CENTRAL FINANCE AND CONTRACTS UNIT (CFCU)

POLAND

MEMORANDUM OF UNDERSTANDING

Article 1 - Explanatory Statement

The Establishment of a Central Finance and Contracts Unit (CFCU) is to be seen against the background of the Framework Agreement between the European Commission and the Republic of Poland regulating the Phare Programme signed on 31 May 1990 and the following developments:

- the increase in size of the Phare programme for the Republic of Poland since 1990, the concomitant increase in the number of programmes and projects under implementation, its changing role as an instrument for supporting Poland’s pre-accession strategy, and the need to establish sustainable financial procedures and management structures as required by EU regulations thus ensuring effective financial control;

- the fact, that the Phare programme in Poland is such that supporting a large Programme Management Unit (PMU) structure with each of them having its own financial and accounting responsibilities is neither cost-effective nor feasible. The setting-up of one CFCU for all institution building projects from 1998 Phare programmes onwards (and other Phare projects as appropriate) would increase the visibility and transparency and would avoid divergence in the methods of financial reporting and accounting vis-à-vis the Commission;

- the benefit in terms of sound financial management and effectiveness of a single adequately staffed unit to handle the financial administration, accounting and payments for Phare on behalf of the Government, related to all institution building projects from 1998 Phare programmes onwards (and other Phare projects as appropriate); certain institution building projects may, where relevant and the nature of the project so requires, and after express approval by the Commission be implemented by the existing implementing bodies of the relevant line ministry or agency;

- the New Phare Orientations, requiring in principle: (a) the establishment of the National Fund and nomination of a National Authorising Officer (NAO) within the Ministry of Finance, (b) the establishment of a multisectoral implementing body, called the CFCU (Central Finance and Contracts Unit), for institution building projects, and: (c) the establishment, where appropriate, of a limited number of Implementing Agencies (IAs).

Article 2 - PAO and CFCU

1. A CFCU will be established and operate under the responsibility of a Programme Authorising Officer (PAO) in the Office of the Committee for European Integration.
The designation of the CFCU will be subject to prior approval by the European Commission.

2. The Programme Authorising Officer (PAO), described in Article 6 hereafter, will be an official appointed by the National Authorising Officer (NAO) after consulting the National Aid Co-ordinator of the Phare programme in Poland. The designation of the PAO will be subject to prior approval by the European Commission.

3. The PAO will be responsible in accordance with Article 3 for the financial, and administrative side of the procurement of services, supplies and works for all institution building projects unless otherwise agreed (and other Phare projects as appropriate) from 1998 Phare programmes onwards in Poland, as well as for those programmes which will be transferred to it under the Strategy of Phasing out of PMUs. The technical side of programme implementation will be covered by the responsible Senior Programme Officers (SPO). The responsibility of the Senior Programme Officer is described in Article 7 hereafter.

**Article 3 - Tasks of the CFCU**

1. Specifically, the CFCU shall have the following tasks for the programmes it manages in accordance with the DIS Manual:

**Tendering:**
For all programmes:
Receiving Terms of Reference, Tender Requests and tender summary sheets in standard format from the SPO; providing information for tenderers in line with Phare procedures and request to the European Commission Headquarters for publishing of notices of tender opportunities on Internet (Phare WWB site), as foreseen under amended Article 118 of the financial regulation; checking the preparation of a proper quarterly update of status of programmes implementation, prepared by the SPO; administrative verification of short lists and tender documentation prepared by the SPO which also receive all the letters of interest; checking and requesting changes, as appropriate, for conformity with Phare rules; ensuring the good preparation of tender dossiers; despatching of tender dossiers to bidders; checking the composition of the Evaluation Committee; acting as an observer/chairman, at CFCU discretion, at Tender Evaluations, securing the respect of the procedures; providing advice and administrative support to the carrying out of tender evaluations; ensuring the proper preparation of the tender evaluation report to be drafted by the relevant Evaluation Committee.

**Contracting:**
For all programmes:
supervising evaluation and contract awarding to ensure that proper Phare administrative procedures are followed (but not involving itself, apart from advice on procedures, in the evaluation process, technical or financial, selection, which remain the responsibility of the SPO); contract negotiations, where appropriate (the SPO shall provide technical assistance), drafting, preparation and signature of contracts on the basis of the request and technical recommandations of the SPO; ensuring conformity with the Phare administrative and legal requirements (in case of non-conformity, the
PAO has to inform the concerned SPO in writing); the PAO shall sign the contract (endorsed by the European Commission); recording contract awarded by programme and project.

Administration:
A) For pre-1998 programmes:
administrative checking of Strategic Plans, Work Programmes and Monitoring and Evaluation Reports submitted by the SPO in charge of individual Phare funded projects before endorsement by the European Commission as required by the DIS, in force at the time. The SPO remains fully responsible for the preparation of the above mentioned documents, which must be signed by the PAO. The CFCU shall submit one Work Programme per programme irrespective of the number of SPOs involved in the technical management of the programme.

