

FINANCING MEMORANDUM

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

on the one part, and

The Government of Romania, hereinafter referred to as "THE RECIPIENT"

on the other part,

HAVE AGREED AS FOLLOWS:

The measure referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the measure referred to in Article 1 below shall be implemented is set out in the General Conditions annexed to the Framework Agreement 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 - NATURE AND SUBJECT

As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE, described in detail in Annex C:

Programme number: 2004/016-772

Title: 2004 Phare National Programme for Romania.

Duration: Until 30 November 2006

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **€405.3M**, hereinafter referred to as "THE EC GRANT".

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until **30 November 2006** subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT, which have not been contracted by this date shall be cancelled. The deadline for execution of contracts of THE EC GRANT is **30 November 2007** except for measure Phare/2004/016-772.01.05 and investment and related supervision contracts in subprogramme 4, where the deadline is November 30, 2008. Execution of all contracts must end by the deadline for execution of contracts. 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 the execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.

ARTICLE 4 - ADDRESSES

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

for THE RECIPIENT:

Mr Mihai Nicolae Tănăsescu
Minister of Public Finance
Government of Romania
St. Apolodor 117
Iatru Nord, sector 5
Bucharest
Romania
Fax: 00 40 21 3359878

for the COMMUNITY:

Mr. Jonathan Scheele
Head of Delegation of the
European Commission in Bucharest
St. Jules Michelet 18-20
010463 Bucharest
Romania
Fax: 00 40 1 212 88 08

ARTICLE 5 - NUMBER OF ORIGINALS

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

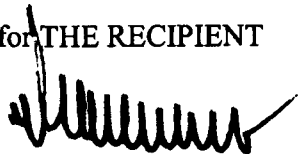
ARTICLE 6 - ENTRY INTO FORCE

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

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

Done at Bucharest

Date *21 December 2004*
for THE RECIPIENT



Mr. Mihai Nicolae Tănăsescu
Minister of Public Finance
National Aid Co-ordinator

Done at Bucharest

Date *21 December 2004*
for THE COMMUNITY



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

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

1. OBJECTIVES AND PRIORITIES

This chapter describes the measures¹ envisaged for the budgetary year 2004 under Phare divided into six sub-programmes. It addresses the multi-annual priority sector programmes through their focus on *Phare priorities* and the implementing *main tasks* for the years 2004 to 2006 and the *specific tasks* envisaged to commence under this 2004 programme. It presents furthermore the group of measures proposed to complement the priority sectors under this programme by implementing specific tasks. These tasks are mainly derived from specific requirements emerging from the *acquis communautaire* or from the desired participation of Romania in certain Community policies.

SUB-PROGRAMME 1 MEETING THE POLITICAL CRITERIA – 2004/016-772.01 (TOTAL: € 50.0 M)

A: Development of democracy, human rights and respect for minorities

PHARE/2004/016-772. 01.01 Sector Minority

Phare funds required: € 8.5 M

This sector addresses the social inclusion of the Roma population in Romania, by promoting the Roma to participate fully in the social, economic and cultural life of Romanian society.

In preparing for Romania's EU accession and the preparation of the implementation of the EU structural funds, the inclusion Roma is one of the priority categories for human resources and social inclusion measures contained in sub-programme 4 "Social and Economic Cohesion".

At the same time this multi-annual sector programme "Minorities", especially aiming at the social inclusion of Roma, is an important continuation of previous Phare programs aimed at strengthening the capacity and readiness of public institutions at the national, county and municipality level to work together with Rom representatives.

This multi-annual programme focuses on the following:

Phare priorities	main tasks
Develop the institutional framework and models to achieve social inclusion	<ul style="list-style-type: none"> Continue support for institution building at national level for coordination and monitoring of the implementation of the National Strategy for Improvement of the Roma Situation, as well as improve cooperation among stakeholders for the implementation of specific social inclusion measures at national, judet and local level. Provide Roma with formal identity papers, in order to contribute

¹ Each measure envisaged for implementation in this programme carries in the following the header PHARE/2004/016-772 continued with a numbering system identifying the sub-programme and the measure itself.

Phare priorities	main tasks
	<p>to improved access to education, employment, social assistance and other social rights;</p> <ul style="list-style-type: none"> • Implement a large public awareness campaign on Roma issues focused on the non-Roma population well as the Roma population • continue the Partnership grant scheme for community development projects of local authorities with local Roma communities to facilitate initiatives to improve the condition of the Roma
Access to education for disadvantaged groups	<ul style="list-style-type: none"> • Focus upon institution and capacity building as well as seeking to improve the educational environment in schools dealing with inclusion for disadvantage groups with a special focus on Roma. • Train school inspectors on inclusive education from newly involved counties thereby ensuring a national standardisation. • Consolidate the school mediator programme nationwide thereby improving the interface between the child, their parents and the Roma community. • Teacher training for early –pre-school education and remedial education. • Development and expansion of curricula for the second chance programme (primary & lower secondary) thereby correcting drop out and increasing the number of Roma children completing compulsory education.. • Ensure evaluation, impact assessment, and a nationwide awareness campaigns for inclusive education schemes and multicultural behaviour.

The 2004 programme will contribute to implementing the following specific tasks, amongst others:

Institution building at the national, county and local level to improve cooperation among stakeholders, implementation and monitoring of specific social inclusion measures
Assess the needs and develop methodology to solve the problems regarding formal identity papers
Implement a public awareness campaign focused on Roma issues, aimed at Roma as well as the general public.
Train school inspectors on inclusive education
Consolidate the school mediator programme
Teacher training for pre-primary and remedial education
Development and expansion of curricula for the second chance programme (primary & lower secondary).

PHARE/2004/016-772. 01.02 Civil society

Phare funds required: €5.0M

This measure aims at further strengthening the monitoring and promoting capacity of Romanian NGOs to address the needs emerging from the Copenhagen criteria. This measure will support interventions to strengthen the advocacy role of NGOs in the field of democracy, rule of law, human rights including minorities' rights, access to information, freedom of expression and related independence of media, independence of justice and

fight against corruption. Secondly this part of the programme provides for capacity building for NGO staff (including volunteers) and board members, reflecting their preoccupation for accountability, transparency, constituency building, strategic development, management and good governance etc. in their specific or more general areas of activity. It will also give limited support for developing local or regional resource centres for NGOs. Thirdly, NGO support for the development of administrative capacity for the implementation of the *acquis Communautaire*, including awareness raising, will be financed.

All components of the measure 01.02 "civil society" will be managed by the Romanian Civil Society Development Foundation (CSDF)². The implementing agency will conclude a service contract to the CSDF through a negotiated procedure with a single tender.

