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 Slovenia, 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 of 7th October 1992 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: 2002/000-600
Title: 2002 National Programme for Slovenia, Part II
Duration: Until 30/09/2004

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of 4,400,000 € 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 30/09/2004 subject to the provisions of his 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 30/09/2005. 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

1 The Financing Memorandum structure is as follows : 1. the coverpages with the references to the country concerned, amount and authority to sign, 2. Annex A of the Framework Agreement; 3. Annex B of the Framework Agreement; Annex C - Special Conditions (the text of the adopted financing proposal starting from Description and Objectives onwards; and Annex D 'Visibility/Publicity).
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 disbursed 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. Erwan Fouéré
Head of Delegation
European Commission Delegation in Ljubljana
Trg Republike, 3, XI.
1000 Ljubljana
SLOVENIA

Telegraphic address:
Telex:
Fax: (386-1) 4252085

for THE RECIPIENT:

Mr. Janez Potocnik
Minister for European Affairs
Government Office for European Affairs
Phare National Co-ordinator
Subiceva 11,
1000 Ljubljana
SLOVENIA

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.
for THE RECIPIENT

for THE COMMUNITY

Encl.
1. Framework Agreement (Annexes A & B)
2. Special Provisions (Annex C)
3. Visibility/Publicity (Annex D)
FRAMEWORK AGREEMENT

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

The Government of Slovenia, acting on behalf of the Republic of Slovenia, hereinafter referred to as Slovenia,
of the other part,

and together, jointly referred to as "the Contracting Parties"

Whereas Slovenia is eligible to be a recipient under the Community's aid programme PHARE as provided for in the European Community Council Regulation n° 3906/89 of 18 December 1989 as last amended by Regulation n° 2334/92 of 11th August 1992,

Whereas it is fitting that the technical, legal and administrative framework within which MEASURES financed in Slovenia under the Community's aid programme shall be executed, should be laid down.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

In order to promote cooperation between the Contracting Parties with a view to supporting the process of economic and social reform in Slovenia, the Contracting Parties agree to implement MEASURES in the field of financial, technical, and other forms of cooperation as specified in the said Regulation, which shall be financed and implemented within the technical, legal and administrative framework laid down in this Agreement. The specific details of each MEASURE (or set of MEASURES) shall be set out in a memorandum to be agreed between the Contracting Parties (hereinafter referred to as "the financing memorandum"), a model of which is provided in annex C.

Slovenia takes all necessary steps in order to ensure the proper execution of all measures.

ARTICLE 2

Each MEASURE which is financed within the framework of this Agreement shall be implemented in accordance with the General Conditions set out in Annex A hereto, which shall be deemed to be incorporated in each financing memorandum. The financing memorandum may vary or supplement the General conditions as may be necessary for the implementation of the measure in question.

ARTICLE 3

For matters relating to the MEASURES financed within the framework of this Agreement, the COMMISSION shall be represented in Slovenia by its Delegation in Ljubljana once it is established which shall ensure, on behalf of the COMMISSION, that the MEASURE is executed in accordance with sound financial and technical practices.
ARTICLE 4

When the Contracting Parties so agree, the COMMISSION may delegate all or part of its responsibility for implementation of a MEASURE to a third party.

In that event the terms and conditions of such delegation shall be set forth in an agreement to be concluded between the COMMISSION and the third party, subject to the consent of the Government of Slovenia.

ARTICLE 5

Any dispute relating to this Agreement which cannot be resolved by consultation shall be settled according to the arbitration procedure referred to in Annex B.

ARTICLE 6

This Agreement is drawn up in the English language in two original copies.

ARTICLE 7

This Agreement shall enter into force on the day the Contracting Parties inform each other of its approval in accordance with the existing internal legislation or procedure of each of the Parties. The Agreement shall continue to be in force for an indefinite period unless terminated upon written notification by one of the Contracting Parties to the other.

On termination of this Agreement any MEASURE still in the course of execution shall be carried out to its completion in accordance with the terms of the financing memorandum relating thereto, and of the General Conditions set out herein.

ARTICLE 8

The provisions of this Agreement shall also apply to technical cooperation and other operations convened between the Contracting Parties which by their nature are not covered by a specific memorandum financed under the PHARE aid programme at the request of the Government of Slovenia.

