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 Bulgaria, hereinafter referred to as "THE RECIPIENT"

on the other part,

HAVE AGREED AS FOLLOWS:

The measure referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the measure referred to in Article 1 below shall be implemented is set out in the General Conditions annexed to the Framework Agreement between THE COMMISSION and THE RECIPIENT, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 - NATURE AND SUBJECT

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

Programme number: 2003/005-630

Title: 2003 Cross-Border Co-operation Programme between Bulgaria and Greece

Duration: Until 30 November 2005

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 20 million € 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 2005 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 2006, with the exception of the projects BG-2003/005-630-02 “Construction of Access Road to the Rudozem Border Crossing between Bulgaria and Greece” and 2003/005-630-03 “Cross-Border Employment Initiative”, for which the execution of contracts expiry date is 30 November 2007.

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 - ADDRESSES

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

for the COMMUNITY:

Delegation of the European Commission  
9 Moscowska Str  
PO Box 668  
BG-1000 Sofia  
Bulgaria

Tel: (+359 2) 933 5252  
Fax: (+359 2) 933 5233

for THE RECIPIENT:

Mr Milen Veltchev  
Minister of Finance  
NAC  
102 Rakovski St  
BG-1040 Sofia  
Bulgaria
ARTICLE 5 - NUMBER OF ORIGINALS

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

ARTICLE 6 - ENTRY INTO FORCE

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

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

Done at Sofia
Date 30/03/2004

[Signature]

for THE RECIPIENT
Mr Milen Veltchev
Minister of Finance

Done at Sofia
Date 30/03/2004

[Signature]

for THE COMMUNITY
Mr Dimitris Kourkoulas
Head of European
Commission Delegation in Bulgaria

Encl.

2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)
ANNEX C

1. OBJECTIVES, DESCRIPTION AND CONDITIONALITY

1.1. The wider objectives of the programme are:

- To promote good neighbourliness and stability between the CEEC countries and the Member States by funding projects which will yield tangible benefits to the regions and communities on both sides of the border;
- To promote co-operation with the CEEC regions bordering the European Union, 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 develop the economy of the border regions by enhancing the trade and the economic co-operation with special environmental consideration.

1.2. The specific objectives and results are reflected in the following priority areas:

- To continue to facilitate the movement of goods and people by rehabilitation of the access roads and infrastructure to the border crossings and by removing bottleneck on the main motorways on the road axis from Sofia to Thessalonica.
- To address local environmental problems that affect both sides of the border, such as, but not limited to, management of liquid waste disposal, and the integrated water management of the shared river basins (Mesta/Nestos) that will improve the quality of life and the safety of the local population and protect the natural environment.
- To facilitate the cross-border co-operation of regional actors and agencies in the areas of civil society, culture, education, business, especially tourism, and environment through the continuation of a Small Project Fund: projects
- To provide technical assistance through Project Preparation Facility projects.

1.3. Programme Description

The programme has been designed following bilateral contacts between Bulgaria and Greece, several consultations with EC Delegation in Bulgaria, and DG Enlargement recommendations reflecting the Commission Regulations No 2760/98 (as amended by Regulation No. 1596/2002), concerning the implementation of CBC programmes in the framework of the Phare programmes. The proposed projects selected for support in the Phare CBC Bulgaria-Greece 2002 Programme were discussed during several meetings at technical level and approved at the JSC meeting in Thessaloniki, on 6 June 2003.
1.3.1. Transport Infrastructure Projects:

Starting from 1994, thanks to the establishment of the Cross-Border programme between Greece and Bulgaria, substantial funds were made available to improve and strengthen the co-operation of the two border regions. In order to have a longer term strategic approach, reduce the isolation and encourage investments and cross-border trade, the governments of Bulgaria and Greece signed on 22 December 1995 a bilateral agreement, by which they agree to open three new border crossing links: Kurdjali – Komotini, Gotse Deltsve – Drama, and Rudozem – Xanthe. This bilateral agreement has since been the basis for the previous development of the Bulgaria-Greece border region. Consequently, each country has undertaken to carry out the necessary feasibility and technical studies in order to ensure appropriate road links to the proposed crossing points.

