

FINANCING MEMORANDUM¹

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 Republic of Bulgaria, 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: **BG 2004/016-711**

Title: **2004 National Programme for Bulgaria (Part II)**

Duration: **Until 30 November 2006**

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **144,328 M€** hereinafter referred to as "THE EC GRANT".

¹ The Financing Memorandum structure is as follows : 1. the coverpages with the references to the country concerned, amount and authority to sign, 2. Framework Agreement incl. Annex A and Annex B; Annex C -- Special Conditions (the text of the adopted financing proposal starting from **Description and Objectives** onwards; and Annex D 'Visibility/Publicity).

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until **30 November 2006** 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 execution of contracts of THE EC GRANT is **30 November 2007**, with exception of the projects BG 2004/016-711.01.01, BG 2004/016-711.01.02, BG 2004/016-711.01.03, BG 2004/016-711.03.01, BG 2004/016-711.11.01, BG 2004/016-711.11.03 and BG 2004/016-711.11.04 where the deadline for execution of contracts is **30 November 2008**. THE COMMISSION may however, in exceptional circumstances, agree to an appropriate extension of the contracting period or of the contract execution period, should this be requested in due time and properly justified by THE RECIPIENT. This Memorandum shall expire at the expiry date for execution of contracts 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:

Delegation of the European Commission

9 Moskovska Str
PO Box 668
BG-1000 Sofia
Bulgaria

Tel: (+359 2) 933 5252

Fax: (+359 2) 933 5233

for THE RECIPIENT:

Mr Milen Veltchev

Minister of Finance
102 Rakovski St
BG-1040 Sofia
Bulgaria

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 *Sofia*

Date *21. 01. 2005*

Done at *Sofia*

Date *27. 01. 2005*



for THE RECIPIENT
Mr. Milen Veltchev
Minister of Finance



for THE COMMUNITY

Encl.

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

ANNEX C TO THE FINANCING MEMORANDUM

SPECIAL PROVISIONS

1. OBJECTIVES AND DESCRIPTION

The Bulgarian authorities have agreed with the Commission that Phare 2004 should focus on six overarching priorities related to accession.

These priorities are:

- Strengthen public administration at all levels and the judiciary;
- Improve transparency, financial control and the fight against corruption and fraud;
- Promote economic growth and competitiveness and social cohesion;
- Integrate minority and vulnerable groups into mainstream society and create a more dynamic and pluralist civil society;
- Enhance the administrative and judicial capacity to implement and enforce legislative measures and assume the obligations of EU membership;
- Improve the strategic planning and effective utilisation of EU funds and prepare for Structural Funds (including implementing EDIS).

Summary descriptions¹ of the individual projects grouped under a number of accession related objectives are as follows.

Asterisks () indicate multi-annual projects.*

1. Political Criteria

BG 2004/016-711.01.01: Civil Society Development Programme*

The aim of this project, involving institution building, is to increase the role of civic society in the process of policy formulation at all levels – national, regional and local - through enhancing the capacity of the non-governmental organisations, developing adequate mechanisms for structured dialogue between the state and the “third sector”, building public private partnerships and recognizing the role of NGOs in the Accession process. These efforts of the NGOs will aim at the fostering of social inclusion of people in vulnerable positions or people being economically or politically marginalised. The project focuses on: NGOs’ participation in the accession process and the participation of the civil society in the process of harmonization and implementation of the acquis; social integration of the minorities and vulnerable groups to promote tolerance in society; enhancing transparency and prevention of the corruption; developing mechanisms of public-private partnership for elaboration of national and local policies and for improvement of self-sustainable and independent civil society; and providing solutions to the problem of vulnerability in rural communities, supporting the development of civil society (at local level), engaged with local development.

¹ Descriptions are indicative; some details may be changed

BG 2004/016-711.01.02: Deinstitutionalisation through provision of community based services for risk groups*

The aim of this project, involving institution building and a grant scheme, is the creation and development of a network of social and mental health services, delivered into the community. The IB components of the project focus on; development of programmes and models, a national awareness campaign, targeted training and the development of modalities for the grant scheme. The grant scheme component focuses on: integrated community-based services for children and their families developed and implemented at local level; extended and diversified services for children and families; decreased number of children, entering specialized institutions; specialized institutions reformed, transformed and closed; the establishment of sheltered homes for adults with physical and mental disabilities, day care centres for the elderly and hospices; the establishment of acute psychiatric wards; and a clinic for child and adolescent mental health.

BG 2004/016-711.01.03: Improvement of the situation and inclusion of the disadvantaged ethnic minorities with a special focus on Roma*

The aim of this project, involving institution building and investment, is to ensure systematic improvement of the situation of disadvantaged ethnic minorities with a special focus on Roma by implementing specific measures with regard to education, health and urbanization and establishment of institutional arrangements at all levels. It focuses on: improved access to integrated education, specialised health care services and public infrastructure for disadvantaged ethnic minorities with a special focus on Roma; improved interactions between the disadvantaged ethnic minorities and central/local public administration and police structure; created conditions for social integration of young Roma through participation in higher education; improved material base of selected integrated kindergartens and schools with ethnically mixed classes; improved health status of Roma by performed preventive health care services, health promotion and education; improved disadvantaged ethnic minorities social integration by upgrading the existing public infrastructure and measures for legalising the constructions; and sustainable administrative capacity to manage, in the future, social cohesion projects

2. Internal Market and Economic Criteria

BG 2004/016-711.02.01: Preparing the Commission on Protection of Competition for the direct application of the rules of the Community competition acquis and cooperative work with the European Commission

The aim of this project, involving institution building, is to establish administrative capacity, in particular at the level of the CPC and the judiciary, properly to apply the anti-trust acquis in light of the preparation of Bulgaria for the Internal Market. It focuses on: upgrading the professional expertise of the CPC Members and staff to the point that they work autonomously and at a high standard in ensuring and maintaining acquis-consistent anti-trust enforcement practice and in applying directly the Community competition acquis; establishing a mechanism for the CPC Members and staff to participate in the co-operative work with the European Commission; strengthening the role of the CPC for competition advocacy and for promoting competition culture in Bulgarian economic

society; and expanding the Human Resources and Knowledge Management systems to the entire scope of CPC sectors.

