FINANCING AGREEMENT

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

on the one part, and

The Government of the Republic of Bulgaria, hereinafter referred to as "THE RECIPIENT"

on the other part,

HAVE AGREED AS FOLLOWS:

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

ARTICLE 1 - NATURE AND SUBJECT

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

Programme number: BG 2006/018-386

Title: Cross Border Co-operation Programme between Bulgaria and Romania in 2006

Duration: Until 30 November 2008

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

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

---

1 The Financing Agreement structure is as follows : 1. the coverpages with the references to the country concerned, amount and authority to sign, 2. Framework Agreement incl. Annex A and Annex B; Annex C –Special Conditions (the text of the adopted financing proposal starting from Description and Objectives onwards; and Annex D 'Visibility/Publicity.
ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until 30 November 2008 subject to the provisions of this Agreement. All contracts must be signed by this date. Any balance of funds of the EC GRANT, which have not been contracted by this date shall be cancelled.

The deadline for execution of contracts of THE EC GRANT is 30 November 2009. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the contract execution period, should this be requested in due time and properly justified by THE RECIPIENT. Disbursements of funds may continue for up to 12 months after the deadline for the execution of contracts to meet liabilities properly incurred through the execution of the contracts entered into under this programme. This Financing Agreement shall expire once those disbursements have been completed. All the funds which have not been disbursed by that time shall then be returned to the Commission.

ARTICLE 4 - ADDRESSES

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

for the COMMUNITY:

**Representation of the European Commission**
9 Moskovska Str
PO Box 668
BG-1000 Sofia
Bulgaria

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

for THE RECIPIENT:

**Mr Lyubomir Datzov**
Deputy Minister of Finance
102 Rakovski St
BG-1040 Sofia
Bulgaria
ARTICLE 5 - NUMBER OF ORIGINALS

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

ARTICLE 6 - ENTRY INTO FORCE

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

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

Done at ..........      Done at ...............  
Date                        Date

for THE RECIPIENT                     for THE COMMUNITY

Lyubomir Datzov  
Deputy Minister of Finance  
National Aid Coordinator

Michael Humphreys  
Head of EC Representation

Encl.
2. Special Provisions (Annex C)  
3. Visibility/Publicity (Annex D)
ANNEX C  
TO THE FINANCING AGREEMENT  
PHARE CROSS BORDER CO-OPERATION PROGRAMME BETWEEN BULGARIA AND ROMANIA IN 2006

1. OBJECTIVES AND DESCRIPTION

1.1 GENERAL OBJECTIVES OF THE BULGARIAN-ROMANIAN CO-OPERATION

• To reinforce co-operation and stimulate the integration between the two countries and the European Union and to support the stability and security in the region.

• To promote good neighbourliness and stability in the CEEC border regions (and the Bulgarian-Romanian one in particular) by funding projects which will yield tangible benefits to the regions and communities on both sides of the border.

• To promote co-operation between border regions in both countries, helping these regions to overcome the specific development problems which may arise from their position within the national economies, in the interest of the local communities and in a manner compatible with the environment protection.

• To promote the creation and further development of co-operation networks on each side of the border and establishment of links between these links and wider Community networks

1.2 SPECIFIC PROJECT PURPOSES

• To improve economic development and environmental protection and management in the border region (project BG 2006/018-386.01.01);

• To encourage and support regular interaction between the communities on either side of the border and thus further development of the economic and social cohesion of border regions, in particular through the improvement of the administrative capacity of local/regional actors, promoted through People to People Actions (local economic development, training and employment measures, improvement of the flow of information and communication, cultural exchanges, etc.) with a cross-border impact (projects BG 2006/018-386.01.02)

Moreover, in order to prepare a pipeline of mature projects and to improve programming and project management skills in the field of cross-border co-operation programmes, project preparation may form part of the Programme Support activities by Technical Assistance (projects BG 2006/018-386.01.03).

1.3 PROGRAMME DESCRIPTION

The 2006 programme has been designed following the set of projects jointly defined by the partner countries and approved at the Joint Cooperation Committee meeting in Sofia, in April 2006.