During the previous years, Phare CBC programmes and INTERREG programmes have contributed to the implementation of this bilateral agreement, by financing the construction of the first border crossing road (Gotse Deltsve – Drama):

- Under CBC BG/GR 1998 – €9 million for the Bulgarian access road to Ilinden (on the border between Gotse Deltsve and Drama)
- Under CBC BG/GR 1998 – €3 million for the new Bulgarian check point at Ilinden
- Under CBC BG/GR 1998 – €11.82 million for Rehabilitation of E85 road
- Under CBC BG/GR 1998 – €23.20 million for Rehabilitation of E79 road
- Under INTERREG II – Greek access road to Ilinden
- Under CBC BG/GR 2000 – €17 million for the construction of the 17.67 Km access road (Podkova-Makaza) to the new border crossing between Greece and Bulgaria (Makaza - Nimfe)
- Under CBC BG/GR 2001 – €7 million for the new Bulgarian check point at Makaza
- Under CBC BG/GR 2002: Construction of Second tube of the Tunnel at km 327 on road E-79 (Dupnitsa By-Pass - €3.8 million
The following project is a logical step forward to the achievement of the programme objectives:

**2003/005-630-01: Modernisation of the safety and telecommunication installations of the railway track Blagoevgrad - Kulata.**

The project aims at the adequate modernisation of the safety and telecommunication installations, introduction of modern technologies, improvement and upgrades the railway stations’ facilities as well as the facilities for the border authorities in order to reduce the travel time and increase the speed of the passenger and cargo trains between the border regions Blagoevgrad and Serres.

The project will impact on the increase of the safety and interoperability conditions of the railway infrastructures of the both border regions Blagoevgrad and Serres and will cause the followings:

- Increase of the traffic between the both border regions by 15%;
- Increase of the quality, the effectiveness and the reliability of the services, supplied to the railway operators;
- Increase of the quality of the transport services, supplied to the passengers of both border regions;

The railway station Kulata will be a pilot station with new visual communication system and facilities for disable persons. The station will be equipped with the information desks, signs and timetables using 3 languages – Bulgarian, English and Greek.

As a result of the project implementation, the travelling time from Sofia to Kulata will be decreased by 50 minutes. The project will result directly on the reduction of the check-border time by 30 minutes by optimisation the check-border activities, implemented at the common border railway station Kulata, based on the usage of the new cross-border document control system. The rooms for the border police staff will be rearranged and upgraded in accordance with their needs, regarding the implementation of the new TETRA computer system for remote check border control as well as the possibilities to exchange information with the Greek colleagues using the established optic backbone network.

**2003/005-630-02: Construction of Access Road to the Rudozem Border Crossing between Bulgaria and Greece**

The proposed project consists of new construction of an I class approach road to the new Rudozem Border Crossing Check Point between Bulgaria and Greece. The new road is a continuation of the existing road II-86 along “Rudozem – Chepintzi – Xanthi” direction. It begins from km 125+074 on road II-86, south of Rudozem, to km 134+664 with a total length of 9.66 km.

The road consists of two traffic lanes (2 x 3,50 m = 7,00 m) and two stabilized shoulders (2 x 1,50 m), consisting of different elements, according to the different types of cross-section. The road construction includes also surface water drainage works, road markings, new traffic signs, guardrails, kerbs and landscaping. Structure of the road pavement is for ‘heavy’ traffic. A number of structures and culverts will be constructed. There is a Detailed Design available (beginning of 2001) and the land acquisition is ongoing which will be completed till the end of 2003.

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1.3.2. Economic Development and Employment:

2003/005-630-03: Cross-Border Employment Initiative

This project aims of the creation of new employment opportunities in the cross-border region as well as to improve the exchange of best practices in the field of labour market policy and services;

The exchange of best practices in the field of labour market policy and services will be achieved through conduction of 4, 2-days seminars in the target regions. Two of the seminars will be held in Bulgaria and the other two in Greece. The participants will be from the regional employment structures, the social partners and branch organisations from the partner countries. They are supposed to discuss and share experience in the field of employment standards, organisational directories, statistics and documentation on the provision of different services, projects, free job places (including opportunities for distant labour), training events, and opportunities for joint business development etc. As a follow up of the seminars a book and a CD will be elaborated and issued. They will comprise of best practices in the field of labour market polices and services as well as areas and concrete ideas for future collaboration and joint activities. The book and CD will be issued in Bulgarian, Greek and English.

