COMMISSION DECISION
PH/2005/2552 OF 21/12/2005

Establishing a Phare cross border cooperation programme between Romania and Hungary in 2005,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe¹, and in particular Article 8 thereof,

Whereas:

(1) Regulation No 3906/89 lays down the rules and conditions for the granting of economic aid to certain countries of Central and Eastern Europe,

(2) The Commission has adopted Regulation No 2760/98 of 18 December 1998, concerning the implementation of a programme for cross-border co-operation in the framework of the Phare programme²,

(3) The measures provided for by this Decision are coherent with the INTERREG III A programme between the Republic of Hungary, the Republic of Romania and Serbia and Montenegro approved by Commission Decision C(2004)4155 of 19 October 2004.

(4) The measures provided for by this Decision are in accordance with the opinion of the Committee on Aid for Economic Restructuring in certain countries of Central and Eastern Europe,

HAS DECIDED AS FOLLOWS:

Article 1

The programme described in the Annex to the present decision is hereby adopted. It shall be implemented by means of a Financing Agreement to be concluded between the Commission and the Government of Romania in conformity with the Framework Agreement concluded between the same parties.

Article 2

The maximum amount of Community assistance shall be € 5 million to be financed through Budget line B 22.0202 in 2005.

Done in Brussels,

For the Commission


² OJ no. L345 of 19/12/1998
ANNEX - PHARE CBC cooperation between Romania and Hungary
2005 Financing proposal

1. IDENTIFICATION

<table>
<thead>
<tr>
<th>Phare 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beneficiary</td>
</tr>
<tr>
<td>Programme</td>
</tr>
<tr>
<td>CRIS number</td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>Cost</td>
</tr>
<tr>
<td>Implementing Authority</td>
</tr>
<tr>
<td>Sector Code</td>
</tr>
<tr>
<td>Expiry Date</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Group</td>
</tr>
<tr>
<td>Budget lines</td>
</tr>
<tr>
<td>Programming Task Manager</td>
</tr>
<tr>
<td>Implementation Task Manager</td>
</tr>
</tbody>
</table>

2. EXECUTIVE SUMMARY OF THE 2005 PHARE CROSS BORDER CO-OPERATION PROGRAMME BETWEEN ROMANIA AND ITS NEIGHBOUR HUNGARY

With this Programme within the Phare CBC framework the EC will support Romania in strengthening its efforts continuing to have good neighbourhood relations with Hungary, taking account of the nature of the border to Hungary as future internal border of the EU.


The objectives shall be accomplished by a grant scheme on Infrastructure, and Economic and Social Development, a Small Project Fund grant scheme and technical assistance for the management of the programme. The results of the programme should establish a sound basis for balanced economic

\(^3\) In no case can the contracting period for projects implemented under this programme exceed three years after the date of the global commitment (Art. 166 (2) FR).

\(^4\) Budgetary commitments which have not given rise to payments during three years counted from the date of the legal commitment will be decommitted (Art. 77 (3) FR)
and social development, thus assuring optimal development opportunities for Romania’s border regions and the adjacent regions in Hungary.

The 2005 Phare CBC programme is coherent with the Community Initiative Programme under INTERREG IIIA between Hungary and Romania (and Serbia and Montenegro). It is also aimed to have a close relation to measures to be implemented under the National Phare programme for Romania. This concerns in particular its parts dealing with Economic and Social Cohesion since the CBC overall objectives are also common with the objectives of these parts of the Phare National Programme. The CBC programmes will address border area specific issues for the Romanian territory and are coherent with the Commission Strategy for Integrated Border Management in the Western Balkans.

3. STRATEGY

Romania has common borders with five countries: the EU Member State Hungary, the Candidate Country Bulgaria and three partner countries: Moldova and Ukraine, included in the European Neighbourhood and Partnership Policy, and Serbia&Montenegro, included in the Stabilization and Association Process. As future EU Member State, Romania will have to manage ca 1800 km external EU border including the border along the Danube and the open border along the Black Sea. Romania’s Cross border cooperation with Phare assistance started already in 1996, under ZZ9624 programme and continued in 1999 under Phare CBC assistance, once Romania became eligible by Commission Regulation 2760/98, with its neighbours co-candidate countries Bulgaria and Hungary. Since 2004, Romania extended the Cross border cooperation to the other three borders, covering all five Romanian neighbours, adding in particular cooperation under the Neighbourhood Programme approach with Moldova, Ukraine and Serbia & Montenegro.

