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: 2003/005-710
Title: 2003 National Programme for Poland, Part II
Duration: Until 30/11/2005

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 147,173,579 € 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 30/11/2005 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 execution of contracts of THE EC GRANT is 30/11/2006. 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 contract execution period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the expiry date for execution of contracts of the EC GRANT. All the funds which have not been disbursed shall be returned to the Commission.
ARTICLE 4 - ADDRESSES

Correspondence relating to the execution of THE MEASURE, stating THE MEASURE'S number and title, shall be addressed to the following:

for the COMMUNITY:

Delegation of the European Commission in Poland
Emilii Plater 53
PL-00-113 Warsaw
Poland
Fax: (+48-22) 520 82 82

for THE RECIPIENT:

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

ARTICLE 5 - NUMBER OF ORIGINALS

This Memorandum is drawn up in duplicate in the English language.

ARTICLE 6 - ENTRY INTO FORCE

This Memorandum shall enter into force on the date on which it has been signed by both parties. No expenditure incurred before this date is eligible for the EC GRANT.

The Annexes shall be deemed an integral part of this Memorandum.

Done at Warsaw, 2003-12-05
Date

SEKRETARZ
Komitetu Integracji Europejskiej
MINISTER

[Signature]

for THE RECIPIENT

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

Done at Warsaw, 2003-12-05
Date

Bruno Dethomas
Head of Delegation

Encl.
2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)
Annex C - Special Provisions

1. **Strategy**

The Phare 2003 programme draws on the findings of the 2002 Regular Report, the 2002 Action Plan on administrative and judicial capacity, 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 the upcoming EU membership. A majority of the national projects also builds on previous Phare financed projects in the respective sectors.

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 2003 were examined to see whether they were relevant to the priorities of the Accession Partnership, the Regular Report and the Action Plan, 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.

Phare is focusing in 2003 on institution building projects 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 and fisheries, environment, justice and home affairs, finance, labour, internal market, economic and social cohesion, and participation of Poland in Community programmes and agencies.

As a result, a National Programme Part II has been prepared, amounting to € 147,173,579 around the following objectives: Strengthen institutional and administrative capacity; Internal market; Justice and Home Affairs; Agriculture and Fisheries; Environment; and Future External Border Initiative.

2. **Objectives and Description**

**Objective 1: Strengthen Institutional and Administrative capacity**

**Project 01.01: Communicable diseases monitoring system.** This project will co-finance the modernisation of the Communicable Disease Monitoring and Control system on local, regional and national level in Poland, aligning it with the Community Network on communicable diseases. The project includes an investment part for the required IT systems (hard- and software) and a technical assistance part which will provide the necessary training on epidemiological surveillance, data analysis, outbreak management and the early warning/response system.

**Project 01.02: Alleviation of social effects of steel restructuring.** This project will cofinance several measures in order to reduce the social effects of the restructuring of the steel sector in Poland. These measures will include start-up and investment grants as well as consulting and training services. In the Treaty of Accession it is stated that the Commission and Council will closely monitor the implementation of the restructuring.
and the fulfilment of the commitments with regard to the steel sector. The implementation of this Phare project will also be linked with the results of this monitoring process.

**Project 01.03: Anti-Corruption.** This project will co-finance institution building for the strengthening of the National Anti-Corruption Strategy, focusing on training for ethical advisors among civil servants, and information and awareness raising activities for the public at large. The project will be implemented through twinning and technical assistance.

**Project 01.04: Public Administration.** This project will co-finance institution building in order to improve the efficiency of public administration in Poland, through improvement of the Human Resource Management capacity and the recruitment system and through the creation of a Civil Service Development Center. These activities will address both the national and the regional level. The project will be implemented through twinning.

**Project 01.05: Preparing Interreg III.** This project will co-finance Institution building, investment and grant schemes, respectively to develop the implementation capacity of all actors in preparing to work with the Interreg III programme and its structure, mainly through training activities, and to support the development of projects eligible for Interreg III A, B and C. An amount of €1 million is specifically dedicated to the Eastern border of Poland and is as part of the Future External Border Initiative (see below). The institution building part of the project will be implemented through technical assistance. The investment part of the project concerns related IT equipment.

**Project 01.06: ERDF project pipeline preparation.** This project is complementary to the projects *Strengthening implementation of Cohesion Fund and ERDF in the transport sector* and *Implementation of IROP on central and regional level* which were approved under part I of the National Programme and will co-finance Institution building (technical assistance) to assist the development and implementation capacity of the ERDF project pipeline.