BG 2004/016-711.02.02: Strengthening of the administrative capacity of the Financial Supervision Commission to implement the acquis in the field of securities, pension and insurance*

The aim of this project, involving institution building in 2004, is strong and efficient supervisory and regulatory framework for the operation of the non-banking financial sector at the level of the EU standards. This phase focuses on: harmonising Bulgarian legislation relating to securities, insurance and pension with the EU legislation; providing the FSC with appropriate mechanisms to develop, enforce and implement EU compliant national policy in the non-banking financial sector; training the staff of the FSC to implement EU compliant financial market legislation, and best practices; developing FSC capacity to participate actively in the work of the international regulators' organisations; establishing appropriate mechanisms to exchange information and assisting in other ways Member State's supervisory authorities; and business and public awareness of the need for changes in the market that will result from the accession process.

BG2004/016-711.02.03: Strengthening of the system for health control on trade with chemical substances, preparations and products and strengthening the capacity for control on the novel foods and novel food ingredients, and for control on the irradiated foods and food ingredients*

The aim of this project, involving institution building and investment, is quality and efficiency of the control on trade with chemical substances and preparations for protecting public health and to guarantee the control of novel foods and novel food ingredients, and the control of irradiation facilities and technologies to both Bulgarian and EU consumers, implementing the EU principles on Food Safety and to control the trade with novel and irradiated foods according to the national and international legislation. It focuses on: strengthening the administrative capacity of the system for health control over the trade with chemical substances and preparations for complying with and applying the harmonized legislation; and securing the implementation of the Bulgarian legislation on control of novel foods, novel food ingredients and irradiated foods through strengthening the human resource and provision of laboratory equipment.

3. Agriculture

BG2004/016-711.03.01: Preparation of the Bulgarian Ministry of Agriculture and Forestry to implement the second pillar of the EU Common Agricultural Policy – Rural Development, and establish its Paying agency and prepare the setting up of IACS in Bulgaria - phase 3*

The aim of this project, involving institution building and investment, is preparation of the Bulgarian Ministry of Agriculture and Forestry to administer the assistance under the European Funds and the National Program for Integrated Rural Development Schemes. It focuses on: improving administrative capacity of Rural Development and Investment Directorate (RDID) within the Ministry of Agriculture and Forestry in programming, implementing, monitoring, control and evaluation of rural development programmes;

and the final phase of equipping and training the Paying Agency and establishment of IACS in Bulgaria for the appropriate management of the various types of funds.

BG2004/016-711.03.02: Improving the internal market control via variety testing and seed control, improvement of the phytosanitary control and biological testing, and bringing the animal waste processing system in Bulgaria in line with the EU requirements*

The aim of this project, involving institution building and investment, is to strengthen the capacity of the Ministry of Agriculture and Forestry (MAF) and its services to undertake the priorities for EU alignment and implement the reforms identified in the current Accession Partnership and the National Program for the adoption of the Acquis (NPAA). It focuses on: reaching the EU level in conducting of variety testing and seed control and seed certification procedures and improvement of the conditions and technical facilities at the Agency's structures; reinforcement of the National Service for Plant Protection (NSPP) through development of Quality assurance system by implementation of key standards and requirements in order to guarantee the quality of NSPP control activities; and the establishment of an EU-compliant processing plant for Category 1, Category 2 and Category 3 animal by-products not intended for human consumption in Bulgaria.

BG2004/016-711.03.03: Approximation and implementation of the legislation - CAP and CFP mechanisms – and strengthening the administrative capacity of MAF to meet future responsibilities*

The aim of this project, involving institution building and investment, is to develop implementation mechanisms based on harmonized laws and by-laws in the agricultural sector. It focuses on harmonising the legal framework in a participative manner; making the Common Market Organisations for grain operate as necessary; establishing an Interbranch association of fruit and vegetable producers; operationalising the CFP; supervising Vine and Wine production qualitatively and quantitatively; improving milk and meat production; and improving communication skills.

4. Transport

BG2004/016-711.04.01: Railway Safety and Interoperability

The aim of this project, involving institution building is strengthening and enhancement of the administrative capacity to implement the European legislation in the railway sector. It focuses on strengthening the administrative capacity of the Railway Administration Executive Agency (including its regional units in Sofia, Plovdiv, Gorna Oryahovitza) to promote and facilitate the compliance with the EU norms and implementation of the European legislation including railway safety, necessary for: strengthening the development of the Pan-European Transport network on the Bulgarian territory; and better integration in the European transport system.

5. Employment, Social policy and Education

BG2004/016-711.05.01: Support for Social Dialogue

The aim of this project, involving institution building and investment is Improving the organisational capacity and skills of Ministry of Labour and Social Policy, trade unions and employers' organisations to ensure full engagement of social partners in the creation of the national labour market and social policy. The project focuses on: regular social dialogue in the field of employment policy; a social dialogue system that identifies, analyzes and implements labour market policy and social inclusion on central and local level; regular negotiation meetings on national as well as on local level, at cross-industry and sectoral levels; establishment of systems and training for various actors in the area of structures for the future ESF; adoption of EU best practices in the development and administration of social dialogue; and a legal framework for a social dialogue system .

BG2004/016-711.05.02: Strengthening of the National Surveillance System for Communicable Diseases*

The aim of this project, involving institution building and investment is to ensure the integration of the national CD surveillance system into the EU surveillance networks through adopting the EU legislation and strengthening the administrative capacity of the involved institutions. It focuses in 2004 on; the adoption of a national framework for epidemiological CD surveillance system according to all EU Decisions; development of legislation for standards, regulations and guidelines in the field of CD; reinforcing the existing CD epidemiological surveillance system; establishing an early warning system as a part of the existing CD surveillance system; equipping workplaces for the epidemiologists involved in the CD surveillance; and training epidemiological staff.

6. Energy

BG2004/016-711.06.01: Implementation of the Directives 2003/54/EC on internal market in electricity and 90/547/EEC on transit of electricity through transmission grids, for the implementation of EU standard ETRF 89 and European Geostationary Navigation Overlay System (EGNOS)*

The aim of this project, involving institution building and investment is to develop a clear measure-based strategy for the achievement of the required level of implementation of the requirements of the EU acquis for which there is a commitment for transposition and implementation before the accession date, as well as building administrative, institutional and technical capacity necessary to implement and enforce the requirements. The project focuses on: the promotion of the electricity produced from renewable energy sources; Combined Heat and Power (CHP); the European Geostationary Navigation Overlay System (EGNOS) and rules for the internal market and the transit of electricity through transmission grids.

