will yield tangible benefits to the regions and communities on both sides of the border;
- To promote co-operation between border regions in both countries, helping these regions to overcome the specific development problems which may arise, *inter alia*, from their position within the national economies, in the interest of the local communities and in a manner compatible with the environment protection;
- To promote the creation and further development of co-operation networks on either side of the border and the establishment of links with wider Community networks.

1.2 The specific objectives and programme results are reflected in the following priority areas:

- To upgrade all types of existing infrastructure networks including road, railroad, electricity, energy networks and to build up the missing links between the two regions. Upgrading existing border crossings and opening new border crossings will ease increasing cross border connections (Project 2002/000-627-01, see below). All infrastructure developments fit into the Trans European Networks development plans. The Pan-European Corridor No. IV. (Budapest-Bucharest-Constanta) will also create new co-operation forms in the border region (Project 2002/000-628-01, see below).
- To strengthen economic co-operation in the border region by supporting relations among institutions representing the business sector and encouraging SME initiatives (Project 2002/000-627-02, see below). Strengthening the cross border partnership by promotion of business, financial co-operation and enterprise development as well as co-operation between institutions representing the business sector in the border region (Project 2002/000-628-02, see below);
- Setting up of a flexible mechanism to finance the so-called “small-scale and people-to-people projects” within socio-economic development field (local economic development, training and employment measures, improvement of the flow of information and communication, cultural exchanges, etc) with a cross-border impact (Project 2002/000-627-03 and Project 2002/000-628-03, see below)

1.3. Programme Description

The programme has been designed following bilateral contacts between Romania and Hungary, several consultations with EC Delegations in both countries and DG Enlargement recommendations reflecting the Commission Regulation No. 2760/98, concerning the implementation of CBC programmes in the framework of the Phare programmes. The projects selected for support in the Phare CBC Hungary-Romania 2002 Programme are in accordance with the content of the JPD.

1.3.1 – JPD PRIORITY: Infrastructure development, border crossing development

After an analysis of the infrastructure connections in the Romanian-Hungarian border region, the following weaknesses have been identified:

- lack of capital and general poverty hinder the development of connections;
- several bottlenecks in the border region and poor transport facilities.

Based on a realistic evaluation of the existing situation and taking into account previous experience, improving connections between the border regions has a positive impact on the economic development and quality of life.

Project 2002/000-627-01

Reconstruction of the road no. 4915 between Nyírbátor and Vállaj (Csanáros)

The objectives of the project reflect the priorities, included in the PNPD and based on sectoral strategies and development strategies of the Northern Great Plain Region.

The development of access infrastructure is indeed a key priority in the region. Improved structures will contribute to strengthen the economy of the region and realize its development potential as envisaged by other Phare Economic and Social Cohesion projects.

The access road to the border station, at present, is not suitable for international transport. Furthermore, it is not adequate to carry the increased traffic generated by a border station, which will be permanently open. Therefore a reconstruction is planned.

The results of the project will consist of strengthening and widening the public road Nr. 4915. At present, because of the cross-section characteristics of the road, traffic moves slowly creating potential danger. The road widening will result in increased throughput, which will reduce the rate of noise and air-pollution in the area. In addition the distance from the county capital - Nyíregyháza - to the Romanian border will be reduced from 98 (Csengersima) to 56 km. Thus the accessibility of the Nyírbátor Industrial Park and Carei on the Romanian side will be improved, strengthening cross-border co-operation in the region.

Applicant name:	Szabolcs-Szatmár-Bereg Megyei Közútkezelő Kht. (Road Management Company of Szabolcs-Szatmár-Bereg County)
Total project Cost:	3,615,000 EUR
Phare CBC:	2,115,000 EUR
Own contribution:	1,500,000 EUR
Romanian mirror project:	Project 2002/000-628-01-Crossover railway in Satu Mare on the route DN 19 – Petea – Hungary

Project 2002/000-628-01

Crossover railway in Satu Mare on the route DN 19 to Petea (RO) - Csengersima (HU)

The project aims are:

- To improve the Cross-Border co-operation between Hungary and Romania.
- To improve and facilitate passing through Satu Mare city by travellers and vehicles by reducing waiting time and by streamlining the city's crossing by car.
- To motivate the creation and development of corresponding transport links on both sides of the Hungary/Romania Border.

The results of the project will consist of:

- Improved transport infrastructure, in the framework of the joint development strategy of both regions.
- Together with the Hungarian mirror project - "Reconstruction of the road No.4915" proposed by Road Management Company of Szabolcs-Szatmar-Bereg County, the distance between the North part of Romania and Hungary will be reduced, improving low cost exchanges and circulation between both countries.
- The activities undertaken will enable heavy traffic and the opening of the border crossing to goods traffic.

