

FINANCING MEMORANDUM on the 2004 Phare Cross border Cooperation programmes of Romania

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 ROMANIA, hereinafter referred to as "THE RECIPIENT"

on the other part,

HAVE AGREED AS FOLLOWS:

The MEASURES referred to in Articles 1 to 5 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 measures shall be implemented is set out in the General Conditions annexed to the Framework Agreement of 12 March 1991 between THE COMMISSION and THE RECIPIENT, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 – CBC Programme between Romania and Bulgaria

(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C1:

<u>Programme number:</u>	RO-Phare 2004/016-784
<u>Title:</u>	2004 <u>CBC Programme between Romania and Bulgaria</u>
<u>Duration:</u>	Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 8 M€ hereinafter referred to as "THE EC GRANT".

(3) For the MEASURE described in Annex C1, THE EC GRANT is hereby available for contracting until **30/11/2006** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled.

The deadline for execution of contracts of THE EC GRANT is **30/11/2007** with exception of **30/11/2008** for projects: RO 2003/016-784.01.01 "Improve traffic fluency to cross border check point Turnu Magurele – Nikopol and RO 2003/016-784.01.02 "Connection infrastructure improvement in Rast - Lom border check point). 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. This Memorandum shall expire at the expiry date for execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 2 – 2004 CBC Programme between Romania and Hungary

For signature



(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C2:

Programme number: RO-Phare 2004/16-940
Title: 2004 CBC Programme between Romania and Hungary
Duration: Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 5 M€ hereinafter referred to as "THE EC GRANT".

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until 30/11/2006 subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled.

The deadline for execution of contracts of THE EC GRANT is 30/11/2008. 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. This Memorandum shall expire at the expiry date for execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 3 – CBC/Neighbourhood Programme between Romania and Moldova

(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C3:

Programme number: RO-Phare 2004/16-941
Title: 2004 CBC/Neighbourhood Programme between Romania and Moldova
Duration: Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 5 M€ hereinafter referred to as "THE EC GRANT".

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until 30/11/2006 subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled.

The deadline for execution of contracts of THE EC GRANT is 30/11/2008. 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. This Memorandum shall expire at the expiry date for execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 4 – CBC/Neighbourhood Programme between Romania and Ukraine

(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C4:

Programme number: RO-Phare 2004/16-942
Title: 2004 CBC/Neighbourhood Programme between Romania and Ukraine.
Duration: Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 6 M€ hereinafter referred to as "THE EC GRANT".

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until **30/11/2006** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled.

The deadline for execution of contracts of THE EC GRANT is **30/11/2008**. 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. This Memorandum shall expire at the expiry date for execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 5 – CBC/Neighbourhood Programme between Romania and Serbia-Montenegro

(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C5:

Programme number: RO-Phare 2004/16-943
Title: 2004 CBC/Neighbourhood Programme between Romania and Serbia-Montenegro.
Duration: Until 30/11/2006

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

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until **30/11/2006** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled.

The deadline for execution of contracts of THE EC GRANT is **30/11/2008**. 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. This Memorandum shall expire at the expiry date for execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 6 – FINANCIAL MANEAGEMENT

The National Fund will for each measure defined in articles 1 to 5 open and manage a separate bank account.

For signature



The National Authorising Officer will submit separate payment requests for each measure.

There may not be any reallocations of budgets between the measures of this Financing Memorandum without a prior Commission decision to that effect.

ARTICLE 7 - ADDRESSES

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

for **THE RECIPIENT**:

Mr Ionel Popescu
Minister of Public Finance
17 Apolodor Street, 5th District
050741 Bucharest, Romania
Fax: 00 40 21 3121630

for the **COMMUNITY**:

EC Delegation in Bucharest
St. Jules Michelet 18-20
70154 Bucharest
Romania
Fax: 00 40 21 212 88 08