Under this agreement CSDF will receive appropriate administrative costs of not more than 7.25 % of the budget, including the audit costs. CSDF will not be an eligible beneficiary of the programme, other than through payments of these administrative costs. Being a non-profit organisation, CSDF will be exempted of the obligation foreseen by the standard service contract related to the bank guarantee.

B: Development of Romania's institutions

PHARE/2004/016-772. .01.03 Sector Public administration reform

Phare funds required: € 11.5 M

The strategy concerning the acceleration of the public administration reform in Romania for the period 2004 – 2006 is aimed at developing a public administration system that meets European standards and values of transparency, predictability, accountability, adaptability and efficiency.

Phare support will provide a substantial contribution to the implementation of the reform measures foreseen within the three priority areas identified in the strategy:

- **civil service reform** through creation of a professional body of civil servants, stable and politically neutral;
- **local government reform** through the continuation of the decentralization/deconcentration process;
- improvement of the **policy formulation and coordination process**.

This multi-annual programme focuses on the following:

Phare priorities	main tasks
Civil service reform	<ul style="list-style-type: none"> • Contribute to develop the conditions for attracting and retaining qualified staff in the public administration through the implementation of the pay reform, an adequate legal framework for the selection, assessment and promotion by

² The CSDF is a non-profit organisations specialised in the management of Civil Society programmes that has been set up with Phare support to this end.

	merit of civil servants and training <ul style="list-style-type: none"> • Strengthen the institutional capacity of the institutions responsible for the reform implementation • Improve the human resources management and information system.
Local government reform – decentralization/ deconcentration process	<ul style="list-style-type: none"> • Improve public services delivery having in view better access of the citizens, promptly and quality services and a better adequacy between the services and the local needs • Coherent and effective assignment of responsibilities, financial resources and rights to all levels of local governments.
Central government reform – improvement of the policy formulation process	<ul style="list-style-type: none"> • Establish coordinated systems for policy formulation • Strengthen the management of governmental structures and the process of policy formulation

The 2004 programme will contribute to implementing the following specific tasks which address only the first two priorities. The policy formulation process will be addressed as of 2005.

Tasks, to start with 2004 funds
Implement the civil service reform
Modernise the Human Resources management within the Romanian civil service
Develop a Corps of professional Public managers
Strengthen the capacity of the National Institute for Administration (INA) and the Regional Training Centres (RTCs)
Decentralisation and deconcentration process led by the central public administration
Strengthening financial autonomy of local authorities through continuation of fiscal decentralization

C. Strengthen the rule of law

PHARE/2004/016-772. 01.04 Sector Reform of the judiciary

Phare funds required: € 18.00 M

This sector covers assistance to enhance the independence, professionalism and management capacity of the Romanian judiciary.

Phare support will significantly contribute to the achievement of these objectives committed by the Ministry of Justice within the Strategy for the Reform of the Judiciary and will complement the national efforts in 4 priorities.

This multi-annual programme focuses on the following:

Phare priorities	main tasks
Building an independent judiciary in Romania	Contribute to establishing <ul style="list-style-type: none"> • a fully functional Superior Council of Magistrates (SCM) with sufficient means to perform its role as guarantor of independence • functional specialized courts

Building a professional judicial system	Improve the institutional capacity and training policy at the National Institute of Magistrates (NIM) and at the Training Centre for Clerks (TCC)
Improving the administration and access to Justice	Contribute to establishing <ul style="list-style-type: none"> • a functional mediation system • an improved legal and institutional framework ensuring legal aid in civil and criminal cases • a transparent act of justice
Building an efficient judicial management system	Equip the entire judicial system with IT with the goal of establishing and operating an automated court management system

The 2004 programme will contribute to implementing the following specific tasks:

Tasks, to start with 2004 funds
Training for Members of the SCM, for its judicial and administrative staff; improving the SCM's rules of procedure; promoting and hosting meetings with relevant stakeholders.
Procure legal documentation, IT and office equipment and furniture for the SCM
Procure IT equipment for the NIM and printing facilities.
Upgrade accommodation facilities in the NIM regional continuous training centre in Timisoara.
Provide training to a network of NIM trainers; provide training focused on the judges for future specialised courts/panels; training for prosecutors; produce practical guides on specialised areas of law for NIM trainers and magistrates; procure legal texts for NIM library.
Provide training to TCC trainers; provide training to TCC trainees; organise a conference on the role of the court clerk
Procure teaching materials, legal documentation, equipment and printing facilities for TCC premises in Bucharest Barlad, Sovata and Timisoara.
Upgrade accommodation facilities in TCC premises in Barlad.
Improve mediation by producing a curriculum for trainers; train trainers; assess relevant legislation and rules of procedure of the Council of Mediators; design and implement a campaign to raise awareness; inform judges of the advantages of mediation
Establish an efficient legal aid system by assessing the existing provisions; make proposals to enhance the system with an associated feasibility study; implement the improved system in a pilot court; propose secondary legislation to implement the new system; and design and implement a campaign to raise awareness of the new system.
Procure IT equipment and associated training to continue the process of automation of the courts

PHARE/2004/016-772. 01.05 Strengthen the fight against corruption

Phare funds required: €4.5M

1) To obtain an accurate and objective picture of corruption in Romania, to assess the state's anti-corruption measures, and to propose an enhanced policy response; 2) To improve the legal framework so that there is greater effectiveness in investigating, prosecuting and convicting corruption cases; 3) To

improve the co-operation between all relevant law enforcement agencies and actors in the justice system with a role in the fight against corruption so that there is greater effectiveness in investigating, prosecuting and convicting corruption cases; 4) To enhance the operational effectiveness of the National Anti-corruption Prosecutor's Office (PNA), the lead agency in the investigation of high-level corruption affecting Romania; 5) To increase the public awareness of the threat that Romanian society faces from all forms of corruption and educate them as to the negative consequences for democracy and socio-economic development while informing them of their individual legal and moral responsibility to fight against corruption as well as the practical possibilities for doing this.

PHARE/2004/016-772. 01.06 Improve penitentiary standards

Phare funds required: €1.5M

This measure aims at (i) a new management system according to the new Law on the Statute of Penitentiary Personnel, (ii) training decision-makers in the prison system in relation to the new management system (iii) improving handling of dangerous prisoners by training relevant prison staff and (iv) making transport of prisoners more reliable.

