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 the Republic 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: 2002/000-196.01 till 2002/000-196.05
Title: 2002 National Programme for Poland - part I
Duration: Until 31 July 2004

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 57,866,773€ 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 31 July 2004 subject to the provisions of his 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 31 July 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
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 .......... Done at ..............
Date Date

for THE RECIPIENT for THE COMMUNITY

....................... ..............................

....................... ..............................

Encl.
1. Framework Agreement (Annexes A & B)
2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)
Annex C - Special Provisions

1. Strategy

The Phare 2001 programme draws on the findings of the 2001 Regular Report and has been elaborated on the basis of the overall priorities outlined in the 2001 Accession Partnership to ensure that assistance would be provided in those areas which have the greatest needs in view of preparing for EU membership. In order to implement the priorities set out in the Accession Partnership, the Polish authorities have elaborated a National Programme for the Adoption of the Acquis.

The Accession Partnership continues to provide the single framework through which the priority areas for further work are identified regarding progress to be made by Poland towards membership of the European Union, the financial means available to implement these priorities and the conditions which will apply to that assistance.

All projects proposed by Poland for Phare 2002 - Part I were examined to see whether they were relevant to the priorities of the Accession Partnership and the Regular Report, whether they would have an impact on Poland’s alignment or implementation of the acquis, whether they were cost-effective, technically and institutionally ready and whether conditionalities and implementation arrangements were clear.

This first part of the Phare 2002 programme is focusing mainly on institution building and investment in the acquis in order to strengthen the administrative capacity of Poland to adopt and implement the acquis in the fields of agriculture, transport and energy, justice and home affairs, finance, labour, internal market, and participation in Community programmes and agencies.

As a result, a National Programme - Part I has been prepared, amounting to 57,866,773 €, around the following objectives:

- Objective 1: Strengthen institutional and administrative capacity
- Objective 2: Internal market
- Objective 3: Justice and Home Affairs
- Objective 4: Agriculture
- Objective 5: Participation in Community Programmes and Agencies

It is currently planned that the National Phare 2002 programme will be presented under three different financing proposals: the one actually presented, the second part of the National Programme related to institution building and investment in the acquis, and Economic and Social Cohesion. Cross border cooperation programmes will also be the subject of separate financing proposals. In 2002 the basic Phare allocation for Poland will be € 398 million. However, up to € 52 million of additional funds will be made available to support enhanced institutional building actions, subject to the presentation by Poland of an action plan on administrative capacity as underlined by the Commission's Enlargement Strategy Paper, published on 13 November 2001. This could potentially therefore amount to a total of € 450 million of Phare funds for Poland in 2002.
2. Objectives and Description

Objective 1: Strengthen institutional and administrative capacity

Project 2002/000-196.01.01 Sustainable Energy Policy
This project addresses a priority of the 2001 Accession Partnership and will strengthen the administrative capacity of the National Energy Conservation Agency in order to allow it to implement energy efficiency and renewables policies. The project also aims at harmonising the national objectives with EU legislation and at defining measures regarding energy efficiency, renewables and related environmental issues. The institution building part of this project will be implemented via twinning. The investment part is related to co-funding of technical equipment for the Energy Conservation Agency.

Project 2002/000-196.01.02 Civil aviation and Railway sector
This project addresses two priorities of the 2001 Accession Partnership. The sub-project on Civil aviation aims at strengthening the Civil Aviation Authority, the implementation of EU legislation and standards in this area, a.o. regarding aviation safety and aviation staff qualifications. Part of the institution building for this project will be implemented via twinning. The investment part concerns equipment for IT systems in the above mentioned areas (e.g. Civil Aircraft State Register, Information system for aviation infrastructure). This project will not start unless the Civil Aviation Law is adopted and signed.

The sub-project on the Railway sector aims at the implementation of the rules included in the new Community regulations for the railway sector ("Railway package"), including training of the officials of the Rail Transport Office in these new regulations. The institution building part will be implemented via TA. The investment part concerns IT equipment for the Office of the Rail Market Regulator.

