FINANCING MEMORANDUM

The European Commission, hereinafter referred to as "THE COMMISSION", acting for and on behalf of the European Community, hereinafter referred to as "THE COMMUNITY" on the one part, and

The Government of the Slovak Republic hereinafter referred to as "THE RECIPIENT" on the other part,

HAVE AGREED AS FOLLOWS:

The measure referred to in Article 1 below shall be executed and financed out of the budget resources of THE COMMUNITY in accordance with the provisions set out in this Memorandum. The technical, legal, and administrative framework within which the measure referred to in Article 1 below shall be implemented is set out in the General Conditions annexed to the Framework Agreement between THE COMMISSION and THE RECIPIENT, and supplemented by the terms of this Memorandum and the Special Provisions annexed hereto.

ARTICLE 1 - NATURE AND SUBJECT

As part of its aid programme, THE COMMUNITY shall contribute, by way of grant, towards the financing of the following MEASURE:

Programme number: SR0113
Title: 2001 Cross-Border Co-operation Programme between the Slovak Republic and Austria
Duration: Until 30th November 2003

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

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

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until 30th November 2003 subject to the provisions of this Memorandum. All contracts must be signed by this date. Any balance of funds of the EC GRANT which have not been contracted by this date shall be cancelled. The deadline for disbursement of THE EC GRANT is 30th November 2004. All disbursements must be completed by the deadline for disbursement. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the disbursement period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the
expiry of the disbursement period of the EC GRANT. All the funds which have not been
dischersed shall be returned to the Commission.

ARTICLE 4 - ADDRESSES

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

for the COMMUNITY:

Mr. Dieter Thiel
Acting Head of Delegation of the European Commission to the Slovak Republic
Panska 3
81101 - Bratislava - Slovak Republic

for THE RECIPIENT:

Mrs. Maria Kadlecikova
Deputy Prime Minister for European Integration
Office of the Government
Namestie Slobody, 1
81106 - Bratislava - Slovak Republic

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 Bratislava
Date 25-01-2002

for THE RECIPIENT

Maria Kadlecikova
Deputy Prime Minister and NAC

Encl.
Annex 1 Framework Agreement
Annex 2 Special Provisions
Annex 3 Visibility and Publicity

for THE COMMUNITY

Dieter Thiel
Acting Head of Delegation
1. OBJECTIVES, DESCRIPTION AND CONDITIONALITY

1.1. Wider objectives

The general objective of the Slovak-Austrian Phare CBC Programme is to promote co-operation in the border regions of the two countries stimulating economic activities in these regions and assisting them in overcoming specific development problems that arise from their peripheral position. In addition, the Phare CBC Programme aims to promote the creation and further development of cooperation networks on the Slovak side of the border region. The programme supports the integration process of Slovakia into the European Union.

1.2. Immediate Objectives and Programme Results

The 2001 Slovak-Austrian Phare CBC Programme focuses on:
• further development of the transport network on the Slovak side of the border,
• preservation of the bio-corridors and the improvement of the ground and surface water quality in the border area,
• increase of the number and sustainability of SMEs resulting in a reduction of the unemployment level.

The proposed project Re-engineering of the water channel Chorvátske rameno will address environmental mitigation measures for the construction of D-61 highway Viedenska cesta - Prístavny most ensuring the protection of the environment and the bio-corridors in the Danube basin. The second project Waste water disposal system of the villages in the basin of the river Morava will allow to address the urgent need to protect and to improve the common aquifer in the border region by reducing the pollution of the ground and surface water in the Gajary-Záhorie Micro-region. The third project Business incubator in the city of Malacky aims at improving the conditions for development and sustainability of SME in the Malacky district by establishing a business incubator closely linked to the planned Industrial Zone Záhorie.

A Small Projects Fund, for an amount of 600.000 Euro, will facilitate contacts between people living in the border region. It may also support the preparation of feasibility studies, plans, short-term technical expertise in the light of future programming exercises. The Small Project Fund is supporting mainly the following fields: local democracy, economic development and tourism, cultural exchanges, ecology, health, information and communication links.
1.3. Programme description

**SR0113.01: Accessibility: Re-engineering of the water channel Chorvátske rameno.**

Improvement of the accessibility conditions in transport and information technology to achieve the desired common living and economic environment in the border area is one of the identified priorities of the JPD.

