

FINANCING MEMORANDUM

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

on the one part, and

The Government of **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 Agreements between THE COMMISSION and THE RECIPIENT, namely :

1. Framework Agreement between the Republic of Bulgaria and EBRD, dated 15 June 2001.
2. Framework Agreement between the Community and the Republic of Bulgaria from 04 April 1995,

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: **2003/005-867**

Title: **2003 Phare Special Programme to Support the Decommissioning of Nuclear Power Plants and Consequential Measures in the Energy Sector in Republic of Bulgaria**

Objectives:

1. Conclusion of the "Contribution Agreement" with EBRD;
2. Project Phare BG 2003/005-867.02 "Assistance to Bulgarian NRA in the development of requirements and procedures for decommissioning of Kozloduy Units 1 and 2, follow-up".

Duration:

**Until 30 November 2011 for objective 1 and,
until 30 November 2007 for objective 2.**

ARTICLE 2 - COMMITMENT OF THE COMMUNITY

The financial contribution of THE COMMUNITY is fixed at a maximum of **61.9 million €** hereinafter referred to as "THE EC GRANT", of which Objective 1 – conclusion of the Contribution Agreement with the EBRD, worth 60 million €, and Objective 2, worth 1.9 million €.

ARTICLE 3 - DURATION AND EXPIRY

For the present MEASURE, THE EC GRANT is hereby available until **30 November 2004** for contracting objective 1 (conclusion of the Contribution Agreement with the EBRD) and **30 November 2005** for contracting objective 2 (*Project BG 2003/005-867.02: Assistance to Bulgarian NRA in the development of requirements and procedures for decommissioning of Kozloduy Units 1 and 2, follow-up*), 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 2011** for contracts related to objective 1, and **30 November 2007** for the ones related to objective 2.

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:

Mr Dimitris Kourkoulas
Head of European Commission Delegation in Bulgaria
9 Moscovska Street
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 Street
BG-1040 Sofia
Bulgaria

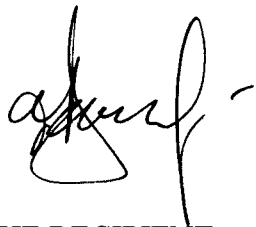
ARTICLE 5 - NUMBER OF ORIGINALS

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

ARTICLE 6 - ENTRY INTO FORCE

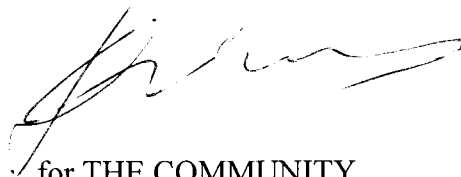
This Memorandum shall enter into force on the date on which it has been signed by both parties. No expenditure incurred before this date is eligible for the EC GRANT. The Annexes shall be deemed an integral part of this Memorandum.

Done at Sofia
Date 29/06/2004



for THE RECIPIENT
Mr Milen Veltchev
Minister of Finance
Sofia, Bulgaria

Done at Sofia
Date 13 04 2004



for THE COMMUNITY
Mr Dimitris Kourkoulas
Head of European Commission
Delegation to Bulgaria

Encl.

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

ANNEX C

1. OBJECTIVES AND DESCRIPTION

General objectives

The overall objective of the 'Special Programme' is to assist Bulgaria's preparation for membership of the EU in relation to the nuclear and energy sectors, especially by facilitating the preparation and implementation of Bulgaria's early closure decision of these units and the short-term priorities of the Accession Partnership in these areas. This assistance is used to finance a range of projects in relation to the decommissioning process and the energy sector.

This is achieved through support to the decommissioning of the designated units at the Kozloduy Nuclear Power Plant, and measures required for the necessary restructuring, upgrading and modernisation of the energy production, transmission and distribution sectors, and improving energy efficiency.

The 'Special Programme' contributes to the international efforts to share the financial implications of early closure with the Bulgarian authorities.

