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:

<table>
<thead>
<tr>
<th>Programme number</th>
<th>PL0109</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Cross Border Co-operation Programme 2001 Poland-Czech Republic</td>
</tr>
<tr>
<td>Duration</td>
<td>Until 30 November 2003</td>
</tr>
</tbody>
</table>

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 5.0 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 30 November 2003 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 30 November 2005. 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
Emili Plater 53
00 - 113 Warsaw
Poland
Fax: (+48-22) 520 82 82

for THE RECIPIENT:

Ministry of Internal Affairs and Administration
ul. Stefana Batorego 5
02-591 Warsaw
Poland
Fax: (+48-22) 661.89. 66

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: ...

for THE RECIPIENT

Mrs Danuta Hübner
Secretary of the Committee for European Integration

Done at Warsaw
Date: ...

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)
1. **Strategy**

In recognition of the need to reinforce co-operation and stimulate integration of the countries of Central and Eastern Europe with the European Union, the 1994 Community budget included a new budget line (B7-612) allocating 150 M€ for the promotion of cross border co-operation between regions of Central and Eastern European Countries (CEEC) and adjacent regions of EU Member States. Commission Regulation (EC) No. 1628/94 of July 4, 1994, specified the implementation of a programme for such cross border co-operation in the framework of the Phare programme. Continuation of the Phare CBC programme beyond 1995 through 1999 to coincide with the INTERREG II programme has been supported by the CEEC and by the European Commission, which considers cross border co-operation to be an important aspect of pre-accession strategies for the CEEC. This has been reconfirmed by the new Commission Regulation (EC) N° 2760/98 of December 18, 1998, which extended the cross-border cooperation to border regions between the CEEC and draws some lessons from previous experience with the CBC programmes. The current programme is the third programme for the Czech-Polish border region prepared under Commission Regulation (EC) N° 2760/98. The Joint-Co-operation Committee (JCC) was formally established on 9 April 1999. The Joint Programming Document (JPD) as referred to under Art.7.2 of Commission Regulation (EC) N° 2760/98 has been prepared for the years 2000 through 2002. The JPD was prepared under the auspices of the JCC to allow the elaboration of common development strategies and priorities for the Czech-Polish border region in its entirety, seen as one single socio-economic and geographical entity, and provisions concerning joint implementation as from the year 2000. This document, in a multi-annual perspective, guides the programming and implementation of the actions to be undertaken in the framework of the CBC programme and initiatives for cross-border co-operation. It also takes into account the preliminary Regional Development Plan, as prepared within the framework of the SPP programme, which is part of the 1998 national Phare programme for the Czech Republic and Poland. For the 2001 Czech-Polish CBC programme, the JCC defines a common set of projects, and this financing proposal for the Czech-Polish border, takes into account the JPD and further JCC recommendations for projects. The 2001 Phare budget provides an allocation of 10 M€ for the support of cross-border co-operation between the Czech Republic and Poland. Out of this total amount of 10 M€, 5 M€ are earmarked for the Czech part and 5 M€ for the Polish part – being jointly the subject of this Financing Proposal. This programme builds on the allocations of previous years and to some extent upon the 1996 CREDO Programme:

- Small-scale activities to create, amongst other benefits, the conditions for future large-scale activities;
- Projects which address cross-border issues in fields as diverse as economic development, socio-cultural co-operation, urban issues, human resources, public services, environment and local democracy;