PHARE/2004/016-772. 01.07 Strengthen police co-operation

Phare funds required: €1.0

This measure aims at supporting (i) developing police co-operative intervention capabilities at national and municipal and rural level (ii) improving police handling of national minorities and community policing (iii) consolidating the structures and practices of the Romanian Gendarmerie (iv) Preparing for full participation in the European Police Force

**SUB-PROGRAMME 2 MEETING THE ECONOMIC CRITERIA-
2004/016-772/02 (TOTAL: €4.45 M)**

PHARE/2004/016-772. 02/01 Cadastre

Phare funds required: €4.45 M

This is to continue the project PHARE 2003/005-551.02.01, as a second phase, which provides support for the development and implementation of a secure, unitary, integrated and cost efficient system of cadastre and real property rights registration. In particular, support for mass registration and process management; completion of IT infrastructure; professional training and development of data exchange will be provided.

**SUB-PROGRAMME 3 MEETING THE OBLIGATIONS OF THE
ACQUIS –**

2004/016-772.03 (TOTAL: € 155.43 M)

This sub-programme focuses on four priority sectors: Public Finance, Agriculture and Rural development, Environment and Border Management.

PHARE/2004/016-772. 03.01 Sector Public Finance

Phare funds required: € 31.42 M

The overall objective of the priority sector is to improve the legal and administrative capacity of the Ministry of Public Finance and the Romanian Court of Accounts.

This multi-annual programme focuses on the following:

<i>Phare priorities</i>	<i>Main tasks</i>
Taxation legislation and Fiscal Administration	<p>Full alignment to the acquis communautaire. Ensuring the compatibility of the taxation legislation with the acquis communautaire and strengthening the tax administration reform. This priority aims at:</p> <ul style="list-style-type: none"> • transposing Community regulations in the taxation and fiscal administration and implementing them in national legislation; • strengthening the capacity and improving working procedures of the Fiscal Administration to ensure uniform and correct application of the regulations on direct and indirect taxation field; • reducing fraud and fiscal evasion • completing the legislative framework regarding the compatibility of legislation with the Code of Conduct for Business Taxation; • improving assistance services for taxpayers and fiscal education campaigns • training personnel on the new tax legislation and for improving the professionalism and integrity of Fiscal Administration • putting legal framework (norms and procedures) in place in order to improve the electronic services to the taxpayers (legal and physical persons).
Public finance management	<p>Contribute to the development of :</p> <ul style="list-style-type: none"> • the institutional and procedural framework in order to ensure a sound financial management of the Community/structural funds;

<i>Phare priorities</i>	Main tasks
	<ul style="list-style-type: none"> • an efficient financial management and control system • the public internal audit function • consolidated financial statements and the consolidated reports related to the budget implementation; • administrative capacity at the completed coordination unit for ensuring the transparency and efficiency of the financial flows to and from the European Union budget; • the public procurement system • Risk management of the government debt portfolio; • the School of Public Finance, to ensure high-standards training to the staff of the MoPF and other concerned institutions.
IT infrastructure development	<p>Continuation of the development of the IT infrastructure in order to obtain</p> <ul style="list-style-type: none"> • efficient enforcement of the financial-tax regulations, based on a harmonized legislation and on new work methods • high level of compatibility with the similar information systems used in the European Union countries • modernisation of information system • improvement of services provided to the taxpayers as well as to the internal end-users • CLO and ELO in place • increased capacity of staff in managing the IT&C infrastructure and softwares • interconnectivity with the National Customs Authority
Court of Accounts	<ul style="list-style-type: none"> • Strengthen the Court of Accounts' overall capacity through the introduction of modern audit methods in compliance with the internationally accepted audit standards and with the best European practices. • Create a highly professional staff, constantly preoccupied to improve its professional performances • Develop a modern and adequate technical and logistical support, a good internal and external communication.

The 2004 programme will contribute to implementing the following specific tasks:

Tasks, to start with 2004 funds
Completing the harmonisation of tax legislation and strengthening the fiscal administration
Strengthening the capacity of the National Fund and implementing agencies to efficiently implement the Phare and ISPA programmes in accordance with EDIS requirements
Capacity building for CFCU to ensure a sound financial management for the Community/structural funds
Strengthening of the financial management and control system in the MoPF
Capacity building for the presentation of the financial consolidated statements and the consolidated reports regarding the budget implementation
Strengthening the administrative and managerial capacity for an efficient implementation of the legislation on public procurement.
Risk management of the government debt portfolio
Development and implementation of new IT applications related to the optimisation of the business environment and taxpayers' assistance

Tasks, to start with 2004 funds
Establishment and implementation of the IT structures regarding the administrative cooperation with the other Member States
Increasing the integration level of new IT and communication systems
Romanian Court of Accounts: Further development of the institutional capacity and improvement of the management information system

PHARE/2004/016-772. 03.02 Sector Agriculture

Phare funds required: € 21.75 M

The sector programme for agriculture aims at supporting Romania to achieve the necessary administrative and management capacity and the necessary inspection and monitoring skills and provisions required in the context of the Common Agricultural Policy and the Rural and Agricultural funds.

This multi-annual programme focuses on the following:

Phare priorities	Main tasks
Rural development policy and CAP	<p>Establish a ready-to implement Operational Programme for Rural Development</p> <p>Assist the MAFRD to acquire capacity as Managing Authority for the management of Rural Funds and capability to effectively develop and implement the rural development operational programme,</p> <p>Strengthen the ministry's capacity to carry out analysis and assessment of past and proposed support measures taking account of the evolving focus of the CAP.</p> <p>Support measures to bring fisheries and aquaculture legislation fully in line with the acquis.</p> <p>Implement the acquis for forest reproductive material.</p> <p>Strengthen further the SAPARD central and regional structures.</p>
European Agricultural Guidance and Guarantee Fund EAGGF	<p>Establish</p> <ul style="list-style-type: none"> • A Paying Agency (PA). This will also cover payments for the Rural Development Fund; the SAPARD Agency will be merged into the PA by accession • An Agricultural Information System (AIS) for transmitting data to EC-DG Agriculture, Eurostat and producers • Farm Accountancy Data Network, to support the statistical and analytical requirements • Integrated Accounting and Control System (IACS) as a key basis for CAP payments • Necessary infrastructure and legislation in order to bring the fruits and vegetables sector fully in line with EU requirements • Necessary infrastructure and legislation to align the wine sector with the acquis • A milk quota and management system in compliance with the EU requirements • A carcass classification system in compliance with the EU requirements

Phare priorities	<i>Main tasks</i>
Food safety	Development of a Romanian Food Safety system based on the Romanian National Veterinary and Food Safety Agency and the continued implementation of the Phytosanitary services.