This project proposal is initiated to allow the improvement of the accessibility in the Slovak-Austrian border region by building the D-61 highway Viedenska cesta - Pristavny most completing the TEN network in the area Vienna - Bratislava and to guarantee the protection of the region’s bio-corridors in the long term, in line with the principle of sustainable development.

The construction of the D-61 highway is foreseen in the strategic planning documents for the Bratislava region. The Ministry of Transport already submitted the first version of the ISPA application for this highway to EC services in Brussels.

The highway will be partially constructed below the current surface. The Chorvatske rameno channel was built in the early 70’s to prevent flooding of the City of Bratislava. In order to mitigate the environmental impact of the construction of the above mentioned highway, the capacity of the existing channel will be increased to absorb also the water collected in protective lines in the Petrzalka/Wolfsthal area. The channel will be connected to the water reservoir Hrusov.

Phare will co-finance the connection of the Chorvatske rameno channel to the water reservoir Hrusov.

The project will contribute to the protection of the highway against high groundwater levels by remediation of the existing Chorvatske rameno channel as well as to the floods protection in the Petrzalka/Wolfstal and Kitsee/Wolfstal areas. Furthermore, the change of the flow patterns in the channel will positively influence the existing bio-corridors in the Danube river basin located in the Slovak-Austrian border region.

**SR0113.02: Sustainable spatial and environmental development: Waste water disposal system of the villages in the basin of the river Morava,**

Securing sustainable regional development in the cross-border region in the medium and long term is a primary goal identified in the JPD. This priority aims both at providing a basis for the planning of methods to achieve the objectives set out in the common programme and at implementing concrete projects (in areas such as technical infrastructure, water and wastewater management, and waste management).

This project proposal is initiated to take actions for the improvement of the natural environment of the border region and to guarantee the protection of the region’s water reserves in the long term, in line with the principle of sustainable development. As a result of the project, the surface water quality of the cross border river Morava will improve, contributing at the same time to a reduction of the pollution of the Danube river.
The waste water management of the municipalities Gajary, Male Levare, Velke Levare, Zavod, Studienka, Jakubov and Kostoliste (total population more than 13,500 inhabitants) is not operating efficiently. This situation has a negative impact on the pollution levels in the Natural Reserve Zahorie and in the river Morava. The project foresees the construction of the sewerage network in these municipalities and its connection to the WWTP’s in Gajary and Malacky as well as the intensification of the existing WWTP in Gajary.

Phare will finance the completion of the sewage network of the above mentioned municipalities and its connection to the WWTP’s.

Due to this project the treatment of waste water and sewage will be brought into compliance with the requirement of the EU environmental acquis. In particular, compliance with the Urban Waste Water treatment directive (91/271/EEC as amended by Directive 98/15/EC), and related decision 93/48/EEC and the Sewage Sludge Directive 86/278/EEC will be ensured. Further, the quality of the surface waters mentioned will be improved to meet the quality standards set by the relevant EU Directives.

**SR0113.03: Cross-border economic co-operation: Business incubator in the city of Malacky**

The active preparation of the economic sectors in the regions on both sides of the border to meet the challenges of EU enlargement and stimulation of cross-border economic development while safeguarding regional independence and competencies are the basic objectives identified in the JPD under the priority of the cross-border economic co-operation.

This project is initiated to stimulate further economic development of the Malacky district. This district is currently the less developed district of the Bratislava region (unemployment rate 18%). In order to improve the current situation in this district, local authorities plan to build an industrial park in Zahorie, which has received the support of the Slovak Government (Government Decree 1039/2000).

The incubator will help entrepreneurs to start-up their businesses and provide them with all necessary services on a total area of more than 4,000 m². It will also serve as a “gateway” for small and medium entrepreneurs coming from the nearby region of Austria (partner regions Weinviertel and Marchland) and seeking for partnerships or joint ventures. It can also serve as a joint administrative and service centre for the companies, which will operate within the above-mentioned industrial park.

Phare will co-finance the building/completion of the business incubator and the training of the incubator staff and promotion of the incubator.

The implementation of the project will contribute to the development and sustainability of the small and medium entrepreneurs in the Slovak-Austrian border region as well as to the facilitation of the access of the Austrian SME into the Slovak market taking advantage of the nearby industrial park.