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

Done at Ljubljana on the ............ day of ........ in the year one thousand nine hundred and ninety two.

THE GOVERNMENT OF SLOVENIA

Prof. Peter Tancig,
Minister of Science and Technology

THE COMMUNITY

MR. ANDRIESSEN
Vice-President

BRUSSELS
7 -10- 1992
ANNEX A

GENERAL CONDITIONS RELATING TO FINANCING MEMORANDA

In these General Conditions the term "THE RECIPIENT" shall be understood as referring to the Government of Slovenia.

TITLE I - FINANCING OF PROJECTS

ARTICLE 1 - COMMITMENT OF THE COMMUNITY

The commitment of the Community, hereinafter referred to as "the EEC Grant", the amount of which is laid down in the financing memorandum, shall determine the limit within which commitment and execution of payments shall be carried out through duly approved contracts and estimates.

Any expenditure over and above the EEC Grant shall be borne by THE RECIPIENT.

ARTICLE 2 - AVAILABILITY OF THE EEC GRANT

Where the execution of a MEASURE depends on financial commitments from THE RECIPIENT'S own resources or from other sources of funds, the EEC Grant shall become available at such time as the financial commitments of THE RECIPIENT and/or the other sources of funds, as set out in the financing memorandum, themselves become available.

ARTICLE 3 - DISBURSEMENT

Contracts are eligible for disbursements under this financing memorandum only if they are concluded before the expiry date of the Financing Memorandum. Disbursements on such contracts may take place during a maximum period of 12 months after the expiry date of the Financing Memorandum. Any exceptional extension of this period must be approved by the Commission.

Within the limit set on the EEC Grant, requests for funds in the form of a work programme shall be presented to the Commission Delegation by the RECIPIENT in accordance with the schedule set out in the financing memorandum. Documentary evidence relating to payments made in respect of THE MEASURE shall be made available in support of the request for funds, where the Commission so requires.

However, certain contracts covered by THE MEASURE may provide for direct payment by THE COMMISSION to the contractors. Each contract shall lay down the rate and the time of such payments, together with the documentary evidence to be produced.

For the part of the programme implemented by the Recipient, the Implementing Authority shall submit in a Work Programme and not later than 9 months before the expiry date of the Financing Memorandum, for approval by the Commission the contracts that still have to be concluded for the implementation of the programme. The Work Programme should include proposals for the utilisation of the net interests accrued on the accounts opened in the implementation of the programme, under the condition that the whole of the EC grant will be previously committed.

As regards MEASURES executed on the basis of prepared estimates, a first payment instalment which, save where the financing memorandum otherwise provides, shall not exceed 20% of the amount of the estimate approved by THE COMMISSION, may be made in favour of THE
RECIPIENT in order to facilitate the launching of THE MEASURE. Other payment instalments shall be made available, at the request of THE RECIPIENT, subject to the same conditions set out in the paragraph 2 above.

**TITLE II - PROCUREMENT**

**ARTICLE 4 - GENERAL**

The procedure to be followed for the conclusion of works, supplies, and technical cooperation contracts, shall be laid down in the financing memorandum following the principles set out below.

**ARTICLE 5 - CONDITIONS OF PARTICIPATION**

1. Save under the conditions of art.6 THE COMMISSION and THE RECIPIENT take the MEASURES necessary to ensure equality of conditions for participation in such contracts, in particular by publication, in due time of invitations to tender. Such publication is to be made for the Community at least in the Official Journal of the European Communities and for the beneficiary states in the appropriate official journal.

2. General conditions of contracts shall be drawn up in conformity with the models in international use, such as the general regulations and conditions for supply contracts financed from PHARE funds.

**ARTICLE 6 - DEROGATION FROM STANDARD PROCEDURES**

Where the urgency of the situation is recognized or where justified on account of the nature, minor importance, or particular characteristics of certain MEASURES, (for example two stage financing operations, multi-phased operations, particular technical specifications, etc.), and related contracts, THE RECIPIENT may, in agreement with THE COMMISSION, exceptionally authorize:

- the placing of contracts after restricted invitations to tender;
- the conclusion of contracts by direct agreement;
- the performance of contracts through public works departments.

Such derogation shall be laid down in the financing memorandum.