The 2004 programme will contribute to implementing the following specific tasks:

Tasks, to start with 2004 funds
Building the institutional capacity of the Managing Authority
Further strengthen institutional capacity of the SAPARD agency
Training of the MA and other bodies' staff
Strengthening the policy making capacity in the field of rural development
Support for further strengthening the fisheries and aquaculture market
Supply of equipment for fisheries and aquaculture
Support for adopting and implementing the acquis in the forestry sector
Building the institutional capacity of a new Paying Agency
Supply of equipment for efficient operation of the new PA
Support to set up and manage an Agricultural Information System (AIS)
Support to set up a Farm Accountancy Data Network (FADN)
Supply of equipment for establishing and efficient operation of FADN
Further support to fully implement IACS
Training of IACS staff
Reinforcement of administrative structures for the acquis in the fruits and vegetables sector
Support to further strengthening the wine sub-sector
Support for the establishment of a milk quota management system
Supply of equipment for efficient operation of the milk quota management system
Support for establishing a carcass classification system
Elaboration of technical specifications for all ICT projects
Development of the Veterinary and Food Safety Agency
Support for elaboration of technical specifications for veterinary and phytosanitary equipment
Continue the harmonisation and reinforcement of the phytosanitary sector

PHARE/2004/016-772. 03.03 Sector Environment

Phare funds required: € 25.49 M

The sector programme aims to strengthen the administrative, monitoring and enforcement capacities and capabilities at all levels (local, regional and central level) in order to implement environmental legislation and to fulfil the EU requirements regarding the environmental acquis.

This multi-annual programme focuses on the following:

<i>Phare priorities</i>	Main tasks
<ul style="list-style-type: none"> Horizontal and noise related legislation 	<ul style="list-style-type: none"> Strengthen institutional and technical capacity of the National Environmental Protection Agency (NEPA). complete secondary legislation to ensure necessary conditions for the Environmental Impact Assessment and the Strategic Environmental Assessment (EIA- and SEA) Directive to be fully implemented and enforced, and intensify training of staff in particular to support public awareness. Establish a high technology informational system (software, data base, statistic analysis), comprising a database for reporting and train staff regarding reporting requirements; Development of a National Noise Monitoring System Supply of noise monitoring equipment and staff training
<ul style="list-style-type: none"> Air quality 	<ul style="list-style-type: none"> Strengthen institutional capacities at regional and local levels in implementing and enforcing air quality related legislation Elaboration of action plans and programmes for air quality management and reduction of emissions; improved acquisition, storage and reporting of relevant data; quality assurance and quality control procedures (QA/QC) in the air quality sector Supply air quality monitoring equipment and staff training
<ul style="list-style-type: none"> Waste management 	<ul style="list-style-type: none"> Strengthen institutional capacities at regional and local levels in implementing and enforcement of domestic waste and industrial waste management related legislation, Improve administrative capacity at regional level for investment planning and elaboration of regional waste management plans Supply of waste monitoring equipment
<ul style="list-style-type: none"> Water quality 	<ul style="list-style-type: none"> Support to the River Basin Management Plan for the Ialomita-Buzau river basin Elaboration of an investment methodology for Water Framework Directive (WFD) within a River Basin Supply of computers and software for data collection, processing and visualization; hardware and software for GIS applications in respect of river basin management plans, quality monitoring equipment and staff training
Nature protection	<ul style="list-style-type: none"> Strengthen institutional capacities at regional and local levels in implementing and enforcement of nature protection related legislation
GIS	<ul style="list-style-type: none"> introduce and maintain Geographical Information System (GPS) techniques improve institutional management and technical performance of the staff environment related GIS maps, supply of IT equipment
<ul style="list-style-type: none"> IPPC & risk management 	<ul style="list-style-type: none"> Strengthen institutional capacities at regional and local levels in implementing and enforcement of Industrial Pollution Prevention Control (IPPC) & risk management related legislation, good institutional management and technical performance of the staff review, validation and update of Implementation Plans supply of IPPC monitoring equipment and staff training

The 2004 programme will contribute to implementing the following specific tasks:

Tasks, to start with 2004 funds
Strengthening the capacity of the Regional Environmental Protection Agencies (REPAs) and Local Environmental Protection Agencies (LEPAs) in implementing, monitoring and enforcement of the transposed environmental legislation.
Strengthening Institutional Capacity to implement horizontal and noise related legislation
Strengthening Institutional Capacity for the implementation and enforcement of Air Quality legislation
Further implementation of the waste management related legislation
Support to implement the provisions of the Water Framework Directive
Implementation of Natura 2000 Network
Support to environmental protection decisions through GIS
Strengthening Institutional Capacity for the implementation and enforcement of IPPC legislation and risk management

PHARE/2004/016-772. 03.04 Sector Border Management

Phare funds required: € 36.8 M

Alignment to the EU Acquis in the field of border management and control in preparation for accession to the EU with the view to establish an integrated border management.

This multi-annual programme focuses on the following:

Phare priorities	Main tasks
Optimization of the Institutional System and of the System of Human Resources	Advanced harmonisation of Romanian Border Police (RBP) management and co-operation structures and of the human resources system with EU best practice in accordance with the Schengen Acquis
Further Development of the System for Strengthening the Romanian Borders	Further modernization of the sub-systems for securing of the Romanian borders in accordance with EU best practice in relation to the border management, including the Schengen Acquis.

The 2004 programme will contribute to implementing the following specific tasks:

Tasks, to start with 2004 funds
Further Developing the Capacity of the RBP to Apply the Schengen and Border Management Acquis
Developing and Implementing an Organisational Development Strategy and Enhancing the Capabilities of RBP Command Officers in the Field of Change Management
Anti-corruption Measures for Border Police and Customs

Tasks, to start with 2004 funds
Improving Border Police and Customs Co-operation at the Ukrainian Border
Technical Project and Tendering documents for the development of the RBP integrated surveillance system of the Danube River and Danube Delta
Implementation of the second phase of RBP Integrated System for Observation, Surveillance And Control of Traffic at the Black Sea
Upgrading the Surveillance Capacity of RBP Special Surveillance Vehicles, Phase 1
Extension of the RBP Voice and Data Communication System
Design and Implementation of the RBP Mobile Communication System
Repair and Refurbishment of RBP Training Premises
Construction and Rehabilitation of the Docking Facilities for RBP Marine and River Vessels
Supply of Furniture and Office Equipment for Border Contact Centres and Points
Re-Configuration of the Infrastructure and Traffic Flows at Designated Border Crossing Points
Endowment of RBP Training Centres and Schools with Specialised Training Equipment

In order to meet the overall objective of sub-programme 3 “Meeting the obligations of the acquis” the following measures, complementary to the priority sectors, have been identified as urgent requirements under the 2004 programme.