Summary descriptions of the individual projects grouped under the objectives per sector are as follows:

**JPD priority 1, 2 and 3: Improving infrastructure, Economic Development & Environmental Protection and Management**

<table>
<thead>
<tr>
<th>Grant Scheme</th>
<th>Duration</th>
<th>Twinning</th>
<th>Phare budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>BG 2006/018-386.01.01 Sustainable development in the Bulgarian-Romanian Border Region – Twinning N/A</td>
<td>18 months</td>
<td>N/A</td>
<td>€ 5,400 million</td>
</tr>
</tbody>
</table>

1 Descriptions are indicative; some details may be changed
The overall objective of the project is the promotion of sustainable development of the cross-border region through effective use of the economic potential in synergy with friendly and appropriate use of the natural resources and preservation of the biodiversity.

The overall result of the project will be a fully operational grant scheme aimed at establishment of sustainable co-operation networks between local and regional actors in the border region. The grant scheme will support joint projects in order to reach synergies in the cross-border cooperation development, thus providing for achieving specific results both in the three components corresponding to three priorities

Priority 1: Improving Infrastructure
Priority 2: Economic Development
Priority 3: Environmental Protection and Management

**JPD priority 4 – People to people actions Joint Small Project Fund**

<table>
<thead>
<tr>
<th>BG2006/018-386.01.02: People to people actions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Duration</strong></td>
</tr>
<tr>
<td><strong>Twinning</strong></td>
</tr>
<tr>
<td><strong>Phare budget</strong></td>
</tr>
<tr>
<td><strong>Implementing Agency</strong></td>
</tr>
</tbody>
</table>

The people to people actions aim at encouraging and supporting the establishment or further development of sustainable co-operation networks between local and regional stakeholders in the border region in order to increase personnel and institutional capabilities for co-operation and participation in future development programmes. The fund will finance selected small-scale “people-to-people” projects. Grants will only be made available for projects whose immediate objective is non-commercial and not-for-profit. Joint projects, especially where co-financed jointly by project partners from Bulgarian and Romania, will be particularly encouraged. The call for proposals will be focused on the themes of economic development, environment, tourism, cultural exchange, local democracy and planning development studies.

**JPD horizontal measure – Programme Support Technical Assistance**

<table>
<thead>
<tr>
<th>BG 2006/018-386.01.03: Technical Assistance and Project Preparation Facility (PPF) to Bulgaria-Romania Cross-border Co-operation Programme</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Duration</strong></td>
</tr>
<tr>
<td><strong>Twinning</strong></td>
</tr>
<tr>
<td><strong>Phare budget</strong></td>
</tr>
<tr>
<td><strong>Implementing Agency</strong></td>
</tr>
</tbody>
</table>

The project purpose is to provide technical assistance for strengthening the capacity in generating, preparing and implementation of adequate projects for the next CBC Programme between Bulgaria and Romania and in supporting the relevant central, regional and local authorities in their efforts to establish future joint technical bodies and manage future projects after EU accession.
2. BUDGET

2.1. Budget Table for 2006

The distribution of figures in this table is indicative within the limits of Art. 5 MoU National Fund. The figures are given in € million:

<table>
<thead>
<tr>
<th>No.</th>
<th>TITLE</th>
<th>IB</th>
<th>INV</th>
<th>TOTAL Phare</th>
<th>National public fund*</th>
<th>Beneficiary contribution</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Priority 1, 2 and 3</td>
<td>Improving Infrastructure, Economic Development and Environment Protection Total</td>
<td>1,350</td>
<td>4,050</td>
<td>5,400</td>
<td>1,350</td>
<td>0.000</td>
<td>6.750</td>
</tr>
<tr>
<td>BG 2006/018-386.01.01</td>
<td>Sustainable development in the Bulgarian-Romanian Border Region</td>
<td>1,350</td>
<td>4,050</td>
<td>5,400</td>
<td>1,350</td>
<td>0.000</td>
<td>6.750</td>
</tr>
<tr>
<td>2. Priority 4 People to people - Total</td>
<td>0,800</td>
<td>0.000</td>
<td>0,800</td>
<td>0.000</td>
<td>0.080</td>
<td>0.880</td>
<td></td>
</tr>
<tr>
<td>BG 2006/018-386.01.02</td>
<td>Joint Small Project Fund</td>
<td>0,800</td>
<td>0.000</td>
<td>0,800</td>
<td>0</td>
<td>0,080</td>
<td>0,880</td>
</tr>
<tr>
<td>Programme Support - Total</td>
<td>1,800</td>
<td>0.000</td>
<td>1,800</td>
<td>0.020</td>
<td>0.080</td>
<td>1,820</td>
<td></td>
</tr>
<tr>
<td>BG 2006/018-386.01.03</td>
<td>Technical assistance and PPF</td>
<td>1,800</td>
<td>0.000</td>
<td>1,800</td>
<td>0.020</td>
<td>0.000</td>
<td>1,820</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,950</td>
<td>4,050</td>
<td>8,000</td>
<td>1,370</td>
<td>0.000</td>
<td>9,450</td>
<td></td>
</tr>
</tbody>
</table>

