COMMISSION DECISION
OF 1999

Establishing a Phare horizontal programme on Justice and Home affairs,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe, as last amended by Regulation (EC) No 1266/99 of 21 June 1999, and in particular article 9 thereof,

Whereas Regulation No 3906/89 lays down the rules and conditions for the granting of economic aid to certain countries of Central and Eastern Europe,

Whereas the measures provided for by this Decision are in accordance with the opinion of the Committee on Aid for Economic Restructuring in certain countries of Central and Eastern Europe,

HEREBY DECIDES AS FOLLOWS:

Article 1

The programme described in the Annex to the present decision is hereby adopted.

Article 2

The maximum amount of Community assistance shall be 10 MEUR to be financed through Budget line B7-500.

Done in Brussels,

For the Commission
PHARE HORIZONTAL PROGRAMME ON JUSTICE AND HOME AFFAIRS

1 IDENTIFICATION

Countries : The ten associated Countries in Central and Eastern Europe
Programme : PHARE Horizontal Programme on Justice and Home Affairs
Year : 1999
Contracting expiry date : 31 December 2002
Disbursement expiry date : 31 December 2003
Budget : 10 Mio €
Implementing Authority : The European Commission
Expiry date : 31st December 2002
Sector : Justice and Home Affairs – AD –
Group : L
Budget Line : B7-5000

Task Managers
Programming : Thomas Bodewig
Implementation : Massimo Serpieri
2 SUMMARY OF THE PLANNED PROGRAMME

The ten associated countries in central and eastern Europe (the "CEECs") are linked to the European Union by Europe Agreements offering an accession perspective. The European Councils of Copenhagen 1993, Essen 1994, Madrid 1995, Amsterdam 1997 and Luxembourg 1997 underlined this commitment. The PHARE Justice and Home Affairs Programme operates in the framework of these Agreements and serves as an instrument to implement the enhanced pre-accession strategy and the Accession Partnerships.

The overall objective of the PHARE Horizontal Programme on Justice and Home Affairs ("JHA") is to assist the ten associated CEECs in taking over the JHA acquis of the European Union and its Member States (referred to hereafter as "JHA acquis"), as well as the practices and standards of the Member States, and to implement the JHA acquis effectively. With this overall objective, assistance provided by the new JHA Horizontal Programme (1999) will build upon the achievements of the preceding PHARE Horizontal Programme on JHA (1996). The assistance will focus on seven areas (rule of law, judiciary, asylum, migration, border management, police, penitentiary system) based on the priorities of the Treaty on European Union.

The Programme will develop 4 specific projects. These projects will be complementary to the projects launched under the 1996 PHARE JHA Programme. In addition a second round of general JHA missions will be carried out to continue monitoring progress and assessing the needs of the associated CEECs in adapting their legislation, institutions, training provisions and practices to the JHA acquis.

The methodology of the programme with its multi-country approach will, as in the case of its predecessor, allow the development of harmonised strategies for the transposition of the JHA acquis to the CEECs. It will be based upon identical parameters for the assessment of progress towards accession, allow the drawing up of regional concepts and provide economies of scale.

The Programme implementation will be co-ordinated with other relevant PHARE JHA Programmes, such as the National Programmes, the PHARE Multi-Beneficiary Drugs Programme, the PHARE Baltic States/Poland Border Management Programme, the PHARE Cross Border Co-operation Programme and the Phare Multi Country Programme for Transit Facilitation and Customs Modernisation.

Some horizontal needs assessment projects will be complemented by projects under the National PHARE Programmes, in particular by twinning/institution building projects. If twinning projects or other projects have already been launched before the start of a horizontal project covering the same field the results of the other project will be taken into account.

In addition co-ordination and synergies are foreseen with complementary initiatives in other countries eligible for membership like Cyprus and Malta, as well as under TACIS and other programmes in non-associated countries.