ARTICLE 7 - NUMBER OF ORIGINALS

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

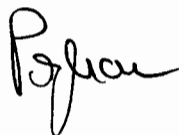
ARTICLE 8 - ENTRY INTO FORCE

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

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

Done at Bucharest
Date *8 April 2005*

for THE RECIPIENT



Mr Ionel Popescu
Minister of Public Finance

Done at Bucharest
Date *8 April 2005*

for THE COMMUNITY



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

Annexes

Annexes A & B. Framework Agreement

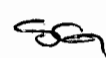
Annex C Special Provisions

Annex C1:	CBC Programme between Romania and Bulgaria
Annex C2:	CBC Programme between Romania and Hungary
Annex C3:	CBC/Neighbourhood Programme between Romania and Moldova
Annex C4:	CBC/Neighbourhood Programme between Romania and Ukraine
Annex C5:	CBC/Neighbourhood Programme between Romania and Serbia-Montenegro

Annex D Visibility/Publicity (Annex D)

Annex E Total budget of all five CBC programmes

For signature



Annex C1: CBC Programme between Romania and Bulgaria

1. OBJECTIVES AND DESCRIPTION

The **overall objectives** of the programme are:

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

The **specific project purposes and results** are reflected in the following priority areas:

- To develop transport infrastructure and accessibility by rehabilitation of access roads to the border point Nikopol-Turnu Magurele (projects BG 2004/016-783.01.01 and RO 2004/016-784.01.01) and by improving the access to the border crossing point in Rast (project RO 2004/016-784.01.02);
- To improve and implement joint management of ground transboundary water in the Dobrudja/Dobrogea Area (projects BG 2004/016-783.01.02 and RO 2004/005-784.01.03);
- Setting up of a flexible mechanism to finance the so called “small-scale and people-to-people projects” within socio-economic development field (local economic development, training and employment measures, improvement of the flow of information and communication, cultural exchanges, support for media etc) with a cross-border impact (projects BG 2004/016-783.01.03 and RO 2004/016-784.01.04)

Romania will implement these objectives by the following projects:

JPD priority1: Improving Infrastructure

Phare RO-2004/016-784.01.01:	<i>“Improve traffic fluency to cross border check point Turnu Magurele – Nikopol by primary rehabilitation of county road DJ 546 between km 4+000 - 40+0” (€ 3.7 million)</i>
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The cross border checkpoint between Turnu Magurele (Romania) – Nikopol (Bulgaria) realization will contribute to the traffic increase in the border region and makes it necessary to provide better conditions for transit traffic.

The transport infrastructure on both sides of the border needs the rehabilitation of carriageway especially because of the traffic increase. On the Romanian side, in 2004 will start at Turnu Magurele the works execution of the “Turnu Magurele Industrial Park” investment that will contribute to increasing the economic activities in area. Also, in the area

will start the construction by the Romanian Government of the Hydro Power Station Islaz on the river Olt near the confluence with the Danube River.

The project ***“Improve traffic fluency to cross border check point Turnu Magurele – Nikopol by primary rehabilitation of county road DJ 546 between km 4+000 - 40+000”*** starts at Turnu Magurele city limits, cross the communes Lita, Segarcea Vale, Lunca, Slobozia Mindra and Plopii Slavitesti up to Olt County limits where is the final point of the project. The county road continues in Olt county making the link with the European road E 70. In present the county road needs urgent rehabilitation being damaged by the traffic, the weather, frozen and unfrozen phenomenon in the winter and excessive heat in summer.

For this project, there have been already elaborated: the feasibility study, the environmental impact study, the technical design. Also, there have been obtained the necessary approvals, agreements and authorisations.

Phare RO-2004/016-784.01.02: “Connection infrastructure improvement in Rast - Lom border check point” (€ 3.0 million)

Both Dolj county (Romania) and Montana district (Bulgaria) lag behind in economic and social terms due to their remoteness from national economic centres. Both cross-border regions are characterized by high unemployment, low incomes, over dependence on agriculture, a low level of industrial activity and over dependence on declining manufacturing activity. In this respect, improvements in transport infrastructure can lead to greater access to the border region and make cross-border travel easier, bringing the communities on both banks closer, also leading to an increasing integration of the border regions within their own respective countries as well as enabling a greater integration of the bilateral border region as a whole and finally generating social-economic development.