Specific objectives

Objective 1:

Contribution to the "Kozloduy International Decommissioning Support Fund"

The purpose of the Fund is to finance or co-finance, through specific grants, two main areas of work:

- (i) decommissioning activities concerning the units 1 to 4 of the KNPP (nuclear projects "window");
- (ii) measures which are consequential to the decision taken to close and decommission the units 1 to 4 and which would assist the necessary restructuring, upgrading and modernisation of the energy production, transmission and distribution sectors as well as to improve energy efficiency (non-nuclear projects "window");

through the provision of goods, works and services.

Kozloduy International Decommissioning Support Fund:

The Kozloduy International Decommissioning Support Fund was established by the EBRD's Board of Directors approval on 12 June 2000. It is governed by the Assembly of Contributors providing strategic guidance, in a manner compatible with the rules. The EBRD, as Fund Manager, provides technical, project management, financial, legal and administrative services. Project financing is conditional upon the Assembly of Contributors being satisfied that Bulgaria is in compliance with its closure commitments. Any member of the EBRD and any interested country may contribute to the Fund. Several countries have pooled their contributions. The minimum individual initial contribution is €1.5 million.

Contributions may be earmarked for one of the purposes of the Fund but not for specific projects.

The EBRD's procurement policies and rules apply to the use of funds with the general rule that procurement is limited to the countries of the contributors or the countries of operations of the EBRD.

The Fund remains in force for a period of ten years unless terminated earlier by a decision of the Assembly. The Assembly may also extend the Fund for an additional period, if required to complete the objectives of the Fund.

The Rules of the Fund are attached in Annex 1.

On 15 June 2001, the Kozloduy International Decommissioning Support Fund held its first Assembly of Contributors to kick off the Fund's activities. A Framework Grant Agreement was signed in June 2001 between the EBRD and the Republic of Bulgaria and the work plan and first budget were endorsed. The Bulgarian Parliament ratified the framework agreement in March 2002. With numbers increasing, currently 8 Contributors support the fund, mainly Member States of the European Union as well as other European States. As the representative of the European Community, the largest contributor to the Fund, the European Commission chairs the Assembly of Contributors. Since 2001, the Assembly has met twice per year.

Activities of the Fund:

To date, € 97 million have been committed under 5 Grant Agreements by the Assembly of Contributors of the Fund. They cover the following projects:

Grant Agreement No. 1:

- "Project Management Unit" (contracted, ongoing)

Grant Agreement No. 2:

- "Design and implementation of a dry spent fuel storage facility" (tendering underway)

Grant Agreement No. 3:

- "Implementation and management of electricity metering devices" (contracted, ongoing)

Grant Agreement No. 4:

- "Implementation and management of the Sofia district heating network" (contracted, ongoing)

Grant agreement No. 5:

- "Design, supply and implementation of projects within the Initial Decommissioning Investment Package for Kozloduy NPP"

A 6th Grant Agreement is currently under discussion with the Bulgarian authorities on the Establishment of Energy Efficiency projects and a Renewable Energy Credit Line Framework Facility.

Objective 2:

Assistance to Bulgarian Nuclear Regulatory Authority (NRA) in the development of requirements and procedures for decommissioning of KNPP Units 1 and 2, follow-up

The purpose of this project is to contribute to the strengthening of nuclear safety during the decommissioning process of units 1 and 2:

- by providing assistance to the Bulgarian Nuclear Safety Authority (NRA) in real-time licensing of decommissioning activities on KNPP units 1 & 2 and related facilities;
- by transferring know-how to the local Technical Safety Organisations (TSOs) supporting the safety authority on a long-term perspective;
- and by providing input to ensure consistency with Western European approaches to decommissioning.

Overall programme conditional ties

The granting and disbursement of assistance under the ‘Special Programme’ will be strictly parallel with a timely process of preparation and implementation of the definitive closures of the four designated units of the KNPP in line with the commitments taken by Bulgaria. Clear provisions to this end have also been included in the Fund rules stating that financing will be conditional upon the Assembly being satisfied that the recipient country is in compliance with its closure commitment.

