

## FINANCING AGREEMENT<sup>1</sup>

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 Agreement. 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 Agreement 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 2005/017-586**

Title: **National Programme for Bulgaria in 2005 (Part II)**

Duration: **Until 30 November 2007**

### ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **10,797 M€** hereinafter referred to as "**THE EC GRANT**".

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<sup>1</sup> The Financing Agreement structure is as follows : 1. the cover pages 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).

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### ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available for contracting until **30 November 2007** subject to the provisions of this Agreement. 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 2008** with the exception of the projects *BG 2005/017-586.04.01: "Industrial zones development"* where the deadline for execution of contracts is **30 November 2009**<sup>2</sup>. 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. Disbursements of funds may continue for up to 12 months after the deadline for the execution of contracts to meet liabilities properly incurred through the execution of the contracts entered into under this programme. This Financing Agreement shall expire once those disbursements have been completed. All the funds which have not been disbursed by that time shall then 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 Plamen Oresharski**

Minister of Finance  
102 Rakovski St  
BG-1040 Sofia  
Bulgaria

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<sup>2</sup> Consistency between the main text of the FP (1<sup>st</sup> page) and the FM (1<sup>st</sup> page as well as in the 'Implementation Arrangements' chapter) must be ensured. The deadline for contracting and the deadline for execution of contracts should correspond accordingly.

ARTICLE 5 - NUMBER OF ORIGINALS

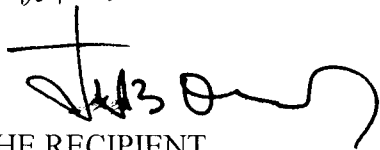
This Agreement is drawn up in duplicate in the English language.

ARTICLE 6 - ENTRY INTO FORCE

This Agreement 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 Agreement.

Done at Sofia  
Date 27.02.2006



for THE RECIPIENT

Plamen Oresharski  
Minister of Finance

Done at Sofia  
Date 27.02.2006



for THE COMMUNITY

Dimitris Kourkoulas  
Head of EC Delegation

Encl.

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

# ANNEX C TO THE FINANCING AGREEMENT

## National programme part II for Bulgaria in 2005

### 1. OBJECTIVES AND DESCRIPTION

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The Phare National Programme 2005 has been deployed according to the 6 overarching priorities that have been set for the MAP 2004-2006 as above mentioned. For the part II it concentrates on five sectoral objectives:

- *Objective 6 / Energy*
- *Objective 8 / JHA*
- *Objective 10 / Administrative reform and capacity*
- *Objective 11 / ESC*
- *Objective 12 / Other - UIBE*

Summary descriptions<sup>1</sup> of the individual projects grouped under the sectoral objectives are as follows:

#### **Objective 6: Energy**

|   |                           |
|---|---------------------------|
| <i>BG 2005/017-586.01.01: Implementation of the Directives 2003/54/EC</i> |                           |
| <i>Duration / Phase</i>   | <i>2004-2005 / Year 2</i> |
| <i>Twinning</i>   | <i>N/A</i>                |
| <i>Phare budget</i>   | <i>€ 2.475 M</i>          |
| <i>Implementing Agency</i>  | <i>CFCU</i>               |

The aim of this project is to contribute to the implementation of the requirements of the EU energy acquis Directive 2003/54/EC notably regarding Article 9 related to the duties of the Transmission System Operator (TSO). The main part of the project will be to provide an assistance to elaborate a Geographic Information System (GIS) based on the collection of relevant data by geodesic measurements.

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<sup>1</sup> Descriptions are indicative; some details may be changed

## **Objective 8: Justice and Home affairs**

|  |                           |
|--|---------------------------|
| <b><i>BG 2005/017-586.02.01: Further strengthening of the administrative capacity of Bulgarian police and providing conditions for application of the classified information protection law in the Public Administration of the Republic of Bulgaria</i></b> |                           |
| <b><i>Duration / Phase</i></b>   | <b><i>2005</i></b>        |
| <b><i>Twinning</i></b>   | <b><i>yes (€0.6M)</i></b> |
| <b><i>Phare budget</i></b>   | <b><i>€ 1.4 M</i></b>     |
| <b><i>Implementing Agency</i></b>  | <b><i>CFCU</i></b>        |

The aim of this project, is to further strengthen the security unit in the Ministry of Interior responsible for the implementation of the classified information protection policy of Bulgaria. The procedures, organisation, training and management systems and equipment will be modernized.

