Establishing a Phare Cross Border Cooperation (‘Neighbourhood Programme’) programme between Romania and Serbia & Montenegro in 2005,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Community,
Having regard to Council Regulation (EEC) N° 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 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 220202 in 2005.

Done in Brussels,

For the Commission

2 OJ n° L345 of 19/12/1998
1. IDENTIFICATION

<table>
<thead>
<tr>
<th>Phare CBC 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>
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<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 NEIGHBOURHOOD PROGRAMME SUPPORTING ROMANIA’S CROSS BORDER COOPERATION WITH ITS NEIGHBOUR SERBIA & MONTENEGRO

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 1800km external EU border including the border along the Danube and the open border along the Black Sea in a way, inter alia, coherent with the Commission Strategy for Integrated Border Management in the Western Balkans.

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)
With this Neighbourhood Programme ('NP') within the Phare CBC framework the EU will support Romania in strengthening its efforts continuing to have good neighbourhood relations with Serbia & Montenegro also after it will have acceded to the EU, taking account of the nature of the border with Serbia & Montenegro as a future external border of the EU.

In June 2004, Romania agreed with Serbia & Montenegro on a Joint Programming Document (JPD) which sets out the common social and economic development strategy for the border area in the 2004-06 period.

That CBC Joint Programming Document (JPD) was updated in June 2005 by the RO – SCG Joint Co-operation Committee in accordance with the common cross-border co-operation strategy. Romania and Serbia & Montenegro agreed on a set of projects to be included in the CBC 2005 programme. Those projects will be implemented through a single call for proposals and a joint selection process. Selected projects will receive assistance from Phare CBC funds through this Financing proposal (for actions on Romania side), and from Cards funds through the Cards NP Action Programme 2005 (for actions on the Serbia & Montenegro side).

The 2005 Financing proposal includes:

- A relatively large “Local Economic and Social Development” grant scheme, to assist mainly investment, institution building and partnership development among the local actors in the eligible region.
- A “Joint Small Project Fund” grant scheme, to support local people-to-people activities and the establishment of cross-border networks.
- A small “Technical assistance” financial envelope to support all aspects of programme management and implementation, including publicity, evaluation and projects preparation.

3. **Strategy**

Romania’s Cross Border Cooperation with Phare assistance first started in 1999, once Romania became eligible by Commission Regulation 2760/98, with its neighbouring co-candidate countries Bulgaria and Hungary as part of the overall Phare CBC Programme.

The Commission Communication “Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours” of 11 March 2003 affirmed that “the European Union should aim to develop a zone of prosperity and a friendly neighbourhood … with whom the European Union enjoys close, peaceful and co-operative relations.” The Wider Europe Communication first outlined the European neighbourhood policy for shaping the future EU relations with its neighbours. As one element of this policy, the Commission sought to establish, as of 2007, a new Neighbourhood Instrument, which will finance cross-border co-operation measures on both side of the external border of the enlarged EU.

Following this approach, on 1 July 2003 the Commission adopted the Communication "Paving the way for a New Neighbourhood Instrument" (COM [2003] 393, hereafter "the NNI Communication") which introduced the concept of "Neighbourhood Programmes".

With the NNI Communication, the Commission proposes a two-phase approach, as follows:

- First phase, practical changes in the implementation of existing co-operation instruments (PHARE CBC, INTERREG, CARDS, TACIS) through the introduction of Neighbourhood Programmes for 2004-2006 at the external borders of the enlarged EU (including Bulgaria and Romania);
- Second phase, as of 2007, introduction of a New Neighbourhood Instrument to operate both inside and outside the external borders of the EU.

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5 COM [2003] 104, hereafter “the Wider Europe Communication”
The objectives of both the future New Neighbourhood Instrument (‘NNI’) after 2006, as well as for the transitional Neighbourhood Programmes 2004-2006, are the following:

- Promoting sustainable economic and social development in the border areas;
- Working together to address common challenges, in fields such as environment, public health, and the prevention and fight against organised crime;
- Ensuring efficient and secure borders;
- Promoting local “people-to-people” type actions.

In order to pave the way for a future New Neighbourhood Instrument, in the period 2004-2006 the focus will be on ensuring effective co-ordination and synchronisation of the existing instruments for cross-border co-operation between the enlarged European Union and its neighbouring countries.

For this purpose, the Phare CBC Regulation (EC) No 2760/98\(^6\) has been amended by Regulation (EC) No 1822/2003\(^7\) which, as of 1 January 2004, expanded the geographical scope of Phare CBC to include all external borders of Bulgaria and Romania.

