FINANCING MEMORANDUM on the 2004 Phare Cross border Cooperation programmes of Romania

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 MEASURES referred to in Articles 1 to 5 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 measures 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 – CBC Programme between Romania and Bulgaria

(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C1:

Programme number: RO-Phare 2004/016-784
Title: 2004 CBC Programme between Romania and Bulgaria
Duration: Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 8 M€ hereinafter referred to as "THE EC GRANT".

(3) For the MEASURE described in Annex C1, THE EC GRANT is hereby available for contracting until 30/11/2006 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 30/11/2007 with exception of 30/11/2008 for projects RO 2003/016-784.01.01 "Improve traffic fluency to cross border point Turma Magwolce – Nikopol and RO 2003/016-784.01.02 "Connection infrastructure improvement in Kasa – Lom border check point). 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 2 – 2004 CBC Programme between Romania and Hungary

For signature

[Signature]
(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C3:

**Programme number:** RO-Phare 2004/16-940  
**Title:** 2004 CBC Programme between Romania and Hungary  
**Duration:** Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 5 M€ hereinafter referred to as "THE EC GRANT".

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until 30/11/2006 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 30/11/2008. 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 3 - CBC/Neighbourhood Programme between Romania and Moldova**

(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C3:

**Programme number:** RO-Phare 2004/16-941  
**Title:** 2004 CBC/Neighbourhood Programme between Romania and Moldova  
**Duration:** Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 5 M€ hereinafter referred to as "THE EC GRANT".

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until 30/11/2006 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 30/11/2008. 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 - CBC/Neighbourhood Programme between Romania and Ukraine**

For signature
(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C4:

Programme number: RO-Phare 2004/16-942
Title: 2004 CBC/Neighbourhood Programme between Romania and Ukraine
Duration: Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 6 M€ hereinafter referred to as "THE EC GRANT".

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until 30/11/2006 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 30/11/2008. 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 5 – CBC/Neighbourhood Programme between Romania and Serbia-Montenegro

(1) As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE described in Annex C5:

Programme number: RO-Phare 2004/16-943
Title: 2004 CBC/Neighbourhood Programme between Romania and Serbia-Montenegro.
Duration: Until 30/11/2006

(2) The financial contribution of THE COMMUNITY is fixed at a maximum of 4 M€ hereinafter referred to as "THE EC GRANT".

(3) For the present MEASURE, THE EC GRANT is hereby available for contracting until 30/11/2006 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 30/11/2008. 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 6 – FINANCIAL MANAGEMENT

The National Fund will for each measure defined in articles 1 to 5 open and manage a separate bank account.

For signature
The National Authorising Officer will submit separate payment requests for each measure.

There may not be any reallocations of budgets between the measures of this Financing Memorandum without a prior Commission decision to that effect.

**ARTICLE 7 - ADDRESSES**

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

**for THE RECIPIENT:**
Mr Ionel Popescu  
Minister of Public Finance  
17 Apolodor Street, 5th District  
050741 Bucharest, Romania  
Fax: 00 40 21 3121630

**for the COMMUNITY:**
EC Delegation in Bucharest  
St. Jules Michelet 18-20  
70154 Bucharest  
Romania  
Fax: 00 40 21 212 88 08

**ARTICLE 7 - NUMBER OF ORIGINALS**

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

**ARTICLE 8 - 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: 5th April 2005

for THE RECIPIENT

[Signature]

Mr Ionel Popescu  
Minister of Public Finance

for THE COMMUNITY

[Signature]

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

**Annexes**

Annexes A & B. Framework Agreement
Annex C1: CBC Programme between Romania and Bulgaria  
Annex C2: CBC Programme between Romania and Hungary  
Annex C3: CBC/Neighbourhood Programme between Romania and Moldova  
Annex C4: CBC/Neighbourhood Programme between Romania and Ukraine  
Annex C5: CBC/Neighbourhood Programme between Romania and Serbia-Montenegro

