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 Romania, 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 12 March 1991 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: 2003/005-778
Title: 2003 External Border Initiative Programme for Romania
Duration: Until 30 November 2005

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 6.56 M€ hereinafter referred to as "THE EC GRANT".

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until 30 November 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 November 2006 with the exception of project 2003/005-778.01 Rehabilitation of National Road NR 59, the sector between km 36+500 – km 63+428 at Voiteg and the border crossing point with Serbia & Montenegro at Moravita, for which the execution of contracts expiry date is 30 November 2007.

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:
   EC Delegation in Bucharest
   St. Jules Michelet 18-20
   70154 Bucharest
   Romania
   Fax: 00 40 1 212 88 08

for THE RECIPIENT:
   Mr Alexandru Farcaș
   Minister of European Integration
   Government of Romania
   St. Apolodor 17
   Iași Nord, sector 5
   Bucharest
   Romania
   Fax: 00 40 1 336 85 09

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 Bucharest
Date 19.12.2003

for THE RECIPIENT
Mr. Alexandru Farcaș
Minister of European Integration
National Aid Co-ordinator

for THE COMMUNITY
Mr. Jonathan Scheele
Head of Delegation of the European Commission in Romania

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

1. Objectives and Description

The 2003 Phare External Border Initiative for Romania has been designed following bilateral discussions between the Romanian authorities and the European Commission’s representatives.

The objectives of the 2003 Phare External Border Initiative for Romania are

- To improve cross-border co-operation at local level between Romania and Serbia & Montenegro, Moldova and Ukraine.
- To support the further development of the economic potential of the border regions.

It focuses on 3 projects; the first project is specific to the Romanian Serbian border, while the other two concern the three borders of Romania with non-candidate countries. A description of the proposed projects is given below:

**Phare 2003/005-778.01: Rehabilitation of National Road NR 59, the sector between km 36+500 – km 63+428 at Voiteg and the border crossing point with Serbia & Montenegro at Moravita (€3.71 M)**

The concerned project is part of a more global project aiming at improving road conditions from Belgrade to Timisoara, including necessary investments to upgrade the road from 10t to 11.5t axle load. At present the existing border crossing point on this road is the most important between Romania and Serbia.

On the Serbian side, the directorate for the reconstruction of roads within the Ministry of Transport is responsible for this project. The first intention of the authorities is to rehabilitate the road from Pancevo to the border crossing point with Romania at Vrsac. A technical design has been completed but no fund has been secured so far.

On the Romanian side, taking into account the likely increase of the traffic between Romania and Serbia & Montenegro, it is necessary to provide better conditions for transit traffic.

Indeed, the actual situation of the road infrastructures requires an important financial effort from the Romanian authorities.

The proposed project is to rehabilitate the National Road NR 59, from km 36+500 to km 63+428 between Voiteg and the border crossing point with Serbia & at Stamora Moravita”.

Rehabilitation will be carried out, as much as possible, on the existing route, with the following specifications:

- 9.00m roadway;
- 7.00m carriageway;
- 2 lanes of 3.5 m width each with separation of the two carriageways;
− 2 x 1.00m shoulders of which: 2 x 0.50m emergency stopping lines, 2 x 0.50m earth shoulders
− wearing course 4 cm
− bituminous treatment 7 cm

The financed activities will also comprise the arrangement of the junctions, sign posting, in accordance with Romanian and European standards. Sizing of the new road structures or reinforcing of the existing ones will be done for a vehicle of 11.5t axle load (in compliance with EU standards) with a view to open the road and the Moravita border crossing to international heavy traffic.

In parallel to the present project, a joint working group will be established to improve border-crossing conditions.

Conditionalities:
• All legal framework related to environmental aspects have to be accomplished and all legal endorsements and approvals have to be obtained before launching the tender for works component, including completion of land arrangement aspects.
• Romanian and Serbian authorities intend to establish a joint working group for improving customs and border police procedures. This group will be established and will approve a working schedule before the contracting of the works component.