The following activities are required:

- **Detailed design of the technical project and preparation of the tender documentation (services)**

- **Land arrangements (works)**

This activity will have to meet all legal requirements in Romania regarding building demolition and removal of network utilities. It will be accomplished, in advance, on a separate project by the beneficiary - Satu Mare Local Council as a precondition of the tender launching for the Component 3 - Construction of the level crossing (crossover).

- **Construction of the level crossing/crossover and connected equipment (works)**

The activity is about building a 668 m length and 7.8 m width crossover with 30 spans over the railways. The crossover will also have two access grades to the main routes in area (DN 19 and Grigore Ureche Street). The project also is about building new streets and footpaths, lightning etc.

- **Technical assistance for supervision of works (services)**

Applicant name: Local Council of Satu Mare, Satu Mare County

Total project Cost: 6,990,000 EUR

Phare CBC: 2,500,000 EUR

Own contribution: 4,490,000 EUR

out of which 485,000 EUR will be provided by the Satu Mare Local Council from its own resources and the rest of co-financing in a total amount of 4,005,000 EUR will be provided by the Satu Mare local Council from a credit obtained from the Romanian Development Bank (BRD) – Societe Generale.

Hungarian mirror project: 2002/000-627-01– Reconstruction of the road no. 4915 between Nyírbátor and Vállaj (Csanálos).

1.3.2 – JPD PRIORITY: Economic Development

After an analysis of the social-economical environment of the Romanian and Hungarian border regions, the following weaknesses have been identified:

- rather low level of promotion regarding the bilateral investments,
- low level of common economic events in spite of the regions' potential and the existence of a common strategy of development,
- lack of suitable multi-functional centres in the regions, which can ensure the organisation of major local and cross-border events,
- unbalanced economic development between the border regions.

Based on this analysis and on experience gained from the previous co-operation between Romania and Hungary, a potential for the development of the economic and social environment in the cross-border area has been identified. For speeding up such activities, the necessity of creating multi-functional buildings that could host activities for economic development and foster co-operation activities has risen.

Project 2002/000-627-02

Cross-Border Economic Development

The objectives of the project are:

- Strengthening the Hungarian-Romanian economic co-operation by supporting organisations that provide business services in the border region.
- In line with the objectives of the Accession Partnership, the project aims also at promoting enterprise development, strengthening their capacity to cope with competitive pressure. The implementation mechanism is indeed indirectly contributing to the preparation of Hungarian central and regional authorities for the implementation of the Structural Funds.

The objectives of the Grant Scheme reflect the priorities of the Preliminary National Development Plan drawn up on the basis of sectoral strategies and regional measures. This project will establish favourable conditions and institutional framework that will support economic actors to develop cross-border relations. In addition, it will increase the capacity of the organisations and economic actors on

both sides of the border to take advantage of the potentials of cross-border co-operation and thus improve the economic position of the region.

The results of the project will consist of:

- Establishment of favourable conditions and support for local starting and running enterprises.
- Increase the growth and competitiveness of the regional SME sector by utilising the potentials of cross-border co-operation.
- Creating concentrated areas of economic development, which will be able to become the core areas for strengthening economic connections.
- Promoting co-operation between institutions representing the business sector and increasing business partnerships and contacts with Romania.
- Encouraging the SMEs' initiatives for cross-border co-operation by providing them with access to the information on the possibilities and markets existing beyond the border.
- Improvement of the standard and efficiency of consulting and other services provided by institutions.
- Implementing innovative business strategies in the targeted regions by owners and managers of SMEs.

Applicant name:

Organisations eligible for support will be non-profit or non-governmental organisations selected through a Call for Proposal.

Total project cost: 3,533,000 EUR

Phare CBC: 2,385,000 EUR

Own contribution: 1,148,000 EUR

Romanian mirror project: Project 2002/000-628-02- Arad International Expo Fair Centre

Project 2002/000-628-02

Arad International Expo Fair Centre

The project aims to complete and extend the exhibition Hall and outside exhibition platform and the establishment of a programme to promote the utilisation of the International Fair for cross-border activities.

This project will:

- Promote the cross-border relations with Hungary and other neighbouring countries through an increased number of partnerships;
- Establish an adequate framework for intercultural exchanges between the different countries and mainly with Hungary;
- Increase the exchange of information in the social-economic field among the institutions from the cross-border region;
- Increase the commercial exchanges in the cross-border region.

The results of the project will consist of:

- Arad International Expo Fair Centre construction including extension of inner surface and outside surface and infrastructure utilities;
- Supply of the necessary endowments/ equipment and facilities for the Arad International Expo Fair Centre;
- The setting-up of a complex programme to promote the activities related to the Arad International Expo Fair Centre.