(The distribution of figures between the budget lines is indicative within the limits of Art. 5 MoU NF)

(*) Contribution from national, regional, local, municipal authorities, FIs loans to public entities, funds from public enterprises.

2.2. Principle of Co-Financing

In accordance with the Phare Guidelines, all investment projects supported by Phare must receive joint 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 (‘IB’) projects is provided at least 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. This does not exclude that co-financing may also be provided from the national funds.

The projects selected through the grant schemes (investments and institution building) will be jointly co-financed between Phare, the beneficiary and government resources. The beneficiary has to provide at least 10% of the total costs.
3. INSTITUTIONAL AND SPECIFIC IMPLEMENTATION ARRANGEMENTS

3.1. Implementing Agencies

Both BG and RO will have an Implementing Agency (IA) (fulfilling also the role of Contracting Authority (CA)) and have three joint management structures, namely the Joint Co-operation Committee (JCC), the Joint Steering Committee (JSC) and the Joint Technical Secretariat (JTS).

The Implementing Agency is the body responsible for the overall management and implementation of the programme for all financing under Phare CBC.

The Contracting Authority role is carried out by the national authority designated in the Financing Agreement.

In Bulgaria, the Implementing Agency will be the Ministry of Regional Development and Public Works (MRDPW), acting through its Phare Implementing Agency Directorate General as IA and CA and, therefore, will retain overall responsibility for the implementation of the whole of the programme, including: approval of tender documents, evaluation criteria, evaluation of offers, signature of contracts, authorisation of invoices.

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

The IA/CA will remain responsible for approval of tender documents, preparation of evaluation criteria, evaluation of offers, signature of contracts and authorisation of invoices and will supervise adequately the CBC Regional Office Calarasi. In addition the IA/CA execute payments to the final beneficiaries (the CBC Regional Office Calarasi will not manage funds and payments). Also, control of funds remains the direct responsibility of the IA.

3.2. CBC Regional Office

The Programme will be implemented as much as possible on a decentralised basis.

The BG Phare IA Directorate will therefore delegate a range of management tasks to the CBC Regional Office Calarasi and to the BG experts in Silistra JTS Branch office. The CBC Regional Office Calarasi togethert with JTS Silistra branch will assist the IA/CA in the implementation phases of the Grant Scheme project cycle (financial management, monitoring and control of the projects). The relationship between the IA/CA and the CBC Regional Office Calarasi shall be defined in an Implementation Agreement which, in turn, shall be approved by the EC Delegation.

For the Romanian side, the Ministry of European Integration may delegate a considerable part of its responsibilities for implementing the CBC to a regional body, situated in the border area.

3.3. The Joint Co-operation Committee (JCC)

The JCC is the strategic body of the CBC BG-RO Programme. With members from both countries and from national, regional and local level, the JCC will ensure a joint management of the programme and thus ensure a policy and financial overview of the operation of the CBC. It performs the tasks described in the Phare CBC Regulation 2760/98.

The main responsibilities of the JCC are:

- To adopt the JPD and any further adjustment of it, as appropriate
- To adopt the project fiches and the Financing Proposals to be put forward for the yearly programming exercise
- To consider and approve the joint annual and final progress and implementation reports before they are sent to the Commission.