The specific purpose of the arrangement works execution for the port facilities is to improve the local infrastructure in order to make the Rast port operational so as to enable the free movement of persons, goods and services in the cross-border area.

The project will comprise the rehabilitation of county road 561D Giubega-Bailesti-Rast-Rast port and arrangement of the port facilities:

- 32 km of county road rehabilitated, with the following specifications:
 - 6.00 m carriageway;
 - 2 x 0.75 m shoulders;
- a repaired and properly arranged building for the border check-point;
- a connection road of 500 m long and 6 m wide between DJ 561 D and the quays executed;
- a functional accosting quay for passengers;
- a functional loading-unloading wharf of 100 sqm., provided with a platform reinforced with concrete of 1000 sqm.;
- a parking ground reinforced with concrete on a surface of 100m x 100m.

The project will also finance the works supervision activities.

JPD priority2: Economic Development

No project under this priority in 2004

JPD priority3: Environmental Protection and Management**RO-2004/016-784.01.03****“Integrated Management of Transboundary Groundwater in Dobrudja/Dobrogea Area”
(€0.5 million)**

The groundwater aquifers of the Dobrogea/Dobrudja region belong to the International Danube River Basin and Black Sea River Basin District and are stretching to both sides of the RO/BG border. On both side the groundwater is the main water resource for drinking water and irrigation and both are facing problems in the field of water quantity and quality.

Component 1: Technical assistance to ensure the implementation of the WFD and Groundwater Directive:

- Identified and characterized groundwater bodies and aquifers between Bulgaria and Romania including chemical status, quantitative status, human pressure, and impact in accordance with the requirements of the EC WFD2000/60/EC;
- Approved joint transboundary groundwaters monitoring Programme;
- Established a Border Groundwater Coordination Committee between Bulgaria and Romania in compliance with the requirements of the EC WFD 2000/60/EC and Convention on the Protection and Use of Transboundary Watercourses and International Lakes;
- Information system including data processing, analysis and visualization with incorporated basin oriented GIS approach, ensuring effective decision support and transboundary water management;
- Trained groundwater management.

Component 2: Equipment acquisition for establishing joint monitoring and information systems

The specific objective of this component is to purchase qualitative and quantitative monitoring equipment in order to unify in the border region all the monitoring objectives, sampling techniques, monitoring standards, methods and parameters, quality control/quality assurance system, data assessment and interpretation.

The first priority of the project is to have operational joint monitoring and information systems in place on an agreed list of issues of common interest. Under this component, priority will be given to investments directly linked to the establishment of these joint monitoring and information systems. This project will contribute to both countries fulfilling requirements of the Water Framework Directive but cannot cover all necessary activities to ensure full compliance. Should complementary monitoring and information systems be necessary to achieve full compliance, financing will be secured under other programmes, including the Phare national programmes.

Phare RO-2004/016-784.01.04: “Joint Small Project Fund” (€ 0.8 million)

The Joint Small Project Fund will be established as a flexible mechanism that finances the “small-scale and people-to-people” projects with a cross-border impact referring to: business co-operation, enterprise development, technology transfer and marketing, for small and medium size enterprises, training, employment, measures for health and cultural exchanges, improvement of information flow and communications between border regions, etc. In order to reach a sufficient impact, these schemes need to be implemented in a multi-annual

perspective. Therefore, both sides have agreed to continue this initiative and to increase the Phare allocation for each country.

The JSPF will operate following the Specific Guidelines developed for the 2000 exercise and approved by the Commission Services (EC Delegations) and the "Practical Guide to contract procedures financed from the general Budget of the European Communities in the context of external actions". Precise joint guidelines will be elaborated by the two countries, and will have to be endorsed by both EC Delegations in Bulgaria and in Romania.

The key institutions of the JSPF are the Bulgarian and Romanian Implementing Agencies which will issue a call for proposals that must be open and fair to all eligible organisations, the Joint Evaluation Committee (JEC) and the Secretariats (CBC Regional Offices for JSPF).