The direct effects of the Arad International Expo Fair Centre construction are related to the increasing of the:

- number of exhibitors from an average number of 120 companies/Fair to 160 companies/Fair;
- Hungarian exhibitors' participation from 20 % to 40 %;
- Hungarian visitors in the Arad International Fair exhibitions from 40 companies to 120 companies / exhibition

The following activities are required:

- Preparation of the technical project including tender documents (services)
- Completion of the first exhibition Hall and outside exhibition platform including infrastructure utilities and supply of equipment for the inside and outside arrangement (works)
This activity includes:
 - Completion of the 1st Exhibition Hall from 2.000 sqm to 3.000 sqm, with all technical aspects, including the fire protection;
 - Completion of the Conference Hall, administrative offices for the fair organisers, catering area and a mini printing house for fair's only purpose, sound equipment, sanitary groups etc;
 - Completion of the outside exhibition platforms from 3.000 sqm to 10.000 sqm including fence's construction, tents for outside exhibitors, exhibition structure, including infrastructure for utilities (water supply, electric power, thermal energy, etc) and any additional facilities and equipment (machines for loading/unloading freight of the exhibitors);
 - Procurement of furniture, equipment and installations and other endowments for the inside and outside arrangements including the Exhibition Hall, the Conference Hall, administrative offices, catering area etc for a proper functioning of the Arad International Expo Fair Centre.
- Technical assistance for supervision of works (services)
- Public awareness campaign (services)

The activity consists in public promotional activities in order to promote the Arad International Fair and its services to the Romanian and Hungarian market and to the regional market.

Applicant name:	Arad Chamber of Commerce, Industry and Agriculture (CCIA Arad)
Total project cost:	2.710.000 EUR
Phare CBC:	2.000.000 EUR
Own contribution:	710.000 EUR (provided by the Arad Chamber of Commerce, Industry and Agriculture)
Hungarian mirror Project:	Project 2002/000-627-02–Economic development through promotion of institutions providing economic services

1.3.3. JPD PRIORITY – Joint Small Projects Fund

With a view to strengthen the local cross-border co-operation of the two border regions, Romania and Hungary decided in early 2000 to start to implement a JSPF. This scheme will finance “soft” projects in the following priority areas: business co-operation, enterprise development, technology transfer and marketing, training, employment, environment co-operation, measures for health and cultural exchanges, improvement of information flow and communications between border regions etc. In order to reach a sufficient impact, these schemes need to be implemented in a multi annual perspective: it is therefore proposed to continue this initiative.

Projects 2002/000-627-03 and 2002/000-628-03 – Joint Small Projects Fund

The Joint Small Projects Fund will be established as a flexible mechanism that finances the “small-scale and people-to-people” projects with a cross-border impact. The Joint Co-operation Committee (JCC) has agreed unanimously that the Phare allocation is identical for each country.

The JSPF will operate following the Specific Guidelines developed for the 2000 exercise and approved by the Commission Services (EC Delegations) and the Practical Guide to Phare ISPA and SAPARD. Precise Joint Guidelines will be elaborated by the two countries, and will have to be endorsed by both EC Delegations in Romania and in Hungary. In principle, both Implementing Agencies – Romanian and Hungarian will draft a specific package including Joint Guidelines for the implementation and will issue a Call for Proposals that must be open and fair to all eligible organisations. The submitted applications will be assessed by an appropriate Team of Assessors and by the Joint Evaluation Committee. The final decisions are taken on the basis of the recommendations of the Joint Evaluation Committee.

The project applicants will, in many cases, need considerable development assistance. Training and information workshops may be organised to inform and assist would-be participants, so as to ensure high transparency and encourage good quality proposals.

The JSPF is designed to make available a total Phare contribution of 500,000 EUR/border region. Up to 7% of the PHARE contribution (maximum 35,000 EUR for each country) may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

Co-financing is needed and will be one criterion for eligibility of projects. Minimum co-financing will be 10% of the cost of each soft project (in cash or in kind).

Total project cost:	1,100,000 EUR	(550,000 EUR for each country)
Phare CBC:	1,000,000 EUR	(500,000 EUR for each country)
Own contribution:	100,000 EUR	(50,000 EUR for each country)

1.4. Conditionality

Phare support for all projects is provided subject to the availability of national co-financing as defined in the budget table below.

All investment projects which, according to the rules stipulated in Directive 85/337/CEE, as amended by Directive 97/11, require an Environmental Impact Assessment, should be the subject of an Environmental Impact Assessment. If the directive has not yet been fully transposed, the procedure should be similar to that established by the above-mentioned directive.

All investment projects 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.

The Governments of Hungary and Romania will ensure that appropriate co-financing in accordance with the details included in the projects will be available in time. As set out for each individual project, co-financing for grants, service, supply and works contracts should be understood as joint and the ratio between the Phare and the National amount has to be applied to the final contract price.