**ARTICLE 7 - AWARD OF WORKS AND SUPPLIES CONTRACTS**

THE COMMISSION and THE RECIPIENT shall ensure that for every operation, the offer selected is economically the most advantageous, particularly in view of the qualifications and guarantees offered by the tenderers, the cost and quality of the services, the nature and conditions for execution of the works or supplies, their cost of utilization and technical value.

Results of the invitations to tender shall be published in the Official Journal of the European Communities as quickly as possible.

**ARTICLE 8 - TECHNICAL COOPERATION CONTRACTS**

1. Technical Cooperation contracts, which may take the form of studies, supervision of works or technical assistance contracts, shall be concluded after direct negotiation with the consultant or when technical, economic or financial reasons so justify, following invitation to tender.

2. Contracts shall be drawn up, negotiated and concluded either by THE RECIPIENT or by THE COMMISSION when the financing memorandum so provides.
3. Where contracts are to be drawn up, negotiated and concluded by THE RECIPIENT, THE COMMISSION shall put forward a short list of one or more candidates on the basis of criteria guaranteeing their qualifications, experience and independence and taking into account their availability for the project in question.

4. When there is to be a direct negotiation procedure and THE COMMISSION has proposed several candidates, THE RECIPIENT may freely choose the candidate with which it intends to conclude the contract from among those put forward.

5. When there is recourse to a tendering procedure, the contract shall be awarded to the candidate which has submitted the offer which is acknowledged by THE RECIPIENT and THE COMMISSION to be economically the most advantageous.
TITLE III - GRANT OF FACILITIES

ARTICLE 9 - GENERAL PRIVILEGES

Personnel taking part in Community financed MEASURES and members of their immediate family may be accorded no less favourable benefits, privileges and exemptions than those usually accorded to other expatriates employed in the state of THE RECIPIENT under any other bilateral or multinational agreement or arrangements for economic assistance and technical cooperation programmes.

ARTICLE 10 - ESTABLISHMENT, INSTALLATION, ENTRY AND RESIDENCE FACILITIES.

In the case of works, supply or service contracts, natural or legal persons eligible to participate in tendering procedures shall be entitled to temporary installation and residence where the importance of the contract so warrants. This right shall be acquired only after the invitation to tender has been issued and shall be enjoyed by the technical staff needed to carry out studies preparatory to the drawing up of tenders; it shall elapse one month after the contractor is designated.

THE RECIPIENT shall permit personnel taking part in works, supplies or services contracts financed by the Community, and members of their immediate family, to enter the state of THE RECIPIENT, to establish themselves in the State, to work there and to leave the said State, as the nature of the contract so justifies.

ARTICLE 11 - IMPORT AND RE-EXPORT OF EQUIPMENT

THE RECIPIENT shall grant the permits necessary for the importation of professional equipment required to execute THE MEASURE, subject to existing laws, rules and regulations of THE RECIPIENT.

THE RECIPIENT shall further grant natural and legal persons who have executed works, supplies or services contracts the permits required to re-export the said equipment.

ARTICLE 12 - IMPORTS AND EXCHANGE CONTROL

For the execution of MEASURES, THE RECIPIENT undertakes to grant import authorizations and authorizations for the acquisition of the foreign exchange, and to apply national exchange control regulations without discrimination between Member States of the Community, Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and the Former Yougoslav Republic of Macedonia.

THE RECIPIENT shall grant the permits necessary to repatriate funds received in respect of THE MEASURE, in accordance with the foreign exchange control regulations in force in the state of THE RECIPIENT.

ARTICLE 13 - TAXATION AND CUSTOMS

1. Taxes, customs and import duties shall not be financed out the EEC Grant.

2. Imports under supply contracts concluded by the authorities of THE RECIPIENT and financed out of the EEC Grant shall be allowed to enter the state of THE RECIPIENT without being subject to customs duties, import duties, taxes or fiscal charges having equivalent effect.

- THE RECIPIENT shall ensure that the imports concerned will be released from the point of entry for delivery to the contractor as required by the provisions of the contract and for immediate use as required.
for the normal implementation of the contract, without regard to any delays or disputes over the settlement of the above-mentioned duties, taxes or charges.