**SR0113.04: Joint Small Projects Fund**

The general aim of the JSPF is the support of ‘people to people’ projects with a genuine cross-border impact. The purpose of the support of these projects is to encourage local involvement and to facilitate the implementation of small-scale actions which may constitute the basis for larger cross-
border co-operation projects. Priority will be given to projects that are planned, selected and realised jointly by Slovak and Austrian partners. The JSPF aims also at the building and developing of specialist resources for local and regional institutions involved in regional development, groundwork and implementation of cross-border projects in line with EU practice.

The specific JSPF objectives in Slovakia are in accordance with regional priorities: the development of cultural and youth co-operation between neighbouring regions on both sides of the border; support for actions aimed at local and regional socio-economic development, in particular measures in support of tourism development; the support of educational activities for institutions and individuals involved in local/regional development, in local government and in organisations of public interest, including the health sector.

The JSPF will not include physical investments other than small infrastructure not generating substantial net revenue.

The JSPF will be implemented following the General Guidelines on the Operation of the Joint Small Project Fund elaborated for the 2000 JSPF endorsed by the Delegation of the European Commission in Bratislava. A Regional Steering Committee (RSC) for the whole Slovak-Austrian border region will be the principal responsible institution for the operation of the JSPF, under the auspices of the Implementing Agency.

Up to 7% of the Phare contribution may be used for expenditure relating to the preparation, selection, appraisal and monitoring of the assistance.

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**Overall programme conditionalities**

Before the Financing Memorandum between the Commission and the Government of Slovakia is signed, the National Aid Co-ordinator will satisfy the Commission that the Ministry of Construction and Regional Development is taking adequate steps to staff and resource adequately the newly established Implementing Agency for Regional Development.

Before the Financing Memorandum between the Commission and the Government of Slovakia is signed, the National Aid Co-ordinator will confirm the availability of the national co-financing indicated in each project fiche, and the modalities for combining Phare and national co-financing when projects are contracted.

Any project involving the supply of equipment and works requires national co-financing as shown in the relevant project fiche. If the total cost of such equipment or works is less than the amount envisaged in the fiche, the amount of Phare support will be reduced to maintain unchanged the relative proportions of Phare support and national co-financing shown in the fiche. If the total cost is greater than the amount envisaged in the fiche, the extra support required will be provided by additional national co-financing.

All investment projects which, according to the rules stipulated in Directive 85/337/CEE as amended by Directive 97/11, require an environmental impact assessment, should be the subject of such an
assessment. All investment projects shall be carried out in compliance with the relevant Community environmental legislation.

In the case of a project coming under Annex II of the Directive 85/337/EEC, as amended by Directive 97/11/EC for which an EIA is not required, the authorities should assess if the project is likely to affect an environmentally sensitive area\(^4\). If so, a declaration from the responsible authorities for nature conservation should be included stating that their conclusion is that the zone's environmental potential will not be directly affected by the project.

2. **BUDGET**

The contracting period of the programme will expire on 30\(^{th}\) November 2003. The disbursement period of the programme will expire on 30\(^{th}\) November 2004. The following table specifies the EU contribution as well as the national co-financing of the programme.

<table>
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<td>Re-engineering of the water channel Chorvatske rameno</td>
<td>-</td>
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<td>Waste water disposal system of the villages in the basin of the river Morava</td>
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<td>TOTAL</td>
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3. **IMPLEMENTATION ARRANGEMENTS**

The programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures. The National Aid Co-ordinator (NAC) will have overall responsibility for programming, monitoring and implementing Phare programmes. The National Aid Co-ordinator and the National Authorising Officer shall be jointly responsible for co-ordination between Phare (including Phare CBC), ISPA and SAPARD.