The JCC consists of:
• representatives of national, regional, and local authorities, as well as representatives from civil society, NGOs, economic and social actors, sectoral organisations – e.g. Chamber of Commerce, Unions, etc. They may participate in the JCC in an advisory capacity, i.e. not as voting members.

• Representatives of the European Commission participate in the JCC in an advisory capacity.

The JCC will be co-chaired by the Romanian IA and the Bulgarian IA and will meet at least once a year.

3.4. Joint Steering Committee (JSC)

The JSC is the operational body of the CBC Programme. The main responsibilities of the JSC are:

➢ To prepare the project fiches for the yearly programming exercise, to be forwarded to the JCC for adoption;
➢ To oversee the calls for proposal/Application Pack (drafted by the JTS), to be forwarded to respective IA for publication;
➢ To oversee the joint selection of projects;
➢ To supervise the activities of the Joint Technical Secretariat (JTS) and the Evaluation Committee;
➢ To approve the framework for the Joint Technical Secretariat’s tasks and the rules of procedures for the JTS to define the exact division of tasks to approve
➢ To review periodically, progress made towards achieving the specific (and quantified) objectives of the programme and to analyse the results of implementation (achievement of the targets set for the different measures).

The JSC consists of:

• representatives from the RO IA/CA and representatives from the BG IA/CA (in case of RO, one member shall be nominated from the CBC Regional Office Calarasi)
• representatives of regional and local authorities with an equal representation of both RO and BG partners
• representatives of the EC Delegations, acting as observers.

The JSC will meet quarterly. It draws up and adopts its own rules of procedure.

3.5. Joint Technical Secretariat (JTS)

The JTS is the main administrative body of the programme.

The main responsibilities of the JTS are:

• receiving project applications,
• providing regularly monitoring reports the JSC
• providing advice to potential project partners
• carrying out day-to-day administrative tasks related to the programme.

The tasks of the JTS include only technical and administrative support which means that there will be no transfer of public authority tasks relating to the management of the funds.

The JTS consists of an Executive Secretary and four desk officers (2 Romanian (from the CBC Regional Office Calarasi and 2 Bulgarian). The CBC Regional Office Calarasi provides office facilities to the JTS. In case of RO, JTS running costs (with the exception of staff costs) will be financed from the programme’s Technical Assistance budget. The JTS will be accountable to the IA/CA in RO and to the EC Delegations to RO for the management of the respective EU funds used for fulfilling its tasks.

From past experience it is clear that project applicants need considerable assistance in the preparation of their applications. The JTS will be equipped to organise training and information workshops and to assist in a transparent manner the potential beneficiaries to prepare good quality proposals, including project cost assessment.
3.6. **Rules and procedures to this programme**

3.6.1. **Guidelines for the implementation of the Grant Schemes**

In 2006 two separate but harmonised application procedures will be introduced. It is the intention of all parties to develop this system into a procedure that is coordinated and “joint” to the greatest extent possible.

The IA/CAs in BG and RO, in close co-operation with the JSC, will draft the following harmonised documents:
- Calls for proposals,
- Guidelines for applicants,
- Application form.

For BG, the Application Pack will be published in English and in Bulgarian.

### 3.6.1.1 Project application and submission

For BG, the application language will be English. Supporting documents for Bulgarian applicants/partners can be presented in Bulgarian language. The CA can ask the successful applicants/partners for a translation into English of supporting documents (on the cost of the applicant/partner) before the signature of the contract. For BG, the RO partners should provide translated documents into English.

All applications shall be submitted to the JTS. The JTS collects and registers all proposals.

### 3.6.1.2 Project Selection

The JTS will perform the secretariat function for the joint Evaluation Committee. Projects will be selected following the approval and issue of harmonised Guidelines for Applicants, harmonised Call for Proposals and an evaluation of subsequent project applications. The JTS will provide support to applicants. The JTS will collect and register submitted project proposals and the selection and approval process will follow PRAG.

Each IA/CA (PAO) will nominate a Grant Scheme Evaluation Committee (with a non-voting Chair and Secretary, and voting members) exclusively on the basis of technical and professional competence, ensuring a clear balance between national / regional / local representation, technical knowledge and independent expertise. The EC Delegation will approve the composition of the committee and will nominate an observer to follow all or part of the proceedings.

