

## FINANCING AGREEMENT<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 Agreement. 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 Agreement 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>	BG 2006/018-388
<u>Title:</u>	<b>Cross Border Co-operation Programme/Neighbourhood Programme between Bulgaria and Serbia in 2006</b>
<u>Duration:</u>	<b>Until 30 November 2008</b>

### ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **4 M€** hereinafter referred to as "**THE EC GRANT**".

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<sup>1</sup> The Financing Agreement structure is as follows : 1. the coverpages 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 2008** subject to the provisions of this Agreement. 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 execution of contracts of THE EC GRANT is **30 November 2009**. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the contract execution period, should this be requested in due time and properly justified by THE RECIPIENT. Disbursements of funds may continue for up to 12 months after the deadline for the execution of contracts to meet liabilities properly incurred through the execution of the contracts entered into under this programme. This Financing Agreement shall expire once those disbursements have been completed. All the funds which have not been disbursed by that time shall then 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 Lyubomir Datzov**

Deputy Minister of Finance  
102, Rakovski Str.  
BG-1040 Sofia  
Bulgaria

## ARTICLE 5 - NUMBER OF ORIGINALS

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

## ARTICLE 6 - ENTRY INTO FORCE

This Agreement 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 Agreement.

Done at .....

Date

02.02.2007

for THE RECIPIENT

*Lyubamir Latkov*  
Deputy Minister of Finance  
National Aid Coordinator

Done at .....

Date

02.02.2007

for THE COMMUNITY

**Michael B. Humphreys**  
Head of Representation

Encl.

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

## ANNEX C

### TO THE FINANCING AGREEMENT FOR THE PHARE CBC PROGRAMME FOR BULGARIA -SERBIA IN 2006

#### 1. OBJECTIVES AND DESCRIPTION

##### 1.1. Overall objectives of the programme

- To reinforce technical infrastructures that supports cross-border relations;
- To promote sustainable development of the border area through economic valorisation of its potentialities;
- To create new cross border collaboration and to strengthen previously operative cross border contacts.

##### 1.2. Specific project purposes

- To maximise the **social and economic cohesion** in the border area by encouraging contacts and co-operation at local and regional levels;
- To develop the border area's territory in a co-ordinated and integrated way between the two sides of the border, thus creating the basis for a **sustainable economic development**;
- To stimulate **regional cooperation** and to establish **local capacity and networks**;
- To facilitate **the cross-border co-operation of regional actors and agencies** in the areas of information, cultural exchange, education, health and social problem through the implementation of a Joint Small Project Fund.

##### 1.3. Programme Description

The 2006 programme has been designed following the set of projects jointly defined by the partner countries and approved at the Joint Cooperation Committee meeting in Sofia in April 2006.

Summary descriptions<sup>1</sup> of the individual projects grouped under the sectoral objectives are as follows:

**JPD priority 1 & 2: Promoting sustainable economic development & Support to social, institutional and economic cohesion**

<b>BG 2006/018-388.01.01 Integrated Grant Scheme for sustainable development</b>	
<b>Duration</b>	<b>18 months</b>

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<sup>1</sup> Descriptions are indicative; some details may be changed



<i><b>Twinning</b></i>	<i><b>N/A</b></i>
<i><b>Phare budget</b></i>	<i><b>€3.10 million</b></i>
<i><b>Implementing Agency</b></i>	<i><b>Ministry of Regional Development and Public Works of the Republic of Bulgaria</b></i>

The objectives of the project are to exploit and manage the border area's territory in a co-ordinated and integrated way between the two sides of the border, thus creating the basis for a sustainable economic development. It is also to maximise the social and economic cohesion between the border area by encouraging contacts and co-operations at various levels

The project will be implemented in the form of a grant scheme, while the support granted will be focused on areas/spheres of co-operation in which regions, municipalities, local development organisations and other social-economic partners should have expertise and experience. In particular this will include the eligible spheres of co-operation as set out below:

#### **Window 1:**

##### ***- Support for development and implementation of projects direct to improvement of business-related infrastructures***

This sphere of intervention is fully consistent with measure 1.1 of the JPD (2004-2006), which aims *at improving existing infrastructures that are concretely impacting on cross-border economic development, business and trade, transports and logistics, services and tourism*. In order to raise awareness and competencies on cross-border co-operation among the public actors the operational objective of the measure is to improve actual infrastructures, especially in qualitative terms.