7. Environment

BG2004/016-711.07.01: Transposition and implementation of the environmental acquis at national level

The aim of this project, involving institution building, is improvement of the institutional and administrative framework to implement and enforce the Bulgarian legislation concerning fuel quality and marketing requirements (FQMR), supervision and control over trans-boundary movement of waste and genetically modified organisms. It focuses on: transposition of the new EC FQC directives, as well as a parallel study of the quality control and marketing requirements for each fuel type, and development of a National Program for production and use of bio-fuels; the development of institutional capacity in the genetically modified organisms sector and to ensure adequate level of GMO management; and preparation of the experts responsible for supervision and control of trans-boundary movement of wastes.

BG2004/016-711.07.02: Implementation of the environmental acquis at regional and local level

The aim of this project, involving institution building and investment is to improve the institutional and administrative framework at local level necessary to implement and enforce the legislation, and supporting the necessary investments to give effect to the entire body of the EU Environmental Acquis. It focuses on: strengthening the monitoring and reporting capacity of the Ministry of Health (MoH) and other relevant institutions and improving the capacity building of the Regional Hygiene and Epidemiology Inspectorates (RHEIs) and the National Centres - National Centre of Hygiene, Medical Ecology and Nutrition (NCHMEN) and National Centre of Radiobiology and Radiation Protection (NCRRP); establishment of administrative structures in order to ensure implementation of an integrated waste management approach within selected regions and to undertake all necessary steps to ensure the start of the proper functioning of these systems; and strengthening administrative capacity of the local Bulgarian authorities in development and implementation of municipal environmental programs in accordance with the national and EU environmental requirements and improvement of the information systems and data exchange at local level.

8. Justice and Home affairs

BG2004/016-711.08.01: Support for further Implementation of the Strategy for Reform of Bulgarian Judiciary*

The aim of this project, involving institution building and investment, is to develop the necessary administrative and judicial capacity to transpose, implement and enforce the *Acquis* and to accrue the benefits of an operational national network of effective and transparent information systems for the Judiciary. It focuses on: ensuring fast, efficient and qualitative court procedures; ensuring further implementation of the Community instruments in the area of judicial cooperation in civil and penal matters; and building on the activities previous Phare projects to strengthen the institutional capacity of Bulgarian Judicial System.

BG2004/016-711.08.02: Strengthening of the Bulgarian Judiciary*

The aim of this project, involving institution building and investment, to support the bodies of the judiciary and the executive in the implementation of the Strategy for reform of the judiciary through a contribution to the process of preparation of the Republic of Bulgaria for accession to the EU by introduction of European standards for higher quality of justice and judicial training, as well as for effective and smooth management of the judiciary and the institutional cooperation. It focuses on: improvement of the legal framework of the magistrates' status and development of the principle of impartiality and transparency in their appointment and work; provision of high quality of training for magistrates and administrative staff, strengthening the administrative capacity of the Supreme Judicial Council, improvement of the management of the judiciary; identifying and implementing practical measures for strengthening the inter-agency cooperation between Public Prosecutor's office (PPO) and other concerning bodies in fighting organized crime, fraud and corruption; and developing practical measures and training modules for implementing of newly adopted *acquis* in the field of organized crime, fraud and corruption

BG2004/016-711.08.03: Streamlining the Penitentiary System in Bulgaria*

The aim of this project, involving institution building and investment, is to contribute to the successful reform of the Bulgarian Judiciary and to combating crime through constructive and flexible law enforcement and execution of penalties within the Bulgarian judicial system. It focuses on two main issues: improvement of the penitentiary system including elaboration of a human resources strategy for the penitentiary system, development of social work in places for deprivation of liberty; improvement of work with drug and alcohol-dependant persons deprived of liberty, organisation of vocational training in places for deprivation of liberty and establishing a probation system in Bulgaria including provision of the legal basis, foundation of state probation bodies in Bulgaria in line with European best practices, recruitment and training of staff in the probation system.

BG2004/016-711.08.04: Modernising the Bulgarian Police and Enhancing its Efficiency*

The aim of this project, involving institution building and investment is enhancing police structures' anti-crime capacity through introducing EC *acquis* and practices in the field of justice and home affairs related to the conduct of police investigation and respect for human rights, as well as the optimisation of data exchange and establishment of a state authority in the field of migration. It focuses on: applying EU standards for on information and computing powers in the Ministry of Interior, elaborating a system for information security, equipping the officers of the territorial services of the Ministry of Interior and extending capacity for access and usage of data stored in the automated information systems; improvement of the effectiveness of police investigation by development of information systems supporting police investigation and information exchange with the other law enforcement authorities as well as elimination of the conditions for human rights violation within the police by the means of improving the physical conditions of detention premises and by promoting better respect for human rights under police detention; and improvement of the administrative capacity for control on the migration and opposition to the illegal migration and establishment of special homes for accommodation of illegally staying foreigners in the territory of the Republic of Bulgaria.

BG2004/016-711.08.05: Establishment of Mobile Units for Border Control and Surveillance on the Bulgarian Western Border and implementation of the EU best practices for Integrated Border Control in the Border Area – third stage

The aim of this project, involving investment is enhancement of the effectiveness of border control and management and modernization of the equipment according the EU requirements for external borders guarding through introduction of surveillance equipment, mobility equipment and documents checking mobile systems in the border area of Dragoman (the border with Serbia and Monte Negro) and of Kjustendil (the border with Macedonia). It focuses on the supply of surveillance equipment, document checking equipment and mobile systems equipment to various key border areas.

BG2004/016-711.08.06: Further Strengthening of Border Control and Management of the Future EU External Borders through Modernisation of Technical Equipment, Development of Centralised Information Systems and Introduction of EU Best Practices and Standards in the Field of Border Control*

The aim of this project, involving institution building and investment is efficient border control and management according to the requirements and standards of the EU for external borders guarding, improved border control results with respect to counteraction to cross-border organised crime, a change in the manner of work of border police officers and improved information infrastructure and communication environment for the needs of the border control and migration systems. The first phase (Phare 2004) of the project is focused on the further strengthening of border control and management of the state border of the Republic of Bulgaria by implementation of integrated measures including the regional structures of the Ministry of Interior in the border zone, as well as further modernisation of the technical equipment of Border Police and development and implementation of the automated information system for border control

9. Customs and Finance

BG2004/016-711.09.01: Strengthening of the customs control on the future EU external borders in accordance with the Common Agricultural Policy (CAP)*

The aim of this project, involving institution building and investment is improvement of the customs control efficiency at the future EU external borders and enhancement of the administrative capacity of the customs for the future implementation of the CAP. It focuses on: enhancement of the operational and administrative capacity of the customs control and modernization of the specialised technical equipment; and assistance to the Bulgarian Customs Administration (BCA) in the process of adoption of the European customs legislation and practices in the field of the CAP.