**Project 01.07: Strengthen Evaluation capacity.** This project will co-finance Institution building to improve the monitoring and evaluation capacity regarding the implementation of EU funded projects, which, following the implementation of the Extended Decentralised Implementation System will be of the full responsibility of the Accessing Country. The project will be implemented through technical assistance.

**Project 01.08: Digital cadaster.** The project will co-finance the further digitisation of the Polish cadaster, improving as such its availability for strategic and informational goals, including in the sectors of agricultural, economic and real estate development. The project will be implemented through an investment contract to convert the analogue cadastral maps into vector formats.

**Project 01.09: Support to the European integration process - Flexible reserve.** This project will cofinance impact studies, needs assessments, budgetary impact analyses and other technical assistance, expertise and twinning light, which might be needed to help Poland in the process of adoption and/or implementation of the acquis as needs arise regarding issues which were not covered elsewhere in the Phare 2003 programme for Poland.

**Objective 2: Internal market**
Project 02.01: Food Safety Strategy. This project will co-finance Institution building and investment in order to improve the efficiency of food control in terms of food safety. The Institution building part will be implemented through technical assistance regarding training and application of new methods of food analysis and the improvement of the existing information network, covering local, regional and national level. The investment part covers both related IT equipment and software, and laboratory and sampling equipment.

Objective 3: Justice and Home Affairs

Project 03.01: Twinning for Border Services. This project will co-finance institution building for the Border Guard, in the form of twinning, in strengthening the following areas: border control and surveillance; combatting organised crime and illegal migration; anti-corruption measures; quality management; and financial and human resources management.

Project 03.02: Future External Border. This project is a continuation of previous years' projects and will co-finance investment and technical assistance related to the protection of the EU future external border, and more specifically in regard to the third section of the Radar System for the Polish sea border area; a pilot stationary perimeter protection system for the Green border; and to the implementation of criminal analysis for the Border Guard. The technical assistance will be used for tender preparation and appraisal, as well as for the follow-up of the technical implementation of the investment part.

Project 03.03: Road Border Crossing Hrebenne. This project will co-finance investment in the third stage of the upgrading of this Polish-Ukrainian road border crossing to European security standards, while at the same time increasing the border crossings' safety, capacity and efficiency. The project includes several control and operating buildings, tele-information and radio-communication networks, as well as access and area roads.

Project 03.04: Road Border Crossing Grzechotki-Mamonowo. This project will co-finance investment in the second stage of the upgrading of this Polish-Russian road border crossing to European security standards, while at the same time increasing the border crossings' safety, capacity and efficiency. The project includes the construction of a Custom Administration Building, a Border Guard Building, a Border Crossing Service Building, Controllers Kiosks and Station Service Buildings.

Project 03.05: Twinning fight against organised crime. This project will co-finance institution building under the form of twinning for the Police and will focus on the fight against economic crime, drug related crime, terrorism and organised crime, crime prevention, investigation, intervention and psychological assistance, and on the implementation of the Schengen Information System.

Project 03.06: Fight against Drugs. This project will co-finance institution building and investment. The institution building part will be implemented through twinning and will focus on the implementation and evaluation of the National Drug Strategy, further development of the National Focal Point and the network of regional contact points, strengthening co-operation on national and international level, and on the development of an early warning system regarding synthetic drugs. The investment part will cover related IT equipment and digital equipment for training and scientific studies.
**Project 03.07: Fight against crime IV.** This project is a continuation of previous years’ projects and will co-finance institution building and investment related to the improvement of the efficiency of combating crime by the Polish Police Force. The investment part of the project will cover the expansion of the Police IT network, modernisation of the (radio-)communication systems, computerisation of the forensic science service and specialised equipment for the fight against organised crime, terrorism, and drug related crime. The institution building part will be implemented through technical assistance and will focus on training in the area of development and modernisation of the Police organisation, as well as on Quality Management.

**Project 03.08: Improving the Justice system.** This project will co-finance institution building and related investment focussing on strengthening the first level of the judicial system, improving the efficiency of the selection, evaluation and promotion system within the judiciary, training of judges in EU law, and improving the efficiency of the post-penitentiary assistance system in co-operation with NGOs, with specific attention towards youth criminality. Part of the institution building will be implemented through twinning.

**Objective 4: Agriculture and Fisheries**

**Project 04.01: Phytosanitary and Seed administration.** This project will co-finance Institution building and investment and will further strengthen the Phytosanitary and Seed administration including inspection in line with the rules of the Internal Market, training for phytosanitary field inspectors, and the functioning of the laboratories of the Plant Protection and Seeds Service. The investment part will cover related laboratory equipment, while the institution building part will be implemented through twinning.

