

FINANCING MEMORANDUM

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

on the one part, and

The Government of the Republic of 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: BG 9803

Title: 1998 Cross-Border Cooperation Programme between Bulgaria and Greece

Duration: Until 31 December 2000

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 51 MECU hereinafter referred to as "THE EC GRANT".

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until 31 December 2000, 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 31 December 2001 with the exception of project BG9803.01.01 (rehabilitation of E79 and E85 roads), project BG9803.01.02 (reopening of access road to the new border crossing at Illinden - link Gocce-Delcev/Drama) and project BG9803.02.01 (construction of cross border check-point Illinden) for all of which the deadline for disbursement is 31 December 2002. All disbursements must be completed by the deadline for disbursement. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the disbursement period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the expiry of the disbursement period of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 4 - ADDRESSES

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

for the **COMMUNITY**:

Delegation of the European Commission to Bulgaria
Interpred
World Trade Center
36, Blvd. Dragan Tsankov
1040 Sofia
Bulgaria

Tel.: (+359) 2-97 33 240
Fax: (+359) 2-97 33 872

for **THE RECIPIENT**:

Ministry of Foreign Affairs
Department for European Integration
2 Al. Jendov Str.
1113 Sofia
Bulgaria

Tel.: (+359) 2-73 99 22
Fax: (+359) 2-971 24 13

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 22. XII. 1998

for THE RECIPIENT



Mrs. N. Mikhailova
Minister of Foreign Affairs
National Phare Coordinator

Done at Sofia
Date 22. XII. 1998

for THE COMMUNITY



Mr. J. Wunenburger
Head of European Commission
Delegation to the Republic of Bulgaria

Annex 1 Framework Agreement (Annexes A & B)
Annex 2 Special Provisions (Annex C)

ANNEX 2 SPECIAL PROVISIONS

1. OBJECTIVES AND DESCRIPTION

1.0 Objectives

The general objectives of the programme are:

- to promote economic and social cohesion in the CBC region
- to promote co-operation with the CEEC regions bordering the European Union, and thus to help these border regions to overcome specific development problems stemming from their relative isolation in the national economy;

The specific objectives of the programme are:

- to rehabilitate major roads infrastructure in southern Bulgaria (Sub-programme 1)
- to construct a new cross border check point (Illinden) in order to promote and facilitate economic cooperation between Bulgaria and Greece (Sub-programme 2)
- to prepare future projects in the transport and environment sectors (Sub-programme 3)

1.1 Sub-programme 01: Rehabilitation of major roads in the CBC region

- *Project 01.01* : Rehabilitation of E79 (corridor Sofia - Thessaloniki) and E85 (corridor Haskovo - Alexandroupolis) roads.
The project is cofinanced by EIB.

- *Project 01.02* : Reopening of access road to the new border crossing at Illinden (link Goce-Delcev - Drama)

- *Special conditions*

1. Road design complies with the provisions EC Directive on weights and dimensions.
2. Special consideration will be given to measures in favour of road safety (including sustainable road marking, road signs, guard rails, safety fencing) and environment (including measures to reduce impact both during construction and after construction).
3. Land acquisition is financed by the Bulgarian authorities. The Bulgarian authorities undertake to notify to the European Commission before the signature of the works contracts that related land acquisitions have been completed.
4. Security arrangements at the border, especially for construction through the restricted area will be specified in the tender documents.
5. The General Road Administration will make all data and inspection equipment fully available for the consultant in charge to complete the detailed design.
6. All works (E79, E85, Illinden access road) will be tendered simultaneously.

1.2 Sub-programme 02: Cross Border Check-Points

- *Project 02.01* Construction of Cross Border Check-Point Illinden

- *Special conditions*

1. Cross Border Check Points will be upgraded to a level of services which will correspond to EU requirements in the relevant sectors - customs, border police, veterinary and phytosanitary controls - and consequently adequately staffed.
2. For the construction project, land acquisition is financed by the Bulgarian authorities. The Bulgarian authorities undertake to notify to the European Commission before the signature of the works contracts that land acquisitions have been completed.

3. Security arrangements at the border, especially for construction through the restricted area will be specified in the tender documents.

1.3 Sub-programme 3: Preparation of future projects/Programme management

- *Project 03.01* E79 motorway studies (first phase)
- *Project 03.02* Environmental projects preparation (including flood prevention of the Struma/Strymos, water management study of Mesta/Nestos, project management for waste water treatments plants)
- *Project 03.03* Programme Management (technical assistance to the IA and PIUs ; IA and JPMC operational costs ; audit, monitoring and evaluation)

1.4 An environmental impact assessment was carried out for all investment projects.

2. BUDGET

The EC PHARE CBC contribution to the 1998 Programme is 51 MECU. A breakdown of funds by sub-programmes is given in the table below.