The Governments of Hungary and Romania will ensure that adequate human and financial resources are provided to the National Fund and the implementing Agencies, so as to ensure the smooth implementation of the programme and in particular the implementation of the grant scheme.

- The final implementing rules of the JSPF will be subject to verification and approval from the two EC Delegations, in Budapest and Bucharest.

2. BUDGET

No. of Project	Priority / Project Title	PHARE in €			National Cofinancing in €	Total in €
		Institution Building	Investment Support	TOTAL		
	Sector: Infrastructure (IN) JPD priority: Infrastructure development, border crossing development	300,000	4,315,000	4,615,000	5,990,000	10,605,000
2002/000-627-01	Reconstruction of the road no. 9415 between Nyirbator and Vallaj (Csanalos) (HU)	0	2,115,000	2,115,000	1,500,000	3,615,000
2002/000-628-01	Crossover railway in Satu Mare on the route DN 19 to Petea (RO) - Csengersima (HU)	300,000	2,200,000	2,500,000	4,490,000	6,990,000
	Sector: Integrated regional measures (RE) JPD priority: Economic development	200,000	4,185,000	4,385,000	1,858,000	6,243,000
2002/000-627-02	Economic development through promotion of institutions providing economic services (HU)	0	2,385,000	2,385,000	1,148,000	3,533,000
2002/000-628-02	Arad International Expo Fair Centre (RO)	200,000	1,800,000	2,000,000	710,000	2,710,000
	Sector: Social Development (SO) JPD priority: Joint Small Projects Fund	1,000,000	0	1,000,000	100,000	1,100,000
2002/000-627-03	Joint Small Projects Fund (HU-RO)	500,000	0	500,000	50,000	550,000
2002/000-628-03	Joint Small Projects Fund (RO-HU)	500,000	0	500,000	50,000	550,000
	TOTAL	1,500,000	8,500,000	10,000,000	7,948,000	17,948,000

3. IMPLEMENTATION ARRANGEMENTS

a) Financial and Project Management by the Candidate Country - in Hungary

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures¹.

The National Aid Co-ordinator (NAC), who is the Minister Responsible for the Co-ordination of the Phare Programme in Hungary, will have overall responsibility for programming, monitoring and implementation of Phare programmes. The National Authorising Officer (NAO) and the Project Authorising Officers (PAO) will ensure that the programmes are implemented in line with the

¹ taking into consideration the rules set down in the annex of Council Regulation 1266/1999

procedures laid down in the *DIS Manual* and other instructions of the Commission, and that all contracts are being prepared in accordance with the *Practical Guide for PHARE, ISPA and SAPARD*.²

The NAC and the NAO shall be jointly responsible for co-ordination between PHARE (including PHARE CBC), ISPA and SAPARD.

The National Fund (NF) in the Hungarian Ministry of Finance, respectively, 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 overall responsibility for financial management of the PHARE funds. He shall ensure that the PHARE rules, regulations and procedures pertaining to procurement, reporting and financial management as well as Community state aid rules are respected, and that a reporting and project information system is functioning. This includes the responsibility of reporting all suspected and actual cases of fraud and irregularity. The NAO shall have the full overall accountability for the PHARE funds of a programme until the closure of the programme.

- in Romania

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures³.

The National Aid Co-ordinator (NAC) will have overall responsibility for programming, monitoring and implementation of Phare programmes. The National Authorising Officer (NAO) and the Project Authorising Officers (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the *DIS Manual* and other instructions of the Commission, and that all contracts are being prepared in accordance with the *Practical Guide for PHARE, ISPA and SAPARD*.⁴

The NAC and the NAO shall be jointly responsible for co-ordination between PHARE (including PHARE CBC), ISPA and SAPARD.

The National Fund (NF) in the Romanian Ministry of Public Finances, respectively, 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 overall responsibility for financial management of the PHARE funds. He shall ensure that the PHARE rules, regulations and procedures pertaining to procurement, reporting and financial management as well as Community state aid rules are respected, and that a reporting and project information system is functioning. This includes the responsibility of reporting all suspected and actual cases of fraud and irregularity. The NAO shall have the full overall accountability for the PHARE funds of a programme until the closure of the programme.

b.) Project size

All projects will be greater than €2 M, with the exception of the Small Projects Fund, which will provide grants to micro-projects including actions "people to people" and small pilot projects in the border region. This justifies projects of a smaller amount than €2 M. This is also in compliance with Art. 5 par. 2 of EC Regulation n. 2760/98.

c.) Contracting and disbursement deadline

All contracts must be concluded by 30 November 2004.

