COMMISSION DECISION
OF 2002

Establishing a Phare multi-beneficiary programme on “Special EIB Programme 2002 for Border Regions – Municipal Infrastructure Facility” in 2002,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) N° 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe¹, as last amended by Regulation (EC) N° 2500/2001 of 17 December 2001 ², and in particular Article 8 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,

HAS DECIDED 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 35 MEUR to be financed through Budget line B7-030 in 2002.

Done in Brussels,

For the Commission

¹ OJ n° L375 of 23/12/1989
² OJ n° L342 of 27/12/2001
**FINANCING PROPOSAL**

1. **IDENTIFICATION**

<table>
<thead>
<tr>
<th>Beneficiary countries</th>
<th>Bulgaria, Czech Republic, Estonia, Hungary, Poland, Slovenia, Slovakia</th>
</tr>
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<tbody>
<tr>
<td>Programme</td>
<td><strong>EIB Special Programme 2002 for Border Regions – Municipal Infrastructure Facility</strong></td>
</tr>
<tr>
<td>CRIS-Number</td>
<td>2002 / 000-612</td>
</tr>
<tr>
<td>Year</td>
<td>2002</td>
</tr>
<tr>
<td>Cost</td>
<td>€35 million</td>
</tr>
<tr>
<td>Implementing Authority</td>
<td>European Commission</td>
</tr>
</tbody>
</table>
| Expiry Date           | Contracting: 30 November 2005¹  
                        | Completion: 30 November 2009                                         
                        | Disbursement: 31 May 2010                                            |
| Group                 | L                                                                     |
| Sector                | IN                                                                    |
| DAC Code              | 43040                                                                |
| Budget Line           | B7-030                                                               |
| Programming Task Manager| Judith Novak *(DG ELARG)*                                          |
| Implementation Task Manager| N.N. (DG ECFIN Unit L2; Programme Management ) |

2. **SUMMARY**

A key factor for success of enlargement is the support of Europe’s citizens both in the EU and the candidate countries. The economic gap between Member States and Candidate Countries remains considerable in particular along large parts of the EU’s border with the candidate countries. Therefore, the Nice European Council of December 2000 called upon the Commission to propose a programme to strengthen the border regions’ overall competitiveness. An analysis of the border regions revealed that one of the major problems in the border regions of the Candidate Countries is the lack of adequate transport and environmental infrastructure, which is a potential obstacle to their regional integration. In its Communication on the Impact of

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¹ Date by which the Contribution Arrangement with the EIB and Project Agreements with Participating Financial Intermediaries must be concluded.
Enlargement in Border Regions\(^2\), the Commission has, therefore, announced a special EIB Programme to support the development of smaller infrastructure in the Candidate Country border regions with the EU.

The overall objective of the Special EIB Programme is to contribute to the social and economic development of border regions in the Candidate Countries and their integration with their neighbouring regions in the current EU Member States. The proposed measures should help to enhance cross border co-operation and create opportunities for growth and employment in border regions.

To this end, the Programme combines loans from EIB resources with non-reimbursable Phare support in order to accelerate the development and completion of small local infrastructure investments, where appropriate, taking account of regional development plans, and to increase the related funding sources available to municipalities and public or private companies delivering a public service. Support will mainly focus on the funding of small local transport and environmental infrastructure investments.

3. **Strategy and Background**

3.1. **Strategy**

The revised Accession Partnerships adopted in November 2001 define, for each chapter, priorities for the adoption and the enforcement of the Acquis in the Candidate Countries. They are in line with the Regular Reports 2001, which assessed the progress made by the Candidate Countries, as well as the overall situation in terms of the adoption of the Acquis and the capacity to enforce it. The Accession Partnerships include the priorities which the Candidate Countries are expected to take forward within the next two years.

The Accession Partnerships 2001 call on the completion of the transposition of the Acquis and the continued implementation of EC legislation in the field of transport and environment, in particular, as regards air quality, water quality, waste management, nature protection and industrial pollution control.

In addition, the Nice European Council called on the Commission to propose a programme to strengthen the competitiveness of border regions.

The Commission subsequently analysed existing Community support to border regions, the socio-economic situation of border regions and effects of enlargement as well as possible measures to strengthen their competitiveness.