A grant scheme will be created in order to provide investment resources for creation of new jobs, improvement of professional qualification level of the labour force, encouragement of entrepreneurship, building partnership between people and institutions from Bulgaria and Greece, improvement of living environment in the targeted regions. The grant scheme will have two subcomponents.

The first subcomponent will comprise activities of:

1. training and retraining;
2. joint community employment initiatives;
3. business consultancies

as described above.

Generally the eligible applicants should be Bulgarian-Greek consortia comprising of NGOs, municipalities, municipal organisations, community associations, and private companies. The applicants will be required to provide at least 10% co-financing. The second subcomponent will comprise activities supporting micro entrepreneurs and start-ups. In any case support will be given to projects financed by Greek and/or Bulgarian partners. As the grants provisions are investment support for private companies the procedures will be in full compliance with the State Aids provisions of the Europe Agreements.

The two subcomponents will be implemented separately in the time and their implementation will be arranged in common Guidelines for Applicants. As far as the first one comprises entrepreneurship training and business consultancy, it is preferably the second one (provision of investment grants) to be implemented when the first trained entrepreneurs are trained. So, those who are trained in entrepreneurship could apply for grants supporting their business initiatives. The implementation of the two subcomponents will be arranged in Guidelines of Applicants. Only Bulgarian beneficiaries and activities taking place on the Bulgarian side of the border will be eligible to Phare CBC financial support.
1.3.3. Environment projects

**2003/005-630-04: Improvement of fire and emergency safety along the Bulgarian-Greek Border**

The proposed project is in the field of institutional building and support of the activities of regional/local services in the border regions between the Republic of Bulgaria and the Republic of Greece at leading body in the field of fire-fighting and emergency-rescue operations (FFERO) - Ministry of the Interior (MoI), respectively its competent service - National Service “Fire and Emergency Safety” (NSFES). The project's realisation will support the acceleration of the process of changes within the Ministry which has begun since 1997 and will promote the implementation of government's Strategy for efficiency increase of activities of bodies responsible for fire and emergency safety. The aim is raising at quantitative new level of the operational and tactical opportunities of District Services for fire and emergency safety (DSFES)- Blagoevgrad, Petrich, Sandanski, Gotse Delchev, Dospat, Devin, Smolyan, Rudozem, Zlatograd, Kardjali, Podkova, Krumovgrad, Ivailovgrad, Harmanli and Svilengrad. These services are an integral part of the NSFES’ structure, responsible for fire and emergency safety of the territories of municipalities located in the border regions.

The proposed project is closely related to the prevention and keeping under control of fires, industrial emergencies and first aid rendering during natural disasters and crashes in the border regions of districts Blagoevgrad, Smolyan, Kardjali and Haskovo of the Republic of Bulgaria and the corresponding structures of prefectures East Macedonia and Thrace and Central Macedonia of the Republic of Greece, Xanthi, Drama, Kavala, Evros, Rhodope, Serres and Thessaloniki.

The project will be a basis of development of: plans for interactions; models of information systems for prevention, timely revelation and joint actions for control of occurred accidents.

This project will have strong cross border impact and it gives the opportunity for implementation of the same project on reciprocal principle by the Republic of Greece upon the programme INTERREG IIIA.

Similarly, on the Greek side, using the funds of INTERREG IIIA programmes, important projects for modernisation of fire service related to the effective fight against forest fires are implemented.

**2003/005-630-05: Water quality management of Arda River**

The project aims to establish a working partnership between the stakeholders of Bulgaria and Greece based on European standards for integrated monitoring and pollution prevention along the whole flow of the Arda River.

The project has direct cross-border impact and will be developed in a cross-border region of Arda River valley. Partnership for Arda River water management will be established in the both sides of the border. A co-operative system for integrative monitoring will be created and local people will be trained for bio-indicators for water quality. Preconditions for reduction of Arda River pollution will be developed.
1.3.4. Technical assistance

2003/005-630-06: Project Preparation Facility for the CBC Bulgaria-Greece

The projects aims are: strengthening the capacity to prepare adequate programmes and projects in the context of Phare Cross Border Cooperation Programme between Bulgaria and Greece, with a view of financial support under future Phare CBC programmes and/or international financing institutions (IFI) as well as to support the relevant authorities to prepare a pipeline of mature projects in all JPD axes and measures that will be proposed for the 2004 and 2005 Phare CBC programmes.