² The Practical Guide has replaced section F ("Procurement") of the DIS Manual

³ taking into consideration the rules set down in the annex of Council Regulation 1266/1999

⁴ The Practical Guide has replaced section F ("Procurement") of the DIS Manual

All disbursements must be made by 30 November 2005, with the exception of RO project 2002/000-628-02 "Crossover railway in Satu Mare on the route DN 19 to Petea (RO) - Csengersima (HU)", for which the expiry date for disbursement is 30 November 2006.

d.) Recovery of Funds

Any proven irregularity or fraud discovered at any time during the implementation of the programme will lead to the recovery of funds by the Commission.

If the implementation of a measure appears not to justify either a part or the whole of the assistance allocated, the Commission is to conduct an appropriate examination of the case, in particular requesting the beneficiary country to submit its comments within a specified period of time and to correct any irregularity.

Following the examination referred to in the previous paragraph, the Commission may reduce, suspend or cancel assistance in respect of the measures concerned if the examination reveals irregularity, an improper combination of funds or a failure to comply with one of the conditions in the financing memorandum and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission's approval has not been sought. Any reduction or cancellation of the assistance is to give rise to recovery of the sums paid.

Where the Commission considers that an irregularity has not been corrected or that all or part of an operation does not justify either all or part of the assistance granted to it, the Commission is to conduct a suitable examination of the case and request the beneficiary country to submit its comments within a specified period. After the examination, if the beneficiary country has undertaken no corrective measures, the Commission may:

- (a) reduce or cancel any advance;
- (b) cancel all or part of the assistance granted to the measure.

The Commission is to determine the size of a correction taking into account the nature of the irregularity and the extent of any failures in the management and control systems.

Any funds not used by the expiry date of the programme will be recovered by the Commission. A final written declaration with supporting documentation shall be issued by the NAO just after the end of the disbursement period of the Financing Memorandum showing the total amount contracted and disbursed. A final bank reconciliation showing the existing balances in the NF/IA shall also be enclosed.

Notwithstanding the recovery of unused and ineligible funds after expiry of the Financing Memorandum, a complementary recovery order may be issued after the final audit of the reliability and consistency of contracts and disbursements as well as their compliance with the provisions of the Financing Memorandum has been carried out, taking into account the independent opinion of the final audit.

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 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 payments shall be charged on sums not repaid by applying the rules specified in the Financial Regulation governing the Community Budget.

e.) Financial Flows

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and Hungary on 17 December 1998 and between the Commission and Romania on 20 October 1998. Funds will be transferred following requests from the NAO onto a

separate bank account, denominated in €, which will be opened and managed by the NF in a Bank agreed in advance with the Commission.

a.a.) Transfer of Funds to the National Fund

A payment of up to 20% of the funds to be managed locally* will be transferred to the NF following signature of the Financing Memorandum and the Financing Agreements (FAs) between the NF and the Implementing Agency (IA). The provisions foreseen in articles 2 and 13 of the MoU on the NF must also be met. 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 IA and the manner in which the payment function will be carried out.

Two replenishments will be made of up to 30 % of the funds to be managed locally* and the final payment of up to 20% or the full balance of the budget whichever is the lesser amount. The first replenishment will be triggered when 5% of the budget* has been disbursed by the IAs. The second replenishment may be requested when 35% of the total budget* in force has been disbursed. The final third replenishment will be paid when 70% of the total budget* in force is disbursed. Exceptionally the NAO may request an advance payment of more than the percentages mentioned above in accordance with the procedures laid down in the aforesaid Memorandum of Understanding. Save for express prior authorisation from the Commission HQs, no replenishment may be made if the trigger points mentioned above have not been respected.

b.b.) Transfer of Funds to the Implementing Agencies

The National Fund will transfer funds to IAs in accordance with Financing Agreements (FAs) signed between the NFs and the IAs. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency in charge of the financial administration of the sub-programme in line with Art. 13 of the MoU on the establishment of the National Fund.

Each individual FA will be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the IA there will be no transfer of funds from the NF to the IA. The IAs 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 the operations carried out by the relevant IA.

For those contracts with funds retained for a warranty period extending beyond the end of the disbursement period of the programme, the overall total of funds related to those contracts, as calculated by the PAO and established by the Commission, will be paid to the Implementing Agency before the official closure of the programme. The Implementing Agency assumes full responsibility of depositing the funds until final payment is due and for ensuring that said funds will only be used to make payments related to the retention clauses.

The Implementing Agency further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Interests accrued on the funds deposited will be paid to the Commission after final payment to the contractors. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the Commission. An overview of the use of funds deposited on warranty accounts - and notably of the payments made out of them - and of interests accrued will annually be provided by the NAO to the Commission.

c.c.) Interest

In principle, all bank accounts⁵ will be interest bearing. Interest will be reported to the European Commission. If the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the Programme.