Project 2002/000-196.01.03 Public Employment Services
This project addresses a priority of the 2001 Accession Partnership and aims at preparing the Public Employment Services to implement the European Employment Strategy and to participate in the EURES system. The project will include training of staff of national, regional (Voivodship) and local (Powiat) labour offices. The institution building part of the project will be implemented via TA. The investment part concerns equipment for the IT system "National Job Offers Database" for the national and regional level.

Project 2002/000-196.01.04 Occupational health and safety in the SME sector
This project addresses a priority of the 2001 Accession Partnership and aims at promoting measures related to the improvement of occupational health and safety in small and medium-sized enterprises in a certain number of industry sectors. The project addresses employers, employees and representatives of the chambers of commerce. It will be implemented via a grant scheme for SMEs and technical assistance.

Project 2002/000-196.01.05 Modernisation of the system of tax collection and taxpayers control
This project addresses a priority of the 2001 Accession Partnership and aims at aligning the tax administration to EC standards both on the level of the structure of the administration (policy and management functions) and the creation and/or use of specific IT tools (Tax control supporting system and Tax information system). The institution building part of this project will
be partly implemented via twinning. The investment part of the project concerns IT equipment for the "Tax Control IT Supporting System" and the "Tax Information System".

Objective 2: Internal market

Project 2002/000-196.02.01 Medicinal products surveillance and registration system
This project addresses a 2001 Accession Partnership priority and aims at strengthening the surveillance system for medicinal products and their registration subject to a full harmonization of the legislation on pharmaceuticals with EU standards. The institution building part of this project will be implemented via twinning. The investment part concerns IT equipment related to the systems necessary to achieve the above mentioned goals, as well as specific software and equipment in relation to the future involvement in the European information tracking system.

Project 2002/000-196.02.02 Strengthening Poland's Customs Border as Part of the Future Eastern EU Border
This project addresses a 2001 Accession Partnership priority and is a follow-up of previous years’ projects, aiming at strengthening and further developing the post-clearance customs control system, and bringing the customs aspects of border crossings, including maritime borders, up to EC standards. The institution building part of this project will be implemented via twinning. The investment part of the project concerns the extension of the IT communication system at the future Eastern border, and detection and identification equipment for the maritime borders.

Objective 3: Justice and Home Affairs

Project 2002/000-196.03.01 State Border Protection System II
This project will be a continuation of activities started and financed by the Phare programme in previous years and will address a priority of the Accession Partnership 2001. Under the overall supervision of twinning, this project will cofinance surveillance equipment to further strengthen the capacities of Poland’s border guard services in view of future Schengen requirements.

Objective 4: Agriculture

Project 2002/000-196.04.01 Integrated information system for seed certification and marketing
This project addresses a 2001 Accession Partnership priority and aims at the implementation of EU regulations regarding seed marketing, including setting up the registration and information system, the registration and control of producers, importers and distributors, and a seed labelling system. The institution building part of the project will be implemented via TA. The investment part concerns the IT system for the Integrated Information System of the Seed Inspection Service and for the eLearning system for its staff.

Objective 5: Participation in Community Programmes and Agencies - part I

Project 2002/000-196.05.01 Participation in Community Programmes and Agencies - part I
On the basis of Association Council decisions and Agreements, candidate countries may participate in certain European Community programmes and agencies. The Phare programme can be used to help a Candidate Country to meet on the basis of an increasing contribution
from the Candidate Country part of the costs of participating in those programmes and agencies. As from 2001, these funds will be made available each year as part of the Phare national programme so as to co-finance the financial contribution to be paid by the country to participate in these programmes and agencies in the following year. This programme also includes part of the costs of participating in those programmes for which decisions were taken more recently. It should be noted that the proposed participation and the related financial contribution are subject in certain cases to the conclusion of the relevant Association Council Decisions and/or Memoranda of Understanding. A maximum of 10% of the Phare national programme may be used to co-finance participation in Community programmes and Agencies other than the Research and Development framework programme. Participation in the RTD programme does not count towards the 10% limit.