The Project Preparation Facility (PPF) will support the preparation of projects within the future multi-annual Phare CBC programmes and as a consequence it will promote the key objectives of the Greek Interreg III Programme and Bulgarian Phare CBC Programme. Special attention will be given to the preparation of joint CBC Phare/INTERREG III projects and to projects with a strong cross-border co-operation character which will be planned in close co-operation with the regional and local authorities in the border areas.

1.3.5. People to people

2003/005-630-07: People to people

The project (under Small Projects Fund – SPF) aims are as follows:

- Strengthening of local co-operation across the border;
- Stimulation and support to creation of permanent structures among the local and regional organisations in the border regions;
- Capacity building of local and regional institutions involved in regional development and cross-border co-operation;
- Development of local/regional economy and employment;
- Development and strengthening of an effective implementation structure for implementation of cross-border projects in line with EU practice;
- Encourage local involvement in the Phare CBC Programme through support of small-scale actions which may form the basis for larger cross-border co-operation projects;
- Promote development of tourism, as an important contributor to the local/regional economic and employment development of the districts in the Bulgarian-Greece border region.

The SPF promotes projects with cross border impact and encourages the development of contacts and linkages between communities (organisations), institutions on both sides of the border. In general, the “people-to-people” aspect of projects and the general direction of the SPF guarantee a high degree of cross border relevance of the scheme.

The SPF Steering Committee will be composed with representatives of the relevant Bulgarian and Greek border regions.
1.4. Overall programme conditionalities

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Co-ordinator will satisfy the Commission that it is taking adequate steps to staff and resource adequately the National Fund, CFCU, other Implementing Agencies and project management units involved in implementing this programme.

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

All projects involving the supply of equipment and works require national co-financing as shown in the relevant project fiche. If the total cost of such equipment or works turns out to be less than the amount envisaged in the fiche, the amount of Phare support will be reduced to maintain unchanged the relative proportions of Phare support and national co-financing shown in the fiche. If the total cost turns out to be greater than the amount envisaged in the fiche, the extra support required will be provided by additional national co-financing.

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Co-ordinator will satisfy the Commission that draft twinning covenants, terms of reference and technical specifications have been prepared, as appropriate, to allow each project to be launched immediately.

All investment projects which, according to the rules stipulated in Directive 85/337/CEE, as amended by Directive 97/11, require an Environmental Impact Assessment should be the subject of such an assessment. If the directive has not yet been fully transposed, the procedure should be similar to that established by the above-mentioned Directive.

All investment projects 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.

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

The following table specifies the EU contribution as well as national co-finance to the programme.

<table>
<thead>
<tr>
<th>CRIS Code</th>
<th>DAC Code</th>
<th>Priority / Project Title</th>
<th>PHARE 2003</th>
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<tr>
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<td></td>
<td>Institution</td>
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<td>Building</td>
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<td>Transport infrastructure</td>
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<td>Modernisation the safety and telecommunication installations of the railway track Blagoevgrad - Kulata</td>
<td>0.250</td>
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<tr>
<td>Transport infrastructure</td>
<td></td>
<td>Construction of Access Road to the Rudozem Border Crossing between Bulgaria and Greece</td>
<td></td>
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<tr>
<td>Economic Development and Employment</td>
<td></td>
<td>Cross-Border Employment Initiative</td>
<td>0.250</td>
</tr>
<tr>
<td>Environmental protection</td>
<td></td>
<td>Improvement of fire and emergency safety along the Bulgarian-Greek Border</td>
<td>0.150</td>
</tr>
<tr>
<td>Environmental protection</td>
<td></td>
<td>Water quality management of Arda River</td>
<td>0.460</td>
</tr>
<tr>
<td>Technical assistance</td>
<td></td>
<td>Project Preparation Facility for the CBC Bulgaria-Greece</td>
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<tr>
<td>People to people</td>
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<td>People to people</td>
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<tr>
<td>TOTAL</td>
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<td></td>
<td>1.345</td>
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3. IMPLEMENTATION ARRANGEMENTS

a) Financial and Project Management by the Candidate Country

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures\(^1\).

