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 Poland, 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 31 May 1990 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              PL0112
Title                          Flood Damage Reconstruction Programme Poland 2001
Duration                      Until 15 December 2002.

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 15 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 15 December 2002 subject to the provisions of this 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 15 December 2003. All 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 in Poland
Emilii Plater 53
PL-00-113 Warsaw
Poland
Fax: (+48-22) 520 82 82

for THE RECIPIENT:

Office of the Committee for European Integration
Al. Ujazdowskie 9
PL-00918
Warsaw
Fax: (+48-22) 694 71 94

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.

Done at Warsaw, Date: 07 December 2001

for THE RECIPIENT

Prof. dr hab. Danuta Hübner

for THE COMMUNITY

Mr. B. Dethomas
Head of the Delegation of the European Commission in Poland

Annex 1 Framework Agreement (Annexes A & B)
Annex 2 Special Provisions (Annex C)
Annex C - SPECIAL PROVISIONS

1. Objectives and programme description

Project PL01.12: Flood Damage Reconstruction

The objectives of this Flood Damage Reconstruction programme are to contribute to the restoration of economic and social infrastructure in the regions affected by the flooding and to contribute to the prevention of future flooding, thereby allowing Poland and its regional and local authorities to continue the process of preparation for accession, in particular regarding economic and social cohesion.

This programme will finance small scale infrastructure projects, notably:

- redevelopment of local public infrastructure buildings damaged by the flooding (educational facilities, health care centres, public institutions, etc.) with a demonstrated impact on the local community. Private housing will be excluded.
- reconstruction of environment protection facilities damaged by the flooding: water supply systems, water treatment facilities, clean-up of polluted areas.
- rebuilding of small scale transport infrastructure damaged by the flooding (small roads and bridges) of local significance, provided that these address priorities within the development plans of the regions affected by the floods.
- support to SME infrastructure destroyed by the floods, again on the basis of a demonstrated impact on the benefit for the local community as a whole.
- small scale infrastructure works along the banks of the Vistula river and its tributaries in those regions affected by the floods (dykes, storm drainage, retention reservoirs, etc) destined to contribute to the prevention of future flooding.
- Engineering, supervision and monitoring support to the Implementing Agency and the regional and local authorities to help these local authorities to prepare projects and to supervise and monitor works and reconstruction during the life of the programme.

The local authorities and municipalities eligible under this programme will be those affected by the floods of the Vistula river basin and its tributaries and will be selected by the Polish Government in consultation with the European Commission.

Only regional and local authorities and municipalities will be eligible to submit project applications to representative regional and national project selection committees, to be established in consultation with the European Commission. The Commission’s Delegation will have observer status in these committees. The list of projects retained by these committees will have to be confirmed by the Polish Government and will be approved by the European Commission.

This programme will be managed according to Phare procedures, as explained below under the section on implementation arrangements.
The Polish Government, through the Implementing Agency, shall ensure that the programme and its various components are carried to good end. To this effect, the Polish Government shall provide from its own funds the necessary means, notably adequate staff, office space and equipment, to carry out the programme.

Single eligible projects submitted by eligible authorities will not exceed 300,000 EUR of Phare funding in each individual case. Cofinancing from the budgets of these eligible authorities will not be a necessary condition although this would be desirable and preference will be given to those projects which receive cofinancing, ceteris paribus.

Grant contracts made and financed out of the proceeds of this programme will be endorsed by the EC Delegation in Warsaw and normal Phare tender rules will apply for projects exceeding 300,000 EUR. However, for projects equal to or below 300,000 EUR of Phare funding, tendering will normally be done locally by municipalities according to the local Polish procurement law, as applied already under existing Phare funded Regional Development programmes for Small Infrastructure Projects.

Appropriate and visible publicity requirements will apply throughout the implementation of this programme and beneficiaries will be required to clearly announce, make visible and put up signs that this programme and their projects were financed from funds coming from the European Union. At the end of the programme, a programme completion report will be produced by the Implementation Agency in order to demonstrate the merits and results of the programme.

The implementation of this programme will furthermore be conditional on the establishment of representative regional and national project selection committees by the regional and national authorities, the selection of eligible project proposals by these committees and their approval by the Government at the latest at the time that the Financing Memorandum will be signed with the European Commission, so that the concrete implementation of this Phare funded programme can begin immediately thereafter.