2. BUDGET (million Euro)

Objective	Phare Funding			IFI	Total
	Institution Building (IB)	INV	Phare Total I+IB		
Objective 1: Kozloduy International Decommissioning Support Fund¹			60		60
Objective 2: Assistance to the Nuclear Regulatory Authority	1.9		1.9		1.9
TOTAL	1.9		61.9		61.9

A first contribution of €25 million to the ‘Kozloduy International Decommissioning Support Fund’ had been decided in the year 2000. An institution building project to provide support to the Bulgarian nuclear safety regulator in relation to decommissioning work was also provided for.

A further contribution of €70 million to the ‘Kozloduy International Decommissioning Support Fund’ was decided in the year 2001. No contribution was decided in 2002, pending decision of the Bulgarian Government on the early closure of Units 3 and 4.

Linked activities

In preceding years, Phare financial assistance has supported the elaboration of decommissioning study for units 1&2 and has provided support for safety programmes in the Kozloduy nuclear power plant and for strengthening of the Nuclear Regulatory Authority.

In the non-nuclear field, Phare support has been directed towards supporting the Bulgarian authorities in their reform of the energy sector, in particular preparation to the energy internal market of gas and electricity and strengthening of the national energy regulator.

¹ Note that as a payment to the EBRD this is neither IB nor investment as understood by PHARE.

At the occasion of the Conference on Accession to the European Union of 18 November 2002, the EU took note of Bulgaria's statement that it expects that the Community will continue to provide financial assistance in support of the closure and decommissioning of certain units of the KNPP and is ready to consider this matter. Within this context, the European Commission and Bulgaria have set up a working group on evaluating the consequences and needs, as far as economic, environmental and social aspects are concerned, resulting from the early closure.

Co-Financing

The co-financing practice regarding the special decommissioning support programmes is based on the Commission Decision of 6 September 2002, C(2002)3303-2, on the "Review of the Guidelines for Implementation of the PHARE Programme in Candidate Countries for the Period 2000-2006 in application of Article 8 of Regulation 3906/89", which specifies that programmes related to nuclear issues are governed by a special regime. Hence the principles governing the Commission's policy on co-financing Community-supported investment projects are not being applied to the Special Programmes.

3. IMPLEMENTATION

The funds allocated to support activities in Bulgaria will be made available by means of the "Kozloduy International Decommissioning Support Fund" on the one hand (Objective 1), and through a Phare Project (Objective 2) on the other.

3.1 Objective 1: Project BG 2003/005-867.01: Contribution to the 'Kozloduy International Decommissioning Support Fund'

The funds allocated to support activities in Bulgaria under this project will be made available to Bulgaria by means of the "Kozloduy International Decommissioning Support Fund".

Kozloduy International Decommissioning Support Fund

The appropriations for the "Kozloduy International Decommissioning Support Fund" will be implemented in joint management with the European Bank for Reconstruction and Development (EBRD), in accordance with the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) № 1605/2002 of June 2002. To this end, the Commission will conclude a grant agreement with the EBRD ("Contribution Agreement").

The EBRD has been appointed Manager of the Fund and entrusted with a number of implementation tasks. These tasks are laid out in the "Rules of the "Kozloduy International Decommissioning Support Fund". They ensure that the Commission takes part in the selection of projects and the ensuing funding decisions through its representation in the governing body of the fund ("Assembly of Contributors"). The Rules also establish, amongst other things, the Fund Manager's general obligations with regard to administrative and operational support and reporting to the contributors.

Rules on the eligibility of contractors from European Union Member States and Partner States shall be respected.

Phare contributions to the Fund will be discussed in *tranches* in line with the relevant provisions of the "Contribution Agreement".

The "Contribution Agreement" must be concluded by 30 November 2004. The execution of contracts procured by the Kozloduy International Decommissioning Support Fund must be concluded by 30 November 2011.

3.2 Objective 2: Project BG 2003/005-867.02: Assistance to Bulgarian NRA in the development of requirements and procedures for decommissioning of Kozloduy Units 1 and 2; follow-up

The appropriations for this project will be implemented under decentralised management in accordance with the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) № 1605/2002 of 25 June 2002).

This project follows up on the assistance delivered in 2000 (BG 0009.02, currently under implementation) in the development of requirements and procedures for decommissioning of Units 1 and 2 of the Kozloduy Nuclear Power Plant.