Both Polish and Czech government policy towards border regions is part of the national government’s regional policy. In addition, the promotion of friendly relations with neighbouring countries is an important tenet of their respective foreign policies. The development of closer cross border co-operation is regarded as an important mechanism in the creation of favourable conditions for European integration.
Equally, the region bordering the Czech Republic is regarded by the respective Governments as a development priority area in the view of its strategic location in the process of integration within the European Union. A joint study on regional development in the Czech-Polish border region has been carried out in 1997 in close cooperation between the state and relevant regional authorities of both countries. Within the framework of regional economic policy, the Czech government focuses on the financial support of regionally differentiated small- and medium-sized enterprises and on the building of infrastructure in problem regions - often border regions. The Czech government declaration N° 159 of 4th March 1998 recorded agreement that the Ministry for Regional Development is the co-ordinator in the sphere of Economic and Social Cohesion and for the Structural Funds. The Cabinet also agreed on the Principles of Regional Policy, which it considers are fully in accordance with the principles of the EU: to contribute to harmonious and balanced development both according to the requirements of individual regions, while also ensuring economic and social cohesion between regions. Thus, the new regional policy concept is based on principles and approaches common in the European Union - adapted to the conditions in the Czech Republic - and will lay the foundation for the future participation of the Czech Republic in the Structural Funds. The cross border co-operation programme on both the Polish and Czech sides is compatible with other programmes implemented under the Phare framework. The mutual interface and complementary nature of the CBC programme with the national Phare programme will be enhanced under the 2001 programmes through focusing on institution-building on regional and local levels as well as through supporting regional development policies of the Government in the border regions. The EC’s Opinion emphasised the need to establish an administrative framework and capacity to ensure effective regional development and the economic and social cohesion of society, highlighting this within the Accession Partnership as a process requiring short- and medium-term action. The decentralised approach for the 2001 CBC programmes together with institution-building measures is seen as an important element in support of this process. For the Polish government the region bordering the Czech Republic is regarded as a development priority area in the view of its strategic location in the integration process with the European Union. In view of its status as a future Interreg internal border, the Polish government has decided to already provide for co-financing up to and beyond the level of 25% currently required by the structural funds. The top priority developmental needs of the region are identified as the establishment of a modern efficient transport communications, both rail and road, and the preservation of the environment by halting the increase in environmental damage and if possible reversing the trend which is arising from the closer contacts between the countries. The preparation of the 2001 programme is in compliance with the priorities of the Accession Partnerships and of the National Programmes for the Adoption of the Acquis (NPAA) of both countries. The 2001 CBC Programme is based on the following principles:
• articulation of needs and priorities coming from the beneficiary regions;
• consistency with national programmes of regional and sectoral development ;
• consistency and complementarity with other internationally aided programmes, in particular, the EU Phare Programme;
• assistance to the Czech and Polish border regions to move toward participation and co-operation on joint programmes with the neighbouring partner countries;
• implementation procedures , which are efficient, effective and stable.
2. **Programme Objectives and Description**

2.1 **Programme Objectives**

2.1.1 **General Objectives**

The general objective of the Phare cross border co-operation programme (Article 3, Commission Regulation No. 2760/98) is to promote co-operation of border regions in Central and East European Countries with adjacent regions in a neighbouring country. The programme seeks to help these regions to overcome specific development problems resulting, *inter alia*, from their relative isolation in the framework of national economics, in the interest of the local population and in a manner compatible with the protection of the environment. It also supports the establishment and development of co-operative networks on either side of the border and the creation of linkages between these networks and wider Community networks.

2.1.2 **Specific Objectives**

More specifically, the objectives of the 2001 Phare Cross Border Co-operation Programme for the Czech Republic and Poland are:

- To support the Czech Republic’s and Polish Republic’s transformation process and to facilitate the process of European integration;
- To support the further development of the economic potential of border regions by strengthening existing structures, increasing the competitiveness of enterprises, and reviving the overall economy on both sides of the border;
- To overcome problems burdening the border areas, including pollution of the environment and inadequate infrastructure that has an impact on both sides of the border;
- To reduce the peripheral character of these areas, thereby improving the quality of life and creating a co-operative network on both sides of the border.

2.2 **Programme Description**

In accordance with the Joint Programming Document, the 2001 programme for Polish-Czech cross-border cooperation identifies three priority areas for measures on both sides of the common border. The following priorities have been selected:

- Environment: provision of efficient sewers and sewage treatment systems
- Economy: development of efficient and dense road network for local cross-border traffic
- Social Sphere: social activation of local population centres based on the advantages of their cross-border location (people-to-people and institution building)

The preparation process for the 2001 programme, involved an overall review of the economic and social situation in the border regions and a programming workshop with the regional stakeholders, supported these priorities. The programme includes allocations for large infrastructure projects in the above priority areas (transport on both the Czech and on the Polish side) and for a Joint Small Projects Fund. All projects to be supported under the programme will be co-financed from Czech and Polish sources, primarily from resources of the communities in the Czech - Polish border region and of the respective Czech and Polish Governments. The Joint Co-operation Committee (JCC), established on 9th April, 1999, agreed on the programme composition at its meeting in Prague on 26th April, 2000. The criteria for project selection include the cross border impact of projects, methods of project co-financing, and project impact on the environment.