### 2. Budget (million EUR)

<table>
<thead>
<tr>
<th>Project No.</th>
<th>Project Title</th>
<th>Total</th>
<th>Institution</th>
<th>Investment</th>
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</table>
The total Phare contribution under this programme will therefore not exceed 15 million EUR.

All investment projects which, according to the rules stipulated in Directive 85/337/CEE, as amended by Directive 97/11, require an Environmental Impact Assessment, should be the subject of an Environmental Impact Assessment. If the directive has not yet been fully transposed, the procedure should be similar to that established by the above-mentioned directive.

All investment projects shall be carried out in compliance with the relevant Community environmental legislation. The Project Fiche 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.

3. Implementation Arrangements

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) Procedures. The National Aid Coordinator (NAC) will have overall responsibility for programming, monitoring and implementation of Phare programmes. The National Aid Co-ordinator and the National Authorising Officer 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 National Authorising Officer (NAO), will supervise the financial management of the Programme, and will be responsible for reporting to the European Commission. The National Authorising Officer 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 proper reporting and project information system is functioning. The National Authorising Officer shall have the full overall accountability for the Phare funds of a programme until the closure of the programme. Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the programme.

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and Poland on 24 December 1998. Funds will be transferred following requests from the NAO.

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 Agreement (FA) between the NF and the Implementing Agencies (IA). 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 PAO and a description of the system put in place, highlighting the flow of information between the NF and the IA and the manner in which the payment function will be carried out.

Four replenishments will be made of up to 20 % of the funds to be managed locally or the full balance of the budget whichever is the lesser amount. The first
replenishment will be triggered when 10% of the budget has been disbursed by the IA and the CFCU. The second replenishment may be requested when 30% of the total budget in force has been disbursed. The trigger point for the third replenishment is 50%, and for the final fourth instalment when 70% is disbursed. Save for express prior authorisation from the Commission HQ, no replenishment request may be made if the aggregate of the funds deposited in the NF and the IA exceeds 10% of the total budget in force of the commitment. Exceptionally the NAO may request an advance payment of more than 20% in accordance with the procedures laid down in the aforesaid Memorandum of Understanding.

The following Implementing Agency will be responsible for the entire programme:

*Polish Agency for Regional Development*

The National Fund will transfer funds to the IA in accordance with the Financing Agreements (FA) signed between the NF and the IA. Each individual FA will be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the IA there will be no transfer of funds from the NF to the IA. The IA must 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 Phare operations carried out by the relevant IA regarding this flood damage reconstruction programme.

A separate bank account, denominated in EUR will be opened and managed by the NF in a separate accounting system in the Central Bank. 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. The same procedures will apply to any funds transferred to the IA.

The NAO and the PAO will ensure that all contracts are prepared in accordance with the procedures set out in the DIS Manual, except for the fact that the implementation of the selected individual projects below 300,000 EUR of Phare funding shall be subject to the local Polish procurement law as used and adapted in the past in Phare financed regional development programmes (STRUDER) in Poland, as referred to above also in the description of the programme.

All contracts must be concluded by 15 December 2002. All disbursements must be made by 15 December 2003. Any funds not used by the expiry date of the programme will be recovered by the Commission.

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.

4. Monitoring and Assessment

A Joint Monitoring Committee (JMC) will be established. It will include the NAO, the NAC and the Commission. The JMC will meet at least once a year to review all Phare funded programmes in order to assess their progress towards meeting the objectives set out in 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) and will include the NAC, the NAO and 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 consultants (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.

5. Anti-fraud measures, Audit and Evaluation

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 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 can conduct check-ups and inspections on site in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96 dated from November 11, 1996.

The procedures foreseen in Art. 15 para 3 of Commission Regulation No. 2222/2000 on the communication in case of irregularities and the putting in place of a system to administrate the information in this field, and Regulation No. 1681/94, shall apply.

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 Court of Auditors as referred to in the General Conditions relating to the Financing Memorandum attached to the Framework Agreement.

The Commission services shall ensure that an ex-post evaluation is carried out after completion of the Programme.
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 in the Annex “Visibility/Publicity”.

7. Special conditions

In the event that agreed commitments are not met for reasons which are within the control of the Government of Poland, 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 global Phare programme.