The project will contribute to achieve a higher effectiveness of police activities by adoption and implementation of the best practices in prevention and protection of Automated Information Systems (AIS) and public administration networks.

|  |                            |
|--|----------------------------|
| <b><i>BG 2005/017-586.02.02: Improving the standard and practices of policing at local level and enhancing the quality of its management</i></b> |                            |
| <b><i>Duration / Phase</i></b>   | <b><i>2005</i></b>         |
| <b><i>Twinning</i></b>   | <b><i>Yes (€1.0 M)</i></b> |
| <b><i>Phare budget</i></b>   | <b><i>€1.0 M</i></b>       |
| <b><i>Implementing Agency</i></b>  | <b><i>CFCU</i></b>         |

The aim of this project is to enhance the capacity of the Bulgarian police by the implementation of EU Acquis and best practices at local level, in the District Police Units (DPU). This will contribute to the improvement of police investigation methods at local level and to increase the quality of service delivered to the citizens by the DPU staff. This project support more widely the improvement of activities linked to the pre-trial phase.

### **Objective 10: Administrative Reform and Capacity**

| <b><i>BG 2005/017-586.03.01: Support to the Commission for personal data protection</i></b> |                            |
|---|----------------------------|
| <b><i>Duration / Phase</i></b>  | <b><i>2005</i></b>         |
| <b><i>Twinning</i></b>  | <b><i>yes (€ 0.7M)</i></b> |
| <b><i>Phare budget</i></b>  | <b><i>€ 1.2 M</i></b>      |
| <b><i>Implementing Agency</i></b>   | <b><i>CFCU</i></b>         |

The aim of this project is to strengthen the Commission for Personal Data Protection (CPDP) in accordance with the EU best practices. This project covers the lack identified in the 2004 Regular Report and reminded in the early warning letter sent in June by the EC. The project will address the needs either at the central level or in the six regional offices of CPDP.

### **Objective 11: Economic and Social Cohesion**

| <b><i>BG 2005/017-586.04.01: Industrial zones development</i></b> |  |
|---|--|
| <b><i>Duration / Phase</i></b>                                    | <b><i>2005-2006 / Year 1</i></b>                               |
| <b><i>Twinning</i></b>  | <b><i>N/A</i></b>  |
| <b><i>Phare budget</i></b>  | <b><i>€ 1.0 M</i></b>  |
| <b><i>Implementing Agency</i></b>                                 | <b><i>Ministry of Regional Development and Public Work</i></b> |

The aim of this project is to provide increased investment opportunities and favourable business environment in order to maximise direct foreign and domestic investments and foster economic development as part of Bulgaria's preparations for implementing EU cohesion policy upon accession.

This project will be implemented in two years. This first phase will include investigations on industrial zones development, defining criteria and selection of sites, in which infrastructural improvements are to be undertaken. Furthermore, a comprehensive inventory data-base will be prepared to register industrial zones locations and their profiles. This should increase the economic development potential.

| <b><i>BG 2005/017-586.04.02: Cluster development initiatives</i></b> |                                  |
|--|----------------------------------|
| <b><i>Duration / Phase</i></b>                                       | <b><i>2005-2006 / Year 1</i></b> |
| <b><i>Twinning</i></b>   | <b><i>N/A</i></b>                |
| <b><i>Phare budget</i></b>   | <b><i>€ 2.4 M</i></b>            |

|                            |                     |
|----------------------------|---------------------|
| <b>Implementing Agency</b> | Ministry of Economy |
|----------------------------|---------------------|

This project aims at increasing the level of competitiveness and innovation in the SME sector as a basis for sustainable and balanced development of the economy. In this regard, it has to be stressed that it fully corresponds to the third priority (SMEs development) of the Operational Programme “Increasing the competitiveness of Bulgarian economy” of the National Development Plan. It will support growth of existing or embryonic clusters of Bulgarian enterprises in order to improve their competitiveness. A Project Steering Committee (PSC) will be established in order to co-ordinate, assist and monitor project implementation activities