**Phare 2003/005-778.02: Joint Small Project Fund (JSPF) (€1.5 M)**

With a view to strengthen the local cross-border co-operation of the border regions, it has been decided to start to implement a JSPF on the RO/SeM, RO/MOL and RO/UA borders.

In existing CBC programmes with Hungary and Bulgaria, the JSPF proved to be a key factor for promoting cross-border co-operation at local level and for encouraging daily contacts with neighbouring population / authorities.

Therefore, a JSPF will be launched as a first measure to develop as quickly as possible local co-operation and to pave the way for the Neighbourhood Programmes between Romania and its Cards and Tacis neighbours, to be initiated in 2004.

Eligible projects are those defined in the Article 5 of Phare CBC regulation n°2760/98 as amended by regulation n°1596/2002. The JSPF will operate following the "Practical Guide to contract procedures financed from the general Budget of the European Communities in the context of external actions". This scheme will finance "soft" projects: business co-operation, enterprise development, technology transfer and marketing for small and medium sized enterprises, training, employment, environment, measures for health and cultural exchanges, improvement of information flow and communications between border regions, etc.

A specific TA (project n°3) will define procedures. To the greatest possible extent, it will try to harmonise procedures with those used in Serbia & Montenegro, Moldova and Ukraine for similar types of projects.
As a minimum requirement – regardless of to what extent the funds will be co-ordinated – the representatives of local / regional institutions from the concerned country will be associated in the decision-making process.

The JSPF is designed to make available a total Phare contribution of €500,000 per border. Up to 7% of the Phare contribution (maximum €35,000 for each border) may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

Co-financing is needed and will be one criterion for eligibility of projects. Minimum co-financing will be 10% of the cost of each soft project. Projects already part-financed by another EU funded programme may not be granted support from this PHARE programme.

The Romanian Implementing Agency, in co-operation with the Serbian / Moldovan / Ukrainian authorities, will issue a call for proposals that must be open and fair to all eligible organisations. The submitted applications will be assessed by an appropriate Team of Assessors where both countries are represented. On the basis of these recommendations, a Joint Evaluation Committee will take the final decision.

The project applicants will, in many cases, need considerable development assistance. Training and information workshops may be organised to inform and assist would-be participants, so as to ensure high transparency and encourage good quality proposals. Experts will also be appointed to visit would-be project applicants in order to provide assistance, especially in relation to matters such as project cost assessment.

**Phare 2003/005-778.03: Technical Assistance for Multi Annual Programming and Implementation of future cross border neighbourhood programmes with Serbia & Montenegro SeM), Ukraine (UA) and Moldova (MOL) (€1.35 M)**

The project will provide direct support to the Phare Cross Border Co-operation Directorate in the Ministry of European Integration (MOEI), local authorities, future beneficiaries and other relevant bodies concerned by future Phare CBC / Neighbourhood programmes.

The Technical Assistance will provide support to the Phare CBC Directorate for:

1. **Preparing a Joint Programming Document (JPD)/Neighbourhood Programme 2004-2006 for each of the three borders:**

This document will be prepared using the format used for CBC programmes according to the guidance the Commission will provide concerning the Neighbourhood programmes. It will be fully in line with the CBC regulation requirements (including eligible activities).

For each border, a Steering Committee will be put in place with members of the two concerned countries. On the RO side, the CBC Directorate of the MOEI will ensure the secretariat of this Steering Committee with the assistance of the TA. The Steering Committee will include representatives of local stakeholders.

The JPD will analyse strengths and weaknesses of the regions and will identify joint cross-border priorities and measures that may be addressed during the period 2004-2006. Highest
priority should be given to the identification of measures that may be quickly implemented to have a maximal impact in the short term and then may gain high support from local stakeholders.