Annex 1: Overview of the results of the Flood Damage Reconstruction Programme for Poland, financed by the Phare programme in 1997

Annex 2: Cumulative quarterly contracting and disbursement schedule

Annex 3: Project fiche

Annex 4: Visibility and Publicity
Annex 1: Overview of the results of the Flood Damage Reconstruction Programme for Poland, financed by the Phare programme in 1997

The floods along the Oder river which started on 8 July 1997 were the worst disaster of this kind in Poland for 200 years and caused considerable loss to life and property: at least 55 people perished and more than 20 million people were affected by the floods. More than 10 per cent of the territory of Poland was under water for more than three weeks. The damage was estimated at 2.6 billion EUR. The European Commission responded swiftly and provided emergency relief, through the Humanitarian Office, and reconstruction aid, through the Phare Programme.

Following an official request from the Prime Minister of Poland on 16 July for EU support for a flood damage reconstruction programme, a reallocation of Phare funds worth 65 million EUR was agreed and signed with the Polish authorities on 21 August. In addition, on 30 July, again at the request of the Polish authorities, an expert team, financed by the Phare programme, was sent to Poland in order to help estimate the nature and extent of the damage.

The Phare-funded flood damage reconstruction programme was implemented by the Polish authorities, using rapid implementation mechanisms, which had been tested and used for several years in the Phare-funded regional development programme (STRUDER) involving municipalities and regional authorities. These mechanisms were used in the flood damage reconstruction programme in order to finance local and municipal infrastructure projects (schools, medical centres, roads, bridges, strengthening of dykes). The works were completed in 1998.

Some 2,600 small scale projects were implemented in almost 200 municipalities and this proved to be a very visible sign of support from the EU that was much appreciated in Poland. An OMAS assessment rated the programme as highly successful, in particular regarding conformity of the applied procedures with the decentralised implementation rules, simplicity and transparency of application system, high level of performance of regional committees and agencies involved in technical assistance services.
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ANNEX ON
INFORMATION AND PUBLICITY FOR THE PHARE PROGRAMME OF THE
EUROPEAN COMMUNITIES

1. Objective and scope

Information and publicity measures concerning assistance from the European Community Phare Programme are intended to increase public awareness and transparency of EU action and to create a consistent image of the measures concerned in all applicant countries. Information and publicity shall concern measures receiving a contribution from the Phare Programme.

2. General principles

The appropriate Programme Authorising Officer in charge of the implementation of Financing Memoranda, and other forms of assistance shall be responsible for publicity on the spot. Publicity shall be carried out in cooperation with the EC Delegations, which shall be informed of measures taken for this purpose.

The competent national and regional authorities shall take all the appropriate administrative steps to ensure the effective application of these arrangements and to collaborate with the EC Delegations on the spot.

The information and publicity measures described below are based on the provisions of the regulations and decisions applicable to the Structural Funds. They are:


Information and publicity measures must comply with the provisions of the above mentioned regulation and decision. A manual on compliance is available to national, regional and local authorities from the EC Delegation in the country concerned.

3. Information and publicity concerning Phare programmes

Information and publicity shall be the subject of a coherent set of measures defined by the competent national, regional and local authorities in collaboration with the EC Delegations for the duration of the Financing Memorandum and shall concern both programmes and other forms of assistance.

The costs of information and publicity relating to individual projects shall be met from the budget for those projects.
When Phare programmes are implemented, the measures set out at (a) and (b) below shall apply:

(a) The competent authorities of the applicant countries shall publish the content of programmes and other forms of assistance in the most appropriate form. They shall ensure that such documents are appropriately disseminated and shall hold them available for interested parties. They shall ensure the consistent presentation throughout the territory of the applicant country of information and publicity material produced.

(b) Information and publicity measures on the spot shall include the following:

(i) In the case of infrastructure investments with a cost exceeding EUR 1 million:

- billboards erected on the sites, to be installed in accordance with the provisions of the regulation and decision mentioned in paragraph 2 above, and the technical specifications of the manual to be provided by the EC Delegation in the country concerned.

- permanent commemorative plaques for infrastructures accessible to the general public, to be installed in accordance with the provisions of the regulation and decision mentioned in paragraph 2 above, and the technical specifications of the manual to be provided by the EC Delegation in the country concerned.

(ii) In the case of productive investments, measures to develop local potential and all other measures receiving financial assistance from Phare:

- measures to make potential beneficiaries and the general public aware of Phare assistance, in accordance with the provisions cited at paragraph 3(b)(i) above.