3. Contracts for supplies or services provided by Slovenian or external firms, financed out of the EC Grant shall not be subject in the state of THE RECIPIENT to value added tax, documentary stamp or registration duties or fiscal charges having equivalent effect, whether such charges exist or are to be instituted.

4. Natural and legal persons, including expatriate staff, from the Member States of the European Community executing technical cooperation contracts financed out of the EEC Grant shall be exempted from business and income tax in the state of THE RECIPIENT.

5. Personal and household effects imported for personal use by natural persons (and members of their immediate families), other than those recruited locally, engaged in carrying out tasks defined in technical cooperation contracts shall be exempt from customs duties, import duties, taxes and other fiscal charges having equivalent effect, the said personal and household effects being either re-exported or disposed of in the state in accordance with the regulations in force in the state of THE RECIPIENT after termination of the contract.

6. Natural and legal persons importing professional equipment, as provided for in Article 11, shall, if they so request, benefit from the system of temporary admission as defined by the national legislation of THE RECIPIENT in respect of the said equipment.

**TITLE IV - EXECUTION OF CONTRACTS**

**ARTICLE 14 - ORIGIN OF SUPPLIES**

THE RECIPIENT agrees that, save when otherwise authorized by THE COMMISSION, materials and supplies required for execution of contracts must originate in the Community, Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and the Former Yugoslav Republic of Macedonia.

**ARTICLE 15 - PAYMENT PROCEDURES**

2. When tenders are drawn up in ECU, payments relating thereto shall be made, as appropriate, in the currency named in the contract, on the basis of the equivalent value of the ECU on the day preceding payment.

3. THE RECIPIENT and THE COMMISSION shall take all measures necessary to ensure execution of payments within the shortest possible time.
TITLE V - COLLABORATION BETWEEN THE COMMISSION AND THE RECIPIENT

ARTICLE 16 - INSPECTION AND AUDIT

1. THE COMMISSION shall have the right to send its own agents or duly authorised representatives to carry out any technical or financial mission or audit that it considers necessary to follow the execution of THE MEASURE. However, THE COMMISSION shall give the authorities of THE RECIPIENT advance notice of such missions.

THE RECIPIENT shall supply all information and documents which shall be requested of it, and take all suitable measures to facilitate the work of persons instructed to carry out audits or inspections.

2. THE RECIPIENT shall:

(a) maintain records and accounts adequate to identify the works, supplies or services financed under the financing memorandum in accordance with sound accounting procedures;
(b) ensure that the aforementioned agents or representatives of THE COMMISSION have the right to inspect all relevant documentation and accounts pertaining to items financed under the financing memorandum, and assist the Court of Auditors of the European Communities to carry out audits relating to the utilization of the EEC Grant.

The Commission may also carry out an ex-post evaluation and a final audit of the programme. The ex-post evaluation will assess the achievement of the objectives/targets of the programmes as well as the impact on the development and restructuring of the sector concerned.

The final audit will review the local financial data of the programme, providing an independent opinion on the reliability and consistency of contracts and disbursements as well as their compliance with the provisions of the Financing Memorandum. The audit will establish the balance of uncommitted and/or undisbursed funds which shall be reimbursed to the Commission.

ARTICLE 17 - FOLLOW-UP OF MEASURES

In following the execution of THE MEASURE, THE COMMISSION may request any explanation and, where necessary, may agree with THE RECIPIENT on a new orientation for THE MEASURE which is deemed to be better adapted to the objectives in view.

THE RECIPIENT shall make reports to THE COMMISSION following the time-schedule laid down in the financing memorandum, throughout the period of execution of THE MEASURE and after completion thereof.

The Commission will in the light of the reports and where appropriate of the ex-post evaluation, proceed to the official closure of the programme and will inform the recipient country of the date of official closure of the programme.

TITLE VI - GENERAL AND FINAL PROVISIONS

ARTICLE 18 - CONSULTATION - DISPUTES

1. Any question relating to execution or interpretation of the financing memorandum or these General Conditions shall be the subject of consultation between THE RECIPIENT and THE COMMISSION. Leading, where necessary, to an amendment of the financing memorandum.

2. Where there is a failure to carry out an obligation set out in the financing memorandum and these General Conditions, which has not been the subject of remedial measures taken in due time, THE COMMISSION may suspend the financing of the MEASURE, after consultation with THE RECIPIENT.
3. THE RECEPIENT may renounce in whole or in part the execution of THE MEASURE. The Contracting Parties shall set out the details of the said renunciation in an exchange of letters.