BG2004/016-711.09.02: Further Development of the process of the Bulgarian Customs Administration Computerisation and Development of a National System for Administering the Excise Duty Entirely by the Customs Administration*

The aim of this project, involving institution building and investment is computerisation of the customs business at the national level in line with the targets identified in the NCA

Strategic documents in order to meet the accession criteria in accordance with the acquis and implementation of the acquis in the field of excise duties and automation of the activities related to administering the excise duties. It focuses on: the extension of the functionality of key systems; technical assistance for evaluation and quality control; supply of equipment for modernisation of the infrastructure supporting key systems; support for the NCA in developing and further strengthening of a system for administering excise duties in compliance with the European legislation and EU best practice; development of legal and administrative capacity for administering the excise duties entirely by the customs administration; and supply of specialised equipment and development of information system for administering excise duties.

BG2004/016-711.09.03: Alignment with the Acquis on Taxation and Strengthening of the Administrative Capacity of the Revenue Administration*

The aim of this project, involving institution building and investment is creating a business friendly environment in the country, clear and efficient revenue collection and administration through harmonisation of Bulgarian tax legislation with the acquis and strengthening the administrative capacity of revenue administration in the process of accession to the European Union. It focuses on: tax policy; institutional development of the revenue administration; development of computer tools and experimental implementation of the Intrastat system in Bulgaria; and strengthened IT support for the operation of the revenue administration and its client services

BG2004/016-711.09.04: Strengthening the Institutional Capacity of the Ministry of Finance*

The aim of this project, involving institution building and investment is strengthening the relevant institutional capacity at the Ministry of Finance in order to achieve, upon accession, sound public finance and efficient management of the national and the EU funds, including the effective protection of these funds against fraud and other irregularities. It focuses on: support for improvement of the Budgeting Process; strengthening the capacity of the “Management of European Union Funds” Directorate for monitoring; building up an integrated State Treasury; development of the IT system; strengthening the institutional and administrative capacity of the Agency for Economic Analysis and Forecasting; and targeted equipment supply in support of the above components.

BG2004/016-711.09.05: Sustainable Development of the National Statistical System*

The aim of this project, involving institution building and investment is to fully integrate the National Statistical System (NSS) that will lead to full integration into the European Statistical System (ESS) by the date of EU accession. It focuses on: providing decision makers with data in new policy areas; improvement of data quality; strengthening the NSI administrative capacity; reorganization of the NSI regional structure in order to strengthen the administrative capacity and in connection with the preparation for the Structural Funds; adjusting the capacities of the regional statistical offices and NSI to produce these data; and statistical data production according to the new aligned NSI regional structure in connection with the preparation for the Structural Funds.

10. Administrative Reform and Capacity

BG2004/016-711.10.01: Strengthening the capacity of the Bulgarian public administration for implementing the e-Government Strategy*

The aim of this project, involving institution building and investment is strengthening the capacity of the ITC directorate of the Council of Ministers and “Co-ordination, Information and Analysis” Directorate within the Ministry of Interior for the implementation of the e-government strategy. It focuses on: analysis of the existing practices and legislation made and proposals for changes; the administrative structure to deal with the implementation of the Strategy for e-Government; developing the strategy for information technologies in conformity with the needs for e-Government Strategy implementation; and supply of computer equipment required for the implementation of the e-Government Strategy.

BG2004/016-711.10.02: Assistance in designing training programs and training of representatives of minority and vulnerable groups

The aim of this project, involving institution building is strengthening the capacity of the Institute of Public Administration and European Integration (IPAIE) in developing and delivering training programs, specifically designed for providing equal opportunities for minority and vulnerable groups to apply for and join the public administration. It focuses on: analysis of legislation and practices in Bulgaria and proposals for changes; presentation of practices in EU members states and development of mechanisms for implementation; training programs and training of trainers trained; and piloting of training programs.

BG2004/016-711.10.03: Assistance for the implementation of the National program for decentralization

The aim of this project, involving institution building is to build up sufficient administrative capacity in public administration at central, regional and local level, in order to ensure basis for implementation of the National program for decentralization. It focuses on: improvement of the work of the administration by encouragement of the internal contacts between the different structures in the administration and overcoming of the vertical hierarchical subordination and creation of models for work in a team; establishment of a model of state-civil consultative councils to different administrative structures; and analyses and elimination of the structural preconditions for creation of corrupt surrounding in the state administration in the process of decentralisation.

BG2004/016-711.10.04: Strengthening the Capacity of the Anti-Corruption Commission to Counteract Corruption in Public Administration and Judiciary*

The aim of this project, involving institution building and investment is to strengthen the capacity of the ACC and the internal control body of the Supreme Judicial Council- the Commission for fight against corruption in the Judiciary - to curb the corruption in the administration and the Judiciary. The project focuses on: continuation of implementation of the EU standards and best practices in preventing and countering corruption through cooperation of the law enforcement bodies; introduction and support for the existing corruption prevention initiatives directed at reduction of the corruption pressure on the administration; improving the cooperation among the institutions involved in the fight against corruption, media and NGOs through public education and stakeholders

involvement in the decision making process including the regional and local level; continuation, development and support of the anti-corruption training for the officials of different levels of the public administration, including the administration of the Judiciary, and the magistrates; and strengthening the capacity of the existing regional anti-corruption coordination Councils

BG2004/016-711.10.05: Unallocated Institution Building Envelope*

This facility, building on the one provided under Phare 2002 and 2003, will provide Institution Building support through assistance (twinning, twinning light, or other form of technical assistance) to meet the requirements related to specific, urgent and unforeseen needs identified in the course of the accession negotiation process. In particular this facility may help to; assist the adoption and implementation of *acquis* in particular areas where assistance is still necessary; strengthen the institutional and operational capacity of public administration bodies in view of the future role in the implementation of the EU *acquis*; develop human resources of public administration institutions relevant for the implementation of the EU *acquis*; facilitate public administration reform; and develop the institutions involved in current and future management of EC funds, and in the protection of these funds against fraud, other irregularities and corruption. Funding will be allocated as required for monitoring and interim evaluation of Phare projects after the end of the current EU centrally funded contract A Steering Committee chaired by the National Aid Coordinator will manage the facility, identify suitable projects, and propose them to the Commission Delegation for approval.