The analysis found that even if the Candidate Countries have made impressive progress in modernising their economies in the recent years, the economic gap between existing Member States and Candidate Countries remains considerable. The economic divide is especially visible along large parts of the EU’s borders with the Candidate Countries.

\(^2\) COM (2001) 437
Community support in this area has so far been provided in the form of non-reimbursable grants in the framework of Phare-Cross Border Co-operation on the side of the Candidate Countries and through INTERREG on the EU side. On the Candidate Countries’ side, larger investments (> 5 mio €) are supported through ISPA, where grants are provided up to an amount of 75% of project costs.

One of the major problems identified in the border regions was the lack of adequate transport and environmental infrastructure. The problem of infrastructure is linked to the fact that the Candidate Countries have limited funds available for smaller infrastructure projects. This has been identified as a major obstacle in the successful completion of cross border projects.

In its 2001 Communication on the Impact of Enlargement in Border Regions, the Commission has, therefore, announced a special EIB Programme to support the development of smaller infrastructure in the candidate country regions bordering the EU.

As part of this Programme, the Commission and the EIB combine Phare grant money with EIB lending. From the Commission point of view the combination with EIB funding would bring additional leverage to grants from Phare and help authorities in border regions to implement regional development programmes.

As a result, citizens and enterprises, who are the main users of municipal infrastructure, shall benefit from an increased mobility in work and leisure, an increased exchange of goods and services as well as an improved standard of living. This shall help promote opportunities for growth and employment in border regions.

The EIB intends to start the roll out of the Facility in Poland, which shares a large border with the European Union. It is intended to cover additional border regions from other Candidate Countries under this Programme. In line with the Communication of the Commission it is planned to continue funding of the Special EIB Programme with an additional amount of up to €15 million from the 2003 Phare budget.

3.2. Background

The inter-institutional co-operation between the EIB and the Commission includes structural adjustment and regional development, support for smaller businesses, environmental protection and transport.

Since 1990, EIB lending in the Candidate Countries has amounted to €16.8 billion, of which €16.2 billion in central European countries.

Co-operation under the pre-accession financial instruments such as PHARE and ISPA has been very intensive. Co-operation with PHARE started already some 10 years ago. Since then, EIB has co-financed a substantial number of projects with an important European interest, particularly projects in the transport sector.

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3 COM (2001) 437
When co-operating with the European Commission, the EIB aims at maximising the leverage effect of Phare support and at reaching as large a number of eligible investments as possible, hence optimising the catalytic role of grants and maximising the overall positive impact of appropriate loan/grant blending.

In the context of the Phare programme, co-operation between the Commission and the EIB includes in particular the promotion of lending to small and medium-sized enterprises in the Candidate Countries under the SME Finance Facility.

4. OBJECTIVES AND DESCRIPTION

4.1 Objectives

The overall objective of the Facility is to contribute to the social and economic development of border regions in the candidate countries and to their integration with their neighbouring regions in the current EU Member States.

The specific objective is to support the development of smaller municipal infrastructure investments by taking due account of regional development plans. Infrastructure investments will include those, which facilitate cross border exchanges and contribute to the development of local communities in the border regions, mainly in the environmental and transport sectors and typically promoted by municipalities or public or private companies providing a municipal service.

4.2. Results

Results obtained under this programme include

- Municipalities and public or private companies delivering municipal services will have larger financial means to implement local infrastructure projects;
- Municipalities and public or private companies delivering a municipal service will have made loan applications to local financial institutions;
- Municipalities and public or private companies will have signed loan agreements with local financial institutions supporting local infrastructure investments over a long term;
- Municipalities will have increased their contacts and business relations with financial intermediaries.

4.3. Activities

4.3.1. Summary

The EIB will identify local financial institutions in the designated candidate country border regions as partners under this Programme. The EIB will provide loans to these institutions, which, in return, will engage in lending operations to municipalities or public or private companies providing a municipal service. Investments financed out of these loans must be envisaged in the context of a co-ordinated approach of infrastructural works at local or regional level and, where appropriate, take account of integrated industrial restructuring programmes or regional development plans.
Phare funds will be transferred in tranches to an interest bearing Special Account at the EIB.