* excluding the amount foreseen for the Community programmes

⁵ in particular, but not exclusively, accounts run by the NF, the CFCU and IAs

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

- in Romania

In Romania, the Implementing Agency will be the Ministry of Development and Prognosis, through its Cross Border Co-operation Directorate, which will retain overall responsibility for the implementation of the programme, including: approval of tender documentation, evaluation criteria, evaluation of offers, negotiation of contracts signature of contracts, authorisation of invoices, excepting the payments of invoices that will be made by the Payments Directorate within the same ministry. The CBC Directorate also includes a unit for the National Co-ordination of CBC programmes nominated as CBC Programme Co-ordination Unit (CBC - PCU). This unit will liaise with the beneficiary (institutions) and with the line Ministries in order to help them to prepare Terms of Reference, Technical Projects design, Technical Specifications and tender documentation. In 1997, a CBC Regional Office was set up in the border region, in Arad to provide closer contacts with project beneficiaries, local authorities, and relevant bodies in the border region. This Regional Office in Arad, re-nominated as JSPF Secretariat, will help the Implementing Agency in all activities related to the implementation of Joint Small Projects fund under Specific Guidelines prepared by the Implementing Agency.

For the works contracts under FIDIC rules, an official on behalf of project beneficiary acts as the Employer and invoices have to be certified by the independent Engineer contracted and financed by the Programme.

Project beneficiary institutions report monthly to the Implementing Agency, including copies to the EC Delegation, with commitment and disbursement schedules and sufficient details to allow assessment of progress made and remaining work to be accomplished.

-in Hungary

The Ministry of Agriculture and Regional Development has been defined as the Implementing Authority for all measures to be implemented on the Hungarian side of the border in the framework of the JPD. In Phare terms, the National Agency for Regional Development of the Ministry of Agriculture and Regional Development will be the Implementing Agency. It will have the overall responsibility for all aspects of tendering and contracting as well as administrative and financial matters of the implementation.

<u>Implementing Agency:</u>	National Agency for Regional Development of the Ministry of Agriculture and Regional Development
Address:	1016 Budapest, Gellérthegy u. 30-32.
Phone:	+36 1 4887171
Fax:	+36 1 4887188

g.) Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive⁶ 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 I or annex II of the EIA Directive, the carrying out of the EIA-procedure must be documented⁷.

⁶ DIR 85/337/EEC; OJ L 175/40; 5.7.1985; as amended by DIR 97/11/EEC; OJ L 73/5; 14.3.1997

⁷ in **Annex EIA** to the corresponding investment project fiche

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-Directive⁸ must be documented⁹.

All investment projects 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.

h.) Special rules for certain components for the programme

Grant Schemes

For grant schemes whose procedures and formats are not covered by the current DIS rules, 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 provisions of the Practical Guide. In particular, due care will be given to the selection process of the beneficiary projects, which has to be done at technical level through selection committees composed of experts appointed by the authorities which are co-financing the schemes as well as by the relevant administrations and interest groups involved in the schemes.
- 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 has also to sign the grant contracts with the beneficiaries and to ensure adequate monitoring and financial control under his/her authority and responsibility. With this reservation, the management of the schemes can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.
- The ex ante approval of the Commission (Delegation in Hungary and in Romania, respectively) will be required for the call for proposals, application forms, evaluation criteria, the selection procedures (including the composition of the committees) and results (list of projects to be funded). The grant contracts signed by the PAO will be subject to the ex-ante control of the EC Delegation.

The implementation of the selected projects through the provision of works, supplies and services sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement regulations in the Practical Guide.

The decentralised system established for CBC small projects is to be applied to all such contracts below 300 000 EUR (or any increased threshold to be fixed by EC Headquarters for small project funds under CBC programmes). Tenders and contracts above this threshold will be presented to the EC Delegation for ex ante approval. The financial commitments in Phare terms will be effected at the date of signature of the grant contracts by the competent PAO. Project implementation and all Phare disbursements are to be done before the expiry date of the present Financing Memorandum.

CBC Small Projects Facility

The Small Projects Facility will not include physical investments other than small infrastructure not generating substantial net revenue.

For the CBC Small Project Facility, up to 7% of the PHARE contribution may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

⁸ DIR 92/43/EEC; OJ 206/7; 22.7.1992

⁹ in **Annex Nature Conservation** to the corresponding investment project fiche

4. MONITORING AND EVALUATION

Project implementation will be monitored through the Joint Monitoring Committee (JMC). It includes the NAO, the NAC and the Commission. 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 Financing Memoranda and the Accession Partnership. Furthermore, the JMC will review the progress of all pre-accession EU-funded assistance programmes once a year (PHARE, ISPA and 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 IA (and of 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 these are effected. The SMSC will report to the JMC, to which it will submit overall detailed reports on all Phare financed programmes in its sector.

The Commission services shall ensure that an ex-post evaluation is carried out after completion of the Programme.

