

FINANCING AGREEMENT¹

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:

Programme number: **BG 2006/018-389**

Title: **Cross Border Co-operation Programme between Bulgaria and the former Yugoslav Republic of Macedonia in 2006**

Duration: **Until 30 November 2008**

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **3 M€** hereinafter referred to as "**THE EC GRANT**".

¹ 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:

Representation 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

Minister of Finance
102 Rakovski St
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

Done at
Date

for THE RECIPIENT

for THE COMMUNITY

National Aid Coordinator
Deputy Minister of Finance
Lyubomir Datzov

Head of EC Representation in Bulgaria
Michael Humphreys

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 CROSS BORDER CO-OPERATION PROGRAMME/NEIGHBOURHOOD PROGRAMME BETWEEN THE REPUBLIC OF BULGARIA AND THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA IN 2006

1. OBJECTIVES AND DESCRIPTION

1.1. Overall objectives of the programme

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

Specific project purposes

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

1.2. 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, on April 2006.

Summary descriptions² of the individual projects grouped under the sectoral objectives are as follows:

JPD priority 1 & 2: Sustainable development of the BG-fYRoM border region

<i>BG 2006/018-389.01.01: Sustainable development Grant scheme</i>	
<i>Duration</i>	<i>18 months</i>
<i>Twinning</i>	<i>N/A</i>
<i>Phare budget</i>	<i>€ 2.400 M</i>
<i>Implementing Agency</i>	<i>Ministry of Regional Development and Public Works of the Republic of Bulgaria.</i>

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

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

² Descriptions are indicative; some details may be changed

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

Window 1

- increased efficiency of the integrated management and sustainable use of natural and cultural resources
- improved infrastructures supporting cross-border cooperation and developed complementary economic activities and thus created jobs and generated additional wealth

Window 2

- improved regional cooperation and established/developed local capacity and networks
- increased local initiatives and developed cross-border networks in different economic and social sectors

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

JPD priority 3 – “People to people actions

<i>BG 2006/018-389.01.02: People to people actions</i>	
<i>Duration</i>	<i>12 months</i>
<i>Twinning</i>	<i>N/A</i>
<i>Phare budget</i>	<i>€ 0.400 M</i>
<i>Implementing Agency</i>	<i>Ministry of Regional Development and Public Works of the Republic of Bulgaria.</i>

The people to people actions aim at encouraging and supporting the establishment or further development of sustainable co-operation networks between local and regional stakeholders in the border region in order to increase personnel and institutional capabilities for co-operation and participation in future development programmes. The fund will finance selected small-scale “people-to-people” projects. The grants may not have the purpose or effect of producing a profit for the beneficiary. Joint projects, especially where co-financed jointly by project partners from Bulgarian and the former Yugoslav Republic of Macedonia, will be particularly encouraged. The following priority themes will be the subject of the call for proposals:

- Development or establishment of facilities and resources to improve the flow of information and communication between border regions, including television and radio programmes of common interest
- Cultural exchange
- Development or establishment of local employment, education and training initiatives between border regions

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

JPD horizontal measure – Technical Assistance

<i>BG 2006/018-389.01.03: Technical Assistance</i>	
<i>Duration</i>	<i>36 months</i>
<i>Twinning</i>	<i>N/A</i>
<i>Phare budget</i>	<i>€ 0.200 M</i>
<i>Implementing Agency</i>	<i>Ministry of Regional Development and Public Works of the Republic of Bulgaria.</i>

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

from Phare CBC funds and Cards funds) shall be envisaged for supporting the efficient implementation of the programme.

The activities are broadly divided into two categories:

- I. Operational costs to the Programme including
Programme management and implementation
Projects preparation, programme publicity and evaluation
- II. TA to future Programme preparation

Lessons Learned

Experience with the implementation of Phare programmes in previous years and evaluation have led to a number of general lessons being learned. The experience gained with the tender procedure of the calls for proposals for 2004 and 2005 which are now prepared and even launched is 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, the Phare CBC Implementing Agency of the Ministry of Regional Development and Public Works and project management units involved in implementing this programme.