Annex D. Visibility/Publicity (Annex D)
Annex E. Total budget of all five CBC programmes

For signature
**Annex C2 : CBC Programme between Romania and Hungary**

### 1. Objectives and Priorities

This chapter describes the measures\(^1\) envisaged for the budgetary year 2004 under Phare in Romania’s CBC-programme with Hungary. These measures are also coherent with the Community Initiative Programme and measures foreseen under INTERREG III A for co-operation between HU-RO (and HU-SCG). The global objective of these CBC programmes is:

"to bring the people, communities and economic actors of the border area closer to each other in order to establish a sound basis for balanced economic and social development, assuring optimal development opportunities for the three countries"

The overall aim of this Phare programme, with the core elements of the strategy derived from the SWOT analysis, together lead to the formulation of the following specific objectives:

- **Specific objective No. 1**: To establish and develop the physical and infrastructural systems supporting co-operation.
- **Specific objective No. 2**: To establish and develop a joint system to protect and capitalise on common natural resources promoting sustainable development.
- **Specific objective No. 3**: To reinforce economic connections between the border regions in order to boost sustainable economic development building on joint assets.
- **Specific objective No. 4**: To develop social and cultural coherence among people and communities.

In the light of the above objectives, the partners agreed priorities and measures which constitute the backbone of their CBC development strategy for 2004-06

<table>
<thead>
<tr>
<th>CBC RO-HU (and HU-SCG) 2004-06 - Priorities and Measures</th>
<th>GRANT SCHEME</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Priority 1</strong></td>
<td>Strengthening the spatial, physical &amp; infrastructural integrity of the HU-RO cross-border area</td>
</tr>
<tr>
<td>Measure 1.1</td>
<td>Improving cross-border infrastructure</td>
</tr>
<tr>
<td>Measure 1.2</td>
<td>Addressing common challenges in the field of environmental protection &amp; flood prevention</td>
</tr>
<tr>
<td><strong>Priority 2</strong></td>
<td>Promotion of cooperation initiatives in order to facilitate the integration of markets &amp; enhance coherence between local societies.</td>
</tr>
<tr>
<td>Measure 2.1</td>
<td>Development of business infrastructure &amp; joint business</td>
</tr>
</tbody>
</table>

\(^1\) Each measure envisaged for implementation in this programme carries in the following the header Phare/2004/016-940 continued with a numbering system identifying the sub-programme and the measure itself.

| Measure 2.2 | Support co-operation of enterprises |
| Measure 2.4 | Promotion of co-operation in the field of RTD & human resource development |

**SMALL PROJECT FUND**

| Measure 2.3 | Encourage co-operation between institutions & communities |
| **Priority 3** | **TECHNICAL ASSISTANCE** |
| Measure 3.1 | Programme administration & management |
| Measure 3.2 | Programme publicity, monitoring & evaluation |

Notes: The priorities and measures are transposed from the jointly developed CBC planning documents

The programme for 2004 is

PHARE/2004/016-940. 01.01 Cross Border Co-operation between Romania and Hungary

The programme is to enable Romania to co-operate with Hungary on this border just under INTERREG IIIA rules including joint tendering and selection procedures.

This 2004 Phare programme will contribute to implementing the following specific tasks:

- Construction and rehabilitation of public roads
- Rehabilitation/extension of railway stations and associated facilities
- Collection and treatment of waste
- Rehabilitation and cleaning up of contaminated sites
- Investments related to the development of joint nature protection areas and nature parks
- Investments related to the development of joint river protection and flood prevention
- Support to the use of renewable energy sources with a cross border impact
- Development of existing business infrastructure facilities
- Establishment of new business incubators
- Support for cross border business events facilitating the meeting of SMEs
- Support for enterprise cooperation in regards to cross border activities
- Support to the establishment of new partnerships, collaboration between research institutions
- Cooperation in the field of education and vocational training
- Support to cross-border events, people-to-people actions and to the cooperation of institutions and communities
- Technical assistance for programme management and implementation

Basic eligibility criteria, generic selection criteria and potential beneficiaries of this grant scheme, are to be found in § 6.5.

