

## FINANCING MEMORANDUM<sup>1</sup>

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 Bulgaria, 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:

Programme number: **BG2004/016-715**

Title: **Phare Cross Border Co-operation Programme between Bulgaria and Turkey in 2004**

Duration: **Until 30 November 2006**

### ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **€ 3.0 million** hereinafter referred to as "**THE EC GRANT**".

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<sup>1</sup> The Financing Memorandum structure is as follows : 1. the cover pages with the references to the country concerned, amount and authority to sign, 2. Framework Agreement incl. Annex A and Annex B; Annex C – Special Conditions (the text of the adopted financing proposal starting from **Description and Objectives** onwards; and Annex D 'Visibility/Publicity).

### ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until **30 November 2006** 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 2007** with the exception of the project *BG2004/016-715.01* (Road I-9 (E-87) - Construction of road Malko Tarnovo Border Crossing checkpoint with Turkey, including bypass of Malko Tarnovo), where the deadline for disbursement is **30 November 2009**. 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. 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).

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  
9 Moskovska Str  
PO Box 668  
BG-1000 Sofia  
Bulgaria

Tel: (+359 2) 933 5252  
Fax: (+359 2) 933 5233

**for THE RECIPIENT:**

Mr Milen Veltchev  
Minister of Finance  
102 Rakovski St  
BG-1040 Sofia  
Bulgaria

## ARTICLE 5 - NUMBER OF ORIGINALS

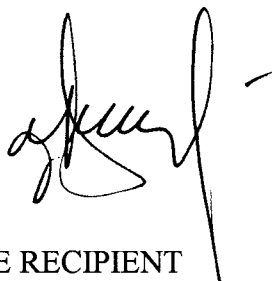
This Memorandum is drawn up in duplicate in the English language.

## 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 ...*SOFIA*...  
Date *19/11/2004*



for THE RECIPIENT  
*MILEN VELTCHEV*  
*MINISTER OF FINANCE*

Done at *SOFIA*  
Date *7. 10. 2004*



for THE COMMUNITY

*Dimitris Kourkoulas*  
*Head of Delegation*

### Encl.:

1. Framework Agreement (incl. 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. Overall objectives of the programme

- 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 establishment of links between these links and wider Community networks.

##### 1.2. Specific project purposes

- To facilitate the movement of goods and people by **improvement the transport infrastructure and accessibility** to the border crossings, namely by constructing of road Malko Tarnovo – Border Crossing checkpoint with Turkey, including bypass of Malko Tarnovo.
- To facilitate **the cross-border co-operation of regional actors and agencies** in the areas of economic development, cultural exchange, tourism, environment trough the continuation of a Joint Small Project Fund.

##### 1.3. Programme Description

The programme has been designed following bilateral contacts between Bulgaria and Turkey and approved at the Joint Cooperation Committee meeting in Ankara, on 31 March 2004.

##### *JPD priority 1: Improving Cross-border Infrastructure*

<b>Phare BG 2004/016-715.01: “Road I-9 (E-87) Construction of road Malko Tarnovo – Border Crossing checkpoint with Turkey, including bypass of Malko Tarnovo” (€ 2.5 million)</b>
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The road section is situated at approximately 80 km south of Burgas. The town of Malko Tarnovo is centre of the municipality, slightly populated with some 3 000 inhabitants. At

present a part of ring road of town of Malko Tarnovo (from km 0 to km 2+732) is under construction, financed under the state budget and will be completed by the end of 2004.

More specifically, the proposed project provides the Construction of a new road from the town of Malko Tarnovo to the Bulgarian–Turkish Border with length of 3.532 km (from km 364+134 to km 367+666) and the construction of bypass of Malko Tarnovo with length of 0.452 km (from km 2+732 to km 3+184).

There is a detailed design available, prepared in 2000. On 10.06.2002 the Ministry of Environment and Water confirmed the Decision on Environmental Impact Assessment Report No 6-2/1999, issued on the base of the feasibility study. The Decision permits construction and operation of the Project.

The detailed design envisages construction of third lane for heavy vehicles along the whole length of the road. The road width is 10.50/12.50, maximum longitudinal slope – 5 %, cross slope – 2.5 %. The Project consists construction of 17 culverts, 8 concrete supporting walls, 1 big structure - bridge (L = 4x18 m) at km 365+250, 1 road junction (three branched) at km 3+184=364+134, which will establish connection between bypass of Malko Tarnovo and road I-9 in direction of Tzarevo. On the basis of the detailed design a parcel plan was prepared necessary for acquisition of the lands.