**Project 04.02: National Reference Laboratory Pulawy.** This project will co-finance Institution building and investment, aiming at the modernisation of the buildings of the national reference laboratory in Pulawy, as well as the purchase of laboratory equipment and training of the staff in line with Community Reference Laboratories standards. The institution building part of the project will be implemented through technical assistance.

**Project 04.03: TSE control in Poland.** This project will co-finance institution building and related investment and will provide advisory and training support in implementing EU standards in TSE control. The investment part will support the modernisation of the equipment of several Veterinary Hygiene laboratories and will renew the number of TSE tests for the period 2004-2005. The institution part of the project will be implemented through twinning light (improved organisation of the laboratory network and harmonisation of diagnostic methods) and technical assistance (training).

**Project 04.04: Eradication of rabies among foxes.** This project will co-finance investment and will assist Poland in the preventive control on, and the minimalisation of rabies cases among wildlife (foxes) on its territory by implementing an effective vaccination programme in compliance with EU recommendations.

**Project 04.05: Improving the LPIS system.** This project will co-finance Institution building and related investment and will contribute to the improvement of the Land Parcel Identification System. The investment part will focus on vectorisation of the agricultural layer and on equipment related to the LPIS database. The institution building
part is dedicated to the training of staff regarding the management of the LPIS database and its related GIS technology, and will be implemented through twinning.

**Project 04.06: Strengthening EAGGF.** This project will co-finance institution building in order to further strengthen the institutions involved in the implementation of rural development measures financed from the EAGGF. The project will be implemented through twinning (strengthening of the implementation of the Sectoral Operational Programme and of the role of the paying agency for the Rural Development Plan) and technical assistance (training).

**Objective 5: Environment**

**Project 05.01: IPPC and EIA implementation.** This project is the continuation of the 2002 project and will co-finance institution building and related investment to further improve administrative capacity of the central, regional and local authorities, inspectorates, and operators in their efforts to monitor, enforce and apply the requirements of IPPC and EIA directives. The institution building part will be implemented through twinning (advisory services and development of training programmes for different levels and target groups) and technical assistance (implementation of the training programmes). The investment part consists of related IT equipment for local and regional level.

**Project 05.02: Implementation of the Water Framework Directive.** This project is the continuation of the 2002 project and will co-finance institution building and related investment to further improve the implementation of the Water Framework Directive, in particular through the introduction of a river basin oriented water management system and water management instruments, addressing local, regional and national levels. Part of the institution building element of this project will be implemented via twinning. The investment part will cofinance IT equipment for the data collection and the processing system, and laboratory equipment for the national and regional inspectorates of environmental protection and for the national and regional water boards.

**Objective 6: Future External Border Initiative.**

Part of the allocation for this objective is included in project **01.05: Preparing Interreg III** (above) in which € 1 million is specifically allocated to Poland’s eastern border.

**Project 06.01: Business Related Infrastructure Project Fund.** This project will co-finance a business related infrastructure project fund (BRIPF) to support economic cross border co-operation of Polish institutions situated at the Eastern border of Poland through the creation of improved infrastructural conditions supporting business development in the Polish eastern border region, contributing to the economic, environmental and touristic development of the eligible districts and support cross-border networks, provided, inter alia, the following criteria are met: have a strong and evident cross border impact; funding will only be used on the territory of Poland; located in two lines of poviatas adjacent to the Eastern border; have a public character and not generate substantial net revenue; be related to small projects not exceeding € 300,000 of Phare support in each case; develop co-operative networks on both sides of the border notably in the Euroregions along the border; be defined on the basis of local/regional needs; covering the following priority areas in the first place: economic development, cross border tourism, environmental protection. Implementation of this BRIPF will follow the
guidelines for small infrastructure project funds followed in previous years on the Poland-Germany border. It is expected that actions undertaken by this project will find complementary funding under parallel schemes provided by the Tacis programme.

**Project 06.02: Eastern Border Small Project Fund.** This project will co-finance a small project fund (SPF) to support the development of cross border co-operation of the Polish institutions situated on the eastern border with their foreign partners and aiming at small scale people-to-people actions, excluding infrastructure projects. To achieve this objective, all projects supported within the Fund will have to show clear benefits for inhabitants from the neighbouring country in the border region, provided, inter alia, the following criteria are met: have a strong and evident cross border impact; funding will only be used on the territory of Poland; located in two lines of poviaty adjacent to the Eastern border; have a public character and not generate substantial net revenue; be related to small projects not exceeding € 50,000 of Phare support in each case; develop co-operative networks on both sides of the border notably in the Euroregions along the border; be defined on the basis of local/regional needs; covering the following priority areas in the first place: cultural exchanges, local democracy, human resources, economic development and tourism, cross border studies and development analysis, environmental protection. Implementation of this SPF will follow the guidelines for small project funds followed in previous years on the Poland-Germany border. It is expected that actions undertaken by this project will find complementary funding under parallel schemes provided by the Tacis programme.
### 3. Budget (£ million)