2. Information of local beneficiaries on both sides of the concerned borders

The TA will be responsible for organising, under the responsibility of MOEI, local workshops for beneficiaries to raise awareness on the programme, its specificity, eligible activities, project identification, preparation and approval procedures. Additional information activities will be carried out if needed (leaflets, etc).

3. Setting up procedures to manage the future programmes (including proposals for adapting existing procedures followed for CBC programmes to other community tools constraints: Cards, Tacis) in line with the guidance the Commission will provide concerning the Neighbourhood programmes.

The TA will assist the CBC Directorate of the MOEI in defining an implementation strategy for these future programmes (drafting guidelines and procedures; training programmes for staff of key local/regional institutions to be involved). Given constraints imposed by Cards and Tacis rules, the TA will try to develop procedures as simple as possible.

The TA will also assist the CBC Directorate in defining the procedures for managing Joint Small Project Funds.

4. Training of local staff

The TA will assist the MOEI in identifying training needs of local/regional institutions involved in the implementation of the future programmes (including JSPF): preparation of business plans, cost benefit analysis and any other matters related to the identification, preparation and implementation of projects.

5. Project preparation facility

The TA will assist the CBC Directorate to identify project proposals, to assess them (eligibility, cost/benefit analysis,..) and to rank them. The TA will provide assistance to beneficiaries for project preparation (completion of feasibility studies; technical design; environmental impact assessment; preparation of project fiches; tender dossiers...). The objective is to prepare a mature pipeline of projects (minimum 8) in the fields of Justice and Home Affairs/ Border Management, Transport, Economic Development and Environment for future Phare CBC/ Neighbourhood Programmes.

Lessons learned:

Experience with the implementation of Phare programmes in previous years and evaluation have led to a number of general lessons being learned. These lessons are reflected in the design and implementation of the Phare External Border Initiative for Romania. The most important lessons relate to constraints on Romanian administrative capacity. Another key lesson is that the success of Phare projects, especially institution building, depends on continuity of key senior and working level personnel.
More specific lessons relating to individual sectors or project types have also been learned and are reflected in individual project documents.

2. Budget

<table>
<thead>
<tr>
<th>CRIS N°</th>
<th>Project Title</th>
<th>Phare Institution Building</th>
<th>Phare Investment</th>
<th>Phare Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003/005-778.01</td>
<td>Rehabilitation of National Road NR 59, the sector between km 36+500 – km 63+428 at Voiteg and the border crossing point with Serbia &amp; Montenegro at Moravita</td>
<td>300,000</td>
<td>3,410,000</td>
<td>3,710,000</td>
</tr>
<tr>
<td>2003/005-778.02</td>
<td>Joint Small Project Fund (JSPF)</td>
<td>1,500,000</td>
<td>0</td>
<td>1,500,000</td>
</tr>
<tr>
<td>2003/005-778.03</td>
<td>Technical Assistance for Multi Annual Programming and Implementation of future cross border neighbourhood programmes with Serbia &amp; Montenegro (SeM), Ukraine (UA) and Moldova (MOL)</td>
<td>1,350,000</td>
<td>0</td>
<td>1,350,000</td>
</tr>
</tbody>
</table>

| TOTAL                                                   | 2,150,000                  | 3,410,000        | 6,560,000       |

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.

1 Taxes are not an element eligible for co-financing
3. 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 EDIS (EDIS Implementation Agreement; EIA) concluded between Romania and the Commission. Prior to the conclusion of said Agreement, implementation will follow Phare Decentralised Implementation System (DIS) procedures. 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 Accreditation Decision 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 (including Phare CBC), ISPA and SAPARD as well as the Structural and Cohesion Funds.