This project provides Phare funding towards the part-financing of the cost of Poland (excluding administrative costs) towards the participation in, inter alia, the following programmes: Leonardo da Vinci II, Socrates II, Youth, Culture 2000, Media Plus, Save II, Altener II, and the European Environment Agency.

3. Budget

<table>
<thead>
<tr>
<th>Project No.</th>
<th>Project Title</th>
<th>Total Institution Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Phare Building (indicative)</td>
</tr>
<tr>
<td>2002/000-196.01</td>
<td>Objective 1: Strengthen institutional and administrative capacity</td>
<td>16.8 10.113 6.687</td>
</tr>
<tr>
<td>2002/000-196.02</td>
<td>Objective 2: Internal Market</td>
<td>8.0 1.7 6.3</td>
</tr>
<tr>
<td>2002/000-196.03</td>
<td>Objective 3: Justice and Home Affairs</td>
<td>11.0 0.0 11.0</td>
</tr>
<tr>
<td>2002/000-196.04</td>
<td>Objective 4: Agriculture</td>
<td>2.0 0.41 1.59</td>
</tr>
<tr>
<td>2002/000-196.05</td>
<td>Objective 5: Participation in Community Programmes/Agencies</td>
<td>20.066773 0.0 20.066773</td>
</tr>
<tr>
<td>Total Phare contribution (million EUR)</td>
<td>57.866773 12.223000 45.643773</td>
<td></td>
</tr>
</tbody>
</table>

The total Phare contribution under this programme will therefore not exceed 57,866,773€.
4. Implementation Arrangements

a.) Financial and Project Management by the Candidate Country

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures\(^1\).

The National Aid Co-ordinator (NAC) will have overall responsibility for programming, monitoring and implementation of Phare programmes. The National Authorising Officer (NAO) and the Project Authorising Officers (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the \textit{DIS Manual} and other instructions of the Commission, and that all contracts are being prepared in accordance with the \textit{Practical Guide for PHARE, ISPA and SAPARD}\(^2\).

The NAC and the NAO 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 NAO, will supervise the financial management of the Programme, and will be responsible for reporting to the European Commission. The NAO 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 reporting and project information system is functioning. This includes the responsibility of reporting all suspected and actual cases of fraud and irregularity. The NAO shall have the full overall accountability for the PHARE funds of a programme until the closure of the programme.

b.) Project size

All projects will be greater than 2 M€.

c.) Contracting and disbursement deadline

All contracts must be concluded by 31 July 2004. All disbursements must be made by 31 July 2005.

d.) Recovery of Funds

Any proven irregularity or fraud discovered at any time during the implementation of the programme will lead to the recovery of funds by the Commission.

\(^1\) taking into consideration the rules set down in the annex of Council Regulation 1266/1999

\(^2\) The Practical Guide has replaced section F (“Procurement”) of the DIS Manual
If the implementation of a measure appears not to justify either a part or the whole of the assistance allocated, the Commission is to conduct an appropriate examination of the case, in particular requesting the beneficiary country to submit its comments within a specified period of time and to correct any irregularity.

Following the examination referred to in the previous paragraph, the Commission may reduce, suspend or cancel assistance in respect of the measures concerned if the examination reveals irregularity, an improper combination of funds or a failure to comply with one of the conditions in the financing memorandum and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission’s approval has not been sought. Any reduction or cancellation of the assistance is to give rise to recovery of the sums paid.

Where the Commission considers that an irregularity has not been corrected or that all or part of an operation does not justify either all or part of the assistance granted to it, the Commission is to conduct a suitable examination of the case and request the beneficiary country to submit its comments within a specified period. After the examination, if the beneficiary country has undertaken no corrective measures, the Commission may:

(a) reduce or cancel any advance;

(b) cancel all or part of the assistance granted to the measure.

The Commission is to determine the size of a correction taking into account the nature of the irregularity and the extent of any failures in the management and control systems.

Any funds not used by the expiry date of the programme will be recovered by the Commission. A final written declaration with supporting documentation shall be issued by the NAO just after the end of the disbursement period of the Financing Memorandum showing the total amount contracted and disbursed. A final bank reconciliation showing the existing balances in the NF/IA/CFCU shall also be enclosed.