<table>
<thead>
<tr>
<th>Project No.</th>
<th>Project Title</th>
<th>Total Phare Budget</th>
<th>Investment (indicative)</th>
<th>Institution Building (indicative)</th>
</tr>
</thead>
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<tr>
<td>2003/1</td>
<td>Objective 1: Strengthen institutional and administrative capacity</td>
<td>39.496079</td>
<td>23.99875</td>
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<tr>
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<td>Alleviation of social effects of steel restructuring</td>
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<td>3</td>
<td>Anti-corruption</td>
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<td>4</td>
<td>Public Administration</td>
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<tr>
<td>5</td>
<td>Preparing Interreg III</td>
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<tr>
<td>6</td>
<td>ERDF project pipeline preparation</td>
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<td>7</td>
<td>Evaluation</td>
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<td>8</td>
<td>Digital Cadaster</td>
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<td>Flexible Reserve</td>
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<td>Future external EU border - investment</td>
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<tr>
<td>5</td>
<td>Twinning Fight against organised crime</td>
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<td>4</td>
<td>Eradication of rabies among foxes</td>
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<tr>
<td>5</td>
<td>Improvement LPIS system</td>
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<td>Strengthening EAGGF</td>
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<td>Eastern border SPF</td>
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<td><strong>TOTAL PHARE CONTRIBUTION (ME)</strong></td>
<td>147.173579</td>
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<td>35.132329</td>
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</table>

The figures in the budget table are indicative only. In accordance with the Phare Guidelines of 1999 and Revised Guidelines of 2002, all investment projects supported by Phare must receive co-financing from national public funds. The Community contribution may amount to up to 75% of the total eligible public expenditure. Co-financing for Institution Building projects is provided by the beneficiary bearing certain infrastructure and operational implementation costs, through financing the human and other resources, required for effective and efficient absorption of PHARE assistance.

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1 Taxes are not an element eligible for co-financing
4. IMPLEMENTATION ARRANGEMENTS

a.) Financial and Project Management by the Candidate Country
The programme will be managed in accordance with the Phare Extended Decentralised Implementation System (EDIS) procedures as set down in the EDIS Accreditation Decision* and the Agreement on the Implementation of EDIS2 (EDIS Implementation Agreement; EIA) concluded between Poland and the Commission2. Prior to the conclusion of said Agreement, implementation will exceptionally follow Phare Decentralised Implementation System (DIS) procedures3. Extended Decentralisation will, however, apply from the date of accession at the latest.
The National Aid Co-ordinator (NAC) will have overall responsibility for programming and monitoring 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 EDIS Implementation Agreement* and/or the DIS Manual as well as the other instructions of the Commission, and that all contracts required to implement the Financing Memorandum are awarded using the procedures and standard documents defined and most recently published by the European Commission for the implementation of External Actions.
The NAC and the NAO shall be jointly responsible for co-ordination between Phare, ISPA and SAPARD, as well as the Structural and Cohesion Funds.
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 million, except for the following: 01.01 Communicable diseases monitoring system, 01.07 Strengthen Evaluation capacity, 01.09 Flexible reserve, 03.06 Fight against drugs, and 04.01 Phytosanitary and Seed administration. All projects have been tailored based on the actual and existing needs. For the above-mentioned projects, there is no necessity for a higher level of funding at this moment.

c.) Deadline for contracting and execution of contracts; programming deadline
All contracts must be concluded by 30 November 2005. Execution of all contracts must end by 30 November 2006. Budgetary commitments which have not given rise to payments during three years counted from the date of the legal commitment will be decommitted.

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* working title
* working title
* working title
Concerning the amount foreseen under the Unallocated Institution Building Envelope (project number 01.09), projects must be programmed and Terms of Reference agreed by the Delegation by no later than the date of accession.

d.) Clearance of Accounts Procedure and Recovery of Funds
A clearance-of-accounts procedure in line with Art. 53 par. 5 of the Financial Regulation\(^4\) and Art. 42 of the Implementing Rules to the Financial Regulation\(^5\) will be put in place. Any proven irregularity or fraud\(^6\) discovered at any time during the implementation of the programme will lead to the recovery of funds by the Commission.
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 2 months after all payments have been made, 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