The vision behind such investment initiatives should clearly demonstrate a cross-border impact as well as the potential to foster further economic activities in the area and create the conditions for the enhancement of the economic competitiveness.

##### ***- Support for safeguard and management of the natural environment projects***

This sphere of intervention is fully consistent with measure 1.2 of the JPD (2004-2006), which aims *at promoting specific cross-border interventions to increase the safeguard of environmental resources as well as the re-cultivation and protection of lands*.

The **eligible activities** under this Window could cover:

- Cross-border investment plans and feasibility studies for cross-border infrastructures
- Improvement of local transport facilities: bus stops, parking lots and lanes for heavy traffic, signposts, road illuminations, checkpoint improvement
- Improvement of cross-border accessibility of business activities including enhancement of tourism attractions
- Improvement of enterprises and business units accessibility to actual cross-border infrastructures ,facilities and connections, including logistics and inter-modality

- Small business non-financial facilities and actual services for cross-border activities (lots equipped for local marketplaces, premises and facilities for settling small business)
- Cross-border development plans, feasibility studies and environmental impacts assessments
- Establishment of cross-border monitoring systems for natural safeguard
- Joint database for controlling pollution and assessing environmental impact
- Pollution prevention plans for the border area
- Small scale water treatment facilities
- Actions for introducing or adopting environmental friendly agriculture

**Window 2 - *Support to further capacity building within the spheres of co-operation between institutions and communities and cross-border social and economic cohesion***

This sphere of intervention is addressing both measures 2.1 and 2.2 of the JPD (2004-2006), thus creating the prerequisite for achieving the specific priority 2 objective, namely *to maximize the social and economic cohesion between the border area by encouraging contacts and co-operations at various levels.*

The **eligible activities** under this Window could cover:

- Creation of networks as the basis of regional partnerships by which information, experience and best practice can be exchanged
- Training courses and workshops on programme and project preparation
- Partnership building and promotion of project based partnerships
- Developing marketing strategies
- Training on eco-standards
- Support to implementation of joint research projects with direct relevance to the border region
- Organising training sessions, conferences and seminars to local entrepreneurs
- Counselling and advising in business start up, business planning, technology transfer, patents, legal affairs, finances and marketing
- Information services for/to the entrepreneurs active in the border region
- Support to the development of new, competitive products, services and technologies

The above given list of activities is not exclusive and will further be specified within the Guidelines for Applicants.

The grant scheme will be implemented through joint Call for Proposals and in compliance with the provisions laid down in the JPD.

The joint Call for Proposals will use funds, which are allocated to the Neighbourhood Programme under the EU Phare and CARDS programmes, and which will cover the respective eligible activities from the both sides of the border. The eligible applicant should prepare a joint application form in accordance with the requirements set out in details within the Guidelines for Applicants.

***JPD priority 3 – “People to people actions***

<b><i>BG 2006/018-388.01. 02: People to people actions</i></b>	
<b><i>Duration</i></b>	<b><i>12 months</i></b>
<b><i>Twinning</i></b>	<b><i>N/A</i></b>
<b><i>Phare budget</i></b>	<b><i>€ 0.60 million</i></b>
<b><i>Implementing Agency</i></b>	<b><i>Ministry of Regional Development and Public Works of the Republic of Bulgaria</i></b>

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

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

- Development or establishment of facilities and resources to improve the flow of information and communication between border regions, including television and radio programmes of common interest
- Cultural exchange
- Justice, Freedom and security by enhancing cross border communication and prevention of crime in the border regions by developing training partnership projects
- Development or establishment of local employment, education and training initiatives between border regions

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

***JPD horizontal measure – Technical Assistance***

<b><i>BG 2006/018-388.01.03</i></b>	
<b><i>Duration</i></b>	<b><i>36 months</i></b>
<b><i>Twinning</i></b>	<b><i>N/A</i></b>