In managing the 1999 PHARE JHA Programme the Commission will continue to work closely with the Member States, drawing on Member States’ expertise via the informal
network of National Contact Points – “NCP” -.

3 BACKGROUND

3.1 General context

The ten associated CEECs are linked to the European Union by Europe Agreements offering an accession perspective. The European Councils of Copenhagen (1993), Essen (1994), Madrid (1995), Amsterdam (1997) and Luxembourg (1997) underlined this commitment.

Basic conditions and obligations for accession have been laid down in the Europe Agreements and by the European Councils of Copenhagen 1993 and Madrid 1995\(^1\). The Opinions of the Commission on the applicant countries and the Accession Partnerships – the single framework for all forms of Community assistance to the applicants and covering the priorities to be observed in adopting the EU JHA acquis-have highlighted the extent to which further efforts must be made in order to fulfil the accession criteria. The Regular Progress Reports of the Commission and the Screening of the acquis in the pre-accession process complement this evaluation.

The efforts of the associated CEECs to prepare for accession are supported by PHARE in the framework of Accession Partnerships. The main PHARE instruments in the field of JHA are the Horizontal Programme on Justice and Home Affairs, conceived in 1996, and the National Programmes concerning the individual associated CEECs. Reference should also be made to the Multi- Country Programme for the Fight against Drugs, covering drugs supply reduction and money laundering, as well as to the PHARE Mult-Country Programme for Transit Facilitation and Customs Modernisation and the PHARE Cross Border Co-operation Programmes.

3.2 Previous activities

The previous PHARE JHA Horizontal Programme had the aim of the transposition and effective implementation of the JHA acquis.

The first PHARE JHA Horizontal Programme was conceived in 1996 to assist the CEECs in the preparation for accession. The overall objective of the 1996 PHARE JHA Horizontal Programme was to assist the associated CEECs in taking over the developing JHA acquis of the Union as well as the standards and practices used by Member States. Under this overall objective, assistance focused on a needs assessment of the transposition of the acquis and the corresponding adaptation of

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\(^1\) Membership requires from a candidate country:
- Achievement of stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities
- Existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union
- The ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union
- The administrative capacity to effectively apply and implement the acquis
legislation, institutions and training provisions. Following this needs assessment, six projects were developed (table page 6).

In addition, ten general needs assessment missions with Member States’ experts have been carried out. These missions aimed at identifying gaps and needs in the fields of the rule of law, the judiciary, asylum, migration, border management and police organisation. Moreover, they aimed at the development of a comprehensive JHA Programme for each candidate country, which will be implemented under the National Programmes. Furthermore, horizontal multi-beneficiary projects were launched on the transposition of the JHA _acquis_ in the fields of:

- Asylum
- Police Training (including a pre-project on an inventory on bilateral Member States’ activities in the CEECs).
- Fight against Organised Crime and Corruption
- Judicial Co-operation in Civil Matters

A project on institution building in the Baltic States for judicial co-operation in penal matters was prepared.

As implementation of most of the projects started only in the beginning of 1999, no impact evaluation is yet available.

3.3 Other Related Programmes

**National PHARE Programmes**
The National Programmes provide technical assistance, training and equipment in the field of JHA at national level. The Horizontal Programme aims to identify JHA needs in the CEECs based on a harmonised methodology and to elaborate harmonised strategies for the transposition of the JHA _acquis_ to the CEECs (equipment is provided only in exceptional cases).

The **PHARE Baltic States/ Poland Border Management Programme**
The programme aims to assist the Baltic States and Poland in enhancing the management of their Eastern borders and in the development of programmes to deal with the effects of illegal border activity.