In addition, the project fiche identifies specific criteria for each of the tasks identified for 2004.

This programme is linked to corresponding projects, which Hungary will implement under the INTERREG IIIA regime.
2. **Indicative Budget**

2.1. **Table for the Budgetary Year 2004**

The distribution of figures between the budget lines is indicative within the limits of Art. 5 MoU National Fund. The figures are given in Mio €:

<table>
<thead>
<tr>
<th>Programme part</th>
<th>Phare Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Investment</td>
</tr>
<tr>
<td>Total programme budget</td>
<td>4.09</td>
</tr>
</tbody>
</table>

Including a Grant Scheme (all measures under Priorities 1 & 2, except Meas. 2.3); a Joint Small Project Fund (Priority 2, Measure 2.3) and Technical Assistance (Phare allocation to JSPF will in principle be not less than 10 % of project total, Phare funds for TA must be capped at 5% of total of Phare funds for this project).

The CBC programme with Hungary provides for a technical assistance financial envelope to assist in programme administration and management, programme publicity, monitoring and evaluation. The RO Implementing Agency will ensure that the allocated funds for these purposes will be used in the most effective way for the benefit of the overall CBC programme of Romania.

2.2. **Principle of Co-Financing**

In accordance with the Phare Guidelines, 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. Taxes are not an element eligible for co-financing.

Co-financing for Institution Building projects is provided by the Beneficiary Country bearing certain infrastructure and operational implementation costs, through financing the human and other resources required for effective and efficient absorption of Phare assistance.

The projects selected through the grant schemes (investments and institution building) will be jointly co-financed between Phare, the beneficiary and government resources. The beneficiary has to provide at least 10 % of the total costs. The remaining eligible costs will be shared by Phare support up to a maximum of 75% with the Romanian government contributing the remaining costs.

2.3. **Outlook for the Years 2005 and 2006**

In line with recommendations of the Phare Management Committee to step forward to Multi-Annual Programming, the Romania – Hungary CBC outlook for the years 2005-06 is described in the joint programming documents.

For the purpose of allowing developing a realistic outlook the Commission services indicated to the NAC that € 79 million would in principle be available for the Cross-border cooperation in 2005 and 2006 for all five borders, subject to the decisions of the budgetary authority and the Commission in the respective years.

Both parties to this FM are aware that such assumptions are in no way binding to either of the two parties.
3. INSTITUTIONAL AND SPECIFIC IMPLEMENTATION ARRANGEMENTS

3.1. IMPLEMENTING AGENCY
The Romanian CBC Implementing Agency is the Ministry of European Integration and retains overall responsibility for the implementation of the programme.

Ministry of European Integration
Cross Border Cooperation Directorate
Bdul Libertatii nr 12, sector 5
Bucuresti, Romania.

3.1.1. CBC Regional Office
For the Romanian side, the Ministry of European Integration may delegate a considerable part of its responsibilities for implementing the Romanian-Hungarian CBC programme to a regional body, situated in the border area. In this respect, the RDA West and North-West will establish a CBC Regional Office in Oradea (Bihor County), which will act in close co-operation with the MIE.

3.2. THE JOINT CO-OPERATION COMMITTEE (JCC)
The JCC is the strategic body of the CBC Programme. It fulfils the function of the Joint Co-operation Committee as described in the Phare CBC Regulation and the Joint Monitoring Committee as for INTERREG. With members from both countries and from national, regional and local level, the JCC will ensure a joint management of the programme and thus ensure a policy and financial overview of the operations.

The main responsibilities of the JCC are:

➢ To adopt the programming documents (Joint Programming Document and Programme Complement) and any further adjustment of it, as appropriate
➢ To adopt the project fiche to be put forward for the yearly programming exercise
➢ To consider and approve the joint annual and final progress and implementation reports before they are sent to the Commission.
➢ To approve the framework for the Joint Technical Secretariat’s tasks.