**Building the network of financial intermediaries and creating the “Projects”**

The EIB will select local financial institutions, which have the capacity, strength and interest to expand their operations to financing small municipal infrastructure investments of municipalities in a specific region. An agreement on a financial package between EIB and the local financial institution providing a EIB loan together with a Phare Contribution will represent the “Project”. Before signing this agreement, the EIB has to propose the Project to the competent Commission services for their approval. In the Project proposal, the EIB will inform the Commission about the total loan amount allocated to this local financial institution under the Facility and the corresponding Phare resources. Upon approval, the EIB will sign a Project Agreement with the local financial institution, which then becomes the Participating Bank under this Programme.

**Creating the “Sub-Projects”**

The Participating Bank will engage in the promotion of the Facility among municipalities or public or private companies providing a municipal service (hereinafter referred to as the Promoters) and aim at receiving loan applications for infrastructure investments that meet the eligibility criteria of this Programme. The Investment take account, where appropriate, of a regional development plan or industrial restructuring programme or is in line with another relevant plan at local or regional level. On the basis of a thorough analysis of the applications, the Participating Bank will sign a loan agreement with the Promoter. This loan agreement becomes the “Sub-Project”; it includes the allocation of a proportion of the Phare Contribution to the Promoter.

**4.3.2 Phare Contribution**

The Phare Contribution represents the (a) € 35 mio allocation to this Programme and (b) all income accruing to the Special Account. Income accruing on the Special Account consists of interest accrued and possible recoveries of Phare funds from Projects.

It may be used for

(1) **Performance and Service Fee to the Participating Banks**

The purpose of this fee is to motivate banks to participate in the Programme and to partially compensate for additional costs incurred, for instance, for

- the promotion of the Facility among municipalities;
- the services rendered to municipalities to help them prepare project applications;
- the work of analysing and structuring individual loans;

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4 Joint Co-financing with the EIB
• the cover of additional risks involved in municipal lending;
• the cost of administrative obligations under the Facility, including reporting to EIB and where necessary to the Commission.

(2) Direct Investment Support to the Promoter
The purpose of this payment is to partly reimburse the Promoter for the financing of the fixed asset cost incurred in an Investment and for costs incurred for the selection and evaluation of Investments.

(3) Management Fee and Auditing Costs
A management fee shall be paid to the EIB as 1.2% of each tranche transferred to the Special Account and corresponding to a maximum amount of €420,000. In addition, the annual cost for auditing the special Account will be paid from the Phare Contribution.

The Commission shall not provide any additional amount to support the ordinary EIB costs resulting from the implementation of this Programme, except where duly justified.

Upon proposal of the EIB and subject to approval by the competent Commission services, other appropriate incentives for the benefit of Participating Banks or the Promoters may be granted to enhance the implementation of the Facility.

From the total Phare Contribution available to the Programme, the mix and level of these different components will be tailored by the EIB to the particular market environment in which the Facility will be operating.

4.4. Financial Support Ratios

Contribution Arrangement Level (Commission and EIB)
1. The overall ratio between the EIB resources and the Phare allocation shall be equal to or higher than 5/1. The EIB will provide at least €175 million in the form of loans and the EC will provide a maximum of €35 million.

Project Agreement Level (EIB and Participating Bank)
2. The ratio between the EIB loans and the Phare Contribution allocated to one individual Project will be equal to or higher than 4/1. The Phare Contribution to a Project will be generally between 1 and 10 Mio EUR.

3. The Phare Contribution to one Project will be used for the benefit of the Participating Bank and the Promoters. No less than 40% of the Phare Contribution to one Project may be used for the Promoters taken as a group.

Sub-Project Agreement Level (Participating Bank and Promoter)
4. The ratio between the Participating Bank’s loan refinanced by the EIB and the Phare Contribution allocated to a specific Sub-Project will be equal to or higher than 4/1.

5. At least 40% of Phare Contribution allocated to a Sub-Project must be used for the benefit of the Promoter.
4.5. **Eligibility Criteria**

4.5.1 **Eligible Participating Banks (PB)**

Eligible Participating Banks are those operating in the beneficiary countries including locally registered entities and also subsidiaries or branches of EC banks.

Participating Banks will be selected on the basis of their capacity, financial strength and interest to participate and promote the Facility and its objectives. Selection of PBs will also take into account their credit worthiness (as demonstrated by acceptance as EIB global loan intermediaries), their activity in municipal and infrastructure lending and, in general, their sound banking practice. In principle, those banks that EIB considers to fulfil these requirements based on an ongoing relationship with EIB, are eligible to participate in the Facility.