The National Aid Co-ordinator (NAC) will have overall responsibility for programming, monitoring and implementation of Phare programmes. The National Authorising Officer (NAO) and the Project Authorising Officers (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the DIS Manual and other instructions of the Commission, and that all contracts are being prepared in accordance with the Practical Guide to contract procedures financed from the General Budget of the European Communities in the context of external actions (May 2003)\(^2\).

The NAC and the NAO shall be jointly responsible for co-ordination between PHARE (including PHARE CBC), ISPA and SAPARD.

The National Fund (NF) in the Ministry of 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 overall responsibility for financial management of the PHARE funds. He shall ensure that the PHARE rules, regulations and procedures pertaining to procurement, reporting and financial management as well as Community state aid rules are respected, and that a reporting and project information system is functioning. This includes the responsibility of reporting all suspected and actual cases of fraud and irregularity. The NAO shall have the full overall accountability for the PHARE funds of a programme until the closure of the programme.

b) Project size

All projects will be greater than €2 million, except those in the following areas:

a) Cross-Border Employment Initiative

b) Water quality management of Arda River

c) Project Preparation Facility for the CBC Bulgaria – Greece

d) People to people

where the Bulgarian Ministries concerned cannot utilise as much as €2 million.

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\(^1\) Taking into consideration the rules set down in the annex of Council Regulation 1266/1999

\(^2\) The Practical Guide has replaced section F ("Procurement") of the DIS Manual
c) Deadline for contracting and execution of contracts, and programme deadline

All contracts must be concluded by 30 November 2005. Execution of all contracts must end by 30 November 2006.

Budgetary commitments, which have not given rise to payments during three years counted from the date of legal commitment, will be decommitted.

In the cases of the following projects, BG 2003/000-630-02 “Construction of Access Road to the Rudozem Border Crossing between Bulgaria and Greece and BG 2003/000-630-03 “Cross-Border Employment Initiative” execution of contracts must end by 30 November 2007. Justification is provided in the project fiches.

These extensions of disbursement period are needed to take into account the duration of works (impossibility to work in winter during several months) and the Defect Liability Period of one year after the completion of works.

d) Clearance of Accounts procedure and Recovery of Funds

A clearance-of-accounts procedure in line with Art.53 para 5 of the Financial Regulation\(^3\) and Art. 42 of the Implementing Rules to the Financial Regulation\(^4\) will be put in place.

Any proven irregularity or fraud\(^5\) discovered at any time during the implementation of the programme will lead to the recovery of funds by the Commission.

If the implementation of a measure appears not to justify either a part or the whole of the assistance allocated, the Commission is to conduct an appropriate examination of the case, in particular requesting the beneficiary country to submit its comments within a specified period of time and to correct any irregularity.

Following the examination referred to in the previous paragraph, the Commission may reduce, suspend or cancel assistance in respect of the measures concerned if the examination reveals irregularity, an improper combination of funds or a failure to comply with one of the conditions in the financing memorandum and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission’s approval has not been sought. Any reduction or cancellation of the assistance is to give rise to recovery of the sums paid.

Where the Commission considers that an irregularity has not been corrected or that all or part of an operation does not justify either all or part of the assistance granted to it, the Commission is to conduct a suitable examination of the case and request the beneficiary country to submit its comments within a specified period.

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\(^3\) Commission Regulation 1605/2002 of 25 June 2002

\(^4\) Commission Regulation 2342/2002 of 23 December 2002

\(^5\) As defined under number 8a (Audit and Anti-fraud Measures by the Candidates Countries) of this document
After the examination, if the beneficiary country has undertaken no corrective measures, the Commission may:

(a) reduce or cancel any advance;
(b) cancel all or part of the assistance granted to the measure.

The Commission is to determine the size of a correction taking into account the nature of the irregularity and the extent of any failures in the management and control systems.

Any funds not used by the expiry date of the programme will be recovered by the Commission. A final written declaration with supporting documentation shall be issued by the NAO 2 months after all payments have been made, showing the total amount contracted and disbursed. A final bank reconciliation showing the existing balances in the NF/IA/CFCU shall also be enclosed.

Notwithstanding the recovery of unused and ineligible funds after expiry of the Financing Memorandum, a complementary recovery order may be issued after the final audit of the reliability and consistency of contracts and disbursements as well as their compliance with the provisions of the Financing Memorandum has been carried out, taking into account the independent opinion of the final audit.