The JCC consists of representatives of national, regional, and local authorities.

The JCC will also include representatives from civil society, NGOs, economic and social actors, sectoral organisations – e.g. Chamber of Commerce, Unions, etc. They may participate in the JCC in an advisory capacity, i.e. not as voting members.

Representatives of the European Commission may participate in the JCC in an advisory capacity.

JCC will meet at least once a year in order to monitor the implementation of the programme and to approve project fiches for the annual Financing Proposal.

3.3. JOINT STEERING COMMITTEE (JSC)
The JSC is the operational body of the CBC programme. The main responsibilities of the JSC are the joint selection and approval of projects and the monitoring of their implementation. The JSC has the following tasks
Proposals for the criteria for evaluating and selection of the projects to be submitted to the JCC;
Approval/endorsement of the materials of the call for proposals;
Ratification of operations for selecting projects and formulation of the ranking of projects to be financed;
Examination of the monitoring documents;
Addition of comments and formulating directives for the Managing Authority, national Authorities, Joint Technical Secretariat and Implementing Agencies.

The JSC consists of representatives of national, regional and local authorities. Representatives of the European Commission will participate in the JSC acting as observers.

3.4. JOINT TECHNICAL SECRETARIAT (JTS)

A Joint Technical Secretariat for the programme is established in the VÁTI Hungarian Public Non-profit Company for Regional Development and Town Planning. The JTS is based in the headquarters, supported by the VÁTI regional office in Békéscsaba. The JTS directly provides in the first place services for the Managing Authority and Paying Authority in Hungary with the operational management of their respective responsibilities but also supports the activity of the Romanian and Serbian National Authorities. At least one Romanian national employee as part of the programme secretariat will be appointed.

Joint Technical Secretariat Hungary/Romania/Serbia:

VÁTI Hungarian Public Nonprofit Company for Regional Development and Town Planning (VÁTI Területfejlesztési Igazgatóság)
Gellerthegy u. 30-32.
1016 Budapest,
HUNGARY
Phone: (+36 1) 224 3278
Fax: (+36 1) 224 3291

To ensure efficient project development under the Romanian component of the Programme, the Romanian Authorities have decided to have a CBC Regional Office in Oradea (Bihor county), acting as part of the sub-programme Secretariat for the Romanian side in this programme, along with MIE representatives. This regional office will also give assistance to the potential project applicants and will participate in the project selection and monitoring activities in close cooperation with the JTS.

3.5. RULES AND PROCEDURES SPECIFIC TO THIS PROGRAMME

3.5.1. Implementing guidelines

The Commission might, as appropriate, provide additional guidance for the implementation of the programme taking INTERREG and PHARE rules into account.
3.5.2. Basic eligibility criteria

In the meaning of the CBC Programme, the following should be considered as joint projects:

- **Simple** projects with a cross-border effect taking place mostly or exclusively on one side of the border but for the benefit of both partners;
- **Complementary** projects where an activity on one side of the border is accompanied by a similar activity on the other side;
- **Integrated** projects where partners on either side of the border contribute different elements to a single project

To be eligible for Phare CBC co-financing, a project must fall into one of these categories.

3.5.3. Generic selection criteria for grant schemes in the CBC programmes

Activities under CBC financed grant schemes must be coherent with national policies, or demonstrate coherence with the relevant chapters of the National Development Plan, or the Association process. Activities should complement, but not overlap activities foreseen or implemented through the National Phare Programmes.

Activities must clearly demonstrate a cross border character via the involvement of a partner institution in the other country, or by benefits accruing to communities on both sides of the border. Activities should be implemented close to the border.

Activities which are eligible under the Phare National Programmes should in priority seek financing under that programme. Only genuine CBC projects are to be financed under the CBC Programme.