PHARE/2004/016-772. 03.05 Improving social security for migrant workers

Phare funds required: €2.25M

Increase the capacity to implement the community acquis at the institutions concerned with the field of free movement of workers and co-ordination of social security systems. Launch preparation of the European health insurance card. Develop & launch relevant IT systems and provide training for IT specialists/ personnel and users. Set up 5 additional local Centres for Information and Documentation for Migrant Workers and provide them with specific training.

PHARE/2004/016-772. 03.07 Design and implementation of the INTRASTAT system

Phare funds required: €1.13M

Implementation of the Acquis on the statistics of goods traded between Member States by introducing the INTRASTAT statistical system to become fully operational when Romania joins the EU.

PHARE/2004/016-772. 03.08 Implementation of the harmonized legislation on occupational safety and health in the small and medium-sized enterprises

Phare funds required: €1.5M

Raise awareness of employers and employees in SMEs as regards observing the *acquis* in the field of health and safety at work. Select and support at least six SMEs to become “model centres of good practices in the field of health and safety at work” by implementing there the harmonized occupational safety and health legislation.

PHARE/2004/016-772. 03.09 Strengthening the capability of the Romanian Blood Transfusion System to comply with EC requirements for Quality and Safety of Human Blood and Blood Components

Phare funds required: 2.7M

Establish a National Quality System compliant with the specifications developed under Article 29(h) of Directive 2002/98/EC. Ensure quality control and traceability of each single blood donation and each single blood unit and components by establishing a National computer system for quality assurance, quality control, traceability and recall in place. Accomplish compliance with the requirements for storage, transport and distribution by establishing a national cold chain specified in accordance with requirements of Directive 2003/33/EC Annex IV. Encourage voluntary and unpaid donations by launching a mobile donation collection system.

PHARE/2004/016-772. 03.10 Consolidation of the energy sector

Phare funds required: €10.4M

Support to further restructuring and reform of the electricity and gas sectors by strengthening of the administrative capacity of the National Regulatory Authorities in the electricity sector (ANRE) and in the gas sector (ANRGN) and by completing the privatisation of the remaining regional electricity distribution companies and by increasing the interconnectivity between Romania and Hungary through the construction of an overhead line 400 kV Arad-Nadab.

PHARE/2004/016-772. 03.11 Strengthening the institutional capacity of the Romanian agencies in the field of drug demand reduction

Phare funds required: €2.02M

Strengthen the strategic and operational capacity of the Romanian agencies as well as co-operation in drug demand reduction based on an inter-agency approach. Conduct a survey of the current capabilities and needs in all of Romania in the area of forensic analysis and make proposals for enhancing them as well as making the system more efficient and effective.

PHARE/2004/016-772. 03.12 Fight against organised crime – An Inter-Institutional Approach

Phare funds required: (€2.56M)

Enhance the capabilities of Romanian law enforcement agencies to fight organised crime based on an integrated sector strategy ensuring strategic and operational co-operation. The legal and institutional framework in this field is to be assessed and improved. Relevant specialised training is to be provided to all the agencies involved; and databases and intelligence processing procedures developed.

PHARE/2004/016-772. 03.13 Strengthening the institutional and operational management capacity of migration and asylum administrations

Phare funds required: (€2.76M)

Enhance the institutional capacity of the migration and asylum management authorities by implementing the National Migration Strategy and finalising National legislation in the field of asylum and migration and building specialised IT Units in the field of asylum and migration management and preparing Romania for participation in the EURODAC system

PHARE/2004/016-772. 03.14 Assistance to implement the new safety aspects of the EU legislation in the field of road safety and to consolidate the railway restructuring

Phare funds required: (€12.45M)

Improve the traffic safety and living environment in localities crossed by the national roads, with significant volume of traffic and accidents recorded and promote the local awareness and initiative; improve the traffic safety on the road sections outside localities affected by a significant number of serious accidents.

Consolidate the Restructuring Process for the Romanian Railways by developing new modules for the existing financial application, regarding payroll, stock and fixed assets systems, elaborating a new strategy for the Romanian Railway Companies (CFR) on time table design for passenger trains based on a commercial approach and by improving the railway infrastructure accesses fee (TUI) formula

The rehabilitation of railway stations will be another focus of the Phare 2004 support for the Romanian transport sector in order to improve the quality of the services for passengers in the railway stations.

PHARE/2004/016-772. 03.15 Enhancement and development of the professional expertise of the Romanian audiovisual sector

Phare funds required: €2.2M

Strengthening (i) the audiovisual sector with the aim to allow Romania to promote Europe's cultural diversity and to develop a viable national audiovisual industry and (ii) the capacity of the National Audio-visual Council (C.N.A.) to apply the EU acquis in the sector. Increase the effectiveness and transparency of the CNA activity in monitoring and sanctioning infringements of the law mainly on: protection of minors and human dignity; respect of the right to reply, freedom of expression, pluralism in electronic media and promotion of European works.

SUB-PROGRAMME 4 ECONOMIC AND SOCIAL COHESION

2004/016-772.04 (TOTAL: € 160.1 M)

This sector is split into three parts, each of it is implemented by a different implementing agency.

PHARE/2004/016-772. 04.01 Sector Economic and Social Cohesion
Part 1: Improving infrastructure, provision of SME support, environmental protection and improving access to education and training at regional level in order to enhance economic development

Phare funds required: (€ 114.25M)

PHARE/2004/016-772. 04.02 Sector Economic and Social Cohesion
Part 2: Human Resource Development: employment and social inclusion measures

Phare funds required: € 22.20 M

PHARE/2004/016-772. 04.03 Sector Economic and Social Cohesion
Part 3: Development of administrative capacities for Structural Funds management

Phare funds required: € 23.65 M

In view of implementing the NDP priorities and preparation for Structural Funds, the 2004 – 2006 Phare assistance in the field of ESC will be focused on the achievement of the following objectives:

- To develop and implement multi-annual policies and programmes for economic and social cohesion, through investment projects in priority sectors, in line with the provisions of the National Development Plan 2004-2006 (NDP), to support the overall national and regional economic growth, in order to increase the overall potential of the country and of each of the eight development regions, as well as to diminish the economic and social disparities between them;
- To strengthen the institutional capacity of central ministries, the 8 Regional Development Agencies and relevant local authorities to prepare for the implementation of investment support to be provided, in line with provisions regarding the Extended Decentralised Implementation Systems (EDIS) in candidate countries.
- To build the institutional, administrative, programming and implementation structures necessary to effectively manage EU Structural Funds after accession.