The main objective of this cooperation for all five borders 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, thus assuring optimal development opportunities for Romania and its neighbours.

For the CBC Programme between Romania and Hungary, joint management structures where set up anticipating already the future INTERREG IIIA structures.

Within these structures, Hungary and Romania developed a Joint Programming Document (JPD) and a Programme Complement⁵, setting out their cross-border development strategy for the 2004-06 period with the support of Phare CBC (RO side) and INTERREG (HU side). Also, in compliance with the Phare CBC rules, Romania developed the Project Fiche in a multi-annual perspective 2004-2006. The two countries approved the Phare CBC Project Fiche on 2004 and agreed in principle on the Programme Complement draft covering the programming period 2004 to 2006, at the JCC meeting on 8 July 2004. These documents will guide the CBC programming process and the selection of projects in the coming years up to 2006, by which Romania and Hungary want to establish, enhance and stabilise their cooperation along the common border, until Romania becomes a Member State. The two countries can review the joint programming documents as well as the multi-annual project fiches, as appropriate, including complementing them with further project proposals.

The overall strategy, developed and described in the JPD, shall lead to an efficient and appropriate cooperation on practical but also longer lasting measures between the neighbouring countries where

⁵ These documents also cover the border between Hungary and Serbia & Montenegro.
in particular the Phare fund mechanism in Romania is used in an optimal way, also to create the necessary structures for the INTERREG cooperation with Hungary. Wherever joint measures are feasible and appropriate they should be encouraged. On the other hand it is important that the implementation rules for measures on one side of the border do not hinder activities on the other side. The measures, which started with the funds of the 2004 budgetary year, will by and large continue to establish cooperation structures and the framework in terms of grant schemes for a speedy implementation of the cooperation as outlined in the JPD.

4. **OBJECTIVES AND PRIORITIES**

This chapter describes the measures\(^6\) envisaged for the budgetary year 2005 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 the HU–RO/HU–SCG 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

---

\(^6\) Each measure envisaged for implementation in this programme carries in the following the header Phare/2005/017-536 continued with a numbering system identifying the sub-programme and the measure itself.
**CBC RO-HU 2004-06**  
**Priorities and Measures**

<table>
<thead>
<tr>
<th><strong>GRANT SCHEME</strong></th>
<th></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 areas</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 services</td>
</tr>
<tr>
<td>Measure 2.2</td>
<td>Support co-operation of enterprises</td>
</tr>
<tr>
<td>Measure 2.4</td>
<td>Promotion of co-operation in the field of RESEARCH AND TECHNOLOGY DEVELOPMENT &amp; human resource development</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>SMALL PROJECT FUND</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Priority 3</strong></td>
<td></td>
</tr>
<tr>
<td>Measure 2.3</td>
<td>Encourage co-operation between institutions &amp; communities</td>
</tr>
<tr>
<td><strong>Priority 4</strong></td>
<td>TECHNICAL ASSISTANCE</td>
</tr>
<tr>
<td>Measure 3.1</td>
<td>Programme administration &amp; management</td>
</tr>
<tr>
<td>Measure 3.2</td>
<td>Programme publicity, monitoring &amp; evaluation</td>
</tr>
</tbody>
</table>

**Notes:**

The priorities and measures are transposed from the jointly developed CBC programming documents.

---

**Phare/2005/017-536.01 Cross Border Co-operation between Romania and Hungary**

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

This 2005 Phare programme will contribute to implementing the following specific tasks:

<table>
<thead>
<tr>
<th>Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction and rehabilitation of public roads</td>
</tr>
<tr>
<td>Rehabilitation/extension of railway stations and associated facilities</td>
</tr>
<tr>
<td>Collection and treatment of waste</td>
</tr>
<tr>
<td>Rehabilitation and cleaning up of contaminated sites</td>
</tr>
</tbody>
</table>
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 2005.