The evaluation process will be simultaneously carried out by the BG and RO Grant Scheme Evaluation Committees. Formal evaluation decisions will be made once both Evaluation Committees have consulted each other and drawn up their evaluation report (containing recommendations for grants) and submitted it to the IA/CA. The IA/CA (PAO) then approves and forwards the evaluation report, and grant award proposals, to the EC Delegation. The EC Delegation then endorses (ex-ante) the evaluation report and the final list of grants to be awarded. It should be noted that the EC Delegation participation in the evaluation committees as observer is compulsory.

The IA/CAs notify the JTS and each applicant in writing of the result of the selection process.

### 3.6.1.3 The Joint Steering Committee

The Joint Steering Committee (JSC) oversees the joint selection of projects, but is not actually involved in the selection process. The Joint Evaluation Committee operates in full autonomy. The JSC cannot change the Evaluation Committee’s scores or recommendations and cannot alter the evaluation grids. The JSC formally ratifies the Evaluation Report and the award proposals and pass them on (together with recommendations, as appropriate) to the IA/CA for endorsement and onward transmission to EC Delegations for final approval.

### 3.6.1.4 Award of grants

Once the EC Delegation has approved the Evaluation Report and the grant award proposals, the IA/CA will commence awarding the grants according to PRAG rules.

Each IA/CA drafts the grant contract according to PRAG, using the standard grant contract form and its annexes, and submits this to the EC Delegation. The EC Delegation approves the standard contract form and then the list of grants to be awarded.
The PAO then signs the grant contracts with the selected beneficiaries based on the final list of grants approved by the EC Delegation. The language of the grant contract is English. A copy of the signed grant contract is sent to the EC Delegation. Copies of the signed grant contracts are made available at the respective IA/CA in BG and RO.

The Joint Technical Secretariat will notify the successful and unsuccessful applicants of the result of the Call for proposals within 30 days of the Commission approval of the list of award proposals.

3.6.1.5 Implementation of grant contracts

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants (“secondary procurement”) will be subject to the procurement rules for External actions (PRAG) at the time of implementation. The IA is responsible for ensuring that grant beneficiaries implement the projects in compliance with the EC rules.

Tenders and contracts of EUR 50,000–300,000 will be presented to the IA (MRDPW) for ex-ante approval. For secondary procurement below this threshold, the IA will implement a system of random checks to verify that grant beneficiaries apply contracting procedures in accordance with EC rules.

Tenders and contracts above EUR 300,000 will be presented to the IA and EC Delegation for ex-ante control. For secondary procurement below this threshold, the Delegation will implement a system of random checks.

The above provisions are valid until Bulgaria becomes a member state of the European Union. After accession, the national procurement legislation will be in force.

3.6.2 Basic eligibility criteria

In the meaning of the CBC Programme, the following should be considered as joint projects:

- **Simple** projects with a cross-border effect taking place mostly or exclusively on one side of the border but for the benefit of both partners;
- **Complementary** projects where an activity on one side of the border is accompanied by a similar activity on the other side;
- **Integrated** projects where partners on either side of the border contribute different elements to a single project

To be eligible for Phare CBC co-financing, a project must fall into one of these categories.

3.6.3 Generic selection criteria for grant schemes in the CBC programmes

Activities under CBC financed grant schemes must be coherent with national policies, or demonstrate coherence with the relevant chapters of the National Development Plan, or the Association process. Activities should complement, but not overlap activities foreseen or implemented through the National Phare Programmes.

Activities must clearly demonstrate a cross border character via the involvement of a partner institution in the other country, or by benefits accruing to communities on both sides of the border. Activities should be implemented close to the border.

Activities which are eligible under the Phare National Programmes should in priority seek financing under that programme. Only genuine CBC projects are to be financed under the CBC Programme.