- measures targeting applicants for public aids part-financed by Phare through an indication on the forms to be filled out by such applications, that part of the aid comes from the EU, and specifically, the Phare Programmes in accordance with the provisions outlined above.
4. Visibility of EU assistance in business circles and among potential beneficiaries and the general public

4.1 Business circles

Business circles must be involved as closely as possible with the assistance which concerns them most directly.

The authorities responsible for implementing assistance shall ensure the existence of appropriate channels for disseminating information to potential beneficiaries, particularly SMEs. These should include an indication of the administrative procedures to be followed.

4.2 Other potential beneficiaries

The authorities responsible for implementing assistance shall ensure the existence of appropriate channels for disseminating information to all persons who benefit or could benefit from measures concerning training, employment or the development of human resources. To this end, they shall secure the cooperation of vocational training bodies involved in employment, business and groups of business, training centres and non-governmental organisations.

Forms

Forms issued by national, regional or local authorities concerning the announcement of, application for and grant of assistance intended for final beneficiaries or any other person eligible for such assistance shall indicate that the EU, and specifically the Phare Programme, is providing financial support. The notification of aid sent to beneficiaries shall mention the amount or percentage of the assistance financed by the Phare Programme. If such documents bear the national or regional emblem, they shall also bear the EU logo of the same size.

4.3 The general public

The media

The competent authorities shall inform the media in the most appropriate manner about actions co-financed by the EU, and Phare in particular. Such participation shall be fairly reflected in this information.

To this end, the launch of operations (once they have been adopted by the Commission) and important phases in their implementation shall be the subject of information measures, particularly in respect of regional media (press, radio and television). Appropriate collaboration must be ensured with the EC Delegation in the applicant country.

The principles laid down in the two preceding paragraphs shall apply to advertisements such as press releases or publicity communiqués.
Information events

The organisers of information events such as conferences, seminars, fairs and exhibitions in connection with the implementation of operations part-financed by the Phare Programme shall undertake to make explicit the participation of the EU. The opportunity could be taken of displaying the European flags in meeting rooms and the EU logo upon documents depending on the circumstances. The EC Delegation in the applicant country shall assist, as necessary, in the preparation and implementation of such events.

Information material

Publications (such as brochures and pamphlets) about programmes or similar measures financed or co-financed by Phare should, on the title page, contain a clear indication of the EU participation as well as the EU logo where the national or regional emblem is used.

Where such publications include a preface, it should be signed by both the person responsible in the applicant country and, for the Commission, the Delegate of the Commission to ensure that EU participation is made clear.

Such publications shall refer to the national and regional bodies responsible for informing interested parties.

The above-mentioned principles shall also apply to audio-visual material.

5. Special arrangements concerning billboards, commemorative plaques and posters

In order to ensure the visibility of measures part-financed by the Phare Programme, applicant countries shall ensure that the following information and publicity measures are complied with:

Billboards

Billboards providing information on EU participation in the financing of the investment should be erected on the sites of all projects in which EU participation amounts to EUR 1 million or more. Even where the competent national or regional authorities do not erect a billboard announcing their own involvement in financing the EU assistance must nevertheless be announced on a special billboard. Billboards must be of a size which is appreciable to the scale of operation (taking into account the amount of co-financing from the EU) and should be prepared according to the instructions contained in the technical manual obtainable from EC Delegations, referred to above.

Billboards shall be removed not earlier than six months after completion of the work and replaced, wherever possible, by a commemorative plaque in accordance with the specifications outlined in the technical manual referred to above.
Commemorative plaques

Permanent commemorative plaques should be placed at sites accessible to the general public (congress centres, airports, stations, etc.). In addition to the EU logo, such plaques must mention the EU part-financing together with a mention of the Phare Programme.

Where a national, regional or local authority or another final beneficiary decides to erect a billboard, place a commemorative plaque, display a poster or take any other step to provide information about projects with a cost of less than EUR 1 million, the EU participation must also be indicated.

6. Final provisions

The national, regional or local authorities concerned may, in any event, carry out additional measures if they deem this appropriate. They shall consult the EC Delegation and inform it of the initiatives they take so that the Delegation may participate appropriately in their realisation.

In order to facilitate the implementation of these provisions, the Commission, through its Delegations on the spot, shall provide technical assistance in the form of guidance on design requirements, where necessary. A manual will be prepared in the relevant national language, which will contain detailed design guidelines in electronic form and this will be available upon request.