The National Fund (NF) in the Ministry of Finance, headed by the National Authorising Officer (NAO), will supervise the financial management of the Programme and will be responsible for reporting to the European Commission. The National Authorising Officer shall have overall responsibility for financial management of the Phare funds. He shall ensure that the Phare rules, regulations and procedures pertaining to procurement, reporting and financial management as well as

\(^4\) Definition of environmentally sensitive areas:-

a) areas protected by national legislation;

b) internationally important wetlands (sites fulfilling RAMSAR Convention ornithological criteria) and other sites meeting the criteria which would require designation as Special Protected Areas under Directive 79/409/EEC;

c) areas to which the Bern Convention on the conservation of European wildlife and natural habitats (article 4) applies, in particular site meeting the criteria of the Emerald network;

d) Breeding or resting place of an animal species listed in Annex IV of Directive 92/43/EEC (Article 12);
Community State Aid rules are respected, and that a proper reporting and project information system is functioning. The National Authorising Officer shall have the full overall accountability for the Phare funds of a programme until the closure of the programme.

Appropriate financial control will be carried out by the competent National Control Authority with respect to the implementation of the programme. The NAO shall maintain a financial reporting system for all Phare funds.

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and Slovakia on 10th December 1998 respectively. Funds will be transferred following requests from the NAO.

A payment of up to 20% of the funds to be managed locally will be transferred to the NF following signature of the Financing Memorandum and the Financing Agreement (FA) between the NF and the Implementing Agency (IA). The provisions foreseen in articles 2 and 13 of the Memorandum of Understanding (MoU) on the NF must also be met. 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 will be carried out.

Four Replenishments will be made of up to 20% of the funds to be managed locally or the full balance of the budget whichever is the lesser amount. The first replenishment will be triggered when 10% of the budget has been disbursed by the IA. The second replenishment may be requested when 30% of the total budget in force has been disbursed. The trigger point for the third replenishment is 50%, and for the final fourth instalment when 70% is disbursed. Save for express prior authorisation from the Commission HQs, no replenishment request may be made if the aggregate of the funds deposited in the NF and the IAs exceeds 10% of the total budget in force of the commitment. Exceptionally the NAO may request an advance payment of more than 20% in accordance with the procedures laid down in the aforesaid Memorandum of Understanding.

The overall responsibility for the Slovak-Austrian Phare CBC Programme will rest with the Ministry of Construction and Regional Development, as the Implementing Agency of all sub-programmes of the Programme.

The National Fund will transfer funds to IA, in accordance with Financing Agreement (FA) signed between the NF and the IA where applicable. Each individual FA will be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the IA there will be no transfer of funds from the NF to the IA. 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 the operations carried out by the relevant IA.

A separate bank account, denominated in EUR will be opened and managed by the NF in a separate accounting system in the Central Bank. In principle, all bank accounts will be interest bearing. Interest will be reported to the European Commission. If the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the Programme. The same procedures will apply to any funds transferred to the IA.

The NAO and the PAO will ensure that all contracts are being prepared in accordance with the procedures set out in the Practical Guide.
For grant schemes, whose procedures and formats are not covered by the current Practical Guide, the precise implementation arrangements will be specified in the relevant project fiches in line with the following principles:

- the procedures and formats to be used in the implementation of the schemes and award of the grants will follow the provisions of the Practical Guide. In particular, due care will be given to the selection process of the beneficiary projects, which has to be done at technical level through selection committees composed of experts appointed by the authorities which are co-financing the schemes as well as by the relevant administrations and interest groups involved in the schemes.

The competent PAO for the programme under which the grant scheme is financed has to retain his/her contractual and financial responsibility for the implementation of the schemes. In particular, the PAO has to formally approve the call for proposals, application forms, evaluation criteria, as well as the selection process and results. The PAO has also to sign the grant contracts with the beneficiaries and to ensure adequate monitoring and financial control under his/her authority and responsibility. With this reservation, the management of the schemes can be decentralised from the PAO to the appropriate bodies at sectoral or regional level.

- The ex ante approval of the Commission (Delegation in Bratislava) will be required for the call for proposals, application forms, evaluation criteria, the selection procedures (including the composition of the committees) and results (list of projects to be funded). The grant contracts signed by the PAO will be subject to the ex post control of the EC Delegation.

- The implementation of the selected projects through the provision of works, supplies and services sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement regulations in the Practical Guide. The decentralised system established for CBC small projects is to be applied to all such contracts below 300,000 EUR (or any increased threshold to be fixed by EC Headquarters for small project funds under CBC programmes). Tenders and contracts above this threshold will be presented to the EC Delegation for ex ante approval. The financial commitments in Phare terms will be effected at the date of signature of the grant contracts by the competent PAO. Project implementation and all Phare disbursements are to be done before the expiry date of the relevant financing memorandum.