3.6.4 Generic list of potential beneficiaries of grant schemes

The potential beneficiaries for grant schemes under this CBC programme are (non-exhaustive list):

- Local and regional authorities in the border regions concerned
- Non-Governmental or Non-profit making organisations, associations and foundations (NGOs and NPOs) such as Business Support Organisations, Local Enterprise Agencies, Development Agencies, Chambers of Commerce, Tourism Agencies, Educational and training institutions; Producers Associations, Labour Unions
- County and regional water management, waste water management, river protection and flood protection companies and public bodies; county and regional environment protection agencies; natural park administrations (responsible at central, regional and municipal level) and local forestry directorates etc,
• Public road and rail management companies;
• Local bodies of local administration legal set up
• Employment Agencies

The list of eligible beneficiaries will be detailed in the Call for proposal/Guidelines for applicants

4. IMPLEMENTATION ARRANGEMENTS

4.1. Method of Implementation

Implementation of this programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation. 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 programme or a project, which the National Aid Co-ordinator proposes to the Commission in compliance with this Financing Agreement. Once jointly agreed these programmes or projects are implemented by means of procurement contracts for investment and/or services, twinnings, or grant schemes, managed by the Romanian and/or the Bulgarian authorities. Each such programme or project is supervised by one or several Implementing Authority (ies) and technically implemented by one Implementing Agency. Until the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999 project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

4.2. Procurement

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Chapter 3 of Part 2, Title III of its Implementing Rules, as well as the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries adopted by the Commission on 24 January 2006 (C(2006)117).

The Contracting Authorities shall also use the procedural guidelines and standard templates and models facilitating the application of the above rules provided for in the “Practical Guide to contract procedures for EC external actions” (PRAG) as published on the EuropeAid website at the date of the initiation of the procurement or grant award procedure.

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. Until the EDIS accreditation, the ex-ante approval of the Commission Delegations 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.

---

4 current address: http://ec.europa.eu/comm/europeaid/tender/gestion/index_en.htm
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 manner, the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by the final beneficiaries of the individual grants. The detailed provisions governing the role of the Delegation in the above-mentioned sub-contracting phase will be specified, as appropriate, in the Exchange of Letters between the Delegation and the national authorities following the above-mentioned assessment exercise.

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

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

### 4.4. Principles for the CBC Small Projects Fund

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

### 5. MANAGEMENT OF ASSISTANCE

#### 5.1. Project Management

##### 5.1.1. RESPONSIBILITIES

The National Aid Co-ordinator (NAC) will have overall responsibility for programming, 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 Agreement are awarded using the procedures and standard documents for External Actions in force at the time of implementation, and that EU state aid rules are respected.

It is specifically noted that all grant proposals shall, wherever applicable, be required to demonstrate their additionality to the results of other related actions financed from other sources, notably earlier CBC programmes.

Also, the Managing Authority and subordinate agencies shall take particular care to ensure that all actions under this programme shall be recorded, for example in PERSEUS, in such away as to make readily identifiable the specific sub-measure and budget year under which they are contracted.

Moreover, that specific registration shall be organised in such a way as to facilitate a readily traceable connection with the results of each contract, including notably the demonstration in terms of results of the abovementioned additionality.

##### 5.1.2. PROJECT Size

All programme components will be greater than 2 M € except for the grant scheme “Joint Small Project Fund” and the “TA scheme”, due to the specific nature of the CBC actions.

---

7 see section 11 and Annex 4 of the Phare and Pre-Accession Assistance to Turkey Programming Guide 2005
5.1.3. **DEADLINE for contracting and execution of contracts, programming deadline**

(1) All contracts must be concluded by no later than November 30, 2008.
(2) All contracts must be executed by no later than November 30, 2009.
(3) Under DIS, a comprehensive tendering dossier plan must be submitted to the Delegation for approval by no later than 6 months after the signature of the Financing Agreement. In case of non-compliance, the Beneficiary Country will inform the JMC, which may recommend reallocation of funds in accordance with Art. 5 of the MoU on the National Fund.

5.1.4. **ENVIRONMENTAL Impact Assessment and Nature Conservation**

The procedures for environmental impact assessment as set down in the EIA-directive\footnote{DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended} 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 documented\footnote{in Annex EIA to the corresponding investment project fiche.}.

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 documented\footnote{In Annex Nature Conservation to the corresponding investment project fiche.}.

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.

Actions under this programme shall in particular be coherent with the Danube Basin Flood Prevention Strategy and the draft EU Flood Prevention Strategy.