ARTICLE 19 - NOTICE - ADDRESSES

Any notice and any agreement between the parties provided for herein must be the subject of a written communication referring explicitly to the number and title of THE MEASURE. Such notices or agreements shall be made by letter sent to the party authorized to receive the same, and sent to the address notified by the said party. In case of urgency, telefax, telegraphic or telex communications shall be permitted and deemed to have been validity served, provided that they are confirmed immediately by letter. The addresses are set out in the financing memorandum.
ARBITRATION

Any dispute between the Contracting Parties, arising out the Framework Agreement or a financing memorandum, which is not settled by applying the procedures laid down in Article 18 of the general conditions relating to financing memorandum, shall be submitted to arbitration by an Arbitral Tribunal as hereinafter provided.

The parties to such arbitration shall be THE RECIPIENT on the one side and THE COMMISSION on the other side.

The Arbitral Tribunal shall consist of three arbitrators appointed as follows:

- one arbitrator shall be appointed by THE RECIPIENT
- a second arbitrator shall be appointed by THE COMMISSION
- the third arbitrator (hereinafter sometimes called "THE UMPIRE") shall be appointed by agreement of the parties or, if they shall not agree, by the Secretary-General of the United Nations.

If either side fail to appoint an arbitrator, such arbitrator shall be appointed by THE UMPIRE.

Should any arbitrator appointed in accordance with this provision resign, die or become unable to act, another arbitrator shall be appointed in the same manner as the arbitrator whose place he takes: such successor shall have all the powers and duties of the original arbitrator.
ANNEX C TO F.M (SPECIAL PROVISIONS)

1. OBJECTIVES AND DESCRIPTION

The conclusions of the November 1998 Report of the Commission on the progress made by Slovenia towards the accession ("Regular Report") stressed the slow pace of preparations, particularly in so far as (short-term) priority areas for reform in the Accession Partnership are concerned, and the limited progress made with regard to the necessary reinforcement of the institutional and administrative capacity of the country.

However major progress has been made since the first progress Report was issued. The Regular Reports in 1999, 2000 and 2001 indicated that Slovenia had accelerated its overall legislative approximation effort and demonstrated impressive progress across most sectors of the acquis. Furthermore, they indicated, that Slovenia:

- fulfils the Copenhagen political criteria
- can be regarded as a functioning market economy
- has maintained economic stability
- followed a gradual approach to structural reform, and,
- had met most of its short term Accession Partnership priorities.

Lessons learned

The quality of Phare programming in Slovenia has generally improved over the last five years as a result of lessons learned.

It is noteworthy that it is the State Secretaries who present the project fiches and budgets thus engaging their political responsibility. This means they make a direct commitment to bringing each project to a good end.

The Government Office for European Affairs is the governmental body responsible for Phare programming and is the one focal and decision-making point. Moreover it co-ordinates all bilateral aid. The GOEA is also involved in the accession negotiations, which gives it a clear picture of priorities and problems.

In Slovenia there is only one Implementing Agency, The Central Finance and Contract Unit. As with the National Fund, the CFCU is part of the Ministry of Finance and since they are located in the same building this certainly facilitates implementation and monitoring.
With the introduction of the multi-annual programming approach it should be easier to implement and monitor programmes because there will be a longer commitment in terms of time and funds both from the Commission and Candidate Country.

An assessment of twinning as a tool took place in Slovenia in January 2001 and the overall conclusions were positive.

The 2002 Programme, Part 2, will, in the light of all the above, focus on **three objectives**:

**Objective 1: Support Economic and Social Cohesion**

**Project 1 - Project Preparation Facility II (2002/000-600.01)**

This project will assist institutions identified in the implementation structure for the Structural Funds to prepare projects proposals for the period 2004-2006. Assistance will be provided in order to elaborate and facilitate project proposals with all the necessary documentation and to train the institutions supporting the project applicants. The National Agency for Regional Development within the Ministry of Economy will establish a Steering Committee responsible for project selection.

