

MEMORANDUM OF UNDERSTANDING ON THE ESTABLISHMENT OF THE NATIONAL FUND

Whereas the enhanced pre-accession strategy is intended to enable all the applicant States of Central and Eastern Europe eventually to become members of the European Communities and, to that end, to align themselves as far as possible on the Community acquis prior to accession;

Whereas the Accession Partnership is the key feature of the enhanced pre-accession strategy which will mobilize all forms of assistance to the applicant countries within a single framework;

Whereas it is important to improve the existing management systems in order to achieve the objectives set out in the Accession Partnership;

Therefore,

The European Community, represented by the European Commission, hereinafter referred to as "The Commission", of the one part, and

The Government of Bulgaria, acting on behalf of the republic of Bulgaria, hereinafter referred to as "The Recipient", of the other part,

have agreed as follows:

Article 1 Definitions

Decentralised Implementation System (DIS)

Implementation System of the Phare Programme where part of the management and responsibilities have been transferred to the Partner Country whilst the Commission retains the final responsibility under the EC Treaties.

Central Finance and Contracts Unit (CFCU)

An implementing body of the DIS within the national administration in charge of tendering, contracting and payments for institution building projects and other projects if so specifically provided. For these projects the technical implementation is carried out by a SPO.

Implementation Agency (IA)

An implementing body of the DIS within the national administration in charge of tendering, contracting, payments and technical implementation of Investment Support projects and other projects if so specifically provided.

Joint Monitoring Committee (JMC)

A committee, consisting of the NAO, NAC and the Commission representatives, in charge of the review of Phare programmes.

National Aid Co-ordinator (NAC)

An official of the national administration in charge of the programming within the Recipient. The NAC also ensures a close link between the general accession process and the use of Community financial assistance, and is responsible for the monitoring and assessment of Phare programmes.

National Authorising Officer (NAO)

An official of the national administration heading the NF. The NAO has the overall responsibility for the financial management of Phare funds.

National Fund (NF)

The Central treasury entity within the Ministry of Finance through which the Community funds are channeled towards the Recipient.

Perseus

The current financial reporting system of the European Commission.

Programme Authorising Officer (PAO)

An official of the national administration heading an IA or the CFCU. The PAO is responsible for the operations of the IA/CFCU and for the sound financial management of the projects to be implemented.

Senior Programme Officer (SPO)

An official of the national administration (line ministry/agency) in charge of the technical implementation of the projects in case where the CFCU is responsible for the administrative and financial implementation of the projects.

Article 2

National Fund and National Authorising Officer

1§

The Recipient shall establish the national fund as a central treasury entity under the responsibility of a National Authorising Officer (hereinafter the NAO) in the Ministry of Finance to manage the Community assistance allocated to the Recipient under the Decentralised Implementation System (DIS).

2§

The National Authorising Officer shall be an official of ministerial or state secretary status, appointed by the Recipient. The National Authorising Officer may not hold at the same time the office of the National Aid Co-ordinator. The National Authorising Officer may delegate his responsibilities to a maximum of two other officials, but he shall remain fully

accountable for all the responsibilities vested in him in this Memorandum of Understanding and other agreements.

Article 3 **Responsibilities of National Authorising Officer**

1§

The National Authorising Officer shall have overall responsibility for financial management of Phare funds. He shall ensure that the Phare rules, regulations and procedures pertaining to procurement, reporting and financial management 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 closure of the programme.

2§

Appropriate financial control shall be carried out by the National Court of Auditors. The National Authorising Officer shall maintain a financial reporting system for all Phare funds. He shall be accountable to the Commission for the use of funds. In carrying out these responsibilities, the national Authorising Officer shall be responsible for the following tasks:

- (i) request and manage the funds from the Commission
- (ii) appoint Programme Authorising Officers (PAOs) in each Implementing Agency (IA), and the Central Finance and Contracts Unit (CFCU) where applicable, after consulting the National Aid Coordinator.
- (iii) conclude the Financing Agreements, which he/she will sign with each of the Implementing Agencies and the CFCU where applicable.
- (iv) ensure the flow of national and other co-financing resources as set out in Financing Memoranda for the Phare programmes.
- (v) ensure that a financial reporting system (Perseus) for Phare funds is regularly updated and reporting procedures properly respected by the IA of CFCU (where applicable).
- (vi) transfer funds to Implementing Agencies (IA) and to the CFCU where applicable, according to the mechanism set out in the Financing Agreement.
- (vii) participate with the Commission and National Aid Coordinator in a Joint Monitoring Committee.
- (viii) recover non-used funds from the IA/CFCU at the end of the programme.