11. Economic and Social Cohesion

BG2004/016-711.11.01: Human Resources Development and promotion of employment*

The aim of this project, involving institution building and a grant scheme is to advance Bulgaria's labour market transformation and to make progress in adapting the employment system so as to be able to implement the European Employment Strategy and to prepare for accession to the EU. It focuses on: the development of an effective system of labour market needs analysis and the promotion of more effective active labour market policies; and the development and implementation of an effective strategy and framework for life long learning incorporating reform of the VET system (IVET and CVT) as well as further implementation of the adult learning strategy.

BG2004/016-711.11.02: Support to mobilising bottom-up development and project capacity as part of Structural Funds preparations in Bulgaria*

The aim of this project, involving institution building and investment is to develop appropriate skills and expertise among sufficient number of regional stakeholders in elaborating qualitative needs-oriented regional strategic documents in line with the partnership principle, in order to justify future SF measures and result in mature ready-to-go project applications for ERDF and ESF funding. It focuses on: reviewing and updating Regional Development Plans for 2007-2013 period in line with the partnership principle; consolidation of Regional Development Councils and institutions at regional/local level to ensure proper partnership at planning and programming level and adequate project pipeline development; establishment and use of bottom-up development

capacity by each partnership area for needs-based project development; and strengthened capacity of the future Intermediate Bodies for working in the regions on programme contents and projects.

BG2004/016-711.11.03: Former Military Base Conversion

The aim of this project, involving investment is to develop two former military base locations and fully equip them with relevant technical business-related infrastructure designated for investments, in order to provide increased new jobs opportunities. It focuses on: conversion of former military bases into business zones including related infrastructure; creation of business areas for investors; reconstruction of access roads to the zones and inside the zones; modernization of water systems, sewerage systems, communication systems, electrical systems; restoration and refurbishment of buildings for business; and implementation of environmental management systems.

BG2004/016-711.11.04: Support for Increasing the Competitiveness of Bulgarian Enterprises*

The aim of this project, involving institution building and a grant scheme is to foster the sustainable development of Bulgarian enterprises through improving their competitiveness. It focuses on: increasing the competitiveness of Bulgarian productive sector enterprises and preparing them to cope with the competitive pressure within the EU through targeted support in accession-related aspects of their development (achieving compliance of manufacturing processes with EU environmental standards and occupational safety & health (OSH) requirements, introducing various standards, increasing energy efficiency, enhancing the capacity for innovations and R&D), and promoting the sustainable development of growth potential enterprises; and creating an attractive business environment at regional and local level through promoting the public/private partnership development.

Other Programmes

BG2004/016-711.12.01: Participation in EC programmes and agencies*

This facility will provide Phare co-financing to help Bulgaria pay its contribution for participating inter alia in the following indicative list of EC programmes and agencies in 2005: Leonardo da Vinci II, Socrates II, Intelligent Energy Europe, Youth, Sixth Research Framework Programme (including Euratom), European Monitoring Centre for Drugs and Drug Addiction, Culture 2000, eLearning Programme, Erasmus Mundus Programme, Enterprise and Entrepreneurship, Media, Gender Equality, Community Action in the field of Public Health, Combating Social Exclusion, Combating Discrimination, Community Incentive Measures in the field of Employment, Customs 2007, Fiscalis 2007, Civil Protection Mechanism, Community actions in support of consumer policy, Community action Programme to promote active European citizenship, Community action programme to promote bodies active at European level in the field of youth, Trans-European Telecommunication Network (E-TEN). Both Phare co-financing

and participation will take place on the basis of the relevant Association Council decisions or Memoranda of Understanding

BG2004/016-711.12.02: Project Preparation Facility*

This facility, building on the ones in 2001 to 2003, will strengthen the capacity of Bulgarian institutions to prepare and manage Phare, and (for the first time in 2004) EIB, projects and play a fuller partnership role in Phare programming. It should contribute to better project design and results. Technical assistance will be provided for feasibility studies, training in programming, project design and project management, and the preparation of projects, technical specifications, procurement plans, tender dossiers and environmental impact assessments. The facility will be managed by the National Aid Coordinator in close consultation with the Commission Delegation. Assistance will only be given for preparing projects linked to agreed programming priorities. There will be a strong emphasis on Bulgarian involvement in project preparation, in order to enhance progressively the capacity of domestic institutions to prepare and manage projects themselves.

Lessons Learned

Experience with the implementation of Phare programmes in previous years and evaluation have led to a number of general lessons being learned. These lessons are reflected in the design and implementation of the 2004 National Programme. The most important lessons relate to constraints on Bulgarian administrative capacity both across the board in many line Ministries and agencies and more specifically in Ministries acting as Implementing Agencies. Medium to long term efforts to reinforce this capacity are already under way and are supplemented in Phare 2004, but in the meantime additional measures have been put in place to assist. These include efforts to support horizontal public administration reform, limiting the number of grant schemes as these place extra burdens on administrative capacity, restricting the number of Implementing Agencies, avoiding complex multi-phase contracting and building in an unallocated reserve for institution building. Another key lesson is that the success of Phare projects, especially institution building, depends on continuity of key senior and working level personnel. In addition to conditionality in project agreements, this issue is being addressed in the context of public sector reform and strengthening, e.g. by developing civil service contracts and conditions to avoid politically motivated staff transfers.

More specific lessons relating to individual sectors, Ministries or project types have also been learned and are reflected in individual project documents.

Overall programme conditionalities

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will satisfy the Commission that adequate steps have been taken to staff and resource adequately the National Fund, CFCU, Ministry of Regional Development and Public Works, other Implementing Agencies and project management units involved in implementing this programme.

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator 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. In addition, all operational and running costs and the maintenance of the equipment will be provided by the final beneficiaries. If the total cost of 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.

Before the Financing Memorandum between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will satisfy the Commission that draft twinning covenants, terms of reference and technical specifications have been prepared, as appropriate, to allow each project to be launched immediately.

For any project delivered partly or wholly by twinning, a draft twinning covenant shall be presented to the Commission Delegation for approval within four months of notification of selection of the twinning partner. If no draft covenant is presented within this period, the Commission may re-circulate the project to Member States for selection of a new twinning partner, tender the project for commercial technical assistance, or cancel the project.

Projects to be implemented through twinning or twinning light require the full commitment and participation of the senior management of the beneficiary institution. In addition to providing the twinning partner with adequate staff and other resources to operate effectively, the senior management must be fully involved in the development and implementation of the policies and institutional change required to deliver the project results.

