ARTICLE 4 - ADDRESSES
Correspondence relating to the execution of THE MEASURE, stating THE MEASURE'S number and title, shall be addressed to the following:

for THE RECIPIENT:
Mr Istvan Jakab
Secretary of State and National Aid Coordinator
Ministry of Public Finance
Government of Romania
St. Apolodor 117
Iatura Nord, sector 5 Bucharest
Romania
Fax: 00 40 21 3359878

for the COMMUNITY:
Mr. Jonathan Scheele
Head of Delegation of the European Commission in Bucharest
St. Jules Michelet 18-20
010463 Bucharest
Romania
Fax: 00 40 1 212 88 08

ARTICLE 5 - NUMBER OF ORIGINALS
This Memorandum is drawn up in duplicate in the English language.

ARTICLE 6 - ENTRY INTO FORCE
This Memorandum shall enter into force on the date on which it has been signed by both parties. No expenditure incurred before this date is eligible for the EC GRANT.

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

Done at Bucharest
Date 18 May 2006
for THE RECIPIENT

[Signature]

Mr. Sebastian Vladescu
Minister of Public Finance

for the COMMUNITY

[Signature]

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

2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)
4. Budget (Annex E)
Annex C

PHARE Programme 2005/017-690

centering flood damage

rehabilitation and prevention measures
1. **Objectives and Priorities**

The measures foreseen under this programme shall complement the measures already envisaged under sub-programmes 3 to 5 of the 2004 National Phare programme 2004/016-772 for flood damage re-habilitation and prevention. This programme comprises five measures, each identified by a Phare code for the year 2005.

1.1. **Measures concerning “Meeting the obligations of the acquis”**

In the framework of the Phare national programme 2004/016-772 sub-programme.03 “Meeting the obligations of the acquis”, flood-damage rehabilitation and prevention actions under this programme will focus on two sectors Environment and Transport.

**2005/017 690 01.01 Flood related measures in the environment sector**

2005 Phare funds required: € 2.00 M

| Task |  
| --- | --- |
| Contribution to Floods prevention strategy by: |  
| Developing the flooding area maps, flooding risk maps, establishing the preventive measures for the protection and reduction of the floods effects, developing a system for increasing the public awareness concerning floods risk and improving the informational and decisional flow for flood management. |

This task is coherent with the multi-annual sector programme PHARE 2004/016-772.03.03 Environment, which addresses inter alia the following tasks relevant to floods damage:

<table>
<thead>
<tr>
<th>Phare priorities</th>
<th>Main tasks</th>
</tr>
</thead>
</table>
| **Waste management** | • Strengthen institutional capacities at regional and local levels in implementing and enforcement of domestic waste and industrial waste management related legislation,  
• Improve administrative capacity at regional level for investment planning and elaboration of regional waste management plans  
• Supply of waste monitoring equipment |
| **Water quality** | • Support to the River Basin Management Plan for the Ialomita-Buzau river basin  
• Elaboration of an investment methodology for Water Framework Directive (WFD) within a River Basin  
• Supply of computers and software for data collection, processing and visualization; hardware and software for GIS applications in respect of river basin management plans, quality monitoring equipment and staff training |
| **Nature protection** | • Strengthen institutional capacities at regional and local levels in implementing and enforcement of nature protection related legislation |

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1. Each measure in this 2005 programme carries the following header PHARE/2005/XXX-YYY followed by a numbering system identifying the sub-programme and the measure itself.
<table>
<thead>
<tr>
<th>Phare priorities</th>
<th>Main tasks</th>
</tr>
</thead>
</table>
| GIS              | - introduce and maintain Geographical Information System (GPS) techniques  
|                  | - improve institutional management and technical performance of the staff  
|                  | - environment related GIS maps, supply of IT equipment |

2005/017/690.01.02 Flood damage prevention strategy for Romania’s road and railway network

This 2005 measure complements the project 2004/016-772.03.14 “Assistance to implement the new safety aspects of the EU legislation in the field of road safety and to consolidate the railway restructuring”.