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

5. **Budget**

5.1. **Table for the Budgetary Year 2005**

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>The implementing project split into three components</th>
<th>Phare support</th>
<th>National Public Funds</th>
<th>Beneficiary contribution</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>INV</td>
<td>IB</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Grant scheme Economic and Social development Priority 1&amp;2</td>
<td>4,09</td>
<td>4,09</td>
<td>1,37</td>
<td>0,60</td>
</tr>
<tr>
<td>People to People/JSPF actions Priority 3. Encourage cooperation between institutions &amp;communities ()</td>
<td>0</td>
<td>0,66</td>
<td>0,66</td>
<td>0,22</td>
</tr>
<tr>
<td>Technical Assistance Priority 4 -</td>
<td>0</td>
<td>0,25</td>
<td>0,25</td>
<td>0</td>
</tr>
<tr>
<td>Total project 2005</td>
<td>4,09</td>
<td>0,91</td>
<td>5,00</td>
<td>1,59</td>
</tr>
</tbody>
</table>

National co-financing may be made by contributions from National, Regional, Local, Municipal authorities, IFIs loans to public entities or funds from public enterprises NB only in those cases where the public organisation providing funds is not also the beneficiary of the specific project concerned. This is to say that the beneficiary contribution shall be a separate – and in any case additional - amount.

The CBC programme with Hungary provides for a technical assistance financial envelope (capped at 5% of total Phare funds, i.e. € 0.25 Mio) 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.

It is specifically noted that all grant proposals shall, wherever applicable, be required to demonstrate their additionality to the results of other related actions financed from other sources, notably earlier CBC programmes.

Also, the Managing Authority and subordinate agencies shall take particular care to ensure that all actions under this programme shall be recorded, for example in PERSEUS, in such away as to make readily identifiable the specific sub-measure and budget year under which they are contracted.

Moreover, that specific registration shall be organised in such a way as to facilitate a readily traceable connection with the results of each contract, including notably the demonstration in terms of results of the abovementioned additionality.

5.2. **PRINCIPLE OF CO-FINANCING**

In accordance with the Phare Guidelines, all investment (‘INV’) 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 (‘IB’) projects is provided at least 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. This does not exclude that co-financing may also be provided from the national funds.

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.

5.3. **OUTLOOK FOR 2006**

In line with recommendations of the Phare Management Committee to step forward to Multi-Annual Programming, the Romania – Hungary CBC outlook for 2006 is described in the joint programming documents.

6. **INSTITUTIONAL AND SPECIFIC IMPLEMENTATION ARRANGEMENTS**

6.1. **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.
6.1.1. **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.

6.2. **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.

6.3. **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.
6.4. **J**OINT **T**ECHNICAL **S**ECRETARIAT (JTS)

A Joint Technical Secretariat for the programme is established in the VÁTI Hungarian Public Nonprofit Company for Regional Development and Town Planning. The JTS is based in the headquarters, supported by the VATI 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.

6.5. **R**ULES AND PROCEDURES SPECIFIC TO THIS PROGRAMME

6.5.1. **I**MPLEMENTING GUIDELINES

The Commission may, as appropriate, provide additional guidance for the implementation of the programme taking INTERREG and PHARE rules into account.

6.5.2. **B**ASIC **E**LIGIBILITY **C**RITERIA

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.

6.5.3. **G**ENERIC **S**ELECTION **C**RITERIA FOR **G**RANT **S**CHEMES IN THE **C**BC **P**ROGRAMMES

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.

6.5.4. 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

7. IMPLEMENTATION ARRANGEMENTS

7.1. METHOD OF IMPLEMENTATION

Implementation of this programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation7. 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 Agreement. 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.

Until the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/19998 project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

---

7.2. **PROCUREMENT**

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Chapter 3 of Part 2, Title III of its Implementing Rules, as well as the Commission Decision SEC (2003) 387/2. 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 at the date of the initiation of the procurement or grant award procedure.

7.3. **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 decentralised management. Until 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.

---


11 current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

12 see section 11 and Annex 4 of the 2004 Phare Programming Guide
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 Agreement.

7.4. 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.