3.5.4. Generic list of potential beneficiaries of grant schemes

The potential beneficiaries for grant schemes under this CBC programme are (non-exhaustive list):

- Local and regional authorities in the border regions concerned
- Non-Governmental or Non-profit making organisations, associations and foundations (NGOs and NPOs) such as Business Support Organisations, Local Enterprise Agencies, Development Agencies, Chambers of Commerce, Tourism Agencies, Educational and training institutions; Producers Associations, Labour Unions
- County and regional water management, waste water management, river protection and flood protection companies and public bodies; county and regional environment protection agencies; natural park administrations (responsible at central, regional and municipal level) and local forestry directorates etc,
- Public road and rail management companies;
- Local bodies of local administration legal set up
- Employment Agencies

The list of eligible beneficiaries will be detailed in the Call for proposal/Guidelines for applicants.
4. IMPLEMENTATION ARRANGEMENTS

4.1. METHOD OF IMPLEMENTATION

Implementation of this FM will follow Art. 53 (1) b (second alternative) of the Financial Regulation\(^2\). The Beneficiary Country will continue to ensure that the conditions laid down in Art. 164 (1) (a) - (e) of the Financial Regulation are respected at all times.

Each measure is either contained in a programme or a project, which the National Aid Co-ordinator proposes to the Commission in compliance with this Financing Memorandum. Once jointly agreed these programmes or projects are implemented by means of procurement contracts for investment and/or services, twinnings, or grant schemes, managed by the Romanian authorities. Each such programme or project is supervised by one or several Implementing Authority(ies) and technically implemented by one Implementing Agency.

Prior to accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999\(^3\) project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

4.2. PROCUREMENT

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Title 5 of its Implementing Rules\(^4\), as well as the Commission Decision SEC (2003) 387/2\(^5\).

The Contracting Authorities shall also use the procedural guidelines and standard templates and models provided for in the “Practical Guide to contract procedures financed from the general EC budget in the context of external actions” as published on the EuropeAid website\(^6\) at the date of the initiation of the procurement or grant award procedure.

In line with Art. 164 of the Financial Regulation, the Commission may decide to allow the Contracting Authorities entrusted with decentralised management responsibilities to execute procurement in accordance with procedures and guidelines transposing the European Union Public Procurement Directives.

4.3. PROCUREMENT PRINCIPLES FOR 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 rules for External Actions. In particular, due care will be given to the selection process of the projects. Grants will be awarded in conformity with the provisions of chapter 6 of the Practical Guide, and following the principles of Phare

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\(^5\) Commission Decision SEC (2003) 387/2 on the general regulations for service, supply and works contracts financed from the general budget of the European Communities in the course of co-operation with third countries, adopted on March 25, 2003
\(^6\) current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm
decentralised management. Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Bucharest will be required.

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 also has 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 can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants, shall be subject to the procurement rules in use for External Actions at the time of implementation. Following a positive assessment of the Implementing Agency’s capacity to operationally and financially manage the schemes in a sound and efficient manner, the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by the final beneficiaries of the 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 the Phare contribution is below € 50,000 (except for the Small Project Fund, see below) or above € 2 million. 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. The 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 grants contract by the competent PAO. The projects should be fully implemented before the expiry date for contract execution of the corresponding Financing Memorandum.

4.4. IMPLEMENTATION PRINCIPLES FOR TWINNING PROJECTS

The amounts foreseen for Twinning projects will cover the eligible costs (as set down in the rules applicable for Twinning) for implementing the work plan agreed between the Twinning partners.

The eligible costs may include costs incurred by the selected Partner 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.

4.5. PRINCIPLES FOR THE CBC SMALL PROJECTS FUND

The CBC Small Projects Fund will finance projects with a Phare contribution below €50,000. It will not include physical investments other than small supply or infrastructure not generating substantial net revenue.

\[\text{7 see section 11 and Annex 4 of the 2004 Phare Programming Guide}\]
5. MANAGEMENT OF ASSISTANCE

5.1. PROJECT MANAGEMENT

5.1.1. Responsibilities

The National Aid Co-ordinator (NAC) will have overall responsibility for programming, co-ordination of implementation and monitoring of Phare programmes.

