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 ESTONIA, hereinafter referred to as "THE RECIPIENT" on the other part,

HAVE AGREED AS FOLLOWS:

The measure referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the measure referred to in Article 1 below shall be implemented is set out in the General Conditions annexed to the Framework Agreement of 12 December 1991 between THE COMMISSION and THE RECIPIENT, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 - NATURE AND SUBJECT

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

Programme number: 2002/000-266.01-04
Title: Phare National Programme for Estonia in 2002 – First Part
Duration: Until 31/07/2004

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 5.1 MEUR 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 31/07/2004 subject to the provisions of his 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 disbursement of THE EC GRANT is 31/07/2005. All

---

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

2 Consistency between the main text of the FP (1st page) and the FM (1st page as well as in the ‘Implementation Arrangements’ chapter) must be ensured. The deadline for contracting and the deadline for disbursements should correspond accordingly.
disbursements must be completed by the deadline for disbursement. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the disbursement period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the expiry of the disbursement period 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  
Kohtu 10  
10130 Tallinn  
Estonia  
Tel: 00 372 626 44 00  
Fax: 00 372 626 44 39  
E-mail: eudelest@delest.ccc.eu.int

for THE RECIPIENT:

Mr Harri Ounapuu  
Minister of Finance and National Aid Coordinator  
Ministry of Finance  
Suur-Ameerika 1  
15006 Tallinn  
Estonia  
Tel: 00 372 61 13 444  
Fax: 00 372 63 17 810

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.
Encl.
1. Framework Agreement (Annexes A & B)
2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)
ANNEX C: SPECIAL CONDITIONS

1. Objectives and description

Objective 1: Administrative Capacity

Project 2002/000-266.01.01: Phare Project Preparation, Training and Management Facility

This project is a follow up in Estonia of the horizontal ES-9912 Project Preparation Facility aimed at offering additional technical assistance to Candidate Countries in their efforts for project preparation, which proved to be very useful.

This project aims at strengthening the administrative capacity of the Estonian administration for programming and managing Phare assistance in order to improve technical preparation of projects.

This facility should be used for the preparation of Phare projects up to accession, ensuring in particular a sound gap and needs analysis as a precondition for each project, and a feasibility study for each investment component. It will also be used to increase the level of technical preparation of Economic and Social Cohesion projects. Project preparation support under this facility can be made available regardless of the source of financing of the final investment.

It will therefore finance inter alia:

- Preparation of tender documentation and procurement plans
- Feasibility studies
- Market studies
- Cost-benefit analysis for investment components in the projects
- Training and workshops on various aspects of programme cycle management for the administration
- Support to CFCU Phare related activities

This project will also allow financing of additional institution building requirements that might be identified in the action plan. The project will be implemented through technical assistance.

Objective 2: Internal Market

Project 2002/000-266.02.01: Integration of the Estonian Customs Information System with the DG TAXUD Computer Systems and Modernisation of Basic Customs Procedures

The project aims at achieving interconnectivity of the Estonian custom system with EU systems to enable Estonia to join the New Computerised Transit System (NCTS). It will provide assistance to the Estonian Customs Board to develop a national transit system, which should allow on-line
communication between operational sites (transit system of other countries, brokers and traders
communities, bank and financing institutions, port and airport authorities, etc.).

In the course of development of the transit system, technical solutions will be created to implement
the NCTS standards for electronic data interchange (EDI) in customs, the declaration processing
system will be linked to the new national tariff system, facilities for simplified customs clearance and
simplified procedures will be introduced.

The Phare project will be used to:

• Train analysts from the customs intelligence staff in the field of risk analysis

• Carry out a gap and need analysis leading to the establishment of an Estonian Customs Strategic
Plan for 2003-2006

• Design, develop and implement an updated Customs IT-strategy and planning systems in order to
implement the EU interconnectivity policy, after a feasibility study is completed and its results
approved by the Commission services. Train staff to the new system

• Carry out a Business change analysis in order to address problems related to administrative,
legislative and procedural aspects and produce plans for modernised administrative structures of the
organisation; develop a communication strategy and a human resource development plan

• Audit of the developed IT applications.

The project is focussed on institution building and investment in the Acquis. It will be implemented
through technical assistance.

Conditionality: The third technical assistance service contract is aimed at implementing a feasibility
study and drafting the terms of reference for the procurement of an Integrated Customs Information
System. The technical assistance contract for procurement and development of software will be
conditional upon formal agreement by Commission services (DG TAXUD) on the results of such
feasibility study.

Project 2002/000-266.02.02: Assistance to the Ministry of Finance (Competition Board and
State Aid Division) and Public Procurement Office to achieve fair competition

This project aims at ensuring EU compliant legislation enforcement in the fields of competition, state
aids and public procurement, under the responsibility of Ministry of Finance.