8. Management of Assistance

8.1. Project Management

8.1.1. Responsibilities

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

The National Authorising Officer (NAO) and the NAC shall be jointly responsible for the coordination 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 Agreement 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.

It is specifically noted that all grant proposals shall, wherever applicable, be required to demonstrate their additionality to the results of other related actions financed from other sources, notably earlier CBC programmes.

Also, the Managing Authority and subordinate agencies shall take particular care to ensure that all actions under this programme shall be recorded, for example in PERSEUS, in such a way as to make readily identifiable the specific sub-measure and budget year under which they are contracted.

Moreover, that specific registration shall be organised in such a way as to facilitate a readily traceable connection with the results of each contract, including notably the demonstration in terms of results of the abovementioned additionality.

8.1.2. Project Size

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

8.1.3. Deadline for Contracting and Execution of Contracts, Programming Deadline

(1) All contracts must be concluded by no later than November 30, 2007.

(2) All contracts must be executed by no later than November 30, 2008
(3) Under DIS, a comprehensive tendering dossier must be submitted to the Delegation for approval by no later than 6 months after the signature of the Financing Agreement. In case of non-compliance, the Beneficiary Country will inform the JMC, which may recommend reallocation of funds in accordance with Art. 5 of the MoU on the National Fund.

8.1.4. ENVIRONMENTAL IMPACT ASSESSMENT AND NATURE CONSERVATION

The procedures for environmental impact assessment as set down in the EIA-directive\textsuperscript{13} 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\textsuperscript{14}.

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\textsuperscript{15}.

All investments 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.

8.2. FINANCIAL MANAGEMENT

8.2.1. 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 and modified by mutual agreement on 17 July 2003.

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. According to Articles 3 & 4 of the implementing rules of the Financial Regulation accrued interest is the property of the Beneficiary Country. The NAO must however ensure that the accrued interest is actually registered in its entirety as revenue in the national budget. Furthermore the NAO will ensure a regular reporting of the interest via Perseus.

\textsuperscript{13} DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

\textsuperscript{14} in Annex EIA to the corresponding investment project fiche.

\textsuperscript{15} In Annex Nature Conservation to the corresponding investment project fiche
8.2.2 Payments to the National Fund

A first payment\(^{16}\) of up to 20% of the funds to be managed locally will be sent to the NF following signature of the Financing Agreement and the Implementing Agreement between the NF and the Implementing Agency (IA). Furthermore, the NAO must submit to the Commission the designation of the PAO and a description of the system put in place, highlighting the flow of information between the NF and the IA and the manner in which the payment function between them will be carried out.

Two further payments of up to 30% of the funds to be managed locally will be made. The second payment will be triggered when 5% of the total budget in force has been disbursed by the IA. 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 has been disbursed and all contracts have been signed.

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 and IA 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.

8.2.3 Payments from the National Fund to the Implementing Agency

The National Fund will make payments to the IA in accordance with the Implementing Agreement signed between the NF and the IA. Bank accounts for CBC-programmes shall be opened in the name of the Implementing Agency 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 Implementing Agreement must be endorsed in advance by the European Commission. The IA 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 IA.

8.2.4 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.

8.2.5 Closure of Expenditure and Clearance of Accounts

No later than sixteen (16) months after the end of the execution of contracts, the NF will submit a final declaration of expenditure covering both PHARE support and co-financing and an attestation

\(^{16}\) representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation
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. The funds will be recovered either by direct reimbursement from the NF or by compensation in accordance with Community rules.

**9. Monitoring and Evaluation**

In addition to the respective CBC roles of the JCC & JSC as described above, 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 EC-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 this programme will be subject to interim (either centralised or decentralised) and/or ex-post evaluations.
10. **Audit, Financial Control, Anti-Fraud Measures, Preventive and Corrective Actions**

10.1. **Supervision and Financial Control by the Commission and the European Court of Auditors**

All Financing Agreements 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) 2185/96.¹⁸

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, 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.

10.2. **Obligations of the Beneficiary Country**

10.2.1. **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 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 438/2001.²⁰

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.