The trans-pillar **PHARE Multi-Beneficiary Drugs Programme**
The PHARE Drugs Programme aims at assisting the Central and Eastern European countries (CEECs) in their efforts to combat drugs and drugs related crime. In light of the pre-accession strategy, the Programme is focusing on the approximation of legislation and on the strengthening of the administrative and operational capacities of the PHARE Partner Countries with a view to facilitate the transposition of the EU _acquis_ in the field of drugs (trans-pillar). The Programme has adopted a multi-disciplinary approach providing assistance in three main fields: demand reduction, supply reduction and policy development. Furthermore, in view of the cross-border nature of the drug problem, the promotion of co-operation at an intra-regional level, with the EU Member States and agencies and international organisations is a priority.
In order to avoid overlaps, the PHARE Horizontal JHA Programme does not focus on drugs. The two programmes are working in close co-ordination and co-operation.

Cross Border Co-operation Programme

The PHARE CBC programme was set up in 1994 in order to support, in conjunction with Interreg, structural actions in border regions adjacent to the EU. The programme allowed substantial improvements of border crossings between PHARE countries and Member States. Important changes were introduced into the programme following the adoption of a new PHARE CBC Regulation by the Commission on 18 December 1998. The geographical scope of the programme was widened by including borders between candidate countries. Greater alignment with Interreg is aimed at through the setting up of a joint co-operation committee for each border and the elaboration of joint programming documents covering both sides of the border, seen as one single geographical and socio-economic entity. Furthermore, cross border actions related to JHA also became eligible for PHARE CBC support.

4 POLICY AND INSTITUTIONAL ASSESSMENT

In order to meet the accession requirements of the EU, the ten associated CEECs have to launch or enhance a series of reform processes to adopt and implement the JHA acquis of the European Union and its Member States. They have to take over international and supranational legal instruments adopted by the Member States and envisage reforms in the fields of legislation, institution building (administration and judiciary), procedures, training and practices. They have to adopt EU standards in all these areas.

Judged by the criteria of the Commissions’ Opinions of 1997 all 10 associated CEECs made substantial progress in preparation for accession as seen in the Commission’s Progress Reports 1998. However, there are still significant unmet needs in the fields of the rule of law, judicial co-operation, migration, visa policy, external border management, training of judges in Community Law, asylum rules and procedures as well as law enforcement in general.

All these constraints affect both the capacity of the CEECs’ institutions to tackle their JHA problems in accordance with EU standards and practices, and constrain their ability to participate effectively in international co-operation measures.

5 PROGRAMME OBJECTIVES

The general objective of the 1999 JHA Horizontal Programme is to assist the CEECs in transposing and implementing effectively the JHA acquis of the EU and its Member States.

The methodology of the programme, with its horizontal, multi-country approach, will allow, as in the case of its predecessor, the development of harmonised strategies for the transposition of the JHA acquis to the CEECs, result in identical parameters for the
assessment of their preparedness for accession, and allow the drawing up of regional concepts and provide economies of scale.

The Programme aims at assisting the CEECs in introducing or enhancing reforms of the
- judiciary,
- administrative bodies and
- their procedures, working standards and practices

in order to bring the CEECs’ legislation, institutions, procedures, training provisions and practices up to the Union standards with the aim of implementing effectively the JHA *acquis*.

The assistance will in particular focus on the adoption and implementation of measures with respect to
- the rule of law (in particular the independence of the judiciary, access to courts, court procedures, execution of judgements, safety of victims, witnesses, members of legal professions),
- migration, visa policy / procedures/ practices, external border control
- the judiciary in general, including international judicial co-operation in penal matters and training of judges in Community law, Judicial co-operation in civil matters, asylum, police organisation, fight against organised crime and corruption as well as the penitentiary system will be covered in addition to the other topics mentioned by the general JHA needs assessment missions to the candidate countries.

This second JHA Horizontal Programme will be complementary to the first JHA Horizontal Programme. New projects will be developed to further cover the JHA needs as identified up to now. Moreover, there will be a further series of general JHA needs assessment missions to assess the progress made in the transposition and effective implementation of the JHA *acquis*. The following table presents an overview of the two JHA Horizontal Programmes.