### **Objective 12: Other**

|  |                            |
|--|----------------------------|
| <b>BG 2005/017-586.05.01: Unallocated Institution Building Envelope (UIBE)</b> |                            |
| <b>Duration / Phase</b>  | <b>2004-2006 / Year 2</b>  |
| <b>Twinning</b>  | <b>Yes (possibilities)</b> |
| <b>Phare budget</b>  | <b>€ 1.322 M</b>           |
| <b>Implementing Agency</b>   | <b>CFCU</b>                |

This facility, will provide Institution Building support through assistance (twinning, twinning light, other form of technical assistance) to meet the requirements related to urgent and unforeseen needs identified in the course of the accession process. The current project is a top-up of the UIBE already financed in the NP 2005 part I.

This is particularly needed regarding the substantial number of requests and the need for further institutional support to be covered with a flexible and fast tool.

### **Lessons Learned**

This is a recall of the lessons learned already mentioned in the part I.

Experience with the implementation of Phare programmes in previous years and evaluation have led to a number of general lessons being learned. These lessons have been developed in the Country Interim Evaluation Review released in March 2004. Recommendations have been made according to the key lessons learned and taken into account:

*(i) The National Aid Co-ordinator should, as an urgent priority, develop a comprehensive, stable, and professionally staffed Phare monitoring system, and should ensure the availability of the necessary resources to operate the system.*

Accordingly, the NP 2004 and 2005 includes a project on “Strengthening of the Ministry of Finance”, not only regarding Phare funds but on global EU assistance, including Structural funds.

(ii) *The Bulgarian administration should develop its own training capacity and a systematic, long-term training programme to provide introductory and refresher training in core project skills, at regular intervals, for those involved in project design and management.*

Accordingly, most of the projects belonging to the multi-annual framework, include training components or similar actions.

(iii) *Given that the failure to make real progress in the area of civil service reform is one of the main reasons for the poor performance of Phare in Bulgaria since October 2001, the Commission Services should develop indicators of civil service stability and should consider including these as conditionalities in all future Phare assistance.*

Accordingly, all the projects presented in 2005 have been assessed, keeping in mind as far as possible the issue of the capacity of at least the Implementing Agencies (IAs). Around 70% of this year's budget will be managed by the CFCU which have been reinforced. In addition, the comprehensive overview of the Phare staff dedicated to the projects, by IAs has been required.

(iv) *In order to avoid a potential administrative crisis when Bulgaria joins the EU, the acceleration of basic civil service reform should be the main focus of Phare support in the short and medium-term. This will help to establish the necessary conditions for the effective and sustainable absorption and implementation of the acquis.*

In this regard, the NP 2004 part III presented in November 2004 to the PMC have focused on strengthening of the administrative network at the regional level, and at the training of senior civil servants at national level. The public administrative reform will focus this year on counteracting corruption in public administration.

(v) *The Commission Services should ensure that programme and project conditionalities are clearly and precisely defined as contractual obligations and it should enforce them without exception.*

This point has been done during the assessment of the projects 2005 by an iterative work between the NAC / Beneficiaries and the European Commission (both DG Enlargement and EC Delegation in Sofia) and Projects Fiches have been modified accordingly to include contractual conditionalities.

(vi) *The National Aid Co-ordinator should prioritise the monitoring of Phare preparatory projects in order to identify and rectify, at an early stage, potential problems in the preparatory projects.*

This is an issue that need continuous efforts. Anyway the funds have been made available in the multi-annual programme with specific and increased envelopes for Project Preparation Facility (PPF) and Unallocated Institution Building Envelope (UIBE).

(vii) *As grant schemes account for a significant and growing proportion of Phare funds in several sectors, the National Aid Co-ordinator should ensure that all Phare grant schemes are promptly followed by an independent ex-post analysis and that lessons learned are quickly and widely circulated in order to promote good practices and avoid the reoccurrence of problems.*

A close follow-up of grant schemes is ensured by the EC Delegation. The number of grant schemes has been limited and when including grant schemes components, the projects 2005 has been simplified as much as possible to ensure a faster implementation.