2005 Phare funds required: (€ 2.00 M)

<table>
<thead>
<tr>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to the capacity for developing the Romanian administration’s flood damage prevention strategy for Romania’s road and railway network</td>
</tr>
</tbody>
</table>

### 1.2. Measures concerning Economic and social cohesion

Within the Phare national programme for Romania 2004/016-772, Sub-programme 04. “Economic and social cohesion” focuses on the following priorities:

<table>
<thead>
<tr>
<th>PRIORITIES</th>
<th>MEASURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority A: Improving regional infrastructure to support economic development</td>
<td>Regional and local transport, business and tourism infrastructure</td>
</tr>
</tbody>
</table>
| Priority B: Human Resource Development | Tackling structural unemployment  
| | Improving long term labour market adaptability  
| | Actively combating social exclusion  
| | Improving access to education and region specific technical and vocational education and training system |
| Priority C: Development of the productive sector through support to SMEs | Support to SMEs, business start-up, micro-enterprises and business support service providers |
| Priority D: Environmental protection at regional level | Improving environmental protection at local and regional level  
| | SAMTID supervision |

Within those overall objectives, it is proposed that the present 2005 ‘floods’ specific programme will focus on Part 1: “Improving infrastructure, provision of SME support, environmental protection and improving access to education and training at regional level in order to enhance economic development” which is the most suitable section of sub-programme 04 to support the flood damage rehabilitation.

And also on
Part 3: “Development of administrative capacities for Structural Funds management” which is the suitable section to address the administrative capacity issues related to floods and disasters.

**2005/017-690.01.03 Flood damage related measures coherent with Part 1 (investments) in the NP 2004 Economic Social Cohesion sector**

2005 Phare funds required: (€17.0M)

<table>
<thead>
<tr>
<th>Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to floods damage rehabilitation measures for regional and local infrastructure</td>
</tr>
<tr>
<td>- TA for preparation of tender dossiers and supervision of works: regional roads</td>
</tr>
<tr>
<td>- Rehabilitation works for regional roads</td>
</tr>
</tbody>
</table>

It is foreseen that these funds will be used principally for Technical Assistance, indicatively* contracted by means of grant contracts established following a Call for Proposals addressed to those County Councils in whose area significant flood-damage to regional has occurred.

The County Councils will thus be equipped and responsible for speedy but accurate preparation of detailed tender dossiers (including technical designs) relating to the most urgent cases of rehabilitation of flood-damaged regional roads. It is intended that the actual repair works shall be financed by EIB/EBRD/IFI funds. Where appropriate, those designs will take into account the possibility of minor changes to road design and alignment to improve flood-resistance. The designs will also take into account possible efficiency and safety gains. The same contracts will also include supervision of the rehabilitation works concerned.

This allocation may also – after meeting the above-mentioned TA requirement - be used for works (or grants) contracts concerning rehabilitation of flood-damaged regional roads (also for SAPARD, ISPA and IFI operations).

*grant scheme as described subject to formal request from NAO and prior approval of derogation by Commission services.*
1.3. Measures concerning Technical Assistance

Within Phare national programme for Romania 2004/016-772, Sub-programme 5 “Special Actions Facility” provides technical and administrative support to the programme. A similar component is also required in this programme.

2005/017-690.01.05 Technical Assistance to flood damage related projects

2005 Phare funds required: €2.00 M

| Task | Contribution by technical assistance to flood-damage prevention measures on national, regional and local level |

This sub-component shall cover the expenditures required for technical assistance including project preparation in the context of floods damage rehabilitation and prevention measures, insofar as not already adequately covered by other allocations or other financing sources.
2. **Indicative Budget**

2.1. **Budget Table**

Indicative budget distribution of funds

The distribution of figures between the proposed measures is indicative within the limits of Art. 5 MoU on the National Fund. The figures are given in Million €.