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

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

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

For projects involving more than one Bulgarian Ministry or agency, the National Aid Co-ordinator will ensure that effective mechanisms for co-operation and co-ordination between such Ministries or agencies are in place. The National Aid Co-ordinator will undertake thorough reviews of progress on implementation of the projects listed at least every three months from the time the Financing Agreement is signed until the final date for contracting. If these reviews indicate that by the first quarter of the final year for contracting (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 2005

No.	OBJECTIVE	Phare support			Co-financing		TOTAL
		IB	INV	Total Phare (in €M)	Other sources (**)	National public fund (*)	
01	Sustainable development grant scheme	0.600	1.800	2.400		0.600	3.000
02	People to people actions	0.400		0.400			0.400
03	Technical Assistance	0.200		0.200			0.200
	TOTAL	1.200	1.800	3.000		0.600	3.600

(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 Regulation³. 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.

³ Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002; OJ L 248; 16.9.2002; p. 1

Until the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999⁴, 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 Rules⁵, 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 website⁶ at the date of the initiation of the procurement or grant award procedure.

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

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

⁴ Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

⁵ 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 L 227 of 19.08.2006, p3).

⁶ current address: http://ec.europa.eu/comm/europeaid/tender/gestion/index_en.htm

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 manner⁷, the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by the final beneficiaries of the individual grants. The detailed provisions governing the role of the Delegation in the above-mentioned sub-contracting phase will be specified, as appropriate, in the Exchange of Letters between the Delegation and the national authorities following the above-mentioned assessment exercise.

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

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

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 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.

⁷

see section 11 and Annex 4 of the Phare and Pre-Accession Assistance to Turkey Programming Guide 2005

5.1.2. *Project Size*

The projects concerning people to people actions (2006/018-389.01.02) and technical assistance (2006/018-389.01.03) will be lower than €2 million due to the fact that these projects can not utilise such amount of allocation

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

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

5.1.4. *Environmental Impact Assessment and Nature Conservation*

The procedures for environmental impact assessment as set down in the EIA-directive⁸ 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 documented⁹.

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 documented¹⁰.

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.

⁸ DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

⁹ in Annex EIA to the corresponding investment project fiche.

¹⁰ in Annex Nature Conservation to the corresponding investment project fiche

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

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

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

5.2.2. Payments to the National Fund

A first payment¹¹ of up to 20% of the funds to be managed locally¹², will be sent to the NF following signature of the Financing Agreement and the Implementing Agreements between the NF and the Phare CBC Implementing Agency. Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the Phare CBC Implementing Agency and the manner in which the payment function between them will be carried out.

Two further payments¹³ of up to 30% of the funds to be managed locally¹⁴ will be made. The second payment will be triggered when 5 % of the total budget in force¹⁵ has been disbursed by the Phare CBC Implementing Agency. The third payment may be requested when 35% of the total budget in force¹⁶ has been disbursed.

A final fourth payment will be made when 70 % of the total budget in force¹⁷ 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.

5.2.3. Payments from the National Fund to the Implementing Agency

The National Fund will make payments to the Phare CBC Implementing Agency, in accordance with Implementing Agreements signed between the NF and the Phare CBC Implementing Agency. Bank accounts for sub-programmes shall be opened in the name of

¹¹ representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹² excluding the amount foreseen for Community Programmes

¹³ representing interim payments or the renewal of pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹⁴ excluding the amount for Community Programmes

¹⁵ excluding the amount for Community Programmes

¹⁶ excluding the amount for Community Programmes

¹⁷ excluding the amount for Community Programmes

the Phare CBC Implementing Agency in charge of financial management of the sub-programme in line with Art. 13 of the MoU on the National Fund.

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

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 compensation 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) 2185/96¹⁸.

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 Auditors¹⁹, 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 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 438/2001²⁰.

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.

¹⁸ Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2

¹⁹ as referred to in the General Conditions relating to the Financing Memorandum" attached to the Framework Agreement

²⁰ Commission Regulation (EC, Euratom) 438/2001 of 2 March 2001, OJ L 63; 3.3.2001, p.21

8.2.2. *Preventive Measures*

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption²¹ 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 1681/94²².

In particular, all suspected or actual cases of fraud²³ and irregularity²⁴ 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.

²¹ 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.

²² Commission Regulation (EC) 1681/94 of 11. July 1994; 12.7.94; p. 43

²³ 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.

²⁴ 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.)

8.3. Recovery of Funds in Case of Irregularity or Fraud

Any proven irregularity²⁵ or fraud²⁶ 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.

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.

²⁵ see definition above
²⁶ see definition above

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.