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 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 payments shall be charged on sums not repaid by applying the rules specified in the Financial Regulation governing the Community Budget.

e) Financial Flows

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and the Government of Bulgaria in December 1998. Funds will be transferred following requests from the NAO onto a separate bank account, denominated in €, which will be opened and managed by the NF in the Central Bank.

a) Transfer of Funds to the National Fund

A first transfer of up to 20% of the funds to be managed locally, representing pre-financing, 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). The provisions foreseen in articles 2 and 13 of the MoU on the NF must also be met. 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 will be carried out.

6 as defined in Art. 81.1.b.i of the Financing regulation
Two replenishments will be made of up to 30% of the funds to be managed locally and the final payment of up to 20% or the full balance of the budget whichever is the lesser amount. The first replenishment will be triggered when 5% of the budget has been disbursed by the IAs and the CFCU. The second replenishment may be requested when 35% of the total budget in force has been disbursed. The final third replenishment will be paid when 70% of the total budget in force is disbursed. No later than 2 months after all payments have been made the National Fund will submit a final declaration of expenditure, which will trigger a balancing operation of all transfers against final certified expenditure incurred, which at that point will be equal to payments made. (Closure of expenditure)\(^7\).

Exceptionally the NAO may request an advance payment of more than the percentages mentioned above in accordance with the procedures laid down in the aforesaid Memorandum of Understanding. Save for express prior authorisation from the Commission HQs, no replenishment may be made if the trigger points mentioned above have not been respected.

\textit{b) Transfer of Funds to the Implementing Agencies}

The National Fund will transfer funds to IAs, including the Central Financing and Contracting Unit (CFCU), in accordance with Financing Agreements (FAs) signed between the NFs and the IAs/CFCU where applicable. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of the financial administration of the sub-programme in line with Art. 13 of the MoU on the establishment of the National Fund.

Under DIS, each individual FA will 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 transfer of funds from the NF to the CFCU/IA. 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 the operations carried out by the relevant CFCU/IA.

For those contracts with 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 Implementing Agency before the official closure of the programme. The Implementing Agency assumes full responsibility of depositing the funds until final payment is due and for ensuring that said funds will only be used to make payments related to the retention clauses.

The Implementing Agency further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Interests accrued on the funds deposited will be paid to the Commission after final payment to the contractors. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the Commission. An overview of the use of funds deposited on warranty accounts - and notably of the payments made out of them - and of interests accrued will annually be provided by the NAO to the Commission.

\(^7\) as defined in Art.105 of the Implementing Rules
c) Interest

In principle, all bank accounts\(^8\) will be interest bearing. Interest will be reported to the European Commission. If the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the Programme.

f) Implementing Agencies will be responsible for sub-programmes as follows:
The Implementing Agency of the CBC Phare programme of the Ministry of Regional Development and Public Works on the Bulgarian side will be responsible for all programmes and sub-programmes.

g) Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive\(^9\) 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 I or annex II of the EIA Directive, the carrying out of the EIA-procedure must be documented\(^10\).

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-Directive\(^11\) must be documented\(^12\).

All investment projects 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.

\(^8\) in particular, but not exclusively, accounts run by the NF, the CFCU and IAs
\(^10\) in Annex EIA to the corresponding investment project fiche
\(^11\) DIR 92/43/EEC; OJ 206/7; 22.7.1992
\(^12\) in Annex Nature Conservation to the corresponding investment project fiche
h) Special rules for certain components for the programme

Grant scheme

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 provisions of the Practical Guide. In particular, due care will be given to the selection process of the beneficiary projects, which has to be done at technical level through selection committees composed of experts appointed by the authorities which are co-financing the schemes as well as by the relevant administrations and interest groups involved in the schemes.

- 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 has also 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 of the schemes can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.

- Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Sofia will be required, in conformity with the provisions of chapter 6 of the Practical Guide (decentralised ex-ante control).

- The implementation of selected projects through provision of works, supplies and services, sub-contracted by the final beneficiaries of the individual grants, shall be subject to the procurement regulations in the Practical Guide.