As a general preventive action, a careful follow-up of the implementation of projects by the means of Monthly meetings is carried by the ECD and updated procurement plans have been provided early this year by the Bulgarian authorities to the Commission. This allows to identify in advance risks of delays and to ask for the necessary remedial actions. More specific lessons relating to individual sectors, Ministries or project types have also been learned and are reflected in the design of individual project documents.

### **Overall programme conditionalities**

Before the Financing Agreement 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 Agreement 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 Agreement between the Commission and the Government of Bulgaria is signed, the National Aid Coordinator will satisfy the Commission that draft twinning contract, 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 contract shall be presented to the Commission Delegation for approval within three months of notification of selection of the twinning partner. If no draft contract 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 three months from the time the Financing Agreement is signed until the final date for contracting.

If these reviews indicate that by the first quarter of the final year for contracting (2007 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 2005

| No. | OBJECTIVE                                | Phare support |              |                        | Co-financing             |                                | TOTAL         |
|-----|--|---------------|--------------|------------------------|--------------------------|--------------------------------|---------------|
|     |  | IB            | INV          | Total Phare<br>(in €M) | Other<br>sources<br>(**) | National<br>public<br>fund (*) |               |
| 06  | Energy                                   | 0.00          | 2.475        | 2.475                  | 0.00                     | 0.825                          | 3.30          |
| 08  | Justice and Home<br>affairs              | 1.60          | 0.80         | 2.40                   | 0.00                     | 0.267                          | 2.667         |
| 10  | Administrative<br>reform and<br>capacity | 0.7           | 0.50         | 1.20                   | 0.00                     | 0.167                          | 1.367         |
| 11  | Economic and<br>Social cohesion          | 1.60          | 1.80         | 3.40                   | 0.00                     | 0.60                           | 4.0           |
| 12  | Other                                    | 1.322         | 0.00         | 1.322                  | 0.00                     | 0.00                           | 1.322         |
|     | <b>TOTAL</b>                             | <b>5.222</b>  | <b>5.575</b> | <b>10.797</b>          | <b>0.00</b>              | <b>1.859</b>                   | <b>12.656</b> |

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

(\*) Contribution from national, regional, local, municipal authorities, FIs loans to public entities, funds from public enterprises.

(\*\*) Private funds, FIs loans to private entities.

### 2.2. Principle of Co-Financing

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

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

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

### **3. 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 Regional Development and Public Works: BG 2005/017-586.04.01;
- Ministry of the Economy: BG 2005/017-586.04.02.

### **4. IMPLEMENTATION ARRANGEMENTS**

#### **4.1. Method of Implementation**

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

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

#### **4.2. General rules for Procurement**

Procurement shall follow the provisions of Part 2, Title IV of the Financial Regulation and Chapter 3 of Part 2, Title III of its Implementing Rules<sup>4</sup>, as well as the Commission Decision SEC (2003) 387/2<sup>5</sup>.

The Contracting Authorities shall also use the procedural guidelines and standard templates and models facilitating the application of the above rules provided for in the "Practical Guide to contract procedures financed from the general EC budget in

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<sup>2</sup> Council Regulation (EC, Euratom) 1605/2002 of 25 June 2002; OJ L 248; 16.9.2002; p. 1

<sup>3</sup> Council Regulation (EC) 1266/1999 of 21 June 1999; OJ L 161; 26.6.1999; p. 68

<sup>4</sup> Commission Regulation (EC; Euratom) 2342/2002 of 23. December 2002; OJ L 357; 31.12.2002; p.1 as amended by Commission Decision 2004/121 of 6 February 2004. OJ L 036, 07.02.2004 p 58

<sup>5</sup> Commission Decision SEC (2003) 387/2 on Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities in the context of co-operation with third countries, adopted on March 25, 2003

the context of external actions” (“Practical Guide”) as published on the EuropeAid website<sup>6</sup> at the date of the initiation of the procurement or grant award procedure.

### 4.3. Grant Schemes

For grant schemes the precise implementation arrangements will be specified in the relevant project fiches in line with the following principles:

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

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

The implementation of selected projects through provision of works, supplies and services, which are sub-contracted by the final beneficiaries of the individual grants shall be subject to the procurement rules 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 manner<sup>7</sup>, 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.