All funds must be contracted by 30th November 2003.
All funds must be disbursed by 30th November 2004.

Any funds not used by the expiry date of the programme will be recovered by the Commission.

For those contracts with funds retained for a warranty period extending beyond the end of the disbursement period of the programme, the overall total of funds related to those contracts, as calculated by the PAO and established by the Commission, will be paid to the Implementing Agency before the official closure of the programme. The Implementing Agency assumes full responsibility of depositing the funds until final payment is due and for ensuring that said funds will only be used to make payments related to the retention clauses. The Implementing Agency further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Interests accrued on the funds deposited will be paid to the Commission after final payment to the contractors. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the Commission. An overview of the use of funds deposited on warranty accounts -
and notably of the payments made out of them - and of interests accrued will annually be provided by the NAO to the Commission.

4.1. The Institutional Structure of the Programme

The Department of the Programmes of Regional Projects and Co-ordination of the Structural Funds at the Ministry of Construction and Regional Development, CBC Unit (Implementing Authority) will have the overall technical responsibility for the Slovak-Austrian Phare CBC Programme. The Implementing Agency for Regional Development in the Ministry of Construction and Regional Development will act as Implementing Agency.

The Phare CBC Slovakia–Austria 2001 Programme is based on the resolution of the JCC and also on the Joint Programming Document for the years 2000-2006.

5.2. The Joint Programming and Monitoring Committee

Based on the Memorandum of Understanding of the Slovakia-Austria Phare CBC Programme and INTERREG III, a bilateral Joint Co-operation Committee (JCC) has been set-up as the main joint body of the organisational structure of cross-border activities. JCC meetings are being chaired jointly by the heads of the Slovak and Austrian delegations.

6. MONITORING AND ASSESSMENT

A Joint Monitoring Committee (JMC) will be established for the programme including the NAO, the NAC and the Commission. The JMC will meet at least once a year to review all Phare funded programmes in order to assess their progress towards meeting the objectives set out in Financing Memoranda and the Accession Partnership. The JMC may recommend a change of priorities and/or the re-allocation of Phare funds.

The JMC will be assisted by Monitoring Sub-Committees (MSC) and will include the NAC, the PAO of the IA and the Commission Services. The MSC will review in detail the progress of each programme, including its components and contracts, on the basis of regular Monitoring and Assessment reports produced with the assistance of external consultants (in accordance with the provisions of the Practical guide to ISPA, Phare and SAPARD contract procedures), and will put forward recommendations on aspects of management and design ensuring that these are effected. The MSC will report to the JMC, to which it will submit overall detailed reports on all Phare financed programmes.

7. ANTI-FRAUD-MEASURES, AUDIT AND EVALUATION

All financing memoranda as well as the resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-fraud Office) and the Court of Auditors. This includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Candidate Country concerned and on-the-spot checks.

In order to ensure efficient protection of the financial interests of the Community, the Commission can conduct check-ups and inspections on site in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96 dated from November 11, 1996, concerning on-the-spot...
checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.

The procedures foreseen in Art. 15 para 3 of Commission Regulation No. 2222/2000 dated from June 7, 2000, on the communication in case of irregularities and the putting in place of a system to administrate the information in this field shall apply.

The accounts and operations of both respective the National Funds and all relevant Implementing Agencies may be checked at the Commission’s discretion by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Union’s Court of Auditors as referred to in the General Conditions relating to the Financing Memorandum attached to the Framework Agreement.

The Commission services shall ensure that an ex-post evaluation is carried out after completion of the Programme.

8. VISIBILITY AND PUBLICITY

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

9. SPECIAL CONDITIONS

The Slovak Government will carry the legal liability to carry out the projects specified under the programme to a satisfactory outcome and shall carry out by its own means any work on which contractors default. In the measures specified under this programme, in which the European Union grant contributes to the financing of revenue generating activities, the Commission shall determine, in consultation with the Implementing Authority, specific arrangements for financing which could include co-financing by the project revenues or reimbursement of the initial grant.

The European Union's financial contribution is limited to 6 MEUR. This contribution will not cover any additional costs, cost increases or extensions which must therefore be catered for by the implementing and contracting authorities.

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