3§

The technical and administrative issues of programme implementation, including tendering and contracting will be the full responsibility of the Implementing Agency, CFCU or the line ministry/ agency concerned.

4§

Failure to carry out any of the responsibilities set out in this Memorandum of Understanding will lead to reimbursement of Phare funds to the Commission.

Article 4

Request of funds from the Commission

1§

An advance payment, a percentage of the total budget of the Financing Memorandum that will be managed in a decentralized manner, will be transferred by the Commission to the National Fund after the signature of the Financing Memorandum, provided that the conditions included in Article 13 (bank accounts) have been fulfilled. The advance payment may not exceed 20% of the total budget of the programme.

2§

The amount of the advance payment and subsequent replenishments, as well as the trigger points thereof will be specified in the Financing Memorandum. Save for express prior authorisation by the Commission, no replenishment request may be made if the aggregate of the funds deposited in the National Fund, CFCU, and the Implementing Agencies exceeds 10% of the total budget in force of the programme that will be managed in a decentralized manner.

3§

The request for advance payments and replenishments, to be certified and approved by the National Authorising Officer, is submitted to the Commission for approval and transfer. The request for replenishments shall be supported by:

- (i) a declaration of expenditures showing the cumulative amount contracted and paid broken down by sub-programme and project and sub-project (where appropriate) – so demonstrating the link between the indicative budget (i.e. Financing Memorandum) and the expenditure and payments actually made based on the financial reporting as presented by the IA/CFCU. To this end, a table showing the link between the IA/CFCU and the project they manage should also be enclosed.
- (ii) appropriate financial reporting (Perseus) indicating effected contracts and payments.
- (iii) bank reconciliation corresponding to the bank accounts opened by the NF and the IA/CFCU. Interest earned on the bank accounts shall be communicated as well.
- (iv) progress reports as stipulated in Article 9.
- (v) written declaration by the NAO that the information contained in the Request for Replenishment is correct and that the implementation of the Phare assistance is progressing at a satisfactory rate and according to the objectives laid down in the Financing Memorandum.

4§

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 be enclosed as well.

5§

The Commission retains the right to request additional information in support of transfers of funds.

6§

Exceptionally, the National Authorising Officer may request a larger advance payment request than 20% where it can be illustrated by a cash-flow projection based on a list of commitments by the IAs that the cash flow requirements in the subsequent period will exceed 20%.

Article 5

Reallocation of funds

1§

The NAO may request a reallocation of funds from one subprogramme to another inside the same Financing Memorandum (Programme adjustment) following a recommendation from the Joint Monitoring Committee. This can only take effect following Commission endorsement on the basis of a detailed justification.

If the reallocation is less than 15% of the Financing Memorandum and does not involve a modification of the objectives set in the Financing Memorandum, this endorsement will be provided by the Commission Delegation. The subsequent declaration of expenditure (Article 4.3 (i)) shall incorporate these reallocations and a copy of the endorsement made by the Delegation enclosed.

2§

If the reallocation is below 15% but involves a change of objectives from those in the relevant Financing Memorandum or if the proposed reallocation exceeds 15% or if existing projects are suppressed or new projects are created involving a change of objectives from those in the relevant Financing Memorandum, the reallocation request will have to be submitted to Commission Headquarters for approval, and will be subject to a new Commission Decision.