The project will provide:

• Training for the Competition Board staff and judges on the new Competition Act, with a special
attention to be paid to the training of judges in competition issues

• Training for officials from the Competition and State aid division on the State aids enforcement
practices.
• Training for officials from the Public procurement office on the implementation of the new Public Procurement Act and analysis of the Estonian legal and institutional framework on public procurement

The project will be implemented through twinning light.

**Objective 3: Justice and Home Affairs**

**Project 2002/000-266.03.01: Improving the Effectiveness of Criminal Procedure**

The aim of this project is to provide assistance to the Ministry of Justice for implementing the new Criminal procedure Code (CPC), ensuring in particular a good co-operation between the Police and the Prosecutor’s office.

On the basis of the content of the new code, and the possibility of building an information system, the Phare project will provide:

• Analysis of the organisational structure of the Prosecutor’s office with a view to the implementation of the new CPC

• Training of both Prosecutor’s office staff and Police on the new Criminal Procedure Code, with particular attention to be paid to the most essential changes, e.g. principle of opportunity and simplified procedure

• Strategic analysis and feasibility study for a criminal procedure information system, in order to compile all criminal procedural documents in an electronic form at the first stage of procedure.

The project is focussed on institution building, and will be implemented through a twinning. Technical assistance is foreseen for IT system analysis. No investment will be financed from this project; if necessary, the development of the relevant IT system, when defined, might be envisaged in the future.

Conditionalities: The project is conditional upon the adoption of the Code of Criminal procedure in line with the Acquis. A formal agreement for co-operation between Police Board and Ministry of Justice whereby the Police commit to releasing officiers to attend training is also a prerequisite to start the activities.

**Objective 4: Participation in community programmes**

**Project 2002/000-266.04.01: Participation in Community programmes in 2002, inter alia MEDIA**

Phare contribution to the participation of Estonia to Community programmes for the year 2002 is foreseen in the 2001 Financing memorandum. An additional contribution is now foreseen in order to allow Estonia to participate to, inter alia, the new MEDIA programme as soon as possible (approval of the Association Council decision and then conclusion of a memorandum of understanding).

It should be noted that the proposed participation and the related financial contribution are subject to the conclusion of the relevant Association Council Decision and/or Memoranda of Understanding.
2. Budget Institution Building and Acquis investment projects

<table>
<thead>
<tr>
<th>Project number</th>
<th>Project Name</th>
<th>IB</th>
<th>INV</th>
<th>Total Phare</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002/000-266.01</td>
<td>ADMINISTRATIVE CAPACITY</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002/000-266.01.01</td>
<td>Phare Project Preparation, Training and Management Facility</td>
<td>510.000</td>
<td>650.000</td>
<td>1.160.000</td>
</tr>
<tr>
<td>2002/000-266.02</td>
<td>INTERNAL MARKET</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002/000-266.02.01</td>
<td>Integration of the Estonian Customs Information System with the DG TAXUD Computer Systems and Modernisation of Basic Customs Procedures</td>
<td>1.000.000</td>
<td>2.200.000</td>
<td>3.200.000</td>
</tr>
<tr>
<td>2002/000-266.02.02</td>
<td>Assistance to the Ministry of Finance (Competition Board and Competition and State Aid Division) and Public Procurement Office to achieve fair competition</td>
<td>260.000</td>
<td>0</td>
<td>260.000</td>
</tr>
<tr>
<td>2002/000-266.03</td>
<td>JUSTICE AND HOME AFFAIRS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002/000-266.03.01</td>
<td>Improving the Effectiveness of Criminal Procedure</td>
<td>438.000</td>
<td>0</td>
<td>438.000</td>
</tr>
<tr>
<td>2002/000-266.04</td>
<td>PARTICIPATION IN COMMUNITY PROGRAMMES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2002/000-266.04.01</td>
<td>Participation in Community programmes in 2002, inter alia MEDIA</td>
<td>42.000</td>
<td>0</td>
<td>42.000</td>
</tr>
<tr>
<td></td>
<td><strong>GRAND TOTAL</strong></td>
<td><strong>2.250.000</strong></td>
<td><strong>2.850.000</strong></td>
<td><strong>5.100.000</strong></td>
</tr>
</tbody>
</table>

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

\(^1\) taking into consideration the rules set down in the annex of Council Regulation 1266/1999
contracts are being prepared in accordance with the *Practical Guide for PHARE, ISPA and SAPARD.*

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 M€, except those in the following areas: Administrative capacity - project preparation, training and management facility; improving the effectiveness of criminal procedure; assistance to the ministry of Finance (Competition Board and State Aid division) and Public Procurement Office; participation in the Media Programme.