5.2. **Financial Management**

5.2.1. **PRINCIPLES and Responsibilities**

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

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

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

Payments will be made following requests from the NAO onto a separate bank account, denominated in €, which will be opened and managed by the National Fund in a bank agreed in advance with the Commission. In principle, all bank accounts will be interest bearing. According to Articles 3 & 4 of the implementing rules of the Financial Regulation accrued interest is the property of the Beneficiary Country. The NAO must however ensure that the accrued interest is actually registered in its entirety as revenue in the national budget. Furthermore the NAO will ensure a regular reporting of the interest via Perseus.

5.2.3. **Payments to the National Fund**

A first payment\footnote{in Annex EIA to the corresponding investment project fiche.} of up to 20% of the funds to be managed locally will be sent to the NF following signature of the Financing Agreement and the Implementing Agreements between the NF and the Implementing Agency (IA).
Furthermore, the NAO must submit to the Commission the designation of the PAO and a description of the system put in place, highlighting the flow of information between the NF and the IA and the manner in which the payment function between them will be carried out.
Two further payments of up to 30% of the funds to be managed locally will be made. The second payment will be triggered when 5% of the total budget in force has been disbursed by the IA. The third payment may be requested when 35% of the total budget in force has been disbursed.
A final fourth payment will be made when 70% of the total budget in force has been disbursed and all contracts have been signed.
Exceptionally the NAO may request more than the percentage agreed where it can be demonstrated by a cash-flow projection that the cash-flow requirements in the subsequent period will exceed such percentage. In cases where the aggregate of the funds deposited in the NF and IA 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.

5.2.4. Payments from the National Fund to the Implementing Agency

The National Fund will make payments to the IA in accordance with the Implementing Agreement signed between the NF and the IA. Bank accounts for CBC-programmes shall be opened in the name of the Implementing Agency in charge of financial management of the CBC-programme in line with Art. 13 of the MoU on the National Fund.
As long as implementation follows DIS, each individual Implementing Agreement must be endorsed in advance by the European Commission. The IA 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 IA.

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 sixteen (16) months after the end of the execution of contracts, the NF will submit a final declaration of expenditure and a final technical progress report covering both PHARE support and co-financing and an attestation regarding the regularity, accuracy and veracity of the accounts transmitted. The final certified expenditure should at this point equal the original value of the contracts minus any deductions and savings agreed with contractors in the course of implementation. This should also equal payments made plus any sums outstanding on account of contractual retention.
If the payments received from the Commission exceed the final certified expenditure, the NF shall return the excess to the Commission at the time of submitting the final declaration. If there are any outstanding payments (with the exception of contractual retention funds), the NF should provide an explanation and a forecast when payment will be finalised. The NF shall report on progress on contractual retention funds and outstanding payments on a quarterly basis. If they are not paid to the contractor, they shall be returned to the Commission.
After evaluation of the final declaration, the Commission will state its view on any expenditure to be excluded from Community funding, where it finds that expenditure has not been executed in compliance with Community rules. The results of the Commission’s checks and its conclusions to exclude expenditure from financing will be notified in writing to the NF, which shall be given one month to transmit its reply in writing. If no agreement is reached within one month of receipt of the NF’s written reply, the Commission shall decide and establish the amounts to be excluded, having regard in particular to the degree of non-compliance found, the nature and gravity of the infringement as well as the financial loss suffered by the Community.
Following the decision about amounts to be excluded, all ineligible expenditure will be recovered without prejudice to the treatment of irregularities and subsequent financial corrections stipulated below. The funds will be recovered either by direct reimbursement from the NF or by compensation in accordance with Community rules.

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

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

For the Phare programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC), which will include the NAC, the PAO of each Implementing Agency (and the CFCU where applicable) and the Commission Services. The SMSC will review in detail the progress of each programme, including its components and contracts, assembled by the JMC into suitable monitoring sectors. Each sector will be supervised by one SMSC on the basis of regular monitoring reports produced by the Implementing Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward recommendations on aspects of management and design, ensuring that these are implemented. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

The Commission services shall ensure that this programme will be subject to interim (either centralised or decentralised) and / or ex post evaluations.