Notwithstanding the recovery of unused and ineligible funds after expiry of the Financing Memorandum, a complementary recovery order may be issued after the final audit of the reliability and consistency of contracts and disbursements as well as their compliance with the provisions of the Financing Memorandum has been carried out, taking into account the independent opinion of the final audit.

The National Authorising Officer will ensure the reimbursement of any unused funds or any sum wrongly paid within sixty calendar days of the date of notification. If the NAO does not repay the amount due to the Community, the beneficiary country shall refund this amount to the Commission. Interest on account of late payments shall be charged on sums not repaid by applying the rules specified in the Financial Regulation governing the Community Budget.

e.) Financial Flows

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and Poland in December 1998. Funds will be
transferred following requests from the NAO onto a separate bank account, denominated in €, which will be opened and managed by the NF in the Central Bank.

aa) Transfer of Funds to the National Fund

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)/Central Finance and Contracts Unit (CFCU). 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/CFCU and the manner in which the payment function will be carried out.

Two replenishments will be made of up to 30% of the funds to be managed locally* and the final payment of up to 20% or the full balance of the budget whichever is the lesser amount. The first replenishment will be triggered when 5% of the budget* has been disbursed by the IAs and the CFCU. The second replenishment may be requested when 35% of the total budget* in force has been disbursed. The final third replenishment will be paid when 70% of the total budget* in force is disbursed. Exceptionally the NAO may request an advance payment of more than the percentages mentioned above in accordance with the procedures laid down in the aforesaid Memorandum of Understanding. Save for express prior authorisation from the Commission HQs, no replenishment may be made if the trigger points mentioned above have not been respected.

bb.) Transfer of Funds to the Implementing Agencies

The National Fund will transfer funds to IAs, including the Central Financing and Contracting Unit (CFCU), in accordance with Financing Agreements (FAs) signed between the NFs and the IAs/CFCU where applicable. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of the financial administration of the sub-programme in line with Art. 13 of the MoU on the establishment of the National Fund. Each individual FA will be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the CFCU/IA there will be no transfer of funds from the NF to the CFCU/IA. The CFCU and 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 CFCU/IA.

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

* excluding the amount foreseen for the Community programmes
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.

cc.) Transfer of Funds to the National Fund for Participation in Community Programmes and Agencies

A single advance will be made to the National Fund to cover the full amount of the PHARE part of the financial contribution for participation in Community programmes and agencies. This advance will be made following signature of the Financing Memorandum and upon request from the National Fund.

This advance is separate from the advances made for the rest of the programme. However, it should be noted that the Phare contribution for each programme will only be transferred when the Association Council Decision or Memorandum of Understanding establishing the terms and conditions for participation in that programme is in force.

If there is a delay in the entry into force of some of the Memoranda of Understanding the payment to the National Fund may be divided into two or more tranches, so that 100% of the funds necessary for the programmes in force can be transferred immediately.

The National Fund will be responsible for transferring the funds back to the Commission, following the call for funds of the Commission’s Directorate General responsible for the programmes concerned and within the deadlines requested.

dd.) Interest

In principle, all bank accounts\(^3\) 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.

f.) Implementing Agencies will be responsible for sub-programmes as follows:

Central Financing and Contracting Unit: all projects, except for:
- Project 2002/000-196.01.04 Occupational health and safety in the SME sector: Polish Agency for Enterprise Development, and
- Project 2002/000-196.03.01 State Border Protection System II: Implementing authority for the Phare Cross Border Co-operation Programme.

g.) Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive\(^4\) are fully applicable for all investment projects under PHARE. If the EIA-directive has not yet been fully transposed, the procedures should be similar to the ones established in the above-mentioned

\(^3\) in particular, but not exclusively, accounts run by the NF, the CFCU and IAs
directive. If a project would fall within the scope of annex I or annex II of the EIA Directive, the carrying out of the EIA-procedure must be documented\(^5\).

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-Directive\(^6\) must be documented\(^7\).

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.