For projects involving more than one Bulgarian Ministry or agency, the National Aid Co-ordinator will ensure that effective mechanisms for co-operation and co-ordination between such Ministries or agencies are in place.

The National Aid Co-ordinator will undertake thorough reviews of progress on implementation of the projects listed at least every six months from the time the Financing Memorandum is signed until the final date for contracting. If these reviews indicate that by the first quarter of the final year for contracting (2006 unless otherwise specified) there is a high risk of a project or component of a project not being contracted, the Commission reserves the right to take remedial action including, if necessary, reallocating funds to other purposes or cancelling projects or components thereof.

Further project-specific conditionalities are described in each project fiche.

2. BUDGET

2.1. Budget Table for 2004² (in M€)

No	DAC/ CRS Code	OBJECTIVE	Phare funding			IFI	TOTAL
			IB	INV	Total Phare(M€)		
01	15050	Political criteria	6.460	10.190	16.650	0	16.650
02	15010	Internal market and Economic criteria	3.163	0.690	3.853	0	3.853
03	31110	Agriculture	7.171	3.818	10.989	0	10.989
04	21010	Transport	0.900		0.900	0	0.900
05	16110	Employment, Social policy and Education	2.490	0.960	3.450	0	3.450
06	23010	Energy	0.900	0.600	1.500	0	1.500
07	41010	Environment	5.510	2.718	8.228	0	8.228
08	15030	Justice and Home affairs	11.995	12.517	24.512	0	24.512
09	24010	Customs and Finance	12.490	7.311	19.801	0	19.801
10	15040	Administrative reform and capacity	12.900	2.902	15.802	0	15.802
11	25010	Economic and Social cohesion	6.350	19.777	26.127	0	26.127
12	99810	Other programmes	9.426	3.090	12.516	0	12.516
		TOTAL	79.755	64.573	144.328	0	144.328

(The distribution of figures between the budget lines is indicative within the limits of Art. 5 MoU NF)

2.2. Principle of Co-Financing

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

The Community contribution may amount to up to 75% of the total eligible public expenditure. Taxes are not an element eligible for co-financing.

Co-financing for Institution Building projects is provided by the Beneficiary Country bearing certain infrastructure and operational implementation costs, through financing the human and other resources required for effective and efficient absorption of Phare assistance.

² In the case of multi-annual projects, indicative figures for later years are set out in project fiches

3. IMPLEMENTING AGENCIES

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

The Central Finance and Contracting Unit (CFCU) of the Ministry of Finance will be the Implementing Agency for all programmes and sub-programmes with the following exceptions:

- Ministry of Labour and Social Policy: BG 2004/016-711.01.02 and 11.01;
- Ministry of Regional Development and Public Works: BG 2004/016-711.11.03;
- Ministry of the Economy: BG 2004/016-711.11.04.
- For the project BG 2004/016-711.12.01 "Participation in EC programmes and agencies", the implementation will consist in the payment of the Phare part of the financial contribution to the programmes by the National Fund.

4. IMPLEMENTATION ARRANGEMENTS

4.1. Method of Implementation

Implementation of the programme will follow Art. 53 (1) b (second alternative) of the Financial Regulation³.

The Beneficiary Country will ensure that the conditions laid down in Art. 164 (1) (a) - (e) of the Financial Regulation are respected at all times. The Commission reserves the right to take the necessary measures, including suspension of funds, if it considers that these conditions are not met.

Prior to the accreditation of Implementing Agencies foreseen by Art. 12 (2) of Regulation 1266/1999⁴, project selection, tendering and contracting by the Beneficiary Country will be subject to ex-ante approval by the Commission.

4.2. Procurement

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Title 5 of its Implementing Rules⁵, as well as the Commission Decision SEC (2003) 387/2⁶.

The Contracting Authorities shall also use the procedural guidelines and standard templates and models provided for in the "Practical Guide to contract procedures financed from the general EC budget in the context of external actions" as published

³ Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002; OJ L 248; 16.9.2002; p. 1

⁴ Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

⁵ Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1

⁶ Commission Decision SEC (2003) 387/2 on the general regulations for service, supply and works contracts financed from the general budget of the European Communities in the course of co-operation with third countries, adopted on March 25, 2003

on the EuropeAid website⁷ at the date of the initiation of the procurement or grant award procedure.

In line with Art. 164 of the Financial Regulation, the Commission may decide to allow the Contracting Authorities entrusted with decentralised management responsibilities to execute procurement in accordance with procedures and guidelines transposing the European Union Public Procurement Directives.

4.3. Procurement Principles for Grant Schemes

For grant schemes in the field of economic and social cohesion, the precise implementation arrangements will be specified in the relevant project fiches in line with the following principles:

The procedures and formats to be used in the implementation of the schemes and award of the grants will follow the rules for External Actions. In particular, due care will be given to the selection process of the projects. Grants will be awarded in conformity with the provisions of chapter 6 of the Practical Guide, and following the principles of Phare decentralised management. Prior to EDIS accreditation, the ex-ante approval of the Commission Delegation in Sofia will be required.

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

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement rules in use for External Actions at the time of implementation. Following a positive assessment of the Implementing Agency's capacity to operationally and financially manage the schemes in a sound and efficient manner⁸, the Commission Delegation may decide to waive its ex-ante approval of sub-contracting carried out by the final beneficiaries of the individual grants. The detailed provisions governing the role of the Delegation in the above-mentioned sub-contracting phase will be specified, as appropriate, in the Exchange of Letters between the Delegation and the national authorities following the above-mentioned assessment exercise.

Grant schemes will not involve projects for which the Phare contribution is below € 50,000 or above € 2 million. This lower limit may be waived as a result of the above-mentioned assessment of the Implementing Agency's capacity of giving assurance of sound financial management. The lower limit is not applicable in the case of NGOs.

⁷ current address: http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm

⁸ see section 11 and Annex 4 of the 2004 Phare Programming Guide

The financial commitments in Phare terms will be effected at the date of signature of the grants contract by the competent PAO. The projects should be fully implemented before the expiry date for contract execution of the corresponding Financing Memorandum.

4.4. Implementation Principles for Twinning Projects

The amounts foreseen for Twinning projects will cover the eligible costs (as set down in the rules applicable for Twinning) for implementing the work plan agreed between the Twinning partners.

The eligible costs may include costs incurred by the selected Partner 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.