The National Authorising Officer (NAO) and the NAC shall be jointly responsible for the co-ordination between Phare (including Phare CBC), ISPA and SAPARD, as well as the Structural and Cohesion Funds.

The NAO and the Project Authorising Officer (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the instructions of the Commission. They will also ensure that all contracts required to implement the Financing Memorandum are awarded using the procedures and standard documents for External Actions in force at the time of implementation, and that EU state aid rules are respected.

5.1.2. Project Size

All projects will be greater than € 2 million except for the grant scheme “Joint Small Project Fund” and the “TA scheme”, due to the specific nature of the CBC actions.

5.1.3. Deadline for contracting and execution of contracts, programming deadline

(1) All contracts must be concluded by no later than November 30, 2006.
(2) All contracts must be executed by no later than November 30, 2008\(^8\)
(3) Under DIS, a comprehensive tendering plan must be submitted to the Delegation for approval by no later than 1 July 2005.

5.1.4. Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive\(^9\) 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 1 or annex 2 of the EIA-directive, the carrying out of the EIA-procedure must be documented\(^10\).

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\(^11\).

All investments shall be carried out in compliance with the relevant community environmental legislation. The project fiches will contain specific clauses on compliance

\(^8\) This provides an extra year for the implementation of this complex programme, for which call for proposals and project selection process have to be jointly carried out by the two countries and the implementation of joint projects requires a close co-ordination between partners from either side of the border.

\(^9\) DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

\(^10\) In Annex EIA to the corresponding investment project fiche.

\(^11\) In Annex Nature Conservation to the corresponding investment project fiche
with the relevant EU-legislation in the field of the environment according to the type of activity carried out under each investment project.

5.2. **FINANCIAL MANAGEMENT**

5.2.1. **Principles and Responsibilities**

The National Fund in the Ministry of Public 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 the overall responsibility for financial management of the Phare funds, and the full accountability for the Phare funds of a programme until the closure of that programme.

The NAO shall ensure that the Phare rules, regulations and procedures pertaining to reporting and financial management are respected, and that a reporting and project information system is functioning.

The Commission will make payments to the NF in accordance with the Memorandum of Understanding signed between the Commission and Romania in 1998.

Payments will be made following requests from the NAO onto a separate bank account, denominated in €, which will be opened and managed by the National Fund in a bank agreed in advance with the Commission. In principle, all bank accounts will be interest bearing. Interest will be reinvested in the programme.

5.2.2. **Payments to the National Fund**

A first payment\(^{12}\) of up to 20% of the funds to be managed locally\(^{13}\) 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). 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 between them will be carried out.

Two further payments\(^{14}\) of up to 30% of the funds to be managed locally\(^{15}\) will be made. The second payment will be triggered when 5% of the total budget in force\(^{16}\) has been disbursed by the IAs and the CFCU. The third payment may be requested when 35% of the total budget in force\(^{17}\) has been disbursed.

A final fourth payment will be made when 70% of the total budget in force\(^{18}\) has been disbursed and all contracts have been signed.

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\(^{12}\) representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

\(^{13}\) excluding the amount foreseen for Community Programmes

\(^{14}\) representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

\(^{15}\) excluding the amount for Community Programmes

\(^{16}\) excluding the amount for Community Programmes

\(^{17}\) excluding the amount for Community Programmes

\(^{18}\) excluding the amount for Community Programmes
Exceptionally the NAO may request more than the percentage agreed where it can be demonstrated by a cash-flow projection that the cash-flow requirements in the subsequent period will exceed such percentage. In cases where the aggregate of the funds deposited in the NF, CFCU and IAs accounts exceeds 15% of the total budget in force for the programme the Commission may exceptionally authorise a payment, if the NAO provides duly substantiated evidence that contractual obligations cannot be met with the funds available.