B) For 1998 and subsequent programmes:
in accordance with the relevant Financing Agreement.

Accounting:
A) For pre-1998 programmes:
establishing and maintaining an accounting system; keeping separate records for each sector programme and adequate accounting recording all payments registered by programme, project, contract, etc; operating financial accounts with all the standard checks and reconciliations; recording all transactions on the DIS reporting system provided by the European Commission.

B) For 1998 and subsequent programmes:
in accordance with the relevant Financing Agreement

Payments:
A) For pre-1998 programmes:
Carrying out payments in accordance with DIS procedures, in force at the time; receiving requests for payment from contractors, checking these are legitimate, request the authorization from the SPO (“conforme aux faits”/“read & approved”), or returning for amendment to contractor, as appropriate.

B) For 1998 and subsequent programmes:
In accordance with the relevant Financing Agreement

Reporting:
A) For pre-1998 programmes:
compiling monthly reports on the financial status of each programme; distributing to SPOs, Office of the Committee for European Integration, the EC Delegation in Warsaw and the European Commission Headquarters; providing regularly updated information on schedules for tenders, tender evaluations and contracts awarded, in accordance with the DIS.

B) For 1998 and subsequent programmes:
In accordance with the relevant Financing Agreement.

Phare account:
A) For pre-1998 programmes:
Operation of an account for each Programme to be managed by the CFCU, as agreed between the Government of Poland and the European Commission, maintaining, monitoring and arranging for replenishment of the bank accounts, based on individual SPO Work Programmes, and the disbursement performances of SPO, reporting on a monthly basis on the status of the bank account; preparation of requests to the Commission for advance payments.

B) For 1998 and subsequent programmes:
In accordance with the relevant Financing Agreement.

Fund requests
A) For pre-1998 programmes:
in accordance with the DIS manual and Article 9.

B) For 1998 and subsequent programmes:
Preparation of requests to the National Authorising Officer (NAO) for advance payments as set out in the financing agreement with the National Fund and Article 9 if applicable.

Training and Advice
For all programmes:
arranging and providing, where appropriate, training in Phare payments and procurement procedures for any implementing bodies of Phare Decentralised Implementation System; advising SPOs on Phare procurement and financial implementation procedures (structure of work programmes, strategic plans, procurement and contracting procedures, etc.), it being clear however that full responsibility, for technical implementation, remains with the recipient SPO. The CFCU will develop a specialised advisory training capacity and maintain the necessary documentation for this purpose. In particular, the CFCU shall provide administrative assistance, where requested, to Programme Authorising Officers of pre-1998 programmes in those cases where PMUs were closed down, pursuant to the Strategy of phasing out of PMUs. In those cases, however, the PAO’s concerned will remain fully responsible for their programmes pursuant to subparagraph 2.

Audit:
For all programmes:
arranging for national audits of accounts; cooperating with, and assisting the audit requirements of the European Commission and the Polish authorities in accordance with Article 13.

2. For the pre-1998 programmes transferred from PMUs to the CFCU, the PAO of the PMU shall remain responsible for the signature of any programme documents which are to be signed by a PAO pursuant to this MoU or the DIS, unless the PAO of the CFCU has expressly taken over these responsibilities, and the European Commission has endorsed this transfer.
Article 4 - CFCU Staff

1. The PAO will ensure appropriate staffing of the CFCU with the approval of the NAC and the Delegation.

Article 5 - CFCU location, facilities and operating costs

1. The CFCU shall be located at premises identified by the NAC and provided by the Polish authorities. The premises shall comprise ample and adequate office space for the staff of the CFCU, including space for meetings, advisory support, training and visiting audit staff.

2. The administrative, salary and all other operating costs of the CFCU shall be covered by the national budget of the Polish Government. The cost of advisory support and appropriate training for the efficient operation of the CFCU may be covered from the national Phare allocation for Poland if so expressly agreed between the Commission and Poland.

Article 6 - Programme Authorising Officer (PAO)

1. The CFCU will operate under the authority of a Programme Authorising Officer (PAO) who will be nominated by the National Authorising Officer of Poland after consulting the National Aid Co-ordinator. The PAO is responsible for the execution of Phare institution building projects (and other Phare projects as appropriate) from the 1998 Phare programmes onwards in Poland, as well as for those programmes which have been transferred to it under the Strategy of Phasing out of PMUs in accordance with Article 3.2. Additional responsibilities may be defined in the financing agreement with the National Fund.

2. The PAO may delegate, after express approval by the Commission, part of his responsibilities, including the right of signature or endorsement of all documents and actions listed in Article 3.1, in line with the relevant stipulations of the DIS Manual to this effect. The responsibilities thus delegated will be clearly enumerated in a separate document and communicated to the Commission. The PAO can, at any time, revoke the delegation of the right of signature.