5. MANAGEMENT OF ASSISTANCE

5.1. Project Management

5.1.1. Responsibilities

The national Aid Co-ordinator (NAC) will have overall responsibility for programming and monitoring of Phare programmes.

The National Authorising Officer (NAO) and the NAC shall be jointly responsible for the co-ordination between Phare (including Phare CBC), ISPA and SAPARD, as well as the Structural and Cohesion Funds.

The NAO and the Project Authorising Officer (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the instructions of the Commission. They will also ensure that all contracts required to implement the Financing Memorandum are awarded using the procedures and standard documents for External Actions in force at the time of implementation, and that EU state aid rules are respected.

5.1.2. Project Size

All projects will be greater than € 2 million, except those in the following areas:

a) projects focused primarily on institution building where the Bulgarian Ministry/agency concerned has limited absorptive capacity and cannot utilise as much as € 2 million

and

b) projects constituting part of a wider multi-annual project where the total value of the multi-annual project is greater than € 2 million.

5.1.3. Deadline for contracting and execution of contracts, programming deadline

- (1) All contracts must be concluded by no later than November 30, 2006.
- (2) All contracts must be executed by no later than November 30, 2007.

In the cases of the following more complex projects, however, execution of contracts must end by November 30, 2008. The justification for this relates to the complexity of contracting, especially for grant schemes. Detailed justifications are contained in individual project fiches:

BG2004/016-711.01.01, 01.02, 01.03, 03.01, 11.01, 11.03 and 11.04.

- (3) Under DIS, a complete tender dossier must be submitted to the Delegation for approval by no later than 31 May, 2006. In case of non-compliance, the Beneficiary Country will inform the JMC, which may recommend reallocation of funds in accordance with Art. 5 of the MoU on the National Fund.

5.1.4. Environmental Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive⁹ are fully applicable for all investment projects under Phare. If the EIA-directive has not yet been fully transposed, the procedures should be similar to the ones established in the above-mentioned directive. If a project would fall within the scope of annex 1 or annex 2 of the EIA-directive, the carrying out of the EIA-procedure must be documented¹⁰.

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-directive must be documented¹¹.

All investments shall be carried out in compliance with the relevant community environmental legislation. The project fiches will contain specific clauses on compliance with the relevant EU-legislation in the field of the environment according to the type of activity carried out under each investment project.

5.2. Financial Management

5.2.1. Principles and Responsibilities

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

⁹ DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

¹⁰ in Annex EIA to the corresponding investment project fiche.

¹¹ In Annex Nature Conservation to the corresponding investment project fiche

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

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

Payments will be made following requests from the NAO onto a separate bank account, denominated in €, which will be opened and managed by the National Fund in the Central bank or in a Government guaranteed bank. In principle, all bank accounts will be interest bearing. Interest will be reinvested in the programme.

5.2.2. Payments to the National Fund

A first payment¹² of up to 20% of the funds to be managed locally¹³, will be sent to the NF following signature of the Financing Memorandum and the Financing Agreements (FAs) between the NF and the Implementing Agencies (IAs)/Central Finance and Contracts Unit (CFCU). Furthermore, the NAO must submit to the Commission the designation of the PAOs and a description of the system put in place, highlighting the flow of information between the NF and the IA/CFCU and the manner in which the payment function between them will be carried out.

Two further payments¹⁴ of up to 30% of the funds to be managed locally¹⁵ will be made. The second payment will be triggered when 5 % of the total budget in force¹⁶ has been disbursed by the IAs and the CFCU. The third payment may be requested when 35% of the total budget in force¹⁷ has been disbursed.

A final fourth payment will be made when 70 % of the total budget in force¹⁸ has been disbursed and all contracts have been signed.

Exceptionally the NAO may request more than the percentage agreed where it can be demonstrated by a cash-flow projection that the cash-flow requirements in the subsequent period will exceed such percentage. In cases where the aggregate of the funds deposited in the NF, CFCU and IAs accounts exceeds 15% of the total budget in force for the programme the Commission may exceptionally authorise a payment, if the NAO provides duly substantiated evidence that contractual obligations cannot be met with the funds available.

¹² representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹³ excluding the amount foreseen for Community Programmes

¹⁴ representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

¹⁵ excluding the amount for Community Programmes

¹⁶ excluding the amount for Community Programmes

¹⁷ excluding the amount for Community Programmes

¹⁸ excluding the amount for Community Programmes

5.2.3. Payments from the National Fund to the Implementing Agency

The National Fund will make payments to IAs, including the CFCU, in accordance with Financing Agreements signed between the NF and the IAs/CFCUs. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of financial management of the sub-programme in line with Art. 13 of the MoU on the National Fund.

As long as implementation follows DIS, each individual FA must be endorsed in advance by the European Commission. In cases where the NF is itself the paying agent for the CFCU/IA there will be no payments from the NF to the CFCU. The CFCU and the IAs must each be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the NAC. The PAO will be responsible for all operations carried out by the relevant CFCU/IA.

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

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

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

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

5.2.5. Payments to other International Organisations in Case of Joint Management or direct grants

Not relevant.

5.2.6. Payments in Case of Contractual Retention Clauses

For those contracts with contractual retention clauses (e.g. funds retained for a warranty period), the overall total of funds related to those contracts (as calculated by the PAO and established by the Commission) will be paid to the IA before the deadline for execution of contracts. The Implementing Agency assumes full responsibility for depositing the funds until final payment is due, as well as for ensuring that the said funds will only be used to make payments related to the retention clauses.

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

5.2.7. Closure of Expenditure and Clearance of Accounts

No later than eight months after the end of execution of contracts, the NF will submit a final declaration of expenditure and an attestation regarding the regularity, accuracy and veracity of the accounts transmitted. The final certified expenditure should at this point equal the original value of the contracts minus any deductions and savings agreed with contractors in the course of implementation. This should also equal payments made plus any sums outstanding on account of contractual retention.

If the payments received from the Commission exceed the final certified expenditure, the NF shall return the excess to the Commission at the time of submitting the final declaration. If there are any outstanding payments (with the exception of contractual retention funds), the NF should provide an explanation and a forecast when payment will be finalised. The NF shall report on progress on contractual retention funds and outstanding payments on a quarterly basis. If they are not paid to the contractor, they shall be returned to the Commission.

After evaluation of the final declaration, the Commission will state its view on any expenditure to be excluded from Community funding, where it finds that expenditure has not been executed in compliance with Community rules.

The results of the Commission's checks and its conclusions to exclude expenditure from financing will be notified in writing to the NF, which shall be given one month to transmit its reply in writing.