An initial screening has been carried out to assess the programme’s effect on Small and Medium Enterprises. As a result, a fuller assessment is not required. The implementation of the investment projects and of the small projects fund will contribute indirectly to the creation and growth of small and medium businesses.
The JCC approved the following projects (the projects are summarised in fiche format in annex to this document).

2.2.1 PL – Kamienna Gora By-pass – PL01.09.01
The project will result in the construction of the 3.3 km by-pass for the town of Kamienna Gora bypass (stage I) in the course of the national road No 5 from Jeleniogórská street to Przedwojowa street. Construction of the by-pass along the section from Jeleniogórská street (road No 367) to the junction with the modernised section of the road in the area of Przedwojów will significantly improve access to the PL-CZ border crossing in Lubawka. Currently heavy traffic is slowed down and severely congests the centre of Kamienna. This traffic is very detrimental for the natural environment, the dwelling houses and the urban canalization / piping. The works include the construction of a road section of class GP/1/2, a carriageway width 7.00m with 2.0m hard shoulders on both sides, construction of bridge structures, protection of existing underground infrastructure.

2.2.2 PL – Raciborz BCP link – PL01.09.02
The project will result in the construction of the ring road and Voivod road 916 located in and around the town of Raciborz, close to the PL-CZ border. The construction is in line with the traffic study funded by bilateral assistance from Netherlands. The Statement for supporting the modernization of the road no 1/46 Opava-Sudice and road no 916 Pietraszyn-Raciborz has been signed by Polish and Czech local authorities, dated 3.12.1999. Modernization of theses roads will considerable increase traffic safety and limit congestion. Construction of new 866.22 m road section will form centre ringroad and local road communication intersection. There are two linked investments. The first is the construction of the Raciborz’centre ringroad by the construction of a new 866.22m road section, reconstruction of sewege systems, reconstruction of 1362 m rainfall drains, providing information centres, reconstruction of the bus station. Secondly comes the modernization of a 3.12km section of the voivodship road no 916 (Raciborz-state border) including adjustment of verges, pavements, driveways to estates and fields and raising them up to road level, regulation of drainage ditches, and road surfacing and drainage. The cross-border impact of the two above projects under the respective JPD priorities has been confirmed explicitly by the Czech side. In addition, the projects will be co-financed by the Polish authorities and have been confirmed as ready for implementation.

2.2.3 Joint Small Projects Fund (JSPF) – PL01.09.03
The Joint Small Projects Fund (JSPF) supports the key objectives of the Polish-Czech CBC Programme, namely to help the border regions to overcome specific development problems resulting from their relative isolation in the framework of national economics; the JSPF also supports the establishment and development of co-operative networks on both sides of the border and the creation of linkages between these networks and wider European Union networks. The purpose of the support of these projects is to encourage local involvement and to facilitate the implementation of small-scale actions, which may constitute the basis for larger cross-border cooperation projects. Priority will be given to projects that are planned, selected and realised jointly by Czech and Polish partners and supported from both JSPFs on the Czech and on the Polish side. The JSPF aims also at the building and developing of specialist resources for local and regional institutions involved in regional development, groundwork and implementation of cross-border projects in line with EU practice. The JSPF shall support local and regional development across the border through small-scale activities in the fields mentioned in Article 5.1 j) to n) of the Commission Regulation No. 2760/98 of
18 December 1998. Special attention will be given to measures with a strong cross-border cooperation character which are planned in close cooperation between the regional and local authorities in the border areas and which include the establishment or development of shared management structures intended to widen and deepen cross-border cooperation between public and para-public agencies as well as non-profit organisations. Only non-profit making entities are eligible. The maximum grant per project (Phare contribution) is 50,000 EUR, and the minimum grant is 1,000 EUR and the beneficiary’s co-financing contribution to the project is min. 10% of the budgeted project cost. The Small Projects Facility will not include physical investments other than small infrastructure not generating substantial net revenue. Up to 7% of the Phare contribution may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

The JSPF will be implemented in accordance with Commission Regulation 2760/98, article 5.1 and 2; the Practical Guide to Phare, ISPA and SAPARD contract procedures, Section 6; the Phare 2000 Review communication, section 5.1.5, para 6, in conjunction with section 5.1.4; and the Phare Programming Guide 2001, in particular sections 8.2.3 f), 9 and 9.1, and its annex 4 (grant schemes checklist). Implementation of the JSPF is conditional on prior verification and approval of the scheme by the Delegation.