As of 2004, Romania’s cross border cooperation has included the borders with all of its five neighbours: a Member State (Hungary), where the CBC programme is implemented in conjunction with INTERREG; a candidate country (Bulgaria) where the Phare CBC Joint Programming Document 2003-06 will continue to be implemented; two neighbouring NIS countries (Ukraine and Moldova) and a Western Balkan country (Serbia&Montenegro), where Neighbourhood Programmes will be implemented in 2004-06 in conjunction with Tacis (UA and MD) and Cards (SCG).

The overall 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.

With the new Neighbourhood Programmes, Romania will strengthen its efforts to have good relations also after it will have acceded to the EU, with Moldova, Ukraine and Serbia&Montenegro despite the nature of the borders as future external borders of the EU.

In 2003, an "External Border Initiative" (EBI) was set up, intended for helping Romania to prepare the new cross-border co-operation Neighbourhood Programmes at its borders with Moldova, Ukraine and Serbia & Montenegro. The EBI provides, \textit{inter alia}, for € 1.35 million technical assistance for the three new Romanian Neighbourhood Programmes (preparation of programmes, information and publicity, training of local staff, support to programme management structures, etc.) and for assistance for project preparation. For the Neighbourhood Programme between Romania and Serbia&Montenegro, joint management structures where set up, which elaborated a Joint Programming Document (JPD) setting out their cross-border development strategy for the 2004-06 period with the support of Phare CBC (RO side) and Cards (SCG side).

The 2005 Phare CBC programmes are intended to have a close relation to measures to be implemented under the National Phare programme in particular for its parts dealing with border management and Economic and Social Cohesion since the CBC overall objectives are also

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common with the objectives of these parts of the Phare National Programme. The CBC programmes, however, address border area specific issues for the Romanian territory.

The two countries endorsed the JPD in June 2004 covering the programming period 2004 to 2006. This document will guide the CBC programming process and the selection of projects in the coming years up to 2006, by which Romania and Serbia&Montenegro want to establish, enhance and stabilise their cooperation along the common border. That CBC Joint Programming Document (JPD) was updated in June 2005 by the RO – SCG Joint Co-operation Committee in accordance with the common cross-border co-operation strategy.

4. **OBJECTIVES AND PRIORITIES**

The global objective of the RO-SCG Neighbourhood Programme 2004-06 is:

"to achieve the balanced socio-economic development of the eligible area in Romania and Serbia&Montenegro by developing the principle of cross-border co-operation"

Two strategic objectives will reinforce the global objective:

– To increase the overall competitiveness of the regional economy, and
– To improve the quality of living standards for the areas' population.

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

<table>
<thead>
<tr>
<th>Neighbourhood Programme Priorities and Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Priority 1</strong></td>
</tr>
<tr>
<td>Measure 1.1:</td>
</tr>
<tr>
<td>Measure 1.2:</td>
</tr>
<tr>
<td>Measure 1.3:</td>
</tr>
<tr>
<td>Measure 1.4:</td>
</tr>
<tr>
<td><strong>Priority 2</strong></td>
</tr>
<tr>
<td>Measure 2.1:</td>
</tr>
<tr>
<td><strong>Priority 3</strong></td>
</tr>
<tr>
<td>Measure 3.1</td>
</tr>
<tr>
<td>Measure 3.2</td>
</tr>
</tbody>
</table>
The projects of the programme for 2005 are:

**Phare/2005/017-538** 01.01 Local Economic and Social development

The Phare contribution to this project may amount to a maximum of €4.200 Mio.

**Grant Scheme for Promoting Local Socio-Economic Development**

A feature of the Neighbourhood Programme is to encourage regular interaction between businesses (including agriculture) located across the entire border area, via sustainable business-to-business networks, quality business support services, professional assistance and other important services, especially for SMEs.

This measure, therefore, is aimed at establishing networks of various business oriented facilities, offering high quality business services, with special emphasis on cross-border business-to-business co-operation. It will facilitate co-operation and institution building between agricultural sector support services to sustain the sector’s viability.

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

<table>
<thead>
<tr>
<th><strong>Tasks in the 2005 CBC programme</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and Agricultural Support co-operation establishing network of various business oriented facilities</td>
</tr>
<tr>
<td>facilitate co-operation and institution building between agricultural sector support services</td>
</tr>
<tr>
<td>Co-operation between local public services</td>
</tr>
<tr>
<td>Support for small-scale environmental and local infrastructure development</td>
</tr>
<tr>
<td>Co-operation in tourism development</td>
</tr>
<tr>
<td>Small scale Transport and border infrastructure projects: preparation and implementation support</td>
</tr>
<tr>
<td>Setting up/reinstalling monitoring networks for air and water quality in border regions</td>
</tr>
<tr>
<td>Natural park management</td>
</tr>
<tr>
<td>Local environment education programmes</td>
</tr>
</tbody>
</table>

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.

**PHARE/2004/016-943.** 01.02 Joint Small Project Fund

The Phare contribution to this project may amount to a maximum of €0.550 Mio.