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<i>Phare budget</i>	<i>€0.30 M</i>
<i>Implementing Agency</i>	<i>Ministry of Regional Development and Public Works of the Republic of Bulgaria</i>

Financial support provided under the TA should produce smooth operation of the JTS Joint Technical secretariat, JSC Joint Steering Committee and JCC Joint Cooperation Committee through:

- Staff employed within the JTS, capable to manage the tasks prescribed in the JPD,
- Timely management of all Programme related meetings,
- JTS staff sufficiently competent to assist JCC, JSC, IA/PCMU in performing Neighbourhood Programme implementation;
- Increased awareness and information among the local beneficiaries, as well as suitably promoting programme's results achieved and aims pursued;
- Improved different administrative activities related to the joint evaluation, monitoring and control process;
- Ready to finance project proposals;
- Programming documents for CBC between Bulgaria and Serbia for 2007-2013 prepared
- established and trained new managing structures.

This project will be focused on the following activities

#### **Programme management and implementation**

Eligible actions within the framework of the JPD horizontal measure are, as an indication, the following ones:

- Expenditure relating to the JTS
- Expenditure relating to the management, implementation, monitoring and control of the Programme

#### **Projects preparation, programme publicity and evaluation**

- Expenditure for assisting potential applicants in project preparation
- Expenditure relating to evaluations, audits, seminars, information, publicity concerning the Programme

#### **TA to the Programme**

- The TA will support MRDPW *Ministry of Regional Development and Public Works* and MIER *Ministry for International Economic Relations* in the preparation of the relevant Programming Documents for 2007-2013 in line with the adopted EC Regulations.



- The TA will also provide support to future managing structures and potential beneficiaries in the whole cycle of project preparation and implementation for the period 2007-2013

### **Lessons Learned**

Experience with the implementation of Phare programmes in previous years and evaluation have led to a number of general lessons being learned. As in 2005, these lessons are reflected in the design and implementation of the 2006 CBC/Neighbourhood Programme.

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

### **Overall programme conditionalities**

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

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

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

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

For projects involving more than one Bulgarian Ministry or agency, the National Aid Co-ordinator will ensure that effective mechanisms for co-operation and co-ordination

between such Ministries or agencies are in place. The National Aid Co-ordinator will undertake thorough reviews of progress on implementation of the projects listed at least every three months from the time the Financing Agreement is signed until the final date for contracting. If these reviews indicate that by the first quarter of the final year for contracting (2008 unless otherwise specified) there is a high risk of a project or component of a project not being contracted, the Commission reserves the right to take remedial action including, if necessary, reallocating funds to other purposes or cancelling projects or components thereof.

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

## 2. BUDGET

### 2.1. Budget Table for 2006

No.	OBJECTIVE	Phare support			Co-financing		TOTAL
		IB	INV	Total Phare (in €M)	Other sources (**)	National public fund (*)	
01	Integrated Grant Scheme for sustainable development	0.700	2.400	3.100		0.800	3.900
02	People to people actions	0.600		0.600			0.600
03	Technical Assistance	0.300		0.300			0.300
	<b>TOTAL</b>	<b>1.600</b>	<b>2.400</b>	<b>4.000</b>		<b>0.800</b>	<b>4.800</b>

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

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

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

### 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 will be responsible for sub-programmes as follows:

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

### **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>2</sup>. The Beneficiary Country will continue to ensure that the conditions laid down in Art. 164 (1) (a) - (e) of the Financial Regulation are respected at all times.

Until accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999<sup>3</sup>, project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

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

#### **4.2. General rules for Procurement**

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Chapter 3 of Part 2, Title III of its Implementing Rules<sup>4</sup>, as well as the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries adopted by the Commission on 24 January 2006 (C(2006)117).

The Contracting Authorities shall also use the procedural guidelines and standard templates and models facilitating the application of the above rules provided for in the "Practical Guide to contract procedures for EC external actions" (PRAG) as published 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

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<sup>2</sup> Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002; OJ L 248; 16.9.2002; p. 1

<sup>3</sup> Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

<sup>4</sup> Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1 as last amended by Commission Regulation (EC, EURATOM) N° 1248/2006 of 07.08.2006 (OJ L227 19.08.2006 p3).