This multi-annual programme focuses on the following:

PRIORITIES	MEASURES
Priority A: Improving regional infrastructure to support economic development	Regional and local transport, business and tourism infrastructure

Priority B: Human Resource Development	Tackling structural unemployment Improving long term labour market adaptability Actively combating social exclusion Improving access to education and region specific technical and vocational education and training system
Priority C: Development of the productive sector through support to SMEs	Support to SMEs, business start-up, micro-enterprises and business support service providers
Priority D: Environmental protection at regional level	Improving environmental protection at local and regional level SAMTID supervision
Priority E: (Horizontal IB) Building the institutional structures in order to achieve, upon accession, sound and efficient management of EU Structural Funds, and efficient management of programmes under EDIS requirements	Development of administrative capacities for Structural Funds management

Under the 2004 programme the following specific tasks will be implemented:

Part 1

Tasks, to start with 2004 funds
Regional and local transport, business and tourism infrastructure (Priority A)
Improving region specific Technical and Vocational Education and Training (TVET) system (Priority B)
Continuing training of pre-university staff (Priority B)
Institutional Support for the National Agency for SMEs (NASMEC) to introduce and develop e-governance and to foster use of Information and Communication Technology (ICT) by innovative SMEs (Priority C)
Improving business support services (Priority C)
Improving access to finance of SMEs, micro-enterprises and innovative companies (Priority C)
Improving environmental protection at local and regional level (Priority D)
SAMTID supervision (Priority D)

Part 2

Tasks, to start with 2004 funds (All from Priority B)
Active employment measures for youth and long-term unemployed
Qualification and re-qualification of work force
Establishment of the National Authority for Qualifications
Social inclusion measures for disadvantaged groups
Strengthening the capacity of the Ministry for Labour, Social Solidarity and Family (MLSSF) in the field of social assistance and services

Part 3

Tasks, to start with 2004 funds (All from Priority E)
--

Tasks, to start with 2004 funds (All from Priority E)
--

Support to CSF Managing Authority

Horizontal training for MA

Expanding the Single Management Information System
--

Coordination, management and implementation of regional programmes
--

Support to future Managing Authorities and Intermediate Bodies
--

Ex-ante evaluation of Operational Programmes
--

For implementing agencies for parts 1 to 3, please refer to chapter 6.

SUB-PROGRAMME 5 SPECIAL ACTIONS FACILITY-2004/016-772.05 (TOTAL: € 11.22 M)

This sub-programme will cover special actions such as evaluations or audit missions by external experts, peer reviews and urgent needs, which will arise just before or during the first years of Membership. Furthermore, it contains measures for strengthening the administrative capacity of those parts of the administration which cope with pre-accession funds.

PHARE/2004/016-772. 05.01 Support to administrations managing EC funds

Phare funds required: €9.9 M

Strengthen the capacity of the line ministries and government institutions to prepare better quality programmes and projects and deliver qualitative outputs when using EU funds, do Project Preparation and allow for Special Actions during early Membership – using this unallocated Institution Building Envelope

PHARE/2004/016-772. 05.02 Support Romania in participating in Community Initiatives

Phare funds required: (€1.32 M)

Community Initiatives to be supported by Phare and their impact on Romania's effort as future member of the EU, such as INTERREG III strands B and C

SUB-PROGRAMME 6 COMMUNITY PROGRAMMES AND AGENCIES AND END-USER SUPPORT 2004/016-772.06 (TOTAL: € 24.1 M)

PHARE/2004/016-772. 06.01 Community Programmes and Agencies

Phare funds required: €20.1M

On the basis of Association Council decisions and Agreements, Candidate Countries may participate in certain European Community programmes and agencies. The Phare national programme will co-finance part of the contribution costs of participating in those programmes and agencies. As from 2001, these funds are made available each year as part of the Phare national programme.

The programme supports Romania to participate in the following European Community programmes keeping a reserve for participation in other programmes or in European agencies:

Programme Name	Programme Name
Civil Protection Mechanism	Combating Discrimination
Combating Social Exclusion	Community Action in support of consumer policy
Community Action in the field of Public Health	Culture 2000
Customs	Enterprise and Entrepreneurship
Fiscalis	FP 6 for RTD and Euratom
Gender Equality	Intelligent Energy
Incentive measures in the field of employment	Leonardo da Vinci II
Socrates II	Youth
Reserve for participation in agencies	

PHARE/2004/016-772. 06.02 End user support

Phare funds required: €4.0M

Phare will facilitate the access of Romanian university students and teachers, pre-university teachers and decision makers in education to the Community programmes concerning mobility schemes (such as Socrates II, Erasmus, Comenius 2.2 C, Arion Actions).

2. INDICATIVE BUDGET

BUDGET TABLE FOR THE BUDGETARY YEAR 2004

The distribution of figures between the budget lines is indicative within the limits of Art. 5 MoU National Fund. The figures are given in Million €

Phare 2004-016-772		PHARE contribution		
measure	title	INV	IB	Total
.01	POLITICAL CRITERIA	17,50	32,50	50,00
.01	Sector Minority	0,00	8,50	8,50
.02	Civil Society	0,00	5,00	5,00
.03	Sector Public Administration Reform	3,30	8,20	11,50
.04	Sector Judiciary Reform	12,40	5,60	18,00
.05	Anti-corruption	1,30	3,20	4,50
.06	Improve penitentiary	0,50	1,00	1,50
.07	Police co-operation	0,00	1,00	1,00
.02	ECONOMIC CRITERIA	0,25	4,20	4,45
.01	Cadastre	0,25	4,20	4,45
.03	ACQUIS OBLIGATIONS	80,67	74,76	155,43
.01	Sector Public Finance	17,02	14,40	31,42
.02	Sector Agriculture	3,15	18,60	21,75
.03	Sector Environment	4,29	21,20	25,49
.04	Sector Border Management	33,15	3,65	36,80
.05	Migrant Workers Social Security	1,85	0,40	2,25
.06	void			
.07	INTRASTAT	0,22	0,91	1,13
.08	SME Health and Safety	0,00	1,50	1,50
.09	Blood Transfusion System	1,50	1,20	2,70
.10	Energy sector consolidation	6,00	4,40	10,40
.11	Drug Demand Reduction	1,17	0,85	2,02
.12	Fight against organised	1,36	1,20	2,56

Phare 2004-016-772		PHARE contribution		
measure	title	INV	IB	Total
	crime			
.13	Migration and asylum	1,76	1,00	2,76
.14	Road safety/Railway	9,20	3,25	12,45
.15	Audiovisual Sector	0,00	2,20	2,20
.04	ECO.& SOC. COHESION	115,19	44,91	160,10
.01	Infrastructure, etc.	99.29	14.96	114.25
.02	Human Resource Development	14.90	7.30	22.20
.03	Structural Funds Management	1,00	22,65	23,65

Phare 2004-016-772		PHARE contribution		
measure	title	INV	IB	Total
.05	SPECIAL ACTIONS FACILITY	0,00	11,22	11,22
.01	Support to EU funds management	0,00	9,90	9,90
.02	Community Initiatives	0,00	1,32	1,32
.06	COMMUNITY PROGRAMMES	9,40	14,70	24,10
.01	CPs and Agencies	9,40	10,70	20,10
.02	End-user Support	0,00	4,00	4,00
Grand Total		223,01	182,29	405,30

2.1. Outlook for the years 2005 and 2006

Following recommendations of the Phare Management Committee to step forward to Multi-Annual Programming the Commission asked the Romanian authorities to develop a programme outlook for the years 2005 and 2006. This outlook should in particular be described for the eight multi-annual priority sector programmes based on their respective strategies, developed for each of the sectors with a three years time horizon.