- Following a positive assessment of the Implementing Agency's capacity to operationally and financially manage the schemes in a sound and efficient manner (cf. Section 11 and Annex 4 of the 2003 PHARE Programming Guide), the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by final beneficiaries of 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 PHARE contribution is more than €2 million and less than €50,000. 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. This lower limit is not applicable in the case of NGOs.

The financial commitments in Phare terms will be effected at the date of signature of the grant contracts by the competent PAO. The projects should be fully implemented before the expiry date for contract execution of the present Financing Memorandum.
Joint Small Project Fund

The Joint Small Projects Fund will not include physical investments other than small infrastructure not generating substantial net revenue.

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

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 provisions of the Practical Guide. In particular, due care will be given to the selection process of the beneficiary projects, which has to be done at technical level through selection committees composed of experts appointed by the authorities which are co-financing the schemes as well as by the relevant administrations and interest groups involved in the schemes.

- 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 has also 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 of the schemes can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.

- Prior to DIS accreditation, the ex-ante approval of the Commission Delegation in Bulgaria will be required, in conformity with the provisions of chapter 6 of the Practical Guide (decentralised ex-ante control).

- The implementation of selected projects through provision of works, supplies and services, sub-contracted by the final beneficiaries of the individual grants, shall be subject to the procurement regulations in the Practical Guide.

- Following a positive assessment of the Implementing Agency's capacity to operationally and financially manage the schemes in a sound and efficient manner (cf. Section 11 and Annex 4 of the 2003 PHARE Programming Guide), the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by final beneficiaries of 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 PHARE contribution is more than €2 million and less than €50,000. 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. This lower limit is not applicable in the case of NGOs.
The financial commitments in Phare terms will be effected at the date of signature of the grant contracts by the competent PAO. The projects should be fully implemented before the expiry date for contract execution of the present Financing Memorandum.

4. MONITORING AND EVALUATION

Project implementation of this programme 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 Financing Memoranda and the Accession Partnership. The JMC may recommend a change of priorities and/or the re-allocation of Phare funds. Furthermore the JMC will review the progress of all pre-accession EU-funded assistance programmes once a year (PHARE, ISPA and 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 of 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 these are effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

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

5. AUDIT AND ANTI-FRAUD MEASURES

a) By the Candidate Countries\textsuperscript{13}

Each year an audit plan and a summary of the findings of the audits carried out shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the programme.

Beneficiary countries shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or Community controls.

Irregularity shall mean any infringement of a provision of Community law\textsuperscript{14} resulting from an act or omission by an economic operator, which has, or would have, the effect

\textsuperscript{13} in accordance with the rules set down in Art. 54 of the Financing Regulation

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of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Fraud shall mean any intentional act or omission relating to:

(i) 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,

(ii) non-disclosure of information in violation of a specific obligation, with the same effect,

(iii) the misapplication of such funds for purposes other than those for which they are originally granted.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94\(^\text{18}\).

In particular, all suspected and actual cases of fraud and irregularity 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 and irregularity to report, the beneficiary country shall inform the Commission of this fact at the end of each quarter.

b) By the Commission

All financing memoranda as well as the resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-fraud Office) and audits by the Court of Auditors. This includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Candidate Country concerned and on-the-spot checks.

In order to ensure efficient protection of the financial interests of the Community, the Commission may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96\(^\text{19}\).

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 an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Union's Court of Auditors as referred to in the “General Conditions relating to the Financing Memorandum” attached to the Framework Agreement.

\(^{14}\) defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (for example the Europe Agreements, the Framework Agreement, the Memorandum of Understanding on the Establishment of the National Fund, etc….)

\(^{18}\) OJ L 178; 12.7.94; p. 43-46

\(^{19}\) OJ L 292; 15.11.1996; p. 2-5
6. VISIBILITY / PUBLICITY

The appropriate Programme Authorising Officer will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed from the programme. This will be done in close liaison with the European Commission Delegation. Further details are at the Annex “Visibility/Publicity” (enclosed).

7. SPECIAL CONDITIONS

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

Almost all the appropriate structures for implementation and management have already been set up during the previous CBC programme, proving that parties involved are able to co-operate to fulfil the proposed objectives. A letter of commitment will accompany every project approved by JSC, stating the fact that local co-financing will be made available by the beneficiaries.

Each construction project will include adequate independent supervision of projects. Works will be tendered to pre-qualified contractors with relevant financial capacity, and technical and FIDIC experience.