The financial commitments in Phare terms will be effected at the date of signature of the grant agreements by the competent PAO. The projects should be fully

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<sup>6</sup> current address: [http://europa.eu.int/comm/europeaid/tender/gestion/index\\_en.htm](http://europa.eu.int/comm/europeaid/tender/gestion/index_en.htm)

<sup>7</sup> see section 11 and Annex 4 of the 2005 Phare Programming Guide

implemented before the expiry date for contract execution of the corresponding Financing Agreement.

#### **4.4. Implementation Principles for Twinning Projects**

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

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

The twinning manual is available on the Website of DG ELARG at the following address: <http://europa.eu.int/comm/enlargement/pas/twinning/index.htm>.

The projects including a twinning component in this Financing proposal are:

- **BG 2005/017-586.02.01**: Further strengthening of the administrative capacity of Bulgarian police and providing conditions for application of the classified;
- **BG 2005/017-586.02.02**: Improving the standart and practices of policing at local level and enhancing the quality of its management;
- **BG 2005/017-586.03.01**: Support to the Commissison for personnal data protection.

## **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, ISPA and SAPARD, as well as the Structural and Cohesion Funds.

The NAO and the Project Authorising Officer (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the instructions of the Commission. They will also ensure that all contracts required to implement the Financing Agreement are awarded using the procedures and standard

documents for External Actions in force at the time of implementation, and that EU state aid rules are respected.

### 5.1.2. *Project Size*

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

In accordance with the Phare Guidelines, some specific objectives may require smaller projects. The main reason is that this programme aims at covering as far as possible the remaining gaps before accession, by targeted projects:

- (i) Justice and home affairs: BG 2005/017-586.02.01 and BG 2005/017-586.02.02;
- (ii) Administrative reform and capacity : BG 2005/017-586.03.01.

Other reasons are :

a) Projects focused primarily on institution building but where the total value of the annual project is greater than € 2 million (UIBE BG 2005/017-586.05.01).

b) Projects constituting part of a wider multi-annual project where the total value of the multi-annual project is greater than € 2 million (Economic and Social Cohesion : BG 2005/017-586.04.01)

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

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

(2) All contracts must be executed by no later than November 30, 2008. For the following project only, the contracts must be executed by no later than November 30, 2009 :

- BG 2005/017-586.04.01: Economic and Social Cohesion – Industrial zones development.

*This “Structural Funds-type” project requires first a clear identification of the industrial sites and then the assistance to the management of the selected sites. This will need a longer period of implementation to provide the full services.*

In no case can the contracting period for projects implemented under this programme exceed three years after the date of the global commitment (Art. 166 (2) FR). Budgetary commitments which have not given rise to payments during three years counted from the date of the legal commitment will be de-committed (Art. 77 (3) FR).

(3) Under DIS, a complete tender dossier must be submitted to the Delegation for approval by no later than 6 months after the signature of the Financing Agreement, In case of non-compliance, the Beneficiary Country will inform the JMC, which may

recommend reallocation or cancellation of funds in accordance with Art. 5 of the MoU on the National Fund.

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

The procedures for environmental impact assessment as set down in the EIA-directive<sup>8</sup> 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 documented<sup>9</sup>.

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats-directive must be documented<sup>10</sup>.

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.

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.

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<sup>8</sup> DIR 85/337/EEC; OJ L 175/40; 5.7.1985, as amended

<sup>9</sup> in Annex EIA to the corresponding investment project fiche.

<sup>10</sup> in Annex Nature Conservation to the corresponding investment project fiche

According to Articles 3 & 4 of the implementing rules of the Financial Regulation accrued interest is the property of the Beneficiary Country. The NAO must however ensure that the accrued interest is actually registered in its entirety as revenue in the national budget. Furthermore the NAO will ensure a regular reporting of the interest via Perseus.

#### 5.2.2. *Payments to the National Fund*

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

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

A final fourth payment will be made when 70 % of the total budget in force<sup>17</sup> has been disbursed and all contracts have been signed.