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<tr>
<th>1st JHA Horizontal Programme 1996</th>
<th>2nd JHA Horizontal Programme 1999</th>
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<td>Missions</td>
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<td>- General needs assessment</td>
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<td>missions on transposition /</td>
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<td>JHA <em>acquis</em> covering</td>
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Projects
- Judicial co-operation in civil matters
- Preparation of project on judicial co-operation in penal matters (Baltic States)
- Asylum *acquis*
- Police organisation and training (including pre-project on inventory on MS activities)
- Fight against corruption and organised crime (Octopus II)
- Reinforcement of the rule of law
- Judicial co-operation in penal matters
- Training of Judges in Community Law (common manual)
- Migration/visa policy/ external border management

6 PROGRAMME DESCRIPTION

The programme will develop specific activities (projects). In addition, there will be in particular ten general JHA missions to evaluate progress made and assess needs to be addressed before accession.

As regards the individual projects the 1999 Programme will cover:

- The Rule of law including the independence of the judiciary,
- Training of Judges in Community Law
- Migration, Border Control, Visa,
- Judicial co-operation in penal matters,

As regards the JHA missions the 1999 programme will cover in addition to the sectors mentioned above:

- Asylum
- Judiciary (branches)
- Judicial cooperation in civil matters
- Police
- Fight against organised crime and corruption
- Penitentiary system (respect of human rights).

The sectors of intervention correspond to the priority areas of the Treaty on European Union (the "TEU") as well as to the Copenhagen and Amsterdam criteria. When relevant, the Schengen *acquis* incorporated into the TEU by the Treaty of Amsterdam will be taken into account when elaborating these activities. The specific activities are presented below.

- **Reinforcement of the rule of law**

Legal criterion for accession is in accordance with Art. 49, 6 (1) TEU and based on the requests of the European Council of Copenhagen, that the candidate country has
achieved stability of institutions guaranteeing the rule of law. The general JHA missions to the candidate countries revealed that all of them have to make further reforms.

Twinning projects under the National Programmes covering parts of the reforms necessary to establish the rule of law have been drafted for the Czech Republic, Estonia, Latvia, Poland, Romania and Slovakia. No activities are foreseen yet for Slovenia, Bulgaria and Hungary.

The JHA Council of Ministers invited the European Commission in May 1998 to launch a horizontal project on the rule of law in favour of the CEECs.

Consequently the Commission will draw up an horizontal project in close co-operation with the Member States

This project will cover all ten associated CEECs. It will aim at establishing and reinforcing the independence of the judiciary in the CEECs. The project will encompass several modules and include in particular the following elements: balance of power among executive, legislative and judiciary; independence of the judiciary; access to court, court procedures, execution of judicial decisions and protection of vulnerable targets. The main activities will include the adjustment of current legislation and procedures as well as the re-structuring of existing organisations and training.

The horizontal programme will take over the assessments and results of ongoing twinning projects.

Approximate budget: 3.11 Mio €

- Judicial co-operation in penal matters

Judicial co-operation in penal matters and the transposition of the acquis in this field to the CEECs are of vital importance in particular for the fight against organised crime.

Most National PHARE programmes and twinning arrangements do not yet cover institution building in this field. Accordingly, a horizontal project is advisable.

This horizontal project will cover all ten associated CEECs and will be implemented in two parts; the first one covering the three Baltic States and the second one for the remaining seven associated CEECs. The project will focus in particular on extradition rules / procedures, mutual assistance in penal matters and on establishing a central authority / direct contacts between authorities as well as practices and standards. Approximate budget: 2.0 Mio €

- Training of judges in Community Law

The project supports the establishment of an independent judiciary. The project will cover all ten associated CEECs. The objective is to reinforce the capacity of the judiciary to effectively apply Community Law through:

a) the elaboration of a training manual relating to the interpretation and application of
Community Law which will be translated into the national language of every participating country;
b) the training of trainers on the use of this manual.
This project will ensure a certain degree of standardisation in the training provided in the different Candidate Countries.
Approximate budget: 1.0 Mio €

- Migration policy encompassing visa policy, procedures and practices and external border management

It is essential for the candidate countries to adopt a balanced migration policy, corresponding to the acquis as well as to the standards and practices of the Member States, and this with the objective to prevent illegal immigration, to fight against organised crime, to avoid different rules for the access to the territories of the Member States and finally to envisage the integration of aliens and to promote the relations with the countries of origin.