5.2.3. Payments from the National Fund to the Implementing Agency

The National Fund will make payments to IAs, including the CFCU, in accordance with Financing Agreements signed between the NF and the IAs/CFCUs. Bank accounts for CBC-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of financial management of the CBC-programme in line with Art. 13 of the MoU on the National Fund. As long as implementation follows DIS, each individual FA must 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 payments from the NF to the CFCU. 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 operations carried out by the relevant CFCU/IA.

5.2.4. Payments in Case of Contractual Retention Clauses

For those contracts with contractual retention clauses (e.g. 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 IA before the deadline for execution of contracts. The Implementing Agency assumes full responsibility for depositing the funds until final payment is due, as well as for ensuring that the said funds will only be used to make payments related to the retention clauses.

The IA 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.

5.2.5. Closure of Expenditure and Clearance of Accounts

No later than eight months after the end of execution of contracts, the NF will submit a final declaration of expenditure and an attestation regarding the regularity, accuracy and veracity of the accounts transmitted. The final certified expenditure should at this point equal the original value of the contracts minus any deductions and savings agreed with contractors in the course of implementation. This should also equal payments made plus any sums outstanding on account of contractual retention.

If the payments received from the Commission exceed the final certified expenditure, the NF shall return the excess to the Commission at the time of submitting the final declaration. If there are any outstanding payments (with the exception of contractual retention funds), the NF should provide an explanation and a forecast when payment will be finalised. The NF shall report on progress on contractual retention funds and outstanding payments on a quarterly basis. If they are not paid to the contractor, they shall be returned to the Commission.
After evaluation of the final declaration, the Commission will state its view on any expenditure to be excluded from Community funding, where it finds that expenditure has not been executed in compliance with Community rules.

The results of the Commission’s checks and its conclusions to exclude expenditure from financing will be notified in writing to the NF, which shall be given one month to transmit its reply in writing.

If no agreement is reached within one month of receipt of the NF’s written reply, the Commission shall decide and establish the amounts to be excluded, having regard in particular to the degree of non-compliance found, the nature and gravity of the infringement as well as the financial loss suffered by the Community.

Following the decision about amounts to be excluded, all ineligible expenditure will be recovered without prejudice to the treatment of irregularities and subsequent financial compensation in accordance with Community rules.

6. **MONITORING AND EVALUATION**

Implementation 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.

It reviews all Phare funded programmes in order to assess their progress towards meeting the objectives set out in the Financing Memoranda and the Accession Partnership.

The JMC may recommend a change of priorities and/or reallocation 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 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 that these are implemented. 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.

7. **AUDIT, FINANCIAL CONTROL, ANTI-FRAUD MEASURES, PREVENTIVE AND CORRECTIVE ACTIONS**

7.1. **SUPERVISION AND FINANCIAL CONTROL BY THE COMMISSION AND THE EUROPEAN COURT OF AUDITORS**

All Financing Memoranda as well as all resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-Fraud Office) and audits by the European Court of Auditors. As long as EDIS is not yet applicable to the Implementing Agencies in the Beneficiary Country, this includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Beneficiary Country.
In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96.\(^{19}\)

The controls and audits described above are applicable to all contractors and subcontractors who have received Community funds.

Without prejudice to the responsibilities of the Commission and the European Court of Auditors\(^{20}\), 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 the Commission itself or by an outside auditor contracted by the Commission.

### 7.2. OBLIGATIONS OF THE BENEFICIARY COUNTRY

#### 7.2.1. Audit and Financial Control

In order to ensure sound financial management of the Phare funds, the Beneficiary Country must have a system for management and control of assistance in accordance with generally accepted principles and standards in place. This system shall fulfil the requirements set out in Art. 164 of the Financial Regulation, and in particular provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

The Beneficiary Country’s management and control systems shall provide a sufficient audit trail, as defined in Art. 7 (2) of Commission Regulation 438/2001.\(^{21}\)

The competent national financial control authority shall carry out appropriate financial controls of all actors involved in the implementation of the programme.