All contractual and financial issues will be of the responsibility of CFCU, which will be the Implementing Agency.

NRA will appoint a high official as Senior Programme Officer. The NRA will provide necessary office space, equipment and general administrative support for a successful implementation of the project.

The EU regulatory authorities – which have been involved in the identification of the assistance needs under this project – will be informed as appropriate of implementation progress.

a) Financial and Project Management by the Candidate Country

The National Aid Co-ordinator (NAC) will have overall responsibility for programming and monitoring of Phare programmes. The National Authorising Officer (NAO) and the Project Authorising Officers (PAO) will ensure that the programmes are implemented in line with the procedures laid down in the EDIS Accreditation Decision and/or the DIS Manual as well as the other instructions of the Commission, and that all contracts required to implement the Financing Memorandum are awarded using the procedures and standard documents defined and most recently published by the European Commission for the implementation of External Actions. The NAC and the NAO shall be jointly responsible for co-ordination between Phare (including Phare CBC), ISPA and SAPARD as well as the Structural and Cohesion Funds.

The National Fund (NF) in the Ministry of Finance, headed by the NAO, will supervise the financial management of the Programme, and will be responsible for reporting to the European Commission. The NAO shall have overall responsibility for financial management of the Phare funds. He shall ensure that the Phare rules, regulations and procedures pertaining to procurement, reporting and financial management as well as Community state aid rules are respected, and that a reporting and project information system is functioning. This includes the responsibility of reporting all suspected and actual cases of fraud and irregularity. The NAO shall have the full overall accountability for the Phare funds of a programme until the closure of the programme.

b) Project size

A single contract is expected with a total value of **around € 1,900,000**.

c) Deadline for contracting and execution of contracts; programming deadline

The contract must be concluded by 30 November 2005. In no case can the contracting period exceed 3 years after the date of the global commitment². Execution of the contract must end

² In case of extension

by 30 November 2007. Budgetary commitments which have not given rise to payments during this period will be decommitted.

d) Clearance of Accounts Procedure and Recovery of Funds

A clearance-of-accounts procedure in line with Art. 53 para 5 of the Financial Regulation³ and Art. 42 of the Implementing Rules to the Financial Regulation⁴ will be put in place.

Any proven irregularity or fraud⁵ discovered at any time during the implementation of the programme will lead to the recovery of funds by the Commission.

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

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

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

- (a) reduce or cancel any advance;
- (b) cancel all or part of the assistance granted to the measure.

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

Any funds not used by the expiry date of the programme will be recovered by the Commission. A final written declaration with supporting documentation shall be issued by the NAO two months after all payments have been made, showing the total amount contracted and disbursed. A final bank reconciliation showing the existing balances in the NF/IA/CFCU shall also be enclosed.

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

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

³ Council Regulation 1605/2002 of 25 June 2002

⁴ Commission Regulation 2342/2002 of 23 December 2002

⁵ As defined under number 8a (Audit and Anti-fraud Measures by the Candidate Countries) of this document

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

e) Financial Flows

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

aa) Transfer of Funds to the National Fund

A first transfer of up to 20% of the funds to be managed locally, representing pre-financing⁶ 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). The provisions foreseen in articles 2 and 13 of the MoU on the NF must also be met. Furthermore, the NAO must submit to the Commission the designation of the 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 will be carried out.

Two further transfers of up to 30% each of the funds to be managed locally will be made. The second transfer will be triggered when 5% of the budget has been disbursed by the IAs and the CFCU. The third transfer may be requested when 35% of the total budget in force has been disbursed. A fourth transfer will be made when 70% of the total budget in force is disbursed and when all expenditure has been incurred (i.e. fully contracted). No later than 2 months after all payments have been made the National Fund will submit a final declaration of expenditure, which will trigger a balancing operation of all transfers against final certified expenditure incurred, which at that point will be equal to payments made (closure of expenditure⁷).