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

#### 5.2.3. *Payments from the National Fund to the Implementing Agency*

The National Fund will make payments to IAs, including the CFCU, in accordance with Implementing Agreements signed between the NF and the IAs/CFCUs. Bank

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<sup>11</sup> representing pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

<sup>12</sup> excluding the amount foreseen for Community Programmes

<sup>13</sup> representing interim payments or the renewal of pre-financing as defined in Art. 105 (1) of the Implementing Rules to the Financial Regulation

<sup>14</sup> excluding the amount for Community Programmes

<sup>15</sup> excluding the amount for Community Programmes

<sup>16</sup> excluding the amount for Community Programmes

<sup>17</sup> excluding the amount for Community Programmes



accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of financial management of the sub-programme in line with Art. 13 of the MoU on the National Fund.

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

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

N.A.

*5.2.5. Payments in Case of Contractual Retention Clauses*

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

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

*5.2.6. Closure of Expenditure and Clearance of Accounts*

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

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

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

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

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

Following the decision about amounts to be excluded, all ineligible expenditure will be recovered without prejudice to the treatment of irregularities and subsequent financial corrections stipulated below.

The funds will be recovered either by direct reimbursement from the NF or by compensation in accordance with Community rules.

## **6. MONITORING AND EVALUATION**

Project implementation will be monitored through the Joint Monitoring Committee (JMC). It includes the NAO, the NAC and the Commission services. The JMC will meet at least once a year to review all Phare funded programmes in order to assess their progress towards meeting the objectives set out in the Financing Agreements and the Accession Partnership. The JMC may recommend a change of priorities and/or reallocation of Phare 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 this programme will be subject to interim (either centralised or decentralised) and/or ex post evaluations.

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

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

All Financing Agreements as well as all resulting contracts are subject to supervision and financial control by the Commission (including the European Anti-Fraud Office)

and audits by the European Court of Auditors. As long as EDIS is not yet applicable to the Implementing Agencies in the Beneficiary Country, this includes measures such as ex-ante verification of tendering and contracting carried out by the Delegation in the Beneficiary Country.

In order to ensure the efficient protection of the financial interests of the Community, the Commission (including the European Anti-Fraud Office) may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (EC, Euratom) 2185/96<sup>18</sup>.

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

Without prejudice to the responsibilities of the Commission and the European Court of Auditors<sup>19</sup>, 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 provide adequate assurance of the correctness, regularity and eligibility of claims on Community assistance.

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

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.

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<sup>18</sup> Council Regulation (EC, Euratom) 2185/96 of 11. November 1996, OJ L 292; 15.11.1996; p. 2

<sup>19</sup> as referred to in the General Conditions relating to the Financing Memorandum" attached to the Framework Agreement

<sup>20</sup> Commission Regulation (EC, Euratom) 438/2001 of 2 March 2001, OJ L 63; 3.3.2001, p.21

### 7.2.2. *Preventive Measures*

The Beneficiary Country shall take any appropriate measure to prevent and counter active and passive corruption<sup>21</sup> practises at any stage of the procurement procedure or grant award procedure, as well as during the implementation of corresponding contracts.

The authorities of the beneficiary country, including the personnel responsible for the implementation of the programme, shall also undertake to take whatever precautions are necessary to avoid any risk of conflict of interest, and shall inform the Commission immediately of any such conflict of interest or any situation likely to give rise to any such conflict.

### 7.2.3. *Anti-Fraud Measures and Corrective Actions*

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

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94<sup>22</sup>.

In particular, all suspected or actual cases of fraud<sup>23</sup> and irregularity<sup>24</sup> as well as all measures related thereto taken by the national authority must be reported to the Commission services without delay. Should there be no suspected or actual cases of

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<sup>21</sup> 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.

<sup>22</sup> Commission Regulation (EC) 1681/94 of 11. July 1994; 12.7.94; p. 43

<sup>23</sup> 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.

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

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 irregularity<sup>25</sup> or fraud<sup>26</sup> 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 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

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<sup>25</sup> see definition above

<sup>26</sup> see definition above

the NAO does not repay the amount due to the Community, the Beneficiary Country shall refund this amount to the Commission.

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

#### **8. VISIBILITY AND PUBLICITY**

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

#### **9. SPECIAL CONDITIONS**

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