Both parties agreed that this outlook should be based on the assumption that also in the years 2005 and 2006 about 80% of the funds should be devoted to the eight priority sectors.

For the purpose of allowing to develop a realistic outlook the Commission services indicated to the NAC that about €840 M would be available for the National Phare Programmes 2005 and 2006, subject to the decisions of the budgetary authority and the Commission in the respective years.

Both parties to this FM are aware that such assumptions are in no way binding to either of the two parties.

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.

Implementing agency	Sub-programme
Central Finance and Contracting Unit (CFCU) at the Ministry of Public Finance	1/Political criteria; 2/Economic criteria; 3/Meeting the Obligations of the Acquis 4/Economic and Social Cohesion-Part 3; 5/Special Actions and early membership facility 6/Community Programmes and Agencies, End user support
Implementing Agency for “Improving infrastructure, provision of SME support, environmental protection and improving access to education and training at regional level in order to enhance economic development” at the Ministry of European Integration	4/Economic and Social Cohesion-Part 1
Implementing Agency ³ for “Human Resource Development: employment and social inclusion measures” at the Ministry of Labour, Social Solidarity and Family	4/Economic and Social Cohesion-Part 2

Simultaneously with signature of the FM, the NAC will provide the necessary details about these Implementing Agencies (addresses, communication contacts, Phare Authorising Officers, affiliation in the government etc).

In case of sub-programme “Participation in Community Programmes and Agencies”, implementation will consist in the payment of the Phare part of the financial contribution to the programmes by the National Fund.

³ See chapter 12, special conditions

4. IMPLEMENTATION ARRANGEMENTS

4.1. Method of Implementation

Implementation of this FM will follow Art. 53 (1) b (second alternative) of the Financial Regulation⁴. 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.

Each measure is either contained in a sector programme or a project, which the National Aid Co-ordinator proposes to the Commission in compliance with this Financing Memorandum. Once jointly agreed these sector programmes or projects are implemented by means of procurement contracts for investment and/or services, twinnings, or grant schemes, managed by the Romanian authorities. Each such sector programme or project is supervised by one or several Implementing Authority(ies) and technically implemented by one Implementing Agency.

Prior to accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999⁵ project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

The implementation of the project "Support Romania in participating in Community Initiatives" might be governed according to specific rules to be issued 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 Rules⁶, as well as the Commission Decision SEC (2003) 387/2⁷.

The Contracting Authorities shall also use the procedural guidelines and standard templates and models provided for in the "Practical Guide to contract procedures financed from the general EC budget in the context of external actions" as published on the EuropeAid website⁸ 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

⁴ Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002; OJ L 248; 16.9.2002; p. 1

⁵ Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

⁶ Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1

⁷ 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

⁸ current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

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, 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 Bucharest 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 manner⁹, 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.

⁹ 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

Not applicable

5. MANAGEMENT OF ASSISTANCE

5.1. Project Management

5.1.1. Responsibilities

The National Aid Co-ordinator (NAC) will have overall responsibility for programming, co-ordination of implementation 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 M €, except those covering the following measures:

Phare/2004/016-772.01.06	Improve penitentiary standards (€1.5M)
Phare/2004/016-772.01.07	Strengthen police co-operation (€1.0M)
Phare/2004/016-772.03.07	Design and implementation of the INTRASTAT system (€1.13M)
Phare/2004/016-772.03.08	Implementation of the harmonized legislation on occupational safety and health in the small and medium-sized enterprises (€1.5M)

These exceptions are justified given the predominantly Institution Building nature of the projects.

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 except for measure Phare/2004/016-772.01.05 and investment and related supervision contracts in subprogramme 4, where the deadline is November 30, 2008.

(3) Under DIS, a comprehensive tendering plan must be submitted to the Delegation for approval by no later than 1 July 2005. 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-directive¹⁰ 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 documented¹¹.

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 documented¹².

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 Romania in 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 a bank

¹⁰ DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

¹¹ in Annex EIA to the corresponding investment project fiche.

¹² In Annex Nature Conservation to the corresponding investment project fiche

agreed in advance with the Commission. 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 payment¹³ of up to 20% of the funds to be managed locally¹⁴, will be sent to the NF following signature of the Financing Memorandum and the Financing Agreements (FAs) between the NF and the Implementing Agencies (IAs)/Central Finance and Contracts Unit (CFCU). Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the IA/CFCU and the manner in which the payment function between them will be carried out.

Two further payments¹⁵ of up to 30% of the funds to be managed locally¹⁶ will be made. The second payment will be triggered when 5 % of the total budget in force¹⁷ has been disbursed by the IAs and the CFCU. The third payment may be requested when 35% of the total budget in force¹⁸ has been disbursed.

A final fourth payment will be made when 70 % of the total budget in force¹⁹ 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

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

¹⁴ excluding the amount foreseen for Community Programmes

¹⁵ representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹⁶ excluding the amount for Community Programmes

¹⁷ excluding the amount for Community Programmes

¹⁸ excluding the amount for Community Programmes

¹⁹ excluding the amount for Community Programmes

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

A single payment to the National Fund will be made, covering the full amount of the Phare part of the financial contribution for participation in Community programmes and agencies. This payment will be made following signature of the Financing Memorandum and upon request from the National Fund.

This payment is separate from the payments made for the rest of the programme. The Phare contribution for each programme will, however, only be transferred when the Association Council Decision or Memorandum of Understanding establishing the terms and conditions for participation in that programme is in force.

If there is a delay in the entry into force of some of the Memoranda of Understanding, the payment to the National Fund may be divided into two or more instalments, so that 100% of the funds necessary for the programmes in force can be paid immediately. The National Fund is responsible for transferring the funds back to the Commission, following the call for funds of the Commission service responsible for the programmes concerned and within the deadlines requested.

