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 I 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

PL0110

Title

Phare 2001 - Cross Border Co-operation Programme

between

Poland and Slovak Republic

Duration

Until 30 November 2003

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 4 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 2004. 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
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: 20...11....DC

for THE RECIPIENT

Mrs Danuta Hübner
Secretary of the Committee
for European Integration

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)
FINANCING MEMORANDUM

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Done at Warsaw
Date: .../.../2012

for THE RECIPIENT

Mrs Danuta Hübner
Secretary of the Committee for European Integration

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. **Strategy**

The Commission Regulation (EC) N° 2760/98 of December 18, 1998 extends the cross-border co-operation to border regions between the CEEC and draws some lessons from previous experience with the CBC programmes.

The current programme is the second one for the Slovak-Polish border region prepared under Commission Regulation (EC) N° 2760/98. The Joint-Co-operation Committee (JCC) was formally established on 16 February 2000. The Joint Programming Document (JPD) as referred to under Art.7.2 of Commission Regulation (EC) N° 2760/98 has been prepared for the period 2000/2. The JPD was prepared under the auspices of the JCC to allow the elaboration of common development strategies and priorities for the Slovak-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.

For the 2001 Slovak-Polish CBC programme, the JCC defines a common set of projects, and this financing proposal for the Slovak-Polish border, takes into account the JPD and further JCC recommendations for projects.

The 2001 Phare budget provides an allocation of 8 MEUR for the support of cross-border cooperation between the Slovak Republic and Poland. Out of this total amount of 8 MEUR, 4 MEUR are earmarked for the Slovak part and 4 MEUR for the Polish part – being jointly the subject of this Financing Proposal. This programme covers:

- medium scale projects which consolidate and build further cross-border transport links;
- Small-scale activities helping to create the conditions for future large-scale activities issues and activities in the fields of environment and transport, economic development, urban development, socio-cultural cooperation, human resources, public services and local democracy;

Slovak 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 Slovak foreign policy. 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 Slovak Republic is regarded by the Polish Government as a development priority area in the view of its strategic location in the process of integration within the European Union.

Within the framework of regional economic policy, the Slovak 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 cross border co-operation programme on both the Polish and Slovak 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.

For the Polish government the region bordering the Slovak 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 sectoral development;
- consistency and complementarity with other internationally aided programmes, in 
  particular, the EU Phare Programme;
- assistance to the Slovak 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 Slovak Republic and Poland are:

- To support the Slovak 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-Slovak cross-border cooperation identifies two priority areas for measures on both sides of the common border. The following priorities have been selected:

• Accessibility - including transport
• Environment

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 two medium scale infrastructure projects in the above priority areas (transport and environment for Slovakia and transport for Poland) and for a Joint Small Projects Fund. All projects to be supported under the programme will be co-financed from Slovak and Polish sources, primarily from resources of the communities in the Slovak - Polish border region and of the respective Slovak and Polish Governments. The Joint Co-operation Committee (JCC), established on 16 February 2000, agreed on the programme composition at its meeting in Cracow on 4th May 2000. The criteria for project selection include the cross border impact of projects, methods of project co-financing, and project impact on the environment.

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. An environmental impact assessment according the EU Environmental Impact Assessment Directive (85/337/EEC as amended by 97/11/EC) will be carried out for all investment projects where applicable according to this directive.

The JCC approved the following projects:

Modernisation of the Polish Voivodship Road No 981 leading to Koniecza BCP (PL0110.01)

The project will result in the upgrading of the Voivodship road No. 981 which is an essential part of the communication routes of the powiat of Gorlice, linking the powiats of Dabrowa and Tarnów with the powiat of Gorlice and, going further to the south through the Konieczna – Becherov border pass – with Slovakia. The road needs immediate modernisation. The existing surface is in poor condition, and it lacks pavements in municipal areas. The project will provide for new bituminous surfaces for the following sections: Moszczenica – Gorlice: length of 5.5 km, Gorlice – Malastów: length of 11 km, Gladyszów – Zdynia: length of 8 km, a 2 metre wide pavement, rainwater drainage system and new bituminous surface of 2 km along the following section: Wegierska Street. In addition a new section of the Stawiska ringroad in Gorlice is to be established, with a 7 metre wide bituminous surface of length of 0.8 km and pavement on one side of the road.
Modernisation of Polish National Road No 9 leading to Barwinek BCP (PL0110.02)

The project will result in the upgrading of National Road 9 which provides direct access to the modernised border crossing at Barwinek. In order to improve integration and cross border communications this route needs considerable improvement. Upgrading of the will consist in the refurbishment of road pavement on sections with total length of 13.3 km. This is for the improvement of road quality, strengthening of road pavement to 115 kN axle load, renovation of drainage conduits, repair and modernization of culverts and road bridge structures, landslide protection, introduction of road traffic safety improvements, additional traffic lanes, renovation of shoulders, construction of bus lay-bys, reconstruction of exit roads and some traffic routing improvements. In addition the project covers the roundabout conversion of the intersection of national road No 9 and national road No 28 in Miejsce Piastowe.
**Joint PL/SK Small Projects Fund (JSPF) - PL0110.03**

The general aim of the JSPF is the support of ‘people to people’ projects with a genuinely cross-border impact. 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 Slovak and Polish partners and supported from both JSPFs on the Slovak 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 specific JSPF objectives in Poland and the Slovak Republic are in accordance with regional priorities: the development of cultural and youth co-operation between neighbouring regions on both sides of the border; support for actions aimed at local and regional socio-economic development, in particular measures in support of tourism development; the support of educational activities for institutions and individuals involved in local/regional development, in local government and in organisations of public interest.