A Regional Steering Committee has been established for the whole Czech-Polish border region and is the principle responsible institution for the operation of the JSPF, under the auspices of the relevant Implementing Agencies identified in Section 6. An operational Agreement has been signed between the two Implementing Agencies for the implementation of the JSPF.

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 Fiches will contain specific clauses on compliance with the relevant EU-legislation in the field of the environment according to the type of activity carried out under each investment project.

3. Budget

The total financial commitment under the **Phare CBC Programme 2001 Czech Republic - Poland** in support of the projects described in section 2 above amounts to **5 MEUR** for Poland, as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Projects</th>
<th>Total Cost (M€)</th>
<th>Phare Allocation (M€)</th>
<th>PL co-financing Allocation (M€)</th>
<th>Indicative Split Between IB / Inv.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PL01.09.01</td>
<td>Kamienna Gora By-pass</td>
<td>4,800</td>
<td>2,500</td>
<td>2,300</td>
<td>-</td>
</tr>
<tr>
<td>PL01.09.02</td>
<td>Raciborz BCP link</td>
<td>4,167</td>
<td>2,000</td>
<td>2,167</td>
<td>-</td>
</tr>
<tr>
<td>PL01.09.03</td>
<td>JSPF</td>
<td>0,660</td>
<td>0,500</td>
<td>0,160</td>
<td>0,500</td>
</tr>
<tr>
<td>Total</td>
<td>9,627</td>
<td>5,000</td>
<td>4,627</td>
<td>0,500</td>
<td>4,500</td>
</tr>
</tbody>
</table>

4. Implementation Arrangements

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) Procedures. The National Aid Co-ordinator (NAC) will have overall responsibility for programming, monitoring and implementation of Phare programmes.
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. 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 Agreements (FAs) between the NF and the Implementing Agency (IA). The Implementing Authority for the Phare Cross Border Co-operation Programme will be under the supervision of a Director within the Ministry of Internal Affairs and Administration; the final responsibility lies with the PAO. The Implementing Agency is the Implementing Authority.

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. 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 IAs 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 National Fund will transfer funds to Implementing Agencies (IA) in accordance with Financing Agreements (FAs) signed between the NFs and the IA where applicable. Each individual FA will be endorsed in advance by the European Commission. The IA is to be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the NAC. The PAO will be responsible for all the operations carried out by the IA.

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 an IA.

The NAO and the PAOs will ensure that all contracts are prepared in accordance with the procedures set out in the DIS Manual, except for the Joint Small Project Fund for which separate measures have been defined by the Commission. The General Guidelines of the Commission for Small Projects Funds and detailed guidelines developed for SPF in Poland, endorsed by the Commission, will be applied for the JSPF. The tendering and contracting of the works will be carried out by the recipient in accordance with the national Procurement Law of Poland together with the following additional conditions which must be observed:

- all work contracts of an expected total value exceeding 50,000 EUR must be awarded following an open tendering procedure;
- every such open tender will be announced in the local press, including a publication in a European Union language newspaper issued in Poland;
• the Phare Programme rules of eligibility and origin must be complied with which means that companies must be registered in an European Union Member State or a Phare beneficiary country, and all goods supplied must have a certificate of origin to state that the goods were manufactured in an European Union Member State or a Phare beneficiary country.

All funds must be contracted by 30 November 2003. All disbursements must be made by 30 November 2005. All projects must be greater than 2 million EUR unless otherwise agreed by the Commission.

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.

5. 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) which will include the NAC, the PAO of the CBC Programmes 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.

6. 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, 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 Art. 15 para 3 of Commission Regulation No. 2222/2000 dated from June 7, 2000, on the communication in case of irregularities and the putting in place of a system to administrate the information in this field 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 Union’s 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.”

7. Visibility/Publicity
The appropriate PAO 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 at the Annex III “Visibility/Publicity”.

8. Special Conditions
In the event that agreed commitments are not met for reasons which are within the control of the Government of the Czech Republic, the Commission may review the Programme with a view, at the Commission’s discretion, to cancelling all or part of it and/or reallocate unused funds for other purposes consistent with the objectives of the Phare programme.