Exceptionally the NAO may request payment of more than the percentages mentioned above in accordance with the procedures laid down in the aforesaid Memorandum of Understanding. Save for express prior authorisation from the Commission HQs, no interim payments may be made if the trigger points mentioned above have not been respected.

bb) Transfer of Funds to the Implementing Agencies

The National Fund will transfer funds to IAs, including the Central Financing and Contracting Unit (CFCU), in accordance with Financing Agreements (FAs) signed between the NFs and the IAs/CFCU where applicable. Bank accounts for sub-programmes shall be opened in the name of the relevant Implementing Agency/CFCU in charge of the financial administration of the sub-programme in line with Art. 13 of the MoU on the Establishment of the National Fund.

Under DIS, each individual FA will 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 transfer of funds from the NF to the CFCU/IA. The CFCU and the IAs must each be headed by a Programme Authorising Officer (PAO) appointed by the NAO after consultation with the

⁶ as defined in Art. 81.1.b.i of the Financial Regulation

⁷ as defined in Art. 105 of the Implementing Rules

NAC. The PAO will be responsible for all the operations carried out by the relevant CFCU/IA.

For those contracts with 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 Implementing Agency before the official closure of the programme. The Implementing Agency assumes full responsibility of depositing the funds until final payment is due and for ensuring that said funds will only be used to make payments related to the retention clauses.

The Implementing Agency further assumes full responsibility towards the contractors for fulfilling the obligations related to the retention clauses. Funds not paid out to the contractors after final payments have been settled shall be reimbursed to the Commission. An overview of the use of funds deposited on warranty accounts - and notably of the payments made out of them - and of interests accrued will annually be provided by the NAO to the Commission.

cc) Interest

In principle, all bank accounts⁸ will be interest bearing. Interest will be reported to the European Commission. If the Commission so decides, on the basis of a proposal from the NAO, interest may be reinvested in the Programme.

dd) Note

The Central Financial Co-ordination Unit (CFCU) of the Ministry of Finance will be the Implementing Agency for programme BG 2003/005-867.02

f) Environment Impact Assessment and Nature Conservation

The procedures for environmental impact assessment as set down in the EIA-directive⁹ will be fully applicable for all investment projects under PHARE. If the EIA-directive has yet been fully transposed, the procedures should be similar to the ones established in the above-mentioned directive. If a project would fall within the scope of annex I or annex II of the EIA Directive, the carrying out of the EIA-procedure must be documented¹⁰

If a project is likely to affect sites of nature conservation importance, an appropriate assessment according to Art. 6 of the Habitats – Directive¹¹ must be documented¹².

All investment projects shall be carried out in compliance with the relevant Community environment 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.

4. MONITORING AND EVALUATION

4.1. Kozloduy International Decommissioning Support Fund

The EBRD will prepare reports and technical documentation, including an Annual Report, as required, on the operation of the Fund. These reports will provide a comprehensive overview

⁸ in particular, but not exclusively, accounts run by the NF, the CFCU and IAs

⁹ DIR 85/337/EEC; OJ L 175/40; 5.7.1985; as amended by DIR 97/11/EEC; OJ L 73/5; 14.3.1997

¹⁰ in **Annex EIA** to the corresponding investment project fiche

¹¹ DIR 92/43/EEC; OJ 206/7; 22.7.1992

¹² in **Annex Nature Conservation** to the corresponding investment project fiche

of the implementation of the Fund's work programme (approved by the Assembly of Contributors) including its relation to compliance with closure commitments, the conditionalities set out in the project grant agreements, the administration of specific projects and eventual problems of relevance to the programme.

4.2 Assistance to Bulgarian NRA in the development of requirements and procedures for decommissioning of Kozloduy Units 1 and 2, follow-up

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

For the PHARE programme, the JMC will be assisted by Sectoral Monitoring Sub-Committees (SMSC) which will include the NAC, the PAO of each Implementing Agency (and of the CFCU where applicable) and the Commission Services. The SMSC will review in detail the progress of each programme, including its components and contracts, assembled by the JMC into suitable monitoring sectors. Each sector will be supervised by one SMSC on the basis of regular monitoring reports produced by the Implementing Agency, and interim evaluations undertaken by independent evaluators. The SMSC will put forward recommendations on aspects of management and design, ensuring these are effected.