The 2005 Phare funds will be allocated as follows

<table>
<thead>
<tr>
<th>Measure no.</th>
<th>Measure title</th>
<th>PHARE contribution</th>
<th>National co-finance</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>Flood related measures coherent with multiannual programme 2004/016-772.03.3 (environment)</td>
<td>0.00 2.00</td>
<td>0.00 2.00</td>
<td>2.00</td>
</tr>
<tr>
<td>02</td>
<td>Flood damage prevention strategy for Romania's road and railway network coherent with annual project 2004/016-772.03.14 (transport)</td>
<td>0.00 2.00</td>
<td>0.00 2.00</td>
<td>2.00</td>
</tr>
<tr>
<td>03</td>
<td>Flood damage related measures coherent with the multi-annual programme Economic Social Cohesion 2004/016-772.04 (ESC-part 1)</td>
<td>17.00 0.00</td>
<td>17.00 5.67</td>
<td>22.67</td>
</tr>
<tr>
<td>04</td>
<td>Flood damage related measures coherent with the multi-annual programme Economic Social Cohesion 2004/016-772.04 (ESC-part 3)</td>
<td>0.00 1.60</td>
<td>0.00 1.60</td>
<td>1.60</td>
</tr>
<tr>
<td>05</td>
<td>Technical Assistance to flood damage related projects coherent with annual project fiche 2004/016-772.05.01 .</td>
<td>2.00 0.00</td>
<td>2.00 0.66</td>
<td>2.66</td>
</tr>
</tbody>
</table>

**Total** | | | | 19.00 5.60 24.6 6.33 31.93 |

2.2. **Principle of Co-Financing**

In accordance with the Phare Guidelines, all investment projects supported by Phare must receive co-financing from national public funds.

The Community contribution may amount to up to 75% of the total eligible public expenditure. Taxes are not an element eligible for co-financing.
Co-financing for Institution Building projects is provided by the Beneficiary Country bearing certain infrastructure and operational implementation costs, through financing the human and other resources required for effective and efficient absorption of Phare assistance.

3. IMPLEMENTATION

3.1. Implementing Agencies

Implementing Agencies will be responsible for sub-programmes as follows.

<table>
<thead>
<tr>
<th>Implementing agency</th>
<th>Measure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Finance and Contracting Unit (CFCU) at the Ministry of Public Finance</td>
<td>01, 02, 04 and 05</td>
</tr>
<tr>
<td>Implementing Agency of the Ministry of European Integration</td>
<td>03</td>
</tr>
</tbody>
</table>

Simultaneously with the signature of the Financing Agreement, the NAC will provide the necessary details about these Implementing Agencies (addresses, communication contacts, Phare Authorising Officers, affiliation in the government etc).

4. IMPLEMENTATION ARRANGEMENTS

4.1. Method of Implementation

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

Each measure is either contained in a sector programme or a project, which the National Aid Coordinator proposes to the Commission in compliance with this Financing Memorandum. Once jointly agreed these sector 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 sector programme or project is supervised by one or several Implementing Authority(ies) and technically implemented by one Implementing Agency.

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

4.2. General rules for 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\(^4\), as well as the Commission Decision SEC (2003) 387/2\(^5\).

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

### 4.3. 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 procurement 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. Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Bucharest will be required.

The competent PAO for the programme under which the grant scheme is financed has to retain his/her contractual and financial responsibility for the implementation of the schemes. In particular, the PAO has to formally approve the call for proposals, application forms, evaluation criteria, as well as the selection process and results. The PAO also has to sign the grant agreements 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 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\(^7\), 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/ pre-accession instrument contribution is below € 50,000 or above € 2 million. This lower limit may be waived as a result of the above-mentioned assessment of the Implementing Agency’s capacity of giving assurance of sound financial management. The lower limit is not applicable in the case of NGOs.

The financial commitments in Phare/ pre-accession instrument terms will be effected at the date of signature of the grant agreements by the competent PAO. The projects should be fully implemented before the expiry date for contract execution of the corresponding Financing Agreement.

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\(^6\) current address: [http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm)

\(^7\) see section 11 and Annex 4 of the 2005 Phare Programming Guide
4.4. Implementation Principles for Twinning Projects

Twinning projects are set up in the format of a grant contract (twinning contract) whereby the selected Member State administration agrees to provide the requested public sector expertise (including the long term secondment of an official assigned to provide full time counsel to the beneficiary administration as Resident Twinning Advisor) against the reimbursement of the expenses thus incurred. This twinning contract is in line with the provisions of Article 27 of the Financial Regulation and of Part One, Title VI on grants of the Financial Regulation and its Implementing rules.

Further to the provisions of Article 160, first paragraph of the aforementioned Implementing Rules, the Contracting authority shall use the rules and proceedings set out in the regularly updated Twinning Manual (which includes a system of fixed rates and prices for the reimbursement of the provided public sector expertise by the selected Member state administration for launching, selection, implementation and closing of twinning projects.