The **new constructed approach road** with length of 3.532 km and the **bypass of Malko Tarnovo** with a length of 0.452 km will facilitate the heavy traffic flow between Bulgaria and Turkey through the existing Border Crossing at Malko Tarnovo and therefore reduce the isolation of the border regions, encourage investments and cross-border trade, support for intensifying the development of both regional and national economic co-operation.

### ***Priority 3 – “People to people actions”***

<b>Phare BG-2004/016-715.02: “People to people actions” (€ 0.500 million)</b>
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The proposed project under the Small Project Fund (SPF) will support the key objectives of the Turkish-Bulgarian CBC Programme, namely to help the border regions to overcome specific development problems resulting from their relative isolation in the framework of national economics. 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 JSPF supports the establishment and development of cooperative networks on both sides of the border and the creation of linkages between these networks and wider EU networks. The JSPF will promote “soft” cross border activities. The fund will finance selected small-scale “people-to-people” projects (projects located wholly in the Bulgarian border region, or from the Bulgarian JSPF contribution to common Bulgarian-Turkish projects). Grants will only be made available for projects whose immediate objective is non-commercial and not-for-profit. Joint projects, especially where co-financed jointly by Turkish and Bulgarian project partners, will be particularly encouraged. Projects that are part of an overall strategy for the development of the region/town/municipality will also receive priority. The following priority themes will be the subject of the call for proposals: economic development, tourism, cultural exchanges, and capacity building at local level.

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 Secretariat will also appoint experts to visit would-be project applicants in order to provide assistance, especially in relation to matters such as project cost assessment.

The JSPF is designed to make available a total Phare contribution of € 500,000 /border region. Up to 7 % of the Phare contribution (maximum € 35,000 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. Projects already part-financed by another EU funded programme may not be granted support from this Phare programme.

#### **1.4. Lessons learned**

Experience with the implementation of Phare CBC programmes in previous years and evaluation have led to a number of general lessons being learned. These lessons are reflected in the design and implementation of the 2004 CBC Programme Bulgaria-Turkey. The most important lessons relate to constraints on Bulgarian administrative capacity specifically in the Ministry acting as Implementing Agency. Medium to long term efforts to reinforce this capacity are already under way and are supplemented in Phare 2004, but in the meantime additional measures have been put in place to assist. These include efforts to support horizontal public administration reform, limiting the number of grant schemes as these place extra burdens on administrative capacity and avoiding complex multi-phase contracting. Another key lesson is that the success of Phare projects depends on continuity of key senior and working level personnel. In addition to conditionality in project agreements, this issue is being addressed in the context of public sector reform and strengthening, e.g. by developing civil service contracts and conditions to avoid politically motivated staff transfers.

More specific lessons relating to individual sectors are reflected in individual project documents

#### **1.5. Overall programme conditionalities**

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will satisfy the Commission that adequate steps are taken to staff and resource adequately the National Fund, CFCU, other Implementing Agencies and project management units involved in implementing this programme.

Before the Financing Memorandum 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.

All projects involving the supply of equipment and works require national co-financing as shown in the relevant Project Fiche. If the total cost of such equipment or works turns out

to be 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 turns out to be greater than the amount envisaged in the fiche, the extra support required will be provided by additional national co-financing.

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will satisfy the Commission that draft twinning covenants, terms of reference and technical specifications have been prepared, as appropriate, to allow each project to be launched immediately.

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 such an 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.

Further project-specific conditionalities are described in each Project Fiche.

## 2. BUDGET

### 2.1. Financial Table

**2004 Phare Cross Border Programme Bulgaria-Turkey (in € million)**

Objective	Phare Funding			IFI	TOTAL
	Institution Building (IB)	Investment (INV)	TOTAL Phare (IB and INV)		
<b>Transport infrastructure</b>					
Road I-9 (E-87) Construction of road Malko Tarnovo – Border Crossing checkpoint with Turkey, including bypass of Malko Tarnovo		2.5	2.5	0	2.5
<b>People to people</b>					
People to people	0.5		0.5	0	0.5
<b>TOTAL</b>	<b>0.5</b>	<b>2.5</b>	<b>3.0</b>	<b>0</b>	<b>3.0</b>

(The distribution of figures between the budgets line is indicative within the limits of Art 5 MoU NF)

### 2.2. 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.

### **3. IMPLEMENTING AGENCIES**

Implementing Agencies responsible for the CBC programmes will be the Phare CBC Implementing Agency of the Ministry of Regional Development and Public Works.