10.2.2. **Preventive Measures**

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

---


¹⁹ as referred to in the General Conditions relating to the Financing Memorandum” attached to the Framework Agreement

The authorities of the beneficiary country, including the personnel responsible for the implementation of the programme, shall also undertake to take whatever precautions are necessary to avoid any risk of conflict of interest, and shall inform the Commission immediately of any such conflict of interest or any situation likely to give rise to any such conflict.

10.2.3. **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\(^{22}\).

In particular, all suspected or actual cases of fraud\(^{23}\) and irregularity\(^{24}\) 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.

\(^{21}\) 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 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.

\(^{22}\) Commission Regulation (EC) 1681/94 of 11. July 1994; 12.7.94; p. 43

\(^{23}\) 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.

\(^{24}\) Irregularity shall mean any infringement of a provision of national or Community law, this Financing Agreement 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 Agreement (e.g. the Europe Agreements, Framework Agreements, and the MoU on the Establishment of the National Fund etc.)
10.3. **RECOVERY OF FUNDS IN CASE OF IRREGULARITY OR FRAUD**

Any proven irregularity\(^{25}\) or fraud\(^{26}\) 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
(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.

11. **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.

12. **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

---

\(^{25}\) see definition above

\(^{26}\) see definition above
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.
ANNEX D ON

INFORMATION AND PUBLICITY FOR THE PHARE, ISPA AND SAPARD PROGRAMMES OF THE EUROPEAN COMMUNITIES

1. Objective and scope

Information and publicity measures concerning assistance from the European Community Phare Programme are intended to increase public awareness and transparency of EU action and to create a consistent image of the measures concerned in all applicant countries. Information and publicity shall concern measures receiving a contribution from the Phare Programme.

2. General principles

The appropriate Programme Authorising Officer in charge of the implementation of Financing Memoranda, and other forms of assistance shall be responsible for publicity on the spot. Publicity shall be carried out in co-operation with the EC Delegations, which shall be informed of measures taken for this purpose.

The competent national and regional authorities shall take all the appropriate administrative steps to ensure the effective application of these arrangements and to collaborate with the EC Delegations on the spot.

The information and publicity measures described below are based on the provisions of the regulations and decisions applicable to the Structural Funds. They are:


Specific provisions concerning ISPA are included in:


Information and publicity measures must comply with the provisions of the above mentioned regulation and decision. A manual on compliance is available to national, regional and local authorities from the EC Delegation in the country concerned.

3. Information and publicity concerning Phare programmes

Information and publicity shall be the subject of a coherent set of measures defined by the competent national, regional and local authorities in collaboration with the EC Delegations for the duration of the Financing Memorandum and shall concern both programmes and other forms of assistance.
The costs of information and publicity relating to individual projects shall be met from the budget for those projects.

When Phare programmes are implemented, the measures set out at (a) and (b) below shall apply:

(a) The competent authorities of the applicant countries shall publish the content of programmes and other forms of assistance in the most appropriate form. They shall ensure that such documents are appropriately disseminated and shall hold them available for interested parties. They shall ensure the consistent presentation throughout the territory of the applicant country of information and publicity material produced.

(b) Information and publicity measures on the spot shall include the following:

(i) In the case of infrastructure investments with a cost exceeding EUR 1 million:

- billboards erected on the sites, to be installed in accordance with the provisions of the regulation and decision mentioned in paragraph 2 above, and the technical specifications of the manual to be provided by the EC Delegation in the country concerned.

- permanent commemorative plaques for infrastructures accessible to the general public, to be installed in accordance with the provisions of the regulation and decision mentioned in paragraph 2 above, and the technical specifications of the manual to be provided by the EC Delegation in the country concerned.

(ii) In the case of productive investments, measures to develop local potential and all other measures receiving financial assistance from Phare, Ispa or Sapard:

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

- measures targeting applicants for public aids part-financed by Phare, ISPA or SAPARD in the form of an indication on the forms to be filled out by such applications, that part of the aid comes from the EU, and specifically, the Phare, ISPA or SAPARD Programmes in accordance with the provisions outlined above.

4. Visibility of EU assistance in business circles and among potential beneficiaries and the general public

4.1 Business circles

Business circles must be involved as closely as possible with the assistance, which concerns them most directly.