If no agreement is reached within one month of receipt of the NF's written reply, the Commission shall decide and establish the amounts to be excluded, having regard in particular to the degree of non-compliance found, the nature and gravity of the infringement as well as the financial loss suffered by the Community.

Following the decision about amounts to be excluded, all ineligible expenditure will be recovered without prejudice to the treatment of irregularities and subsequent financial compensation in accordance with Community rules.

6. MONITORING AND EVALUATION

Project implementation will be monitored through the Joint Monitoring Committee (JMC). It includes the NAO, the NAC and the Commission services. The JMC will meet at least once a year to review all Phare funded programmes in order to assess their progress towards meeting the objectives set out in the Financing Memoranda and the Accession Partnership. The JMC may recommend a change of priorities and/or reallocation of Phare funds. Furthermore, the JMC will review the progress of all pre-accession EU-funded assistance programmes once a year (Phare, ISPA, SAPARD).

For the Phare programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC), which will include the NAC, the PAO of each Implementing Agency (and the CFCU where applicable) and the Commission Services. The SMSC

will review in detail the progress of each programme, including its components and contracts, assembled by the JMC into suitable monitoring sectors. Each sector will be supervised by one SMSC on the basis of regular monitoring reports produced by the Implementing Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward recommendations on aspects of management and design, ensuring that these are 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.

7. AUDIT, FINANCIAL CONTROL, ANTI-FRAUD MEASURES, PREVENTIVE AND CORRECTIVE ACTIONS

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

All Financing Memoranda as well as all resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-Fraud Office) and audits by the European Court of Auditors. As long as EDIS is not yet applicable to the Implementing Agencies in the Beneficiary Country, this includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Beneficiary Country.

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96¹⁹.

The controls and audits described above are applicable to all contractors and subcontractors who have received Community funds.

Without prejudice to the responsibilities of the Commission and the European Court of Auditors²⁰, the accounts and operations of the National Fund and, where applicable, the CFCU and all relevant Implementing Agencies may be checked at the Commission's discretion by the Commission itself or by an outside auditor contracted by the Commission.

7.2. Obligations of the Beneficiary Country

7.2.1. Audit and Financial Control

In order to ensure sound financial management of the Phare funds, the Beneficiary Country must have a system for management and control of assistance in accordance with generally accepted principles and standards in place. This system shall fulfil the requirements set out in Art. 164 of the Financial Regulation, and in particular

¹⁹ Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2

²⁰ as referred to in the General Conditions relating to the Financing Memorandum" attached to the Framework Agreement

provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

The Beneficiary Country's management and control systems shall provide a sufficient audit trail, as defined in Art. 7 (2) of Commission Regulation 438/2001²¹.

The competent national financial control authority shall carry out appropriate financial controls of all actors involved in the implementation of the programme.

Each year an audit plan and a summary of the findings and main recommendations of the audits carried out and an outline of the follow-up given to past audit recommendations shall be sent to the Commission. Audit reports shall be at the disposal of the Commission.

7.2.2. Preventive Measures

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption²² practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

7.2.3. Anti-Fraud Measures and Corrective Actions

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

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94²³.

In particular, all suspected or actual cases of fraud²⁴ and irregularity²⁵ as well as all measures related thereto taken by the national authority must be reported to the

²¹ Commission Regulation (EC, Euratom) 438/2001 of 2 March 2001, OJ L 63; 3.3.2001, p.21

²² Active corruption is defined as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests.

Passive corruption is defined as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or a third party, or accepts a promise of such advantage, to act or to refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests.

²³ Commission Regulation (EC) 1681/94 of 11. July 1994; 12.7.94; p. 43

²⁴ Fraud shall mean any intentional act or omission relating to: the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; non disclosure of information in violation of a specific obligation with the same effect; the misapplication of such funds for purposes other than those for which they are originally granted.

²⁵ Irregularity shall mean any infringement of a provision of national or Community law, this Financing Memorandum or ensuing contracts, resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, by an unjustified item of expenditure. The term "Community law" in this context shall be defined as

Commission services without delay. Should there be no suspected or actual cases of fraud or irregularity to report, the Beneficiary Country shall inform the Commission of this fact within two months following the end of each quarter.

In case of irregularity or fraud, the Beneficiary Country shall make the necessary financial corrections required in connection with the individual irregularity. The corrections made by the Beneficiary Country shall consist in cancelling all or part of the Community contribution. The Community funds released in this way may be re-used by the NF for the purpose of the programme, in compliance with Art. 5 of the MoU on the National Fund.

7.3. Recovery of Funds in Case of Irregularity or Fraud

Any proven irregularity²⁶ or fraud²⁷ discovered at any time during the implementation of the programme or as the result of an audit will lead to the recovery of funds by the Commission.

If, after completing the necessary verifications, the Commission concludes that:

(a) the Beneficiary Country has not complied with the obligations to prevent, detect, and correct irregularities or

(b) the implementation of a project appears not to justify either part or the whole of the assistance allocated or

(c) there are serious failings in the management or control systems which could lead to irregularities,

the Commission may suspend further financing of the programme in question, and, stating its reasons, request that the Beneficiary Country submit comments and, where appropriate, carry out any corrections within a specified period of time.

If no agreement is reached by the end of the period set by the Commission and if the required corrections have not been made, the Commission may – taking into account any comments made by the Beneficiary Country – decide within three months to:

(a) reduce or cancel any payment for the programme in question, or

(b) make the financial corrections required by cancelling all or part of the assistance granted to the programme concerned.

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

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

the entirety of Community rules applicable between the Parties of the Financing Memorandum (e.g. the Europe Agreements, Framework Agreements, the MoU on the Establishment of the National Fund etc.)

²⁶ see definition above

²⁷ see definition above

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

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

8. VISIBILITY AND PUBLICITY

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

9. 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 Bulgaria, 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.

ANNEX D TO THE FINANCING MEMORANDUM

INFORMATION AND PUBLICITY FOR THE PHARE, ISPA AND SAPARD PROGRAMMES OF THE EUROPEAN COMMUNITIES
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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:

- Regulation (EEC) 1159/2000 Official Journal of the European Communities No L130/30, 31 May 2000;
- Commission Decision of 31 May 1994; Official Journal of the European Communities No L 152/39, 18 June 1994.

Specific provisions concerning ISPA are included in:

- Commission Decision of 22nd June 2001, Official journal of the European Communities No L.182/58

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.