5.2.5. Payments in Case of Contractual Retention Clauses

For those contracts with contractual retention clauses (e.g. funds retained for a warranty period), the overall total of funds related to those contracts (as calculated by the PAO and established by the Commission) will be paid to the IA before the deadline for execution of contracts. The Implementing Agency assumes full responsibility for depositing the funds until final payment is due, as well as for ensuring that the said funds will only be used to make payments related to the retention clauses.

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

5.2.6. 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

Programme 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.

It reviews 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) 2185/96²⁰.

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 Auditors²¹, 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 438/2001²².

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

²⁰ Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2

²¹ as referred to in the General Conditions relating to the Financing Memorandum" attached to the Framework Agreement

²² Commission Regulation (EC, Euratom) 438/2001 of 2 March 2001, OJ L 63; 3.3.2001, p.21

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 corruption²³ 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 1681/94²⁴.

In particular, all suspected or actual cases of fraud²⁵ and irregularity²⁶ 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.

²³ 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.

²⁴ Commission Regulation (EC) 1681/94 of 11. July 1994; 12.7.94; p. 43

²⁵ 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.

²⁶ Irregularity shall mean any infringement of a provision of national or Community law, this Financing Memorandum or ensuing contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure. The term "Community law" in this context shall be defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (e.g. the Europe Agreements, Framework Agreements, the MoU on the Establishment of the National Fund etc.)

In case of irregularity or fraud, the Beneficiary Country shall make the necessary financial corrections required in connection with the individual irregularity. The corrections made by the Beneficiary Country shall consist in cancelling all or part of the Community contribution. The Community funds released in this way may be re-used by the NF for the purpose of the programme, in compliance with Art. 5 of the MoU on the National Fund.

7.3. Recovery of Funds in Case of Irregularity or Fraud

Any proven irregularity²⁷ or fraud²⁸ 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

²⁷ see definition above

²⁸ see definition above

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 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.

9. SPECIAL CONDITIONS

- 1) Contracting of Phare investment support under Economic and social cohesion is conditioned upon the signature of the service contracts between the implementing agency and Regional Development Agencies, (as described under Phare 2004/016-772.04.02).
- 2) The implementing agency for “Human Resource Development: employment and social inclusion measures” to be responsible for Part 2 of subprogramme 4 shall be operational no later than six months after this FM is signed.
- 3) In the event that agreed commitments are not met for reasons which are within the control of the Government of Romania, 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.
- 4) Before launching tendering procedures for projects which implement the Multi-annual programme Phare :2004/016-772.03.04 Sector Border Management, the Romanian government needs to provide evidence, that these projects do not overlap with those covered by other activities initiated by the Romanian government in this field. In case overlap cannot be excluded the funds allocated to the sector will in full or in parts be reallocated following the rules laid down in Article 5 of the Memorandum on the Establishment of the National Fund.

Annex E to Financing Memorandum 2004 Phare National Programme

Measure	Name	INV	IB	PHARE	National Cofinancing*	IFI	Total
Grant Total		223,01	182,29	405,30	99,74	25,52	530,56
.01	POLITICAL CRITERIA	17,50	32,50	50,00	8,17	0,22	58,39
	A: Development of democracy, human rights and respect for minorities						
.01	Sector Minority	0,00	8,50	8,50	1,00	0,00	9,50
.02	Civil Society	0,00	5,00	5,00	0,00	0,00	5,00
	B: Development of Romania's Institutions						
.03	Sector Public Admin Reform	3,30	8,20	11,50	1,10	0,22	12,82
	C: Strengthen the Rule of Law						
.04	Sector Judiciary Reform	12,40	5,60	18,00	5,00	0,00	23,00
	<i>measures specific for the year 2004</i>						
.05	Anti-corruption	1,30	3,20	4,50	0,70	0,00	5,20
.06	Improve penitentiary	0,50	1,00	1,50	0,17	0,00	1,67
.07	Police co-operation	0,00	1,00	1,00	0,20	0,00	1,20
.02	ECONOMIC CRITERIA	0,25	4,20	4,45	0,09	0,00	4,54
.01	Cadastre	0,25	4,20	4,45	0,09	0,00	4,54
.03	ACQUIS OBLIGATIONS	80,67	74,76	155,43	32,11	25,30	212,84
	A: Priority Sectors						
.01	Sector Public Finance	17,02	14,40	31,42	5,69	3,30	40,41
.02	Sector Agriculture	3,15	18,60	21,75	1,84	0,00	23,59
.03	Sector Environment	4,29	21,20	25,49	1,44	0,00	26,93
.04	Sector Border Management	33,15	3,65	36,80	11,93	0,00	48,73
	B: Further measures specific for year 2004						
.05	Migrant Workers Soc Sec	1,85	0,40	2,25	0,62	0,00	2,87
.06	void						
.07	INTRASTAT	0,22	0,91	1,13	0,24	0,00	1,37
.08	SME Health and Safety	0,00	1,50	1,50	0,50	0,00	2,00
.09	Blood Transfusion System	1,50	1,20	2,70	0,50	0,00	3,20
.10	Energy sector consolidation	6,00	4,40	10,40	2,65	22,00	35,05
.11	Drug Demand Reduction	1,17	0,85	2,02	0,68	0,00	2,70
.12	Fight against organised crime	1,36	1,20	2,56	1,06	0,00	3,62
.13	Migration and asylum	1,76	1,00	2,76	1,36	0,00	4,12
.14	Road safety/Railway	9,20	3,25	12,45	3,60	0,00	16,05
.15	Audiovisual Sector	0,00	2,20	2,20	0,00	0,00	2,20
.04	ECO.& SOC. COHESION	115,19	44,91	160,10	37,73	0,00	197,83
	Regional development,						
.01	Infrastructure, Education, training	99,29	14,96	114,25	32,42	0,00	146,67
.02	Human Resource Development	14,90	7,30	22,20	4,97	0,00	27,17
.03	Structural Funds Management	1,00	22,65	23,65	0,34	0,00	23,99
.05	SPECIAL ACTIONS FACILITY	0,00	11,22	11,22	0,44	0,00	11,66
.01	Support to EU funds management	0,00	9,90	9,90	0,00	0,00	9,90
.02	Community Initiatives	0,00	1,32	1,32	0,44	0,00	1,76
.06	COMMUNITY PROGRAMMES	9,40	14,70	24,10	21,20	0,00	45,30
.01	CPs and Agencies	9,40	10,70	20,10	21,20	0,00	41,30
.02	End-user Support	0,00	4,00	4,00	0,00	0,00	4,00

* The National co-financing includes both joint co-financing (94.88 Meuro) for investment projects and parallel co-financing (4.86 Meuro) for Institution Building projects

For signature