The Small Projects Facility will not include physical investments other than small infrastructure not generating substantial net revenue.

The minimum co-financing contribution of the beneficiary to the project is 10%. As concerns the administrative support for operating the JSPF, the Phare contribution may finance the JSPF’s indirect (overhead) costs up to 7\%\(^1\) of total amount eligible costs as defined in the DIS manual. This is conditional upon the provision of at least the same amount from the regions for covering the management costs of the operation. This financial support is provided to the administrative structures running the JSPF, normally situated in the Euroregions. The minimum Phare contribution per project is 1,000 EUR, the maximum contribution is 50,000 EUR. The maximum PHARE support per project of 50,000 EUR may be raised to a maximum of 300,000 EUR; however, projects of more than 50,000 EUR require ex-ante approval from the Commission Services. Within these limits, the regional Steering Committee may establish differing limits (in particular lowering the maximum contribution of Phare, keeping in view the overall amount available, and increase of the beneficiary’s own contribution).

Implementation of the JSPF will follow the principles described in the “Joint Guidelines for Applicants to Call for Proposals – budget 2001” which will be jointly developed by the Polish and Slovak Phare CBC IAs. They will require endorsement of the EC Delegations in Warsaw and Bratislava prior to the JSPF launching. They will be based on the Practical Guide to Phare, ISPA and SAPARD programmes (chapter 6 on the “Grants” specifically).

At the beginning of 2001 the Polish and Slovak sides worked out the “Joint Guidelines for Applicants to Call for Proposals – budget 2000”. Operation of the JSPF Poland-Slovak Republic budget 2001 will be developed based on these common

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\(^1\) To maintain continuity on the Polish side the ceiling is expected to remain at 5%
guidelines.

The two Implementing Agencies will elaborate a joint set of guidelines (to be endorsed by the respective Delegation of the European Commission). A Regional Steering Committee is established for the whole Slovak-Polish border region and will be the principle policy orientation institution for the operation of the JSPF, under the auspices of the relevant Implementing Agencies identified in Section 6.

* * * * *

- 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.

- In the case of a project coming under Annex II of the Directive 85/337/EEC, as amended by Directive 97/11/EC for which an EIA is not required, the authorities should assess if the project is likely to affect an environmentally sensitive area\(^2\). If so, a declaration from the responsible authorities for nature conservation should be included stating that their conclusion is that the zone's environmental potential will not be directly affected by the project.

3. Budget

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<tr>
<td>TOTAL</td>
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4. Implementation Arrangements

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures. The National Aid Co-ordinator (NAC), who is the Minister Responsible for the Co-ordination of the Phare Programme, will have overall responsibility for programming, monitoring and implementing Phare programmes in Slovakia. The National Aid Co-ordinator and the National Authorising

\(^2\) Definition of environmentally sensitive areas:–

a) areas protected by national legislation;

b) internationally important wetlands (sites fulfilling RAMSAR Convection ornithological criteria) and other sites meeting the criteria which would require designation as Special Protected Areas under Directive 79/409/EEC;

c) areas to which the Bern Convention on the conservation of European wildlife and natural habitats (article 4) applies, in particular site meeting the criteria of the Emerald network;

d) Breeding or resting place of an animal species listed in Annex IV of Directive 92/43/EEC (Article 12);
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 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 will be carried out by the competent National Control Authority with respect to the implementation of the programme in both partner countries.

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and Poland on 24th 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 Agencies (IAs). 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 PAOs 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 IAs. 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 HQs, 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 Implementing Authority for the Phare Cross Border Co-operation Programme will be under the responsibility of a Director; within the Ministry of Internal Affairs and Administration. Final responsibility lies with the PAO. The Implementing Agency is the Implementing Authority for all projects.

The National Fund will transfer funds to IAs, in accordance with Financing Agreements (FAs) signed between the NFs and the IAs where applicable. 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 IAs must each 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 relevant 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 or the CFCU.

The NAO and the PAOs will ensure that all contracts are being prepared in accordance with the procedures set out in the DIS Manual.

All contracts must be concluded by 30 November 2003. All disbursements must be made by 30 November 2004.

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 both respective the National Funds 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 in the Annex “Visibility/Publicity”.

8. Special Conditions

The Slovak and Polish Governments will carry the legal liability to implement the projects specified under the programme to a satisfactory outcome and shall carry out by its own means any work on which contractors default. In the measures specified under this programme, in which the European Union grant contributes to the financing of revenue generating activities, the Commission shall determine, in consultation with the Implementing Authority, specific arrangements for financing which could include co-financing by the project revenues or reimbursement of the initial grant.

The European Union's financial contribution is limited to 4 MEUR per country (in total 8 MEUR). This contribution will not cover any additional costs, cost increases or extensions, which must therefore be catered for by the implementing and contracting authorities.
In the event that agreed commitments are not met for reasons which are within the control of the Government of Slovakia and Poland respectively, 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.