3. The PAO (or his delegated representative) will sign or endorse, as required, the documents as described in Articles 9, 10 and 11.

Article 7 - Responsibilities of the Senior Programme Officers (SPO)

1. A Senior Programme Officer (SPO) will be an official appointed by the line Ministry or Agency involved in the project, in order to ensure the good and timely implementation of projects at technical level.
2. The SPO formalises his or her authority by endorsing commitments and disbursement documents prior to their transmission by the CFCU.

3. The SPO may delegate part of his/her responsibility, including the right of signature or endorsement for all documents and actions to a maximum of two officials within the same Ministry or Agency.

4. The names and signatures of the SPOs and, if relevant, the delegated officials to whom the SPOs have delegated their responsibility will be communicated to the Commission.

5. More specifically the responsibilities of the SPO will include:

   (a) technical implementation and follow-up of institution building (and other Phare) projects funded from Phare 1998 programmes onwards, as well as the technical implementation of pre-1998 programmes of which the technical implementation has been transferred to him.

   (b) planning and reporting to the responsible authority and maintaining contact on technical issues with the Commission,

   (c) input into the preparation of financial and reporting documents necessary for the operation of the CFCU

   (d) preparation of Terms of Reference,

   (e) submitting requests to the CFCU to launch tenders,

   (f) requests to the CFCU to negotiate and conclude contracts,

   (g) provision of assistance to the CFCU for the contract negotiations,

   (h) endorsement of payments against invoices (“conforme aux faits/read and approved”)

Article 8 - CFCU Bank Account

A) For pre-1998 programmes:

1. The CFCU will manage one bank account for each programme, as agreed between the Government of Poland and the European Commission, according to the provisions of Article 3, paragraph 1. The CFCU will manage a single bank account for each programme.

2. The above bank accounts will be held in one of the three banks already selected for this purpose and agreed by the European commission and the Government of Poland. The European Commission reserves the right to review on a regular basis the performance of the selected banks.

3. The bank accounts shall be denominated in ECU. The amount of interest earned on the bank accounts will be communicated to the European Commission on a regular basis and may be reinvested in the activities covered by the relevant Financing Memorandum,
after the written approval by the European Commission, and in accordance with DIS provisions in force at the time.

4. The bank accounts shall be operated on the basis of a double signature system, requiring at least the signature of the PAO and another person duly authorised.

5. The CFCU will communicate to the European Commission by means of a bank confirmation all relevant information (name and address of the bank, accounts numbers, name(s) of account holders and interest rates).

6. The bank accounts transferred from the PMUs phased out shall be kept separate unless otherwise instructed by the Commission.

B) for 1998 and subsequent programmes:
In accordance with the relevant Financing Agreement.

Article 9 - Advance Payments

A) For pre-1998 programmes:

1. The CFCU will keep account of all advance payments received for the benefit of implementing individual Phare funded programmes and projects.

2. The European Commission shall make available advance payments on the basis of a request from the PAO or his delegated signatory, but only after the European Commission has given its final approval of the required DIS documents, signed by the relevant authorities of the recipient SPO, and checked in terms of their budget and administrative conformity by the PAO.

B) For 1998 and subsequent programmes:
In accordance with the relevant Financing Agreement.

Article 10 - Payments

Once the payments have been received in the bank accounts, the funds will be used for disbursement against Phare funded contracts under the relevant projects in accordance with Article 3.1.

Article 11 - Contract Award Procedures

The contract award procedures to be followed by the Senior Programme Officer and the CFCU shall be those laid down in the DIS Manual.

Article 12 - Accounting and Financial Reporting System

1. The PAO will operate accounting and financial reporting systems covering all contractual and other financial operations pertaining to all Phare-financed projects under his responsibility as described above.
2. This system shall follow the requirements set out in the DIS Manual with regard to financial management.

**Article 13 - Auditing of the CFCU and the SPOs**

1. The accounts and operations of the CFCU and the SPOs may be checked at regular intervals by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Court of Auditors as referred to in the General Conditions relating to the Financing Memorandum attached to the Framework Agreement.

2. Written records of the entire financial management, tendering and contracting shall be stored for five years after the closure of the programme.

**Article 14 - Final Stipulations**

1. This Memorandum is drawn up in duplicate in English and shall enter into force on the date on which it has been signed by both parties.

2. This Memorandum of Understanding will have a duration of 6 years from its entry into force. It may be extended by agreement of the both parties by an exchange of letters.

3. This Memorandum of Understanding may be subject to a review after each year of operation, and may then be amended by an exchange of letters and this without prejudice to the responsibilities of the European Commission, which retains the right to review the implementation provisions, as appropriate, in accordance with the DIS.

Done at:          Done at:
Date:            Date:

On behalf of the Government of Poland  On behalf of the European Commission
Mr. R. Timans  Head of Delegation of the European Commission in Poland