7. **EQUAL TREATMENT**

Equal opportunity and gender equality are fundamental principles enshrined in the Treaty that are reflected in the programming and implementation of the Phare funding.

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

8.1. **Supervision and Financial Control by the Commission and the European Court of Auditors**

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

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96. 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 Auditors, the accounts and operations of the National Fund and, where applicable, the CFCU and all relevant Implementing Agencies may be checked at the Commission’s discretion by the Commission itself or by an outside auditor contracted by the Commission.

8.2. **Obligations of the Beneficiary Country**

8.2.1. **AUDIT and Financial Control**

In order to ensure sound financial management of the Phare funds, the Beneficiary Country must have a system for management and control of assistance in accordance with generally accepted principles and standards in place. This

---

14 as referred to in the General Conditions relating to the Financing Memorandum attached to the Framework Agreement
system shall 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 438/2001\(^{15}\).

The competent national financial control authority shall carry out appropriate financial controls of all actors involved in the implementation of the programme. Each year an audit plan and a summary of the findings and main recommendations of the audits carried out and an outline of the follow-up given to past audit recommendations shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

### 8.2.2. PREVENTIVE Measures

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption\(^{16}\) practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

The authorities of the beneficiary country, including the personnel responsible for the implementation of the programme, shall also undertake to take whatever precautions are necessary to avoid any risk of conflict of interest, and shall inform the Commission immediately of any such conflict of interest or any situation likely to give rise to any such conflict.

### 8.2.3. Anti-Fraud Measures and Corrective Actions

The Beneficiary Country shall, in the first instance, bear the responsibility to ensure investigation and satisfactory treatment of suspected or actual cases of fraud and irregularities following national or Community controls. The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94\(^{17}\).

In particular, all suspected or actual cases of fraud\(^{18}\) and irregularity\(^{19}\) as well as all measures related thereto taken by the national authority must be reported to the Commission services without delay. Should there be no suspected or actual cases of fraud or irregularity to report, the Beneficiary Country shall inform the Commission of this fact within two months following the end of each quarter.

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

---


\(^{16}\) 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.

\(^{17}\) 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.


\(^{19}\) 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.

\(^{17}\) Irregularity shall mean any infringement of a provision of national or Community law, this Financing Agreement 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 Agreement (e.g. the Europe Agreements, Framework Agreements, and the MoU on the Establishment of the National Fund etc.)
8.3. Recovery of Funds in Case of Irregularity or Fraud

Any proven irregularity\(^{20}\) or fraud\(^{21}\) discovered at any time during the implementation of the programme or as the result of an audit will lead to the recovery of funds by the Commission.

If, after completing the necessary verifications, the Commission concludes that:

(a) The Beneficiary Country has not complied with the obligations to prevent, detect, and correct irregularities or
(b) The implementation of a project appears not to justify either part or the whole of the assistance allocated or
(c) There are serious failings in the management or control systems which could lead to irregularities,

The Commission may suspend further financing of the programme in question, and, stating its reasons, request that the Beneficiary Country submit comments and, where appropriate, carry out any corrections within a specified period of time.

If no agreement is reached by the end of the period set by the Commission and if the required corrections have not been made, the Commission may – taking into account any comments made by the Beneficiary Country – decide within three months to:

(a) Reduce or cancel any payment for the programme in question, or

(b) Make the financial corrections required by cancelling all or part of the assistance granted to the programme concerned.

The Commission shall, when deciding on the amount of a correction, take into account the principle of proportionality, the type of irregularity and the extent and financial implications of the shortcomings found in the management and control system of the Beneficiary Country.

In the absence of a decision to do either (a) or (b), further financing of the programme shall immediately resume.

The National Authorising Officer will ensure the reimbursement of any unused funds or any sum wrongly paid within sixty calendar days of the date of the notification. If the NAO does not repay the amount due to the Community, the Beneficiary Country shall refund this amount to the Commission.

Interest on account of late payment shall be charged on sums not repaid by applying the rules specified in the Financial Regulation.

9. VISIBILITY AND PUBLICITY

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

10. SPECIAL CONDITIONS

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

\(^{20}\) see definition above

\(^{21}\) see definition above