5. AUDIT AND ANTI-FRAUD MEASURES

a.) By the Candidate Countries

Each year an audit plan and a summary of the findings of the audits carried out shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the programme.

Beneficiary countries shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or Community controls.

Irregularity shall mean any infringement of a provision of Community 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 Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Fraud shall mean any intentional act or omission relating to:

- (i) 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,
- (ii) non-disclosure of information in violation of a specific obligation, with the same effect,
- (iii) the misapplication of such funds for purposes other than those for which they are originally granted.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94¹⁰.

In particular, all suspected and actual cases of fraud and irregularity as well as all measures related thereto taken by the national authority must be reported to the Commission services without delay.

¹⁰ OJ L 178; 12.7.94; p. 43-46

Should there be no suspected or actual cases of fraud and irregularity to report, the beneficiary country shall inform the Commission of this fact at the end of each quarter.

b) By the Commission

All financing memoranda as well as the resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-fraud Office) and audits by the Court of Auditors. This includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Candidate Country concerned and on-the-spot checks.

In order to ensure efficient protection of the financial interests of the Community, the Commission may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96¹¹.

The accounts and operations of the National Fund and all relevant Implementing Agencies may be checked at the Commission's discretion by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Union's Court of Auditors as referred to in the "General Conditions relating to the Financing Memorandum" attached to the Framework Agreement.

6. VISIBILITY/PUBLICITY

The appropriate Programme Authorising Officer 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 Delegation. Further details are set down in the Annex "Visibility/Publicity".

7. SPECIAL CONDITIONS

In the event that agreed commitments are not met for reasons which are within the control of the Governments of Hungary and Romania, 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.

All the adequate structures for implementation and management have been already set up during the previous similar programmes, proving that parties involved are able to co-operate to fulfil the proposed objectives. A letter of commitment will accompany every project approved by JCC, stating the fact that local co-financing will be made available by the beneficiaries.

¹¹ OJ L 292; 15.11.1996; p. 2-5

ANNEX D ON

INFORMATION AND PUBLICITY FOR THE PHARE, ISPA AND SAPARD PROGRAMMES OF THE EUROPEAN COMMUNITIES

1. Objective and scope

Information and publicity measures concerning assistance from the European Community Phare Programme are intended to increase public awareness and transparency of EU action and to create a consistent image of the measures concerned in all applicant countries. Information and publicity shall concern measures receiving a contribution from the Phare Programme.

2. General principles

The appropriate Programme Authorising Officer in charge of the implementation of Financing Memoranda, and other forms of assistance shall be responsible for publicity on the spot. Publicity shall be carried out in co-operation with the EC Delegations, which shall be informed of measures taken for this purpose.

The competent national and regional authorities shall take all the appropriate administrative steps to ensure the effective application of these arrangements and to collaborate with the EC Delegations on the spot.

The information and publicity measures described below are based on the provisions of the regulations and decisions applicable to the Structural Funds. They are:

- Regulation (EEC) 1159/2000 Official Journal of the European Communities No L130/30, 31 May 2000;
- Commission Decision of 31 May 1994; Official Journal of the European Communities No L 152/39, 18 June 1994.

Specific provisions concerning ISPA are included in:

- Commission Decision of 22nd June 2001, Official journal of the European Communities No L.182/58

Information and publicity measures must comply with the provisions of the above mentioned regulation and decision. A manual on compliance is available to national, regional and local authorities from the EC Delegation in the country concerned.

3. Information and publicity concerning Phare programmes

Information and publicity shall be the subject of a coherent set of measures defined by the competent national, regional and local authorities in collaboration with the EC Delegations for the duration of the Financing Memorandum and shall concern both programmes and other forms of assistance.

The costs of information and publicity relating to individual projects shall be met from the budget for those projects.

When Phare programmes are implemented, the measures set out at (a) and (b) below shall apply:

- (a) The competent authorities of the applicant countries shall publish the content of programmes and other forms of assistance in the most appropriate form. They shall ensure that such documents are appropriately disseminated and shall hold them available for interested parties. They shall ensure the consistent presentation throughout the territory of the applicant country of information and publicity material produced.

(b) Information and publicity measures on the spot shall include the following:

(i) In the case of infrastructure investments with a cost exceeding EUR 1 million:

- billboards erected on the sites, to be installed in accordance with the provisions of the regulation and decision mentioned in paragraph 2 above, and the technical specifications of the manual to be provided by the EC Delegation in the country concerned.
- permanent commemorative plaques for infrastructures accessible to the general public, to be installed in accordance with the provisions of the regulation and decision mentioned in paragraph 2 above, and the technical specifications of the manual to be provided by the EC Delegation in the country concerned.