**h.) Special rules for certain components for the programme**

**Twinning**

The amounts earmarked for twinning projects will cover the eligible costs (as set down in the DIS instructions) for implementing the work plan agreed between the Member State and the Applicant Country. The eligible costs may include costs incurred by the selected Member State during the preparation of the twinning covenant in the period between signature of the Financing Memorandum and the final notification of the financing approval of the covenant.

**Grant Schemes**

For grant schemes whose procedures and formats are not covered by the current DIS rules, the precise implementation arrangements will be specified in the relevant project fiches in line with the following principles:

- the procedures and formats to be used in the implementation of the schemes and award of the grants will follow the provisions of the Practical Guide. In particular, due care will be given to the selection process of the beneficiary projects, which has to be done at technical level through selection committees composed of experts appointed by the authorities which are co-financing the schemes as well as by the relevant administrations and interest groups involved in the schemes.

- The competent PAO for the programme under which the grant scheme is financed has to retain his/her contractual and financial responsibility for the implementation of the schemes. In particular, the PAO has to formally approve the call for proposals, application forms, evaluation criteria, as well as the selection process and results. The PAO has also to sign the grant contracts with the beneficiaries and to ensure adequate monitoring and financial control under his/her authority and responsibility. With this reservation, the management of the schemes can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.

- The ex ante approval of the Commission (Delegation in Warsaw) will be required for the call for proposals, application forms, evaluation criteria, the selection procedures (including

---

\(^5\) in **Annex EIA** to the corresponding investment project fiche  
\(^6\) **DIR 92/43/EEC; OJ 206/7; 22.7.1992**  
\(^7\) in **Annex Nature Conservation** to the corresponding investment project fiche
the composition of the committees) and results (list of projects to be funded). The grant contracts signed by the PAO will be subject to the ex-ante control of the EC Delegation.

The implementation of the selected projects through the provision of works, supplies and services sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement regulations in the Practical Guide. The decentralised system established for CBC small projects is to be applied to all such contracts below 300 000 EUR (or any increased threshold to be fixed by EC Headquarters for small project funds under CBC programmes). Tenders and contracts above this threshold will be presented to the EC Delegation for ex ante approval. The financial commitments in Phare terms will be effected at the date of signature of the grant contracts by the competent PAO. Project implementation and all Phare disbursements are to be done before the expiry date of the present Financing Memorandum.

5. Monitoring and Assessment

Project implementation will be monitored through the Joint Monitoring Committee (JMC). It includes 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 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 consultant (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.

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

6.) Audit and Anti-Fraud Measures

a.) By the Candidate Countries

Each year an audit plan and a summary of the findings of the audits carried out shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the programme.

Beneficiary countries shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or Community controls.

Irregularity shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the
general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Fraud shall mean any intentional act or omission relating to:

(i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities,

(ii) non-disclosure of information in violation of a specific obligation, with the same effect,

(iii) the misapplication of such funds for purposes other than those for which they are originally granted.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94\(^\text{15}\).

In particular, all suspected and actual cases of fraud and irregularity as well as all measures related thereto taken by the national authority must be reported to the Commission services without delay. Should there be no suspected or actual cases of fraud and irregularity to report, the beneficiary country shall inform the Commission of this fact at the end of each quarter.

b.) By the Commission

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 audits by 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 may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96\(^\text{14}\).

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.

7. 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 set down in the Annex “Visibility/Publicity”.

\(^{15}\) OJ L 253; 7.10.00; p. 5-14

\(^{14}\) OJ L 292; 15.11.1996; p. 2-5
8. 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 Phare programme.
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 co-operation 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:


Specific provisions concerning ISPA are included in:


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, Ispa or Sapard:

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

- measures targeting applicants for public aids part-financed by Phare, ISPA or SAPARD in the form of 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, ISPA or SAPARD 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 co-operation 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, ISPA or SAPARD Programmes, is providing financial support. The notification of aid sent to beneficiaries shall mention the amount or percentage of the assistance financed by the Programme in question. 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, ISPA or SAPARD 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, ISPA or SAPARD Programmes 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, ISPA or SAPARD 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, Ispa or Sapard Programmes, 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 relevant Programme (Phare, Ispa or Sapard).

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.