Under the National Programmes and the Baltic States / Poland Border Management Programme only projects on border management and the Schengen acquis have been drawn up as well as one project on migration. Twinning projects covering this segments are underway in the Czech Republic, Hungary, Latvia, Slovakia and Slovenia.

Consequently there is a need for a complementary horizontal migration policy project giving the CEECs as future Member States the opportunity to align themselves to the acquis and the standards and practices of the Member States

The project will cover all ten associated CEECs. It will take into account the results of the ongoing projects under the National Phare Programmes and the results of the implementation of the Baltic States/ Poland Border Management programme. It will aim at assisting the candidate countries in adopting and implementing the JHA acquis on migration, visa policy and external border management as well as to amend related procedures and practices. This acquis encompasses and derives from the relevant articles of the TEU and the Treaty on European Community. The project will develop the following main activities: support for the adoption of supranational and international instruments already adopted by the Member States, the adaptation of national legislation, and the corresponding reform of the administration, procedures and practices. Approximate budget: 3 Mio €.

- Missions

A second series of general JHA missions to the CEECs will be undertaken to assess progress and needs in preparing for accession.

These missions, to be carried out in each of the ten associated CEECs, will cover, as in the past: asylum, migration, border management, police, judiciary/ judicial co-operation and the rule of law. The penitentiary system, which until now has only been marginally dealt with, will be added specifically. Particular attention will be given as before to instruments and institutional provisions to combat international organised crime. The objective of these missions is twofold: (a) to evaluate the progress made by the CEECs
in adopting and implementing the JHA *acquis* and (b) to further identify gaps and needs in the seven areas (see Annex 1 "Guiding Principles for Missions", Annex 2 "Model Structure of general JHA Mission Report", Annex 3 "Checklist for the Beneficiary Country", Annex 4 "Documentation for the Mission Experts").

Also specific JHA missions might be undertaken.

Approximate budget: 0.22 Mio €.

7 CO-ORDINATION WITH OTHER DONORS

The programme will be implemented by taking into account the activities of other international and national donors, such as the Council of Europe, the United Nations organisations, the World Bank, EU Member States and others.

The programme reserves the option for co-operation or joint projects with other donors/institutions in appropriate cases in accordance with PHARE rules.

**COST AND FINANCING PLAN**

*Financing proposal 1999-2002*

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<th>Rule of Law</th>
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<th>Reinforcement of the rule of law</th>
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<tr>
<td>Judicial co-operation</td>
<td>3.0</td>
<td>Judicial co-operation in penal matters</td>
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<td>Judiciary</td>
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<td>Migration policy encompassing visa policy, external border management</td>
<td>3.0</td>
<td>Transposition of the acquis as well as standards and practices of the Member States</td>
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</table>
10 general JHA Missions:
Rule of law, judiciary, Police, migration, asylum, visa, external border control/management, penitentiary system, organised crime (incl. Prep. meeting and evaluation meeting in Brussels) and specific JHA missions

NCP-meetings (regular, country specific, subject specific)

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<th>Needs and progress assessment with Member States’ experts</th>
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<td>Management, evaluation</td>
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<td>Total</td>
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9 IMPLEMENTATION ARRANGEMENTS

The European Commission will implement the programme centrally in close cooperation with the Member States’ National Contact Points. Contracts and other commitments (and subsequent payments) will be concluded in accordance with Phare rules and procedures.