**Objective 2: Strengthen the institutions and administrative capacity for the full application of the acquis communautaire**

**Project 2 - Unallocated Institution Building Envelope (2002/000-600.02)**

This project will support Institution Building (twinning, twinning light or technical assistance) to meet the requirements related to specific urgent and unforeseen needs identified in the course of the negotiation process, in the preparation of the Action Plan for Administrative and Judicial Capacity and the peer reviews. In particular, this facility may help to:

- assist the adoption and implementation of the acquis in particular areas where assistance is still necessary.
- Strengthen the institutional and operational capacity of public administration bodies in view of their future role of implementation of the EU acquis.
- Develop human resources of public administration institutions relevant for the implementation of the EU acquis.

The Government Office for European Affairs will assure the relevance of the project proposal in the light of the usual Phare criteria and submit project fiches and Terms of Reference to the Delegation of the European Commission.

**Objective 3: Provide Phare contribution towards Slovenia's subscription to three Community Programmes and one Agency**

**Project 3 - Community Programmes (2002/000-600.03)**

The financing table below gives an indication of which programmes will be covered.
2. **BUDGET**

The following table specifies the EU contribution to the Programme:

**Budget (in €):**

<table>
<thead>
<tr>
<th>Sub-programme and Projects</th>
<th>PHARE Budget</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>INV</td>
<td>IB</td>
</tr>
<tr>
<td><strong>Support Economic and Social Cohesion (CRS CODE15040)</strong></td>
<td>1,860,000</td>
<td>140,000</td>
</tr>
<tr>
<td><strong>2002/000-600.01 - Project Preparation Facility II</strong></td>
<td>1,860,000</td>
<td>140,000</td>
</tr>
<tr>
<td><strong>Strengthen the institutions and administrative capacity (CRS CODE15040)</strong></td>
<td></td>
<td>2,045,000</td>
</tr>
<tr>
<td><strong>2002/000-600.02 Unallocated Institution Building Envelope</strong></td>
<td></td>
<td>2,045,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,860,000</td>
<td>355,000</td>
</tr>
<tr>
<td><strong>2002/000-600.03 Community Programmes (CRS CODE15040)</strong></td>
<td></td>
<td>130,000</td>
</tr>
<tr>
<td>Media Plus and Media Training</td>
<td></td>
<td>100,000</td>
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<tr>
<td>Enterprise and Entrepreneurship</td>
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<td>50,000</td>
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<tr>
<td>Public Health Programme</td>
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<td>75,000</td>
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<tr>
<td>European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)</td>
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<td>80,000</td>
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<tr>
<td><strong>OVERALL TOTAL PART II</strong></td>
<td>1,860,000</td>
<td>2,540,000</td>
</tr>
</tbody>
</table>

3. **IMPLEMENTATION ARRANGEMENTS**

a.) **Financial and Project Management by the Candidate Country**

The Programme will be managed in accordance with the Phare Decentralised Implementation System (DIS) procedures¹.

The National Aid Co-ordinator (NAC) will have overall responsibility for the programming, monitoring and implementation of Phare programmes. The National Authorising Officer (NAO) and the Project Authorising Officers (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the DIS Manual and other instructions of the Commission and that all contracts are being prepared in accordance with the *Practical Guide for PHARE, ISPA and SAPARD*².

The NAC and the NAO 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 NAO, will supervise the financial management of the Programme and will be responsible for reporting to the

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¹ taking into consideration the rules set down in the annex of Council Regulation 1266/1999.

² The Practical Guide has replaced section F ("Procurement") of the DIS Manual.
European Commission. The NAO shall have overall responsibility for financial management of the Phare funds. S/he shall ensure that the Phare rules, regulations and procedures pertaining to procurement, reporting and financial management as well as community state aid rules are respected, and that a proper reporting and project information system is functioning. This includes the responsibility of reporting all suspected and actual cases of fraud and irregularity. The NAO shall have the full overall accountability for the Phare funds of a Programme until the closure of the Programme.

b.) Project Size

All projects will be greater than or equal to €2 million: one project will have a value of €2 million and be administrated as a grants scheme. The other project will have a budget of €2,045,000 and will finance a number of institution building projects. The contributions to Community programmes are not concerned by the project size criterion.

c.) Contracting and disbursement deadline

All contracts must be concluded by 30th September 2004. All disbursements must be made by 30th September 2005.

d.) Recovery of funds

Any proven irregularity or fraud discovered at any time during the implementation of the Programme will lead to the recovery of funds by the Commission.