	MECU
SUB-PROGRAMME 9803.01	
Rehabilitation of major roads in the CBC region	44
<i>Project 9803.01.01</i> Rehabilitation of E79 and E85 roads	
<i>Project 9803.01.02</i> Reopening of access road to the new border crossing at Illinden (link Goce-Delcev - Drama)	
SUB-PROGRAMME 02	
Cross Borders Check-Points	3
<i>Project 9803.02.01</i> Construction of cross border check-point Illinden	
SUB-PROGRAMME 03	
Preparation of future projects /Programme management	4
<i>Project 9803.03.01</i> E79 motorway studies (first phase)	
<i>Project 9803.03.02</i> Environmental projects preparation (including the water management study of Mesta/Nestos, Waste Water Treatments Management)	
<i>Project 9803.03.03</i> Programme management	
TOTAL	51

N.B. Up to 1 % of the budget may be contracted directly by the Commission and will not, therefore, be transferred to the National Fund

3. IMPLEMENTATION ARRANGEMENTS

3.1 Joint Programming and Monitoring Committee

A Joint Programming and Monitoring Committee has been established on the basis of the Framework Agreement signed between Bulgaria and Greece.

The co-chairmen of the Committee are :

on the Bulgarian side:	the Minister of Regional Development
on the Greek side:	the General Secretary of the Ministry of National Economy for Investment and Regional Development

The co-chairmen define the composition of their respective delegations to the Committee and may set up special working groups consisting of representatives of local authorities and representatives of ministries and institutions concerned.

The CBC IA and the project beneficiary institutions defined below are members of the Bulgarian delegation.

The CBC IA established in the Ministry of Regional Development acts as the Secretary of the Committee.

The European Commission representatives participate in the meetings of the Committee. They examine the conformity with EU rules, requirements of proposed measures and projects, and of implementation arrangements. They also take a view on the complementarity of project proposals with respect to INTERREG.

The ordinary meetings of the Committee should be held every six months in either of the countries concerned. Extraordinary meetings may be required during the period of preparation of programmes and annual financing proposals or in case of any special implementation issue. Such meetings may be called at any time by agreement of the co-chairmen or the Commission. Extraordinary meetings called at the request of the Commission may be held in Brussels.

The preparation of reports, agendas and minutes of the meetings of the Committee are organised by the co-chairmen and their services.

Technical assistance, including interpretation and translation support to the Committee, the secretariats and the joint working groups may be provided from the funds of PHARE Cross Border Co-operation and INTERREG II. Operational costs of the Committee to be supported by the programme will be submitted to the EC Delegation for endorsement.

The Committee in the scope of its activities monitors needs, selects project and monitors the realisation of measures under PHARE Cross Border Co-operation and of the relevant measures of INTERREG II. The Committee - deciding by consensus - should in particular:

- give its opinion on the objectives, priorities and CBC measures proposed for inclusion in the Indicative Multi-annual Indicative Programme and the Operational programmes of INTERREG II.
- approve the selection of projects
- receive reports on progress, reviews and assessments of the approved programmes and their components parts

- initiate and support activities which can promote Cross Border Co-operation and make more effective current and future CBC programmes.

3.2 The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures. The National Aid Coordinator (NAC) will have overall responsibility for programming, monitoring and implementation of Phare programmes.

The National Fund (NF) in the Ministry of Finance, headed by the National Authorising Officer (NAO) will supervise the financial management of the Programme, and will be responsible for financial reporting to the European Commission. Appropriate financial control shall be carried out by the competent National Financial Control Authority with respect to the implementation of the programme.

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding to be signed between the Commission and the Bulgarian Government. Funds will be transferred following requests from the NAO. A payment of up to 10.12 Mecu will be transferred to the NF following signature of the Financing Memorandum. Four replenishments will be made of 10.12 Mecu or the full balance of the budget whichever is the lesser amount. The first replenishment will be triggered when 10% of the budget has been disbursed by the Implementation Agency. The second replenishment may be requested when 30% of the total budget in force has been disbursed. The trigger point for the third replenishment is 50%, and for the final fourth instalment when 70% is disbursed. Save for express prior authorisation from the Commission HQ, no replenishment request may be made if the aggregate of the funds deposited in the NF and the Implementation Agency exceeds 10% of the total budget in force of the commitment. Exceptionally the NAO may request an advance payment of more than 20% in accordance with the procedures laid down in the aforesaid Memorandum of Understanding.

The Implementing Agency (IA) of the programme is the Ministry of Regional Development and Public Works.

The National Fund will transfer funds to the Implementing Agency in accordance with the Financing Agreement (FA) signed between the NF and the Implementing Agency. The FA will be endorsed in advance by the European Commission. The Implementing Agency will be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the NAC. The PAO will be responsible for all the operations carried out by the Implementing Agency.

A separate interest bearing bank account, denominated in ECU will be opened and managed by the NF in a separate accounting system in the Central Bank or in a Bank agreed in advance with the Commission. Interest will be reported to the European Commission; if the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the Programme. The same procedures will apply to any funds transferred from the National Fund to the Implementing Agency.