In the specific and highly sensitive field of Justice and Home Affairs there exists in general no market characterised by a competition regime for the search and selection of operators for the implementation of JHA projects. The 15 Member States or public or semi-public non-profit making organisations will be consulted on their interest to become operator and agreements will be concluded with Member States’ authorities or other non-profit making organisations in accordance with the Financial Regulation. Public tendering procedures cannot be followed in the JHA field, if the services concerned have a sensitive character or if the particular situation on the market concerned is not disposed to this. Derogations for direct agreements are in those cases not necessary.

The provision of training assistance will be conditional in each associated CEEC upon it taking the political decision on the necessary legal and institutional framework as identified in the assessment missions in line with the Europe Agreements and the Accession Partnerships.

In the case of the JHA Horizontal Programme, purchase of equipment will be made only exceptionally and when it is deemed indispensable for the achievement of the objectives of the projects.
The European Commission will work closely with the Member States and draw on Member States’ expertise via the informal network of EU National Contact Points for Justice and Home Affairs – NCP – also for the implementation of related programmes (see 3.3). The NCP are officials at the Ministries of Interior and Justice of the Member States. They co-operate with the Commission and contribute to the drawing up and implementation of projects. In addition they act as a link between the Commission and relevant experts in the Member States’ administrations and judiciary.

The European Commission will organise NCP meetings, which will bring together the NCP and Commission Services. These NCP meetings will play an important role in developing and enhancing an ongoing dialogue on JHA programmes and projects and in creating a forum for the exchange of ideas and experiences. There will be 2 regular NCP meetings a year, as well as country specific and subject specific meetings. The expenses for NCP meetings are considered as operational expenses.

Fees for Member States’ experts will correspond to TAIEX rules on Twinning –Annex 9–.

10 AUDIT, MONITORING AND EVALUATION

The implementation of this Programme and its predecessor, as well as each project, will be monitored and evaluated by the European Commission.

Each project will include monitoring and evaluation measures with regard to the project objectives, predetermined implementation steps and envisaged output.

The overall impact in the areas covered by the Programme will be evaluated in the Regular Progress Reports of the European Commission. The general JHA missions will contribute to this evaluation. These missions will identify further needs for assistance and assess the progress of each associated CEEC regarding the adaptation of legislation, institutional reforms and reforms of training and education provisions, in accordance with the JHA Acquis.

Moreover, the European Commission has the option of signing contracts with independent experts to monitor and evaluate the impact of both the present and previous Programme and their components, and to carry out an ex-post evaluation after completion of the projects. The European Commission will regularly monitor the implementation of the projects.
11 RISKS

The risks refer to the external factors capable of preventing the achievement of the objectives of the Programme. Two types of risks have been identified:

- **Availability of qualified expertise from Member States’ authorities and other institutions**

  The role of the Member States, in particular the informal network of the NCP, is crucial for the supply of national expertise and, therefore, for the success of the Programme. The European Commission will regularly inform the Member States on the evolution of the Programme, in order to involve them, their national experts and their administrations and judiciary, as much as possible in the implementation of the Programme.

- **The disposition and capacity of the ten associated CEECs in achieving the necessary policy adjustment to adopt and implement the JHA Acquis**

  The political will and capacity is a prerequisite for the adoption and efficient implementation of the JHA Acquis by the CEECs.

  In its Regular Reports, the European Commission will indicate its opinion on the maturity of each associated CEEC for accession.
12 ANNEXES

- **General JHA Missions**
  - Annex 1 Guiding Principles for Missions
  - Annex 2 Model Structure of Mission Report
  - Annex 3 Checklist for the Beneficiary Country
  - Annex 4 Documentation for the Mission Experts

- Annex 5 Project fiche **Rule of Law**
- Annex 6 Project fiche **Migration/Visa policy / external Border Management**

- Annex 7 Project fiche **Training of Judges in Community Law**
- Annex 8 Project fiche **Judicial Co-operation in Penal Matters**
- Annex 9 TAIEX/Twinning rules for fees paid to Member States experts