If the implementation of a measure appears not to justify either a part or the whole of the assistance allocated, the Commission is to conduct an appropriate examination of the case, in particular requesting the beneficiary country to submit its comments within a specified period of time and to correct any irregularity.

Following the examination referred to in the previous paragraph, the Commission may reduce, suspend or cancel assistance in respect of the measures concerned if the examination reveals irregularity, an improper combination of funds or a failure to comply with one of the conditions in the financing memorandum and in particular any significant change affecting the nature or conditions of implementation of the measure for which the Commission's approval has not been sought. Any reduction or cancellation of the assistance is to give rise to recovery of the sums paid.

Where the Commission considers that an irregularity has not been corrected or that all or part of an operation does not justify either all or part of the assistance granted to it, the Commission is to conduct a suitable examination of the case and request the beneficiary country to submit its comments within a specified period. After the examination, if the beneficiary country has undertaken no corrective measures, the Commission may:

(a) reduce or cancel any advance;

(b) cancel all or part of the assistance granted to the measure.

The Commission is to determine the size of a correction taking into account the nature of the irregularity and the extent of any failures in the management and control systems.

Any funds not used by the expiry date of the Programme will be recovered by the Commission. A final written declaration with supporting documentation shall be issued by
the NAO just after the end of the disbursement period of the Financing Memorandum showing the total amount contracted and disbursed. A final bank reconciliation showing the existing balances in the NF/IA/CFCU shall also be enclosed.

Notwithstanding the recovery of unused and ineligible funds after the expiry of the Financing Memorandum, a complementary recovery order may be issued after the final audit of the reliability and consistency of contracts and disbursements as well as their compliance with the provisions of the Financing Memorandum has been carried out, taking into account the independent opinion of the final audit.

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 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 payments shall be charged on sums not repaid by applying the rules specified in the Financial Regulation governing the Community Budget.

e.) Financial flows

The Commission will transfer funds to the NF in accordance with the Memorandum of Understanding signed between the Commission and the Government of Slovenia on 23rd December 1998. Funds will be transferred following requests from the NAO onto a separate bank account, denominated in €, which will be opened and managed by the NF in the Central Bank.

aa) Transfer of Funds to the National Fund

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 Central Finance and Contracts Unit (CFCU). The provisions foreseen in articles 2 and 13 of the 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 CFCU and the manner in which the payment function will be carried out.

Two replenishments will be made of up to 30% of the funds managed locally* and the final payment of up to 20% or the full balance of the budget, whichever is the lesser amount. The first replenishment will be triggered when 5% of the budget* has been disbursed by the IAS and the CFCU. The second replenishment may be requested when 35% of the total budget* in force has been disbursed. The final third replenishment will be paid when 70% of the total budget* in force is disbursed. Exceptionally, the NAO may request an advance payment of more than the percentages mentioned above in accordance with the procedures laid down in the aforesaid Memorandum of Understanding. Save for express prior authorisation from Commission HQ, no replenishment may be made if the trigger points mentioned above have not been respected.

bb.) Transfer of funds to the Implementing Agency

* excluding the amount foreseen for the Community programmes
The National Fund will transfer funds to the Central Financing and Contracting Unit, in accordance with the Financing Agreement (FA) signed between the NF and the CFCU. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of the financial administration of the sub-programme in line with Article 13 of the MoU on the establishment of the National Fund.

Each individual FA will be endorsed in advance by the European Commission. In case where the NF is itself the paying agent for the CFCU, there will be no transfer of funds from the NF to the CFCU. The CFCU must 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 CFCU.

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 the final payments have been settled shall be reimbursed to the Commission. An overview of the use of the funds deposited on warranty accounts – and notably the payments made out of them – and of interests accrued will annually be provided by the NAO to the Commission.

cc.) Transfer of funds to the National Fund for participation in Community Programmes and Agencies

A single advance will be made to the National Fund to cover the full amount of the PHARE part of the financial contribution for the participation in Community Programmes and Agencies. This advance will be made following signature of the Financing Memorandum and upon request from the National Fund.

This advance is separate from the advances made for the rest of the Programme. However, it should be noted that the Phare contribution for each Programme will 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 tranches, so that 100% of the funds necessary for the Programmes in force can be transferred immediately.