An appropriate Team of Assessors will assess the submitted applications. The final decisions are taken on the basis of the recommendations of the Joint Evaluation Committee.

The Bulgarian Secretariat has been set up in the border region, at Ruse, in order to ensure the day-by-day contact and co-operation with the project beneficiaries. This office has specific tasks as set up in the guidelines for the JSPF.

The Romanian Secretariat has been set up in the border region, at Giurgiu, in order to ensure the day-by-day contact and co-operation with the project beneficiaries. This office has specific tasks as set up in the guidelines for the JSPF.

The project applicants will, in many cases, need considerable development assistance. Training and information workshops may be organised to inform and assist would-be participants, so as to ensure high transparency and encourage good quality proposals. The Secretariat will also appoint experts to visit would-be project applicants in order to provide assistance, especially in relation to matters such as project cost assessment.

The JSPF is designed to make available a total Phare contribution of 800,000 EUR/border region. Up to 7% of the Phare contribution (maximum € 56,000 for each country) may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

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

Lessons learned:

Experience with the implementation of Phare programmes in previous years and evaluation have led to a number of general lessons being learned. These lessons are reflected in the design and implementation of the 2004 CBC Phare Programme Bulgaria-Romania. The most important lessons relate to constraints on Bulgarian and Romanian administrative capacity. Another key lesson is that the success of Phare projects, especially institution building, depends on continuity of key senior and working level personnel.

More specific lessons relating to individual sectors or project types have also been learned and are reflected in individual project documents.

2. BUDGET

2.1. FINANCIAL TABLE

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

CRIS N°	Objective	Phare Funding		
		IB	INV	TOTAL Phare (IB and INV)
	Transport infrastructure			
RO-2004/016-784.01.01	Improve traffic fluency to cross border check point Turnu Magurele – Nikopol by primary rehabilitation of county road DJ 546 between km 4+000 - 40+0	0.35	3.35	3.70
RO-2004/016-784.01.02	Connection infrastructure improvement in Rast - Lom border check point	0.30	2.70	3.00
	Environmental Protection and Management			
RO-2004/016-784.01.03	Integrated Management of Transboundary Groundwater in Dobrudja/Dobrogea Area	0.10	0.40	0.50
	People to people			
RO-2004/016-784.01.04	People to people	0.80	0.00	0.80
	TOTAL	1.55	6.45	8.00

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

2.2. PRINCIPLE OF CO-FINANCING

In accordance with the Phare Guidelines, all investment projects supported by Phare must receive co-financing from national public funds.

The Community contribution may amount to up to 75% of the total eligible public expenditure. Taxes are not an element eligible for co-financing.

Co-financing for Institution Building projects is provided by the Beneficiary Country bearing certain infrastructure and operational implementation costs, through financing the human and other resources required for effective and efficient absorption of Phare assistance.

3. IMPLEMENTING AGENCIES

3.1. IMPLEMENTING AGENCY

In Romania, the Implementing Agency will be the Ministry of European Integration, through its Cross Border Co-operation Directorate, which will retain overall responsibility for the implementation of the programme, including: approval of tender documents, evaluation criteria, evaluation of offers, signature of contracts, authorisation of invoices. The Payments Directorate within the same ministry will make the payments of invoices.

4. IMPLEMENTATION ARRANGEMENTS

4.1. METHOD OF IMPLEMENTATION

Implementation of the programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation¹. 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.

Prior to the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999², project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

4.2. PROCUREMENT

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Title 5 of its Implementing Rules³, as well as the Commission Decision SEC (2003) 387/2⁴.

The Contracting Authorities shall also use the procedural guidelines and standard templates and models provided for in the "Practical Guide to contract procedures

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

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

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

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

financed from the general EC budget in the context of external actions” as published on the EuropeAid website⁵ at the date of the initiation of the procurement or grant award procedure.

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

4.3. PROCUREMENT PRINCIPLES FOR GRANT SCHEMES

For grant schemes in the field of economic and social cohesion, the precise implementation arrangements will be specified in the relevant project fiches in line with the following principles:

The procedures and formats to be used in the implementation of the schemes and award of the grants will follow the rules for External Actions. In particular, due care will be given to the selection process of the projects. Grants will be awarded in conformity with the provisions of chapter 6 of the Practical Guide, and following the principles of Phare decentralised management. Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Sofia will be required.