### **4. IMPLEMENTATION ARRANGEMENTS**

#### **4.1. Method of Implementation**

Implementation of the programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation<sup>1</sup>.

The Beneficiary Country will ensure that the conditions laid down in Art. 164 (1) (a) - (e) of the Financial Regulation are respected at all times. The Commission reserves the right to take the necessary measures, including suspension of funds, if it considers that these conditions are not met.

Prior to the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999<sup>2</sup>, project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

#### **4.2. Procurement**

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Title 5 of its Implementing Rules<sup>3</sup>, as well as the Commission Decision SEC (2003) 387/2<sup>4</sup>.

The Contracting Authorities shall also use the procedural guidelines and standard templates and models provided for in the "Practical Guide to contract procedures financed from the general EC budget in the context of external actions" as published

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

<sup>2</sup> Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

<sup>3</sup> Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1

<sup>4</sup> Commission Decision SEC (2003) 387/2 on the general regulations for service, supply and works contracts financed from the general budget of the European Communities in the course of co-operation with third countries, adopted on March 25, 2003



on the EuropeAid website<sup>5</sup> 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 procedures and guidelines transposing the European Union Public Procurement Directives.

#### **4.3. Procurement Principles for Grant Schemes**

For grant schemes in the field of economic and social cohesion, 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 rules for External Actions. In particular, due care will be given to the selection process of the projects. Grants will be awarded in conformity with the provisions of chapter 6 of the Practical Guide, and following the principles of Phare decentralised management. Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Sofia 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 contracts 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 in use 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 manner<sup>6</sup>, 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 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.

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<sup>5</sup> current address: [http://europa.eu.int/comm/europeaid/tender/gestion/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm)

<sup>6</sup> see section 11 and Annex 4 of the 2004 Phare Programming Guide

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

#### **4.4. Implementation Principles for Twinning Projects**

The amounts foreseen for Twinning projects will cover the eligible costs (as set down in the rules applicable for Twinning) for implementing the work plan agreed between the Twinning partners.

The eligible costs may include costs incurred by the selected Partner State during the preparation of the Twinning covenant in the period between signature of the Financing Memorandum and the final notification of the financing approval of the covenant.

#### **4.5. Principles for the CBC Small Projects Fund**

The CBC Small Projects Fund will finance projects with a Phare contribution below € 50,000 (Phare contribution). It will not include physical investments other than small infrastructure not generating substantial net revenue.

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

### **5. MANAGEMENT OF ASSISTANCE**

#### **5.1. Project Management**

##### *5.1.1. Responsibilities*

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

The National Authorising Officer (NAO) and the NAC shall be jointly responsible for the co-ordination between Phare (including Phare CBC), 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 Memorandum 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.

### 5.1.2. *Project Size*

All projects will be greater than € 2 million, except those for people to people actions (2004/016-715.02) where the Bulgarian Ministry concerned cannot utilise as much as € 2 million

### 5.1.3. *Deadline for contracting and execution of contracts, programming deadline*

(1) All contracts must be concluded by no later than November 30, 2006.

(2) All contracts must be executed by no later than November 30, 2007.

In the cases of the following more complex project, however, execution of contracts must end by November 30, 2009:

***BG2004/016-715.01: "Road I-9 (E-87) Construction of road Malko Tarnovo – Border Crossing checkpoint with Turkey, including bypass of Malko Tarnovo".***

The justification for this relates to the need to take into account the duration of works (impossibility to work in winter during several months) and the Defect Liability Period of one year after the completion of works.

(3) Under DIS, a complete tender dossier must be submitted to the Delegation for approval by no later than 31 May 2006. 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.

### 5.1.4. *Environmental Impact Assessment and Nature Conservation*

The procedures for environmental impact assessment as set down in the EIA-directive<sup>7</sup> 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 documented<sup>8</sup>.

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 documented<sup>9</sup>.

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.

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<sup>7</sup> DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

<sup>8</sup> in Annex EIA to the corresponding investment project fiche.