The twinning manual is available on the Website of DG ELARG at the following address:

HTTP://EUROPA.EU.INT/COMM/ENLARGEMENT/PAS/TWINNING/INDEX.HTM

5. Management of Assistance

5.1. Project Management

5.1.1. Responsibilities

The National Aid Co-ordinator (NAC) will have overall responsibility for programming and monitoring of Phare/ pre-accession instrument programmes.

The National Authorising Officer (NAO) and the NAC shall be jointly responsible for the co-ordination between Phare/ pre-accession instrument (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.

5.1.2. Project Size

All projects will be funded with at least 2 M € except for project PHARE/2005/017-690.01.04 which due to its Institution building nature requires less funding.

5.1.3. 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 except for investments within subprogramme 4 - part 1 (2005/017-690.01.04) and related investment supervision contracts for which the deadline is November 30, 2009.
(3) Under DIS, a complete tender dossier must be submitted to the Delegation for approval by no later than 8 months after the signature of the Financial 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.

5.1.4. **Environmental Impact Assessment and Nature Conservation**

The procedures for environmental impact assessment as set down in the EIA-Directive\(^8\) are fully applicable for all investment projects under Phare/ pre-accession instrument. 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\(^9\).

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\(^10\).

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.

5.2. **Financial Management**

5.2.1. **Principles and Responsibilities**

The National Fund in the Ministry of Public Finance, headed by the NAO, will supervise the financial management of the programme, and will be responsible for reporting to the European Commission. The NAO shall have the overall responsibility for financial management of the Phare/ pre-accession instrument funds, and the full accountability for the Phare/ pre-accession instrument funds of a programme until the closure of that programme.

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

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

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

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.

\(^8\) DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

\(^9\) in Annex EIA to the corresponding investment project fiche.

\(^10\) in Annex Nature Conservation to the corresponding investment project fiche
5.2.2. Payments to the National Fund

A first payment\textsuperscript{11} of up to 20\% of the funds to be managed locally\textsuperscript{12}, will be sent to the NF following signature of the Financing Agreement and the Implementing Agreements between the NF and the Implementing Agencies (IAs)/Central Finance and Contracts Unit (CFCU). Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the IA/CFCU and the manner in which the payment function between them will be carried out.

Two further payments\textsuperscript{13} of up to 30\% of the funds to be managed locally\textsuperscript{14} will be made. The second payment will be triggered when 5\% of the total budget in force\textsuperscript{15} has been disbursed by the IAs and the CFCU. The third payment may be requested when 35\% of the total budget in force\textsuperscript{16} has been disbursed.

A final fourth payment will be made when 70\% of the total budget in force\textsuperscript{17} 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, CFCU and IAs accounts exceeds 15\% of the total budget in force for the programme the Commission may exceptionally authorise a payment, if the NAO provides duly substantiated evidence that contractual obligations cannot be met with the funds available.

5.2.3. Payments from the National Fund to the Implementing Agency

The National Fund will make payments to IAs, including the CFCU, in accordance with Implementing Agreements signed between the NF and the IAs/CFCUs. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of financial management of the sub-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. In cases where the NF is itself the paying agent for the CFCU/IA there will be no payments from the NF to the CFCU. The CFCU and the IAs must each be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the NAC. The PAO will be responsible for all operations carried out by the relevant CFCU/IA.

5.2.4. Payments to the National Fund for Participation in Community Programmes and Agencies

A single payment to the National Fund will be made, covering the full amount of the Phare/ pre-accession instrument part of the financial contribution for participation in Community programmes...
and agencies. This payment will be made following signature of the Financing Agreement and upon request from the National Fund.

This payment is separate from the payments made for the rest of the programme. The Phare/ pre-accession instrument contribution for each programme will, however, only be transferred when the Association Council Decision or Memorandum of Understanding establishing the terms and conditions for participation in that programme is in force.

If there is a delay in the entry into force of some of the Memoranda of Understanding, the payment to the National Fund may be divided into two or more installments, so that 100% of the funds necessary for the programmes in force can be paid immediately. The National Fund is responsible for transferring the funds back to the Commission, following the call for funds of the Commission service responsible for the programmes concerned and within the deadlines requested.