The National Fund (NF) in the Romanian 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:

2003/005-778.02, Joint Small Project Fund (JSPF), given its scope

2003/005-778.03, Technical Assistance for Multi Annual Programming and Implementation of future cross border neighbourhood programmes with Serbia & Montenegro (SeM), Ukraine (UA) and Moldova (MOL), given the Institution Building nature of the project.

c.) Deadline for contracting and execution of contracts; programming deadline

\[ ^2 \text{in accordance with the rules set down in the Council Regulation 1605/2002 (Financial Regulation), in particular Art. 164, Commission Regulation 2342/2002 (Implementing Rules of the Financial Regulation) and the annex of Council Regulation 1266/1999} \]

\[ ^3 \text{in accordance with the rules set down in Council Regulation 1605/2002 (Financial Regulation), the Commission Regulation 2342/2002 (Implementing Rules of the Financial Regulation) and the annex of Council Regulation 1266/1999} \]
All contracts must be concluded by 30 November 2005. In no case can the contracting period exceed 3 years after the date of the global commitment.

Execution of all contracts must end by 30 November 2006 with the exception of project n°1, 2003/005-778.01, Rehabilitation of National Road NR 59, the sector between km 36+500 – km 63+428 at Voiteg and the border crossing point with Serbia & Montenegro at Moravita, for which the execution of contracts expiry date is 30 November 2007. The objective is to take into account contingencies that are likely to occur during the works period as it has happened for similar projects in the past (weather conditions, etc.).

Budgetary commitments which have not given rise to payments during three years counted from the date of the legal commitment will be decommitted.

d.) Clearance of Accounts Procedure and Recovery of Funds

A clearance–of-accounts procedure in line with Art. 53 para 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;

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\(^5\) 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
(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

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and Romania 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 a Bank agreed in advance with the Commission.

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

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7 as defined in Art. 81.1.h.i of the Financial Regulation
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)\(^8\).

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 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

\(^8\) as defined in Art.105 of the Implementing Rules
In principle, all bank accounts will be interest bearing. Interest will be reported to the European Commission. If the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the Programme.

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

The Implementing Agency of the whole programme will be the Ministry of European Integration (MoEI).

**g.) Environmental Impact Assessment and Nature Conservation**

The procedures for environmental impact assessment as set down in the EIA-directive 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.

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

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**

**Grant Schemes**

For Grant Schemes, 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

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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 92/43/EEC; OJ 206/7; 22.7.1992
13 in Annex Nature Conservation to the corresponding investment project fiche
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 Bucharest 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.

Small Projects Fund

The Small Projects Fund will finance projects below €50,000 (PHARE contribution). It will not include physical investments other than small infrastructure not generating substantial net revenue.

For the CBC Small Project Fund, up to 7% of the PHARE contribution may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

4. 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.

5.) 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.

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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.).
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 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.

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.

6. Visibility/Publicity

The appropriate Programme Authorising Officer will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed from the programme. This will be done in close liaison with the Commission Delegation. Further details are set down in the Annex “Visibility/Publicity”. (enclosed)

7. Special conditions

Successful implementation of the 2003 External Border Initiative for Romania requires the Government of Romania to make a particular effort to identify and remedy gaps and weaknesses in the management of cross-border co-operation programmes. The National Aid Co-ordinator will, by 31 March 2004, elaborate and present to the Commission a CBC capacity building plan, covering the period 2004-2006, specifying the actions needed to

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16 OJ L 178; 12.7.94; p. 43-46
17 OJ L 292; 15.11.1996; p. 2-5
reinforce the implementing agency and implementing authorities. The plan should cover the measures necessary in order to ensure that the above bodies have an adequate endowment of qualified full-time personnel, sufficient operating budgets and that all other necessary conditions exist for the effective implementation of current and future CBC programmes. The document will describe the first concrete actions already implemented to bring the administrative capacity (human resources and logistics: transportation, access to international phone numbers, etc.) to a sufficient level for the year 2004. Except for project no. 3, 2003/005-778.03, Technical Assistance for Multi Annual Programming and Implementation of future cross border programmes/ neighbourhood with Serbia & Montenegro (SeM), Ukraine (UA) and Moldova (MOL), no contract may be signed before this condition is fulfilled.

In the event that agreed commitments are not met for reasons which are within the control of the Government of Romania, 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.