This is mostly due to the limited absorption capacities of the Estonian administration as well as to the nature of some projects, especially as regards participation in community programmes or some institution building actions. Some very useful actions such as twinning, twinning lights, training sessions on implementation of the Acquis require low degree of financing. This is particularly true for the project preparation facility, which aims at providing targeted support to the Estonian administration, as well as for the assistance to the Ministry of Finance. In the case of the project aimed at improving the effectiveness of criminal procedure, support is foreseen for the implementation of the new Code of criminal procedure, as well as for the analysis of the required institutional changes.

c.) Contracting and disbursement deadline

All contracts must be concluded by 31 July 2004. All disbursements must be made by 31 July 2005.

d.) Recovery of Funds

Any proven irregularity or fraud 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

---

2 The Practical Guide has replaced section F (“Procurement”) of the DIS Manual
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. 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 just after the end of the disbursement period of the Financing Memorandum 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.

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 just after the end of the disbursement period of the Financing Memorandum 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 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 Estonia 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 or in a Bank agreed in advance with the Commission.

aa) Transfer of Funds to the National Fund

A payment of up to 20% of the funds to be managed locally will be transferred 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.

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. 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.

bb.) 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.

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.

* excluding the amount foreseen for the Community programmes
For those contracts with funds retained for a warranty period extending beyond the end of the disbursement period of the programme, 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.

cc.) Transfer of Funds to the National Fund for Participation in Community Programmes and Agencies

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

This advance is separate from the advances made for the rest of the programme. However, it should be noted that the Phare contribution for each programme will only be transferred when the Association Council Decision or Memorandum of Understanding establishing the terms and conditions for participation in that programme is in force.

If there is a delay in the entry into force of some of the Memoranda of Understanding the payment to the National Fund may be divided into two or more tranches, so that 100% of the funds necessary for the programmes in force can be transferred immediately.

The National Fund will be responsible for transferring the funds back to the Commission, following the call for funds of the Commission’s Directorate General responsible for the programmes concerned and within the deadlines requested.

dd.) Interest

In principle, all bank accounts 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:

All contracting and tendering will be carried out by the following implementing agency:

<table>
<thead>
<tr>
<th>Project number</th>
<th>Project name</th>
<th>Implementing agency</th>
<th>Ministries or Institutions with a technical role</th>
<th>Project type</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002/000-</td>
<td>Phare Project Preparation, Training and</td>
<td>CFCU</td>
<td>Ministry of</td>
<td>IB Project</td>
</tr>
</tbody>
</table>

3 in particular, but not exclusively, accounts run by the NF, the CFCU and IAs
266.01.01 Management Facility Finance Any line Ministry involved in the follow up of specific projects

| 2002/000-266.02.01 | Integration of the Estonian Customs Information System with the DG TAXUD Computer Systems and Modernisation of Basic Customs Procedure | CFCU | Ministry of Finance Estonian Customs Board | IB project involving investment |
| 2002/000-266.02.02 | Assistance to the Ministry of Finance (Competition Board and Competition and State Aid division) and Public Procurement Office to achieve fair competition | CFCU | Ministry of Finance Public Procurement Office | IB project Twinning light |
| 2002/000-266.03.01 | Improving the effectiveness of Criminal Procedure | CFCU | Ministry of Justice Ministry of Internal Affairs | IB project Twinning |

**g.) Environmental Impact Assessment and Nature Conservation**

The procedures for environmental impact assessment as set down in the EIA-directive⁴ 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 documented⁵.

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-Directive⁶ must be documented⁷.

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.

**h.) Special rules for certain components for the programme**

**Twinning**

The amounts earmarked for twinning projects will cover the eligible costs (as set down in the DIS instructions) for implementing the work plan agreed between the Member State and the Applicant Country. The eligible costs may include costs incurred by the selected Member State during the preparation of the twinning covenant in the period between signature of the Financing Memorandum and the final notification of the financing approval of the covenant.

**4. Monitoring and Assessment**

Project implementation will be monitored through the Joint Monitoring Committee (JMC). It includes the NAO, the NAC and the Commission. The JMC will meet at least once a year to review all

---

⁵ in Annex EIA to the corresponding investment project fiche
⁶ DIR 92/43/EEC; OJ 206/7; 22.7.1992
⁷ in Annex Nature Conservation to the corresponding investment project fiche
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.

The JMC will be assisted by Monitoring Sub-Committees (MSC) which will include the NAC, the PAO of each IA (and of the CFCU where applicable) and the Commission Services. The MSC will review in detail the progress of each programme, including its components and contracts, on the basis of regular Monitoring and Assessment reports produced with the assistance of external consultant (in accordance with the provisions of the DIS Manual), and will put forward recommendations on aspects of management and design, ensuring these are effected. The MSC will report to the JMC, to which it will submit overall detailed reports on all Phare financed programmes.

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

5.) Audit Anti-Fraud Measures

a.) By the Candidate Countries

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 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, 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.

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.

---

15 OJ L 253; 7.10.00; p. 5-14
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\(^\text{14}\). 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.

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 Commission Delegation. Further details are set down in 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 Estonia, 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.

Encl.

1. Framework Agreement (Annexes A & B)
2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)

\(^{14}\) OJ L 292; 15.11.1996; p. 2-5