4.5.2. **Eligible Promoters**

Eligible Promoters are municipalities or public or private companies delivering municipal services and directly responsible for the implementation of the Investments. They are the owners of the assets of the Investment.

Promoters must be located in an eligible border region.

4.5.3. **Eligible Investments**

Investments must relate to the building, up-grading or refurbishing of small municipal infrastructure.

The eligible Investment must take account of a development plan at, in general, local or regional level or an industrial restructuring programme, where appropriate. In the absence of such plans, documents of reference to the Promoter may be those that have been developed for programming Phare assistance and which form at the same time the basis for programming future Structural Funds assistance. This may include Joint Programming Documents for INTERREG IIIA/Phare CBC operations or draft Single Programming Documents/(National) Development Plans or draft Joint Regional Operational Programmes.

The total cost of the Investment must be less than €5 million. Exceptionally, and on a case by case basis, i.e. for implementing a joint Investment between several municipalities, and where the Investment is not eligible under ISPA, the Facility may support also individual Investments with a maximum total cost of up to € 10 million.

4.5.4. **Eligible sectors**

Investments will be carried out mainly in the environment, transport, health and education sectors. The eligibility of sectors is based on Article 5 of Council Regulation 2760/98 excluding letters (d), (f), (g) and (h).

Sectors included in the EIB exclusion list are not eligible.
4.5.5. Eligible Investment Costs

Eligible components of Investment costs will be determined by EIB eligibility criteria.

4.5.6. Eligible countries and regions

The eligible border regions are based on the Communication of the Commission on the Impact of Enlargement in Border Regions. These are Level-2 regions in the eligible countries as identified by EUROSTAT in the document “Statistical Regions in the EFTA countries and the Central European Countries (CEC)-2001 Edition” and sharing a border region with EU Member States; they are listed below. Where the whole country is covered, the regions are not named individually.

Estonia; Zachodniopomorskie, Lubuskie, Dolnoslaskie (Poland); Severovýchod, Severozápad, Jihozápad, Jihozápad, Jihozápad (Czech Republic); Západné Slovensko, Bratislavsky (Slovak Republic); Nyugat Dunántúl (Hungary); Slovenia; Yuzhen Tsentrален, Yugozapaden (Bulgaria).

5. Budget

The European Commission will support the Municipal Infrastructure Facility with €35 million.

6. Implementation Arrangements

The Commission entrusts the EIB with the implementation of this Programme and will conclude a Contribution Arrangement with the EIB for this purpose. The management of the Programme by the Commission will be sub-delegated to Directorate General Economic and Financial Affairs.

The Commission shall exercise its responsibility over the use of funds through the duration of the Programme in accordance with its Financial Regulation applicable to the General Budget of the European Communities of December 21, 1977 as amended.

6.1. Process of Project Approval

The EIB will prepare a Project proposal for each new or amended Project Agreement with a Participating Bank and submit it to the competent Commission services for approval. The EIB will provide all relevant information to assess the Project proposals including information on the selected bank, amounts from EIB and EC contribution allocated to the Project, type of incentives provided, compliance with eligibility criteria, indicators of achievement for monitoring and evaluation and disbursement schedule. A standard Project proposal format will be included in the Contribution Arrangement.

The Commission shall assess Project proposals according to their compliance with the following criteria:

5 COM (2001) 437
• the compliance with the Contribution Arrangement and its annexes, including the
degree of compliance with the eligibility criteria;
• Projects will bring forward the fulfilment of the beneficiary country's commitments
undertaken in the context of the accession negotiations under Chapter 22;
• the degree to which the requested Phare Contribution grant leverages additional
funds from the PBs;
• the coherence of the proposed allocation of the Phare Contribution with other
approved Projects.

By their approval of the Project, the Commission authorises the mobilisation of the
Phare Contribution from the Special Account set up at the EIB. The Commission also
ensures the confidentiality of the Projects proposed by the EIB.

Each Sub-Project must have received the authorisation of the EIB after verification that
the relevant eligibility criteria are met.

The Contribution Arrangement will specify a limited time period between the signature
of the Project and the signature of individual loan agreements (i.e. Sub-Projects). The
limited time period set by the EIB in the individual Project proposal can be shorter than
the time limit specified in the Contribution Arrangement. In the event that the time
limit approved in the Project proposal has expired, the EIB may request from the
Commission the approval to decommit the unused Phare Contribution from a Project
and its commitment to a new or existing Project.