This project addresses priority2 mentioned in the above table and consists of only one measure "Joint Small Project Fund" to implement people to people actions including Cross-Border networks and local contacts.

The people to people actions are aimed at supporting the establishment and development of co-operative networks on both sides of the border and the creation of linkages between these networks and wider European Union networks.

The selected projects under this fund shall fall within the priority fields set out in the Joint Programming Document for the period 2004-2006. The projects will encourage new forms of cross-border co-operation and strengthen existing ones.

<table>
<thead>
<tr>
<th><strong>Tasks of the Joint Small Project Fund for the 2005 programme</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Strengthening local co-operation across the border</td>
</tr>
<tr>
<td>Stimulation and support to creation of permanent structures among the local and regional organisations in the border regions</td>
</tr>
</tbody>
</table>
Tasks of the Joint Small Project Fund for the 2005 programme

| Building and development of specialist resources of local and regional institutions involved in regional development and cross-border co-operation; |
| Development of local/regional economic and employment; |
| Development and strengthening of an effective implementation structure. |

Providing on-going assistance for participants in the identification and preparation of projects; increase personal and institutional capabilities for co-operation and participation in future development programmes in particular for the preparation of future Neighbourhood Programme activities;

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.

PHARE/2004/016-943. 01.03 Technical assistance

The Phare contribution to this project may amount to a maximum of €0.250 Mio.

The technical assistance comprises two specific measures: (i) support for Programme management and implementation, which will provide the necessary support to management structures, including covering the operational costs of the Joint technical Secretariat to be set up on the Romanian eligible border area; (ii) support for programme publicity and evaluation (studies, seminars, information and publicity measures, evaluation, etc.) and providing assistance for projects preparation. The Implementing Agency in Romania will be responsible for the implementation of this project in co-operation with the PCU in Serbia & Montenegro.

5. **FINANCIAL TABLE FOR THE BUDGETARY YEAR 2005**

5.1. **FINANCIAL TABLE FOR THE BUDGETARY YEAR 2005**

The distribution of figures in this table 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>Local Economic &amp; Social Development (Priority 1)</td>
<td>4.200</td>
<td>0.000</td>
<td>4.200</td>
<td>1.400</td>
</tr>
<tr>
<td>People-to-people(JSPF) actions (Priority 2)</td>
<td>0.000</td>
<td>0.550</td>
<td>0.550</td>
<td>0.184</td>
</tr>
<tr>
<td>Technical Assistance (Programme support) Priority 3)</td>
<td>0.000</td>
<td>0.250</td>
<td>0.250</td>
<td>0.000</td>
</tr>
<tr>
<td>Total project 2005</td>
<td>4.200</td>
<td>0.800</td>
<td>5.000</td>
<td>1.584</td>
</tr>
</tbody>
</table>

Beneficiary Contribution minimum shall be calculated as total of Phare and national co-finance, divided by 9

(The distribution of figures between the budget lines is indicative within the limits of Art. 5 MoU NF)
Each Neighbourhood Programme provides for a technical assistance financial envelope (capped at 5% of total Phare funds, i.e. € 0.25 Mio). The implementing agency will ensure that the funds allocated to this purposes will be used in the most effective way for the benefit of Romanian Neighbourhood Programmes.

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 THE YEAR 2006**

In line with recommendations of the Phare Management Committee to step forward to Multi-Annual Programming, the Romania – Serbia&Montenegro Neighbourhood Programme outlook for the year 2006 is described in the Joint Programming Document.

6. **INSTITUTIONAL AND SPECIFIC IMPLEMENTATION ARRANGEMENTS**

6.1. **IMPLEMENTING AGENCY**

The Romanian CBC Implementing Agency is the Ministry of European Integration (MIE), which retains overall responsibility for the implementation of the project.

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 NP to a regional body, situated in the border area. In this respect, the Regional Development Authority (‘RDA’) V West and RDA IV South-West will establish a **CBC Regional Office**.

6.2. **JOINT CO-OPERATION COMMITTEE (JCC)**

The JCC is the strategic body of the Neighbourhood Programme. 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 operation of the NP.
The main responsibilities of the JCC are:

- To adopt the JPD and any further adjustment of it, as appropriate
- To adopt the project fiches for the Financing Proposal 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 participate in the JCC in an advisory capacity.

The JCC will be co-chaired by the Romanian IA and the Serbia&Montenegro Programme Coordination Unit.

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 NP. The main responsibilities of the JSC are:

- To prepare the project fiches for the yearly programming exercise, to be forwarded to the JCC for adoption;
- To oversee the calls for proposals and Application Packs (drafted by the JTS), to be forwarded to respective Contracting Authorities for publication;
- To oversee the joint selection of projects;
- To supervise the activities of the Joint Technical Secretariat (JTS) and the Evaluation Committee;
- To review periodically, progress made towards achieving the specific (and quantified) objectives of the programme and to analyse the results of implementation (achievement of the targets set for the different measures).