3§

Where appropriate, the NAO may request a reallocation of funds from one sub-project to another inside the same project after a recommendation from the Monitoring Subcommittee. The reallocation can only take effect following a Commission Delegation endorsement on the basis of detailed justification. If the reallocation involves a change of objectives from those in the relevant FM or if existing sub-projects are suppressed or new sub-projects created involving a change of objectives from those in the relevant Financing Memorandum, the reallocation request will have to be submitted to the Commission HQ for approval. The subsequent declaration of expenditure (Article 4§3(i)) shall incorporate these reallocations and a copy of the endorsement made by the delegation enclosed.

Article 6

Transfer of funds to Implementing Agency

1§

The transfers of funds to the Implementing Agencies and CFCU, where appropriate, shall be made on the basis of cash estimates.

2§

The IA shall submit transfer requests to the National Fund according to its needs as set out in the relevant Financing Agreement. The provisions of the Financing Agreement will replace, where appropriate, existing Memoranda of Understanding on the establishment of the CFCU signed with the Commission.

3§

On the basis of the request and supporting documentation, the National Authorising Officer shall verify the disbursement level of the preceding tranche by the IA and, if the request is justified, the NAO shall approve the release of the next tranche of funds. The IA shall only make payments against signed contracts.

4§

The National Fund and NAO shall be held ultimately responsible to the Commission that the transfers are made properly and based on correct information.

5§

The Financing Agreement to be concluded between the National Fund and the Implementing Agency and to be endorsed by the Commission will make detailed provisions for the transfers.

6§

The National Fund shall keep account of all transfers made for the benefit of implementing individual Phare funded programmes, sub-programmes, projects, and sub-projects (where appropriate).

Article 7

Payments

Where the National Fund acts as a paying agent for a project, the National Fund shall effect the payments to contractors following requests from Implementing Authorities (CFCU/IA), in accordance with the DIS Manual and other instructions of the Commission. The NF shall report the payments to the CFCU/IA to enter the data in Perseus without delay.

Article 8

Financial Control

1§

Appropriate financial control shall be carried out by the National Court of Auditors with respect to the implementation of the Financing Agreements signed with each IA, and CFCU where applicable. 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.

2§

The accounts and operations of all relevant implementation structures may be checked at regular intervals by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Court of Auditors as referred to in the General Conditions relating to the Financing Memorandum attached to the Framework Agreement concluded between Bulgaria and the Commission.

Article 9 Reporting

1§

The National Authorising Officer shall ensure that the NF (where appropriate), the IA and CFCU maintain a viable technical and financial reporting system (Perseus, including i.a. prequalification and tendering data) for all Phare funds including funds transferred to the Implementing Agencies and to the CFCU, where applicable.

2§

In addition, the National Fund shall compile pursuant to Article 4 § 3 (iv) the reports on the financial status of the programme, on schedules for upcoming tenders, effected tender evaluations and contracts awarded, how the projects are implemented, problems encountered (if any), perspectives for the future, and any other necessary information, requested by the Commission. Furthermore, the National Fund shall compile quarterly reports on the above mentioned matters if so requested by the Commission to complete the reporting required in Article 4.

Article 10 Staff

The Recipient shall provide at its own costs that necessary human resources are available for the timely and correct execution of the tasks entrusted to the National Fund.

Article 11 Location, Facilities

The Recipient shall provide on its own costs necessary premises, office furniture and other facilities for the National Fund within the Ministry of Finance.

Article 12 Operational costs of the National Fund

Operational costs of the National Fund shall be covered by the Recipient.

Article 13 Bank Accounts

1§

The National Fund shall for each Financing Memorandum open a bank account in the Central Bank or in a Government guaranteed bank account. This bank account shall have sub-accounts from which the IAs/CFCU are entitled to execute payments. In case where this system cannot be implemented, specific arrangements can be agreed between the Commission services and the National Fund. The account shall, in principle, be interest-generating.

2§

The amount of the interest earned on the bank accounts shall be communicated to the Commission each time the NF requests for replenishment, and at the end of the programme. If the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the programme.

3§

The bank account shall be operated on the basis of double signature system, requiring the signatures of the National Authorising Officer and a Senior Accounting Officer.