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

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement rules in use for External Actions at the time of implementation. Following a positive assessment of the Implementing Agency's capacity to operationally and financially manage the schemes in a sound and efficient manner⁶, the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by the final beneficiaries of the individual grants. The detailed provisions governing the role of the Delegation in the above-mentioned sub-contracting phase will be specified, as appropriate, in the Exchange of Letters between the Delegation and the national authorities following the above-mentioned assessment exercise.

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

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

⁵ current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

⁶ see section 11 and Annex 4 of the 2004 Phare Programming Guide

4.4. IMPLEMENTATION PRINCIPLES FOR TWINNING PROJECTS

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

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

4.5. PRINCIPLES FOR THE CBC SMALL PROJECTS FUND

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

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

5. MANAGEMENT OF ASSISTANCE IN ROMANIA

5.1. PROJECT MANAGEMENT

5.1.1. Responsibilities

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

The National Authorising Officer (NAO) and the NAC shall be jointly responsible for the co-ordination between Phare (including Phare CBC), ISPA and SAPARD, as well as the Structural and Cohesion Funds.

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

5.1.2. Project Size

All projects will be greater than € 2 million, except those for:

- Integrated Management of Transboundary Groundwater in Dobrudja/Dobrogea Area (RO 2004/016-784.01.03)
- People to people actions (RO 2004/016-784.01.04)

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

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

(2) All contracts must be executed by no later than November 30, 2007 with exception of **30 November 2008** for projects RO 2004/016-784.01.01 "Improve traffic fluency to cross border check point Turnu Magurele – Nikopol and RO 2004/016-784.01.02 "Connection infrastructure improvement in Rast - Lom border check point

(3) Under DIS, a complete tender dossier must be submitted to the Delegation for approval by no later than 31 May 2006. In case of non-compliance, the Beneficiary Country will inform the JMC, which may recommend reallocation of funds in accordance with Art. 5 of the MoU on the National Fund.

5.1.4. Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive⁷ 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 documented⁸.

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 documented⁹.

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 Public Finance, headed by the NAO, will supervise the financial management of the programme, and will be responsible for reporting to the European Commission. The NAO shall have the overall responsibility for financial management of the Phare funds, and the full accountability for the Phare funds of a programme until the closure of that programme.

The NAO shall ensure that the Phare rules, regulations and procedures pertaining to reporting and financial management are respected, and that a reporting and project information system is functioning.

The Commission will make payments to the NF in accordance with the Memorandum of Understanding signed between the Commission and the Republics of Bulgaria and Romania 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. Interest will be reinvested in the programme.

5.2.2. Payments to the National Fund

A first payment¹⁰ of up to 20% of the funds to be managed locally¹¹, will be sent to the NF following signature of the Financing Memorandum and the Financing Agreements (FAs) between the NF and the Implementing Agencies (IAs)/Central Finance and Contracts Unit (CFCU). Furthermore, the NAO must submit to the Commission the

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

⁸ in Annex EIA to the corresponding investment project fiche.

⁹ In Annex Nature Conservation to the corresponding investment project fiche

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

¹¹ excluding the amount foreseen for Community Programmes

designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the IA/CFCU and the manner in which the payment function between them will be carried out.

Two further payments¹² of up to 30% of the funds to be managed locally¹³ will be made. The second payment will be triggered when 5 % of the total budget in force¹⁴ has been disbursed by the IAs and the CFCU. The third payment may be requested when 35% of the total budget in force¹⁵ has been disbursed.

A final fourth payment will be made when 70 % of the total budget in force¹⁶ 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, CFCU and IAs accounts exceeds 15% of the total budget in force for the programme the Commission may exceptionally authorise a payment, if the NAO provides duly substantiated evidence that contractual obligations cannot be met with the funds available.