<sup>9</sup> In Annex Nature Conservation to the corresponding investment project fiche

## 5.2. Financial Management

### 5.2.1. 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 account. In principle, all bank accounts will be interest bearing. Interest will be reinvested in the programme.

### 5.2.2. Payments to the National Fund

A first payment<sup>10</sup> of up to 20 % of the funds to be managed locally<sup>11</sup>, will be sent to the NF following signature of the Financing Memorandum and the Financing Agreements (FAs) between the NF and the Implementing Agencies (IAs)/Central Finance and Contracts Unit (CFCU). 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/CFCU and the manner in which the payment function between them will be carried out.

Two further payments<sup>12</sup> of up to 30 % of the funds to be managed locally<sup>13</sup> will be made. The second payment will be triggered when 5 % of the total budget in force<sup>14</sup> has been disbursed by the IAs and the CFCU. The third payment may be requested when 35 % of the total budget in force<sup>15</sup> has been disbursed.

A final fourth payment will be made when 70 % of the total budget in force<sup>16</sup> has been disbursed and all contracts have been signed.

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<sup>10</sup> representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

<sup>11</sup> excluding the amount foreseen for Community Programmes

<sup>12</sup> representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

<sup>13</sup> excluding the amount for Community Programmes

<sup>14</sup> excluding the amount for Community Programmes

<sup>15</sup> excluding the amount for Community Programmes

<sup>16</sup> excluding the amount for Community Programmes

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, CFCU and IAs 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.

#### *5.2.3. Payments from the National Fund to the Implementing Agency*

The National Fund will make payments to IAs, including the CFCU, in accordance with Financing Agreements signed between the NF and the IAs/CFCUs. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU 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 FA must be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the CFCU/IA there will be no payments from the NF to the CFCU. The CFCU and 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 operations carried out by the relevant CFCU/IA.

#### *5.2.4. Payments to the National Fund for Participation in Community Programmes and Agencies*

Not relevant

#### *5.2.5. Payments to other International Organisations in Case of Joint Management or direct grants*

Not relevant

#### *5.2.6. Payments in Case of Contractual Retention Clauses*

For those contracts with contractual retention clauses (e.g. funds retained for a warranty period), the overall total of funds related to those contracts (as calculated by the PAO and established by the Commission) will be paid to the IA before the deadline for execution of contracts. The Implementing Agency assumes full responsibility for depositing 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 IA 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.

#### *5.2.7. Closure of Expenditure and Clearance of Accounts*

No later than eight months after the end of execution of contracts, the NF will submit a final declaration of expenditure and an attestation 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 compensation in accordance with Community rules.

## **6. MONITORING AND EVALUATION**

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 Memoranda 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 an ex-post evaluation is carried out after completion of the programme.

## **7. AUDIT, FINANCIAL CONTROL, ANTI-FRAUD MEASURES, PREVENTIVE AND CORRECTIVE ACTIONS**

### **7.1. Supervision and Financial Control by the Commission and the European Court of Auditors**

All Financing Memoranda 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) 2185/96<sup>17</sup>.

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 Auditors<sup>18</sup>, the accounts and operations of the National Fund and, where applicable, the 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.

### **7.2. Obligations of the Beneficiary Country**

#### *7.2.1. 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 438/2001<sup>19</sup>.

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<sup>17</sup> Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2

<sup>18</sup> as referred to in the General Conditions relating to the Financing Memorandum" attached to the Framework Agreement

<sup>19</sup> Commission Regulation (EC, Euratom) 438/2001 of 2 March 2001, OJ L 63; 3.3.2001, p.21

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.

#### *7.2.2. Preventive Measures*

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption<sup>20</sup> practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

#### *7.2.3. 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.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94<sup>21</sup>.

In particular, all suspected or actual cases of fraud<sup>22</sup> and irregularity<sup>23</sup> 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.

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<sup>20</sup> 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.

<sup>21</sup> Commission Regulation (EC) 1681/94 of 11. July 1994; 12.7.94; p. 43

<sup>22</sup> 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.

<sup>23</sup> 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.)



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.

### **7.3. Recovery of Funds in Case of Irregularity or Fraud**

Any proven irregularity<sup>24</sup> or fraud<sup>25</sup> 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.

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.

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<sup>24</sup> see definition above

<sup>25</sup> see definition above

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

## **8. VISIBILITY AND PUBLICITY**

The POA 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 (attached).

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