Subject to the legal obligation of bank secrecy and the rules of confidentiality, the
Commission shall have access to all relevant information in connection with the
Project proposals.
6.2. Interest earned on the Special Account

The EIB will set up and manage a separate interest bearing account for this Programme. Interest will be reported to the European Commission. Upon proposal of the EIB and subject to approval by the competent Commission services in line with Article 6.1., interest may be reinvested in the Programme in line with Article 4.3.2.
The modalities for managing the Special Account will be set in the Contribution Arrangement.

6.3. Recovery of Funds

In the case of default on Projects, the EIB will undertake recovery proceedings of the Phare Contribution in a manner consistent with the care and diligence applied in EIB projects financed out of its ordinary resources. The Commission will assist in this process where required.

Funds recovered from the Projects will be credited to the Special Account and may be used for the purpose of the Programme.

6.4. Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive\textsuperscript{6} 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.

All investment projects shall be carried out in compliance with the relevant Community environmental legislation. The Project Proposals will contain information on specific clauses on compliance with the relevant EU-legislation in the field of the environment. These clauses will be included in the legal documentation implementing the Project Proposal. EIB will require compliance with EU environmental legislation by means of its standard clauses in the Global Loan Contract with the Participating Bank.

Where transitional periods have been granted to the candidate countries for implementing the main heavy investment directives in the waste and water sectors, these were granted on the basis of detailed implementation plans that include intermediate targets to fulfil. EIB will ensure that the selection of investments in the area of environment helps in bringing forward the implementation of such commitments.

6.5. Complementarity

The sum of the total value of the Sub-Project, the total value of the Phare Contribution (Direct Investment Support) in favour of the Promoter and any other European Community funds used by the Promoter for the financing of the Investment shall not exceed 90% of the Investment costs.

\textsuperscript{6} DIR 85/337/EEC; OJ L 175/40; 5.7.1985; as amended by DIR 97/11/EEC; OJ L 73/5; 14.3.1997
7. **MONITORING AND EVALUATION**

At operational level, the implementation of this Programme will be monitored through regular financial and technical reports to be submitted by the EIB and through a Steering Committee composed of representatives of the Commission and the EIB.

The Steering Committee will be chaired by a representative of the Commission and will monitor the implementation of the Facility, in particular it will

1. monitor financial and operational progress of the Facility;
2. review, as appropriate, publications reporting on the Facility;
3. review the experiences of the Facility and propose improvements;
4. co-ordinate activities of the Facility, where necessary.

Moreover, the accounts and operations of all activities carried out under the Programme may be checked at regular intervals by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the Court of Auditors. Also the Commission may carry out any necessary audits and on-the-spot checks in accordance with the Practical Guide to EC external aid contract procedures.

To facilitate this, the EIB, Participating Banks and Promoters will keep accounting, financial and operational documents concerning all activities financed from the Phare Contribution under this Programme, and will make available to the competent bodies of the European Commission and the European Court of Auditors on request all relevant financial information.

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

8. **AUDIT AND ANTI-FRAUD MEASURES**

The Financing Decision for this Programme as well as the utilization of the Phare Contribution in Projects and Sub-Projects are subject to supervision and financial control by the Commission (including the European Anti-Fraud Office, OLAF), and the Court of Auditors. In order to ensure efficient protection of the financial interests of the Community, the Commission can conduct check-ups and inspections on site, in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No 2185/96, concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities’ financial interests against fraud and other irregularities.

The procedures foreseen in Article 15 of the Commission Regulation (EC) No 2222/2000 of 7 June on the communication in case of irregularities and the putting in place of a system to administrate the information in this field shall apply.

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7 OJ L 292; 15. 11. 1996; p. 2-5
9. **VISIBILITY/PUBLICITY**

The EIB will take the necessary measures to ensure appropriate publicity for all activities financed from the Programme. This will be done in close liaison with the Commission. Phare visibility measures are based on the provisions of the regulations and decisions applicable to the Structural Funds\(^8\).

10. **SPECIAL CONDITIONS**

In the event that agreed commitments are not met for reasons which are within the control of the EIB, 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.