\(^5\) Commission Regulation 2342/2002 of 23 December 2002
\(^6\) As defined under number 8a (Audit and Anti-fraud Measures by the Candidate Countries) of this document
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 first transfer of up to 20% of the funds to be managed locally, representing pre-financing will be sent 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 further transfers of up to 30% each of the funds to be managed locally will be made. The second transfer will be triggered when 5% of the budget has been disbursed by the IAs and the CFCU. The third transfer may be requested when 35% of the total budget in force has been disbursed. A fourth transfer will be made when 70% of the total budget in force is disbursed and when all expenditure has been incurred (i.e. fully contracted). No later than 2 months after all payments have been made, the National Fund will submit a final declaration of expenditure, which will trigger a balancing operation of all transfers against final certified expenditure incurred, which at that point will be equal to payments made. (closure of expenditure). Exceptionally the NAO may request 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 interim payments 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.

Under DIS, 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, 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. Funds not paid out to the

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7 as defined in Art. 81.1.b.i of the Financial Regulation
8 as defined in Art.105 of the Implementing Rules
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.) Interest
In principle, all bank accounts\(^9\) 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:
All projects under Objectives 1, 2, 4 and 5: Central Financing and Contracting Unit (CFCU), except project 01.02 (Alleviation of social effects steel restructuring) under objective 1: Polish Agency for Enterprise Development (PAED).
All other projects: Implementing Authority for Phare Cross Border Co-operation Programme (IA-CBC), except for projects 03.01 (Twinning for border services), 03.05 (Twinning Fight against organised crime), 03.06 (Fight against drugs) under Objective 3: Central Financing and Contracting Unit (CFCU).

g.) Environmental Impact Assessment and Nature Conservation
The procedures for environmental impact assessment as set down in the EIA-directive\(^10\) 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 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\(^11\).
If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-Directive\(^12\) must be documented\(^13\).
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, the precise implementation arrangements will be specified in the relevant project fiches in line with the following principles:

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\(^9\) in particular, but not exclusively, accounts run by the NF, the CFCU and IAs
\(^11\) in Annex EIA to the corresponding investment project fiche
\(^12\) DIR 92/4/EEC; OJ 206/7; 22.7.1992
\(^13\) in Annex Nature Conservation to the corresponding investment project fiche
• 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.

• Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Poland will be required, in conformity with the provisions of chapter 6 of the Practical Guide (decentralised ex-ante control).

• The implementation of selected projects through 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.

• Following a positive assessment of the Implementing Agency’s capacity to operationally and financially manage the schemes in a sound and efficient manner (cf. Section 11 and Annex 4 of the 2003 PHARE Programming Guide), the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by final beneficiaries of individual grants. The detailed provisions governing the role of the Delegation in the above mentioned sub-contracting phase will be specified, as appropriate, in the exchange of letters between the Delegation and the National Authorities following the above mentioned assessment exercise.

• Grant schemes will not involve projects for which PHARE contribution is more than € 2 million and less than € 50,000. This lower limit may be waived as a result of the above-mentioned assessment of the Implementing Agency’s capacity of giving assurance of sound financial management. This lower limit is not applicable in the case of NGOs.

The financial commitments in Phare terms will be effected at the date of signature of the grant contracts by the competent PAO. The projects should be fully implemented before the expiry date for contract execution of the present Financing Memorandum.

5. **MONITORING AND EVALUATION**

Project implementation of this programme will be monitored through the Joint Monitoring Committee (JMC). It includes the NAO, the NAC and the Commission services. 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. Furthermore the JMC will review the progress of all pre-accession EU-funded assistance programmes once a year (PHARE, ISPA and SAPARD).

For the PHARE programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC) which will include the NAC, the PAO of each Implementing
Agency (and of the CFCU where applicable) and the Commission Services. The SMSC will review in detail the progress of each programme, including its components and contracts, assembled by the JMC into suitable monitoring sectors. Each sector will be supervised by one SMSC on the basis of regular monitoring reports produced by the Implementing Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward recommendations on aspects of management and design, ensuring these are effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector. 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 national or Community law, this Financing Memorandum or ensuing contracts or 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. 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 within two months following 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 on-the-spot checks and, as long as the

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14 in accordance with the rules set down in Art. 54 of the Financial Regulation
15 defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (for example the Europe Agreements, the Framework Agreement, the Memorandum of Understanding on the Establishment of the National Fund etc.).
16 OJ L 178; 12.7.94; p. 43-46
Extended Decentralisation System is not yet applicable to the Implementing Agencies in the Candidate Country concerned, measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Candidate Country concerned.  
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\(^\text{17}\).  
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”. *(enclosed)*

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.

\(^{17}\) OJ L 292; 15.11.1996; p. 2-5