The SMSC will report to the JMC, to which it will submit overall detailed opinions on all Phare financed programmes in its sector.

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

5. AUDIT AND ANTI-FRAUD MEASURES

Internal and external auditors of the EBRD shall audit the financial statements of the Fund. A Contribution Agreement has been signed and further specifies audit requirements in accordance with the European Commission's general provisions and in line with the practice established for similar fund arrangements with the EBRD.

a) By the Candidate Countries¹³

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

Appropriate financial control shall be carried out by the competent national financial control authority with respect to the implementation of the programme. Beneficiary countries shall ensure investigation and satisfactory treatment of suspected and actual cases of fraud and irregularity following national or Community controls.

Irregularity shall mean any infringement of a provision of national or Community law¹⁴, this Financing Memorandum or ensuing contracts or resulting from an act or omission by an

¹³ in accordance with the rules set down in Art. 54 of the Financial Regulation

¹⁴ defined as the entirety of Community rules applicable between the Parties of the Financing Memorandum (for example the Europe Agreements, the Framework Agreement, the Memorandum of Understanding on the Establishment of the National Fund etc.).

economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.

Fraud shall mean any intentional act or omission relating to:

- (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities;
- (ii) non-disclosure of information in violation of a specific obligation, with the same effect;
- (iii) the misapplication of such funds for purposes other than those for which they are originally granted.

The national authorities shall ensure the functioning of a control and reporting mechanism equivalent to the one foreseen in Commission Regulation 1681/94¹⁵.

In particular, all suspected and actual cases of fraud and irregularity as well as all measures related thereto taken by the national authority must be reported to the Commission services without delay. Should there be no suspected or actual cases of fraud and irregularity to report, the beneficiary country shall inform the Commission of this fact within two months following the end of each quarter.

b) By the Commission

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

In order to ensure efficient protection of the financial interests of the Community, the Commission may conduct on-the-spot checks and inspections in accordance with the procedures foreseen in Council Regulation (Euratom, EC) No. 2185/96¹⁶.

The accounts and operations of the National Fund, and, where applicable, the CFCU and all relevant Implementing Agencies may be checked at the Commission's discretion by an outside auditor contracted by the Commission without prejudice to the responsibilities of the Commission and the European Union's Court of Auditors as referred to in the "General Conditions relating to the Financing Memorandum" attached to the Framework Agreement.

6. VISIBILITY AND PUBLICITY

The EBRD will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all KIDSF - related activities financed from the programme. This will be done in close liaison with the Commission. The Fund Rules ensure that the necessary measures are taken to ensure appropriate publicity for the EU for all activities that it finances.

¹⁵ OJ L 178; 12.7.94; p. 43-46

¹⁶ OJ L 292; 15.11.1996; p. 2-5

For the NRA - related project, the appropriate Programme Authorising Officer will be responsible for ensuring that the necessary measures are taken to ensure appropriate publicity for all activities financed from the programme. This will be done in close liaison with the Commission Delegation. Further details are set down in the Annex "Visibility/Publicity" (*enclosed*).

7. SPECIAL CONDITIONS

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

INFORMATION AND PUBLICITY FOR THE PHARE, ISPA AND SAPARD

PROGRAMMES OF THE EUROPEAN COMMUNITIES

1. Objective and scope

Information and publicity measures concerning assistance from the European Community Phare Programme are intended to increase public awareness and transparency of EU action and to create a consistent image of the measures concerned in all applicant countries. Information and publicity shall concern measures receiving a contribution from the Phare Programme.

2. General principles

The appropriate Programme Authorising Officer in charge of the implementation of Financing Memoranda, and other forms of assistance shall be responsible for publicity on the spot. Publicity shall be carried out in co-operation with the EC Delegations, which shall be informed of measures taken for this purpose.

The competent national and regional authorities shall take all the appropriate administrative steps to ensure the effective application of these arrangements and to collaborate with the EC Delegations on the spot.

The information and publicity measures described below are based on the provisions of the regulations and decisions applicable to the Structural Funds. They are:

- 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.