5.2.3. Payments from the National Fund to the Implementing Agency

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

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

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

Not relevant

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

Not relevant

5.2.6. Payments in Case of Contractual Retention Clauses

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

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

¹³ excluding the amount for Community Programmes

¹⁴ excluding the amount for Community Programmes

¹⁵ excluding the amount for Community Programmes

¹⁶ excluding the amount for Community Programmes

depositing the funds until final payment is due, as well as for ensuring that the said funds will only be used to make payments related to the retention clauses.

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

5.2.7. Closure of Expenditure and Clearance of Accounts

No later than eight months after the end of execution of contracts, the NF will submit a final declaration of expenditure and an attestation regarding the regularity, accuracy and veracity of the accounts transmitted. The final certified expenditure should at this point equal the original value of the contracts minus any deductions and savings agreed with contractors in the course of implementation. This should also equal payments made plus any sums outstanding on account of contractual retention.

If the payments received from the Commission exceed the final certified expenditure, the NF shall return the excess to the Commission at the time of submitting the final declaration. If there are any outstanding payments (with the exception of contractual retention funds), the NF should provide an explanation and a forecast when payment will be finalised. The NF shall report on progress on contractual retention funds and outstanding payments on a quarterly basis. If they are not paid to the contractor, they shall be returned to the Commission.

After evaluation of the final declaration, the Commission will state its view on any expenditure to be excluded from Community funding, where it finds that expenditure has not been executed in compliance with Community rules.

The results of the Commission's checks and its conclusions to exclude expenditure from financing will be notified in writing to the NF, which shall be given one month to transmit its reply in writing.

If no agreement is reached within one month of receipt of the NF's written reply, the Commission shall decide and establish the amounts to be excluded, having regard in particular to the degree of non-compliance found, the nature and gravity of the infringement as well as the financial loss suffered by the Community.

Following the decision about amounts to be excluded, all ineligible expenditure will be recovered without prejudice to the treatment of irregularities and subsequent financial compensation in accordance with Community rules.

6. MONITORING AND EVALUATION

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

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

Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward recommendations on aspects of management and design, ensuring that these are affected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

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

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

7.1. SUPERVISION AND FINANCIAL CONTROL BY THE COMMISSION AND THE EUROPEAN COURT OF AUDITORS

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

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96¹⁷.

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 Auditors¹⁸, the accounts and operations of the National Fund and, where applicable, the CFCU and all relevant Implementing Agencies may be checked at the Commission's discretion by the Commission itself or by an outside auditor contracted by the Commission.

7.2. OBLIGATIONS OF THE BENEFICIARY COUNTRY

7.2.1. Audit and Financial Control

In order to ensure sound financial management of the Phare funds, the Beneficiary Country must have a system for management and control of assistance in accordance with generally accepted principles and standards in place. This system shall fulfil the requirements set out in Art. 164 of the Financial Regulation, and in particular provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

The Beneficiary Country's management and control systems shall provide a sufficient audit trail, as defined in Art. 7 (2) of Commission Regulation 438/2001¹⁹.

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

¹⁸ as referred to in the General Conditions relating to the Financing Memorandum" attached to the Framework Agreement

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

The competent national financial control authority shall carry out appropriate financial controls of all actors involved in the implementation of the programme.

Each year an audit plan and a summary of the findings and main recommendations of the audits carried out and an outline of the follow-up given to past audit recommendations shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

7.2.2. Preventive Measures

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption²⁰ practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

7.2.3. Anti-Fraud Measures and Corrective Actions

Beneficiary Countries shall, in the first instance, bear the responsibility to ensure investigation and satisfactory treatment of suspected or actual cases of fraud and irregularities following national or Community controls.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94²¹.

In particular, all suspected or actual cases of fraud²² and irregularity²³ 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.

²⁰ 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.

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

²² 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.

²³ 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.)

7.3. RECOVERY OF FUNDS IN CASE OF IRREGULARITY OR FRAUD

Any proven irregularity²⁴ or fraud²⁵ 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.

8. VISIBILITY AND PUBLICITY

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

9. 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 or Romania, the Commission may

²⁴ see definition above

²⁵ see definition above

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.