(ii) In the case of productive investments, measures to develop local potential and all other measures receiving financial assistance from Phare, Ispa or Sapard:

- measures to make potential beneficiaries and the general public aware of Phare, Ispa or Sapard assistance, in accordance with the provisions cited at paragraph 3(b)(i) above.
- measures targeting applicants for public aids part-financed by Phare, ISPA or SAPARD in the form of an indication on the forms to be filled out by such applications, that part of the aid comes from the EU, and specifically, the Phare, ISPA or SAPARD Programmes in accordance with the provisions outlined above.

4. Visibility of EU assistance in business circles and among potential beneficiaries and the general public

4.1 Business circles

Business circles must be involved as closely as possible with the assistance, which concerns them most directly. The authorities responsible for implementing assistance shall ensure the existence of appropriate channels for disseminating information to potential beneficiaries, particularly SMEs. These should include an indication of the administrative procedures to be followed.

4.2 Other potential beneficiaries

The authorities responsible for implementing assistance shall ensure the existence of appropriate channels for disseminating information to all persons who benefit or could benefit from measures concerning training, employment or the development of human resources. To this end, they shall secure the co-operation of vocational training bodies involved in employment, business and groups of business, training centres and non-governmental organisations.

Forms

Forms issued by national, regional or local authorities concerning the announcement of, application for and grant of assistance intended for final beneficiaries or any other person eligible for such assistance shall indicate that the EU, and specifically the Phare, Ispa or Sapard Programmes, is providing financial support. The notification of aid sent to beneficiaries shall mention the amount or percentage of the assistance financed by the Programme in question. If such documents bear the national or regional emblem, they shall also bear the EU logo of the same size.

4.3 The general public

The media

The competent authorities shall inform the media in the most appropriate manner about actions co-financed by the EU, and Phare, ISPA or SAPARD in particular. Such participation shall be fairly reflected in this information.

To this end, the launch of operations (once they have been adopted by the Commission) and important phases in their implementation shall be the subject of information measures, particularly in respect of regional media (press, radio and television). Appropriate collaboration must be ensured with the EC Delegation in the applicant country.

The principles laid down in the two preceding paragraphs shall apply to advertisements such as press releases or publicity communiqués.

Information events

The organisers of information events such as conferences, seminars, fairs and exhibitions in connection with the implementation of operations part-financed by the Phare, Ispa or Sapard Programmes shall undertake to make explicit the participation of the EU. The opportunity could be taken of displaying the European flags in meeting rooms and the EU logo upon documents depending on the circumstances. The EC Delegation in the applicant country shall assist, as necessary, in the preparation and implementation of such events.

Information material

Publications (such as brochures and pamphlets) about programmes or similar measures financed or co-financed by Phare, Ispa or Sapard should, on the title page, contain a clear indication of the EU participation as well as the EU logo where the national or regional emblem is used.

Where such publications include a preface, it should be signed by both the person responsible in the applicant country and, for the Commission, the Delegate of the Commission to ensure that EU participation is made clear.

Such publications shall refer to the national and regional bodies responsible for informing interested parties.

The above-mentioned principles shall also apply to audio-visual material.

5. Special arrangements concerning billboards, commemorative plaques and posters

In order to ensure the visibility of measures part-financed by the Phare, Ispa or Sapard Programmes, applicant countries shall ensure that the following information and publicity measures are complied with:

Billboards

Billboards providing information on EU participation in the financing of the investment should be erected on the sites of all projects in which EU participation amounts to EUR 1 million or more. Even where the competent national or regional authorities do not erect a billboard announcing their own involvement in financing the EU assistance must nevertheless be announced on a special billboard. Billboards must be of a size which is appreciable to the scale of operation (taking into account the amount of co-financing from the EU) and should be prepared according to the instructions contained in the technical manual obtainable from EC Delegations, referred to above.

Billboards shall be removed not earlier than six months after completion of the work and replaced, wherever possible, by a commemorative plaque in accordance with the specifications outlined in the technical manual referred to above.

Commemorative plaques

Permanent commemorative plaques should be placed at sites accessible to the general public (congress centres, airports, stations, etc.). In addition to the EU logo, such plaques must mention the EU part financing together with a mention of the relevant Programme (Phare, Ispa or Sapard).

Where a national, regional or local authority or another final beneficiary decides to erect a billboard, place a commemorative plaque, display a poster or take any other step to provide information about projects with a cost of less than EUR 1 million, the EU participation must also be indicated.

6. Final provisions

The national, regional or local authorities concerned may, in any event, carry out additional measures if they deem this appropriate. They shall consult the EC Delegation and inform it of the initiatives they take so that the Delegation may participate appropriately in their realisation.

In order to facilitate the implementation of these provisions, the Commission, through its Delegations on the spot, shall provide technical assistance in the form of guidance on design requirements, where necessary. A manual will be prepared in the relevant national language, which will contain detailed design guidelines in electronic form and this will be available upon request.