5.2.5. Payments in Case of Contractual Retention Clauses

For those contracts with contractual retention clauses (e.g. funds retained for a warranty period), the Implementing Agency assumes full responsibility for managing the funds until final payment is due, as well as for ensuring that the said funds will only be used to make payments related to the retention clauses.

The IA further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the Commission.

5.2.6. Closure of Expenditure and Clearance of Accounts

No later than 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 corrections stipulated below.
The funds will be recovered either by direct reimbursement from the NF or by compensation in accordance with Community rules.

6. Monitoring and Evaluation

Project 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 to review all Phare/ pre-accession instrument funded programmes in order to assess their progress towards meeting the objectives set out in the Financing Agreements and the Accession Partnership. The JMC may recommend a change of priorities and/or reallocation of Phare/ pre-accession instrument funds. Furthermore, the JMC will review the progress of all pre-accession EC-funded assistance programmes once a year (Phare/ pre-accession instrument, ISPA, SAPARD).

For the Phare/ pre-accession instrument 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 effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare/ pre-accession instrument 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.

7. Audit, Financial Control, Anti-Fraud Measures, Preventive and Corrective Actions

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

All Financing 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,\(^{19}\) the accounts and operations of the National Fund and, where applicable, the CFCU and all relevant


\(^{19}\) as referred to in the General Conditions relating to the Financing Memorandum” attached to the Framework Agreement
Implementing Agencies may be checked at the Commission’s discretion by the Commission itself or by an outside auditor contracted by the Commission.

7.2. Obligations of the Beneficiary Country

7.2.1. Audit and Financial Control

In order to ensure sound financial management of the Phare/ pre-accession instrument 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 fulfill the requirements set out in Art. 164 of the Financial Regulation, and in particular provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

The Beneficiary Country’s management and control systems shall provide a sufficient audit trail, as defined in Art. 7 (2) of Commission Regulation 438/2001\(^20\).

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.

7.2.2. Preventive Measures

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption\(^21\) practices 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.

7.2.3. Anti-Fraud Measures and Corrective Actions

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

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94\(^22\).

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\(^{21}\) Active corruption is defined as the deliberate action of whoever 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
In particular, all suspected or actual cases of fraud\textsuperscript{23} and irregularity\textsuperscript{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 canceling all or part of the Community contribution. The Community funds released in this way may be re-used by the NF for the purpose of the programme, in compliance with Art. 5 of the MoU on the National Fund.

7.3. Recovery of Funds in Case of Irregularity or Fraud

Any proven irregularity\textsuperscript{25} or fraud\textsuperscript{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 canceling all or part of the assistance granted to the programme concerned.

\textsuperscript{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.

\textsuperscript{24} Irregularity shall mean any infringement of a provision of national or Community law, this Financing Memorandum or ensuing contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure. The term “Community law” in this context shall be defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (e.g. the Europe Agreements, Framework Agreements, the MoU on the Establishment of the National Fund etc.)

\textsuperscript{25} see definition above

\textsuperscript{26} see definition above
The Commission shall, when deciding on the amount of a correction, take into account the principle of proportionality, the type of irregularity and the extent and financial implications of the shortcomings found in the management and control system of the Beneficiary Country.

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

The National Authorising Officer will ensure the reimbursement of any unused funds or any sum wrongly paid within sixty calendar days of the date of the notification. If the NAO does not repay the amount due to the Community, the Beneficiary Country shall refund this amount to the Commission.

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

8. VISIBILITY AND PUBLICITY

The PAO in charge will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed from the programme. This will be done in close liaison with the Commission. Further details are set down in the Annex on Visibility and Publicity.

9. SPECIAL CONDITIONS

In the event that agreed commitments are not met for reasons which are within the control of the Government of Romania, the Commission may review the programme with a view, at the Commission's discretion, to canceling all or part of it and/or to reallocate unused funds for other purposes consistent with the objectives of the Phare programme.
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.
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2005/017-690 - Phare flood-damage rehabilitation and prevention programme for 2005 in Romania.

Annex - CUMULATIVE CONTRACTING AND DISBURSEMENT SCHEDULE

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<td>CONTRACTED</td>
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| DISBURSEMENT        | 1,400        | 2,468        | 5,690        | 8,760        | 11,110       | 12,700       | 15,000       | 17,200       | 19,500       | 19,600       | 21,600       | 22,600       | 23,600       | 24,600       |