The National Fund will be responsible for transferring the funds back to the Commission, following the call for funds of the Commission’s Directorate General responsible for the Programmes concerned and within the deadlines requested.

dd.) Interest
In principle, all bank accounts\(^3\) will be bearing interest. 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.

**f.) The CFCU as Implementing Agency will be responsible for all sub-programmes, except for 2002/000-600.03 Community Programmes, for which the Phare funds will be handled by the National Fund itself.**

Additionally, the following Ministries and Institutions will play an important technical role:

<table>
<thead>
<tr>
<th>Sub-programme and Project</th>
<th>Implementing Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002/000-600.01 To support Economic and Social Cohesion</td>
<td>National Agency for Regional Development Ministry of the Economy</td>
</tr>
<tr>
<td>2002/000-600.01 Project Preparation Facility - Part II</td>
<td></td>
</tr>
<tr>
<td>2002/000-600.02 Strengthen the institutions and administrative capacity</td>
<td></td>
</tr>
<tr>
<td>2002/000-600.02 Unallocated Institution Building Envelope</td>
<td>To be determined according to projects selected</td>
</tr>
</tbody>
</table>

**g.) Environmental Impact Assessment and Nature Conservation**

The procedures for environmental impact assessment as set down in the EIA-Directive\(^4\) 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 I or annex II of the EIA Directive, the carrying out of the EIA-procedure must be documented\(^5\).

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-Directive\(^6\) must be documented\(^7\).

All investment projects 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.

**h.) Special rules for certain components of the Programme**

**Twinning**

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\(^3\) in particular, but not exclusively, accounts run by the NF, the CFCU and IAs

\(^4\) DIR 85/337/EEC; OJ L 175/40; 5.7.1985; as amended by DIR 97/11/EEC; OJ L 73/5; 14.3.97

\(^5\) in Annex EIA to the corresponding investment project fiche

\(^6\) DIR 92/43/EEC; OJ 206/7; 22.7.1992

\(^7\) in Annex Nature Conservation to the corresponding investment project fiche
The amounts earmarked for twinning projects will cover the eligible costs (as set down in the DIS instructions) for implementing the work plan agreed between the Member State and the Applicant Country. The eligible costs may include costs incurred by the selected Member State during the preparation of the twinning covenant in the period between signature of the Financing Memorandum and the final notification of the financing approval of the covenant.

Grant Schemes

For grant schemes whose procedures and formats are not covered by the current DIS rules, 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 Ljubljana) 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-ante 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 present Financing Memorandum.

4. MONITORING AND ASSESSMENT

Project implementation of this Programme 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 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 reallocation of Phare funds. Furthermore the JMC will review the progress of all pre-accession EU-funded assistance Programmes once a year (Phare, ISPA and SAPARD).

For the Phare programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC) which will include the NAC, the PAO of each Implementing Agency (and of 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 these are effected. The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

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

5. AUDIT AND ANTI-FRAUD MEASURES

a.) By the Candidate Countries

Each year an audit plan and a summary of the findings of the audits carried out shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the Programme.

Beneficiary countries shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or Community controls.

Irregularity shall mean any infringement of a provision of Community law 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, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Fraud shall mean any intentional act or omission relating to:

(i) 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,

(ii) non-disclosure of information in violation of a specific obligation, with the same effect,

(iii) the misapplication of such funds for purposes other than those for which they are originally granted.
The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94\(^8\).

In particular, all suspected and actual cases of fraud and irregularity 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 and irregularity to report, the beneficiary country shall inform the Commission of this fact at the end of each quarter.

\textbf{b.) By the Commission}

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 audits by 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 interest of the Community, the Commission can conduct on-the-spot checks and inspections on site in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96\(^9\).

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 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.

\section*{6. VISIBILITY AND PUBLICITY}

The appropriate Programming Authorising Officer will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all the activities financed from the Programme. This will be done in close liaison with the Commission Delegation. Further details are at the Annex - Visibility and Publicity (enclosed).

\section*{7. SPECIAL CONDITIONS}

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

\textsuperscript{8} OJ L178, 12.7.1994; p.43-46

\textsuperscript{9} OJ L292; 15.11.1996; p.2-5
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.