The NAO and the PAO will ensure that all contracts are prepared in accordance with the procedures set out in the DIS Manual and with the following provisions under 6.4. All contracts will be greater than 2 Mecu, except those for project 9803.02.01 (supervision component), project 9803.03.01, project 9803.03.02 and project 9803.03.03.

All contracts must be concluded before 31 December 2000. All disbursements must be made before 31 December 2001. In the cases of the following projects, however, disbursements must be made before 31 December 2002: project 9803.01.01, project 9803.01.02, project 9803.02.01.

Any funds not used by the dates noted above of the programme will be recovered by the Commission.

For those contracts with funds retained for a warranty period extending beyond the end of the disbursement period of the programme, the overall total of funds related to those contracts, as calculated by the PAO and established by the Commission, will be paid to the Implementing Agency before the official closure of the programme. The Implementing Agency assumes full responsibility of depositing the funds until final payment is due and for ensuring that said funds will only be used to make payments related to the retention clauses. The Implementing Agency further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Interests accrued on the funds deposited will be paid to the Commission after final payment to the contractors. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the Commission. An overview of the use of funds deposited on warranty accounts - and notably of the payments made out of them - and of interests accrued will annually be provided by the NAO to the Commission.

3.3 The CBC Implementing Agency retains overall responsibility for the implementation of the whole programme. This includes : approval of terms reference, of tender documents, of evaluation criteria, of evaluation of offers, signature of contracts, authorisation and payments of invoices.

Relevant project beneficiary institutions are responsible towards the CBC Implementing Agency for the operational management of the projects: preparation of terms reference, of tender documents, of evaluation criteria, of evaluation of offers, of contracts, of invoices for payment. For works contracts under FIDIC rules, an official of the project beneficiary institutions acts as the Employer and invoices have to be certified by the independent Engineer contracted and financed by the Programme.

Project beneficiary institutions report monthly to the CBC Implementing Agency (with direct copies to the EC Delegation) with monthly disbursement and commitment schedules and with sufficient detail to allow assessment of progress made and remaining work to be accomplished.

Project Beneficiary Institutions liaise directly with the EC Delegation for all issues related to the operational management of the projects.

They are as follows :

- the Foreign Investment and Capital Construction Department of General Road Administration (GRA) for the roads projects (projects 9803.01.01, 9803.01.02, 9803.03.01). The existing project team (previously known as Project Implementation Unit -PIU- in the framework of the 1994 and 1995 programmes) within the Department shall be adequately staffed with 3 qualified full-time experts. Appropriate technical assistance to the project team is to be ensured, financed by the Programme.

- the Foreign Investment Department within the Ministry of Regional Development and Public Works (MRDPW) for the cross border check points projects (project 9803.02.01). The existing project team (previously known as Project Implementation Unit -PIU- in the framework of the 1994 and 1995 programmes) within the Department shall be adequately staffed with 2 qualified full time experts. Appropriate technical assistance to the project team is to be ensured, financed by the Programme.

- a Joint Department to be established between the Ministry of Regional Development and Public Works (MRDPW) and the Ministry of Environment for the environment projects (project 9803.03.02). A project team shall be established within the Department and shall be adequately staffed with 4 qualified full time experts. Appropriate technical assistance to the project team is to be ensured, financed by the Programme.

3.4 Special conditions

3.4.1 Each project will include an adequate independent supervision of projects.

3.4.2 In order to limit the number of tenders, works tender documents may include several lots to be contracted individually with the successful tenderer, depending on availability of funds from other programmes and on satisfactory performance of the contractor with the lots already contracted.

3.4.3 Works will be tendered to prequalified contractors with relevant financial capacity, and technical and FIDIC experience.

3.4.4 Project 9803.03.03 may also partially be implemented by the Commission for and on behalf of the national authorities.

4. MONITORING AND ASSESSMENT

A Joint Monitoring Committee (JMC) will be established. It will include the NAO, the NAC and the Commission. The JMC will meet at least once a year to review all Phare funded programmes in order to assess their progress towards meeting the objectives set out in Financing Memoranda and the Accession Partnership. The JMC may recommend a change of priorities and/or the re-allocation of Phare funds. The JMC will be assisted by Monitoring Sub-Committees (MSC) and will include the NAC, the PAO and the Commission Services.

The above mentioned JPMC will act as MSC for the CBC programme.

The JPMC will review in detail the progress of the programme, including its components and contracts, on the basis of regular Monitoring and Assessment reports produced with the assistance of external consultant (in accordance with the provisions of the DIS Manual), and will put forward recommendations on aspects of management and design, ensuring these are effected. The JPMC will report to the JMC, to which it will submit overall detailed reports on all Phare financed CBC programmes.

5. AUDIT AND EVALUATION

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

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

6. VISIBILITY/PUBLICITY

The Programme Authorising Officer will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed from the programme. This will be done in close liaison with the Commission Delegation. Further details are at appendix 2.

7. SPECIAL CONDITIONS

In the event that agreed commitments are not met for reasons which are within the control of the Government 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 global Phare programme.