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



responsibilities to execute procurement in accordance with national legislation and guidelines transposing the European Union Public Procurement Directives.

#### 4.3. Grant Schemes

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

The procedures and formats to be used in the implementation of the schemes and award of the grants will follow the grant award procedures for External Actions. In particular, due care will be given to the selection process of the projects. Except when provided differently in the Neighbourhood Programme Implementing Guidelines, the grants will be awarded in conformity with the provisions of chapter 6 of the Practical Guide, and following the principles of Phare decentralised management. Until EDIS accreditation, the ex-ante approval of the Commission Delegation in Bulgaria will be required.

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

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement rules for External Actions at the time of implementation. Following a positive assessment of the Implementing Agency's capacity to operationally and financially manage the schemes in a sound and efficient 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 (except for the Small Project Fund, see below) or above € 2 million. This lower limit may be waived as a result of the above-mentioned assessment of the Implementing Agency's capacity of giving assurance of sound financial management. The lower limit is not applicable in the case of NGOs.

The financial commitments in Phare terms will be effected at the date of signature of the grant agreements by the competent PAO. The projects should be fully

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<sup>6</sup> see section 11 and Annex 4 of the 2005 Phare and Pre-accession Assistance to Turkey Programming Guide

implemented before the expiry date for contract execution of the corresponding Financing Agreement.

#### 4.4. Implementation Principles for Twinning Projects

Not relevant

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

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

### 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, ISPA and SAPARD, as well as the Structural and Cohesion Funds.

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

##### *5.1.2. Project Size*

The total allocation of programme totals € 4 million. The project concerning **Integrated Grant Scheme for sustainable development** (2006/018-388.01.01) will be over the limit of € 2 million (€ 3,100 million). The two other projects: People to people actions (2006/018-388.01.02) and Technical Assistance (2006/018-388.01.03) will be lower than € 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, 2008.

(2) All contracts must be executed by no later than November 30, 2009.

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

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years counted from the date of the legal commitment will be de-committed (Art. 77 (3) FR).

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

#### *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.

## **5.2. Financial Management**

### *5.2.1. Principles and Responsibilities*

The National Fund in the Ministry of Finance of the Republic of Bulgaria, 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

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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



in the central bank or in a Government guaranteed bank. In principle, all bank accounts will be interest bearing.

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

#### *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 Agreement and the Implementing Agreements between the NF and the Phare CBC Implementing Agencies. Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the Phare CBC Implementing Agency and the manner in which the payment function between them will be carried out.

Two further 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 Phare CBC Implementing Agency. 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.

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

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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 interim payments or the renewal of 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

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

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

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

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

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

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

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

No later than sixteen months after the end of execution of contracts , the NF will submit a final declaration of expenditure and a final technical progress report covering both PHARE support and co-financing 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 corrections stipulated below.

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

## **6. MONITORING AND EVALUATION**

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

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

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

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

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

For the Phare programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC), which will include the NAC, the PAO of each Implementing Agency (and the CFCU where applicable) and the Commission Services. The SMSC will review in detail the progress of each programme, including its components and contracts, assembled by the JMC into suitable monitoring sectors. Each sector will be supervised by one SMSC on the basis of regular monitoring reports produced by the Implementing Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward



recommendations on aspects of management and design, ensuring that these are effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

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

## **7. EQUAL TREATMENT**

Equal opportunity and gender equality are fundamental principles enshrined in the Treaty that are reflected in the programming and implementation of the Phare funding.

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

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

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

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96<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.

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

#### *8.2.1. 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

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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

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>.

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.

#### *8.2.2. 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.

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

#### *8.2.3. Anti-Fraud Measures and Corrective Actions*

The Beneficiary Country 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>.

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

<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



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.

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.

### **8.3. 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:

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<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.)

<sup>24</sup> see definition above

<sup>25</sup> see definition above



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

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

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

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

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

## **9. VISIBILITY AND PUBLICITY**

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

## **10. SPECIAL CONDITIONS**

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