The authorities responsible for implementing assistance shall ensure the existence of appropriate channels for disseminating information to potential beneficiaries, particularly SMEs. These should include an indication of the administrative procedures to be followed.
4.2 Other potential beneficiaries

The authorities responsible for implementing assistance shall ensure the existence of appropriate channels for disseminating information to all persons who benefit or could benefit from measures concerning training, employment or the development of human resources. To this end, they shall secure the co-operation of vocational training bodies involved in employment, business and groups of business, training centres and non-governmental organisations.

Forms

Forms issued by national, regional or local authorities concerning the announcement of, application for and grant of assistance intended for final beneficiaries or any other person eligible for such assistance shall indicate that the EU, and specifically the Phare, ISPA or SAPARD Programmes, is providing financial support. The notification of aid sent to beneficiaries shall mention the amount or percentage of the assistance financed by the Programme in question. If such documents bear the national or regional emblem, they shall also bear the EU logo of the same size.

4.3 The general public

The media

The competent authorities shall inform the media in the most appropriate manner about actions co-financed by the EU, and Phare, ISPA or SAPARD in particular. Such participation shall be fairly reflected in this information.

To this end, the launch of operations (once they have been adopted by the Commission) and important phases in their implementation shall be the subject of information measures, particularly in respect of regional media (press, radio and television). Appropriate collaboration must be ensured with the EC Delegation in the applicant country.

The principles laid down in the two preceding paragraphs shall apply to advertisements such as press releases or publicity communiqués.

Information events

The organisers of information events such as conferences, seminars, fairs and exhibitions in connection with the implementation of operations part-financed by the Phare, ISPA or SAPARD Programmes shall undertake to make explicit the participation of the EU. The opportunity could be taken of displaying the European flags in meeting rooms and the EU logo upon documents depending on the circumstances. The EC Delegation in the applicant country shall assist, as necessary, in the preparation and implementation of such events.

Information material

Publications (such as brochures and pamphlets) about programmes or similar measures financed or co-financed by Phare, ISPA or SAPARD should, on the title page, contain a clear indication of the EU participation as well as the EU logo where the national or regional emblem is used.
Where such publications include a preface, it should be signed by both the person responsible in the applicant country and, for the Commission, the Delegate of the Commission to ensure that EU participation is made clear.

Such publications shall refer to the national and regional bodies responsible for informing interested parties.

The above-mentioned principles shall also apply to audio-visual material.

5. **Special arrangements concerning billboards, commemorative plaques and posters**

In order to ensure the visibility of measures part-financed by the Phare, Ispa or Sapard Programmes, applicant countries shall ensure that the following information and publicity measures are complied with:

**Billboards**

Billboards providing information on EU participation in the financing of the investment should be erected on the sites of all projects in which EU participation amounts to EUR 1 million or more. Even where the competent national or regional authorities do not erect a billboard announcing their own involvement in financing the EU assistance must nevertheless be announced on a special billboard. Billboards must be of a size which is appreciable to the scale of operation (taking into account the amount of co-financing from the EU) and should be prepared according to the instructions contained in the technical manual obtainable from EC Delegations, referred to above.

Billboards shall be removed not earlier than six months after completion of the work and replaced, wherever possible, by a commemorative plaque in accordance with the specifications outlined in the technical manual referred to above.

**Commemorative plaques**

Permanent commemorative plaques should be placed at sites accessible to the general public (congress centres, airports, stations, etc.). In addition to the EU logo, such plaques must mention the EU part financing together with a mention of the relevant Programme (Phare, Ispa or Sapard).

Where a national, regional or local authority or another final beneficiary decides to erect a billboard, place a commemorative plaque, display a poster or take any other step to provide information about projects with a cost of less than EUR 1 million, the EU participation must also be indicated.

6. **Final provisions**

The national, regional or local authorities concerned may, in any event, carry out additional measures if they deem this appropriate. They shall consult the EC Delegation and inform it of the initiatives they take so that the Delegation may participate appropriately in their realisation.
In order to facilitate the implementation of these provisions, the Commission, through its Delegations on the spot, shall provide technical assistance in the form of guidance on design requirements, where necessary. A manual will be prepared in the relevant national language, which will contain detailed design guidelines in electronic form and this will be available upon request.