4§

The National Fund shall communicate to the Commission all relevant information on the accounts at the National Fund as well as on all other accounts in the Implementing Agencies and other to which Phare funds have been transferred. Relevant information encompasses i.a. name and address of the bank, account number, name(s) of account holders, interest rates, and any other information the Commission deems appropriate.

Article 14 Procurement

1§

Procurement will be carried out according to the DIS Manual ensuring free access, fair competition and transparency as provided by Title IX of the Financial Regulation applicable to the general budget of the European Communities and by the Phare Regulation.

2§

On a case by case basis, the Commission may approve a derogation to the use of a standard Phare rules, is foreseen in the Financial Regulation and Phare Regulation and specified in the Financing Memorandum.

3§

The National Fund shall ensure that the relevant procurement rules and procedures are respected.

Article 15

Monitoring and Assessment

1§

The Recipient shall establish a Joint Monitoring Committee (JMC). It shall consist of the National Aid Coordinator, the NAO, and the Commission. The JMC will meet at least once a year and will review all Phare funded programmes. On the basis of monitoring reports the JMC will assess the programmes' process towards meeting the operational objectives for accession as set out in the Financing Memorandum. The JMC will recommend a change of priorities and/or the re-allocation of Phare funds, if need be, to ensure that stated objectives and targets are met.

2§

To monitor programmes the JMC will nominate a Monitoring Sub-Committee. It will consist of the National Aid Coordinator, the NAO, the Programme Authorising Officer of each Implementing Agency and the Commission. The Sub-Committee will review in detail the progress of each programme and its components and contracts in accordance with the DIS Manual, looking i.a. at relevance and design, efficiency, effectiveness and likely impact, on the basis of reports produced for PAO and the Commission and any other relevant evaluations. The Sub-Committee will review i.a. actual output as compared to plan; rate of implementation and contracting; financial flow; and the management structures of the programmes and projects; put forward recommendations for improvement and if these steps are not followed by the Implementing Agency without good reason, take necessary corrective steps. The Sub-Committee will report to the JMC and prior to its annual meeting submits an overall detailed report on all programmes.

3§

Notwithstanding any monitoring reports produced at the demand of the JMC, the Commission and the NAO can request, at any stage in the programme cycle, jointly or separately, an independent evaluation report. Evaluation will also measure impacts and appropriateness in the fulfillment of objectives. The Commission's evaluation methodology covering the full range of key evaluation issues as relevance, design, efficiency, effectiveness, utility and sustainability will be used for this exercise.

Article 16

Accounting and Audits

1§

The National Fund shall operate a double entry or analytical accounting system covering all contractual and other financial operations pertaining to all Phare financed programmes in Bulgaria.

2§

The accounts and operations of all relevant implementation structures including the National Fund may be checked at regular intervals by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Court of Auditors as referred to in the General Conditions relating to Financing Memorandum attached to the Framework Agreement concluded between Bulgaria and the Commission.

3§

Written records of the entire financial management, tendering and contracting shall be stored for five year after the closure of the programme.

Article 17 **Settlement of disputes**

1§

Any questions relating to the execution or interpretation of this Memorandum of Understanding shall be the subject of consultation between the Recipient and he Commission, leading, where necessary, to an amendment of he Memorandum of Understanding.

2§

Where there is a failure to carry out an obligation set out in this Memorandum of Understanding or the related instructions, and no sufficient remedial measures have been taken in due time, the Commission may suspend the financing of the programmes I implemented through the system introduced by this Memorandum of Understanding, after consultation with the Recipient and ask for reimbursement of Phare funds.

3§

If the consultation does not lead to amicable settlement, the parties may report to the arbitration as set out in Annex B in the General Conditions relating to Financing Memorandum annexed to the Framework Agreement concluded between Bulgaria and the Commission.

Article 18 **Final provisions**

This Memorandum of Understanding may only be amended in writing by common consent of the parties.

This Memorandum of Understanding shall be signed by both parties and shall enter into force further to an exchange of letters.

Done at: Sofia

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For the Government of Bulgaria

For the European Community

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Date: 07.12.1998

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