Each year an audit plan and a summary of the findings and main recommendations of the audits carried out and an outline of the follow-up given to past audit recommendations shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

#### 7.2.2. Preventive Measures

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption\(^{22}\) practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

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\(^{20}\) as referred to in the General Conditions relating to the Financing Memorandum” attached to the Framework Agreement


\(^{22}\) Active corruption is defined as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests.

Passive corruption is defined as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or a third party, or accepts a promise of such advantage, to act or to refrain from acting in accordance with his duty or in
7.2.3. Anti-Fraud Measures and Corrective Actions

Beneficiary Countries shall, in the first instance, bear the responsibility to ensure investigation and satisfactory treatment of suspected or actual cases of fraud and irregularities following national or Community controls.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94.23

In particular, all suspected or actual cases of fraud24 and irregularity25 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 or irregularity to report, the Beneficiary Country shall inform the Commission of this fact within two months following the end of each quarter.

In case of irregularity or fraud, the Beneficiary Country shall make the necessary financial corrections required in connection with the individual irregularity. The corrections made by the Beneficiary Country shall consist in cancelling all or part of the Community contribution. The Community funds released in this way may be re-used by the NF for the purpose of the programme, in compliance with Art. 5 of the MoU on the National Fund.

7.3. RECOVERY OF FUNDS IN CASE OF IRREGULARITY OR FRAUD

Any proven irregularity26 or fraud27 discovered at any time during the implementation of the programme or as the result of an audit will lead to the recovery of funds by the Commission.

If, after completing the necessary verifications, the Commission concludes that:

(a) The Beneficiary Country has not complied with the obligations to prevent, detect, and correct irregularities or
(b) The implementation of a project appears not to justify either part or the whole of the assistance allocated or

the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities’ financial interests.

23 Commission Regulation (EC) 1681/94 of 11 July 1994; 12.7.94; p. 43
24 Fraud shall mean any intentional act or omission relating to: 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; non disclosure of information in violation of a specific obligation with the same effect; the misapplication of such funds for purposes other than those for which they are originally granted.
25 Irregularity shall mean any infringement of a provision of national or Community law, this Financing Memorandum or ensuing contracts, 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, by an unjustified item of expenditure. The term “Community law” in this context shall be defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (e.g. the Europe Agreements, Framework Agreements, and the MoU on the Establishment of the National Fund etc.)
26 see definition above
27 see definition above
(c) There are serious failings in the management or control systems which could lead to irregularities,

The Commission may suspend further financing of the programme in question, and, stating its reasons, request that the Beneficiary Country submit comments and, where appropriate, carry out any corrections within a specified period of time.

If no agreement is reached by the end of the period set by the Commission and if the required corrections have not been made, the Commission may – taking into account any comments made by the Beneficiary Country – decide within three months to:

(a) Reduce or cancel any payment for the programme in question, or
(b) Make the financial corrections required by cancelling all or part of the assistance granted to the programme concerned.

The Commission shall, when deciding on the amount of a correction, take into account the principle of proportionality, the type of irregularity and the extent and financial implications of the shortcomings found in the management and control system of the Beneficiary Country.

In the absence of a decision to do either (a) or (b), further financing of the programme shall immediately resume.

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 the 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 payment shall be charged on sums not repaid by applying the rules specified in the Financial Regulation.

8. VISIBILITY AND PUBLICITY

The PAO in charge 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. Further details are set down in the Annex on Visibility and Publicity.

9. SPECIAL CONDITIONS

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.

The Regional Office for CBC Management, Implementation and Monitoring foreseen by the Implementing Agency for the CBC with Hungary must be operational prior to any grant scheme contract being signed. This should be no later than the first semester of 2005.