The JSC consists of:

- Representatives of national, regional and local authorities. Given its specific role, and in order to enhance local ownership, regional and local authorities should be largely represented.
- Representatives of the European Commission, acting as observers.

6.4. Joint Technical Secretariat (JTS)

The Implementing Agency (IA) and the Programme Co-ordination Unit (PCU) will jointly establish a Joint Technical Secretariat (JTS) located in the eligible area of the Romanian side of the border, which will include staff from Serbia&Montenegro. The JTS shall in particular be responsible for the secretariat function of the JCC and the JSC, and for assisting the IA and PCU.
The JTS will be responsible for the day-to-day management tasks related to the NP, with due account of the roles and responsibilities of the IA and PCU.

The JTS will assist the JCC and the JSC in their administrative and practical tasks; it will supervise the Technical Assistance provided under this programme, will prepare projects with the help of a project preparation facility and undertake the tasks concerning preparing, monitoring, controlling and evaluating projects under the NP.

6.5. RULES AND PROCEDURES SPECIFIC TO THIS PROGRAMME

6.5.1. IMPLEMENTING GUIDELINES

This Neighbourhood Programme shall be implemented according to the NP Implementing Guidelines for Phare CBC/Cards borders, issued by the Commission on 15 July 2004.

6.5.2. BASIC ELIGIBILITY CRITERIA

In the meaning of the Neighbourhood 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 under the Neighbourhood Programme, a project must fall into one of these categories.

6.5.3. 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 Neighbourhood Programme.

6.5.4. GENERIC LIST OF POTENTIAL BENEFICIARIES OF GRANT SCHEMES

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

- Local and regional authorities in the border regions concerned;
- NGO’s and NPO’s 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) local forestry directorates
• Public road and rail management companies;
• Employment Agencies.

The list of eligible beneficiaries will be detailed in the Call for proposals/Guidelines for applicants

6.5.5. PROGRAMME MONITORING AND EVALUATION

Neighbourhood Programme's monitoring of funding will be conducted at project level by the Contracting Authorities of both countries.

Nevertheless, as a Neighbourhood Programme is a joint co-operation programme, every effort should be made to report on progress across the whole programme. Since projects should, as far as possible, produce single progress reports covering the use of Phare CBC and CARDS funding, the Joint Co-operation Committee should have all necessary information in order to report to the Commission on the entirety of the programme on a yearly basis.

A joint progress report should be prepared, covering both Phare CBC and CARDS activities, and submitted to the Commission by the JCC on a yearly basis. The report should be available in English. This report should be available to all concerned parties.

When an evaluation is conducted under the aegis of the JCC, every effort should be made to evaluate all elements of the programme (Phare CBC and CARDS).

7. IMPLEMENTATION ARRANGEMENTS

7.1. METHOD OF IMPLEMENTATION

Implementation of this programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation. 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 1266/1999 project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

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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\textsuperscript{10}, as well as the Commission Decision SEC (2003) 387/2\textsuperscript{11}.

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\textsuperscript{12} 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 the 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\textsuperscript{13}, 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


\textsuperscript{11} Commission Decision SEC (2003) 387/2 on Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities in the context of co-operation with third countries, adopted on March 25, 2003

\textsuperscript{12} current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

\textsuperscript{13} see section 11 and Annex 4 of the 2004 Phare Programming Guide
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 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.

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 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.

**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\(^{14}\) 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\(^{15}\).

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\(^{16}\).

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

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\(^{14}\) DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

\(^{15}\) in Annex EIA to the corresponding investment project fiche.

\(^{16}\) In Annex Nature Conservation to the corresponding investment project fiche
actually registered in its entirety as revenue in the national budget. Furthermore the NAO will ensure a regular reporting of the interest via Perseus.

### 8.2.2 Payments to the National Fund

A first payment\(^\text{17}\) 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\(^\text{18}\) 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.

\(^{17}\) representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation
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 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 Agreement 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\(^1\).

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\(^2\), 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\(^3\).


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

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\(^{22}\) practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

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\(^{23}\).

In particular, all suspected or actual cases of fraud\(^{24}\) and irregularity\(^{25}\) as well as all measures related thereto taken by the national authority must be reported to the Commission services.

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\(^{22}\) 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 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 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.)
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.

10.3. RECOVERY OF FUNDS IN CASE OF IRREGULARITY OR FRAUD

Any proven irregularity or fraud 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.

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26 see definition above
27 see definition above
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 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.

Prior to any grant scheme contract being signed, the Regional Office for CBC Management, Implementation and Monitoring foreseen by the Implementing Agency for the CBC with Serbia & Montenegro must be operational.